IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Birim Group, LLC, a California Limited Liability Company, Assignee,	)	
Plaintiff,	)	Case No. 20-cv-7198
v.	)	Honorable Thomas R. Durkin
Paa Kwesi Nduom, a.k.a Dr. Paa Kwesi Nduom, Papa Kwesi Nduom, Kwesi P. Nduom, an Individual, et al.,	)	
Defendants.	)	

CERTAIN DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO DISMISS

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INTRODUCTION

Birim Group, LLC's complaint misuses this Court to smear a Ghanaian entrepreneur and political leader, Dr. Papa Kwesi Nduom, founder of the Ghana Progressive People's Party. Birim Group itself is a murky LLC whose members the complaint does not identify. It does not claim to have had any dealings with Dr. Nduom or the other defendants. Rather, Birim Group claims to have paid for the claims of two Ghanaian citizens, Mavis Amanpene Sekyere and Nana Kwame Twum Barimah (the "Assignors"), who have what at most amounts to breach-of-contract claims under Ghanaian law against Ghanaian bank GN Bank and Ghanaian investment firm Gold Coast Fund Management ("GCFM") (collectively, the "Ghanaian Defendants"). Ms. Sekyere invested the equivalent of $52,219 with GCFM (300,000 Ghanaian Cedi); Mr. Barimah claims to have deposited $30,000 in GN Bank. Both Assignors assert the Ghanaian Defendants breached their Ghanaian contracts in Ghana and now seek return of their money via the United States court system. Ms. Sekyere is also simultaneously litigating her claim in Ghana.

Birim Group has filed this spurious complaint in the Northern District of Illinois, a complaint that is more aspersion and innuendo than pleaded fact. Many of the most outrageous (if not extraneous) allegations are based on nothing other than Birim Group's supposed "information and belief." Birim Group plainly did not buy these claims to recover Ghanaian deposits, but rather for a pretext to malign Dr. Nduom, his family, and anyone who does business with him. Thus, over 65 pages, more than 275 paragraphs, and 20 counts, the Assignors are nothing other than a side note: the facts concerning their claims are pleaded in seven paragraphs each.

This motion is brought by more than a dozen U.S. Defendants named in the complaint but who have never met, spoken to, or been involved in any transaction with either Assignor. This includes Dr. Nduom and his immediate family; GN-IL, a Chicago bank in which Dr. Nduom

invested, as well as GN-IL's outside directors and CEO; and three other companies owned in part by members of the Nduom family. The crux of the complaint is a supposed civil RICO conspiracy. However, RICO has no extraterritorial application and thus does not apply to the Assignors' claims of losses in Ghana. Neither does the complaint satisfy the particularized pleading requirements of RICO, including by failing to allege the existence of an enterprise, conduct by any U.S. Defendant in that enterprise or how any enterprise caused Assignors' damages. The complaint's common-law counts fare no better, as those counts allege no facts to support the existence of an Illinois common-law duty owed by any U.S. Defendant to either Assignor based on Ghanaian transactions in Ghana with the Ghanaian Defendants.

Throughout its allegations, the complaint lumps all defendants together and takes the unsupported position that all distinctions between individuals and all corporate forms should be disregarded so that each defendant should be deemed an alter ego not just of each other, but of every employee of every entity with which Dr. Nduom can be associated, in Ghana or the United States. The law permits no such thing.

Ultimately, the complaint fails to state a claim against any of the U.S. Defendants. It cannot do so because none of the U.S. Defendants had anything to do with the Assignors. As such, the complaint is properly dismissed with prejudice against the U.S. Defendants.

THE ALLEGED FACTS

"[A] complaint must be dismissed unless it contains a plausible claim." *Bank of Am., N.A. v. Knight*, 725 F.3d 815, 818 (7th Cir. 2013) (affirming dismissal of complaint). This requires pleading facts that demonstrate such plausibility. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547, 555 (2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Complaints

that allege fraud, including in the context of a civil RICO claim, must be pleaded with additional particularity. *Muskegan Hotels, LLC v. Patel*, 986 F.3d 692, 698 (7th Cir. 2021) ("Where, as here, the alleged predicate acts of racketeering involve fraud, the complaint must describe the 'who, what, when, where, and how' of the fraudulent activity to meet the heightened pleading standard demanded by Rule 9(b).").

