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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

TAMMY WILHITE,

Plaintiff,

v.

PAUL LITTLELIGHT, LANA THREE IRONS, HENRY PRETTY ON TOP, SHANNON BRADLEY, and CARLA CATOLSTER

Defendants.

TAMMY WILHITE,

Plaintiff,

vs.

UNITED STATES,

Defendant.

Case No. CV-19-20-BLG-SPW-TJC

Consolidated with:
CV-19-102-BLG-SPW-TJC

INDIVIDUAL DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS FOR FAILURE TO STATE A VALID RICO CLAIM

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INTRODUCTION

Plaintiff's Response Brief merely presents conclusory statements that fail to elevate her alleged wrongful termination into a criminal racketeering matter. It provides zero credible argument or authority which should enable continuance of the defective civil RICO claim.

To proceed with her purported civil RICO claim, the Parties agree Plaintiff must allege (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (5) causing injury to plaintiff's business or property. Dkt. 73, p. 3. Plaintiff failed to effectively state these elements in her Complaint.

Plaintiff named Individual Defendants for alleged actions undertaken outside of the course and scope of their employment with the Awe Kualawaache Care Center ("Care Center"). Dkt. No. 1, ¶¶ 4-8. Plaintiff does not allege any purported RICO violations were carried out for the benefit of the Care Center, but rather in an individual capacity for the benefit of Individual Defendants. However, Plaintiff fails to allege or explain how Individual Defendants would benefit or that they formed a criminal enterprise outside the scope of their employment, or otherwise.

Plaintiff alleges Defendant Catolster told other Care Center staff members not to report alleged sexual conduct between her aunt, a Care Center employee, and a Care Center resident. Dkt. No. 1, ¶¶ 10-12. Plaintiff alleges Defendant Catolster

did so to protect her aunt and to prevent or delay Care Center staff from reporting a potential federal offense, the sexual contact, to law enforcement. Dkt. No. 1, ¶ 12. Plaintiff does not allege any of the Individual Defendants engaged in, or facilitated, any inappropriate sexual conduct. Dkt. No. 1, ¶¶ 10-12. Plaintiff does not allege the Care Center employee who allegedly engaged in sexual contact is part of the alleged criminal enterprise. *Id.*

Plaintiff alleges Defendant Catolster, individually, instructed the landlord of an apartment rented by the Care Center to exclude Plaintiff from the apartment. Dkt. No. 1, ¶ 17. Plaintiff does not allege the other named Individual Defendants participated in locking Plaintiff out of temporary housing or that the action was undertaken as part of an enterprise. Dkt. No. 1. Plaintiff does not allege the other Individual Defendants had any motivation to protect Defendant Catolster's aunt, or had any personal motivation to terminate Plaintiff's employment. Dkt. 1.

Plaintiff alleges Individual Defendants conspired to terminate Plaintiff's employment. Dkt. No. 1, ¶ 20. Other than the conclusory allegation, Plaintiff alleges no other facts regarding an alleged conspiracy among Individual Defendants or what criminal enterprise they were engaged in. Plaintiff does not allege her termination from employment was carried out with any individual purpose, benefit, intent. Dkt. No. 1.

Plaintiff does not allege Individual Defendants acted with a common purpose. The alleged, underlying, potentially criminal act, the sexual contact, was undertaken by a non-party Care Center employee and there are no allegations that Individual Defendants had any role in that conduct.

Even under the most liberal review of Plaintiff's Complaint, which has been refined over the course of three separate complaints in two lawsuits, it is clear Plaintiff failed to state a valid civil RICO claim.

ARGUMENT

I. Plaintiff Does Not Allege a Criminal Enterprise Existed.

Plaintiff admits the only association of the Individual Defendants as an alleged "enterprise" is a result of their employment with the Care Center.[1] *See* Dkt. 73, pp. 4-5; Dkt. 1. The Court should pay close attention to this admission. Either, (1) the Individual Defendants were acting in their official capacity and enjoy sovereign immunity as employees and/or officials of the Care Center; or (2) they have no association in an individual capacity, which is necessary for Plaintiff's purported RICO action. Plaintiff cannot have it both ways.

The Care Center was dismissed from *Wilhite v. Awe Kualawaache Care Ctr.*, No. CV 18-80-BLG-SPW, 2018 WL 9561646 (D. Mont. Dec. 20, 2018) ("*Wilhite*

[1] Based on this admission, Individual Defendants again reserve their right to seek dismissal on the basis of tribal sovereign immunity.

