NOT YET SCHEDULED FOR ORAL ARGUMENT

IN THE

United States Court of Appeals for the District of Columbia Circuit

No. 09-7129

RENE ARTURO LOPEZ et al.,	:	
	:	**Appeal from the**
Plaintiffs-Appellants,	:	**United States District Court**
	:	**for the**
-v.-	:	**District of Columbia**
	:	
COUNCIL ON AMERICAN-ISLAMIC RELATIONS ACTION NETWORK, INC.,	:	**1:08-cv-01989**
	:	**The Honorable**
Defendants-Appellees.	:	**Ricardo M. Urbina**
	:	**District Court Judge Presiding**

APPELLANTS' OPENING BRIEF

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Due: February 24, 2010
Filed: February 24, 2010

CERTIFICATE OF APPELLANTS AS TO PARTIES, RULINGS & RELATED CASES

Parties:

Pursuant to D.C. Circuit Rule 28(a)(1), Appellants Rene Arturo Lopez, Aquilla A. D. Turner, Mohammed Barakatullah Abdussalaam, and Bayenah Nur hereby certify that the parties appearing below in the U.S. District Court, Index No. 1:08-cv-01989-RMU, from which this appeal follows, and the parties in this Court are as follows:

Plaintiffs-Appellants:

- Rene Arturo Lopez
- Aquilla A. D. Turner
- Mohammed Barakatullah Abdussalaam
- Bayenah Nur

Defendants-Appellees:

- Council on American-Islamic Relations Action Network, Inc.
- Zahara Investment Corporation
- Greater Washington LLC Delaware
- Khalid Iqbal
- Tahra Goraya
- Ibrahim Hooper
- Amina Rubin
- Nihad Awad
- Parvez Ahmed
- Khadijah Athman
- Nadhira Al−Khalili

[Note: Defendant Morris Days is deceased, was not served with a summons and complaint, and is not a party to this appeal.]

There were no *amici curiae* below and Appellants know of no *amici curiae* participating in this appeal.

Rulings Under Review:

The U.S. District Court for the District of Columbia's ruling under review is the Order and Memorandum Opinion dated September 28, 2009, granting Appellees' respective motions to dismiss, U.S. District Court Docket Nos. 26 & 27, Appendix at pp. 90-109, and reported at *Lopez et al. v. Council on American-Islamic Rels. Action Network, Inc. et al.*, 2009 U.S. Dist. LEXIS 89030 (D.D.C. Sept. 28, 2009).

Related Cases:

The case on appeal has not previously been before this Court, and review of the U.S. District Court's Order and Memorandum of Opinion at issue here is not pending in this Court or in any other Court. Subsequent to the filing of the original Certificate of Appellants as to Parties, Rulings and Related Cases filed on November 30, 2009 (Document No. 1218034), a related case was filed in the U.S. District Court for the District of Columbia entitled *Lopez et al. v. Council on American-Islamic Relations Action Network, Inc.*, Case No. 1:10-cv-00023-PLF, which is a diversity action alleging Appellants' state law claims against the Appellee Council on American-Islamic Relations Action Network, Inc. Counsel is aware of no other cases pending before the U.S. District Court, this

Court or any other court that involve substantially the same issues as the case on review.

Dated this 24th day of February 2010. Respectfully submitted,

By: /s/

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GLOSSARY OF ABBREVIATIONS

CAIR	Network of offices of the Council on American-Islamic Relations Action Network, Inc., including the headquarters in Washington, D.C. and the now defunct CAIR branch offices in Herndon, Virginia.
CAIR-MD/VA	Now defunct CAIR branch office in Herndon, Virginia.
CAIR National	Headquarters of CAIR in Washington, D.C.
EEOC	The Equal Employment Opportunity Commission (established on July 2, 1965; its mandate is specified under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990 and the ADA Amendments Act of 2008).
RICO	Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1961 et seq.).

JURISDICTIONAL STATEMENT

The district court below had federal subject matter jurisdiction of the RICO claim as a federal question pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 1964(c) (civil remedies for RICO violations); and supplemental jurisdiction of the state law claims pursuant to 28 U.S.C. § 1367(a). This Court has jurisdiction under 28 U.S.C. § 1291 because this appeal is from a final decision and order that disposes of all parties' claims. The district court issued an Order and Memorandum Opinion granting Appellees' Motion to Dismiss all claims on September 28, 2009. The Notice of Appeal (D.29; A:110-113)[1] was filed on October 14, 2009, within 30 days of the district court's decision. Fed. R. App. P. 4(a)(1)(A).

STATEMENT OF ISSUES

[1] Whether the U.S. District Court erred in granting Appellees' motion to dismiss for lack of subject matter jurisdiction by concluding that the complaint did not sufficiently plead a "by reason of" injury, and more particularly as follows:

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[1] Citations to documents that are part of the docket of the U.S. District Court below are referenced as D.__ at __ referring to the specific docket number followed by the page number if applicable; citations to documents that are included in the Appendix are referenced as A:__-__ referring to the specific page(s) of the Appendix. References to the complaint include the relevant paragraphs cited as A:__-__ at ¶¶ __-__.

A. Whether the court below did not properly credit or accept as true the factual allegations setting forth a single conspiracy between defendant Morris Days and Appellees. [*See* Section VII(B)(1).]

B. Whether the court below improperly applied the "by reason of" injury requirement because it both misread and ignored the factual allegations of the complaint. [*See* Section VII(B)(2).]

C. Whether the court below erred as a matter of fact and law in finding that late-joiners to the conspiracy are not liable for damages arising prior to joinder because there was no antecedent conspiracy. [*See* Section VII(B)(3).]

D. Whether the court below erred as a matter of law in finding that the complaint did not sufficiently plead damages resulting from the loss of legal claims by Appellants Abdussalaam and Nur. [*See* Section VII(B)(4).]

[2] Whether the U.S. District Court erred in granting Appellees' motion to dismiss for failure to state a claim by concluding that the complaint did not sufficiently plead a "'pattern' of racketeering activity", and more particularly as follows:

A. Whether the court below did not properly credit or accept as true the factual allegations setting forth a single conspiracy and therefore

denuded the factual evidence of a long-standing pattern with continuity. [*See* Section VII(C)(1).]

B. Whether the court below did not properly credit or accept as true explicit allegations buttressed by exhibits attached to the complaint of dozens, if not hundreds, of victims of the racketeering activity, which allowed the Court to ignore demonstrable evidence of both a closed-ended and open-ended pattern of racketeering activity. [*See* Section VII(C)(2).]

RELEVANT STATUTES

The relevant statutes, including the relevant provisions of the RICO Act and the statutes relating to the predicate offenses of mail and wire fraud, are included in the Addendum attached hereto.

STATEMENT OF THE CASE

Nature of the Case. This lawsuit was filed by Appellants (Lopez, Turner, Abdussalaam, and Nur) against CAIR and its executives for fraudulently holding CAIR out as a Muslim-oriented civil rights public interest law firm. In reality, CAIR did not provide legal services and employed a non-lawyer, Morris Days (now deceased), to provide fraudulent legal representation to Appellants and hundreds of other CAIR clients. Days and CAIR fraudulently represented to Appellants and to many other unsuspecting clients that CAIR

was providing *pro bono* and effective legal representation in a variety of legal matters.

In addition to this fraudulent conspiracy, Days charged three of the four Appellants and at least 30 other CAIR clients legal fees for what were supposed to be *pro bono* services. CAIR executives joined the original conspiracy and acquiesced in the legal fees scam by operating CAIR through a pattern of racketeering activity for the purpose of furthering the conspiracy. In time, Appellants discovered the conspiracy and its illicit purposes and brought this lawsuit alleging RICO conspiracy violations by the individual CAIR executives and a host of statutory and common law fraud and related tort claims against the executives and CAIR itself.

Specifically relevant to this appeal, Appellants allege that Appellees violated RICO's conspiracy statute, 18 U.S.C. § 1962(d). The lawsuit was brought pursuant to RICO's civil enforcement provision "authoriz[ing] a private suit by '[a]ny person injured in his business or property by reason of a violation of § 1962.'" *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 495 (1985) (citing 18 U.S.C. § 1964(c)).

Course of the Proceedings. Appellants filed the lawsuit in the U.S. District Court for the District of Columbia on November 19, 2008. (D.1; A:10-78.) All but two of the named defendants were served by December 4, 2008.

[D.2; D.3.] (Morris Days, although named as a defendant, died before he was served; Tahra Goraya was located and served in California on June 10, 2009 [D.23] pursuant to the court's March 18, 2009 minute order granting an extension of time to serve the summons and complaint. [*See* A:8.])

Appellees (*sans* Goraya) filed a motion to dismiss on January 15, 2009 (D.11; A:79-80.) Appellants opposed the motion to dismiss (D.13; A:81-83) and following Appellees' reply brief (D.15; A:84), Appellants moved for leave to file a sur-reply. (D.16; A:85.)

On June 25, 2009, Appellee Goraya filed a motion to dismiss on the same grounds as the other Appellees (D.24; A:86-87) and Appellants opposed this motion. (D.25; A:88-89.)

Disposition Below. On September 28, 2009, the court below issued its orders granting Appellants' motion for leave to file a sur-reply, while at the same time granting Appellees' respective motions to dismiss. (D.28; A:90.) The court also published its Memorandum Opinion explaining the rationale behind its orders. (D.29; A:91-109.) The court explained that it had read the complaint, as Appellees had argued, to consist of two wholly separate bad acts: one by Days fraudulently inducing Appellants to pay for legal services and the second a conspiracy between Days, CAIR, and its executives to conceal Days' bad acts. (A:92-92; 101-102.) As such, the court reasoned, the damages alleged by

Appellants were really caused by Days and not by Appellees and therefore Appellants could not show RICO damages proximately caused by Appellees' conspiracy to conceal the legal fees scam. Thus, the court dismissed the RICO cause of action for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure ("Rule"). (A:101-105.)

Having divided and redacted Appellees' conspiracy in the way it did, the court also concluded that the "'pattern' of racketeering activity" requirement was not met for a "closed-ended" pattern (A:105-107) and simply dismissed the facts alleged in the complaint of an "open-ended" pattern without any explanation. (A:105, n.7.) Finding no "closed-ended" or "open-ended" pattern, the court also dismissed the RICO counts for failure to state a claim under Rule 12(b)(6).[2] (A:107-108.)

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[2] It is not explicit in the court's Memorandum Opinion that the court dismissed the RICO counts pursuant to Rule 12(b)(6) because it only states explicitly that it granted the motion to dismiss pursuant to Rule 12(b)(1) (*see* A:92, 96, 108), although the language and the context would strongly suggest the subject matter jurisdiction/damages issue resulted in dismissal under Rule 12(b)(1) and the pattern of racketeering issue resulted in dismissal under Rule 12(b)(6). *See, e.g., Western Assocs. Ltd. Pshp. v. Market Square Assocs.*, 235 F.3d 629, 632 (D.C. Cir. 2001) (affirming the district court's dismissal pursuant to Rule 12(b)(6) based upon a failure to properly allege a pattern of racketeering activity). At a practical level, the Rule 12(b)(6) dismissal is only at issue if this Court finds the Rule 12(b)(1) dismissal in error since standing/subject matter jurisdiction is a foundational prerequisite for any cause of action in federal court. *See, generally*, *Akinseye v. District of Columbia*, 339 F.3d 970, 971 (D.C. Cir. 2003) (court may raise subject matter jurisdiction *sua sponte* because it is a

Having found that it had dismissed the sole federal question due to a lack of standing, the court concluded that supplemental jurisdiction was foreclosed and dismissed the state law claims.

The RICO counts were dismissed with prejudice; the state law claims without prejudice.

