Nos. 24-1544(L); 24-1545

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

LOUIS B. ANTONACCI,

Plaintiff-Appellant,

v.

RAHM ISRAEL EMANUEL, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Virginia,
Alexandria Division

REPLY BRIEF OF APPELLANT

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I. The Appellees Concede that Unpublished Opinions Have No Precedential Value, the District Court Erred in Denying Antonacci's Request for Entry of Default Against Fusion GPS, and Illinois's Absolute Privilege Does Not Apply to the Criminal Acts of Gehringer

The Appellees concede three of Antonacci's arguments, as they must. First, the Appellees nowhere address the glaring fact that the federal courts' decisions in Chicago are unpublished, and therefore have no precedential value. Their desperate and misguided res judicata argument ends there.

Second, the Appellees make no argument even attempting to justify Magistrate Judge Vaala's indefensible denial of Antonacci's request for default against Appellee Fusion GPS. The Appellees therefore concede Appeal No. 24-1545.

Third, Appellees nowhere attempt to resuscitate their argument that Illinois law protects bagmen like Appellee for their criminal acts directed at this Commwealth.

Based on these concessions alone, both Appeals should be granted and the district court reversed. But Antonacci seeks a broader mandate from this Court, as further discussed below.

II. The Fourth Circuit Should Not Allow the Appellees to Operate This Criminal Enterprise in Virginia

Antonacci properly alleges a criminal enterprise that has engaged in a pattern of racketeering against him over a 14-year period, and is ongoing. In their terse and factually barren brief, the Appellees here, as Gehringer did in the Seventh Circuit, mainly rely on conclusory histrionics, claiming Antonacci must be crazy for exposing their disgraceful way of life, and simultaneously begging this Court to have mercy on them because they usually get away with it.

This case again represents a test of our entire system of government, which is designed with the federal courts as our most important counter-majoritarian institution. Our government does not work when our courts will not enforce our laws. The Seventh Circuit failed this test, and as set forth in Antonacci's instant complaint, the Seventh Circuit's failure has emboldened the most toxic elements of our otherwise great nation.

The Fourth Circuit should not exacerbate the shame and disgrace the state and federal courts in Chicago have wrought

upon the American legal system over generations.[1] Chicago courts are communist bureaucracies with fiats for sale to the highest bidder. And the nuevo fugazi mobsters who take pride in that corruption are too ignorant to even comprehend its nature. Not that they care. Most are lazy and talentless parasites who will do anything for money, like Tony Antonacci, the drug-addled high-school dropout whose juvenile incompetence has poisoned everything he touches. The Fourth Circuit should take this opportunity to demonstrate we are still a country committed to the rule of law, not rule by the lawless.

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[1] *See e.g.,* Terrence Hake with Wayne Klatt, OPERATION GREYLORD: THE TRUE STORY OF AN UNTRAINED UNDERCOVER AGENT AND AMERICA'S BIGGEST CORRUPTION BUST (American Bar Association) (2015) (detailing rampant bribery, corruption, and mob influence throughout Cook County courts in the 1980s, where judges had to be paid off for favorable rulings and known murderers walked free). Nothing has changed. *See* Nicole Gonzalez Van Cleve*, Chicago's criminal court system is as flawed as its police*, Crain's Chicago Business (June 14, 2016) ("As I studied how attorneys and judges practiced the law, I observed an entire legal culture that often acted in criminal ways, blurring the boundaries between those enforcing the law and those breaking it."); Nicole Gonzalez Van Cleve, Crook County: Racism and Injustice in America's Largest Criminal Court 161 (Stanford University Press) (2016) ("[W]e saw how due process was reduced to a ceremonial charade for the undeserving. We also examined the logics and narratives that allowed such curtailing of due process to seem justifiable. Procedural justice was reduced to a performance without substance."); Taylor Humphrey, David Krane, Alex Chew, John Simmons, *2015 Lawsuit Climate Survey: Ranking the States*, U.S. Chamber Institute for Legal Reform 8 (September 10, 2015) (ranking Illinois third from last in perceived fairness and reasonableness of courts in U.S.).

As alleged in the complaint, many of this criminal enterprise's false narratives concerning Antonacci take place surreptitiously, such that he never has the opportunity to defend himself. In light of this, it is probably appropriate here to interject a note on Antonacci's wannabe Chicago mob family.

