UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

OPEN RIVERS MEDIA GROUP, INC. D/B/A OPEN RIVERS PICTURES; ALVIN WILLIAMS; AND TAMMY WILLIAMS, Plaintiffs, v. SOUTHERN FILM REGIONAL CENTER, LLC; DOMINIC "NIC" APPLEGATE; GATE INDUSTRIES, LLC; MAURICE ANDERSON; RATLIFF ENTERTAINMENT, LLC; AND THEOPHALUS RATLIFF, Defendants.	)	CIVIL ACTION NO. 1:15-cv-00724-SCJ

DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS THE RICO CLAIMS IN COUNTS II AND III OF PLAINTIFFS' FIRST AMENDED COMPLAINT, PURSUANT TO FED. R. CIV. P. 12(b)(6)

Defendants hereby file this Brief in Support of their Motion to Dismiss the RICO Claims in Counts II and III of Plaintiffs' First Amended Complaint, Pursuant to Fed. R. Civ. P. 12(b)(6).

I. INTRODUCTION.

In an Order entered on November 12, 2015 (the "November 12 Order") [Doc. No. 24], the Court dismissed Plaintiffs' Complaint [Doc. No. 1] as an improper

"shotgun pleading" and gave Plaintiffs "one final" opportunity to file a properly pleaded complaint. On December 4, 2015 Plaintiffs attempted, unsuccessfully, to cure the problems with their Complaint by filing their First Amended Complaint (the "FAC") [Doc. No. 25]. As noted in Defendants' other contemporaneously filed motion to dismiss the FAC as a "shotgun pleading," the FAC must also be dismissed because it, like its predecessor, is still a "shotgun pleading," because the FAC does not specify which allegations support each of the eleven counts in the FAC. The FAC also lacks the necessary specificity regarding the facts supporting each count.

In addition to being a "shotgun pleading," the FAC also fails to state properly pleaded claims for violations of federal and state RICO law, as explained herein. Specifically, Plaintiffs' RICO claims should be dismissed because Plaintiffs patently fail to plead a "pattern of racketeering activity" or an "enterprise." In fact, the FAC (like the Complaint before it) does not even reference a "pattern of racketeering activity," an "enterprise" or "predicate acts." What's more, Plaintiffs lack standing to pursue a claim under Sections 1962(a) or (b) of the federal RICO statute or Section 16-14-4(a) of Georgia's RICO statute.

For all of these reasons, Plaintiffs' FAC should be dismissed with prejudice in its entirety (as argued in Defendants' Motion to Dismiss the entire FAC, filed contemporaneously herewith). In the event that the Court choses not to dismiss the

entire FAC, it should at least dismiss the two RICO claims alleged in Counts II and III of the FAC, for the reasons stated below.

II. STATEMENT OF FACTS.

Defendants hereby incorporate by reference the facts described in Section III of Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint as a "Shotgun Pleading," Pursuant to Fed. R. Civ. P. 12(b)(6).

III. ARGUMENT AND CITATION OF AUTHORITIES.

A. Standard of Review.

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), Plaintiffs must present factual allegations "enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations and citation omitted). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Id*. at 679 (citation omitted). This plausibility requirement applies to claims under the federal or state Racketeer Influenced and Corrupt Organizations Act ("RICO"). *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283

(11th Cir. 2010) (affirming dismissal of RICO claim and holding plaintiffs' allegations of pattern did not meet the Twombley pleading standard.)

B. Plaintiffs' RICO Claims Should Be Dismissed.

In Count II, Plaintiffs purport to raise claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, *et seq*. In Count III, Plaintiffs allege claims under Georgia's parallel RICO statute, O.C.G.A. § 16-14-1, *et seq*.[1] The federal RICO statute outlaws four types of activities:

(1) Section 1962(a) prohibits a person from investing in an enterprise any income derived from a pattern of racketeering activity;

(2) Section 1962(b) prohibits a person from using a pattern of racketeering activity to acquire or maintain control over an enterprise;

(3) Section 1962(c) prohibits a person from conducting the affairs of an enterprise through a pattern of racketeering; and

(4) Section 1962(d) prohibits a person from conspiring to violate sections 1962(a), (b), or (c).

