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

OPENING BRIEF OF APPELLANT

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JURISDICTIONAL STATEMENT

The U.S. District Court for the Eastern District of Virginia, Alexandria Division, has subject-matter jurisdiction over this civil action arising under the laws of the United States pursuant to 28 U.S.C. § 1331. Specifically, Plaintiff-Appellant Louis B. Antonacci ("Antonacci") alleges multiple violations of 18 U.S.C. § 1962. Antonacci also alleges violations of 18 U.S.C. § 1030.

Antonacci appeals the May 23, 2024 order (24-1544(L)) dismissing the complaint for want of subject matter jurisdiction, denying leave to amend the complaint, and further upholding the magistrate's ruling granting several defendants' motions for protective order, such that they were not required to answer Antonacci's discrete requests for admission.

Antonacci also appeals (24-1545) the June 7, 2024 order denying Antonacci's request for entry of default against BEAN LLC d/b/a Fusion GPS ("Fusion GPS"). Antonacci filed his notices of appeal on June 11, 2024, so this Court has jurisdiction pursuant to 28 U.S.C. § 1291. The appeals were consolidated over Antonacci's objection (24-1544). Doc. 33, Doc. 34.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

A. Whether the district court erred in dismissing the complaint for lack of subject matter jurisdiction.

B. Whether Antonacci states timely claims under 18 U.S.C. § 1962 (a), (b), (c) and (d).

C. Whether Antonacci states a claim under 18 U.S.C. § 1030.

D. Whether Illinois's "absolute attorney privilege" protects the Appellees from civil liability for the criminal acts of Appellee Matthew J. Gehringer, former General Counsel of Appellee Perkins Coie LLP.

E. Whether the district court abused its discretion in granting Defendants' Motions for Protective Orders, when Antonacci propounded only discrete requests for admission that sought to establish the veracity of key allegations, only to later dismiss his complaint by incorrectly "reasoning" that his allegations are implausible.

F. Whether the district court denied Antonacci due process of law by granting Defendants' Motions for Protective Orders without an oral argument, when Antonacci propounded only discrete requests for admission that sought to establish the veracity of key allegations, two days before those Requests for Admission would have been deemed admitted, only to later dismiss his complaint by incorrectly "reasoning" that his allegations are implausible.

G. Whether the district court denied Antonacci due process of law by granting Defendants' Motions for Protective Orders without an oral argument, when Antonacci propounded only discrete requests for admission that sought to establish the veracity of key allegations, two days before those Requests for Admission would have been deemed admitted, only to later

dismiss his complaint by incorrectly "reasoning" that his allegations are implausible.

H. Whether the district court denied Antonacci due process of law by scheduling a hearing on Defendants' Seven (7) Motions to Dismiss for May 3, 2024, allowing Antonacci to file his oppositions to all but one of those motions to dismiss, over a three-week period, only to cancel the hearing on all motions to dismiss two days before his last opposition was due, and then deny Antonacci leave to amend his complaint.

I. Whether the district court erred in denying Antonacci leave to amend his complaint.

J. Whether the district court erred in denying Antonacci's second request for entry of default against Fusion GPS.

K. Whether Judge Nachmanoff should be removed on remand because his cancellation of every hearing, granting every request of the defendants, denying Antonacci's every request, and lack of cogent reasoning in his four-page order together demonstrate either unmistakable bias or the inability to handle this matter competently.

STATEMENT OF THE CASE

I. Course of Proceedings

Antonacci filed the complaint that is the subject of this Appeal on February 14, 2024. JA005. All defendants, except for Rahm Emanuel, have been properly served with process. JA015-017, JA814-846. It should be noted, after Antonacci opened this action in PACER, but before filing this complaint, Gehringer left

Perkins Coie. JA024, JA067, JA560-564. Gehringer was the architect of the enterprise's criminal conspiracy against Antonacci in Chicago. JA041-060, JA062-072. The fact that Gehringer suddenly disappeared from Perkins Coie, once he got word of this action being initiated, betrays his and Perkins Coie's complicity in the ongoing acts of this enterprise, particularly here in this Commonwealth.

Shortly after they entered appearances in the case, Antonacci served discrete requests for admission on six of the defendants: 33 on Matthew J. Gehringer ("Gehringer") (JA596-600); 34 on Perkins Coie LLP ("Perkins Coie") (JA590-595); 29 on Paul J. Kiernan ("Kiernan") (JA604-608), 20 on Holland & Knight LLP ("H&K") (JA609-610), 19 on Storij, Inc. d/b/a The So Company d/b/a STOR Technologies d/b/a Driggs Research International ("Storij") (JA583-585); 30 on FTI Consulting, Inc. ("FTI") (JA663); and one request to admit genuineness on Rokk Solutions LLC ("Rokk" or "ROKK") (JA797-802). Gehringer, Perkins, Storij, Kiernan, and H&K filed motions for protective orders, which Antonacci opposed and the Magistrate granted

before any of those requests would have been deemed admitted, canceling oral argument. JA611. Antonacci filed his timely objections to that ruling. JA613.

The defendants separately filed seven motions to dismiss the complaint for failure to state a claim. JA849. The district judge set oral argument on the motion to dismiss filed by FTI for May 3, 2024 (JA568-569), and all subsequent dispositive motions were noticed for the same day.

Antonacci filed his oppositions to the defendants' motions as follows: Derran Eaddy on April 9, 2024 (ECF 89); FTI on April 15, 2024 (ECF 100); Holland & Knight, Stephen B. Shapiro, and Paul J. Kiernan (together the "H&K Defendants") on April 16, 2024 (ECF 101); Storij on April 17, 2024 (ECF 102); and Perkins Coie, Seyfarth Shaw LLP, and Gehringer (together the "Perkins Defendants") (ECF 108), and Seth T. Firmender ("Firmender") on April 23, 2024 (ECF 110). On April 26, 2024, the district court canceled the May 3, 2024 hearing on all defendants' motions to dismiss (JA812). Antonacci filed his opposition to Rokk's Motion to Dismiss on April 28, 2024. (ECF 112.)

On May 2, 2024 Antonacci filed his Motion for Leave to Amend his Complaint, which he noticed for argument on May 24, 2024. JA810-811. The district court terminated that hearing on May 22, 2024 (JA848), and entered its order dismissing the complaint for want of subject matter jurisdiction on May 23, 2024. (JA849.)

On June 3, 2024, Antonacci filed his request for entry of default against defendant BEAN LLC d/b/a Fusion GPS. JA854-855. The magistrate denied that request on June 7, 2024. JA856.

The complaint asserts five causes of action against thirteen defendants. JA086-118. The claim for damages arising from violations of 18 U.S.C. § 1030 (Computer Fraud and Abuse Act or "CFAA") is against only Storij (Count V). JA118. The other four causes of action are against all thirteen defendants: Violations of 18 U.S.C. § 1962(a), (b), and (c) (Racketeer Influenced and Corrupt Organizations Act or "RICO") by investing, participating, and maintaining an interest, in a criminal enterprise (Count I); violations of 18 U.S.C. § 1962(d) (RICO Conspiracy) (Count II); violations of Va. Code Ann. § 18.2-499 (1950) (Virginia Business

Conspiracy) (Count III); and Common Law Civil Conspiracy (Count IV). JA086-118.

Counts I, II, and V are relevant to this Appeal because they constitute the bases for federal-question subject matter jurisdiction, and will be further discussed below.

II. The Defendants Are Part of a Criminal Enterprise Under U.S. Law, Which Engaged in a Pattern of Racketeering Activity and Presents a Clear Threat of Continued Racketeering Activity

Ever since Antonacci, as an associate of Holland & Knight LLP, filed a RICO complaint in this Court in 2009, an insidious criminal enterprise has sought to destroy him. JA022-023. Various false narratives are used to justify their actions, depending on the audience at any particular time; and various actors are used to spread those false narratives. Some of those actors are for-profit enterprises operating in the strategic communications and media space. Those firms develop the false narratives that the enterprise spreads through actors who have a personal or professional relationship with Antonacci. They are bribed with jobs, work promotions, lucrative business opportunities, or other incentives. Many of those bribes are through public officials. This enterprise's

activities are ongoing and nationwide, and they have committed innumerable predicate acts against Antonacci in this Commonwealth, the District of Columbia, and Illinois.

Antonacci specifically alleges the following association-in-fact enterprise:

> Specifically, the enterprise is an association-in-fact among individuals and business entities designed to divert taxpayer money to members of the enterprise; destroy the professional reputation of anyone who seeks to expose the nature and extent of the enterprise through fraud, widespread defamation, and murder; protect the members of the enterprise from civil liability by unlawfully influencing the outcome of civil cases, thereby keeping more money in the enterprise; defrauding litigants from monies to which they are legally entitled by unlawfully delaying and sabotaging meritorious civil cases; bribing and otherwise incentivizing people associated with those deemed enemies of this enterprise to spread lies about those "enemies;" punishing attorneys who sue members of the enterprise by preventing them from becoming admitted to practice law; punishing attorneys who sue members of the enterprise by putting them on the Blacklist of disfavored attorneys; illegally infiltrating protected computers to spy on the "enemies" of the enterprise, in some cases through fraudulently obtained search warrants; and protecting the enterprise by unlawfully preventing them from obtaining evidence of the enterprise's fraudulent misconduct.

