IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

LEONID GOLDSTEIN	§	
	§	
PLAINTIFF	§	
	§	
VS.	§	CIVIL ACTION NO. 5:16-CV-00211-C
	§	
CLIMATE ACTION NETWORK, ET AL.	§	JURY
	§	
DEFENDANTS	§	

THE CONSULTATIVE GROUP ON BIOLOGICAL DIVERSITY CORP.'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS

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I. INTRODUCTION

On September 12, 2016, Plaintiff Leonid Goldstein filed a 69-page complaint against the Consultative Group on Biological Diversity Corp. ("CGBD") and 38 other named defendants asserting causes of action for racketeering and conspiracy in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). ECF 1. Plaintiff's Complaint alleges that the named defendants are members of a global conspiracy perpetuating the idea of climate change in an alleged "criminal scheme" that he refers to as the "Climate Alarmism Enterprise." ECF 1, ¶ 2. As evidenced in his Complaint, Plaintiff does not believe carbon-dioxide emissions are causing global warming or climate change. *Id*. Rather than voice his disbelief in the public marketplace of ideas, Plaintiff brought this lawsuit. Plaintiff's Complaint appears to be nothing more than an attempt to register his own views on climate change and harass organizations and individuals that may have a different view.

CGBD is an organization that has a vision to support a just, healthy, and sustainable future for all life on earth through an effective philanthropic sector. Its mission is to support and grow a community of biodiversity grantmakers who will pursue complementary and collaborative strategies. To achieve its mission, CGBD is committed to sharing knowledge and strategies; building partnerships; identifying needs and emerging issues; and creating a forum for leadership.

Plaintiff's Complaint should be dismissed because it is frivolous on its face and fails to state a cognizable claim under RICO as a matter of law. Additionally, Plaintiff's Complaint represents an improper attempt to silence constitutionally protected speech by nonprofit environmental groups and the entities that fund them. In sum, Plaintiff's Complaint fails on numerous levels and should be dismissed for the following reasons:

a. The Court lacks personal jurisdiction over CGBD and the other named

defendants;

b. Venue is improper; and

c. Plaintiff fails to state a cognizable claim under RICO insofar as:

i. Plaintiff's claims seek to prohibit speech that is protected by the First Amendment;

ii. Plaintiff's claims are barred by RICO's 4-year statute of limitations;

iii. Plaintiff lacks standing to sue under § 1964(c) of RICO; and

iv. Plaintiff has not plausibly alleged any predicate acts of racketeering.

II. ARGUMENT AND AUTHORITIES

A. Plaintiff's Complaint should be dismissed for lack of personal jurisdiction.

Pursuant to Federal Rule of Civil Procedure 12(b)(2), Plaintiff's Complaint should be dismissed because Plaintiff fails to set forth facts that establish personal jurisdiction in this Court over any of the defendants. While RICO provides for nationwide service of process, 18 U.S.C. § 1965(b), Plaintiff must establish the Court has personal jurisdiction over at least one of the defendants engaging in the alleged conspiracy. *Rolls-Royce Corp. v. Heros, Inc.*, 576 F. Supp. 2d 765, 779–80 (N.D. Tex. 2008); *see also Monkton Ins. Servs. v. Ritter*, 768 F.3d 429, 431 (5th Cir. 2014) (plaintiff bears the burden of establishing a prima facie case of personal jurisdiction). Plaintiff fails to satisfy his burden, and thus, the exercise of personal jurisdiction over CGBD or any of the defendants would violate the defendants' due-process rights.

Texas's long-arm statute authorizes the exercise of personal jurisdiction over a nonresident defendant to the extent allowed by the Due Process Clause. *McFadin v. Gerber*, 587 F.3d 753, 759 (5th Cir. 2009); *see also Flores v. Koster*, Civ. No. 3:11-CV-0726-M-BH, 2013 WL 506555, at *3 (N.D. Tex. Jan. 14, 2013). To satisfy due process, Plaintiff must first show that the nonresident defendant purposefully availed itself of the benefits and protections of the forum

state by establishing "minimum contacts" with the forum state. *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945). Second, Plaintiff must show that the exercise of jurisdiction over the nonresident defendant will not offend "traditional notions of fair play and substantial justice." *Id.*; *see also, Asahi Metal Indus. Co. v. Superior Court of Ca., Solano Cnty.*, 480 U.S. 102, 113 (1987). The "minimum contacts" prong of the inquiry may be further subdivided into contacts that give rise to "specific personal jurisdiction" and those that give rise to "general personal jurisdiction." *WNS, Inc. v. Farrow*, 884 F.2d 200, 202 (5th Cir. 1989). General jurisdiction will attach if the nonresident defendant's contacts are both "continuous and systematic." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415-16 (1984); *Bullion v. Gillespie*, 895 F.2d 213, 216 (5th Cir. 1990). Specific jurisdiction attaches when the nonresident defendant's contact with the forum state arises from, or is directly related to, the cause of action. *Helicopteros*, 466 U.S. at 414 n. 8; *Bullion*, 895 F.2d at 216.