Similarly, Georgia's RICO statute forbids three types of activities:

(1) Section 16-14-4(a) prohibits any person through a pattern of racketeering activity or proceeds derived therefrom, to acquire

[1]Because "[t]he Georgia RICO Act, O.C.G.A. § 16-14-1, *et seq*., is modeled and closely analogous to the Federal RICO statute," Georgia courts look primarily to federal decisions for guidance on their interpretation of the Georgia RICO statute. *Martin v. State*, 189 Ga. App. 483, 485 (1988) (citing *Chancey v. State*, 256 Ga. 415 (1986)).

> or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money;
>
> (2) Section 16-14-4(b) prohibits any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity; and
>
> (3) Section 16-14-4(c) prohibits any person to conspire or endeavor to violate any of the provisions of Sections 16-14-4(a) or (b).[2]

Thus, in order to establish a federal or state civil RICO violation, Plaintiffs must plead: (1) a pattern of (2) racketeering activity; and (3) an enterprise. *See, e.g., Jones v. Childers*, 18 F. 3d 899, 910 (11th Cir.1994) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985)). Here, Plaintiffs fail to meet each of these requirements.[3]

Plaintiffs do not allege facts showing that Defendants engaged in a pattern of racketeering activity; nor do they adequately allege the existence of a RICO enterprise. What's more Plaintiffs lack standing to pursue a claim under Sections

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[2]It is in unclear in the FAC which specific section of the federal or state RICO statutes Plaintiffs allege Defendants violated. Therefore, each section is addressed herein.

[3]With respect to the federal RICO claim, Plaintiffs also fail to plead that the activities of the alleged enterprise or predicate acts of racketeering affect interstate or foreign commerce. 18 U.S.C. § 1962(a); *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 232-233 (1989); *see also, e.g., Rose v. Bartle*, 692 F. Supp. 521, 534 (E.D. Pa. 1988) (dismissing § 1962(c) claim because plaintiff failed to allege enterprise affected interstate commerce and facts showed that enterprise was only engaged in intrastate activities).

1962(a) or (b). This is not a RICO case, and Plaintiffs' federal and state RICO claims should be dismissed with prejudice.

C. Plaintiffs Do Not Plead a "Pattern of Racketeering Activity."

Plaintiffs have pleaded no facts to even suggest Defendants engaged in a "pattern of racketeering activity."

1. Plaintiffs Do Not Plead a "Pattern."

The RICO statute is intended to address repeat, rather than one-shot, criminal activity. "[T]he heart of any RICO complaint is the allegation of a pattern of racketeering." *See Agency Holding Corp. v. Malley-Duff & Assoc., Inc.*, 483 U.S. 143, 154 (1987). To meet the "pattern" requirement under RICO, a complaint must, at a minimum, allege: (i) Defendants committed two or more of the predicate crimes[4] enumerated in the statute (18 U.S.C. §§ 1961(1), 1961(5), 1962(a)-(c); O.C.G.A. §§ 16-14-3(8)(a), 16-14-3(9)(a), and 16-14-4(a)-(b)); and (ii)"that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal

[4] The FAC does not even contain the words "predicate crime" or "predicate act"; nor does the FAC even attempt to specify the specific statutory bases for the elements of Plaintiffs' alleged RICO violation. As this Court has noted, "[t]he Eleventh Circuit…does not require the district court, or the defendants, to 'sift through the facts presented and decide…which were material to the particular cause of action asserted.'" *Guthrie v. Wells Fargo Home Mortgage NA*, 2014 U.S. Dist. LEXIS 102777, at *20 (N.D. Ga. July 7, 2014) (quoting *Strategic Income Fund, LLC v. Spear, Leeds & Kellogg Corp.* 305 F.3d 1293, 1296 n.9 (11th Cir. 2002)).

activity." *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989). "It is this fact of continuity plus relationship which combines to produce a pattern." *Id*. (internal quotation marks omitted); *see also Jones v. Childers*, 18 F.3d 899, 912 (11th Cir. 1994) (applying the federal RICO pattern jurisprudence to state RICO claim).