Critically, a complaint must allege a plausible claim against each defendant. In other words, "[a] complaint based on a theory of collective responsibility must be dismissed." *Bank of Am., N.A.*, 725 F.3d at 818; *Paulsen v. Abbott Labs*., 368 F. Supp. 3d 1152, 1171 (N.D. Ill. 2019) (granting motion to dismiss and noting requirement "that a plaintiff structure her complaint such that each individual defendant knows what it did that allegedly harmed the plaintiff.").

In this context, the allegations of the complaint are as follows.

A. The Complaint Alleges No Relationship, Business Dealings or Communication between the Assignors and the U.S. Defendants

Birim Group does not allege any involvement itself with any of the defendants. Concerning the Assignors, the complaint alleges no relationship, business dealings or communications between them and any of the U.S. Defendants.

Ms. Sekyere allegedly opened an investment account with GCFM in Ghana in November 2017. Compl. ¶ 92. That investment followed discussion with a GCFM branch manager in Ghana, who allegedly told her that her investment "would be prudently and conservatively managed," that earnings would be paid to her quarterly, and that "by the end of the investment term, she would receive an amount of $80,000 (Eighty Thousand U.S. Dollars), exclusive of interest." *Id.* ¶ 93. Neither the complaint nor the agreement itself, attached as Exhibit B to the complaint, provide the time period covered by the "investment term."

GCFM then allegedly changed the terms of the investment agreement, removing quarterly payments and increasing the time for when payment would be paid to three years starting from 2019, or in 2022. *Id.* ¶ 95. When Ms. Sekyere demanded return of her investment following these

changes, GCFM refused. *Id.* ¶ 96. The complaint does not allege the basis for this refusal but does allege the Ghanaian SEC revoked GCFM's broker license in November 2019 due to violations of Ghana's Securities Industry Act and other Ghanaian SEC regulations. *Id.* ¶ 90. Birim Group says that on December 27, 2019, it purchased Ms. Sekyere's rights under the terms of "the investment agreement" between her and GCFM. *Id.* ¶ 97.

Notably, shortly before she supposedly assigned this claim to Birim Group, in August 2019, Ms. Sekyere herself filed a lawsuit against GCFM in The High Court of Justice, Commercial Court, in Ghana, making the same basic allegations Birim Group makes here. The Court may properly take notice of Ms. Sekyere's pleading in that case. *Smith v. CNA Fin. Corp.*, No. 10 C 4505, 2011 U.S. Dist. LEXIS 44268, at *10 (N.D. Ill. Apr. 25, 2011) (taking notice of proceedings in another court on motion to dismiss). Accordingly, a true and correct copy of the writ of summons filed in Ms. Sekyere's Ghanaian case is attached here as Exhibit 1. In her complaint, she seeks payment of the amount she invested with GCFM, the same relief sought here, and based on the same factual allegations that Birim Group makes. *Id.* Ms. Sekyere also alleges in her Ghanaian case that she has lodged a formal complaint with the Ghanaian Securities and Exchange Commission, consistent with Act 929 (Securities Industry Act). *Id.* ¶¶ 10-11. Thus, this is the third complaint filed by or on behalf of Ms. Sekyere arising from the same nucleus of fact.

The other Assignor, Mr. Barimah, allegedly opened a deposit account with GN Bank, a Ghanaian bank, in December 2016, again after a discussion with a branch manager in Ghana. *Id.* ¶ 98. The account allegedly held $30,000. *Id.* ¶ 99. Birim Group alleges that Mr. Barimah had a written agreement with GN Bank, but none is attached to the complaint and no terms of that agreement are alleged. *See id.* ¶ 102. It is further alleged that Mr. Barimah was told by some unidentified person in Ghana that he would always have access to his funds. *Id.* ¶ 231. However, when Mr. Barimah requested return of the funds, GN Bank allegedly refused in breach of its contract with him. *Id.* ¶ 101.

GN Bank's banking license was allegedly revoked by the Bank of Ghana in August 2019,

not based on any fraud or similar misconduct but because the bank's "capital adequacy" ratio had fallen below minimum requirements and also because GN Bank failed to meet Ghanaian minimum cash reserve requirements. *Id.* ¶¶ 82-83. Also, it is alleged GN Bank made overdraft transfers to GCFM and another entity that resulted in the loss of $158,000,000, though no nexus is alleged between those transfers and the Ghanaian bank's alleged failure to refund Mr. Barimah his $30,000. *Id.* ¶ 84. Birim Group says Mr. Barimah sold his rights "under the terms of the deposit agreement" to Birim Group on December 21, 2019. *Id.* ¶ 102.