JA086, JA094. Antonacci alleges that the H&K Defendants, together with Emanuel, who worked with Paul Kiernan's wife, Leslie Kiernan, in the Obama White House, were the impetus behind this campaign against Antonacci from the outset, because Antonacci, as an associate of Holland & Knight, identified and prosecuted a fraudulent scheme by another member of their criminal enterprise, Gerald I. Katz, so they wanted to prevent him from doing so again by damaging his career, his subsequent business, and discrediting him. JA027-038.

After forcing Antonacci to resign from Holland & Knight and blocking him from receiving another job offer, despite his overwhelming success, this enterprise prevented Antonacci from obtaining employment for sixteen months. JA030-034. Antonacci finally received a job offer from Seyfarth in Chicago, which was a trap set by the H&K Defendants, Seyfarth and Emanuel, who had recently been elected mayor of Chicago. JA035-037.

Antonacci immediately faced comical and nonsensical harassment from Anita Ponder, a long-time city lobbyist and former partner at Seyfarth, and was terminated, with only 8-

hours of notice, despite generating his own business and successfully supporting other partners there. JA037-039. Antonacci hired a lawyer, Ruth Major, and discovered in his personnel file blatantly defamatory statements made by Ponder. JA039.

When Antonacci filed suit against Seyfarth and Anita Ponder in Chicago, they enlisted the help of Defendants Perkins Coie LLP and Matt Gehringer. JA041-042. The Perkins Defendants squeezed Major, a Cook County Circuit Court judge, and the Illinois Supreme Court Committee on Character and Fitness to sabotage Antonacci's Circuit Court Case and prevent him from being admitted to the Illinois Bar. JA041-060.

Antonacci moved back to Washington, DC (JA052), opened a law practice (JA796), and filed a federal complaint against the Perkins Defendants, and others, in the Northern District of Illinois while his Circuit Court Case was on appeal to Illinois's First Appellate District. JA060. The Perkins Defendants enlisted the strategic communications complex, Defendants Fusion GPS, FTI, and Rokk Solutions to orchestrate a defamation campaign

against Antonacci, further obstructed justice and plotted to have him killed and later indicted via the AECOM Fraud. JA063-064, JA107, JA111, JA114-115.

When Antonacci returned to Washington, DC from Chicago, after filing his federal complaint against the Perkins Defendants and others, Antonacci was introduced to Shaun So and Richard Wheeler, principals for Storij, through a "friend" he has known for years, Charles Galbraith, who worked with Leslie Kiernan and Rahm Emanuel in the Obama White House. JA061. As alleged in the complaint, Storij is a front company who retained Antonacci's firm, Antonacci PLLC f/k/a Antonacci Law PLLC, for legal work related to its purported government contracts services. JA025, JA061-062.

In reality, So was tasked to monitor Antonacci and his business and report developments back to the enterprise, so they could thwart any opportunities his business would have for growth. JA061-062. Wheeler was tasked with exploiting Antonacci's protected computer systems, particularly during the AECOM Fraud, so that the enterprise could monitor Antonacci to

determine his plans, strategy, and outlook on the case, in violation of 18 U.S.C. § 1030. JA062, JA077-078, JA118. This information was disseminated to Firmender and David Mancini, counsel for AECOM, possibly through intermediaries in the enterprise. JA075-079, JA088-089, JA098-099, JA089, JA115, JA118.

The objective of the AECOM Fraud was to destroy Antonacci's law practice by having him indicted and sued for malpractice. JA068-069. Failing to achieve either of those goals because Antonacci identified Mancini's attempt to file an incomplete contract with AECOM's complaint (JA078-079, JA491-496), and because Antonacci refused to file Lane's fraudulent counterclaim on their behalf (JA080-082), they settled for surreptitiously defaming Antonacci. JA088, JA099. In furtherance of the scheme, Firmender orchestrated the turnover of the key Lane employees with whom Antonacci worked for a year preparing for mediation and subsequent litigation. JA068-069, JA077. Firmender utilized interstate wires to receive and transmit information Storij obtained by illegally hacking into Antonacci's protected computers. JA078-79, JA088-089, JA099,

JA107, JA115. Firmender further collaborated with Mancini, counsel for AECOM, and others, to implement the enterprise's strategy. JA074-075. Firmender ordered the destruction of thousands of documents at Lane with litigation pending, and sought to falsely associate Antonacci with the destruction of those documents, in furtherance of their attempted indictment. JA68, JA079-80.

Firmender not only delayed hiring Deloitte, who was tasked with analyzing Lane's affirmative claims (or "backcharge"), but also ordered Lane personnel to deliberately stall getting Antonacci and Deloitte the documents they needed to evaluate Lane's backcharge, to the point where Antonacci simply brought the Deloitte team to Lane's Chantilly office and stayed there for a week until they had the information they needed. JA068, JA077. Firmender further ordered document review work to be stopped numerous times, inexplicably, and further ordered all work on the case halted after Antonacci brought to his attention evidence that contradicted Lane's stated position regarding the Owner Settlement:

395 Express - AECOM v LANE - Fairfax Circuit Court CL2020 - 18128 - KPMG Audit/Irregularities

Louis Antonacci <lou@antonaccilaw.com> Tue, Jul 20, 2021 at 4:14 PM
To: "Firmender, Seth T." <STFirmender@laneconstruct.com>
Cc: "Wiggins, Allen T." <atwiggins@laneconstruct.com>, "Luzier, Dennis A." <DALuzier@laneconstruct.com>, "Schiller, Mark A." <MASchiller@laneconstruct.com>, Louis Antonacci <lou@antonaccilaw.com>, Accouting Department <accounting@antonaccilaw.com>

Seth,

As General Counsel of Lane, I presume that you are charged with legal compliance and governance at the Company. If that is not the case, then please forward this to the appropriate party/ies.

There are some irregularities with respect to the subject matter that I want to ensure are brought to your attention. The first is the purported data collection efforts of Jen Dreyer last year. This seems to have resulted in some missing data. And there are some factual inconsistencies being asserted by your IT Department. I emailed you about this under separate cover, so please respond at your convenience.

The second relates to Lane's settlement with the Owner of the subject Project, 95 Express Lane LLC, in the summer of 2019. As I have previously discussed with Allen and the Lane Project Team, the draft settlement agreement with the Owner specifically identifies the claims purported to be resolved by the settlement, while the final settlement agreement executed by the parties more generally applies to all commercial claims between the parties. I addressed this issue in my legal analysis of Lane's backcharge for the purposes of mediation last summer. I've attached that analysis for your reference, as well both versions of the confidential settlement with the Owner.

In preparing my analysis, I asked that Lane provide its understanding of the Owner's treatment of AECOM's claims passed through by Lane. Lane maintains, via its email attached to this firm's memorandum, that the settlement amount was mostly for weather delays impacting Lane, and that the Owner deemed AECOM's design performance unsatisfactory in general, and it considered AECOM's claims largely untimely and otherwise meritless. This firm prepared its analysis with that understanding.

I should note that, in January of last year, I asked Transurban's assistant general counsel, per the request of AECOM's counsel, if we could disclose the executed settlement to AECOM. She declined to waive the confidentiality provision. I also reached out to her in December of last year to notify her that AECOM had filed suit and to ask about the Owner's official position on the settlement. She indicated that her former superior (she did not exactly say but it seemed that she may no longer be with Transurban/95 Express) would get back to me. I never heard back.

As you know, we hired Epiq to assist with document review and production earlier this year. Last month, while doing quality control review of documents tagged as responsive by the review team, I came across some emails from 2018 with Lane's former project manager, Mr. Jason Tracy, and related documents, that required further explanation. We brought Mr. Tracy on as a consultant and I sent him the documents I wanted to discuss and set up a call for June 30, 2021. Just before that call, he sent the documents back to me with a written explanation, which is attached for your review. As you will see, Mr. Tracy indicates that the Owner had represented to him that the Owner did not intend to hold Lane or AECOM responsible for Design Exceptions/Waivers that arose from defects in the preliminary design. This is contrary to the position taken by Lane in its official responses to AECOM's change order requests. It is unclear to this firm whether the Owner changed that position, but it would also be inconsistent with Lane's position(s) as to the Owner Settlement.

We should discuss how these alleged facts relate to Lane's positions in this case, as well as Lane's ability to properly assert its purported backcharge as a counterclaim and/or offset.

Lou

JA068, JA079-081, JA533.

At that point, Lane owed Antonacci over $230,000 in unpaid legal bills, in breach of its contract with Antonacci PLLC. JA081-82. Firmender left Lane Construction while service was being attempted in this case. JA783, ECF 110 pp.1-2.