According to Plaintiffs' own allegations, the association between Defendants had the finite goal of harming Plaintiffs' business. (FAC, ¶ 15 ("[Defendants] engaged in a scheme to remove Pictures from the EB5 Application process and convert the activities undertaken by all the parties for their benefit and to the detriment of Pictures"); FAC, ¶ 23 ("Applegate, Regional and Gates . . . engaged in activity to harm Plaintiffs' business")). At most, Plaintiffs allege a single predicate act. This is insufficient to establish a "pattern" of racketeering. *Maiz v. Virani*, 253 F.3d 641, 671 (11th Cir. 2001) ("A 'pattern' of racketeering activity is shown when a racketeer commits at least two distinct but related predicate acts"); *see also Cox v. Adm'r U.S. Steel & Carnegie*, 17 F.3d 1386, 1397 (11th Cir. 1994).

But even assuming, *arguendo*, that Plaintiffs did adequately plead two or more predicate acts, Plaintiffs fail to show how these predicate acts "amount to or pose a threat of continued criminal activity." *H.J. Inc.*, 492 U.S. at 239. In *H.J. Inc.*, the Supreme Court explained that "continuity" may refer either to "a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a

threat of repetition." 492 U.S. at 241. Closed-ended continuity may be demonstrated by showing that defendant engaged in "a series of related predicates extending over a substantial period of time." *Id*. at 242. "Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement. . . ." *Id*. Open-ended continuity may be established by showing that the "predicates themselves involve a distinct threat of long-term racketeering activity" or that the "predicate acts or offenses are part of an ongoing entity's regular way of doing business." *Id*. Plaintiffs do not sufficiently allege closed-ended or open-ended continuity. Plaintiffs do not even use the words "predicate act" in the FAC.

First, Plaintiffs point to alleged actions that took place between February and July 2014. (*See* FAC, ¶¶ 15, 23.) This alleged period of wrongful activity—which, even according to Plaintiffs' inflated estimate, lasted only five months—is too short to establish continuity over a "closed period." As a general rule, a closed-ended scheme that runs its course within one year does not constitute a pattern of racketeering. *See Cofacredit, S.A. v. Windsor Plumbing Supply Co.*, 187 F.3d 229, 242 (2d Cir. 1999) (predicate acts of mail and wire fraud over approximately eleven months spanned an insufficient time to demonstrate closed-end continuity because the Second Circuit "has never held a period of less than two years to constitute a 'substantial period of time'"); *Vemco, Inc. v. Camardella*, 23 F.3d 129, 134 (6th Cir. 1994) (single scheme

over seventeen months insufficient to form RICO pattern); *Primary Care Investors, Seven, Inc. v. PHP Healthcare Corp.*, 986 F.2d 1208, 1215-1216 (8th Cir. 1993) (activity extending over ten or eleven months "insubstantial"); *Uni*Quality, Inc. v. Infotronx, Inc.*, 974 F.2d 918, 922 (7th Cir. 1992) (seven to eight months insufficient); *Aldridge v. Lily-Tulip, Inc.*, 953 F.2d 587, 593 (11th Cir. 1992) (defendant's alleged illegal activity "was accomplished in too short a period of time, approximately six months, in order to qualify as a pattern of racketeering activity"); *Hughes v. Consol-Pa. Coal Co.*, 945 F.2d 594, 611 (3d Cir. 1991) (twelve months not substantial enough to show pattern); *Ganzi v. The Wash.-Baltimore Reg'l 2012 Coalition*, 98 F. Supp. 2d 54, 58 (D.D.C. 2000) ("overwhelming amount of persuasive authority" indicates "eight months is not long enough to show a RICO pattern").