B. The Complaint Does Not Allege any Actions Taken by the U.S. Defendants

The complaint alleges little about the U.S. Defendants and alleges no action taken by any one of them directed to either Assignor. The U.S. Defendants fall within several groups.

1. The Nduom Family

First, the complaint names Dr. Nduom, his wife and his children. Dr. Nduom lives in the United States, but is a known political figure in Ghana, having run for president of Ghana in both 2008 and 2012 and having founded the Progressive People's Party in Ghana. J. Shola Omotola et al., 12 J. Afr. Elections 1, 46, 48 (Oct. 2013), https://www.eisa.org/pdf/JAE12.2.pdf. He is alleged, "on information and belief," to be chairman of various companies, though the complaint is vague about for which specific companies this is true. Compl. ¶ 6. The complaint alleges generally that Dr. Nduom "plays a significant decision-making role in over 60 'independent companies,'" but pleads no specific facts about Dr. Nduom's role at any particular company. *Id.* ¶ 5. Without elaboration or explanation of its significance, the complaint also alleges that Dr. Nduom is the "paterfamilias" of the Nduom Family. *Id.* at 1, n.1. Critically, no act or decision by Dr. Nduom is alleged to have caused any harm to either Assignor. Neither is there any allegation that Dr. Nduom met, spoke to or otherwise communicated with or about either Assignor.

The complaint includes even fewer allegations about other members of the Nduom family being sued. Yvonne Nduom is Dr. Nduom's wife and Nana Kweku Nduom ("Kweku"), Edjah Nduom and Nana Aba Nduom ("Aba") are children of Dr. Nduom and Yvonne. *Id.* ¶¶ 25, 28, 32,

35. Kweku is alleged to be the Chief Executive Officer of defendant IBS, which, as explained below, is a Virginia company with which neither Assignor is alleged to have had any dealings. *Id.* ¶ 30. Concerning Yvonne, Edjah and Aba, they are only vaguely alleged to be "either a member of the board and or an executive of one or more of the entities within the Groupe Nduom Family Holding businesses." *Id.* ¶¶ 26, 28, 33, 36. No facts are alleged that describe any action taken by any of these family members at any company. Neither is there any allegation of how any of the "Groupe Nduom Family Holding businesses" are related whatsoever to the Assignors' claims.

2. GN-IL and its Directors and Chief Executive Officer

By number, the greatest number of U.S. Defendants consist of a Chicago bank, GN-IL, each of its outside directors and its former Chief Executive Officer.[1] *Id.* ¶ 7. The complaint alleges both that GN-IL is owned "by Nduom and his family" and that GN-IL was acquired by "Groupe Nduom" in April 2016. *Id.* ¶ 8. While the complaint insinuates that the alleged April 2016 transfer of funds to purchase GN-IL was improper, *id.* ¶ 81, the complaint establishes that the transfer predated either Assignor's deposits with the Ghanaian Defendants. *See id.* ¶¶ 98-99 (Barimah deposit was in December 2016); *id.* ¶ 92 (Sekyere investment was in November 2017).

The complaint names the outside directors of GN-IL, none of whom are alleged to have had anything to do with the Assignors or the Ghanaian Defendants. Rather, the sole factual allegation regarding each of James L. Buckner, Lisa Finch, Francis Baffuor, William C. Goodall, and Donald Davidson is that they hold the title of directors of GN-IL. *Id.* ¶¶ 40-49. No conduct by any of these individuals is alleged. Robert Klamp is alleged to have had the title of Chief Executive Officer of GN-IL and to have "turned a blind eye" to know-your-customer protocols, *id.* ¶¶ 38-39, but the complaint does not allege how these U.S. protocols vis-à-vis GN-IL's U.S. depositors have any relevance to a claim by either Assignor related to deposits with different entities in Ghana.

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[1] As an example of the lack of any factual basis for the complaint, Birim Group includes as a defendant a company called GN USA LLC. Compl. ¶ 13. However, no U.S. Defendant has any ownership interest or involvement with that entity. Birim Group apparently included any company it could find that had "GN" in its name, hoping the company might have some nexus to Dr. Nduom.