As for Derran Eaddy, Antonacci's federal case in the northern district of Illinois was dismissed for want of subject matter jurisdiction, *sua sponte*, six days after he filed it. JA062. Antonacci appealed to the Seventh Circuit and argued the case before a panel chaired by former Chief Judge Diane Wood. JA062-063. The Seventh Circuit affirmed on different grounds. *Contra*. JA192 *with* JA182-184. Antonacci petitioned SCOTUS for certiorari. JA064, JA121-473.

A few weeks before Antonacci's SCOTUS petition was denied, and the evening before he had an international flight, Antonacci was dining outside with his pregnant girlfriend and some friends when Eaddy ran up to their table and started screaming "YOU'RE ALL PRIVILEGED WHITE PIECES OF SHIT!" JA064. When Antonacci rose to protect his pregnant girlfriend, Eaddy pulled out his phone and started recording him, clearly race-baiting Antonacci. JA065. When Antonacci did not take the bait, Eaddy put his phone away and said "IM GOING TO KILL YOU!" and punched Antonacci in the nose. JA065. Antonacci began pummeling Eaddy when several DC Metro cops pulled him

off Eaddy and arrested Eaddy, who was not charged with a hate crime, but only simple assault, despite calling Antonacci a "white piece of shit" and expressly telling Antonacci he was attempting to murder him. JA065. Eaddy is a middle-aged, African American man and a strategic communications professional representing VA contractors, like Storij, and was paid or otherwise incentivized to perform these criminal acts. JA065-066.

The defendants have therefore used the enterprise unlawfully to engage in a pattern of racketeering activity, and they present a clear threat of continued racketeering activity. JA022-023, JA086-87, JA093. The defendants invested, participated in, and conducted the affairs of this criminal enterprise by committing numerous acts of mail fraud, wire fraud, obstruction of justice, and interstate or foreign travel or transportation in aid of racketeering enterprises, in violation 18 U.S.C. §§ 1341, 1343, 1503, 1952, as well as attempting to murder Antonacci. JA086-093. The defendants also conspired to commit several other predicate acts of "racketeering activity," as specifically enumerated in Section 1961(1) of RICO, including 18

U.S.C. § 1951 (Hobbs Act Extortion), and 720 ILCS 5/12-6 (Illinois Intimidation, "extortion" under Illinois law and punishable by imprisonment for more than one year).

The enterprise has engaged in long-term, habitual criminal activity, and because it unlawfully manipulates legal processes and has targeted Antonacci for approximately 15 years, it necessarily presents a clear threat of continued racketeering activity. Antonacci was injured by the defendants' violations of federal criminal law, vis-à-vis the enterprise, in the amount of $105,000,000, plus punitive damages.

In furtherance of this enterprise's goals, Storij gained unauthorized access to Antonacci's protected computer systems to steal and exploit Antonacci's data, in violation of 18 U.S.C. § 1030.

SUMMARY OF THE ARGUMENT

The district court has subject matter jurisdiction over this matter because Antonacci has properly and concisely alleged that the defendants are part of a criminal enterprise, which has engaged in a pattern of racketeering activity that proximately caused Antonacci and his business significant damages, and which

further presents a clear threat of continued racketeering activity. Antonacci also states a claim under 18 U.S.C. § 1030.

The district court also erred in purporting to analyze Antonacci's civil RICO's claims under Rule 8(a) when the heightened pleading standards of Rule 9(b) apply to the criminal conduct alleged in the complaint. Although even taking that logical step assumes jurisdiction.

The district court abused its discretion in granting the defendants' motions for protective orders because Antonacci propounded only discrete requests for admission that would have proved not only the plausibility of Antonacci's allegations, but indeed their veracity. The district court nonetheless granted those motions despite the probative value of the requests and their negligible burden and expense to the defendants. Antonacci gave the district court a tool to quickly and easily determine whether his allegations are plausible, yet it refused any factual inquiry and ruled that these defendants are simply beyond reproach.

To the extent this Court believes the complaint is insufficiently pled, Antonacci contends that the district court

erred in denying leave to amend the complaint. Antonacci further contends that the district court denied Antonacci due process of law by scheduling hearings, allowing briefing to occur on the presumption hearings would be held, and then canceling the hearings after briefing was completed.

The district court erred in denying entry of default against Fusion GPS because it is in default.

Judge Nachmanoff should be removed on remand because his actions in this case, as well as the content of his opinion and the factual inaccuracies therein, demonstrate that further proceedings should be before a judge who is less biased and more capable.

STANDARD OF REVIEW

This Court's review of a district court's dismissal for lack of subject matter jurisdiction under Rule 12(b)(1), based on the face of the complaint, is governed by the same standard as a dismissal for failure to state a claim under Rule 12(b)(6): *de novo*. *Evans v. United States*, No. 22-2022, 2024 WL 3197532, at *6–7 (4th Cir. June 24, 2024). Dismissal is not appropriate if the complaint

contains "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," and pleads facts beyond those that are "merely consistent with the defendant's liability." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). All reasonable inferences that may be drawn from the allegations must be drawn in favor of the plaintiff. *Ray v. Roane*, 948 F.3d 222, 226 (4th Cir. 2020).

"A complaint may only survive a motion to dismiss where its factual allegations 'raise a right to relief above the speculative level, thereby nudging the claims across the line from conceivable to plausible.'" *Evans*, 2024 WL 3197532 at 7 (quoting *Bazemore v. Best Buy*, 957 F.3d 195, 200 (4th Cir. 2020) (internal quotations and citations omitted)). However, "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007) [internal citations omitted].

"Where a district court denies a motion for leave to amend a complaint on grounds of futility, this Court employs the same

standard that would apply in a review of a motion to dismiss." *Stegemann v. Gannett Co., Inc.*, 970 F.3d 465, 473 (4th Cir. 2020) (citing *United States ex rel. Ahumada v. NISH*, 756 F.3d 268, 274 (4th Cir. 2014)).

This Court reviews the entry of a protective order for abuse of discretion. *Nicholas v. Wyndham Int'l, Inc.*, 373 F.3d 537, 542–43 (4th Cir. 2004). "An abuse of discretion may be found where 'denial of discovery has caused substantial prejudice.'" *Id.* (quoting *M & M Med. Supplies & Serv., Inc. v. Pleasant Valley Hosp., Inc.*, 981 F.2d 160, 163 (4th Cir.1992) (en banc)).

"At common law dismissal on a ground not going to the merits was not ordinarily a bar to a subsequent action on the same claim." *Costello v. United States*, 365 U.S. 265, 285 (1961). A dismissal for lack of subject-matter jurisdiction is not a judgment on the merits, and thus res judicata does not apply. *Hughes v. United States*, 71 U.S. 232, 237 (1866) ("In order that a judgment may constitute a bar to another suit, it… must be determined on its merits. If the first suit was dismissed for… the

want of jurisdiction, … the judgment rendered will prove no bar to another suit.”)[1]

In both this Circuit and the Seventh Circuit, unpublished opinions are not binding, and they are entitled only to the weight they generate by the persuasiveness of their reasoning. *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.”).

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[1] This is still the rule. *See, e.g.*, *Prakash v. Am. Univ.*, 727 F.2d 1174, 1182 (D.C. Cir. 1984) (“A dismissal for lack of subject-matter jurisdiction . . . is not a disposition on the merits and consequently does not have res judicata effect.” (footnotes omitted)); *see generally* Restatement (Second) of Judgments § 20 (1982) (“A personal judgment for the defendant, although valid and final, does not bar another action by the plaintiff on the same claim . . . When the judgment is one of dismissal for lack of jurisdiction.”). The principle that dismissal for lack of jurisdiction is not a judgment on the merits entitled to claim preclusion is also embodied in Federal Rule of Civil Procedure 41(b), which provides: “Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19— operates as an adjudication on the merits.” Fed. R. Civ. P. 41(b) (emphasis added)); *see Costello*, 365 U.S. at 286 (“We do not discern in Rule 41(b) a purpose to change this common-law principle with respect to dismissals in which the merits could not be reached for failure of the plaintiff to satisfy a precondition.”).

Magistrate Judge Vaala's act of refusing to enter default against Fusion GPS is unprecedented, so there is no standard of review.

Although the requirements of procedural due process are fluid and fact dependent, the point of procedural due process is to require procedural fairness and to prohibit the state from conducting unfair or arbitrary proceedings. *Johnson v. Morales*, 946 F.3d 911 (6th Cir. 2020); U.S. Const. Amend. 14; *see also* 16C C.J.S. Constitutional Law § 1884. "'[D]ue process is flexible and calls for such procedural protections as the particular situation demands.'" *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

ARGUMENT

I. The District Court Has Subject-Matter Jurisdiction Because Antonacci Has Stated Claims Under 18 U.S.C. §§ 1962 and 1030

Like the Northern District of Illinois in *Antonacci v. City of Chicago*, 2015 WL 13039605 (N.D. Ill. May 5, 2015) (JA177-185) and the Seventh Circuit in *Antonacci v. City of Chicago, 640 F. App'x 553 (7th Cir. 2016)* (JA191-197), the district court went out

of its way to get everything wrong here, so some basic facts should be clarified.