1. CGBD and the other named defendants are not subject to general personal jurisdiction in Texas.

Plaintiff has failed to carry his burden of establishing CGBD or the other named defendants are subject to general personal jurisdiction in Texas. First, Plaintiff makes no specific claims as to CGBD's contacts with Texas and further fails to demonstrate how CGBD or any of the named defendants have any "affiliations with [Texas that] are so continuous and systematic as to render [it] essentially at home in [Texas]." *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 432 (5th Cir. 2014). Rather, in his Complaint, Plaintiff acknowledges that CGBD is headquartered in San Francisco, California, ECF 1, ¶ 19, and states that "almost all [defendants] are headquartered either abroad, in DC, New York, or California." ECF 1, ¶ 46.

In *Hawkins v. Upjohn Co.*, the Eastern District of Texas found plaintiff's complaint was devoid of any allegation that the RICO defendants had continuous and systematic contacts with

Texas. 890 F. Supp. 601, 607 (E.D. Tex. 1994). First, there was no significant reference to Texas in the plaintiff's complaint other than the claim that the alleged conspiracy affected people in Texas. *Id*. And second, none of the RICO defendants were residents of Texas, none worked in Texas, and none had an agent in Texas. *Id*. The *Hawkins v. Upjohn Co.* case is similar to this case because Plaintiff's Complaint is by and large devoid of any reference to Texas other than his bare allegations that certain people and companies were affected in Texas by the defendants' alleged racketeering. *Id*.; *compare to* ECF 1, ¶¶ 164-169; 173-174. Further, none of the defendants are residents of Texas. ECF 1, ¶¶ 15-39.

Although Plaintiff contends two defendants (Greenpeace, Inc. and Greenpeace Fund, Inc.) are licensed to do business and solicit donations "in many states . . . including Texas," ECF 1, ¶ 25, this Court has held that "registration to do business in Texas, without more, does not suffice to establish general jurisdiction." *Fiduciary Network, LLC v. Buehler*, 3:15-CV-0808, 2015 WL 2165953, at *6 (N.D. Tex. May 8, 2015) (citing *Wenche Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 183 (5th Cir. 1992). Further, the solicitation of donations from Texas does not establish that any of the defendants had a business presence in Texas to confer general jurisdiction. *See Am. Univ. Sys., Inc. v. Am. Univ*., 858 F. Supp. 2d 705, 714 (N.D. Tex. 2012) (Court lacked general personal jurisdiction despite evidence that the university employed Texas residents, conducted recruiting and alumni events in Texas, and solicited funds from Texas residents); *see also Access Telecom, Inc. v. MCI Telecomms. Corp*., 197 F.3d 694, 717–18 (5th Cir. 1999) (finding no general jurisdiction even though defendant's revenues derived from Texas residents totaled millions of dollars a month). Accordingly, Plaintiff's Complaint does not support general personal jurisdiction over CGBD or any of the named defendants.

2. CGBD and the other named defendants are not subject to specific personal jurisdiction in Texas.

To establish specific jurisdiction over the defendants, Plaintiff must show: (1) the defendants purposefully directed activities at Texas and (2) Plaintiff's claims stem from alleged injuries that arise out of or relate to the defendants' activities directed at Texas. *Rolls-Royce*, 576 F. Supp. 2d at 786.

Plaintiff's Complaint wholly fails to allege any facts supporting the exercise of specific personal jurisdiction because Plaintiff fails to state how any defendant purposely directed activities to Texas and how Plaintiff's alleged injuries stemmed from any defendants' alleged contact with Texas. Rather, Plaintiff's Complaint is comprised of bare allegations that the "Climate Alarmism Enterprise" and Texas are somehow connected. *See* ECF, ¶¶ 164-169; 173-175. Plaintiff's vague and conclusory allegations offer no basis to support the exercise of specific personal jurisdiction over the defendants. *See Rolls-Royce*, 576 F. Supp. 2d at 786. Further, the Fifth Circuit has expressly found that a defendant's activities will not be considered directed towards a forum state simply because the plaintiff alleged injury in Texas to Texas residents without establishing minimum contacts. *Panda Brandywine Corp. v. Potomac Elec. Power Co*., 253 F.3d 865, 869-70 (5th Cir. 2001); *see also Walden v. Fiore*, 134 S. Ct. 1115, 1125 (2014) ("mere injury to a forum resident is not a sufficient connection to the forum").

Accordingly, Plaintiff's Complaint does not support specific personal jurisdiction over CGBD or any of the named defendants.