3. IBS and the Other Corporate Entities

Three other U.S. entities are named as defendants. IBS is alleged to be a Virginia entity that Birim Group alleges is "wholly owned, dominated and controlled by [Dr.] Nduom and his family." *Id.* ¶¶ 9-11. According to the complaint, IBS received unspecified payments on unspecified dates for allegedly above-market management fees paid by the Ghanaian Defendants. *Id.* ¶ 78. No facts are alleged about what services IBS did, or did not, provide. Nor are any facts alleged to suggest there is a nexus between IBS and the Assignors.

The other two corporate U.S. Defendants are Groupe Nduom USA, LLC (a U.S. entity distinct from Ghanaian defendant "Groupe Nduom") and GN Money, LLC. Concerning them, the complaint alleges only that these companies are owned and controlled by the Nduom family and, according to Birim Group, they are "used as a conduit to facilitate the unlawful acts described herein." *Id.* ¶¶ 12-14. Birim Group does not support this inflammatory allegation with any pleaded facts. Indeed, no actual conduct is alleged by either Groupe Nduom, LLC or GN Money, LLC, let alone conduct that is "unlawful" or has any nexus to the Assignors.

4. The Complaint's Meritless Premise that Corporate Forms Should Be Disregarded and Each Defendant Deemed an Alter Ego

In lieu of factual allegations as to each defendant, the complaint alleges that all corporate forms should be disregarded and each defendant should be deemed an alter ego, not just of each other defendant, but also of each employee of each corporate defendant, including the Ghanaian Defendants. No facts are alleged to support this extraordinary conclusion. Instead, the complaint repeats the elements of alter ego and agency law without elaboration or specificity. *See, e.g.*, *id.* ¶¶ 55-56 (alleging on information and belief "[t]he Corporate Defendants are owned and operated by the same owners and shareholders, Nduom and the Nduom family, and operate as a single business enterprise combining their assets and operations"); *id.* ¶ 57 (alleging generally that "[t]he

Corporate Defendants have interlocking directors, officers and employees. They operate using the same shared pool of money, property, policies of insurance, assets, facilities, suppliers and employees as well as sharing the same customers and business opportunities"); *id.* ¶ 59 (alleging on information and belief that "these entities commingle their funds and other assets and fail to segregate the funds of the separate entities"); *id.* ¶ 64 ("Plaintiff is informed and believes that there was also a failure to adequately capitalize not only the Corporate Defendants herein, but the 60 or more related entities"). Beyond these "information and belief" conclusions repeating the elements of an actual alter ego claim, the complaint pleads no facts about how any of the defendants interacted, the extent of their capitalization or even the identity of the "60 or more" entities the complaint contends should have their corporate forms disregarded.

C. The Complaint's Legal Claims

Based on these vague and conclusory allegations, the complaint alleges 18 different counts against the U.S. Defendants[2]: violations of RICO (Counts I-II); fraud (Counts IV, XIII); intentional misrepresentation (Counts V, XIV); negligent misrepresentation (Counts VI, XV); fraud by concealment (Counts VII, XVI); negligence (Counts VIII, XVII); conversion (Counts IX, XVIII); intentional interference with contract (Counts X, XIX against IBS and the Nduom Family only); and intentional interference with economic advantage (Counts XI, XX against IBS and the Nduom Family only). The complaint seeks damages including treble damages under the RICO counts, as well as attorneys' fees and costs. Each of these legal theories is discussed below.

ARGUMENT

The complaint ultimately fails against the U.S. Defendants because no U.S. Defendant is alleged to have done anything to cause either Assignor harm – and the focus must be on the

[2] The complaint also alleges breach of contract claims against the Ghanaian Defendants (Counts III, XII).

Assignors. Birim Group had no business with the defendants but says it paid for the Assignors' claims so it could file this case. When that happens, "[a]ssignees stand in the shoes of the assignor and can only recover what the assignor could have legally recovered — no more, no less." *Fid. & Deposit Co. of Md. v. Slurry Sys.*, No. 09 C 7459, 2016 U.S. Dist. LEXIS 95077, at *19 (N.D. Ill. July 21, 2016). Here, the Assignors have no claim against any of the U.S. Defendants based on their deposits or investments with the Ghanaian Defendants. This is true under RICO and for each common-law theory on which the complaint relies.