Indeed, when as here, the RICO allegations concern only a single scheme involving a discrete goal is alleged, courts have held that even significantly longer periods do not establish a closed-ended pattern of racketeering. *See, e.g., Effron v. Embassy Suites (Puerto Rico), Inc.*, 223 F.3d 12, 18 (1st Cir. 2000) ("the fact that the defendant has been involved in only one scheme with a singular objective and a closed group of targeted victims" supports conclusion that there was no closed-end continuity); *Al-Abood v. El-Shamari*, 217 F.3d 225, 238 (4th Cir. 2000) (scheme to defraud spanning several years but having "narrow focus" and "commonplace

predicate acts" did not satisfy pattern requirement; "this case is not sufficiently outside the heartland of fraud cases to warrant RICO treatment"); *Edmondson & Gallagher v. Alban Towers Tenants Ass'n*, 48 F.3d 1260, 1265 (D.C. Cir. 1995) (three-year period over which the predicate acts occurred was insufficient to establish a pattern of racketeering where the complaint alleged a single scheme with a discrete goal); *Schnell v. Conseco, Inc.*, 43 F. Supp. 2d 438, 446 (S.D.N.Y. 1999) (predicate acts extending over 23 months were insufficient to establish pattern where plaintiff alleged a scheme to defraud having a single goal and a single class of victims, and the alleged predicate acts of mail and wire fraud "are in themselves innocuous and are not alleged to be false or misleading").

Second, Plaintiffs fail to allege continuity over an "open-ended" period. Plaintiffs do not allege any facts indicating that the purported predicate acts "involve a distinct threat of long-term racketeering activity" or that they are part of Defendants' "regular way of doing business." *See H.J. Inc.*, 492 U.S. at 242. To the contrary, Plaintiffs allege no facts suggesting that the alleged RICO enterprise will ever again engage in a similar scheme—or in any other concerted activity, for that matter. *See, e.g.*, *Aldridge*, 953 F.2d at 594 (no open-ended pattern of racketeering where defendants' acts after the initial fraud "did not threaten future harm or a repetition of

the illegal acts"); *Efron*, 223 F.3d at 19 (no open-ended continuity where "[t]here is nothing to suggest defendants would seek to repeat their fraud").

2. Plaintiffs Also Fail to Allege That Defendants Engaged in "Racketeering Activity."

Even assuming, *arguendo*, that Plaintiffs did not patently fail to establish the "pattern" requirement, Plaintiffs' RICO claims would still fail because they do not sufficiently allege that Defendants engaged in racketeering activities.

In a RICO action, a party must allege two acts of racketeering with enough specificity to show that there is probable cause to believe the crimes were committed. *See* Fed. R. Civ. P. 9(b); O.C.G.A. § 9-11-9(b). RICO's liberal construction clause does not provide a substitute for the specificity mandated by Fed. R. Civ. P. 9(b) or for the requirements of the RICO statute itself. *See, e.g., Reeves v. Ernst & Young*, 507 U.S. 170, 183 (1993) (liberal construction clause "is not an invitation to apply RICO to new purposes that Congress never intended"); *Holmes v. SIPC Corp.*, 503 U.S. 258, 274 (1992) ("RICO's remedial purposes would more probably be hobbled than helped by [plaintiff's] version of liberal construction" and would "open the door to massive and complex damages litigation, which would not only burden the courts, but would also undermine the effectiveness of treble-damages suits"); *Yellow Bus Lines, Inc. v. Local Union 639*, 913 F.2d 948, 955-56 (D.C. Cir. 1990) (RICO is liberally construed only to effectuate its remedial purposes, not to determine what constitutes a violation);

United States v. Bonanno Organized Crime Family of La Cosa Nostra, 879 F.2d 20, 27 (2d Cir. 1989) ("a legislative mandate to apply a liberal interpretation to an act will not justify the judicial creation of rights or liabilities under guise of construction").