B. Plaintiff's Complaint should be dismissed for improper venue.

Pursuant to Federal Rule of Civil Procedure 12 (b)(3), Plaintiff's Complaint should be dismissed because Plaintiff fails to set forth facts demonstrating this district is the proper venue.

Venue in this district is improper under both the general venue statute, 28 U.S.C. § 1391 (2012), and the civil RICO venue provision, 18 U.S.C. § 1965 (a).

Under 28 U.S.C. § 1391(b), venue is proper in a judicial district: (1) where any defendant resides; (2) where a "substantial part of the events or omissions" giving rise to the claim occurred; or (3) where "any defendant may be found." Under 18 U.S.C. § 1965 (a), venue is proper in any "district in which [the defendant] resides," or where the defendant "is found, has an agent, or transacts his affairs." Corporate defendants are deemed to reside wherever they are "subject to the court's personal jurisdiction with respect to the civil action in question." 28 U.S.C. § 1391(c)(2.

As stated above, none of the defendants reside in Texas or are subject to personal jurisdiction with respect to Plaintiff's claims. Further, Plaintiff fails to allege any substantial part of the events giving rise to the claims occurred in Texas—Plaintiff's Complaint only alleges vague harm in Texas, which is not sufficient to establish venue. *See Bigham v. Envirocare of Utah, Inc.*, 123 F. Supp. 2d 1046, 1049 n. 2 (S.D. Tex. 2000). Finally, Plaintiff's Complaint does not allege any defendant "[may be] found, has an agent, or transacts his affairs" in this district. *See Shuman v. Computer Associates International, Inc.*, 762 F. Supp. 114, 116 (E.D. Pa. 1991) ("The term 'is found' has been construed to mean presence and continuous local activity."); *Gatz v. Pensoldt*, 271 F. Supp. 2d 1143, 1158 (D. Neb. 2003) (The term 'transacts his affairs' has been interpreted to mean that the defendants "regularly transact business of a substantial and continuous character within the district."). Therefore, Plaintiff's Complaint should be dismissed due to lack of proper venue in this District. *See* Fed. R. Civ. P. 12(b)(3).

C. Plaintiff fails to state a cognizable claim under RICO.

To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain enough facts to state a claim that is "plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

A claim is facially plausible when it asserts facts that allow the Court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This determination is context-specific and requires the Court to draw upon its own experience and common sense. *Id.* at 679.

A "civil RICO claim must involve: (1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise." *Calcasieu Marine Nat'l Bank v. Grant*, 943 F.2d 1453, 1461 (5th Cir. 1991) (citing 18 U.S.C. § 1962 (a)–(d)). Plaintiff asserts the defendants violated § 1962(c), (a), and (d) of RICO. The predicate acts that allegedly comprise the defendants pattern of racketeering activity are the same for each count and include: retaliation against witness(es) in violation of 18 U.S.C. § 1513 (ECF 1, ¶¶ 91-97); tampering with a witness in violation of 18 U.S.C. § 1512 (ECF 1, ¶¶ 98-115); bribery in violation of 18 U.S.C. § 201 and various state codes (ECF 1, ¶¶ 116-143); and embezzlement from pension and welfare funds in violation of 18 U.S.C. § 664 (ECF 1, ¶¶ 144-155).

Plaintiff's Complaint should be dismissed because: (1) Plaintiff's claims seek to prohibit speech that is protected by the First Amendment; (2) Plaintiff's claims are barred by RICO's 4-year statute of limitations; (3) Plaintiff lacks standing to sue under § 1964(c) of RICO; and (4) Plaintiff's Complaint fails to allege any act that actually constitutes a predicate act of racketeering.

1. Plaintiff's claims seek to prohibit speech that is protected by the First Amendment.

Plaintiff fails to state a claim under civil RICO because his case represents an extraordinary attempt to silence First Amendment-protected speech by nonprofit environmental groups and the entities that fund them regarding climate change. In *New York Times Co. v.*

Sullivan, the United States Supreme Court reaffirmed the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks . . ." 376 U.S. 254, 270 (1964).

According to the Supreme Court of the United States, speech on public issues occupies the "highest rung of the hierarchy of First Amendment values" and is entitled to special protection. *Snyder v. Phelps*, 562 U.S. 443, 444 (2011). Although the boundaries of what constitutes speech on matters of public concern are not well defined, the Supreme Court has said that speech is of public concern when it can "be fairly considered as relating to any matter of political, social, or other concern to the community" or when it "is a subject of general interest and of value and concern to the public." *Id*. A statement's arguably "inappropriate or controversial character . . . is irrelevant to the question whether it deals with a matter of public concern." *Id*. Further, "[s]peech does not lose its protected character . . . simply because it may embarrass others or coerce them into action." *N.A.A.C.P. v. Claiborne Hardware Co*., 458 U.S. 886, 910 (1982); *see also Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971).