At the outset, it should be reiterated that the federal courts' decisions in Chicago have no precedential value for two reasons. First, those opinions are unpublished. *See Hall,* 44 F.4th 218 n.11; *see also Bankers Tr.,* 7 F.3d at 94-95. Second, Antonacci's 2015 complaint was dismissed for want of subject matter jurisdiction, and thus res judicata does not apply. *Costello*, 365 U.S. at 285; *Prakash*, 727 F.2d at 1182. Those opinions are only noteworthy to the extent their reasoning is persuasive, and as will be further discussed below, their reasoning is neither sound nor valid, and therefore completely worthless.

Of the thirteen defendants in this case, the three defendants represented by Perkins Coie (who is proceeding *pro se*) are the only repeat defendants from Antonacci's 2015 case, in which there were nine other defendants not present here. *Contra.* JA001-005 *with* JA368-071. The district court therefore erred in reasoning that "most of [the instant defendants] were defendants in the previous federal case." JA850.

The district court also erred in reasoning that "this suit mirrors Antonacci's previous federal suit. Antonacci brings roughly identical allegations concerning all events prior to his previous federal suit." JA850-851. In so doing, the district court relied on the affidavit filed by Barak Cohen (JA851), the shrinking violet who drafted a Rule 11 motion he did not have the gumption to file. JA676. In reality, however, the initial 100 allegations of the instant complaint, detailing "the events prior to his previous federal suit," appear nowhere in the 2015 complaint. *Contra*. JA022-037 *with* JA372-439. There Antonacci details how Paul Kiernan, Stephen Shapiro, and Rahm Emanuel targeted Antonacci after he prevailed on a RICO case, in the Eastern District of Virginia, against another attorney in their criminal enterprise, Gerald I. Katz, who was subsequently disbarred. *Bovis Lend Lease, Inc. v. Waterford McLean LLC et al*, 1:09-cv-00927 LMB-TRJ (E.D.Va. 2009).

Antonacci's 2015 complaint, which was filed with the instant complaint as part of Antonacci's SCOTUS Petition (JA369-439), contained 295 paragraphs and no exhibits. The instant complaint

contains 547 discrete allegations, which are substantiated with 11 exhibits. The allegations from paragraphs 100 to 243, detailing how this criminal enterprise sabotaged Antonacci's state court case in Illinois and prevented his bar licensure there, are somewhat duplicative of his federal case in Chicago.

In just one paragraph (JA851), the district court summarily dismisses as "implausible" the allegations from paragraphs 253 to 405, which detail the defendants' obstruction of justice in Antonacci's federal case, the AECOM Fraud, Shaun So's human intelligence work on Antonacci and Richard Wheeler's cyberespionage via their hiring of Antonacci's law firm for "government contracts work" they clearly fabricated, and how the enterprise coordinated these efforts with the strategic communications defendants Fusion GPS, FTI, and Rokk, and amplified its defamation apparatus through both Antonacci's derelict and degenerate family members, and Firmender's Georgetown classmate and old family friend of Antonacci, Stephen Lombardo III. JA061-085.

The district court erred in adopting the unreasoned conclusion of the Seventh Circuit that it lacks jurisdiction, under the U.S. Supreme Court's decision in *Bell v. Hood*, 327 U.S. 678, 682-83 (1946), because Antonacci's RICO and CFAA allegations are neither "wholly insubstantial" nor "legally frivolous." JA851-852. And contrary to the district court's false claim that the Northern District of Illinois dismissed under *Bell* (JA850), that court nowhere cited *Bell*, but incorrectly relied on *Twombly* and *Iqbal*, so the Seventh Circuit affirmed on different grounds. *Contra*. JA192 *with* JA182-184.

Bell is an old case that has been applied pretty consistently over the past 80 years, so it is unclear why the district court copied the Seventh Circuit's erroneous conclusion. This Court has recently adopted the reasoning put forth by Antonacci in his SCOTUS Petition for reversal of the Seventh Circuit's dismissal of his RICO claims (JA151-152): "'the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction.'" *Amazon.com, Inc. v. WDC Holdings LLC*, No. 20-1743, 2021 WL 3878403 at *5 (4th Cir. Aug. 31, 2021)

(quoting *Bell*, 327 U.S. at 682, to reverse and remand dismissal of Amazon's RICO claims).

An illustrative case where a RICO claim was properly dismissed for want of subject matter jurisdiction is *Williams v. Hinson*, No. CIVA6071577-HFFWMC, 2008 WL 320146, at *3 (D.S.C. Jan. 30, 2008). In *Williams*, unlike this case, the plaintiff baldly claimed the defendants violated RICO with no substantive allegations supporting that claim: "The elements common to all RICO violations are (1) racketeering activity; (2) conducted through a pattern; (3) affecting an enterprise; (4) a culpable person; and (5) an effect on interstate or foreign commerce. The plaintiff has made no such allegations, and thus federal question jurisdiction cannot be grounded in this statute." *Id.* (internal citation omitted.)

The district court in this case, in its four-page opinion dismissing a five-count complaint containing 547 allegations substantiated with 11 exhibits, explicitly addressed Antonacci's allegations by deliberately misconstruing them. But, like the Seventh Circuit, even the district court's efforts to misconstrue

and minimize those allegations demonstrate that it has jurisdiction because "'the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, i.e., the court's statutory or constitutional *power* to adjudicate the case.'" *DiCocco v. Garland*, 52 F.4th 588, 591 (4th Cir. 2022) (quoting *Verizon Md. Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 642–43, 122 S.Ct. 1753, 152 (2002)).

The Seventh Circuit lamely attempted to give its opinion some credibility by falsely claiming that Antonacci failed even to allege a "pattern" of racketeering activity, which is an essential element of a RICO claim:

> First, even though his RICO allegations describe specific actions undertaken by specific defendants on certain dates, it takes more than that to allege a plausible conspiracy. The allegations fall far short of meeting the stringent pleading requirements of a civil RICO claim, which requires among other things an allegation of a pattern of racketeering activity that shows either closed-ended or open-ended continuity. *Jennings v. Auto Meter Prods., Inc.*, 495 F.3d 466, 472-73 (7th Cir. 2007). Antonacci's complaint comes nowhere close to meeting this standard. **He seems to be thinking of a closed-ended pattern, because by now the alleged racketeers have succeeded in both sabotaging his state-court lawsuit and his bar application.** But the entire

> scheme lasted only 21 months, giving Antonacci the benefit of the doubt, and we have repeatedly found that the combination of such a short period with only a single victim of a single scheme is insufficient as a matter of law. *Gamboa v. Velez*, 457 F.3d 703, 709-10 (7th Cir. 2006) (collecting cases). **Nothing but sheer speculation would support the hypothesis of open-ended continuity, either.**

That did not age well. And Antonacci did, in fact, allege in his 2015 complaint that this enterprise presents a clear threat of continued racketeering activity (JA427), and argued as much in his Seventh Circuit Briefs (JA697-701) and his SCOTUS Petition (JA152-161). And as alleged in the instant complaint, the Defendants continue to demonstrate that their enterprise is open-ended. JA022-023, JA086-87, JA093. So while Nachmanoff baldly claims to follow the Chicago courts' "reasoning," while nonetheless misapplying it, their reasoning is neither sound nor valid, and therefore worthless in any case. *See Hall,* 44 F.4th 218 n.11; *see also Bankers Tr.,* 7 F.3d at 94-95; *see also Costello*, 365 U.S. at 285; *see also Prakash*, 727 F.2d at 1182.

The district court has subject matter jurisdiction because Antonacci states claims, under 18 U.S.C. §§ 1962 and 1030, with

the particularity required by Rule 9(b): "business conspiracy, like fraud, must be pleaded with particularity." *Gov't Emples. Ins. Co. v. Google, Inc.*, 330 F.Supp.2d 700, 706 (E.D.Va.2004). Antonacci's complaint gives the Defendants "fair notice of the claims and the grounds upon which they rest." *Adams v. NaphCare, Inc.*, 243 F. Supp. 3d 707, 711 (E.D. Va. 2017); *see also Venkatraman* v. REI Sys., Inc., 417 F.3d 418, 420 (4th Cir. 2005). Like the complaint in *NaphCare*, Antonacci's "allegations are neither vague nor conclusory, but specific and thorough, with sufficient factual content to allow these Defendants to answer them." *NaphCare,* 243 F. Supp. 3d at 711.