As alleged in the complaint, the Plaintiff-Appellant took a much different path than his immediate and extended family in his life and career goals. But at no point in Antonacci's life did it seem to him that his family was connected to the Chicago outfit. His father seemed to be a hard-working, if mentally unstable man with a fragile ego, who had many ups and downs in his career as a small-time restaurateur. To the extent people say Tino Antonacci or his degenerate son, Tony, were or are connected to a Chicago crime family, that is news to the undersigned. Even before Tony Antonacci became the morbidly obese zombie he is today, he was never an athlete nor could he even throw a punch, let alone intimidate anyone physically.

And Antonacci does not understand why any human being would want to be associated with the Chicago outfit. Besides the

disgrace they have wrought upon the Cook County courts and Illinois government writ large, having read Frank Calabrese, Jr.'s account of his life in the Elmwood and Norwood Park outfit, Antonacci submits that it is an unenviable and repulsive existence, for many reasons. *See generally*, Frank Calabrese, Jr., OPERATION FAMILY SECRETS: HOW A MOBSTER'S SON AND THE FBI BROUGHT DOWN CHICAGO'S MURDEROUS CRIME FAMILY (Broadway Paperbacks) (2011). Besides routinely murdering innocent people who were in the wrong place at the wrong time, and squeezing legitimate businesses for protection from the very criminals extorting them, they would literally hang their "enemies" on meat hooks in warehouses and torture them for days on end, using mob doctors to inject them with amphetamines to keep them awake. Autopsies revealed that most of those victims died from asphyxiation – they screamed to death.

Does that sound like the work of human beings? Antonacci wants to be clear that he has nothing to do with those people. And given his family's defamation alleged in the complaint, he wants nothing to do with them regardless.

Speaking of this case's relation to the abomination that took place in Chicago, Antonacci faced untoward harassment from the Illinois Supreme Court's Committee on Character and Fitness, who ultimately denied his application to the Illinois Bar as retaliatory extortion for his lawsuit against the Madigan/Emanuel-connected lobbyist, Anita Ponder. JA049-052, JA157-161. On May 13, 2024, the Virginia State Bar served Antonacci with a bar complaint filed by Shaun So, "Chief Executive Officer" of Defendant-Appellee Storij, Inc. d/b/a STOR Technologies d/b/a The So Company d/b/a Driggs Research International, complaining that Antonacci used information from their attorney-client relationship to take an adverse position against Storij, and that Antonacci's "frivolous" allegations are causing him unnecessary legal expenses. Aff. ¶¶2-3. Antonacci raised this issue in the district court, showing that both So's allegations and the timing of his bar complaint are dubious at best. JA833-834.

Antonacci responded to So's complaint on June 3, 2024. Aff. ¶4. On June 11, 2024, Bar Counsel referred the complaint to a

Committee for investigation, without explanation. Aff. ¶5. Antonacci has not received anything further related to this "investigation." Aff. ¶6.

June was an eventful month for Antonacci, when another member of this enterprise attempted to murder him with a motor vehicle. Aff. ¶¶7-8. On June 18, 2024 – one week after filing his notices of the instant appeal – a motor vehicle ran a red light and stopped abruptly in the crosswalk Antonacci was traversing on his triathlon bike going 20mph, causing him to swerve, strike the curb, and fly headlong over his handlebars. *Id.* The motor vehicle then fled the scene of the crime. *Id.*

Antonacci broke his left collarbone in two places and had reconstructive surgery on August 27, 2024. Aff. ¶¶9-10. Antonacci filed this brief early because he needs follow-up surgery on September 10, 2024. Aff. ¶10.

In the past four years alone, Antonacci has cycled approximately 5,000 miles on the streets and trails of Northern Virginia and the District of Columbia without incident. Aff. ¶11. This accident occurred one week after he perfected the instant

appeal, on the same route he travels two or three times per week. Aff. ¶11. And while Antonacci got the vehicle's Virginia tag number, neither the Arlington Police nor its Commonwealth Attorney will investigate or prosecute the driver who fled the scene of the accident she caused that almost killed Antonacci. Aff. ¶12. The owner of the vehicle, Mr. Sergio Palma, will be added to this complaint on remand, as he was surely paid by this enterprise to attempt to murder Antonacci, like Appellee Eaddy. Aff. ¶8.

The Brief of Appellees is replete with errors of law and fact that demonstrate the Appellees' lack of sincerity and credibility. In the brief that the Appellees took three tries to file (docs. 52-54), they frequently claim that most of them have never even met each other, and thus Antonacci's allegations must be baseless. They even go so far as to say that nothing in Antonacci's complaint suggests otherwise. That is comical.