STATEMENT OF FACTS

A. The Facts in Proper Context: A Single RICO Conspiracy

1. *Overview*

The complaint alleges that Morris J. Days III, a non-attorney, passed himself off as an attorney in order to gain employment with CAIR in June 2006. (A:11-12 at ¶¶ 1-3.) From the outset, CAIR-MD/VA knew, or through a reckless disregard of its fiduciary obligations failed to discover at the outset, that Days was a fraud. (A:12, 18-20 at ¶¶ 3, 22-25.) Although CAIR passed itself off as a public interest law firm and used public promotions of its free legal services to raise donations from the public, it knew that it was not in fact providing legal services to the public. (A:14, 18-20 at ¶¶ 8, 22-25.) This symbiotic conspiracy between CAIR-MD/VA, its senior executive Iqbal, and

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constitutional and statutory prerequisite to federal court jurisdiction). Apparently, the lower court's Rule 12(b)(6) dismissal was an additional, but not necessary basis for its grant of the motion to dismiss.

Days emerged from the outset of Days' employment as CAIR's "resident attorney". (*Id*.)

Sometime thereafter, Days decided to breach CAIR's policy of *pro bono* services and began charging some, and only some, of the CAIR clients for legal services. (A:20, 28-30, 35 at ¶¶ 26, 53-54, 57, 74-76.) He did so in CAIR's name. (A:28-30, 35 at ¶¶ 54, 57, 74.) Appellee Khalid Iqbal, a senior executive at CAIR and the man directly in charge of supervising Days, learned of this additional fraud of extracting legal fees from CAIR's clients no later than November 2007. (A:12, 16-17, 21 at ¶¶ 4; 16-17, 31-32.) While Days' fee scam added to the damages he was causing CAIR's clients, it was not the whole of it. For example, Appellant Abdussalaam received a "right-to-sue" letter from the EEOC in mid-May 2007. (A:29-30 at ¶ 57.) As a matter of law, the statute of limitations for filing a claim upon receipt of such a letter is 90 days. 42 U.S.C. § 2000e-5(f)(1). CAIR and its executive Iqbal knew that Days was not a lawyer since June 2006 and concealed this fact from Abdussalaam effectively prevented him from seeking other counsel and filing his federal claim in a timely fashion. (A:12, 18-20, 33 at ¶¶ 3, 22-25, 68.)

Similarly, Appellant Nur relied on this very same conspiracy when she took CAIR's legal advice (as provided by Days) and refused her employer's offer to remedy her hostile work environment. (A:40-43 at ¶¶ 90-100.) The

result: she was terminated and had to relocate her family to another state to find employment. (*Id*.) It is important to note here that Nur doesn't allege that she paid Days any legal fees. Her damages arose from her reliance on the original and continuing conspiracy between CAIR-MD/VA, its senior management, and Days to conceal the fact that Days was not an attorney. (A:42-45 at ¶¶ 98-105.)

The court below ignored these salient facts and decided to reduce the Days Scheme[3] to the fraudulent legal fees scam exclusively. (A:92-92; 101-102.) But this was hardly the sum and substance of the conspiracy alleged in the complaint. The essence of the conspiracy was the fact that Days was not a lawyer and he was not performing any legal services for Appellants and there were direct RICO damages arising from this conspiracy.

Moreover, the court chose rather arbitrarily to embrace CAIR's version of the conspiracy by paying attention only to the legal fees scam and bifurcating the Scheme into the legal fees scam and the subsequent cover up. By insisting that (a) only Days was involved in the legal fees scam and (b) the only RICO

[3] The "Days Fraud Scheme" as explicitly alleged in the complaint, referred to here alternatively as "the Days Fraud Scheme" and as "the Scheme", is originally and primarily the conspiracy entered into between Days, CAIR-MD/VA, and Iqbal to promote Days to the public and to the Appellants as a lawyer. (A:18-20 at ¶¶ 22-25.) Later, Days adds the scam to collect legal fees for work CAIR promoted as *pro bono*. (A:20 ¶ 25.) Iqbal, CAIR's senior executive in charge of CAIR-MD/VA, joins this latter conspiracy "at least" by November 2007. (A:21 at ¶ 32.)

damages were the fraudulently induced legal fees, the court was able to construct, albeit artificially, the conclusion that the CAIR cover-up conspiracy did no harm. (A:101-103.) But this ignores the RICO harm resulting from the conspiracy to pass Days off as a lawyer and the resulting damages to Appellants wholly unrelated to the legal fees scam. As will be discussed in more detail below, Abdussalaam and Nur, alleged both explicitly and implicitly, that they suffered damages directly as a result of relying on Days' and CAIR's representations that their respective legal matters were being properly handled. More importantly, the court's forced construction of the facts ignores the explicit allegations in the complaint that Iqbal joined the legal fees scam at least as early as November 2007. As discussed in further detail in the "Argument" section below, had Iqbal informed Abdussalaam and Nur of the Scheme even by November 2007, each of them could have eliminated or reduced their damages considerably.

2. *The Specific Factual Allegations Relating to the RICO Conspiracy*

CAIR National, located in Washington, D.C., purports to operate as a national public interest law firm through its offices and branches in various states. (A:2, 21 at ¶¶ 12, 18.) CAIR National opened up an office in Herndon,

Virginia ("CAIR-MD/VA"[4]) in December 2004. (A:2 at ¶ 12.) To achieve its purposes and to control CAIR-MD/VA, CAIR National sent Khalid Iqbal to manage CAIR-MD/VA. (A:17, 31 at ¶¶ 17, 21.) Iqbal was an authorized representative, managing director, and official of CAIR National (in Washington, D.C.) and CAIR-MD/VA.[5] (*Id*.) In June 2006, as part of its publicized effort purportedly to "protect civil rights and to empower American Muslims to invoke legal protections afforded them by local, state, and constitutional legislations [sic]", CAIR-MD/VA hired Morris Days as its "resident attorney" and "civil rights manager". (A:12-13, 18-19, 46, 48, 65 at ¶¶ 2, 5, 22-23, 110, 118 and at Ex. I-1.)

CAIR-MD/VA and Iqbal either knew or should have known when CAIR-MD/VA employed Days that he was not an attorney. (A: 12-13, 19-20 at ¶¶ 3, 5, 25.) CAIR-MD/VA did not just employ Days as a civil rights manager who happened to be a lawyer, CAIR-MD/VA and CAIR National actively promoted to the public not only that Days was a lawyer, but also that he was CAIR's "resident attorney", a "graduate of Temple University Law School . . . [who]

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[4] While the complaint uses "CAIR-VA" to refer to the CAIR Herndon, Virginia office, this brief will use "CAIR-MD/VA" as preferred by the court below and by Appellees.

[5] Iqbal was also a director and authorized representative of Appellee Zahara Investment Corporation, a real estate holding company of CAIR National. (A:16, 21 at ¶¶ 14, 31.)

specializes in Criminal Law and Civil Rights/Social Service Advocacy Law. He has been a member of the Philadelphia Bar Association and the American Bar Association since 1997. His professional achievements include receiving the Rosa Parks Wall of Tolerance Award in 2005 given by the Southern Poverty Law Center." (A:19, 65-72 at ¶ 23 and at Exs. I-II.) All of these representations were false and CAIR-MD/VA and Iqbal knew (or recklessly failed to discover) they were false. (A: 12-13, 19-20 at ¶¶ 3, 5, 25.)[6]

Iqbal managed CAIR-MD/VA. CAIR-MD/VA was controlled by CAIR National and CAIR National was in turn controlled by the individual CAIR executives named as defendants in the complaint and as Appellees in this appeal. (A:21-23, 47-49 at ¶¶ 31, 36, 111, 120.)

After hiring Days, CAIR National and CAIR-MD/VA published web based promotions (12/20/07) of Days as a CAIR attorney and of his legal representation of its Muslim clients; mailed out promotional literature (March/April 2007); and utilized Days' work as a CAIR lawyer to attract public

[6] It is important to note that the term "Days Fraud Scheme" is first defined in the complaint at paragraph 22. The Scheme at this point had nothing whatsoever to do with any legal fees scam. It was a conspiracy between Days, CAIR-MD/VA, and the senior executive Iqbal, who hired and supervised Days, to fraudulently represent to the public that CAIR (through Days) provided legal services. To reach its decision, the court below ignored completely this primary purpose of the Scheme and the conspiracy to carry it out.

recognition and to solicit donations for CAIR. (A:13-14, 19, 65-72 at ¶¶ 7-8, 23-24 and at Exs. I-II.)

Soon thereafter but not later than November 2007, and again in December 2007, Iqbal learned that Days had gone beyond the original fraudulent conspiracy by charging for services on behalf of CAIR. CAIR promotes its legal services to the public as *pro bono*. (A:21-22, 30-31, 66, 69 at ¶¶ 32, 35, 61 and at Exs. I-2 and II-1.) Days was not authorized by CAIR to charge for his legal services and as such was fraudulently inducing some CAIR clients to pay for *pro bono* legal services. (A:21-22 at ¶¶ 32, 35.) Thus, Days fraudulently induced some but not all of the CAIR clients, including three of the four Appellants, to pay him as CAIR's "resident attorney" for these legal services. (A:28 at ¶ 53.) At no time did Days state that these fees were for his personal services but rather fees charged on behalf of CAIR. (A:28-30, 35 at ¶¶ 54, 57, 74.) On one occasion, Days accepted the fees directly in the form of home repair services performed by Appellants Turner and Lopez. (A:35 at ¶ 76.) Under Virginia law, the legal fees scam is a criminal offense. Va. Code Ann. § 18.2-178. (A:21 at ¶ 30.)

Iqbal, as CAIR's executive in charge of CAIR-MD/VA, was in a bind. On the one hand, as executive director of CAIR's Herndon office, he knowingly participated in, and was very much a part of, the conspiracy to fraudulently hold

Days out as an attorney purportedly doing good deeds for CAIR's clients, which in turn was promoted broadly by CAIR to raise charitable donations. (A:13-14, 19, 65-72 at ¶¶ 7-8, 23-24 and at Exs. I-II.) On the other hand, he was now confronted with an additional criminal fraud carried out by a CAIR "attorney" against CAIR clients who had entrusted their personal and confidential legal matters to both CAIR and Days as their fiduciaries. Rather than come clean and notify CAIR's hundreds of clients that Days was not in fact a lawyer, or at the very least notify them that any fees collected by Days was in violation of CAIR's own policy, Iqbal made the conscious decision to acquiesce in, perpetuate, and join this additional criminal fraud by conspiring to actively conceal it. (A:12 at ¶ 32.) After discussing the Scheme with Days, Iqbal did not terminate Days; he contacted no government authority; and he did not contact any of the CAIR clients represented by Days to inform them of Days' unauthorized and illegal conduct. (A:21-22 at ¶¶ 32-35.) In fact, CAIR-MD/VA and CAIR National continued to promote Days as a most competent and diligent CAIR resident attorney. (*Id.*; A:69-72 at Ex. II.)

Iqbal's motivation for joining the subsequent legal fees scam is clear. He had already compromised CAIR by employing Days and thereby joining the original Days Fraud Scheme to fraudulently hold Days out as a lawyer. Exposing the legal fees scam would quite likely expose CAIR's involvement in

the original conspiracy that put Days in his fiduciary position of trust which in turn provided him with the means and opportunity to carry out the legal fees scam. CAIR and Iqbal were desperate to conceal CAIR's involvement in, and liability for, the original conspiracy (i.e., holding Days out as a lawyer) and this is explicitly evidenced by the legal waiver form CAIR executives belatedly sent to Abdussalaam to sign in December 2007 wherein Abdussalaam was prompted to agree that CAIR-MD/VA did not provide him legal services and he would waive and hold harmless CAIR for any damages arising from the fraudulent legal services previously provided. (A:30-32, 75 at ¶¶ 61-64 and at Ex. IV.)

Finally, on February 8, 2008, but only after one or more CAIR clients threatened to sue and go public to expose the Scheme, did Iqbal terminate Days' employment. (A:22 at ¶¶ 34-35.) Iqbal and CAIR executives Ahmed, Awad, Goraya, and other unidentified CAIR National officials, exchanged emails about Days' termination and at that time Iqbal asked for instructions about how to proceed. (A:22-23 at ¶¶ 36-38.) This exchange of emails was initiated by Iqbal by sending an email from CAIR-MD/VA to CAIR National in Washington, D.C. (*Id*.)