Even construing the allegations in Plaintiffs' FAC liberally, Plaintiffs' RICO claims fail. Plaintiffs' FAC is filled with conclusory allegations that Defendants violated RICO, and generalized references to the legal elements of a federal or state RICO claim. (*See, e.g.*, FAC, ¶¶ 28, 72, 77, 78.) Plaintiffs even go so far as to support their RICO claims on the irrelevant allegations that Applegate "has a history of having RICO claims filed against him." (FAC, ¶¶ 29, 73.) Setting this aside, Plaintiffs' allegations are at best, garden-variety state-law crimes, torts, and contract breaches. (*See, e.g.*, FAC, ¶ 16 ("Regional, Gates and Applegate decided to abandon Pictures' EB5 Application and attempted to steal the EB5 business from Pictures"); FAC, ¶ 17 ("By May 2014, all Defendants were working together deceitfully to harm Pictures and steal Pictures business opportunities"); FAC, ¶ 30 ("Applegate and Regional has engaged in the violation of RICO in their dealings with Plaintiffs and sought to victimize Pictures for monies and business opportunity"); FAC, ¶ 58 ("Ratliff and Anderson have breached the NDA Agreements . . .")). These are not the sort of racketeering activities covered by RICO. *See Annulli v. Panikkar*, 200 F. 3d 189, 192 (3d Cir. 1999) (affirming summary judgment for defendant and holding that theft by

deception, breach of contract, and intentional interference with contract were ***not*** predicate RICO acts).

D. Plaintiffs Also Fail to Allege the Existence of an "Enterprise."

In addition to not sufficiently pleading a "pattern of racketeering activity," Plaintiffs fail to adequately establish the existence of an enterprise. "[A] RICO enterprise exists where a group of persons associates, formally or informally, with the purpose of conducting illegal activity." *United States v. Hewes*, 729 F.2d 1302, 1311 (11th Cir. 1984); *see also United States v. Turkette*, 452 U.S. 576, 583 (1981) (an enterprise is "a group of persons associated together for a common purpose of engaging in a course of conduct"). "[T]he definitive factor in determining the existence of a RICO enterprise is the existence of an association of individual entities . . . that furnishes a vehicle for the commission of two or more predicate crimes. . . ." *United States v. Goldin Indus., Inc.*, 219 F.3d 1271, 1275 (11th Cir.), cert. denied, 121 S. Ct. 573 (2000)). A RICO enterprise requires three structural features: (1) "a purpose; (2) "relationships among those associated with the enterprise"; and (3) "longevity sufficient to permit those associates to pursue the enterprise's purpose." *Boyle v. United States*, 556 U.S. 938, 946-947 (2009). Plaintiffs have not alleged—nor would they be able to prove—these three structural features.

First, Plaintiffs do not allege that Defendants worked together for a common purpose. At most, Plaintiffs allege Defendants engaged in a level of cooperation inherent in their normal commercial transactions. This is not enough. *See, e.g., United Food & Comm'l Workers Union v. Walgreen Co.,* 719 F. 3d 849, 855-856 (7th Cir. 2013) (finding the allegations failed to show how defendants operated as a separate enterprise because there were no allegations that defendants involved themselves in each other's businesses beyond their usual commercial relationship).

Second, Plaintiffs fail to plead the appropriate distinctiveness between the persons associated with the enterprise and the supposed enterprise itself. In their FAC, Plaintiffs repeatedly allege an enterprise consisting of Applegate, Regional, and Gates.[5] (*See, e.g.,* FAC, ¶ 30 ("Applegate and Regional has engaged in the violation of RICO in their dealings with Plaintiffs . . ."); FAC, ¶ 31 ("Regional, Gates and Applegate committed theft by conversion . . ."); FAC, ¶ 33 ("Regional and Applegate have, (1) conspired to harm Pictures, . . ."); FAC, ¶ 35 ("Regional, (its sister entity) Gates and Applegate (1) falsely represented that it would complete the EB5 Application for Pictures as part of a scheme to steal business from Pictures . . .");

[5] Plaintiffs allege that Regional, Gates, and Applegate are one-in-the-same. (FAC ¶ 13 ("Upon information and belief, Regional and Gates operate as one entity"); FAC, ¶ 17 ("Regional and its owner Applegate . . .")).

FAC, ¶ 81 ("Regional and Applegate have (1) conspired to harm Pictures, (2) abandoned Pictures EB5 Application to secure financial benefits for themselves . . .")).