"Among other things, RICO prohibits being 'associated with any enterprise ... [and] conduct[ing] or participat[ing] ... in the conduct of such enterprise's affairs through a pattern of racketeering activity.' 18 U.S.C. § 1962(c). To allege 'a pattern of racketeering activity,' a plaintiff must allege acts of racketeering that are both related and continuous." *CVLR Performance Horses, Inc. v. Wynne*, 524 F. App'x 924, 928–29 (4th Cir. 2013) (*quoting*

GE Inv. Private Placement Partners II v. Parker, 247 F.3d 543, 549 (4th Cir.2001)).

The continuity requirement of a RICO enterprise may be closed-ended or open-ended. *CVLR,* 524 F. App'x at 928. The Supreme Court holds that "a plaintiff establishes open-ended continuity by showing 'past conduct that by its nature projects into the future with a threat of repetition.'" *Id.* (quoting *H.J. Inc. v. Nw. Bell Tel. Co.,* 492 U.S. 229, 248, 109 S.Ct. 2893 (1989).

Specifically, Antonacci has alleged the defendants invested, participated in, and conducted the affairs of this criminal enterprise by committing numerous acts of mail fraud, wire fraud, obstruction of justice, interstate or foreign travel or transportation in aid of racketeering enterprises, in violation 18 U.S.C. §§ 1341, 1343, 1503, 1952, as well as attempting to murder Antonacci. (JA086-093.) Antonacci's conspiracy claim also alleges violations of 18 U.S.C. §§ 1951(1) and 720 ILCS 5/12-6. JA092-101.

Antonacci has pled a valid RICO conspiracy (JA092-101) because he has easily established both requisite elements as to each of the defendants: "(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)). Moreover, "a defendant who agrees to do something illegal and opts into or participates in a [RICO] conspiracy is liable for the acts of his coconspirators even if the defendant did not agree to do or conspire with respect to that particular act." *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). Every Defendant in this case is liable for each and every act of his co-conspirators: "coconspirators may be held vicariously liable for those independent acts until the object of the conspiracy has been achieved or the coconspirators effectively withdraw from or abandon the conspiracy." *Hengle*, 433 F. Supp. 3d at 893.

And the CFAA violation is a no-brainer, with more than adequate facts alleged to demonstrate that Shaun So and Richard Wheeler are precisely the types of opportunists this enterprise would utilize to exploit Storij's fiduciary relationship with Antonacci's law firm and gain unauthorized access to his protected devices. JA061-062, JA075-079, JA088-089, JA099, JA107, JA115, JA118. Counts I, II, and V state valid claims for relief under federal law.

II. Illinois's Absolute Privilege Cannot Shield the Perkins Defendants from the Criminal Acts of Matthew J. Gehringer

In the district court, the Perkins Defendants claimed that Illinois's litigation privilege shields them from liability. ECF 85 pp. 10-11. They are wrong. First, under Virginia law, the "absolute privilege" the Perkins Defendants assert applies only to in-court statements, written or oral, as demonstrated by the cases upon which they disingenuously rely: *Titan Am., LLC v. Riverton Inv. Corp.*, 264 Va. 292, 308–09 (2002) (finding statement in filed complaint privileged "because of the safeguards in those proceedings, including rules of evidence and penalties for

perjury"); *Darnell v. Davis*, 190 Va. 701, 701 (1950) ("[g]enerally the privilege of judicial proceedings is not restricted to trials of civil actions or indictments, but it includes every proceeding before a competent court or magistrate in the due course of law or the administration of justice which is to result in any determination or action of such court or officer"); *Fletcher v. Maupin*, 138 F.2d 742, 742 (4th Cir. 1943) ("[t]he statements contained in the answers filed by the attorneys were true beyond any doubt; in addition to this they were privileged").

Antonacci is seeking damages for the fraudulent scheme the Perkins Defendants orchestrated outside of the courtroom, which includes illegally sabotaging his bar application; criminal extortion; conspiring with his lawyer, the H&K Defendants, and Rahm Emanuel; *ex-parte* communications with judges and their clerks to sabotage his case; obstruction of justice in a federal case; attempting to have Antonacci murdered; hiring the strategic communication Defendants to spread a disinformation campaign attacking Antonacci and his law firm; setting up Antonacci's firm with a client that illegally infiltrated his computers; and trying to

have him indicted and sued for malpractice. The Perkins Defendants find no refuge from liability under the common law.

Second, while the absolute privilege has recently been construed more broadly by one appellate court in Illinois, it does not apply to this case because 1) it does not protect attorneys from liability for their illegal or unlawful acts, as alleged here; and 2) the expansion of the doctrine is a recent development in the First Appellate District, and thus does not even cover the time period when Antonacci was in Chicago and the Perkins Defendants were attacking him there. *See generally*, Amanda J. Hamilton, *It's Okay, I'm a Lawyer! How the Expansion of the Attorney-Litigation Privilege Is Changing the Game*, 107 Ill. B.J. 38 (March 2019) (noting that the 2018 case the Perkins Defendants rely upon, *Scarpelli v. McDermott Will & Emery LLP*, 2018 IL App (1st) 170874, ¶ 18, 117 N.E.3d 238, is a "significant expansion of the attorney litigation privilege").

The recent expansion of the doctrine in one Illinois Appellate District simply has no bearing on the Perkins Defendants' criminal activities directed at Antonacci in this Commonwealth.

Tellingly, Gehringer never once raised the issue of absolute privilege in his 75-page screed before the Seventh Circuit. JA708-782. Furthermore, nothing in the *Scarpelli* decision suggests that it intends to protect attorneys like Gehringer "from the consequences of his participation in an unlawful or illegal conspiracy":

> Illinois courts recognize that claims for conspiracy may be maintained against attorneys where there is evidence that the attorneys participated in a conspiracy with their clients. Accordingly, we see no reason to impose a per se bar that prevents imposing liability upon attorneys who knowingly and substantially assist their clients in causing another party's injury. As we have recognized, **'[o]ne may not use his license to practice law as a shield to protect himself from the consequences of his participation in an unlawful or illegal conspiracy.'** *Celano v. Frederick*, 54 Ill. App. 2d 393, 400 (1964), quoting *Wahlgren v. Bausch Lomb Optical Co.*, 68 F.2d 660, 664 (7th Cir. 1934). The same policy should prevent an attorney from escaping liability for knowingly and substantially assisting a client in the commission of a tort

Thornwood, Inc. v. Jenner & Block, 344 Ill. App. 3d 15, 28 (1st Dist. 2003) (emphasis added). That is still good law.

Finally, attorneys cannot claim any sort of privilege to exculpate themselves from civil liability for their criminal or fraudulent acts. To suggest otherwise denigrates the entire profession, which the Perkins Defendants have been doing for far too long. As such, even the attorney-client privilege cannot protect these Defendants. *See Owens-Corning Fiberglas v. Watson*, 413 S.E.2d 630, 638-39 (Va. 1992) (answer to an interrogatory filed in a Texas case, which was inconsistent with information contained in a privileged document in the Virginia litigation, was a showing of fraud sufficient to overcome attorney-client privilege).

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

The Fourth Circuit follows the "injury discovery rule" for civil RICO claims, where the four-year statute of limitations begins to run when the plaintiff knows or should know of the injury that underlies the cause of action, and each predicate act that causes injury begins the tolling period anew. *Potomac Elec. Power Co. v. Electric Motor and Supply, Inc.,* 262 F.3d 260, 266 (4th Cir. 2001). In *Potomac*, PEPCO's contractor, EMS, was alleged to have fraudulently repaired some of PEPCO's motors,

thereby billing PEPCO for services it never performed. *Id.* The district court dismissed the case for lack of proof of injury on summary judgment, and was reversed on that basis, but EMS also argued on appeal that PEPCO's claims were time-barred as well. *Id.* The Fourth Circuit, applying the injury discovery rule, remanded the statute of limitations issue because it is necessarily a "fact-intensive determination" and the "district court ha[d] not yet grappled with the detailed factual evidence regarding when PEPCO knew or should have known *about each separate alleged incident*." *Id.* (emphasis added).

RICO conspiracy claims also have a four-year statute of limitations that begins running from whenever the plaintiff discovers the last overt act that causes injury: "[t]he statute of limitations, unless suspended, runs from the last overt act during the existence of the conspiracy. *Brown v. Elliott*, 225 U.S. 392, 401, 32 S.Ct. 812, 815 (1912). The overt acts averred and proved may thus mark the duration, as well as the scope, of the conspiracy." *Fiswick v. United States*, 329 U.S. 211, 216, 67 S. Ct.

224, 227, 91 L. Ed. 196 (1946) (citation in original); *see also* *United States v. Izegwire*, 371 F. App'x 369, 371 (4th Cir. 2010).