I") on the basis of tribal sovereign immunity. Even if the Care Center were named in this lawsuit, it is not a criminal enterprise. Plaintiff does not allege otherwise. *See* Dkt. 1. Individual Defendants were also dismissed from *Wilhite I* on the basis of sovereign immunity as Care Center employees and/or officials who were acting in their official capacity. In *Wilhite I,* Plaintiff asserted a civil RICO claim against the Individual Defendants based on the same facts presented by Plaintiff in this action. Plaintiff makes no other allegations that suggest Individual Defendants were engaged in a criminal enterprise beyond their mere employment with the Care Center. Plaintiff must allege facts that demonstrate Individual Defendants were engaged in a "criminal enterprise" to survive dismissal. To do so, Plaintiff must allege facts demonstrating they agreed to act with criminal purpose for their individual benefit.

To establish the existence of an "enterprise," a plaintiff must allege an association among the defendants beyond involvement in the predicate acts at issue. "The 'enterprise' is not the "pattern of racketeering activity"; it is an entity separate and apart from the pattern of activity in which it engages. The existence of an enterprise at all times remains a separate element which must be proved." *United States v. Turkette*, 452 U.S. 576, 583, 101 S. Ct. 2524, 2529 (1981).

Beyond the alleged predicate acts, Plaintiff does not allege Individual Defendants formed an enterprise with a criminal purpose. Her complaint fails on

this basis alone. Plaintiff does not allege Individual Defendants were acting in concert to molest Care Center patients or to violate any other criminal laws subject to RICO. Dtk. 1. Plaintiff merely infers Defendant Catolster acted to protect her aunt, another Care Center employee who allegedly engaged in sexual contact with a Care Center resident. Plaintiff does not allege any of the other Individual Defendants were acting with any criminal purpose that would benefit them in some appreciable way in any capacity. Dtk. 1.

In *Freeney v. Bank of America,* the Court dismissed the plaintiff's civil RICO claims for failure to state a claim. The Court found there were no allegations that the purported criminal enterprise would provide "any meaningful benefit that accrued to [the defendants]." *Freeney v. Bank of Am. Corp.*, No. CV1502376MMMPJWX, 2015 WL 12535021, at *34 (C.D. Cal. Nov. 19, 2015). As a result, the Plaintiff had not effectively pled a civil RICO claim. *Id.*

Similarly, here, Plaintiff has not alleged the alleged predicate acts of (1) terminating Plaintiff's employment, (2) and taking away her employment benefit of temporary lodging, benefited Individual Defendants in any meaningful way or furthered any alleged criminal activity they were engaging in as an enterprise. Beyond the alleged predicate acts, Plaintiff does not allege the existence of a criminal enterprise. Plaintiff must allege more than predicate acts to establish an "enterprise."

In *Lopez v. Dean Witter Reynolds, Inc.*, the Court determined the plaintiffs had not plead facts sufficient to proceed with civil RICO claims. *Lopez v. Dean Witter Reynolds, Inc.*, 591 F. Supp. 581, 589 (N.D. Cal. 1984). The Court found significant that the defendant organization was not "organized solely for [a criminal] purpose." The *Lopez* Court ultimately concluded plaintiffs failed to allege a "criminal RICO enterprise [was] involved" because the organization at issue "was not organized solely for criminal purposes." *Lopez,* 591 F. Supp. at 589.

Plaintiff does not allege Individual Defendants were organized for a criminal purpose. Plaintiff does not allege they were organized at all. Nor does she allege the Care Center was organized for a criminal purpose. In the absence of such allegations, Plaintiff's compliant fails as a matter of law.

Individual Defendants are sued in an individual capacity, for actions taken outside the course and scope of their employment. Even if Plaintiff alleged the Care Center was a criminal enterprise (which she does not), Plaintiff must find some other association or activity among them to effectively allege the formation of a separate RICO enterprise. She does not. Dkt. 1.