It is at this point that Iqbal's colleagues in the senior management of CAIR National, including the chairman of the board (Ahmed), the executive director (Awad), and the national director (Goraya), acquiesced in and joined

the Days Fraud Scheme. (A:22-23 at ¶¶ 35-40.) These individuals then informed the CAIR National in-house lawyer (Al-Khalili) and the head of the CAIR National civil rights department (Athman) and other officials of CAIR National (referred to collectively in the complaint as "the Conspirators"). (*Id*.; A:27-28, 33-34 at ¶¶ 52, 70-72.) They all agreed that the Days' Fraud Scheme, which originated with and included the conspiracy to conceal the fact that Days was not a lawyer, must continue or CAIR would be damaged irreparably. (A:13-14, 23-24 at ¶¶ 5-8, 37-40.)

In addition to acknowledging and acquiescing in the Days Fraud Scheme, each of the Conspirators knew and agreed that additional acts of criminal mail and wire fraud would be required to continue to conceal the Scheme. (A:23, 48-49 at ¶¶ 38, 118-120.) As set out in the complaint and detailed below, each of the Conspirators engaged in substantive acts in furtherance of the Scheme.

Appellee Iqbal. Iqbal was up to his neck in the original Scheme to employ Days as a CAIR lawyer and to fraudulently raise funds through promoting these legal services. Iqbal was no lone actor. He was the executive director of CAIR-MD/VA, a senior executive of CAIR National, and the authorized signatory for Appellee Zahara Investment Corporation, CAIR's real estate holding company. (A:21 at ¶ 31.) The complaint's allegations set out a series of communications between Iqbal and CAIR executives at CAIR

National via email and computer network. (A:23-24, 32 at ¶¶ 37-40, 66.) CAIR-MD/VA, Iqbal, and Days conspired from the inception of the Days Fraud Scheme in June 2006 to hold Days out as CAIR-MD/VA's "resident attorney" and to exploit his legal victories to raise public awareness for CAIR and to solicit donations. (A:14, 18-20 at ¶¶ 8, 22-25.)

Beyond this original Scheme, from at least November 2007 and continuing well after the Days' termination, various clients, including Appellants, called CAIR-MD/VA or visited the offices to complain about Days' failure to communicate with them about the status of their legal matters. Many of them also complained that CAIR had charged for these legal services. (A:22-24, 30-31, 36-37 at ¶¶ 35-40, 61, 79, 81.) Up through April 2008, Iqbal and other CAIR-MD/VA employees effectively ignored their clients' complaints, and on at least one occasion, Iqbal attempted to induce an existing client (Abdussalaam) to sign a release agreement stating that CAIR-MD/VA "is **NOT**[7] a legal services organization and I will hold CAIR-Maryland & Virginia neither financially nor legally liable in respect to any subsequent judicial or administrative proceedings which may result from CAIR's involvement with my complaint." The release agreement was fraudulent since CAIR had in fact held itself out as a "legal service organization" and this was clearly an effort by

[7] Capitalization and emphasis in the original.

Iqbal and CAIR to reconstruct the facts to avoid future civil and criminal liability for the Days Fraud Scheme. This release was mailed by Iqbal using the U.S. Postal Service. (A:30-32, 75 at ¶¶ 61-65 and at Ex. IV.)

Even after Days' termination for fraud in February 2008, Iqbal and other CAIR-MD/VA employees informed their clients (Turner, Lopez, and Abdussalaam) that Days was no longer working at the CAIR-MD/VA office, but not that he had been fired. (A:24 at ¶¶ 40-41; see generally A:28-40 at ¶¶ 53-84.[8]) During the entire period of the conspiracy (June 2006-September 2008), none of the CAIR Defendants informed any of the Appellants that Days was not a lawyer or that Appellants had been fraudulently induced to pay for legal services.[9] (A:32-33, 36-38 at ¶¶ 65-68; 79-84.) On other occasions, CAIR-MD/VA employees assured clients (of the Appellants, specifically Nur) that while Days was no longer working at CAIR, CAIR National would be handling all their legal matters. (A:43-44 at ¶ 102.) These statements were false and made to Appellants to fraudulently conceal the Days Fraud Scheme. (A:41-45 at ¶¶ 94, 97-105.)

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[8] Only in May 2008 was Nur told that Days was no longer employed at CAIR; she was assured by a CAIR employee that CAIR National was handling her legal matters. (A:43-44 at ¶ 102.)

[9] Only Abdussalaam was told that Days was not a lawyer, but this disclosure took place in September 2008, after Abdussalaam had already learned of the fraud. (A:34 at ¶¶ 71-72.)

Appellees Iqbal, Ahmed, Awad, Goraya, Athman, and Al-Khalili ("the Conspirators"). From February (the date of Iqbal's first identified interstate email to Ahmed, Awad, Goraya and other unidentified CAIR National officials) through September 2008, the Conspirators agreed amongst themselves to further the Days Fraud Scheme by taking affirmative steps to conceal the Scheme. (A:23-24, 48-49 at ¶¶ 37-40, 118-120.) These steps included: assisting Iqbal to close down CAIR-MD/VA (A:27-28, 36-37 at ¶¶ 52, 80-81, 104); destroying or removing all of the evidence of the Scheme by agreeing that Al-Khalili would drive to CAIR-MD/VA to physically remove the legal files and any evidence of the Days Fraud Scheme and to bring the files and evidence back to CAIR National in Washington, D.C. (A:27-28 at ¶ 52); instructing CAIR National officials to field angry calls from clients to tell them that: (a) Days was never an employee of CAIR only an independent contractor; (b) that all of the legal services offered to CAIR clients were his own private affair; and (c) that the only proper course of action for the CAIR clients was to turn to Days himself. These statements were knowingly false and omitted the material fact that Days was not an attorney and that CAIR had terminated his employment as a result of the legal fees scam (or more accurately, for being discovered by some of the CAIR victims). (A:23-27, 37-38, 45-46 at ¶¶ 38-50; 81-84; 106-109.)

In addition, each of the Conspirators, individually and as part of CAIR National senior management, agreed that in those cases where CAIR clients threatened to sue or go public about the Days Fraud Scheme, CAIR would only enter into a settlement agreement and pay restitution to these fraud victims on condition that the settling victims agreed not to report the Scheme or Appellees' part in it to any one.[10] These settlement agreements contained none of the exceptions typically found in such confidentiality provisions, such as an exception to permit disclosure to government authorities.[11] In addition, the settling victims were threatened with liquidated damages of $25,000 if they broke their silence.[12] (A:24-27 at ¶¶ 41-51.)

These efforts to conceal the fact that Days and CAIR had fraudulently represented Days as a lawyer were not separate and distinct from the original Scheme, which was to fraudulently hold Days out as a lawyer and to conceal the truth. The acts and omissions by the CAIR Conspirators were intimately and

[10] The complaint refers to the settlement agreements as the Release of Claims Document (A:24-25 at ¶ 42) and the confidentiality provision as the Silence Clause. (A:25 at ¶ 45.)

[11] Failure to report federal crimes (e.g., mail and wire fraud) and to take specific actions to avoid its disclosure is a violation of 18 U.S.C. § 4 (misprision of felony). The silence provision amounts to a conspiracy to violate § 4.

[12] The complaint refers to the liquidated damages provision as the Liquidated Damages Clause. (A:27 at ¶ 48.)

essentially connected to the original conspiracy between Days, CAIR-MD/VA, and Iqbal.

Appellees Hooper and Rubin. On September 9, 2008, Hooper and Rubin, acting as part of CAIR National's senior management, actively joined the Conspirators by taking affirmative steps to contribute to the conspiracy. They, along with the other members of CAIR senior management, published a false and misleading press release denying any wrongdoing on the part of anyone but Days in the Days Fraud Scheme and by stating falsely that CAIR had reached out to all of the defrauded victims to offer compensation. This statement was knowingly false. The press release was published on the CAIR National website. (A:45-46 at ¶¶ 106-110.)

Appellee Athman. Athman's active contribution to the conspiracy is evidenced in mid-September 2008. After Abdussalaam had learned of some of the details of the Days' Fraud Scheme, he contacted Days to query him. Days denied any wrongdoing. Just a few days later, Athman contacted Abdussalaam by telephoning from D.C. to Virginia. (A:33-34 at ¶¶ 70-74.) Athman informed Abdussalaam (who was in Virginia) that she was calling from CAIR National in Washington, D.C. where she worked. While she told Abdussalaam what he had already learned—that Days was not in fact a lawyer and had committed fraud—she continued to omit material facts about the truth of what had happened. At

no time did Athman inform Abdussalaam (a) that Iqbal and CAIR-MD/VA knew of the Days Scheme to fraudulently represent himself as a lawyer as early as June 2006; (b) that Iqbal knew that Days had fraudulently taken money from CAIR clients at least as early as November 2007; or (c) that Iqbal knew that Days and CAIR had defrauded Abdussalaam in December 2007 when Abdussalaam had spoken to Iqbal. Athman also did not explain to Abdussalaam that the 9-9 Press Release was materially false and misleading. Finally, Athman refused Abdussalaam any compensation or restitution and failed to inform him that CAIR had paid other more threatening clients to settle. (*Id.*)[13]

CAIR's Senior Management Joins and Coordinates the Scheme with Days. As will be discussed in the Argument section, the court below artificially decoupled the actions of Appellees from the original Days Fraud Scheme. This is simply not what is alleged nor is it what the facts detail. First, the complaint

[13] The fact that Athman called Abdussalaam so quickly after he had spoken to Days further suggests that Days continued his close connections to, and conspiracy with, the CAIR Conspirators well into September 2008. *See United States v. Brito*, 136 F.3d 397, 409 (5th Cir. Tex. 1998) ("Although mere association or presence by themselves are insufficient to prove knowing participation in the agreement, when combined with other relevant circumstantial evidence these factors may constitute sufficient evidence to support a conspiracy conviction. Thus, a conspiracy can be inferred from a combination of close relationships or knowing presence and other supporting circumstantial evidence.") (citations omitted), cited approvingly by both the majority and dissent in *United States v. Mellen*, 393 F.3d 175, 184, 191 (D.C. Cir. 2004).

explicitly alleges that CAIR-MD/VA, through its executive director, Iqbal, knowingly participated in the original Scheme to fraudulently present Days as a CAIR attorney. (A:12, 18-20 at ¶¶ 3, 22-25.) The complaint also alleges that the other Appellees comprising CAIR National Management acquiesced in and joined the Days Fraud Scheme. (A:21-28, 47-49 at ¶¶ 32-52, 117-121.) The benefit they perceived was clear: they could not afford the potential civil liability or the negative effect such disclosures would have on their fund raising ability. (A:14 at ¶ 8.)

Second, when Iqbal discovered the legal fees scam in November 2007, he discussed the matter with Days and they both agreed to conceal the matter from their clients. Even in December 2007, Iqbal took affirmative steps engaging in mail fraud to conceal this subsequently added element of the Scheme from Abdussalaam. (A:21, 30-32 at ¶¶ 32, 61-64.)

Third, after Days' termination, all of the Appellees as CAIR senior management actively continued the Scheme, which included both the crime of the unauthorized practice of law and the fact that Days had committed criminal fraud by soliciting legal fees. (A:21-47 at ¶¶ 32-111.) While concealment and cover-up was a big part of that continued Scheme, concealment and cover-up was an intrinsic part of the original Scheme from the beginning.