Plaintiff's Complaint attempts to curtail the defendants' speech on environmental issues—specifically climate change. Plaintiff's attempt to stifle the defendants' protected speech is inappropriate as the issue of climate change is an emerging issue of public concern in the United States. *See Climate Change Indicators in the United States*, United State Environmental Protection Agency, 4th ed., 2016, https://www.epa.gov/sites/production/files/2016-08/documents/climate_indicators_2016.pdf.

Plaintiff's claims run afoul not only of the defendants' right to free speech but also of the defendants' right of association. There is no dispute that the named defendants work both independently and in harmony to advocate for the environment. "[T]here are, of course, some

activities, legal if engaged in by one, yet illegal if performed in concert with others, but political expression is not one of them." *Citizens Against Rent Control/Coalition for Fair Hous. v. City of Berkeley, Cal.*, 454 U.S. 290, 294 (1981) ("the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process"). "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as [the Supreme Court] has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly." *Nat'l Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449 (1958).

Plaintiff's Complaint demonstrates that each of his claims is, at its root, based on the defendants' speech about issues of public interest. Plaintiff complains that defendants have:

- taken "extreme anti-scientific positions" (ECF 1, ¶ 6);
- erroneously claimed a scientific consensus regarding climate change (*Id.* ¶ 75);
- published lists of scientists "who testified or were expected to testify in official proceedings adversely to the Defendants' interests," regarding the climate change issue (*Id.* ¶¶ 79–87, 91–95, 100);
- funded "climate pseudo-science" (*Id.* ¶ 90); and
- "persuade[d] . . . witnesses" to offer false testimony by providing statements and information in support of their position that climate change poses an environmental risk (I*d.* ¶¶ 108–13).

Patently, these categories relate to issues of profound public importance. In the defamation context, courts recognize that all matters of environmental harm and safety are matters of legitimate public concern. *See, e.g., Mott v. Anheuser-Busch, Inc.*, 910 F. Supp. 868, 874 (N.D.N.Y. 1995) ("violations of environmental regulations implicate issues of environmental safety and public health"), *aff'd*, 112 F.3d 504 (2d Cir. 1996); *Container Mfg. Inc. v. CIBA-GEIGY Corp.*, 870 F. Supp. 1225, 1234–35 (D.N.J. 1994) (storage of chemicals "pose potentially

severe health and environmental risks to society"). Indeed, Texas's Citizens Participation Act, Tex. Civ. Prac. & Rem. Code Ann. §§ 27.001–.011, specifically applies to an "[e]xercise of the right of free speech," regarding "a matter of public concern," defined to include "an issue related to . . . environmental, economic, or community well-being." *Id.* § 27.001(3). Thus, the defendants' speech regarding the climate-change issue—either by engaging in petitioning and free-speech acts to educate the public about climate change or by funding such efforts—are all protected speech on a matter of public concern. Although Plaintiff tries to reframe such speech as predicate "acts," these activities are manifestly speech-based advocacy protected by the First Amendment.

2. Plaintiff's claims are barred by RICO's 4-year statute of limitations.

The U.S. Supreme Court in *Agency Holding Corp. v. Malley–Duff & Associates, Inc.* established a 4–year limitations period for civil RICO claims. 483 U.S. 143, 156 (1987). The 4-year limitations period runs from the time plaintiff knew or should have known of his injury. *Rotella v. Wood,* 528 U.S. 549 (2000).

This four-year statute of limitations is consistent "with the basic policies of all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Rotella,* 528 U.S. at 555; s*ee also Credit Suisse Sec. (USA) LLC v. Simmonds*, 132 S. Ct. 1414, 1420 (2012) (noting that the "general purpose" of statutes of limitations is "to protect defendants against stale or unduly delayed claims"). These principles strongly support a finding that the civil RICO claims brought against the defendants are now time-barred.

The civil RICO claims alleged in Plaintiff's Complaint were brought more than four years—in some cases *decades*—after the alleged predicate acts that form the basis for such

claims against Defendants.[1] Accordingly, Plaintiff knew or should have known long before September 12, 2012—the operative date for determining whether Plaintiff's civil RICO claims against Defendants are barred by the statute of limitations—of the alleged activities and alleged "injuries" that form the basis for his civil RICO claims. Accordingly, the court should dismiss Plaintiff's claims with prejudice.