"A RICO 'enterprise' is 'any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity[.]'" *Gianelli v. Schoenfeld*, No. 221CV00477JAMKJNPS, 2021 WL 4690724, (E.D. Cal. Oct. 7, 2021), report and

recommendation adopted, No. 221CV0477JAMKJNPS, 2021 WL 5154163, *11 (E.D. Cal. Nov. 5, 2021) (citing 18 U.S.C. § 1961(4)). "An associated-in-fact enterprise is 'a group of persons associated together for a common purpose of engaging in a course of conduct.'" *Turkette*, 452 U.S. at 583. "To allege an associated-in-fact enterprise, a plaintiff must allege three basic elements: (1) a common purpose; (2) an ongoing organization, whether formal or informal; and (3) that the enterprise functions as a continuing unit." *Gianelli,* *11 (citing *United States v. Christensen*, 828 F.3d 763, 780 (9th Cir. 2015); *Odom v. Microsoft Corp*., 486 F.3d 541, 52-53 (9th Cir. 2007)) (emphasis added).

"[I]n an associated-in-fact enterprise…a defendant must still have 'participate[d], directly or indirectly, in the conduct of such enterprise's affairs' for RICO liability to attach." *Gianelli,* *11 (citing 18 U.S.C. § 1962(c)). "As the Supreme Court explained…the statutory language requires that a defendant 'have some part in directing the enterprise's affairs.'" *Gianelli,* *11 (citing *Reves v. Ernst & Young*, 507 U.S. 170, 185 (1993) (emphasis in original) ("'to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs, …one must participate in the operation or management of the enterprise itself").

Plaintiff does not allege Individual Defendants acted with common purpose. Dkt. 1. She does not allege they are part of an ongoing organization. *Id.* She does not allege they function as a continuing unit. *Id.*

In *Gianelli,* a factually similar case, the plaintiff pursued civil RICO claims against individual defendants for retaliatory employment actions. *See Gianelli*. The defendants were associated with one another as a result of their employment. *Id.* The defendants moved for dismissal for failure to state a claim because no criminal enterprise was alleged. *Id.*

The *Gianelli* Court found that other than being employed by the same employer, the "[p]laintiff never explain[ed] what 'common purpose' might have bound [the individually named defendants] in any potential associated-in-fact enterprise." *Gianelli,* *12 (citing Odom, 486 F.3d at 552 (requiring allegations showing that defendants "have associated for 'a common purpose of engaging in a course of conduct'"). The Court found significant that various of the named individual defendants acted "with rather distinct purposes." *Gianelli,* *12.

The *Gianelli* Court observed the "allegedly retaliatory employment actions" did not form the "criminal enterprise" itself and the timing of those actions "reinforce[d] their lack of connection to [a criminal enterprise]." *Gianelli,* *12. The *Gianelli* Court found the alleged retaliation was sporadic at best. *Gianelli,* *12 (citing *Baumer v. Pachl*, 8 F.3d 1341, 1344 (9th Cir. 1993) (defendant's involvement was toward the end of the fraudulent scheme and was sporadic at best). The *Gianelli* Court found the complaint defective because it had "absolutely no description of

how [the individual defendants] had any part in directing the enterprise's affairs." *Gianelli,* *12-13 (citations omitted).

The *Gianelli* Court held "[t]o the extent plaintiff intended to identify some other enterprise consisting of [the individual defendants] alone [other than their association as employees of the same organization], with some other purpose, the current complaint fail[ed] to allege any facts supporting the existence of such secondary enterprise." *Gianelli,* *13. For these reasons, the *Gianelli* Court dismissed the civil RICO claim.

To effectively allege a criminal enterprise, there must be allegations of an arrangement or agreement to participate in a common "scheme." *Baumer*, 8 F.3d at 1345–47 (citing *United States v. Gonzalez,* 921 F.2d 1530, 1539 (11th Cir.) ("[a] RICO conspiracy requires proof of an agreement to violate a substantive RICO provision."), *cert. denied,* 502 U.S. 860, 112 S.Ct. 178, 116 L.Ed.2d 140 (1991) (emphasis added); *United States v. Cauble,* 706 F.2d 1322, 1341 n. 64 (5th Cir.1983), (agreement is "vital" to RICO conspiracy claim), *cert. denied,* 465 U.S. 1005, 104 S.Ct. 996, 79 L.Ed.2d 229 (1984); *United States v. Bright,* 630 F.2d 804, 834 (5th Cir.1980) (there "must be proof that the individual, by his words or actions, objectively manifested an agreement to participate, directly or indirectly, in the affairs of an enterprise, through the commission of two or more predicate crimes.")). "A RICO conspiracy 'requires the assent of each defendant…although it is not

necessary that each conspirator knows all of the details of the plan or conspiracy.'" *Baumer*, 8 F.3d at 1346–47 (internal citation omitted) (emphasis added)).