Antonacci has plainly alleged how each of these Appellees conducted the affairs of this enterprise, invested and maintained their interests therein, and conspired to commit the predicate acts alleged in the complaint. Rahm Emanuel, the H&K Defendants,

and the Perkins Defendants are the central leadership of this criminal enterprise, as all of them have deep ties to the DNC, as alleged in the complaint.[2] And the remaining Appellees, who acted by themselves and through their myriad co-conspirators not named as defendants, are all liable as alleged in the complaint.

If the Appellees want to make some factual denials or averments by filing an actual pleading, then that would mark the first defensive pleading filed since Antonacci's legal proceedings began in 2012. Until then, however, they do not get to deny properly alleged facts with the empty rhetoric of their unscrupulous counsel.

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[2] Stephen Shapiro is actually not connected specifically to the DNC except through Kiernan, the grifter trading on his wife's hard-earned influence there. Shapiro pushed Antonacci, the only successful attorney to ever work in Holland & Knight's Washington, DC, Construction & Design Group, out of the firm because Antonacci's success in the Katz Fraud Case scared Kiernan, who is well aware that the DNC has been operating as a bona fide criminal enterprise ever since it nominated Barack Obama (and The Chicago Way) with his campaign adviser and Defendant-Appellee Rahm Emanuel. Shapiro was elevated to Practice Group Leader of H&K's Construction & Design Group shortly after Antonacci was forced to resign (and Shapiro stabbed his partner of 20 years, the late Andrew W. Stephenson, in the back) despite that Sheppard Mullin LLP wanted to hire Antonacci as a senior associate in its Government Contracts Group at that time. Like Roland Burris being appointed by Rod Blagojevich to the Senate seat vacated by Barack Obama, Shapiro got his job in a manner consistent with his desire for it: In the worst way possible. And the group's subsequent failure is revealing. This criminal enterprise does not promote ethical and successful lawyers. In order to avoid liability for their criminal activity and control the outcome of as much civil litigation as possible, they want to promote the most unscrupulous and politically compromised lawyers possible, just like in Cook County. They have created a race to the bottom that is robbing this profession of both its dignity and its purpose.

Relatedly, the Appellees incorrectly state that Antonacci moved back to Washington, DC from Chicago in 2015. Br. Appellees 9. It was actually 2013. JA052 ¶190. Antonacci was only in Chicago for two years, from August 2011 to August 2013. JA036 ¶88, JA052 ¶190. Before that, Antonacci was in law school in Madison, Wisconsin, from 2001 to 2004, then a Civilian Honors Attorney for the Army in Huntsville, Alabama, from 2004 to 2006, then working in private practice in Northern Virginia and Washington, DC, from 2006 to 2011. JA027, JA036.

III. Antonacci's Allegations are Not Frivolous, And Even If the Chicago Courts' Opinions Were Published, Which They Are Not, Res Judicata Cannot Bar Antonacci's Current Suit

Appellees' first argument that Antonacci's complaint should be dismissed because "it is legally and factually frivolous" does not merit discussion. Br. Appellees 17-19. They rely solely on circular reasoning and do not cite any of Antonacci's allegations. That is not an argument.

Appellees' next section makes the same argument but this time throws in a very mischaracterizations of Antonacci's allegations, ignoring hundreds of specific allegations. Br.

Appellees. 20-24. Some of the cases upon which the Appellees rely are worth distinguishing, however. Appellees compare Antonacci's complaint to that in *Bast v. Cohen, Dunn & Sinclair*, PC, 59 F.3d 492 (4th Cir. 1995). There the plaintiff did not even allege a single predicate act against the defendants, so not exactly a meaningful comparison.

And the Appellees' reliance on *Int'l Data Bank, Ltd. V. Zepkin*, 812 F.2d 149 (4th Cir. 1987) is also telling. There the plaintiff, a corporation, hired the defendants (two individuals and their affiliated partnership and corporation) to raise some outside capital for the plaintiff. The defendants allegedly falsified $75,000 in expenses they claimed to have incurred raising that capital. The end. The court rightly ruled that those facts did not support a RICO claim because it was a single, limited scheme to defraud, and thus did not amount to a "pattern" of racketeering activity. But Antonacci alleges much more than that, and he will not reiterate his hundreds of discrete, factual allegations to defend against Appellees' specious and meritless attempts to reduce them to one-sentence mischaracterizations.