3. Plaintiff lacks standing to sue under § 1964(c) of RICO.

Before any claim may be heard in this Court, a plaintiff must establish standing to sue. "Under RICO, the plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property[.]" *Trugreen Landcare, L.L.C. v. Scott*, 512 F. Supp. 2d 613, 621 (N.D. Tex. 2007); *see also Allstate Ins. Co. v. Benhamou*, 2016 WL 3126423, *4 (S.D. Tex. June 2, 2016). "Injury to mere expectancy interests or to an 'intangible property interest' is not sufficient to confer RICO standing." *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 607 (5th Cir. 1998). Accordingly, "[a] plaintiff may not sue under RICO unless he can show concrete financial loss." *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 492 n. 16 (5th Cir. 2003); *In re Taxable Mun. Bond Secs. Litig.*, 51 F.3d 518, 523 (5th Cir. 1995) (speculative damages are not compensable under RICO).

[1] *See, e.g.*, ECF 1, ¶¶ 2, 188 (alleging "Climate Alarmism Enterprise" existed in 1988); *see also id.* ¶ 16 (alleging general participation in "Climate Alarmism Enterprise" in "1989 or earlier"); *id.* ¶ 18 ("2008 or earlier"); *id.* ¶ 21 ("2006, or earlier"); *id.* ¶ 22 ("1997 or earlier"); *id.* ¶ 29 ("2001 or earlier"); *id.* ¶ 31 ("1993 or earlier"); *id.* ¶ 32 ("1994 or earlier"); *id.* ¶ 33 ("1993 or earlier"); *id.* ¶ 34 ("1995 or earlier"); *id.* ¶ 35 ("2002 or earlier"); *id.* ¶ 36 ("2002 or earlier"); *id.* ¶ 38 ("2008 or earlier"); *id.* ¶ 39 ("2001 or earlier"); *id.* ¶¶ 47–48 (alleging "financial relationships" in 2003); *id.* ¶ 71 (alleging "Climate Alarmism Enterprise was tightly linked to UN agencies" in the "1960s"); *id.* ¶ 90 (alleging that "not later than from 2010" several defendants "gave money to scientific societies and media organizations"); *id.* ¶ 92 (alleging that in 2006, Defendants started causing, attempting to cause, or conspiring to cause "bodily injuries . . . to certain scientists and experts"); *id.* ¶¶ 93, 94 (alleging retaliation against scientists who passed away in 2008 and 2000); *id.* ¶¶ 96, 99 (alleging retaliation in 1996); *id.* ¶ 130, 131 (alleging Defendants "incentivized" witness to testify falsely before the U.S. Senate "[o]n July 29, 2003," and again before the U.S. House "[o]n July 27, 2006"); *id.* ¶ 134 (alleging Defendants "obstructed and eventually shot down" a "probe" by the Virginia Attorney General in "April 2010"); *id.* ¶ 177(b) (alleging Defendants "have been undermining or attempting to undermine US military defenses from 1980's"); *id.* ¶ 177(e) (alleging "sharp escalation in climate alarmism activity in 2004-2006").

To that end, Plaintiff's ability to maintain a private RICO action requires that he demonstrate both injury and causation (i.e., injury by the conduct constituting the violation). *See Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496-97 (1985) "A plaintiff who complains of harm flowing merely from the misfortunes visited upon a third person by the defendant's acts, generally stands at too remote a distance to recover." *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268-69 (1992). Thus, in order to show standing, the RICO plaintiff must demonstrate that he was the intended target of the RICO scheme and that the injuries alleged were the preconceived purpose or the intended consequence of the defendant's racketeering activities. *See Nat'l Enterprises, Inc. v. Mellon Financial Servs. Corp. No. 7*, 847 F.2d 251, 254 (5th Cir. 1988) (finding it was "far beyond the pale of rational causation" to connect an alleged bribery and kickback scheme between a lender and its customer to the customers' failing to pay one of its vendors); *Meng v. Schwartz*, 116 F. Supp. 2d 92, 96 (D.D.C. 2000), aff'd, 48 Fed. Appx. 1 (D.C. Cir. 2002) (finding that a plaintiff must be the "intended target of the RICO violation") quoting *In re Am. Express*, 39 F.3d 395, 400 (2nd Cir. 1994); *Medgar Evers Houses Tenants Ass'n. v. Medgar Evers Houses Associates, L.P.*, 25 F. Supp. 2d 116, 122 (E.D.N.Y. 1998).

Here, Plaintiff's description and alleged factual underpinnings of each predicate act reveals that: (a) Plaintiff failed to allege a concrete financial loss; and (b) there exists no causal nexus between the injury "suffered" by Plaintiff and the purported RICO violations.

a. Plaintiff Failed to Identify a Concrete Financial Loss

In order to bring suit under RICO, Plaintiff must "show [a] concrete financial loss." *Patterson*, 335 F.3d at 492 n. 16. Here, Plaintiff generally alleges he sustained three forms of injury—injury to his reputation, loss of business and employment opportunities, and loss of

social security benefits—none of which is sufficient to confer standing under RICO. (ECF 1, ¶¶ 171-172; 173-175, 190, 197, and 205.)