In *Baumer,* as here, "the bare allegations of the complaint provide[d] no basis to infer assent to contribute to a common enterprise;" therefore, dismissal [was] appropriate. 8 F *Baumer*,.3d at 1346–47 (citing *United States v. Valera,* 845 F.2d 923, 929 (11th Cir.1988) ("[a]ssociation, alone, with the enterprise is, of course, insufficient for violation of RICO: an individual must *agree* to participate in the affairs of the enterprise.") (italic in original, underline emphasis added), *cert. denied,* 490 U.S. 1046, 109 S.Ct. 1953, 104 L.Ed.2d 422 (1989). A "complaint is legally deficient with regard to the § 1962(d) conspiracy-based claims [where] it fails to allege adequately that [the defendants] acted in the capacities of *conspirators."* *Baumer*, 8 F.3d at 1347 (emphasis in original).

Plaintiff does not allege Individual Defendants engaged in a criminal enterprise outside of the two predicate acts or the fact that they shared a common employer. Plaintiff admits Individual Defendant board members did not agree or conspire to lock Plaintiff out of the temporary housing apartment. Dkt. 73, p. 6. Plaintiff merely alleges they potentially ratified that action as a result of her termination, as it was an employment benefit. *Id.;* Dkt. 1. Plaintiff concedes the alleged lock-out occurred without the Individual Defendant board members' participation as they only learned of it after Plaintiff filed a grievance. *Id.* Plaintiff's

termination from employment did not facilitate the lock-out, but rather made it a moot point.

Plaintiff failed to sufficiently allege the existence of a criminal enterprise. In the absence of this necessary element, Plaintiff's civil RICO claim is not sustainable.

II. Plaintiff Failed to Plead a "Pattern of Racketeering Activity."

Plaintiff would have the Court believe a single alleged instance of patient abuse by a non-party, coupled with her employment termination and resulting cease of the employment benefit of temporary employee housing, is enough to thrust her alleged wrongful termination into the throws of organized crime and racketeering. How absurd.

While at least two predicate acts of racketeering activity are required under RICO, "[t]o plead a pattern of racketeering activity, plaintiffs must allege…that [the predicates] amount to or pose a threat of continued criminal activity." *Comm. to Protect our Agric. Water v. Occidental Oil & Gas Corp.*, 235 F. Supp. 3d 1132, 1177 (E.D. Cal. 2017) (citation omitted). Plaintiff must show "a relationship between the [alleged] predicates and of [any] threat of continuing activity." *Id.* (citing *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239, 109 S. Ct. 2893 (1989). There must also be allegations of participation in the two predicate acts. *Staich v. Scharzenegger*, No. CIVS-04-2167DFLDAD P, 2005 WL 1828804, at *3 (E.D. Cal. July 25, 2005).

Plaintiff does not, and cannot in good conscious, allege the single act of alleged patient abuse by a non-party, her termination from employment, and the resulting termination of employee benefits, poses any continued threat of criminal activity by Individual Defendants. Dkt. 1. Plaintiff does not allege the non-party allegedly engaging in sexual conduct is part of the alleged enterprise. Dkt. 1. Plaintiff does not identify any threat of ongoing criminal activity. Dkt. 1; Dkt 73, pp. 4-5. Plaintiff does not allege the Individual Defendant Board members participated in locking her out of her temporary housing apartment. Dkt. 1. Plaintiff's claim thus fails.

Plaintiff does not allege Individual Defendants are mobsters. Plaintiff understands her only basis to maintain federal court jurisdiction and circumvent tribal sovereign immunity is to shove her square peg employment termination into the round hole of organized crime. This Court should not encourage Plaintiff's artful pleading tactics which are meant to game the jurisdictional interplay between federal and tribal courts.

RICO's principal purpose is to "deal with the infiltration of legitimate businesses by organized crime." *Turkette,* 452 U.S. 576, at 593 (emphasis added). "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." *H.J. Inc.,* 492 U.S. at 242 (emphasis in original).