The Appellees' throw in a third section absurdly arguing Antonacci's revealing complaint is barred by res judicata. Br. Appellees 24-27. And they repeatedly invoke the unpublished opinions of the federal courts in Chicago in their desperate pleas for dismissal. Br. Appellees 20-27. But they ignore the glaring fact that the opinions of both the Northern District of Illinois and the Seventh Circuit are unpublished, and thus have no precedential value whatsoever. *See Hall v. United States*, 44 F.4th 218, n.11 (4th Cir. 2022); *see also Bankers Tr. Co. v. Old Republic Ins. Co.*, 7 F.3d 93, 94–95 (7th Cir. 1993) ("[l]ack of publication usually reflects the court's belief that the dispute is one-sided, sapping the disposition of precedential value."). And as Antonacci pointed out in the district court and the Brief of Appellant, those opinions are neither sound nor valid, and thus their reasoning is also worthless. Br. Appellant 23-33.

If this Court wishes, it may review the Illinois state court opinions to see how they are self-contradictory and utterly senseless, further bolstering Antonacci's position that this criminal enterprise has no class, character, or professional

integrity. JA156-157, JA454-457. Those **published** opinions demonstrate that there is literally no such thing as judicial integrity in the state of Illinois.[3] So make no mistake: The Appellees are fighting to bring Chicago-style racketeering to Virginia on a poppy-seed bun.

And even if federal courts' opinions were published, res judicata simply does not apply to dismissals for want of subject matter jurisdiction. *Costello v. United States*, 365 U.S. 265, 285 (1961); *Hughes v. United States*, 71 U.S. 232, 237 (1866); Fed. R. Civ. P. 41(b). The Chicago courts, like the district court here, all incorrectly ruled that they did not have subject matter jurisdiction, and thus no power to adjudicate they case. Their rulings, and the improvident judgment of the Northern District of Illinois, simply carry no weight.

And Antonacci is not sure if counsel for the Appellees were absent the day they taught law at law school, but all the cases

[3] The Chicago Tribune borrowed Antonacci's term "Culture of Corruption" from these proceedings (Br. Appellant at 47, ECF. 70 at 2, ECF 108 at 21) to run a series this summer on the disgraceful state of public service in Illinois: Rick Pearson, Ray Long, *Our culture of corruption: Dishonest politicians at all levels of Illinois government make a mockery of public service*, CHICAGO TRIBUNE (updated August 27, 2024).

upon which they rely make clear the very simple and well accepted proposition that *res judicata only applies to adjudications on the merits*. Antonacci does not want to insult this Court with a reiteration of first year civil procedure, but as discussed above, dismissal for want of subject matter jurisdiction is not an adjudication on the merits.

Defendants attempt to get around this centuries-old principle of the common law, for which they clearly have no regard, by citing *Capitol Env't Servs., Inc. v. N. River Ins. Co.*, 778 F.Supp.2d 623 (E.D. Va. 2011) for the proposition that a "jurisdictional dismissal is res judicata on the jurisdictional issue." Br. Appellees 26. Except the jurisdictional issue there was whether a dismissal for mootness was an adjudication on the merits under Florida law: "Although a federal court's dismissal of a case as moot is generally understood to be jurisdictional, the same principle does not apply under Florida law." *Id.* at 633. The court held that a dismissal under Rule 1.420(b) of the Florida Rules of Civil Procedure for mootness is "policy-based, not jurisdictional," and thus it was appropriate to "conclude that the

dismissal of the covered claim on mootness grounds was not jurisdictional in nature," but rather "an adjudication on the merits." *Id.* So while the Appellees are wrong yet again, Antonacci would like to thank them for nearly making a clever argument for once. He was starting to doze off.

Again, Appellees' res judicata argument is irrelevant because the Chicago Courts' opinions are unpublished. But even if they were published, res judicata would not apply because there was no judgment on the merits, there are new parties (all but the Perkins Defendants), new allegations (the AECOM Fraud, the strategic communications complex, a government-funded front company hiring a lawyer to spy on him, the DNC's fear of racketeering charges vis a vis the H&K and Perkins Defendants), and new predicate acts (the CFAA, obstruction of justice, attempted murder). Antonacci will not be faulted for being repeatedly attacked by the most talentless and unscrupulous folks in law, politics, and communications. They can get a life.

IV. The Appellees Cannot Meet Their Burden To Prove the RICO Claims Are Untimely

The Appellees treatment of the statute of limitations issue is so unhinged it is hard to know where to start. Here is the most obvious point: Firmender and Storij did not even argue that Antonacci's claims are precluded by the statute of limitations, a fact the Appellees conveniently ignore. The acts alleged by Firmender continued into 2023, and those by Storij into 2022, both well within the four-year statute of limitations of civil RICO claims. And contrary to the Appellees' blathering, it is indeed their burden to prove Antonacci's claims are untimely at this stage of the proceedings. *Goodman v. Praxair, Inc.*, 494 F.3d 458, 465–66 (4th Cir. 2007).