Furthermore, "'[c]onspiracy is an inchoate [violation]' separate from a violation of § 1962." *Hengle,* 433 F. Supp. 3d at (quoting *Boyle v. United States*, 556 U.S. 938, 950, 129 S.Ct. 237 (2009). As such, "[n]othing in RICO limits compensable conspiracy injuries solely to those caused by overt acts that also happen to be predicate offenses… a RICO conspiracy violation arises from the mere agreement to violate one of the substantive RICO provisions; it does not require the completion of a substantive violation or predicate offense." *Flinders v. Datasec Corp.*, 742 F. Supp. 929, 933–34 (E.D. Va. 1990). In addition, fraudulent concealment of the enterprise's predicate acts will toll the limitations period when wrongful conduct on part of the defendant prevents the plaintiff from asserting the claims, provided the plaintiff demonstrated diligence in pursuing his or her rights. *Hengle*, 433 F. Supp. 3d at 892.

The difference between the statute of limitations for substantive RICO offenses (§ 1962(a), (b), and (c)) and RICO

conspiracy (§ 1962(d)) lies in the distinction between overt and predicate acts. In both cases, the statute begins to run from the date the plaintiff discovers the injury, of which the RICO violation was a proximate cause, unless he was prevented from understanding the source of the injury through fraudulent concealment. And in substantive RICO cases, the relevant injuries must arise from the commission of predicate acts under § 1962. But in RICO conspiracy cases, the relevant injuries may arise from the commission of *any overt act in furtherance of the conspiracy*. *Flinders*, 742 F. Supp. at 933–34.

The burden is on the defendants to prove that no set of facts consistent with the allegations could show that Antonacci discovered the source of his injuries within four years from the filing date of February 14, 2024. *Goodman v. Praxair, Inc.*, 494 F.3d 458, 465–66 (4th Cir. 2007). They cannot meet that burden.

Antonacci's injuries in this case are the loss of income to both his law firm, Antonacci PLLC f/k/a Antonacci Law PLLC, which was organized in June of 2014, and from loss of employment opportunities that he earned through professional success. Those

injuries have been ongoing for some time, but it was impossible for Antonacci to discover that this enterprise's predicate acts were ongoing. As Antonacci alleged in the complaint: "After Antonacci's petition for writ of certiorari was denied, he believed that the enterprise alleged in his federal case was done with their campaign to destroy him. He was wrong, and has since realized the extent and nature of this criminal enterprise." JA066.

As in *Potomac*, this a fact-intensive inquiry that must be done after discovery in this case. 262 F.3d at 266. The enterprise's predicate acts are deliberately hidden from Antonacci in a way that he could not possibly ascertain, despite his due diligence. One of this enterprise's best ploys avoiding accountability is that it's acts are so egregious, and represent such a departure from Americans' understanding of how their government and legal institutions are supposed to work, that it is easy to label these facts as the crazy ramblings of a conspiracy theorist. Although that is changing; and Americans' resulting distrust in their government sows a bitter harvest we all have to reap.

The Defendants' timeliness arguments have no merit in general because it is simply not reasonable to assume that 1) your former employer is going to do everything in their power to ensure you never have a successful career just because they feel threatened by you and everyone else they encounter; 2) because you file a lawsuit for textbook defamation against a law firm that mistreated you, and later a RICO claim against the lawyers who would not allow you to be admitted to the bar because of it, those lawyers, and political actors like Rahm Emanuel and the Perkins Defendants, would set an enterprise in motion that for years would limit your mobility so it could (unsuccessfully) set you up for a criminal fraud investigation; 3) that a friend's friend would hire you, in a fiduciary capacity, just to spy on you, for years, even after you helped save his life and dined with his children; 4) that a heavy construction firm would hire you, again in a fiduciary capacity, just to set you up for a criminal fraud investigation and legal malpractice, putting a multi-billion dollar enterprise at risk. And the list goes on.

It is not reasonable to expect someone to assume these things are happening to them, because that is not how this country is supposed to work. And based on the precipitous decline in Americans' trust in our institutions, it seems to be a relatively new phenomenon here.[2]

As Antonacci alleged in his complaint, he thought his fight with this enterprise was over when SCOTUS denied his petition in 2016. JA066. His lack of career mobility was surprising to him, but he kept at it and focused his extra energy on raising a family. When the AECOM Fraud unfolded, Antonacci became more suspicious, but it was not until his now ex-wife (and former colleague at Holland & Knight) faked a kidney stone, trying to prevent him from sending the KPMG audit response letter (JA082-083, JA552), that Antonacci realized this was not over. But even then, it took some time to put the pieces together. As

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[2] "New data from Gallup, a pollster, show that **American trust in several national institutions is on the decline**. That may not be surprising, given the fraught state of the country's politics, but the **cumulative fall over the twenty years is startling. Twenty years ago Americans had the highest confidence in their national government** of people in any G7 country. **Today they have the lowest.** American are tied with Italians in having **the lowest trust in their judicial system**, and come last in faith in honest elections." THE ECONOMIST, *America's trust in its institutions has collapsed* (April 17, 2024), available at https://www.economist.com/united-states/2024/04/17/americas-trust-in-its-institutions-has-collapsed.

alleged in the Complaint, Antonacci traveled to Chicago in June of 2022 to do some due diligence, which further confirmed his suspicions. JA084-085. Antonacci's subsequent inability to find work for his firm, or employment, are further revealing. JA093, JA101.

This enterprise has committed innumerable predicate acts against Antonacci over the years, and they are likely ongoing, but it cannot be said that Antonacci discovered the source of his injuries until the summer of 2022. And even now the extent of the enterprise's predicate acts cannot be ascertained without discovery because they are surreptitious by design. If the enterprise's targets were aware of the enterprise's activities, they simply would not work. Antonacci's RICO claims are timely. *Potomac*, 262 F.3d at 266; *Goodman,* 494 F.3d at 465–66.

IV. The District Court Abused its Discretion, and Denied Antonacci Due Process of Law, By Granting Defendants Protective Orders

As set forth above, Antonacci served discrete requests for admission on key defendants, seeking to demonstrate this his allegations are not only plausible, but true. This would be

unnecessary in a normal case, of course, because common law courts accept a plaintiff's allegations as true. But given the influence this criminal enterprise has demonstrated over courts and legal processes, and that the instant case was assigned to Nachmanoff, who was appointed by a Democrat closely affiliated with Defendant Rahm Emanuel, Antonacci anticipated that the court would attack him rather than administer justice:

> As this Court can quickly glean, most admissions sought in Antonacci's RFAs are expressly alleged in the Complaint itself. And those that are not specifically alleged are easily inferred. On a Motion to Dismiss under Rule 12(b)(6), all of Antonacci's allegations, and the reasonable inferences that may be drawn from them, must be accepted as true. So the Perkins Defendants – and the other Defendants upon which Antonacci has propounded respective RFAs – are simply being asked to attest to the facts that their counsel will deny in their motions to dismiss.
>
> As this Court has likely surmised, Antonacci did this deliberately. In Chicago's Cook County Circuit Court, this enterprise's strategy was harassment and exhaustion because nobody takes Cook County Circuit Court seriously anyway. And thanks to the Perkins Defendants and their co-defendant, Rahm Emanuel, that will continue to be the case for the foreseeable future.
>
> But once Antonacci filed his complaint in the Dirksen Building, the enterprise needed to shut

him down immediately, lest he have the opportunity to expose what it really is these bozos call power. So six days later, District Judge Shadur issued his sua sponte opinion, entered judgment and closed the case. His opinion was facially absurd, of course, but that is no problem for this enterprise: former Chief Judge of the Seventh Circuit, Diane Wood, simply affirmed his ruling on different grounds, which are even more at odds with controlling jurisprudence. But we digress.

The point is, to date, this enterprise has dodged Antonacci's verified and well-pled allegations with nothing more than empty rhetoric. And with the support of some behind-the-scenes narratives of patrimony and local culture, to which Antonacci never subscribed, agreed, or supported, the Chicago courts flipped Antonacci's allegations on their head and construed them in the light most favorable to the Perkins Defendants.

So Antonacci has now given the Perkins Defendants an opportunity to deny the truth of some of Antonacci's material allegations under oath. And what have they done? They have come crawling to this Court for protection.

But we are not in Chicago anymore. So this enterprise cannot use Chicago's culture of corruption to conceal its disregard for the rule of law. So if this Court, who upheld a RICO case brought by Antonacci fifteen years ago, will now undermine the rule of law by ignoring and twisting Antonacci's well-pleaded allegations to dismiss his complaint, then what will be the narrative this time around? Because if Antonacci has not alleged criminal racketeering in his

> complaint, then we do not live in a free country. Is it because Antonacci's 2009 RICO case (1:09-cv-927 LMB-TRJ) exposed a once-prominent Zionist, Gerald I. Katz, for the hypocritical crook he always was? Antonacci and this country want to know.

Plaintiff's Resp. in Opp. to Perkins and Gehringer's Mot. for Prot. Order, ECF 70 pp. 2-3. Below are some of the Requests for Admission propounded on Perkins, with a reference to the corresponding allegations:

1. Admit the genuineness of the letter and email correspondence attached to the Complaint as **Exhibit K.**

    a. (Compl. ¶¶ 3, 404.)