Fourth, and most instructive, is that even Days coordinated his post-termination story with the CAIR Conspirators by telling his clients that he was simply working from home (not that he had been fired), something he could not have done had he not known that his CAIR co-Conspirators were continuing to conceal the fact that Days was not a lawyer and that he had been fired when too many victims complained of his incompetence. (A:32-33, 36-38 at ¶¶ 66-69, 79-84.) Conversely, it is also clear that the CAIR Conspirators were informing their victims, including Appellants, that Days was just no longer present at the CAIR-MD/VA offices[14]; and that Appellants needed to contact Days directly. They most certainly were not informing their victims that he was never an attorney or that he had been fired for bad acts. This allowed Days, when contacted by Appellants after his termination, to continue to "represent" them without worry that they had been told of the Days Fraud Scheme by the CAIR Conspirators. (*Id*.)

Finally, as late as September 2008, Abdussalaam telephoned Days to ask about what he had learned from recent press reports. Days informed him that none of the press reports about the Scheme were true; it was all just CAIR "haters" creating a story. Not surprisingly, Athman, as a member of CAIR's senior management, dutifully contacted Abdusalaam a day or so later (again by

[14] *See* note 8 *supra*.

an interstate telephone call) to continue the Scheme, even as she was forced to concede parts of it, by pleading CAIR's case as the victim in the whole affair. (A:33-34 at ¶¶ 70-72.) It is certainly a reasonable inference that Days contacted someone at CAIR so that Athman would reach out to Abdusalaam in an effort to conceal CAIR's intimate participation in the RICO conspiracy that began with Days' employment.

The Scheme's Pattern of Racketeering Activity through the Use of the Mails and Interstate Wires in Furtherance of the Scheme. The Complaint alleges at least 24 separate uses of the mails and interstate wires in furtherance of the Days Fraud Scheme extending from June 2006 through September 2008. These include no fewer than six uses occasioned by Days (A:28-29, 36, 39, 41 at ¶¶ 53, 55, 78, 87-88, 95); seven by Iqbal (A:23, 30, 32-33 at ¶¶ 37, 61, 65-67); at least one by Ahmed, Awad, and Goraya (A:23 at ¶ 37); at least one by Athman (A:34 at ¶ 71); four by unidentified CAIR National officials (A:37-38, 45-46 at ¶¶ 82-84, 106-108) and three by an employee of CAIR-MD/VA (A:43-44 at ¶¶ 101, 103-104).

The Scheme's Continuity and Open-Ended Threat. The complaint alleges explicitly that the Days Fraud Scheme was a conspiracy that reached literally hundreds of CAIR victims. CAIR's own promotional materials, attached to and incorporated as part of the complaint, state that Days had

provided legal representation in "over 100 civil rights cases". Each of these CAIR clients was a victim of the Scheme to fraudulently hold Days out as a lawyer. (A:19, 67, at ¶ 24 and at Ex. I-3.)

And, the complaint adds even greater particularity and specifics by alleging that there were at least 30 other CAIR clients who had paid Days legal fees. (A:20 at ¶ 22.) This is not some vague allegation about some ambiguous collection of victims but a specific allegation with a specific number attached. The complaint also details how some of the most threatening of these 30 victims were paid a partial restitution through the Release of Claims Document, but only after they agreed to the Silence Clause and the Liquidation Damages Clause, to prevent any other victims from learning about the fraudulent Scheme. The exact form of this Release of Claims Document was included as an attachment to the complaint and incorporated therein.[15] (A:24-27, 73-74 at ¶¶ 41-51 and at Ex.III.)

[15] Appellants ask the Court to take judicial notice of yet another CAIR victim, Iftikhar Saiyed, who has just recently filed a diversity action against CAIR in the United States District Court for the District of Columbia alleging damages arising from the Days Fraud Scheme. *Saiyed v. Council on American-Islamic Relations Action Network, Inc.*, Case No. 1:10-cv-00022-PLF, filed January 6, 2010.

B. Factual Allegations Establishing Damages

The complaint alleges sufficient facts to conclude that each of the Appellants were injured in his or her "business or property by reason of a violation of [RICO]". 18 U.S.C. § 1964(c).

1. *Legal Fees Paid by Abdussalaam, Turner, & Lopez*

Appellants Abdussalaam, Turner, and Lopez each paid legal fees to Days acting on behalf of CAIR. These payments were directly and proximately caused by a conspiracy between Days, Iqbal, and CAIR-MD/VA because these fraudulently induced payments were directly and immediately induced by virtue of the original conspiracy to fraudulently employ and promote Days as a CAIR "resident attorney". Abdussalaam, Turner, and Lopez allege that they went to CAIR for legal representation and would not have paid Days legal fees had he not been employed at CAIR and had CAIR not fraudulently represented Days as its competent "resident attorney". (A:28-30, 33, 35 at ¶¶ 53, 57, 68, 73-76.)

The proximate causal relationship between these fraudulently induced payments and Days employment at CAIR is not only factual (i.e., Iqbal and CAIR-MD/VA knew Days was fraudulently representing himself as an attorney), but also legal. Specifically, the complaint alleges that these fraudulent payments arose out of Days' employment as a putative CAIR attorney, implicating *respondeat superior* liability for CAIR-MD/VA. (A:46-47 at ¶¶

110-111.) Even more relevant, the complaint explicitly alleges that these fraudulent payments were ratified by Iqbal acting on behalf of CAIR-MD/VA at least by November 2007. (A:21 at ¶ 32.) Iqbal was motivated to ratify the legal fees scam precisely because Days was a CAIR employee and because Iqbal had joined the original Scheme to present Days as an attorney from its inception.

2. *Nur's Out-of-Pocket Relocation Expenses Relating to Termination of Her Employment Proximately Caused By Following Days' Legal Advice*

While Appellant Nur did not pay legal fees to Days or CAIR, she reasonably relied on Days' legal advice to reject her employer's suggestions to ameliorate her hostile working conditions. As a direct result, she was fired and had to move her family at great expense to another state to look for work. Days' employment as a CAIR attorney and the conspiracy to conceal the fact that Days was not an attorney were the direct, immediate, and proximate causal factors that induced Nur to reasonably rely on Days' advice. (A:38-45 at ¶¶ 85-105.)

3. *Damages to Business and Property Rights Relating to Expiration of Legal Claims Suffered by Abdussalaam & Nur*

Further, Abdussalaam and Nur were barred by the running of the relevant statute of limitations from bringing claims against their respective employers for damages arising from hostile and discriminatory work environments as a direct consequence of the conspiracy engaged in by Days and the CAIR

Conspirators, which prevented Appellants from discovering that Days was not in fact an attorney and could not as a matter of law be prosecuting either their administrative claims before the EEOC or any possible federal claims they might have. Specifically, the complaint alleges that Abdussalaam received a "right-to-sue" letter from the EEOC in mid-May 2007. (A:29-30 at ¶ 57.) As a matter of law, this allowed Abdussalaam 90 days to file a complaint in federal court. 42 U.S.C. § 2000e-5(f)(1). Abdussalaam did not file his complaint during this statutory period because he had been fraudulently induced by Days, Iqbal, and CAIR into believing Days and CAIR had filed the lawsuit on his behalf. (A:30-33 at ¶¶ 58-69.)

Similarly, Nur received a "no action" letter from the EEOC on January 29, 2008. (A:41 at ¶ 96.) As a matter of law, this allowed Nur to file an administrative action before the EEOC within 300 days. 42 U.S.C. § 2000e-5(e)(1). Nur did not file her administrative complaint during this statutory period because she had been fraudulently induced by Days, Iqbal, and CAIR into believing Days and CAIR were taking this action on her behalf. (A:97-105 at ¶¶ 42-45.)

SUMMARY OF ARGUMENT

Appellants appeal the dismissal of their RICO complaint against members of CAIR's senior management on the grounds that the District Court

misread the complaint to allege two separate and distinct conspiracies—one by Morris Days involving a legal fees scam and a separate one by CAIR's senior management to cover-up the scam.

In fact, the complaint explicitly alleges only one central conspiracy: concealing from the public and Appellants that Days was in fact not an attorney. As the complaint clearly states, CAIR-MD/VA hired Days knowing that he was a fraud and actively promoted him to the public as a way to raise charitable donations from the public. While the legal fees scam was added later, it was not the primary conspiracy and this is established by the fact that one of the four Appellants did not even allege that she was a victim of the legal fees scam.

In line with its misreading of the complaint, the lower court bifurcated what the complaint alleged as single pattern of racketeering activity into (1) a legal fees scam perpetrated exclusively by Days and (2) a cover-up by CAIR officials. In support of its misreading of the complaint, the court also concluded that Appellants only suffered damages arising from the legal fees scam and as such the CAIR cover-up was not proximately related to any of the damages suffered by Appellants. Thus, the court dismissed the RICO counts with prejudice for lack of standing under Rule 12(b)(1) and dismissed the state

statutory and tort claims without prejudice on the grounds that supplemental jurisdiction is foreclosed when the court has no subject-matter jurisdiction.

But the court's reading of the facts was plain error. The complaint explicitly alleges a conspiracy between Days and Iqbal, CAIR's executive director of the Herndon office. The primary purpose of this conspiracy was to represent Days to the public as CAIR's "resident attorney" and, inversely, to conceal the truth that he had not even attended law school, much less obtained professional licensure. All of the remaining CAIR co-Conspirators joined this conspiracy with but one goal in mind: to continue to conceal the fact that Days was not an attorney. As such, all of CAIR's senior management are liable for the damages flowing from that initial Scheme irrespective of whether they were early- or late-joiners to the conspiracy.

Alternatively, the District Court held that the complaint failed to properly allege a "pattern of racketeering activity" as required by RICO and found additional grounds for dismissal pursuant to Rule 12(b)(6). But again, the court's misreading of the explicit factual allegations in the complaint doomed it to err on this ruling as well. Having bifurcated the pattern *a priori* and without a basis in the allegations of the complaint, the court was compelled to conclude that the pattern requirement was not met. The court also completely ignored the detailed allegations in the complaint about the more than one hundred victims

of the Days Fraud Scheme, the evidence for which was taken from CAIR's own mailings and web-based publications. Further, the court ignored allegations of 30 other CAIR clients who had fallen prey to the legal fees scam, which was concealed by CAIR senior management in part through the use of settlement agreements. These settlement agreements included a Silence Clause requiring the victims to agree not to report the Scheme to authorities or to other victims. A breach of the Silence Clause would trigger a $25,000 liquidated damages provision. All of these specific and particularized allegations were dismissed by the court as "vague". Thus, the court erroneously held that there was neither a closed-ended or open-ended pattern.

For these reasons and as set forth in the argument more fully set out below, Appellants respectfully request this Court reverse the District Court's grant of Appellees' respective motions to dismiss and reinstate the complaint in its entirety.

ARGUMENT

A. The Standard of Review

Review of a district court's dismissal of a complaint pursuant to Rules 12(b)(1) and 12(b)(6) is *de novo*. *Macharia v. United States*, 334 F.3d 61, 64 (D.C. Cir. 2003). The appellate court must accept the allegations of the

complaint as true and give the complaint "'the benefit of all inferences that can be derived from the facts alleged,'" *Vila v. Inter-American Inv. Corp.*, 570 F.3d 274, 284 (D.C. Cir. 2009) (quoting *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994)). In a Rule 12(b)(1) motion, while the court may entertain undisputed facts outside the complaint, the record below is devoid of any facts not alleged in the complaint and the lower court's dismissal was purportedly based exclusively on the facts as alleged. *Herbert v. Nat'l Acad. of Scis.*, 974 F.2d 192, 197 (D.C. Cir. 1992).

B. The Complaint Alleges a Single Conspiracy Which Proximately Caused Appellants to Suffer Multiple RICO Damages

The court below concluded that Appellants lacked standing to establish the court's subject matter jurisdiction because the complaint only alleged a cover-up conspiracy by CAIR's senior management that was not in furtherance of the Days Fraud Scheme. To reach its ultimate conclusion, however, the court was forced to define the Days Fraud Scheme as exclusively the legal fees scam, which then permitted the court to read the complaint in such a way as to conclude that the only damages suffered by Appellants were monetary damages arising from the legal fees scam. The court was then free to conclude that since the cover-up conspiracy implicating CAIR's senior management occurred only after all of the damages suffered by Appellants had occurred as a result of the

earlier unrelated legal fees scam, Appellants failed to show that they suffered any damages from anyone but Days. As the facts and the natural inferences from those facts show, this is an unreasonable and improper reading of the record.