Next, the Appellees rest most of their statute of limitations argument on the assumption that this Court must accept their fabrication of what has been happening inside Antonacci's head, which, according to them, is that Antonacci has understood the scope of the conspiracy this entire time. That is cute, but Antonacci's allegations are controlling, and he plainly alleged that he was not aware of the scope of this conspiracy until 2022. JA066,

JA084. No reasonable person would be, as Antonacci explained here and in the district court.

In fact, in Antonacci's SCOTUS Petition, he raised the fact that the corrupt Illinois Inquiry Panel, who required that Antonacci disclose all facts surrounding his forced resignation from Holland & Knight, criticized him for being forced to resign from that firm after successfully litigating all of his cases, transparently addressing concerns he had with firm management and complying with their direction, and further bringing to the firm's attention some potentially fraudulently activity perpetrated by a firm client against the Government of the United States, which could have exposed the firm to liability. JA160-161. It is clear from Antonacci's SCOTUS Petition that he had no inkling the H&K Defendants were involved in that litigation, lest he would have named them as defendants.

Indeed, the Appellees try to conflate The Katz Fraud case with Antonacci's understanding of the nature of this criminal enterprise as a law firm associate. Br. Appellees 27-28. They claim that, because he was forced to resign from H&K after successfully

prosecuting the Katz Fraud Case on behalf H&K's client, he must have been aware of the nature of this criminal enterprise at that time. Call him naïve, but Antonacci surely did not appreciate then that Kiernan and Shapiro put their loyalty to opposing counsel, the disgraced Gerald I. Katz, above their fiduciary obligations to their clients. The Katz Fraud Case correctly alleged a very limited criminal enterprise focused on real estate developers and their Dutch lender; it did not implicate all lawyers connected to the Democratic National Committee, who use fraud, extortion, and racketeering in the same manner real lawyers use Westlaw.

As for their "legal argument" related to the statute of limitations, the Appellees' are again out of their depth. But before we get to their specific errors, let's start with the fundamental absurdity of their argument: They say that because Antonacci brought a civil RICO case against some of these Appellees in 2015, the date of filing that lawsuit applies to the subsequent predicate acts and resulting injuries. By their reasoning, four years after a plaintiff files a RICO lawsuit against any members of any criminal enterprise, that enterprise may rob, murder, extort, and commit

any one of the dozens of predicate acts against that plaintiff, without fear of civil liability, because any claim under civil RICO will be untimely. Is that consistent with the language or purpose of the RICO statute?[4] What about sound public policy carried out by rational human beings?

This point bears repeating because it reveals the Appellees for what they really are. Appellees argue that once you bring a civil RICO claim against a criminal enterprise, that enterprise may later enlist additional ne'er-do-well degenerates to commit predicate acts against you and there is nothing you can do about it. Why? Because the statute of limitations will have begun to run at the time of your first lawsuit. These Appellees are advocating for the normalization of criminal racketeering in the United States – a judicial repeal of RICO – because racketeering is their entire way of life.

Further to that point, these Appellees do not even address the difference between the limitations periods on substantive RICO claims and RICO conspiracy in the Fourth Circuit. Pleading

[4] The Congress provided treble damages under RICO for the express purpose of encouraging RICO enforcement by private citizens. *Sedima, S.P.R.L. v. Imrex Co.*, 105 S.Ct. 3275, 3280–81(1985).

a valid RICO conspiracy requires the plaintiff to establish "two elements: (1) that two or more people agreed that some member of the conspiracy would commit at least two racketeering acts (i.e. a substantive RICO offense) and, (2) that the defendant knew of and agreed to the overall objective of the RICO offense. A plaintiff may prove such an agreement solely by circumstantial evidence." *Borg v. Warren*, 545 F. Supp. 3d 291, 319 (E.D. Va. 2021); (citing *United States v. Cornell*, 780 F.3d 616, 623 (4th Cir. 2015); and *Hengle*, 433 F. Supp. at 898).