First, Plaintiff alleges he has suffered reputational injury. ECF 1, ¶¶ 171–73. However, injury to one's personal reputation is not actionable under RICO because it is not an injury to "business or property." 18 U.S.C. § 1964(c); *Tal v. Hogan*, 453 F.3d 1244, 1254 (10th Cir. 2006) ("[I]njury to reputation, dignity and emotional damages are not the type of injuries redressable by . . . RICO[,] which [is] expressly limited to injuries to business or property."

Second, Plaintiff contends he suffered damages "exceeding $30,000 from lost wages or other income" and injury to "his business and employment opportunities." *See id.* at ¶¶ 173–74. Apart from the unsupported assertion of $30,000 in lost wages and undisclosed lost business opportunities, Plaintiff contends "Defendants contacted multiple companies in Texas and other states, demanding that they not hire Plaintiff and . . . not do any business with Plaintiff." ECF 1, ¶ 173. These allegations are deficient because Plaintiff fails to provide: (i) the basis for the claim he lost $30,000 in wages; (ii) which defendants made the alleged contacts; (iii) whom the defendants allegedly contacted; (iv) when the contacts occurred; or (v) what specific and non-speculative business opportunities were lost. Additionally, damages based on lost future opportunities are generally not recoverable because they "require[] extensive speculation," rather than the "calculation of present, actual damages," *Taxable Mun. Bond*, 51 F.3d at 522–23, and are thus "too speculative to confer standing." *See e.g.*, *Hecht v. Commerce Clearing House, Inc.*, 897 F.2d 21, 24 (2d Cir. 1990) (injury in the form of lost business opportunities is too speculative to confer standing).

Third, Plaintiff asserts that he has "been paying into the Social Security [Fund] for more than 15 years," ECF 1, ¶ 13, and that defendants have embezzled "trillions of dollars from

pension and welfare funds, including . . . the Social Security Trust Fund." *Id.* at ¶¶ 144, 148. Even under the most deferential review, these allegations are prospective and speculative in nature and fail to establish a cognizable injury suffered by Plaintiff. Plaintiff's damages are the epitome of speculative damages, and nowhere in his Complaint does Plaintiff identify how he suffered a concrete financial loss.

b. Plaintiff Cannot Demonstrate the Alleged Predicate Acts Proximately Caused any Injury.

Plaintiff must show that the "RICO predicate offense not only was a 'but for' cause of his injury, but was the proximate cause as well." *Hemi Grp. LLC v. City of New York*, 559 U.S. 1, 9 (2010); *Holmes*, 503 U.S. at 268. Proximate causation requires "some direct relation between the injury asserted and the injurious conduct alleged." *Holmes*, 503 U.S. at 268. A link that is too remote, purely contingent, or indirect is insufficient. *Id.* at 271; 274.

Here, Plaintiff cannot show the defendants' alleged racketeering activities caused him any injury. Even as Plaintiff describes the alleged retaliation, bribery, and witness tampering schemes by defendants, he acknowledges that those alleged activities were directed at others. ECF 1, ¶¶ 91-143. Because Plaintiff was never a witness or participant in an official proceeding, he cannot plausibly allege that *his* damages were caused by those predicate acts. Plaintiff similarly fails to connect his alleged embezzlement scheme to any damages he suffered. The only pension and welfare fund alleged to have been "embezzled" by defendants was the California Public Employees' Pension System (CalPERS). Putting aside that Plaintiff failed to show how the defendants embezzled and procured money from this pension fund, Plaintiff also failed to allege that he was a participant in the fund. Instead, he tried to connect this fund to Plaintiff's right to Social Security—a nonexistent connection. Plaintiff's damage allegations are frivolous as CalPERS is not capable of diverting Social Security Fund assets as alleged by

Plaintiff. *See* 42 U.S.C. § 401(d) (the Fund's investment capabilities are limited to certain classes of Treasury notes).

In sum, Plaintiff failed to show how his alleged injuries were the preconceived purpose or intended consequence of the defendants' alleged RICO predicate acts. Because the alleged RICO violations and predicate acts are wholly unrelated to Plaintiff and his injuries, Plaintiff lacks standing under 18 U.S.C. § 1964(c), thereby necessitating dismissal of his Complaint.