A. RICO Does Not Apply and No RICO Claim is Pleaded

There is no way to convert the Ghanaian Assignors' claims for return of their deposit and investment in the Ghanaian Defendants into a civil RICO claim in the United States. RICO is splashy and comes with prayers for attorneys' fees and treble damages, but RICO "does not cover all instances of wrong-doing" – even where wrongdoing in the United States is alleged. *See Gamboa v. Velez*, 457 F.3d 703, 705 (7th Cir. 2006) (reversing order that denied motion to dismiss). Rather, it is a "unique cause of action that is concerned with eradicating organized, long-term, habitual criminal activity." *Id.* Consequently, RICO complaints require "a fuller set of factual allegations," not less. *Tamayo v. Blagojevich*, 526 F.3d 1074, 1083 (7th Cir. 2008). This is "to avoid the 'in terrorem' effect of allowing a plaintiff with a 'largely groundless claim' to force defendants into either costly discovery or an increased settlement value." *Id.* These broad principles apply with particular force here, where no pleaded facts demonstrate that the Assignors' losses in Ghana are tied to any conduct in the United States by any of the U.S. Defendants.

1. RICO Does Not Apply Extraterritorially

As a threshold matter and dispositive of the RICO claim in the complaint, neither Assignor alleges any injury in the United States. On this point, the U.S. Supreme Court has been clear: "***a private RICO plaintiff must allege and prove a domestic injury***." *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2095 (2016) (emphasis added). In so holding, the Supreme Court

highlighted the "danger" that "[a]llowing recovery for foreign injuries in a civil RICO action, including treble damages," could result in injured citizens of foreign countries choosing to "bypass" their home jurisdictions' "less generous remedial schemes" in order to bring suit in U.S. federal court. *Id.* at 2106-07. In this case, Ms. Sekyere did not bypass her home jurisdiction but, via Birim Group, instead seeks a double recovery, one in Ghana and one in the United States against GCFM. In any case, the complaint expressly alleges that the Assignors' injuries occurred in Ghana. This requires dismissal of the RICO claim as a matter of law.

A relevant example of the application of the *RJR Nabisco* rule is *City of Almaty v. Ablyazov*, 226 F. Supp. 3d 272, 282 (S.D.N.Y. 2016). The court there dismissed RICO claims based on allegations that funds embezzled in Kazakhstan were invested in the United States because the injury occurred in Kazakhstan, not here. *Id.* The court stated that the relevant inquiry is not the location of the purportedly injurious conduct but the location where the injury itself arose: thus, "the court should focus 'upon where the economic impact of the injury was ultimately felt' and ask 'two common-sense questions: (1) who became poorer, and (2) where did they become poorer.'" *Id.* In this case, the answer is: Ghana. *See also, e.g.*, *Bascuñán v. Elsaca*, 874 F.3d 806, 810 (2d Cir. 2017) ("with respect to Bascuñán's alleged injuries involving property located outside of the United States, the fact that Elsaca or his co-defendants transferred those stolen funds to (or through) the United States fails to transform an otherwise foreign injury into a domestic one"). RICO simply does not, as a matter of law, apply to the Assignors' claims based on their alleged injuries in Ghana. This is dispositive of the RICO claim here.

2. The Complaint Fails to Plead a RICO Case

The complaint fails to plead a RICO case for other reasons as well. A RICO case based on supposed mail and wire fraud, as here, must be pleaded with particularity, consistent with Fed. R. Civ. P. 9(b). *Slaney v. Int'l Amateur Athletic Fed'n*, 244 F.3d 580, 597 (7th Cir. 2001). This means

that "a RICO plaintiff must, at a minimum, describe the two predicate acts of fraud with some specificity and state the time, place, and content of the alleged false representations, the method by which the misrepresentations were communicated, and the identities of the parties to those misrepresentations." *Id.* (affirming dismissal of RICO complaint). The complaint must also plead the existence of an "enterprise" and a "pattern of racketeering activity" that is connected to "the acquisition, establishment, conduct or control of an enterprise." *Aspacher v. Kretz*, 94 C 6741, 1997 U.S. Dist. LEXIS 8000, at *26-27 (N.D. Ill. June 3, 1997). The enterprise must have both structure and purpose. *Richmond v. Nationwide Cassel L.P.*, 52 F.3d 640, 645 (7th Cir. 1995); *see also Crichton v. Golden Rule Ins. Co.*, 576 F.3d 392, 400 (7th Cir. 2009) (affirming dismissal in absence of allegations of structure and goals for enterprise separate from completing the predicate acts). Facts must be pleaded that demonstrate these elements and that each defendant was not only aware of the enterprise and its illicit purpose, but also that each defendant participated in the enterprise's affairs. *Id.* The complaint here fails to do any of these things.