"RICO conspiracy does not require 'some overt act or specific act' and is therefore 'even more comprehensive' than the general conspiracy statute." *Galloway v. Martorello*, No. 3:19CV314, 2023 WL 6518085, at *8 (E.D. Va. Oct. 5, 2023) (quoting *Salinas v. United States*, 522 U.S. 52, 63 (1997)). "The partners in the criminal plan must agree to pursue the same criminal objective," "even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense." *Salinas*, 522 U.S. at 63. All of these Appellees are liable for all the acts of every co-conspirator. *Id.*, *see also Hengle v. Asner*, 433 F. Supp. 3d 825,

892–93 (E.D. Va. 2020) (parentheticals in original), aff'd sub nom. *Hengle v. Treppa*, 19 F.4th 324 (4th Cir. 2021). As such, for 18 U.S.C. § 1962(d), the limitations periods is renewed for every injury that occurs as a result of the overt act of any co-conspirator.

As for fraudulent concealment, this is another point where the Appellees demonstrate how they eviscerate the integrity from the legal profession. They used two of the instant Appellees to engage Antonacci's firm as their commercial lawyer – they retained him in a fiduciary capacity in order to defraud him.[5] That is the essence of fraudulent concealment. The same is true for Holland & Knight – that firm recruited Antonacci to work there. He did not apply for a job at Holland & Knight. They recruited him, asking him to leave his job and work for them. JA028. And

[5] Appellees also incorrectly claim that damages to Antonacci's law firm are "irrelevant" because Antonacci filed the complaint individually. Br. Appellees. 33 n.3. Antonacci alleges throughout the complaint that Lane Construction Corp. and Storij, Inc. hired Antonacci's firm, Antonacci PLLC f/k/a Antonacci Law, which is a professional limited liability company organized by Antonacci in 2014, of which he has always been the sole owner and principal. JA061 ¶¶ 251-51, JA075 ¶ 335, JA796 ¶ 23. That is a matter of public record. JA837. Antonacci Law PLLC, at its former Washington, DC address, is the signatory of Antonacci's SCOTUS petition attached to the complaint. JA172. Damages to Antonacci's professional reputation, theft of proprietary and even personal information from him and his firm, and fraudulent attempts to set him up for a criminal indictment are therefore damaging to the business he has owned and operated for ten years.

after Antonacci, as a mid-level associate, made it rain for the firm and their clients, and Steve Weber was fired for embezzlement, they asked him to stay. JA028-032. And then they forced him to resign when another firm wanted to make him a job offer in their government contracts group. JA030-032.

And as Antonacci alleged in the complaint, he believed that his case in Chicago was about the way Chicago works, or does not work, more appropriately. He assumed they were turning the Chicago justice system upside down to show that Seyfarth Shaw and Anita Ponder are "untouchable." But after a series of inexplicable events in Washington, DC, he began doing some due diligence and realized that this started with H&K and they were still after him, likely because they have nothing better to do.

Appellees try to brush away the injury discovery rule with the same conclusory, tautological nonsense with which they address all of Antonacci's controlling and indisputable arguments: It is inapplicable because it is. But the Supreme Court's ruling in *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 187-88 (1997) is consistent with Antonacci's position and this Court's subsequent

ruling in *Potomac Power Co. v. Electric Motor and Supply, Inc.*, 262 F.3d 260, 266 (4th Cir. 2001) (applying the injury discovery rule), despite the Appellees' specious position that *Klehr* is "absolute and unavoidable." Antonacci will be happy to explain it to them at oral argument. Antonacci's RICO claims are timely.

V. Antonacci States a Claim Under the Computer Fraud and Abuse Act

The Appellees' argument that Antonacci does not state a CFAA claim again ignores Antonacci's well-pleaded allegations and instead relies on its and the district court's circular and conclusory nonsense. Antonacci cited the relevant allegations on page 34 of the Brief of Appellant: JA061-062, JA075-079, JA088-089, JA099, JA107, JA115, JA118. Have a look and this Court will see that Antonacci's CFAA claim is on all fours with all four elements of the SDNY case Appellees cite. Br. Appellees 35.

Storij hacked Antonacci's computers and mobile phone so that they could monitor Antonacci to determine his plans, strategy, and outlook on Lane's case throughout the AECOM Fraud. JA077-079 ¶¶356-64, JA089 ¶¶413.h-j., JA099 ¶435.g., JA107 ¶¶488-89, JA115 ¶¶541-42, JA118 ¶571. This information

was disseminated to Firmender and David Mancini, counsel for AECOM, possibly through intermediaries in the enterprise. JA075-079 ¶¶336-64, JA089 ¶¶413.h-j., JA099 ¶435.g., JA107 ¶¶488-89, JA115 ¶¶541-42, JA118 ¶571. Essentially the enterprise wanted to determine whether Antonacci knew he was being set up, and once he brought the damaging evidence to Firmender's attention, how he would proceed so that, having failed in getting an indictment or basis for legal malpractice, the enterprise could nonetheless defame Antonacci PLLC in order to prevent him from getting additional work. (JA089, ¶¶ 413.f.-g.) Those are the injuries.