4. Plaintiff has not plausibly alleged any predicate acts of racketeering.

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft,* 556 at 678 quoting *Bell Atl. Corp.,* 550 U.S. at 570. A claim is plausible if the complaint's nonconclusory, factual allegations give rise to "the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* citing *Bell Atl. Corp.,* 550 U.S. at 556. Legal conclusions and "threadbare recitals of the elements of a cause of action . . . do not suffice." *Id.* citing *Bell Atl. Corp.,* 550 U.S. at 555. Further, unadorned accusations, labels and conclusions, formulaic recitations of the elements of a cause of action, or naked assertions devoid of further factual enhancement are insufficient. *Id.* citing *Bell Atl. v. Twombly,* 550 U.S. 544, 555-57 (2007). Although this standard is not a "probability requirement," there must be "more than a sheer possibility that a defendant has acted unlawfully." *Id.* quoting *Bell Atl. Corp.,* 550 U.S. at 556. The court must draw on its "judicial experience and common sense" when determining whether a set of facts has crossed the line from possible or conceivable to plausible. *Id.* at 679. Here, Plaintiff's Complaint's fails to state any plausible claim upon which relief may be granted for the following reasons:

- Plaintiff fails to list each defendant and state the alleged misconduct and basis of liability as to each defendant. *See In re MasterCard Int'l, Inc., Internet Gambling Litig.*, 132 F. Supp. 2d 468, 476 (E.D. La. 2001), *aff'd*, 313 F.3d 257 (5th Cir. 2002); *Chaney v. Dreyfus Serv.*

Corp., 595 F.3d 219, 239 (5th Cir. 2010); ECF 1, ¶¶ 15-45; ECF 24, p. 5.

- Plaintiff fails to describe in detail the pattern of racketeering activity alleged for each RICO claim. For example, Plaintiff failed to allege the dates of each predicate act, the participants of each predicate act, and a description of the facts surrounding the predicate acts. Additionally, Plaintiff failed to identify with specificity the facts regarding the defendants' embezzlement of state and welfare fund.

- Plaintiff fails to describe how the predicate acts form a pattern of racketeering activity—specifically how the predicate acts are related and amount to or pose a threat of continued criminal activity. *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989).

- Plaintiff fails to allege a distinct RICO "enterprise." *United Food & Commercial Worker Unions v. Walgreen Co.*, 719 F.3d 849 (7th Cir. 2013) (finding that even distinct allegations of communications among defendants were insufficient to establish that a distinct enterprise, rather than individual defendants, carried our illegitimate acts); *Rivera v. AT&T Corp.*, 141 F. Supp 2d 719 (S.D. Tex 2001).

- Plaintiff fails to describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity or how the racketeering activity differs from the usual and daily activities of the enterprise, if at all. *St. Paul Mercury Ins. Co v. Williamson*, 224 F.3d 425, 447 n.16 (5th Cir. 2000) (the "enterprise must be more than an association of individual or entities conducting the normal affairs of a defendant corporation.").

- Plaintiff fails to describe what income, if any, the alleged enterprise receives from the alleged pattern of racketeering. 18 U.S.C. § 1962.

- Plaintiff fails to state who received the income derived from the pattern of racketeering activity or how the defendants "use[d] or invest[ed]" the income as required by 18 U.S.C. § 1962(a).

- Plaintiff fails to state who is employed by or associated with the enterprise or information stating whether the same entity is both the liable "person" and the "enterprise" under § 1962(c).

- Plaintiff fails to describe in detail the alleged conspiracy in violation of 18 U.S.C § 1962(d).

- Plaintiff fails to describe the direct causal relationship between the alleged injury and the violation of the RICO statute. *Tompkins v. Cyr*, 202 F.3d 770, 780 n.4 (5th Cir. 2000).

- Plaintiff fails to list the damages sustained by reason of the violation of § 1962, indicating the amount for which each defendant is allegedly liable. *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 492 n. 16 (5th Cir. 2003).

- Plaintiff fails to state a claim for bribery of Dr. Michael Mann under 18 U.S.C. § 201 because Dr. Mann is not a federal officer or employee of the federal government. ECF 1, ¶¶

119-134; 18. U.S.C. § 201.

- Plaintiff fails to allege bribery of Dr. Michael Mann under a state statute as a predicate act, and thus, fails to adequately put defendants on notice as to what laws they have allegedly violated.[2] ECF 1, ¶¶ 119-134; s*ee Lockheed Martin Corp. v. Boeing Co*., 357 F. Supp. 2d 1350. 1375 (M.D. Fla 2005) compared to *Cnty. of El Paso, Tex. v. Jones*, No. 09-cv-0119, 2009 WL 4730305, at *14 (W.D. Tex. Dec. 4, 2009).

- Plaintiff fails to state a claim for bribery of Dr. Michael Mann in violation of the Texas Penal Code or the laws of the District of Columbia because Plaintiff offered no facts in support of the elements of bribery other than mere conclusory allegations. ECF 1, ¶¶119-134.

- Plaintiff fails to state a claim for bribery of employees of NASA Goddard Institute of Space Studies under 18 U.S.C. § 201 because Plaintiff provided no facts in support of his conclusory allegation. *See* ECF 1, ¶ 135 ("Defendants bribed employees of NASA Goddard Institute of Space Studies (NASA GISS)").