a. The Complaint Fails to Plead an Enterprise

The complaint pleads no facts to support the existence of a RICO enterprise. Instead, the complaint lists various groups of defendants and relies on the naked conclusion that each is, in fact, an enterprise. Primarily, the complaint relies on a list of "[t]he Corporate Defendants, GN-IL, Gold Coast, GN-GH, IBS, Groupe Nduom, Groupe Nduom USA, LLC, GN USA, LLC and GN Money, LLC together with the Nduom family defendants and the individually named directors and officers of GN-IL," concluding without elaboration that these parties "formed an association-in-fact for the common and continuing purpose described herein and constitute an enterprise." Compl. ¶ 109. No facts are alleged to suggest a structure for this supposed enterprise or that describe the role and relationship of each (or any) of its alleged participants. *See id.* The complaint

also identifies three "alternative" enterprises, pleading them even more starkly than the first "enterprise," simply naming smaller pairings of defendants with the conclusion that each "constitute[s] a separate enterprise." *Id.* ¶¶ 110-12. This is insufficient as a matter of law. *Richmond v. Nationwide Cassel L.P.*, 52 F.3d 640, 644 (7th Cir. 1995) ("Richmond cannot meet the demands of RICO just by naming a string of entities that assertedly make up an 'association in fact.'").

Where individual defendants worked for corporate defendants, or where certain corporate defendants did business with each other (as IBS and the Ghanaian Defendants are alleged to have done), no RICO enterprise is described. Employment and commercial transactions are natural elements of business activity. *See*, *e.g.*, *Fitzgerald v. Chrysler Corp.*, 116 F.3d 225, 228 (7th Cir. 1997) ("manufacturer plus its dealers and other agents (or any subset of the members of the corporate family) do not constitute an enterprise within the meaning of the statute"); *Llacua v. W. Range Ass'n*, Civil Action No. 15-1889-REB-CBS, 2016 U.S. Dist. LEXIS 193120, at *56-57 (D. Colo. June 3, 2016) (rejecting premise that officers and directors of the corporate defendants constitute a sustainable enterprise).

Complaints are routinely dismissed where, as here, they just list defendants and assert they constitute an "association-in-fact" enterprise. *E.g.*, *Okaya, Inc. v. Denne Indus.*, No. 00 C 1203, 2000 U.S. Dist. LEXIS 20352, at *8-10 (N.D. Ill. Nov. 17, 2000) (dismissing RICO claim where the defendants were also the "association in fact"); *Rowe v. Bankers Life & Cas. Co.*, No. 09-CV-00491, 2010 U.S. Dist. LEXIS 94928, at *17 (N.D. Ill. Sep. 13, 2010) ("as the statute requires that the RICO 'person' be separate and distinct from the RICO 'enterprise,' Defendants alone cannot comprise the enterprise"). This complaint does not come close to alleging an enterprise, let alone one in which the U.S. Defendants each had a role and in which each agreed to participate.

b. The Complaint Fails to Allege Conduct by Any U.S. Defendant in the Affairs of an Enterprise

Not only does the complaint fail to plead a cognizable RICO enterprise, it further fails to allege conduct by any defendant in the affairs of any enterprise. This deficiency is material, as "[t]he essence of a RICO violation is a defendant's conduct in relation to an enterprise." *Reynolds v. E. Dyer Dev. Co.*, 882 F.2d 1249, 1251 (7th Cir. 1989). To satisfy the "conduct" element of Section 1962(c), a plaintiff must allege that the defendant "participated in the operation or management of the enterprise itself," and that the defendant played "some part in directing the enterprise's affairs." *Goren v. New Vision Int'l*, 156 F.3d 721, 727 (7th Cir. 1998). Mere participation in the activities of the enterprise is insufficient: the defendant must participate in the operation or management of the enterprise. *Saleh v. Merchant*, No. 14-CV-09186, 2019 U.S. Dist. LEXIS 49698, at *39 (N.D. Ill. Mar. 25, 2019). Thus, when a plaintiff fails to articulate that a defendant asserted control over the alleged enterprise, dismissal of his RICO claim is appropriate. *See Slaney v. Int'l Amateur Athletic Fed'n*, 244 F.3d 580, 598 (7th Cir. 2001).