3. Admit that Perkins Coie hired Defendant BEAN LLC d/b/a Fusion GPS to provide services concerning Antonacci.

    a. (Compl. ¶¶ 269-71.)

4. Admit that Perkins Coie hired Defendant FTI Consulting, Inc. to provide services concerning Antonacci.

    a. (Compl. ¶¶ 269-71.)

5. Admit that Perkins Coie hired Defendant Rokk Solutions LLC to provide services concerning Antonacci.

    a. (Compl. ¶¶ 269-71.)

6. Admit that Perkins Coie has hired third parties to perform investigative services concerning Antonacci.

a. (Compl. ¶¶ 269-71.)

7. Admit that Perkins Coie has hired third parties to perform strategic communication services concerning Antonacci.

a. (Compl. ¶ 269-71.)

8. Admit that Perkins Coie has communicated with Defendant Rahm Emanuel concerning Antonacci.

a. (Compl. ¶¶ 269, 415.a.-f., 435.i., 483-84, 536-37.)

9. Admit that Perkins Coie has communicated with Defendant Rahm Emanuel in relation to the findings of its investigative services concerning Antonacci.

a. (Compl. ¶¶ 269, 415.a.-f., 435.i., 483-84, 536-37.)

10. Admit that Perkins Coie has communicated with Defendant Rahm Emanuel in relation to the findings of its strategic communication services concerning Antonacci.

a. (Compl. ¶¶ 269, 415.a.-f., 435.i., 483-84, 536-37.)

11. Admit that Perkins Coie has communicated with the Democratic National Committee concerning Antonacci.

a. (Compl. ¶¶ 269, 415.a.-f., 435.i., 483-84, 536-37.)

12. Admit that Perkins Coie has communicated with the Democratic National Committee in relation to the findings of its investigative services concerning Antonacci.

a. (Compl. ¶¶ 269, 415.a.-f., 435.i., 483-84, 536-37.)

13. Admit that Perkins Coie has communicated with the Democratic National Committee in relation to the findings of its strategic communication services concerning Antonacci.

a. (Compl. ¶¶ 269, 415.a.-f., 435.i., 483-84, 536-37.)

14. Admit that Rahm Emanuel is or was your client.

a. (Compl. ¶¶ 269, 415.a.-f., 435.i., 483-84, 536-37.)

15. Admit that Rahm Emanuel hired Perkins Coie to discredit Mr. Antonacci.

a. (Compl. ¶¶ 269, 415.a.-f., 435.i., 483-84, 536-37.)

Below are some of the Requests for Admission propounded on Gehringer:

1. Admit that your employment with Perkins Coie ended on or after February 1, 2024.

a. (Compl. ¶¶ 3, 404.)

15. Admit that, prior to 2023, you communicated with Mr. David Mancini concerning Antonacci. This request does not pertain to communications that took place after December 31, 2022

a. (Compl. ¶¶ 334, 337, 346, 360, 374-45.)

16. Admit that, prior to 2023, you communicated with Troutman Pepper Hamilton Sanders LLP concerning Antonacci. This request does not pertain to communications that took place after December 31, 2022.

a. (Compl. ¶¶ 334, 337, 346, 360, 374-45.)

17. Admit that, prior to 2023, you communicated with Defendant Seth T. Firmender concerning Antonacci. This request

does not pertain to communications that took place after December 31, 2022.

a. (Compl. ¶¶ 302-09, 334-85, 413.f.-g., 414.f., 435.h., 487, 540.)

18. Admit that, prior to 2023, you communicated with any executive, employee, or board member of The Lane Construction Corp., besides Defendant Firmender, concerning Antonacci. This request does not pertain to communications that took place after December 31, 2022.

a. (Compl. ¶¶ 302-09, 334-85, 413.f.-g., 414.f., 435.h., 487, 540.)

19. Admit that, prior to 2023, you communicated with Ms. Judith Ittig concerning Antonacci. This request does not pertain to communications that took place after December 31, 2022.

a. (Compl. ¶¶ 348-49.)

20. Admit that, prior to 2023, you communicated with Mr. Stephen Lombardo III concerning Antonacci. This request does not pertain to communications that took place after December 31, 2022.

a. (Compl. ¶¶ 302-32, 396.)

21. Admit that, prior to 2023, you communicated with Mr. Stephen Lombardo II concerning Antonacci. This request does not pertain to communications that took place after December 31, 2022.

a. (Compl. ¶¶ 302-32, 396.)

22. Admit that, prior to 2023, you communicated with the Gibsons Restaurant Group concerning Antonacci. This request

does not pertain to communications that took place after December 31, 2022.

a. (Compl. ¶¶ 302-32, 396.)

23. Admit that, prior to 2023, you communicated with Holland & Knight LLP concerning Antonacci. This request does not pertain to communications that took place after December 31, 2022.

a. (Compl. ¶¶ 269, 415.a.-f., 435.i., 483-84, 536-37.)

24. Admit that, prior to 2023, you communicated with Defendant Paul J. Kiernan concerning Antonacci. This request does not pertain to communications that took place after December 31, 2022.

a. (Compl. ¶¶ 269, 415.a.-f., 435.i., 483-84, 536-37.)

Plaintiff's Resp. in Opp. to Perkins and Gehringer's Mot. for Prot. Order, ECF 108 pp. 5-8. After full briefing, the magistrate went out of her way to prejudice Antonacci by canceling the hearing and staying all discovery before some of the requests would have been deemed admitted.

Antonacci objected to her ruling, and scheduled the hearing on his objections concurrent with the hearing on defendants' motions to dismiss. Antonacci included his requests for admission, and his arguments as to why they are germane, in his oppositions to those motions. FRAP 30 discourages memoranda of law in the

Appendix, but these memoranda, which Nachmanoff claims to have read (JA849), are available in the record. (*See* ECF 100 (FTI) pp. 3-10; ECF 101 (H&K Defendants) pp. 2-7; ECF 102 (Storij) pp. 2-4; ECF 108 (Perkins Defendants) pp. 5-8.) Nachmanoff nonetheless canceled the hearing on the motions to dismiss, dismissed the complaint on the sole basis that Antonacci's allegations are "implausible," and denied Antonacci's objections to the protective order as "moot." Nachmanoff essentially ruled that there is nothing Antonacci can say or do to seek justice against this criminal enterprise, which is a denial of due process of law. *Mathews*, 424 U.S. at 334; U.S. Const. Amend. 14; *see also Morales*, 946 F.3d at 927.

The record of Antonacci's 15-year dispute with this enterprise demonstrates that it is deliberately obfuscating the significant differences between the "rule of law," under the democratic common law, and "rule by law," which is practiced by legalistic authoritarian governments. This enterprise is walking us into Tiananmen Square while they drive the tanks.

Both the magistrate and the district judge abused their discretion, causing Antonacci substantial prejudice. *Nicholas*, 373 F.3d 542-43. They have undermined the objectivity of federal court proceedings, prejudicing Antonacci, and thereby denied him due process of law. *Mathews,* 424 U.S. at 334; U.S. Const. Amend. 14; *see also Morales*, 946 F.3d at 927.

V. The District Court Abused Its Discretion and Denied Antonacci Due Process of Law By Denying Leave to Amend

Antonacci's complaint is well pled. Nachmanoff seems to believe so too, because dismissing a 547-paragraph complaint, complete with substantiating exhibits, as simply "implausible," is lazy and unconvincing. And most of the very few affirmative statements he did make are just false, as set forth above.

Antonacci did not amend his complaint as a matter of right because there are no fatal deficiencies. But, as addressed in his motion for leave to amend (JA810-813), his affidavit in opposition to Rokk's motion to dismiss (JA793-809), and his reply brief (JA832-848), there are some additions that could be made, if deemed necessary, such as the following:

1. Antonacci first met John Brandt ("Brandt"), Vice President at Rokk in 2007. JA793.

2. Antonacci met Brandt through his now wife, Carrie Miller Brandt ("Carrie"), who I met through a college acquaintance, Kevin Mackey ("Mackey"). Carrie and Mackey served in the Peace Corps together. JA793.

3. In 2010, Antonacci attended John and Carrie's wedding reception in Minneapolis, Minnesota. JA793.

4. Brandt and Antonacci share an interest in cycling, so they did that occasionally, as well as attend some of the same social functions over the years. JA793.

5. Brandt has indicated to Antonacci that he worked as a production assistant for Fox News when we first met, but was let go from Fox and left broadcasting. He represented that he received a masters degree in communications from the George Washington University, and, after graduation, started work as a communications professional with the Public Affairs Council. JA793-794.

6. Antonacci was never close friends with Brandt, but they have known each other for 17 years and spent a good amount of time together. JA794.

7. Antonacci's now ex-wife, Livya Heithaus, became closer friends with Carrie, and would have play dates with her and their children, so their children became friends. JA794.

8. In 2019, because Livya was pregnant with their second child, Antonacci and Livya moved into a bigger house in the Brookland neighborhood of Washington, DC, about a mile from where the Brandts live. JA794.