Storij's briefs begging the district court for a protective order are telling in this regard. ECF 78. Those pages are filled with nonsense, such as assertions that those requests *sought privileged information* and whether Storij *represents legitimate business interests* is a *legal question*. ECF 78 at 3, 5-6. The Appellees argue that fraudulent intent is not just legally defensible, but potentially privileged and proprietary information worthy of legal protection. When people tell you who they are, you should believe them.

Another favorite of the undersigned is where Storij says it cannot answer whether they "accessed Antonacci's protected computer(s) without authorization or exceeding authorized access" because "[w]hether Plaitiff's computer is a 'protected computer' and whether The So Company accessed that computer 'without authorization or exceeding authorized access' within the meaning of the Computer Fraud and Abuse Act are legal questions… ." ECF 78 at 3. If that is not an admission of guilt, what is? And as will be discussed below, the legal questions are very easy in this case because the difficult cases turn on whether someone exceeded the access they were previously granted. Antonacci never granted So any access to his computers – why would he?

There is no serious dispute that Storij (who does business under three assumed names) is a front company who was hired to hack Antonacci's computers and spy on him generally – they even told the district court that if required to answer the requests, they would move to prevent public filing so that their future targets are unaware of their fraudulent intent: "To the extent The So Company will be required to respond to Plaintiff's Requests for

Admission prior to a ruling on its Motion to Dismiss, The So Company will file a renewed motion for a protective order to protect any such information from being publicly-filed on the docket." (ECF 78 n.1.) They admitted that they pose a threat of continued racketeering activity.

The caselaw on this issue is not helpful for the Appellees. The Supreme Court in *Van Buren* held that the threshold inquiry for CFAA cases is simply whether the defendant had lawful access to the data, irrespective of their motives. *Van Buren v. United States*, 593 U.S. 374, 381, 141 S. Ct. 1648, 1653–54 (2021) (holding that the "[l]iability under both clauses stems from a gates-up-or-down inquiry—one either can or cannot access a computer system, and one either can or cannot access certain areas within that system."). Interpreting *Van Buren*, the Eastern District of Virginia similarly found a plaintiff did not allege a CFAA claim where it had granted access to a proprietary data tool, and had not revoked such access when the alleged breach occurred. *Carfax, Inc. v. Accu-Trade, LLC*, No. 1:21-cv-00361RDATCB, 2022 WL 657976, at *14 (E.D. Va. Mar. 4, 2022).

Storij was never granted any access to Antonacci's computers, so its access was plainly without any authorization: the "gate" was always "down." There are no allegations even suggesting that Antonacci granted Storij any such access. And Storij's intent to defraud is well established throughout the complaint. Storij is therefore liable to Antonacci for damages resulting from its unauthorized access, pursuant to 18 U.S.C. § 1030.

And yes, Antonacci is grateful to all our veterans for their service. But unlawfully spying on U.S. citizens, or providing false and/or misleading information to intelligence agencies to obtain fraudulent FISA warrants, is not government service. It is treason.

VI. The District Court Abused its Discretion, and Denied Antonacci Due Process of Law, By Granting Defendants Protective Orders While Dismissing the Complaint as Implausible, and Then Denying Leave to Amend the Complaint, and the Case Should Therefore Be Reassigned on Remand

The Appellees try to separate each of the district court's prejudicial and calculated missteps to make them appear less egregious in isolation. Besides the fundamental absurdity of its

conclusory and unreasoned "opinion," the district court denied Antonacci due process of law because it dismissed Antonacci's well-pleaded allegations summarily as "implausible," when Antonacci had served discrete Requests for Admission that sought to address that very issue. If Judge Nachmanoff was seriously concerned about the plausibility of Antonacci's allegations, or even the appearance of justice, then he would have required the Appellees to answer Antonacci's discrete requests for admission. As set forth in the Brief of Appellant, Antonacci included his Requests for Admission, and his argument as to why they were germane to the issue of plausibility, in his response to each of the Appellees' Motions to Dismiss. Br. Appellant 52-53. Judge Nachmanoff's denial of Antonacci's objections as "moot" is disingenuous – he was briefed on the issue and his subsequent denial is therefore irrational and a denial of due process of law.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). To that end, "due