1. *The Complaint Alleges a Single Conspiracy Consisting of Days and CAIR Senior Management*

The undisputed factual record establishes that the original and essential Days Fraud Scheme was the effort to represent Days to the public as a CAIR attorney at the CAIR-MD/VA branch office. The "Days Fraud Scheme" as defined by the complaint at paragraph 22 begins here. The complaint does not allege that the primary purpose of the Scheme was to engage in the legal fees scam. This is underscored by the fact that Appellant Nur does not allege that she was a victim of the legal fees scam. Presumably, Days wanted a high-profile, important professional role with CAIR to enjoy the salary and other benefits. One might also presume that Days envisioned this Scheme as a way to engage in additional fraudulent behavior, including illegally charging legal fees. But these additional motivations and scams do not detract from the original and essential purposes of the Days Fraud Scheme. As the complaint alleges (A:19-20 at ¶ 25), the unauthorized practice of law in Virginia is a crime. Va. Code Ann. § 54.1-3904 ("Any person who practices law without being authorized or

licensed shall be guilty of a Class 1 misdemeanor.") Days' original purpose to gain employment at CAIR to represent himself as a CAIR attorney was a criminal act accomplished through a multitude of RICO predicate offenses.

The primary and most important element of this Scheme was to conceal the fact that Days was not a lawyer. While this Scheme ultimately included the legal fees scam, which added to the damages suffered by three of the four Appellants, the legal fees scam was only possible because it was added to the original Scheme: to fraudulently represent Days as a CAIR attorney and, its inverse, to fraudulently conceal the fact that Days was not an attorney.

Further, the Days Fraud Scheme became a conspiracy the moment CAIR's branch office in Herndon, Virginia agreed to employ Days. As the Complaint alleges, CAIR agreed to this illegal employment even though CAIR-MD/VA and Iqbal knew that Days was not an attorney, or, at the very least, recklessly disregarded their respective fiduciary duties to the public in general and to Appellants and other CAIR victims in particular when they first employed Days as its "resident attorney". Recklessness qualifies as criminal scienter. S*ee, e.g., United States v. Mellen*, 393 F.3d 175, 181 (D.C. Cir. 2004) ("[G]uilty knowledge need not be proven only by evidence of what a defendant affirmatively knew. Rather, the government may show that, when faced with reason to suspect he is dealing in stolen property, the defendant consciously

avoided learning that fact."); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319, n.3 (2007) ("We have previously reserved the question whether reckless behavior is sufficient for civil liability under § 10(b) and Rule 10b-5. *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194, n. 12 (1976). Every Court of Appeals that has considered the issue has held that a plaintiff may meet the scienter requirement by showing that the defendant acted intentionally or recklessly, though the Circuits differ on the degree of recklessness required. *See Ottmann*, 353 F.3d at 343 (collecting cases)."); *Howard v. SEC*, 376 F.3d 1136, 1143 (D.C. Cir. 2004) ("A secondary violator may act recklessly, and thus aid and abet an offense, even if he is unaware that he is assisting illegal conduct."); *see also United States v. Brito*, 136 F.3d 397, 409 (5th Cir. Tex. 1998) ("a conspiracy can be inferred from a combination of close relationships or knowing presence and other supporting circumstantial evidence").

A "conspiracy is defined as an agreement between two or more people to participate in an unlawful act or a lawful act in an unlawful manner." *Hobson v. Wilson*, 737 F.2d 1, 51 (D.C. Cir. 1984) (abrogated on other grounds by *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993)); *see also Salinas v. United States*, 522 U.S. 52, 65 (1997) ("A conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that

he adopt the goal of furthering the criminal endeavor," affirming § 1962(d) conviction despite the defendant's acquittal under § 1962(c)). The agreement between Days, CAIR-MD/VA, and Iqbal to employ Days as an attorney initiates, as the complaint alleges, the conspiracy to conduct the Days Fraud Scheme. It is the agreement to employ Days as a CAIR attorney and the acts to conceal the truth from the public and from CAIR clients that is at the heart of the conspiracy between Days, Iqbal, and CAIR-MD/VA to further the Scheme's purposes.

Unquestionably, Days adds to the original conspiracy to further the Scheme when he concocts his legal fees scam. But this scam is part and parcel of the original Scheme and cannot be artificially segregated from his fraudulent employment as CAIR's "resident attorney". In fact, when Iqbal learns of this scam no later than November 2007, he readily acquiesces to it even though by doing so he exposes himself and CAIR to additional criminal and civil liabilities. The obvious and most compelling inference for Iqbal's rationale for explicitly agreeing to this latter element of the conspiracy is the fact that he and CAIR were already intimately intertwined in the original Scheme that came to employ Days.[16]

[16] In fact, the negative inference just as strongly suggests that had Iqbal and CAIR-MD/VA not been involved in the original conspiracy to fraudulently

Conspiracy law in general and especially in this Circuit is clear: irrespective of when a co-conspirator joins the conspiracy and irrespective of his or her role—be it as a primary actor or just a supporting one—each co-conspirator is liable for the damages resulting from the conspiracy even when they are unaware of all of the criminal particulars of the conspiracy.

> It is not essential, in charging conspiracy, to show that all of the conspirators participated in the conspiracy at its beginning, nor is it essential that all contribute alike either to the making of the scheme or to its fulfillment. It is enough if at some period during the continuance of the conspiracy there is a common design and purpose applicable to all the conspirators. Some may join the conspiracy early, some late; but if there is ultimately a common design to obtain or further an illegal purpose, the culpability of all is equal.
>
> And this is true as to all the conspirators, whether they joined the conspiracy at its inception or at a later time. "When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made 'a partnership in crime.' What one does pursuant to their common purpose, all do. . . ." [citations omitted].

United States v. Harding, 81 F.2d 563, 566-567 (D.C. 1936); *see also Salinas,* 522 U.S. at 64 ("If conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators.").

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employ Days as an attorney, Iqbal and CAIR-MD/VA would have conducted an investigation to determine the extent of Days' wrongful behavior and at the very least would have contacted CAIR's clients to determine the extent of the legal fees scam and to inform them of it. The fact that Iqbal and CAIR-MD/VA took none of these steps speaks volumes.

In turn, as each of the other Appellees who make up the remainder of CAIR's senior management learned of the Scheme and joined the original conspiracy consisting of Days, Iqbal and CAIR-MD/VA, they become liable as "late-joiners" for all of the damages previously caused by the pre-existing conspiracy. *Id.; see also Havoco of America, Ltd. v. Shell Oil Co.*, 626 F.2d 549, 554 (7th Cir. 1980) ("It is well recognized that a co-conspirator who joins a conspiracy with knowledge of what has gone on before and with an intent to pursue the same objectives may, in the antitrust context, be charged with the preceding acts of its co-conspirators.")[17]; *In re K-Dur Antitrust Litig*., 338 F. Supp. 2d 517, 539 (D.N.J. 2004) ("Those who come on later and co-operate in the common effort to obtain the unlawful results become parties thereto and assume responsibility for all done before."); and *In re Nissan Motor Corp. Antitrust Litigation*, 430 F. Supp. 231, 232 (S.D. Fla. 1977) ("In non-class actions, late-comers to antitrust conspiracies, who, while knowing of the prior existence of the conspiracy, join it in order to promote the unlawful object for which it was organized, are liable for everything done during the period of the

[17] The law of RICO damages is appropriately drawn from the antitrust context. RICO's civil right of action, treble damages, and "by reason of" causation provisions were all modeled after the Clayton Act and the courts have turned for guidance to the relevant jurisprudence developed by the federal courts in the antitrust area. *See, e.g., Holmes v. Sec. Investor Prot. Corp*., 503 U.S. 258, 272 (1992) ("obvious congressional adoption of the Clayton Act direct-injury limitation among the requirements of § 1964(c)").

conspiracy's existence."); 16 Am Jur 2d Conspiracy § 57[18] ("The joint and several liability of a conspirator applies to damages accruing prior to his or her joining the conspiracy as well as damages thereafter resulting—regardless of whether he or she took a prominent or an inconspicuous part in the execution of the conspiracy."); and 16 Am Jur 2d Conspiracy § 68 ("Evidence of acts occurring prior to the time defendant joined an existing conspiracy are admissible not only to show defendant's responsibility for those acts but also to show the scope and nature of the conspiracy.")

It is more than artificial to conclude, as the lower court did, that the late-joiners' acts to conceal the fraud of the original Scheme were somehow distinct from the original Scheme. In fact, the only way the lower court was able to craft this argument was by redefining the original Scheme as exclusively the legal fees scam. But, the complaint explicitly alleges the Days Fraud Scheme was Days' employment as CAIR's attorney and CAIR's public promotion of Days as a successful and licensed attorney, replete with a stellar legal education and past professional references. All patently false. Moreover, the flip side of this Scheme was the concealment that none of this resume was true. Each of the

[18] RICO's civil conspiracy rules follow the common law. *Beck v. Prupis*, 529 U.S. 494, 500-504 (2000) (RICO civil conspiracy follows common law of conspiracy to require tortious [i.e., racketeering] injury arising from conspiracy).

late-joining members of CAIR's senior management were expressly preoccupied with continuing precisely this goal of the original Scheme: concealing the truth about Days.

This Court has explicitly held in a RICO context that cover-up predicate acts (also referred to as acts designed to "lull the victim into a false sense of security," which thereby prevent the fraud from being detected), are part of the same underlying scheme. *See, specifically, U.S. v. Perholtz*, 842 F.2d 343, 365 (D.C. Cir. 1988) (when the plan to conceal is concocted while the purposes of the main conspiracy remain extant, the cover-up is a "plan to lull the victims into a false sense of security" and is very much a part of the original conspiracy).[19] In this case, the agreement by the late-joining Appellees (those

[19] This Court's holding in *Perholtz* is enough to distinguish this case from the Utah District Court's holding in *Albright v. Attorney's Title Insurance Fund*, 504 F. Supp. 2d 1187, 1204 (D. Utah 2007), relied upon heavily by the lower court. In *Albright*, there were two clearly distinct conspiracies: one by a group of bad lawyers who had no conspiratorial connection to the defendant Attorney's Title Insurance Fund and a separate conspiracy by the defendant title company to "clean-up" the earlier bad acts. Thus, the facts are distinguishable from the instant case involving a single conspiracy with a single primary goal of concealing Days' true resume. But more than this, *Perholtz* provides a second basis, one grounded in law, to distinguish *Albright* from this case. *Perholtz* makes clear that a cover-up plan to lull the victims into a false sense of security is part of the original conspiracy and forms a single course of conduct when the cover-up is hatched while the original scheme is in play. In this case, Days was still parading as an attorney in February-March 2008 when the late-joiners joined the conspiracy and indeed, this continued well beyond. As the complaint alleges, even after CAIR fired Days, the Appellees, as part of CAIR senior

other than Iqbal, who joined at inception when he hired Days knowing of the Scheme) was crafted and entered into in February-March 2008 while Days was still being promoted as an attorney by Days himself and by CAIR. It was not until September 2008 that CAIR finally admitted that Days was a fraud and not an attorney. *Midwest Grinding Co. v. Spitz*, 976 F.2d 1016, 1024 (7th Cir. 1992) ("cover-up activity is part of the underlying scheme to defraud, rather than a separate, free-standing scheme" and is part of the pattern of racketeering activity if it falls within one of the enumerated predicate offenses such as mail or wire fraud).