9. During the pandemic, the Antonaccis and Brandts would host each other with the kids at their homes. JA794.

10. Around 2020, Brandt indicated to Antonacci that he started a job with ROKK in strategic communications. JA794.

11. Antonacci knew of ROKK because a former acquaintance, Kristen Hawn ("Hawn") had co-founded the company. Antonacci knew Hawn through Charles Galbraith, who had introduced Antonacci to Shaun So and Richard Wheeler of

Defendant Storij, Inc., and who had worked in the Obama White House with Leslie Kiernan and Rahm Emanuel. JA794.

12. After Brandt started working at ROKK, he began periodically bringing up how Antonacci had been "laid off" from Defendant Holland & Knight LLP during the mass layoffs of 2009. Sometimes Livya would confirm that. Antonacci always quickly corrected them both, indicating that Antonacci was forced to resign in 2010 under dubious circumstances. JA794.

13. On one occasion in 2020 or 2021, Brandt very abruptly brought up, in a non sequitur, that he believed that if an appeals court says something, then it must be true. Antonacci indicated to him that a court's rulings are limited to its holdings under the common law, and that there are good reasons for that. Brandt did not bring this up in the context of Antonacci's federal cases in Chicago, or any case in particular, just as a general statement. JA794.

14. After Antonacci left Livya in 2022, and had visited his brother, Tony Antonacci, and Stephen Lombardo III in Chicago, he began to wonder about Brandt's position with ROKK and

whether he was hired by ROKK simply because he had a personal relationship with Antonacci and could thus provide ROKK information it could use in the enterprise's defamation campaign. JA795.

15. To that end, Antonacci forwarded Brandt some email correspondence between and among Philip "Pete" Evans, partner at Holland & Knight, Livya, and himself, from immediately after Antonacci was forced to resign from Holland & Knight in 2010. JA795.

16. Antonacci served ROKK with that correspondence in a request for admission, asking ROKK to authenticate it. JA795.

17. In his August 20, 2022 email to Brandt, Antonacci reminded Brandt that his unprompted assertions that Antonacci had been "laid off" from Holland & Knight in a mass layoff in 2009 were incorrect, and that the correspondence below should disabuse any notion he had otherwise. Brandt's response to Antonacci's August 20, 2022 email is tellingly defensive. JA795.

18. On February 28, 2024, ROKK's counsel, Jonathan Deem, emailed Antonacci after being served with the complaint,

feigning skepticism as to the truth of the allegations. Antonacci responded simply by saying that they should talk to John Brandt. Deem did not respond until March 11, 2024, claiming Rokk needed more time to respond to the complaint. JA795.

19. On June 29, 2016, Antonacci sent, via email, the SCOTUS Petition and Appendix attached to the Complaint to John Brandt, who confirmed orally that he read it. JA795.

20. Antonacci has heard from other sources that those sources heard that 1) Antonacci had been laid off from Holland & Knight during the mass layoffs of 2009, and 2) Livya was married to a partner at Holland & Knight, which was why Antonacci was forced to resign. JA796.

21. ROKK is a strategic communications firm. Below is an excerpt from its "Message Development" tab:

> Effective campaigns look, sound, and feel authentic, relevant and actionable. But hitting those right notes becomes increasingly difficult when you're talking to people with differing views. That's why we focus first on understanding your audience and uncovering fresh insights about how they think and what they care about. Then we use our bipartisan perspective, cutting-edge research tools and years of storytelling

> expertise to craft messages that help you break through the noise.

JA796.

22. Antonacci is and has always the sole member of Antonacci PLLC f/k/a Antonacci Law PLLC, which was organized in 2014 and has done business providing legal services in the government contracts and commercial litigation and transactions arena ever since. JA796.

23. Firmender left employment at Lane after service of process was attempted on him in this case. JA784. He now works as in-house counsel for an insurance company.

24. Antonacci can elaborate on the fraudulent nature of Storij's relationship with Antonacci PLLC. Antonacci can provide the dates and times of thousands of emails, and the videconference where Storij infiltrated Antonacci's protected computer and mobile phone if this Court wishes. Antonacci can further elaborate on a dubious pandemic loan that Storij sought to associate with Antonacci. JA837.

25. Many of the subcontracts that Antonacci negotiated on behalf of Storij had questionable scopes of services, where it was

difficult to ascertain what value Storij would be providing the United States Government and its prime contractors. At the time, Antonacci simply assumed that this was typical of the white-collar welfare the bloated administrative state provides to those it deems worthy and/or wishes to control through revenue. But upon further reflection, it seems that "The So Company's" entire "business" was likely fabricated on behalf of this enterprise. JA838.

26. In addition, Antonacci can allege that, in furtherance of this scheme, Storij opened an office in DC, in the same building, on the same floor, and just a few offices down the hall from Antonacci Law PLLC, in order to keep tabs on Antonacci. JA838.

27. In Opposition to FTI Consulting, Inc.'s Motion to Dismiss, Antonacci pointed out that his relationship with Kristina Moore, former director at FTI, was the basis of his allegations against FTI. Antonacci can elaborate further on that relationship, including how he met Ms. Moore at George Mason University in 2007, at night class studying for the Virginia Bar, and how she

reached out to him in 2014 or 2015, after many years, as she was leaving her position in the U.S. Congress to work for FTI. JA838.

28. Antonacci can also allege that, at one in point in their renewed friendship, she indicated that she had, in her work with FTI hiring private investigators to discredit plaintiffs adverse to FTI's clients, seen emails from personnel at Fenton Communications, another strategic communications firm, that sought to build a false narrative discrediting Antonacci. When Antonacci became suspicious of Ms. Moore's motives in renewing their "friendship," Antonacci followed up with Ms. Moore about her statement that Fenton Communications was defaming him. Ms. Moore was evasive in her response, and so Antonacci determined that it is, in fact, FTI that was hired to discredit Antonacci, consistent with the plaintiff-defamation agenda of the entire strategic communications sector in Washington, DC. JA838-939.

29. FTI's objections to Antonacci's requests for admission confirm Antonacci's suspicions that, if required to answer, FTI

would admit every one of those requests. Antonacci can amend his complaint to include those allegations against FTI. JA839.

30. And to the extent this Court does not believe Antonacci's complaint alleges the facts underlying his requests for admission on the other Defendants, Antonacci can amend his complaint to more specifically allege those facts. JA839.

Antonacci drafted his briefs assuming the district court would advise of its deemed deficiencies. But Nachmanoff canceled the hearing after briefing was completed and then claimed Antonacci failed to amend his complaint as a matter of right, while nonetheless ruling his claims are so implausible they could not even engage jurisdiction. Nachmanoff has made clear that whatever Antonacci does, he will say it is wrong, which is why he should be removed on remand.

To the extent this court believes there are deficiencies in the complaint that could be cured with amendments, then Antonacci seeks leave to amend because the district court abused its discretion and denied Antonacci due process of law in denying such leave to amend, as needed. *Stegemann,* 970 F.3d at 473;

Mathews, 424 U.S. at 334; U.S. Const. Amend. 14; *see also* *Morales*, 946 F.3d at 927.

VI. The District Court Erred in Denying Antonacci's Request for Entry of Default

This error is absurd. Antonacci did not move for entry of judgment against Fusion GPS, but rather simply entry of default. Whether a party is in default does not implicate the question of whether the court has jurisdiction. That is particularly true here, where the appeal period was still pending when the request was denied. And that is why this is normally a function performed by the clerk's office. That Judge Vaala would step in and deny the request for entry of default reinforces Antonacci's position that Nachmanoff and Vaala are biased against Antonacci. Fusion GPS is in default. JA813-831, JA854-855.

VII. The District Court Should Reassign This Case on Remand

Judge Nachmanoff should be removed on remand because, for all the reasons stated above, he and Magistrate Vaala have demonstrated unequivocally that they are hopelessly biased against Antonacci and therefore cannot administer this case in

accordance with the U.S. Constitution. *Mathews*, 424 U.S. at 334; U.S. Const. Amend. 14; *see also Morales*, 946 F.3d at 927. This case should be reassigned.

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.

STATEMENT REGARDING ORAL ARGUMENT

The Plaintiff-Appellant Louis B. Antonacci requests oral argument in this appeal. Antonacci was denied any hearing in the district court.

Dated: July 23, 2024

Respectfully submitted

/s/ Louis B. Antonacci

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CERTIFICATE OF COMPLIANCE

The undersigned appellant hereby certifies that this Brief of Appellant meets the type volume limitations of Local Rule 32(a)(7)(B)(1). The Brief of Appellant contains 12,438 words. Antonacci further certifies that he included the words in the image reproduced on page 14 in this word count.

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CERTIFICATE OF SERVICE

I hereby certify that, on July 23, 2024, I filed this Brief of Appellant, together with Volumes I and II of the accompanying Appendix, electronically using this Court's CM/ECF system, which caused service on all counsel of record.

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