process requires a 'neutral and detached judge in the first instance.'" *Concrete Pipe & Products of California, Inc. v. Constr. Laborers Pension Trust for S. California*, 508 U.S. 602, 617 (1993) (quoting *Ward v. Village of Monroeville*, 409 U.S. 57, 61–62 (1993). "Even appeal and a trial *de novo* will not cure a failure to provide a neutral and detached adjudicator." *Concrete Pipe,* 508 U.S. at 618. "'[J]ustice,' indeed, 'must satisfy the appearance of justice, and this stringent rule may sometimes bar trial [even] by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.'" *Id.* (quoting *Marshall v. Jerrico, Inc.,* 446 U.S. 238, 243 (1980)).

Not only did Nachmanoff dismiss the complaint as implausible after preventing the Appellees from answering the requests for admission addressing that very issue, Nachmanoff further denied leave to amend he complaint as well.[6] The district court effectively ruled that there is nothing Antonacci can say or do to seek justice against these Appellees. They made no attempt to get at the truth of Antonacci's allegations, but rather went out

[6] Appellees argue that Antonacci has not cited a deprivation of property in relation to this denial of due process. Br. Appellees. 43. These are not serious lawyers.

of their way to ensure these Appellees do not have to answer for their crimes. This case is another travesty of justice and a demonstration that Biden's Administration, who appointed Nachmanoff, is not committed to the rule of law. Like Cook County Communists, they are Legalistic authoritarians committed to rule by law, rather than democratic principles of justice under the common law. Our Constitution commands better. U.S. Const. Amend. 14.

The Appellees concede in their brief that, in the Fourth Circuit, three factors should be considered when deciding whether to reassign a case on remand: (1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness. *G.G. ex rel. Grimm v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 726–27 (4th Cir. 2016),

vacated and remanded, 580 U.S. 1168, 137 S. Ct. 1239, 197 L. Ed. 2d 460 (2017) (citing *United States v. Guglielmi*, 929 F.2d 1001, 1007 (4th Cir.1991)). This case is squarely one this Court has held should be reassigned to maintain the appearance of justice.

And it cannot be said that Antonacci caused any delay in the district court. Antonacci filed the complaint on February 14, 2024, and the district court dismissed the complaint on May 23, 2024. In those three months, Antonacci responded to seven motions to dismiss, served requests for admission, opposed numerous protective orders, moved for leave to amend the complaint, and served every Defendant except the tiny dancer, who has abused his ill-begotten appointment as Ambassador to Japan to avoid service of process. Aff. ¶13. Antonacci did not cause any delay.

Related to his motion for leave to amend, Antonacci did raise new facts in the district court. Specifically, that Appellee Firmender fled Lane Construction after a couple service attempts were made at his office. JA783, ECF 110 pp.1-2. Like Antonacci anticipated in his briefs, this enterprise got him a new job immediately, as in-house counsel at Lockton, an insurance

company. The Appellees claim that Antonacci's allegations are crazy, yet two of these Appellees left their legal positions the moment they got wind of this complaint. They clearly have much to hide.

CONCLUSION

WHEREFORE, for the reasons stated herein, Plaintiff-Appellant Louis B. Antonacci respectfully requests that this Honorable Court 1) **REVERSE** the district court's order of May 23, 2024 Order dismissing the complaint for lack of subject-matter jurisdiction; 2) **REVERSE** the district court's order of April 8, 2024, thereby lifting the stay on discovery; 3) **ORDER** that Defendants-Appellees Perkins Coie LLP, Matthew J. Gehringer, Seyfarth Shaw LLP, Paul J. Kiernan, Holland & Knight LLP, FTI Consulting, Inc., and ROKK Solutions LLC, **ANSWER** the requests for admission propounded upon them within 21 days of this order; 4) **ORDER** the district court clerk to **ENTER DEFAULT** against Defendant BEAN LLC d/b/a Fusion GPS; and 5) **ORDER** the district court to reassign this case to a different judge and magistrate.

Dated: September 9, 2024

Respectfully submitted

/s/ Louis B. Antonacci

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CERTIFICATE OF COMPLIANCE

The undersigned appellant hereby certifies that this Reply Brief of Appellant meets the type volume limitations of Local Rule 32(a)(7)(B)(ii). The Brief of Appellant contains 6,395 words.

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CERTIFICATE OF SERVICE

I hereby certify that, on September 9, 2024, I filed this Reply Brief of Appellant, together with my Affidavit in Support thereof, electronically using this Court's CM/ECF system, which caused service on all counsel of record.

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