(emphasis added). "[A] valid RICO claim is not presented unless "the *threat* of continuity is demonstrated." *Id.* (italic emphasis in original).

Plaintiff does not allege a "threat of continuity." It is common sense that the "threat of continuity" is not even a consideration for Plaintiff's alleged wrongful termination. Even if there was an alleged instance of abuse by Defendant Catolster's aunt, and Plaintiff was terminated because she reported the abuse, such allegations do not create a "threat of continuity." The only contacts Individual Defendants have among themselves is employment or former employment with the Care Center. Without an ongoing association posing a threat of continued criminal activity, Plaintiff's civil RICO claim fails as a matter of law.

III. Plaintiff Should Not be Granted Leave to Amend.

Plaintiff suggests in her Response Brief, that she should be granted leave to amend her facially defective Complaint, despite Plaintiff not filing a motion for leave to amend. Dkt. 73, p. 11. Individual Defendants object to Plaintiff's suggestion and apparent request to amend the Complaint. Plaintiff has now filed three Complaints asserting civil RICO violations against the Individual Defendants: two complaints in *Wilhite I* and the Complaint in this action. Plaintiff has had ample opportunity to develop her claim. Individual Defendants do not believe the Complaint can be cured to effectively state any claim for relief against them in this

federal forum. As such, they respectfully request the Court deny Plaintiff leave to amend the Complaint.

A district court has broad discretion to deny leave to amend due to "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment." *Leadsinger, Inc. v. BMG Music Pub.,* 512 F.3d 522, 532 (9th Cir.2008) (emphasis added); *see also Mir v. Fosburg,* 646 F.2d 342, 347 (9th Cir.1980) ("a district court has broad discretion to…deny leave to amend, particularly where the court has already given the plaintiff one or more opportunities to amend to allege federal claims.").

"A district court's decision to deny leave to amend is reviewed for an abuse of discretion." *Bryant v. City of Pomona*, No. 21-55502, 2022 WL 4363430, at *1 (9th Cir. Sept. 21, 2022). "An 'outright refusal to grant the leave without any justifying reason appearing for the denial' is an abuse of discretion.'" *Id.* (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Furthermore, "a district court's denial of leave to amend without explanation is subject to reversal." *Bryant,* at *1 (citation omtted).

Plaintiff's suggestion that leave to amend must be given as a matter of right is not supported even by the case law she relies upon. The common law of the Ninth Circuit actually supports denial of leave to amend in this situation.

In *Mulato v. Wells Fargo Bank, N.A.,* the Court denied a motion for leave to amend after a Rule 12(b)(6) motion to dismiss was filed. *Mulato v. Wells Fargo Bank, N.A.,* 76 F. Supp. 3d 929, 942–43 (N.D. Cal. 2014). The *Mulato* Court observed the plaintiff had not identified "facts that were not available to her at the time she filed the first amended complaint or opposed defendants' motions." *Id.* (emphasis added). The *Mulato* Court also took issue with the motion for leave to amend because it was filed after a motion to dismiss was filed and briefed. *Id.* The Court denied leave to amend, noting that under such circumstances, undue delay and prejudice to the defendants would result. *Mulato,* 76 F. Supp. 3d at 943.

The Court in *Hinton* held leave may be denied where the plaintiff "failed to show that she could not have discovered the proposed amended material before the motion was submitted." *Hinton v. Pac. Enterprises*, 5 F.3d 391, 395–96 (9th Cir. 1993). In *Marroquin v. OneWest Bank,* the Court denied leave to amend where the party "failed to provide the Court with any facts or argument that indicate leave to amend would not be futile." *Marroquin v. OneWest Bank, FSB*, No. CV124688JFWFFMX, 2012 WL 12904071, at *1 (C.D. Cal. July 12, 2012). Leave to amend is properly denied where the Court determines the "allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Marroquin,* *1 (citing *Abagninin v. AMVAC Chemical Corp.*, 545 F.3d 733, 742 (9th Cir. 2008); *Deutsch v. Turner Corp.*, 324 F.3d 692, 717–718 (9th Cir. 2003)).

Plaintiff's request to amend is intended to delay dismissal of her insufficient claim against Individual Defendants. To allow amendment without any supporting explanation would prejudice Individual Defendants because it substantially limits their ability to respond.