2. *When Understood as Alleging a Single Conspiracy, the Complaint Properly Establishes RICO Damages Proximately Caused by the RICO Conspiracy Conducted by Appellees*

In its Memorandum Opinion, the court below articulated succinctly the proper legal standards for a court's assessment of damages under RICO in the context of standing:

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management, were still referring their victims to seek legal counsel from Days who was, according to the CAIR party-line, simply practicing law on his own now. In *Albright*, the "clean-up" conspiracy occurred only after the earlier frauds had concluded (as the court termed it, "In the wake of the Harrison and Robinson frauds . . .." *Id*., 504 F. Supp. at 1200).

> RICO includes a civil enforcement provision "authoriz[ing] a private suit by '[a]ny person injured in his business or property by reason of a violation of § 1962.'" *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 495 (1985) (citing 18 U.S.C. § 1964(c)). Injury to a person's business or property is required for a civil plaintiff to demonstrate standing. *Id.* at 496. "A showing of standing is an essential and unchanging predicate to any exercise of a court's jurisdiction." *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658, 663 (D.C. Cir. 1996) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). For a plaintiff to have standing, he must demonstrate that a defendant's predicate acts were the proximate cause of his injury. *See Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992) (noting that proximate cause between the predicate acts and the injury is required in a civil RICO claim); *see also Anza v. Ideal Steel Supply Corp*., 547 U.S. 451, 457 (2006) (reaffirming *Holmes*).
>
> "The RICO pattern or acts proximately cause a plaintiff's injury if they are a substantial factor in the sequence of responsible causation, and if the injury is reasonably foreseeable or anticipated as a natural consequence." *Elemary v. Philipp Holtzmann A.G.*, 533 F. Supp. 2d 116, 140 (D.D.C. 2008) (quoting *Hecht v. Commerce Clearing House, Inc.,* 897 F.2d 21, 23-24 (2d Cir. 1990)). "Any recoverable damages occurring by reason of a violation of § 1962(c) will flow from the commission of the predicate acts." *Sedima*, 473 U.S. at 497. The harm must be concrete and actual or imminent, not conjectural or hypothetical. *Byrd v. Envtl. Prot. Agency*, 174 F.3d 239, 243 (D.C. Cir. 1999) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998)).

Unfortunately, the District Court misread the central allegations of the complaint and ignored others. As a result, the court applied the correct legal standard against the wrong facts and not surprisingly erred in its rulings. Specifically, the District Court failed to properly credit the following undisputed facts:

i) that the original and essential Scheme was to conceal the truth about Days and to represent him to the public as a successful CAIR attorney;

ii) that CAIR-MD/VA and its director Iqbal knew of Days' Fraud Scheme to gain employment as CAIR's "resident attorney" and agreed to participate in the Scheme by employing him, thereby creating a conspiracy;

iii) that the legal fees scam joined by Iqbal in November 2007 was part and parcel of the original conspiracy and flowed quite naturally from it; and

iv) that each of the late-joining co-conspirators, making up CAIR's senior management, who joined the conspiracy in February 2008 and beyond were pursuing the same goals and methods of the original conspiracy (previously joined by Iqbal and CAIR-MD/VA) by concealing the fact that Days was not an attorney.

Viewed in the proper context of a single conspiracy, the complaint properly alleges damages proximately caused by the RICO conspiracy. Specifically, all of the monetary damages, whether the fraudulently induced legal fees paid by Turner, Lopez, and Abdussalaam or the moving expenses of Nur, are demonstrably the direct and proximate consequence of Appellants' reasonable reliance upon CAIR's fraudulent promotion of Days as its "resident attorney". This 'promotion' was, necessarily, initiated when CAIR-MD/VA and Iqbal conspired with Days to further the Scheme. And, because these damages flowed from the single conspiracy, the late-joiners making up the balance of the Appellees cannot now claim immunity from those damages.

3. *The District Court Erred as a Matter of Fact and Law in Finding that the Late-Joiners to the Conspiracy are Not Liable for Damages Arising Prior to Joinder Because there was No Antecedent Conspiracy.*

At one point in its Memorandum Opinion (A:102-104), the District Court accepts *arguendo* that the complaint in fact alleges a single conspiracy. The court, however, refuses to apply the law of late-joiner culpability because it concludes that when Appellees joined Days' legal fees scam, it was a scam of one (i.e., Days), and the law of late-joiner culpability applies only when the late joiner joins an existing conspiracy. Even assuming this to be the correct understanding of late-joiner conspiracy culpability[20], the court had to literally mangle the facts to find no existing conspiracy.

First, the court was wrong to consider the Scheme to be exclusively the legal fees scam. The original Scheme to employ Days as an attorney for CAIR

[20] This brief assumes only for purposes of this argument that the late-joiner culpability is, as the lower court held, to be read literally and narrowly in the sense that the late-joiner is only culpable for prior bad acts of the earlier conspirators if and only if he/she joined an existing conspiracy. This reading of conspiracy law is forced at best and wholly illogical at worst and would lead to the following absurdity: Case 1: Bad man "X" plans to rob a bank and to extort inside help from some bank employees in advance. X begins his preparations by committing extortion. One month later, Y, an expert driver, joins X, thereby creating a conspiracy, to drive the get-away car. According to the lower court's understanding of late-joiner culpability, Y is **not** guilty for the extortion because Y did not join an **existing** conspiracy. Case 2: Same facts as above except X conspires with Z to commit the extortions. One month later, Y joins the existing conspiracy. Now, inexplicably, Y is liable for the previously committed extortion.

became a conspiracy when CAIR-MD/VA and Iqbal hire Days knowing of the fraud (or acting recklessly in this regard). This means that when each of the subsequent late-joiners (consisting of all of the remainder of the Appellees) joined this Scheme to keep the public and CAIR victims from discovering that Days was not an attorney, they joined an existing conspiracy.

Second, even accepting the lower court's erroneous factual premise that there was no existing original conspiracy until after the legal fees scam was discovered and joined by Iqbal in at least November 2007, this would only dictate that Iqbal was not liable under the lower court's version of the late-joiner culpability rule. But that would not excuse all of the other late-joiners (i.e., the remainder of the Appellees), who would have each joined an existing conspiracy consisting minimally of Days and Iqbal. Yet, the court simply ignored the facts in the record and somehow mysteriously concluded that all of the Appellees, including Iqbal, joined Days at exactly the same moment in time when there was as yet no existing conspiracy. The only explanation for the court's analysis and holding on this point is a conclusion in search of a rationale, facts notwithstanding.

4. *In Addition to Their Out-of-Pocket Damages, Appellants Abdussalaam and Nur have Properly Alleged RICO Damages Arising from the Termination of the Right to Bring Employment Discrimination Cases Against Their Respective Employers*

The complaint also alleges that Abdussalaam and Nur both suffered from a hostile work environment and employment discrimination. They both turned to CAIR for legal representation and they both reasonably relied on CAIR's and Days' representations that their respective legal matters were being properly prosecuted, whether in federal court in Abdussalaam's case or administratively before the EEOC in Nur's. In both instances, the complaint specifically sets forth when each of them received their respective administrative letters from the EEOC starting the running of the applicable statute of limitations. The facts as alleged establish that both Abdussalaam and Nur continued to reasonably rely on CAIR's and Days' legal representation when in fact neither of their claims were being prosecuted by CAIR or Days at all. By the time they discovered the truth, the statute of limitations in each instance had run.[21]

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[21] While the complaint does not state that the respective statutes of limitations had expired, this is a purely legal conclusion that is established by the facts as alleged. Under the notice pleadings requirements of Rule 8, the termination of Abdussalaam's and Nur's respective legal claims is a natural if not necessary legal inference from the facts as alleged. *See Enron Corp. v. Bear, Stearns In'l Ltd. (In re Enron Corp.)*, 323 B.R. 857, 862 (Bankr. S.D.N.Y. 2005) ("In reviewing a Fed. R. Civ. P. 12(b)(6) motion, a court may consider the allegations in the complaint; exhibits attached to the complaint or incorporated therein by reference; [and] matters of which judicial notice may be taken"); *Faibisch v. Univ. of Minn.*, 304 F.3d 797, 803 (8th Cir. Minn. 2002) (judicial

Consequently, both Abdussalaam and Nur have suffered additional damages by virtue of the fact that the monetary damages they would have received had CAIR properly prosecuted their claims were now barred to them because their respective statutory legal right to bring those claims against their employers had terminated. There can be no doubt that a loss of a money award for damages suffered as a result of a harmful employment environment is an "injury to business or property" no less than had the money been stolen.

But the lower court rejected this category of damages on the grounds that:

> [t]here is, however, no allegation that the plaintiffs could not have filed lawsuits upon learning about the fraud or cannot now file their lawsuits, or that they have been damaged in some quantifiable way by the defendants' cover-up activities. Because the plaintiffs' alleged injury is speculative at best, the plaintiffs have not made the requisite showing that their injuries were the proximate cause of the RICO Defendants' acts.

A:104-105.

The court's analysis ignores two salient points: (1) the complaint alleges sufficient facts to draw the legal conclusion that the relevant statutes of limitations had run and (2) the loss of their respective legal claims was a direct result of the original conspiracy concealing the truth about Days and joined (at various points during the course of the conspiracy) by all of the Appellees and

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notice of public record); Federal Rules of Evidence, Rule 201 (Judicial Notice of Adjudicative Facts).

was no more speculative than a malpractice claim. Specifically, the complaint alleges that Abdussalaam and Nur had both received administrative letters (a right-to-sue letter in Abdussalaam's case and a no-action letter in Nur's) and the allegations state when they each received their respective letters. The complaint also explicitly alleges that both Abdussalaam and Nur reasonable relied on the conspiracy to conceal the fact that Days was not a lawyer and that neither he nor CAIR was prosecuting their respective cases. This conspiracy, conducted by Days, CAIR-MD/VA, and Iqbal, began when Days was first employed, and was joined later by the remaining Appellants. The complaint further provides the time frame when both Abdussalaam and Nur discovered the shocking truth about Days and CAIR. In both instances, that time frame was beyond the expiration of the relevant statute of limitations.[22]

[22] If the complaint's infirmity is the fact that it does not allege the specific statute of limitations and state explicitly that both statutes had run, even though neither are strictly speaking absent factual allegations but rather legal claims which would otherwise be accessible to the court and the parties through judicial notice, this infirmity is easily and rather obviously remedied by an amendment under Rule 15, and Appellants would respectfully request such alternative relief should this Court find the complaint lacking in this or any other regard. *Scarfato v. National Cash Register Corp.*, 830 F. Supp. 1441, 1442 (M.D. Fla. 1993) ("Rule 12(b)(6) is read along with Rule 8(a) which requires 'a short and plain statement of the claim showing that the pleader is entitled to relief.' Federal rules permit pleading a general allegation of negligence and, as Official Form No. 9 illustrates, brevity, simplicity, and avoidance of specifics are contemplated by the rules. . . .[A] complaint may not be dismissed because the plaintiff's claims do not support the legal theory he relies on, since the court

Further, this "injury to property" is no more intangible or speculative than a claim for malpractice against a trial lawyer. A malpractice claim against an attorney in federal court based upon diversity would not be subject to a standing challenge on grounds that the damages were speculative or intangible. *See Jacobsen v. Oliver*, 201 F. Supp. 2d 93, 101 (D.D.C. 2002) ("Attorneys can be liable for exemplary or punitive damages lost or imposed because of their negligence. If the client should have recovered exemplary damages in the underlying action but for the attorney's wrongful conduct, then such a loss should be recoverable in the malpractice action as direct damages.") The typical malpractice claim in the context of damages is very much akin to the claim in this case: plaintiff had a valid claim against party X. Because plaintiff's lawyer allowed the statute of limitations to run, plaintiff has suffered damages equal to the value of the claim against party X. At the pleading stage, it is enough for plaintiff to allege a cause of action against party X, a duty owed and breached by plaintiff's lawyer proximately causing the expiration of the statute of limitations which foreclosed plaintiff's claim against party X.[23] The damages

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must determine if the allegations provide for relief on any possible theory.") (citations omitted)

[23] *See, e.g., Footbridge Ltd. Trust v. Zhang*, 584 F. Supp. 2d 150, 158 (D.D.C. 2008) ("To prove these [legal malpractice] claims, a plaintiff must establish the applicable standard of care, that the defendant violated this standard of care, and that the violation caused a legally cognizable injury."

alleged by Abdussalaam and Nur (above and beyond their out-of-pocket damages) relating to their employment discrimination cases is identical.[24]

In this case, accepting the facts as alleged and all reasonable inferences from those allegations as true, Abdussalaam and Nur have valid employment discrimination cases, which, if properly prosecuted, would have resulted in a monetary award. The opportunity to obtain those monetary awards has been rendered moot as a direct and proximate result of the fraudulent conspiracy conducted by Days, CAIR-MD/VA, and Iqbal and, subsequently, by the remaining Appellees. *See Deck v. Engineered Laminates*, 349 F.3d 1253, 1260 (10th Cir. Kan. 2003) (RICO predicate acts by lawyers which fraudulently induced plaintiffs to give up breach of contract claims are cognizable RICO damages and not too speculative because they are subject to proof at trial).[25]

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[24] While it is certainly true that Abdussalaam and Nur will need to establish the factual basis for their employment discrimination cases for purposes of a motion for summary judgment or at trial, the allegations of the complaint at this stage, accepted as true with all reasonable inferences arising therefrom, suffice to establish yet another category of cognizable damages.