- Plaintiff fails to state a claim for bribery of California Attorney General Harris, Representative Grijalva, or U.S. Attorney General Lynch under 18 U.S.C. § 201 because Plaintiff's claims have no factual support and are merely his own manufactured conclusions. ECF 1, ¶¶ 140-142; 137-139; 142.

- Plaintiff fails to state a claim for retaliation in violation of 18 U.S.C. § 1513 because Plaintiff alleges no facts as to what injury was allegedly caused to each of the scientists and experts who testified in official proceedings regarding carbon dioxide by defendants, when the injuries allegedly occurred, the official proceedings the individuals allegedly testified in, or how the alleged retaliation was linked to the defendants. ECF 1, ¶¶ 91-97; *Ezike v. Mittal*, No. 08-cv-1867, 2009 WL 506867, at *4 (N.D. Cal. Feb. 27 2009) (predicate acts of retaliation could not support RICO claim where "there [was] no factual connection between the [defendant] and [the] retaliation).

- Plaintiff fails to state a claim for witness tampering under 18 U.S.C. § 1512 because Plaintiff fails to identify each of the witnesses the defendants allegedly tampered with, the official proceedings each witness was going to testify at, and when or how defendants tampered with each alleged witness. ECF 1, ¶¶ 98-115.

Additionally, Plaintiff's embezzlement claim fails to comply with the heightened pleading requirement found in Federal Rule of Civil Procedure 9(b). A claim of embezzlement under 18 U.S.C. § 664 constitutes an allegation of fraud and must be plead with sufficient

[2] Plaintiff cites to the Texas and District of Columbia bribery statutes generally in his Complaint, ECF 1, ¶¶ 183, 195, 201, but fails to specify how these statutes apply to any of the defendants.

particularity in accordance with Federal Rule of Civil Procedure 9(b). *Tel-Phonic Servs., Inc. v. TBS Int'l, Inc.*, 975 F.2d 1134, 1138 (5th Cir. 1992) (where predicate RICO act sounds in fraud, it must meet Rule 9(b)'s particularity requirements); *United States v. Dupee*, 569 F.2d 1061, 1064 (9th Cir. 1978 (embezzlement is defined as the "fraudulent appropriation of the property of another by one in lawful possession thereof").

In his Complaint, Plaintiff contends "Defendant Ceres and other Defendants embezzled, attempted to embezzle, or conspired to embezzle trillions of dollars from pension and welfare plans, including, but not limited to the Social Security Trust Fund." *See* ECF 1, ¶ 144-155. Plaintiff's conclusory allegations of embezzlement under 18 U.S.C. § 664, however, fail to meet Rule 9(b)'s heightened pleading standard. *See* ECF 1, ¶¶ 144-155; 175. Specifically, Plaintiff's allegations fail to state which of the defendants embezzled funds from a pension fund; how the defendants embezzled funds; and when the alleged embezzlement occurred. *Tel-Phonic*, 975 F.2d at 1139 (allegations of mail fraud insufficient as predicate act because complaint "fail[ed] to specify the content of any misrepresentation"); *Null v. Easley*, No. 09-cv-296, 2009 WL 3853765, at *5 (N.D. Tex. Nov. 18, 2009); *Joe N. Pratt Ins. v. Doane*, No. 07-cv-07, 2008 WL 819011, at *6 (S.D. Tex. Mar. 20, 2008); *Bonton v. Archer Chrysler Plymouth, Inc.*, 889 F. Supp. 995, 1004 (S.D. Tex. 1995).

Based on the above, Plaintiff has failed to plead facts that support a RICO claim under § 1962 (a), (c), or (d), and thus, his Complaint should be dismissed.

III. ADOPTION OF CO-DEFENDANTS' MOTIONS BY REFERENCE

CGBD understands that co-defendants have or intend to file similar motions to dismiss. CGBD adopts by reference co-defendants' motions to dismiss along with the grounds and arguments stated therein, to the extent they do not contradict the grounds and arguments raised in this motion.

IV. CONCLUSION

For the foregoing reasons, CGBD urges the Court to dismiss Plaintiff's Complaint with prejudice and, accordingly enter judgment in its favor and against Plaintiff. If the Court determines to dismiss the Complaint without prejudice, CGBD requests that the Court inform Plaintiff of the potential sanctions for filing frivolous complaints under Federal Rule of Civil Procedure 11.

Date: January 5, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 5, 2017, a true and correct copy of the foregoing document was served on all counsel and parties who have entered appearances via the Northern District's ECF System. Pursuant to Rule 5.1(d) of the Local Civil Rules, "[d]elivery of the notice of electronic filing that is automatically generated by ECF constitutes service under Fed. R. Civ. P. 5(b)(2)(E) on each party who is a registered user of ECF."

/s/ *Bruce S. Campbell*
Bruce S. Campbell