Furthermore, Local District Court Rule 15.1 requires that "[w]hen a party moves for leave to amend…a pleading, the proposed pleading must be attached to the motion as an exhibit." L.R. 15.1 (emphasis added). "Where a local rule requires that a party seeking leave to amend attach a proposed pleading, the Ninth Circuit has held that district courts do not abuse their discretion by denying leave to amend based on the party's failure to attach a proposed amended complaint." *Boulton v. Am. Transfer Servs., Inc.*, No. 14CV00175-GPC-RBB, 2014 WL 3849915, at *2 (S.D. Cal. Aug. 5, 2014) (citing *Gardner v. Martino,* 563 F.3d 981, 991 (9th Cir.2009) (additional citation omitted) (emphasis added)). Where a "motion to amend violate[s] the local rules, …the district court may in its discretion deny the[] motion on that basis alone." *Ward v. Circus Circus Casinos, Inc.,* 473 F.3d 994, 1000 (9th Cir. 2007) (citation omitted).

Plaintiff has filed now three complaints against Individual Defendants asserting a civil RICO claim. Plaintiff would like to file a fourth complaint without (1) any demonstration there are additional facts to support her claim that were previously unavailable to her, (2) any reason for the significant delay in seeking

amendment, (3) any explanation why the three prior complaints were insufficient, (4) any other explanation regarding why amendment is required, other than to avoid dismissal, and (5) submitting a proposed amended complaint.

Plaintiff provides no argument or explanation regarding how amendment can cure her facially defective Complaint. Plaintiff does not identify any additional facts that could salvage her purported civil RICO claim. Plaintiff has not satisfied Local Rule 15.1 by submitting a proposed amended complaint. L.R. 15.1.

If there were additional facts Plaintiff could have alleged, she would have in one of her three prior complaints. Individual Defendants have been dragged into two separate lawsuits and have responded to three prior complaints over the course of more than four (4) years. The Court should not provide Plaintiff another opportunity to further fancify the underlying facts of her civil RICO claim for a fourth time.

Individual Defendants were held to enjoy sovereign immunity in *Wilhite I* for actions taken in their official capacity. Plaintiff has merely rehashed her official capacity claims from *Wilhite I* in this lawsuit, slapped an "individual capacity" label on them to circumvent sovereign immunity, and now wishes to continue to prejudice Individual Defendants through more creative pleading to their exclusive prejudice.

Plaintiff's request for leave to amend only comes after the Motion to Dismiss was filed and after Plaintiff realized her purported civil RICO claim is facially

defective. The Court should not condone undue delay and prejudice to Individual Defendants by allowing a futile amendment, especially where Plaintiff cannot articulate any valid basis for amendment and have not satisfied the procedural requirements.

IV. Individual Defendants have Not Violated Rule 12.

The instant Motion to Dismiss was filed by Individual Defendants at the invitation of the Court. Dkt 55, p. 11, ft. nt. 4 ("If Defendants wish to contest the sufficiency of the RICO Allegations, they may file an appropriate motion, giving Plaintiff the opportunity to respond."). Moreover, this Court previously issued a similar ruling in this litigation on this same issue. Dkt. 20, pp. 12-14 (Where a litigant does not file successive Rule 12(b)(6) motions for the purposes of delay or any other strategically abusive reason, the motion should be considered at the Court's discretion).

Individual Defendants filed this 12(b)(6) Motion to Dismiss at the Court's invitation and not for an improper purpose. Individual Defendants should be free to seek resolution of their defenses as a matter of law to avoid needless litigation where the claim against them can be resolved in advance of trial. The instant Motion addresses a legal issue that has not been briefed previously and should be addressed

in advance of trial. The Court should disregard Plaintiff's arguments regarding successive dispositive motions and resolve this Motion to Dismiss on the merits.

CONCLUSION

For the reasons stated in Individual Defendant's Opening Brief and herein, Individual Defendants respectfully request the Court grant their Motion and dismiss Plaintiff's civil RICO claim.

DATED this 13th day of December, 2022.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By */s/ Evan M.T. Thompson*
Evan M.T. Thompson
Michael L. Rausch

Attorneys for Individual Defendants

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(d)(2)(E), I certify that Individual Defendants' Brief In Support Of Motion To Dismiss For Failure To State A Valid Rico Claim, is double spaced, is a proportionately spaced 14 point typeface, and contains 4,188 words.

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December, 2022, a true copy of the foregoing was served:

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