[25] The lower court cited *Maio v. Aetna, Inc.*, 221 F.3d 472, 483 (3d Cir. 2000) to support its rejection of this category of damages claim because RICO "requires proof of a concrete financial loss and not mere injury to an intangible property interest." [A:105.] But *Maio* actually supports the damages claim in this case because it stands for the proposition that RICO requires a measurable financial loss to a business or property interest owned by the plaintiff. In *Maio*, what the court rejected was a claim for RICO damages resulting from a merely hypothetically injurious medical care that might materialize because a doctor might lower the standard of care as a result of the way the defendant insurance

C. The Complaint Alleges Sufficient Facts to Establish RICO's Requirement of a Pattern of Racketeering Activity

Having mischaracterized the allegations in the complaint to find one earlier scheme conducted solely by Days and a separate CAIR cover-up conspiracy, the lower court shortened the pattern of racketeering activity articulated by the complaint and effectively denuded the "pattern" such that the court could dismiss the complaint for failing to state a claim under RICO. Further, in order to reduce the pattern to four victims, the court ignored wholesale the explicit allegations of at least 30 additional CAIR victims who had relied on Days as their CAIR lawyer and who had been fraudulently induced to pay for these legal services. Moreover, the court dismissed out-of-hand the massive pattern of racketeering explicitly alleged in the complaint and the very real possibility of an open-ended continuing threat consisting of more than one hundred CAIR victims based upon CAIR's own published public reports.

1. *The Complaint Alleges Sufficient Facts to Establish the Requisite for a Closed-Ended Pattern*

The complaint alleges that Appellees conspired to violate § 1962(c) of the RICO Act. Section 1962(c) consists of four elements: "'(1) conduct (2) of

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company administered its medical insurance policies, none of which occurred and none of which caused a loss of money to plaintiff or resulted in inadequate medical care causing physical damage. In this context, the *Maio* court rejected the damage claim because it was irreducible to any quantifiable claim of harm.

an enterprise (3) through a pattern (4) of racketeering activity.'" *W. Assocs. Ltd. P'ship v. Market Square Assoc.*, 235 F.3d 629, 633 (D.C. Cir. 2001) (quoting *Pyramid Sec. Ltd. v. IB Resolution, Inc.*, 924 F.2d 1114, 1117 (D.C. Cir. 1991)). RICO defines "racketeering activity" as any of a number of predicate offenses, including mail fraud (18 U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343). 18 U.S.C. § 1961. A "pattern" is minimally defined as "at least two acts of racketeering activity" within a 10-year period. § 1961(5); *see also H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 239-240 (1989) (the statutory definition establishes a baseline but the plain meaning and statutory construction of the word 'pattern' requires additional allegations that the predicate offenses evidence continuity and relatedness[26]).

In *H.J. Inc.*, the Supreme Court set the stage for the Circuits to flush out the various factual settings that would satisfy RICO's requirement of continuity either in the form of a closed-ended or open-ended pattern. *Id.*, 492 U.S. at 243 ("development of these concepts must await future cases"). This Circuit has taken up this charge in two important cases: *Edmondson & Gallagher v. Alban*

[26] As the lower court noted, "relatedness" is not at issue here because the motion to dismiss did not raise the issue. (A:105 at n. 8.) Even if it were an issue, there is little doubt that all of the predicate offenses articulated in the complaint demonstrate a relatedness to the Days Fraud Scheme that brought Days to be a CAIR "resident attorney". In any event, "relatedness" is tested along with "continuity" through the six-factor analysis set out in *Edmonson* and *Western Assocs. Ltd. Pshp.* discussed in the coming text.

Towers Tenants Ass'n, 48 F.3d 1260, 1264 (D.C. Cir. 1995) and *Western Assocs. Ltd. Pshp. v. Market Square Assocs*., 235 F.3d 629, 633 (D.C. Cir. 2001).

In *Edmonson* and subsequently in *Western Assocs., Ltd. Pshp*., this Court adopted a six-factor analysis to assess a pattern's continuity and relatedness: (i) number of unlawful acts, (ii) the length of time over which they were committed, (iii) the similarity of the acts, (iv) the number of victims, (v) the number of perpetrators, and (vi) the character of the unlawful activity. *Western Assocs. Ltd. Pshp.*, 235 F.3d at 633-634. Applying this analysis to the facts as alleged, Appellants have sufficiently stated a RICO pattern.

Number of Unlawful Acts and Number of Victims. Specifically, the complaint sets out at least 24 instances of mail and wire fraud committed in pursuit of the RICO conspiracy directed against just the four Appellants. The Scheme, however, extended well beyond Appellants. As the complaint details, and based upon CAIR's own documentation, over one hundred CAIR clients were victimized by the identical Scheme, thinking they were represented by CAIR's "resident attorney" in a variety of legal matters. Beyond these victims,

there are 30 other victims which were further victimized by the legal fees scam.[27]

The Length of Time. As a single conspiracy, the predicate acts extended over a period of more than two years, extending from the inception of Days employment in June 2006 and continuing until September 2008.

The Similarity of the Acts. All of the predicate acts alleged, both as to Appellants and the 100+ other CAIR victims, focused on the concealment of the fact that Days was not an attorney. Even the various sub-schemes of the conspiracy (i.e., the legal fees scam, the settlement agreements requiring the settling victims not to report the crimes to authorities or other victims, and the effort to conceal CAIR's involvement and culpability in the Scheme from the victims even after Days was fired), all evidence that CAIR senior management had as its purpose to conceal the fact that CAIR-MD/VA and Iqbal knew Days was a fraud from the inception of his employment.

The Number of Perpetrators. As the victims multiplied and began to suffer the consequences of the Scheme, it was important to the success of the Scheme that that all of CAIR's senior management participate. If any of the Appellees had backed out of the Scheme and not continued to pursue the goals

[27] *See* note 15 *supra*.

of the conspiracy through mail and wire fraud, the conspiracy would have unraveled.

The Character of the Unlawful Activity. The predicate of mail and wire fraud were all in service of several crimes, including the unauthorized practice of law, criminal fraud by virtue of the illegal legal fees scam, and misprision of felony by virtue of the concerted conspiracy between and among CAIR senior management to conceal the crimes they were fully aware had taken place. This conspiracy used a variety of methods to foster its central goal of concealing the fact that Days was not a lawyer, including the use of mail and wire fraud to lie to Appellants and exploitation of the settlement agreements to demand their victims' silence and to threaten (with severe financial penalty) any disclosure whatsoever.[28]

Viewed reasonably, and applying what the Supreme Court termed "a more natural and commonsense approach", the facts as alleged adequately establish a close-ended pattern. *H.J. Inc*., 492 U.S. at 237.

2. *The Complaint Alleges Sufficient Facts to Establish the Requisite for an Open-Ended Pattern*

An open-ended pattern exists when the racketeering activity "projects into the future with a threat of repetition." *Id*., 492 U.S. at 241. In this case, with more than one hundred victims outstanding, many of which are likely to have

[28] *See* note 11 *supra*.

mistakenly relied on the fact that CAIR had prosecuted their legal matters, this threat of continued racketeering activity is patent. Furthermore, of the victims who entered into settlement agreements and who remain silent under the threat of a $25,000 liquidation damages claim by CAIR, every day continues the impact of the racketeering activity.

The District Court erroneously dismissed this threat of continuing activity by dismissing as "vague" (A:105 at n. 7), the numerous and detailed allegations of the existence of other victims. The court's dismissal, viewed honestly, does not reflect the fact that these allegations were based in large part on CAIR's own publicly published materials about the more than one hundred cases Days worked on and an attachment setting out verbatim the settlement agreements effectively threatening these other victims with liquidated damages if they reported the crimes.

CONCLUSION

For all of the foregoing reasons, Appellants respectfully request this Court to reverse the order of the District Court in its entirety and reinstate the complaint.

Dated this 24th day of February 2010. Respectfully submitted,

By: /s/

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February 24, 2010

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CERTIFICATE OF SERVICE

David Yerushalmi, an attorney, hereby certifies that he caused an electronic copy of Appellants' Opening Brief and Appendix to be served upon all counsel of record via ECF insofar as all counsel of record are registered to file and receive service via the Court's ECF system on this 24th day of February 2010.

/s/

David Yerushalmi

ADDENDUM of STATUTES

ADDENDUM of STATUTES
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18 U.S.C. § 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $ 1,000,000 or imprisoned not more than 30 years, or both.

History:

(June 25, 1948, ch 645, § 1, 62 Stat. 763; May 24, 1949, ch 139, § 34, 63 Stat. 94; Aug. 12, 1970, P.L. 91-375, § 6(j)(11), 84 Stat. 778; Aug. 9, 1989, P.L. 101-73, Title IX, Subtitle F, § 961(i), 103 Stat. 500; Nov. 29, 1990, P.L. 101-647, Title XXV, Subtitle A, § 2504(h), 104 Stat. 4861; Sept. 13, 1994, P.L. 103-322, Title XXV, § 250006, Title XXXIII, § 330016(1)(H), 108 Stat. 2087, 2147; July 30, 2002, P.L. 107-204, Title IX, § 903(a), 116 Stat. 805; Jan. 7, 2008, P.L. 110-179, § 4, 121 Stat. 2557.)

18 USCS § 1341

18 U.S.C. § 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $ 1,000,000 or imprisoned not more than 30 years, or both.

History:

(Added July 16, 1952, ch 879, § 18(a), 66 Stat. 722; July 11, 1956, ch 561, 70 Stat. 523; Aug. 9, 1989, P.L. 101-73, Title IX, Subtitle F, § 961(j), 103 Stat. 500; Nov. 29, 1990, P.L. 101-647, Title XXV, Subtitle A, § 2504(i), 104 Stat. 4861; Sept. 13, 1994, P.L. 103-322, Title XXXIII, § 330016(1)(H), 108 Stat. 2147; July 30, 2002, P.L. 107-204, Title IX, § 903(b), 116 Stat. 805; Jan. 7, 2008, P.L. 110-179, § 3, 121 Stat. 2557.)