A party cannot be both the defendant "person" and the enterprise. *See*, *e.g.*, *Cruz v. FXDirectDealer, LLC*, 720 F.3d 115, 121 (2d Cir. 2013) (addressing § 1962(c) and noting the required person/enterprise distinction "cannot be evaded by alleging that a corporation has violated the statute by conducting the enterprise that consists of itself plus all or some of its officers or employees"). Consequently, Plaintiffs have failed to adequately plead a RICO enterprise. *See, e.g., Riverwoods Chappaqua Corp. v. Marine Midland Bank, N.A.*, 30 F. 3d 339, 344 (2d Cir. 1994) (finding plaintiff cannot circumvent person/enterprise distinctiveness requirement by alleging a RICO enterprise consisting merely of a corporate defendant associating with its own employees or agents in the regular affairs of the corporation").

Finally, even if Plaintiffs adequately allege a "purpose" and sufficient "relationships among those associated with the enterprise," Plaintiffs do not allege sufficient longevity, as Plaintiffs allege Defendants' scheme occurred only over a period of five months. (*See* FAC, ¶¶ 15, 23.)

E. Plaintiffs Lack Standing to Pursue Claims under Sections 1962(a) Or (b).

In addition to failing to adequately plead a "pattern of racketeering activity" and an "enterprise," Plaintiffs lack standing to pursue their claims under RICO Sections 1962(a) or (b).

To establish standing to assert a claim under Section 1962(a), a plaintiff must demonstrate an injury occurring a direct result of the defendant's investment of racketeering income, as opposed to an injury caused by the commission of the alleged predicate acts from which the income was derived. *See, e.g., Abraham v. Singh*, 480 F. 3d 351, 356-357 (5th Cir. 2007) (rejecting claim under Section 1962(a) but allowing claim to proceed under Section 1962(c) because the alleged injury stemmed from the commission of predicate acts rather than the investment of racketeering income); *see also Beck v. Prupis*, 529 U.S. 494, 506 n.9 (2000) ("arguably a plaintiff suing for violation of § 1962(d) based on an agreement to violate § 1962(a) is required to allege injury from the 'use or invest[ment]' of illicit proceeds"); *In re Sahlen & Assocs., Inc. Sec. Litig.*, 773 F. Supp. 342, 367 (S.D. Fla. 1991) (holding plaintiff must show injury from the use or investment of racketeering income).

To have standing to assert a claim under Section 1962(b), a plaintiff must allege that its injury stems not from defendant's predicate acts, but from defendant's acquisition or maintenance of an interest in, or control over, the purported enterprise.

See, e.g., Compagnie De Reassurance D'Ile de France v. New England Reins. Corp., 57 F. 3d 56, 92 (1st Cir. 1995) (affirming dismissal of Section 1962(b) claim for failure to allege injury separate from the fraud that constituted the predicate acts); *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass'n*, 176 F. 3d 315 (6th Cir. 1999) (affirming dismissal of Section 1962(b) claim because plaintiffs failed to allege an injury resulting from the "acquisition or maintenance of an interest in or control of the alleged enterprise").

Here, Plaintiffs do not allege they were harmed as a result of Defendants' investment of purported racketeering income. Plaintiffs also do not allege they were injured as a result of Defendants' acquisition or maintenance of an interest in, or control over, the alleged enterprise. Accordingly, Plaintiffs lack standing to assert claims under Sections 1962(a) or (b) of RICO.

IV. CONCLUSION.

Plaintiffs' RICO claims stated in Counts II and III of their FAC should be dismissed along with the other claims in the FAC, because it is a "shotgun pleading." In addition, Plaintiffs' RICO claims should be dismissed because Plaintiffs have failed properly to allege a "pattern of racketeering activity" or an "enterprise" and because Plaintiffs lack standing to assert those claims, as pleaded.

Respectfully submitted this 4th day of January, 2016.

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1

I hereby certify that this document was prepared in Times New Roman, 14-point font pursuant to LR 5.1(c), NDGa.

This 4th day of January, 2016.

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CERTIFICATE OF SERVICE

I have this day filed the foregoing **Defendants' Brief in Support of Their Motion to Dismiss the RICO Claims in Counts II and III of Plaintiffs' First Amended Complaint, Pursuant to Fed. R. Civ. P. 12(b)(6)** using the CM/ECF system and served a copy of same upon all parties to this matter by depositing a true and correct copy of the same via regular mail, addressed as follows:

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This 4th day of January, 2016.

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