18 USCS § 1343

18 U.S.C. § 1961. Definitions

As used in this chapter [18 USCS §§ 1961 et seq.]--

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act [21 USCS § 802]), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 [18 USCS § 201] (relating to bribery), section 224 [18 USCS § 224] (relating to sports bribery), sections 471, 472, and 473 [18 USCS §§ 471, 472, and 473] (relating to counterfeiting), section 659 [18 USCS § 659] (relating to theft from interstate shipment) if the act indictable under section 659 [18 USCS § 659] is felonious, section 664 [18 USCS § 664] (relating to embezzlement from pension and welfare funds), sections 891-894 [18 USCS §§ 891 through 894] (relating to extortionate credit transactions), section 1028 [18 USCS § 1028] (relating to fraud and related activity in connection with identification documents), section 1029 [18 USCS § 1029] (relating to fraud and related activity in connection with access devices), section 1084 [18 USCS § 1084] (relating to the transmission of gambling information), section 1341 [18 USCS § 1341] (relating to mail fraud), section 1343 [18 USCS § 1343] (relating to wire fraud), section 1344 [18 USCS § 1344] (relating to financial institution fraud), section 1425 [18 USCS § 1425] (relating to the procurement of citizenship or nationalization unlawfully), section 1426 [18 USCS § 1426] (relating to the reproduction of naturalization or citizenship papers), section 1427 [18 USCS § 1427] (relating to the sale of naturalization or citizenship papers), sections 1461-1465 [18 USCS §§ 1461 through 1465] (relating to obscene matter), section 1503 [18 USCS § 1503] (relating to obstruction of justice [influencing or injuring officer or juror generally]), section 1510 [18 USCS § 1510] (relating to obstruction of criminal investigations), section 1511 [18 USCS § 1511] (relating to the obstruction of State or local law enforcement), section 1512 [18 USCS § 1512] (relating to tampering with a witness, victim, or an informant), section 1513 [18 USCS § 1513] (relating to retaliating against a witness, victim, or an informant), section 1542 [18 USCS § 1542] (relating to false statement in application and use of passport), section 1543 [18 USCS § 1543] (relating to forgery or false use of passport), section 1544 [18 USCS § 1544] (relating to misuse of passport), section 1546 [18 USCS § 1546] (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 [18 USCS §§ 1581-1592] (relating to

peonage, slavery, and trafficking in persons)[.], section 1951 [18 USCS § 1951] (relating to interference with commerce, robbery, or extortion), section 1952 [18 USCS § 1952] (relating to racketeering), section 1953 [18 USCS § 1953] (relating to interstate transportation of wagering paraphernalia), section 1954 [18 USCS § 1954] (relating to unlawful welfare fund payments), section 1955 [18 USCS § 1955] (relating to the prohibition of illegal gambling businesses), section 1956 [18 USCS § 1956] (relating to the laundering of monetary instruments), section 1957 [18 USCS § 1957] (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 [18 USCS § 1958] (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 [18 USCS § 1960] (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 [18 USCS §§ 2251, 2251A, 2252, and 2260] (relating to sexual exploitation of children), sections 2312 and 2313 [18 USCS §§ 2312 and 2313] (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 [18 USCS §§ 2314 and 2315] (relating to interstate transportation of stolen property), section 2318 [18 USCS § 2318] (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 [18 USCS § 2319] (relating to criminal infringement of a copyright), section 2319A [18 USCS § 2319A] (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 [18 USCS § 2320] (relating to trafficking in goods or services bearing counterfeit marks), section 2321 [18 USCS § 2321] (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 [18 USCS §§ 2431 through 2346] (relating to trafficking in contraband cigarettes), sections 2421-24 [18 USCS §§ 2421 through 24] (relating to white slave traffic), sections 175-178 [18 USCS §§ 175-178] (relating to biological weapons), sections 229-229F [18 USCS §§ 229-229F] (relating to chemical weapons), section 831 [18 USCS § 831] (relating to nuclear materials), (C) an act which is indictable under title 29, United States Code, section 186 [18 USCS § 186] (dealing with restrictions on payments and loans to labor organizations) or section 501(c) [18 USCS § 501(c)] (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title [18 USCS § 157]), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act [21 USCS § 802]), punishable under any law of the United States, (E) any act

which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 [8 USCS § 1324] (relating to bringing in and harboring certain aliens), section 277 [8 USCS § 1327] (relating to aiding or assisting certain aliens to enter the United States), or section 278 [8 USCS § 1328] (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B) [18 USCS § 2332b(g)(5)(B)];

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter [18 USCS §§ 1961 et seq.];

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter [18 USCS §§ 1961 et seq.] or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter [18 USCS §§ 1961 et seq.];

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter [18 USCS §§ 1961 et seq.]. Any department or agency so designated may use in investigations authorized by this chapter [18 USCS §§ 1961 et seq.] either the investigative provisions of this chapter [18 USCS §§ 1961 et seq.] or the investigative power of such department or agency otherwise conferred by law.

History:

(Added Oct. 15, 1970, P.L. 91-452, Title IX, § 901(a), 84 Stat. 941; Nov. 2, 1978, P.L. 95-575, § 3(c), 92 Stat. 2465; Nov. 6, 1978, P.L. 95-598, Title III, § 314(g), 92 Stat. 2677; Oct. 12, 1984, P.L. 98-473, Title II, Ch IX, § 901(g), Ch X, Part N, § 1020, 98 Stat. 2136, 2143; Oct. 25, 1984, P.L. 98-547, Title II, § 205(1), (2), 98 Stat. 2770; Oct. 27, 1986, P.L. 99-570, Title I, Subtitle H, § 1365(b), 100 Stat. 3207-35; Nov. 10, 1986, P.L. 99-646, § 50(a), 100 Stat. 3605; Nov. 18, 1988, P.L. 100-690, Title VII, Subtitle B, §§ 7013, 7020(c), 7032, 7054, Subtitle N, Ch 1, § 7514, 102 Stat. 4395, 4396, 4398, 4402, 4489; Aug. 9, 1989, P.L. 101-73, Title IX, Subtitle F, § 968, 103 Stat. 506; Nov. 29, 1990, P.L. 101-647, Title XXXV, § 3560, 104 Stat. 4927; Sept. 13, 1994, P.L. 103-322, Title IX, Subtitle A, § 90104, Title XVI, § 160001(f), Title XXXIII, § 330022(1), 108 Stat. 1987, 2037, 2051; Oct. 22, 1994, P.L. 103-394, Title III, § 312(b), 108 Stat. 4140; April 24, 1996, P.L. 104-132, Title IV, Subtitle D, § 433, 110 Stat. 1274; July 2, 1996, P.L. 104-153, § 3, 110 Stat. 1386; Sept. 30, 1996, P.L. 104-208, Div C, Title II, Subtitle A, § 202, 110 Stat. 3009-565; Oct. 11, 1996, P.L. 104-294, Title VI, §§ 601(b)(3), (i)(3), 604(b)(6), 110 Stat. 3499, 3501, 3506; Oct. 26, 2001, P.L. 107-56, Title VIII, § 813, 115 Stat. 382.)

(As amended Nov. 2, 2002, P.L. 107-273, Div B, Title IV, § 4005(f)(1), 116 Stat. 1813; Dec. 19, 2003, P.L. 108-193, § 5(b), 117 Stat. 2879; Dec. 17, 2004, P.L. 108-458, Title VI, Subtitle I, § 6802(e), 118 Stat. 3767; Jan. 10, 2006, P.L. 109-164, Title I, § 103(c), 119 Stat. 3563; March 9, 2006, P.L. 109-177, Title

IV, § 403(a), 120 Stat. 243.)

18 USCS § 1961

18 U.S.C. § 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code [18 USCS § 2], to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

History:

(Added Oct. 15, 1970, P.L. 91-452, Title IX,§ 901(a), 84 Stat. 942; Nov. 18,

1988, P.L. 100-690, Title VII, Subtitle B, § 7033, 102 Stat. 4398.)

18 USCS § 1962

18 U.S.C. § 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter [18 USCS § 1962] by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter [18 USCS § 1962] may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962 [18 USCS § 1962]. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter [18 USCS §§ 1961 et seq.] shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

History:

(Added Oct. 15, 1970, P.L. 91-452, Title IX, § 901(a), 84 Stat. 943; Nov. 8, 1984, P.L. 98-620, Title IV, Subtitle A, § 402(24)(A), 98 Stat. 3359; Dec. 22,

1995, P.L. 104-67, Title I, § 107, 109 Stat. 758.)

18 USCS § 1964

§ 4. Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

History:

(June 25, 1948, ch 645, § 1, 62 Stat. 684; Sept. 13, 1994, P.L. 103-322, Title XXXIII, § 330016(1)(G), 108 Stat. 2147.)

18 USCS § 4

28 U.S.C § 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title [28 USCS §§ 1292(c) and (d) and 1295].

History:

(June 25, 1948, ch 646, 62 Stat. 929; Oct. 31, 1951, ch 655, § 48, 65 Stat. 726; July 7, 1958, P.L. 85-508, § 12(e), 72 Stat. 348; April 2, 1982, P.L. 97-164, Title I, Part A, § 124, 96 Stat. 36.)

28 USCS § 1291

28 U.S.C. § 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

History:

(June 25, 1948, ch 646, 62 Stat. 930; July 25, 1958, P.L. 85-554, § 1, 72 Stat. 415; Oct. 21, 1976, P.L. 94-574, § 2, 90 Stat. 2721; Dec. 1, 1980, P.L. 96-486, § 2(a), 94 Stat. 2369.)

28 USCS § 1331

28 U.S.C. § 1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title [28 USCS § 1332], the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332 [28 USCS § 1332].

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

History:

(Added Dec. 1, 1990, P.L. 101-650, Title III, § 310(a), 104 Stat. 5113.)

28 USCS § 1367

42 U.S.C. § 2000e-5. Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices. The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title [42 USCS §§ 2000e-2 or 2000e-3].

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause. Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without

the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $ 1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings. In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) [(b)] by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission. In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is

requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency.

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title [42 USCS §§ 2000e et seq.] (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(3) (A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title [42 USCS §§ 2000e et seq.], when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(B) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to

discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master.

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the

action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of this Act [title], the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title [42 USCS §§ 2000e et seq.]. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the

case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders.

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2) (A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a) [42 USCS § 2000e-3(a)].

(B) On a claim in which an individual proves a violation under section 703(m) [42 USCS § 2000e-2(m)] and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court--

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 703(m) § 42 USCS § 2000e-2(m)]; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of 29 USCS §§ 101 et seq. not applicable to civil actions for prevention of unlawful practices. The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U. S. C. 101-115), shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders. In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals. Any civil action brought under this section and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

(k) Attorney's fee, liability of Commission and United States for costs. In any action or proceeding under this title [42 USCS §§ 2000e et seq.] the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

History:

(July 2, 1964, P.L. 88-352, Title VII, § 706, 78 Stat. 259; March 24, 1972, P.L. 92-261, § 4, 86 Stat. 104; Nov. 21, 1991, P.L. 102-166, Title I, §§ 107, 112, 113(b), 105 Stat. 1075, 1078, 1079.)

(As amended Jan. 29, 2009, P.L. 111-2, § 3, 123 Stat. 5.)

42 USCS § 2000e-5

Va. Code Ann. § 18.2-178. Obtaining money or signature, etc., by false pretense

A. If any person obtain, by any false pretense or token, from any person, with intent to defraud, money, a gift certificate or other property that may be the subject of larceny, he shall be deemed guilty of larceny thereof; or if he obtain, by any false pretense or token, with such intent, the signature of any person to a writing, the false making whereof would be forgery, he shall be guilty of a Class 4 felony.

B. Venue for the trial of any person charged with an offense under this section may be in the county or city in which (i) any act was performed in furtherance of the offense, or (ii) the person charged with the offense resided at the time of the offense.

HISTORY: Code 1950, § 18.1-118; 1960, c. 358; 1975, cc. 14, 15; 2001, c. 131; 2006, c. 321.

Va. Code Ann. § 18.2-178

Va. Code Ann. § 54.1-3904. Penalty for practicing without authority

Any person who practices law without being authorized or licensed shall be guilty of a Class 1 misdemeanor. A collection agency may refer debts to an attorney for collection with the creditor's approval of the referral and the fee arrangement and shall not be deemed to be engaged in the unauthorized practice of law. An attorney is permitted by the creditor's authorization to enter into such representation agreements.

HISTORY: Code 1950, § 54-44; 1988, c. 765; 1994, c. 441.

Va. Code Ann. § 54.1-3904