This complaint includes almost no allegations as to the U.S. Defendants, much less allegations of fact detailing participation in, direction or control of an enterprise. For example, no conduct is alleged by GN-IL and its directors and former CEO. Their mere existence and titles are alleged. Neither are any of the entity U.S. Defendants (GN-IL, IBS, Group Nduom, LLC or GN Money) alleged to have done or directed anything; they are simply alleged to exist and generally to be owned and controlled by members of Dr. Nduom's family. Compl. ¶¶ 7-12, 14. The only "conduct" alleged of Dr. Nduom himself challenges public statements he made in October 2018, long after the Assignors deposited their money with the Ghanaian entities and, supposedly, suffered a loss. *Compare id.* ¶ 133 *with id.* ¶ 92 (Sekyere investment in November 2017) and *id.* ¶¶ 98-99 (Barimah deposit in December 2016). No conduct is alleged whatsoever by Yvonne,

Edjah or Aba – only that they were either on the Board or executives of "one or more of the entities" with the Groupe Nduom Family Holding businesses. *Id.* ¶¶ 25-27, 32-37. Regarding Kweku, the complaint alleges only a job title and job responsibilities for IBS. *Id.* ¶¶ 28-31. These allegations are insufficient as a matter of law, particularly as none of the U.S. Defendants are alleged to have engaged in any conduct directed specifically at the Assignors. *See Moore v. Fid. Fin. Servs.*, 897 F. Supp. 378, 380 (N.D. Ill. 1995) (dismissing RICO claim where complaint failed to allege that constituent parts of the alleged enterprise "played a direct role in the 'force placed insurance' that allegedly was foisted on plaintiff"); *Guaranteed Rate, Inc. v. Barr*, 912 F. Supp. 2d 671, 688-89 (N.D. Ill. 2012) (RICO claim dismissed where defendant was alleged to have "met with other defendants and directed or cooperated with [another defendant]" as it "fail[ed] to meet Rule 9(b)'s particularity requirement" and does not allege that defendant "directed, controlled, or conducted any aspect of the alleged enterprise").

The complaint further fails to allege a RICO violation by any U.S. Defendant because rather than making particularized allegations regarding each defendant, it relies on group pleading that lumps the "Defendants" together without differentiation or specificity and then parrots elements of the statute or underlying predicates. Typical are paragraphs 140-151, which purport to allege acts of mail and wire fraud, but which do not identify any participating defendant or a date, time or content of any use of the mail or wires. Compl. ¶¶ 140-51. Such pleading fails as a matter of law. *Goren v. New Vision Int'l*, 156 F.3d 721, 730 (7th Cir. 1998) ("the amended complaint simply treats all the defendants as one; such 'lumping together' of defendants is clearly insufficient [under Rule 9(b)] to state a RICO claim"); *Martin v. Durus Capital Mgmt., LLC*, No. 04 C 555, 2005 U.S. Dist. LEXIS 23324, at *16 (N.D. Ill. Mar. 31, 2005) (granting motion to dismiss based on generalized group pleading); *Bulanda v. A.W. Chesterton Co.*, No. 11 C 1682, 2011 U.S. Dist.

LEXIS 61566, at *5 (N.D. Ill. June 7, 2011) (granting motion to dismiss where the complaint "makes a number of generic allegations as to the Defendants collectively" and where those "allegations that do exist are either legal conclusions or recitations of the elements of the relevant cause of action").

The absence of defendant-specific allegations of conduct as to the U.S. Defendants means that the complaint further fails to allege the pattern of conduct required to sustain a RICO case. Indeed, given the lack of any alleged conduct by the U.S. Defendants, plaintiff fails to adequately allege a pattern of racketeering activity. *Green v. Morningstar, Inc.*, No. 17 C 5652, 2018 U.S. Dist. LEXIS 43245, at *28 (N.D. Ill. Mar. 16, 2018) (pleading a pattern of racketeering activity at its barest requires that "each Defendant committed the requisite two predicate acts").

c. No U.S. Defendant Conspired to Violate RICO

Another deficiency of the complaint concerns the conspiracy allegation (Count II). The complaint invokes a RICO conspiracy, but does not plead facts to support such a claim. In this regard, "the touchstone of liability [for a RICO conspiracy] under § 1962(d) is an agreement to participate in an endeavor which, if completed, would constitute a violation of the substantive statute." *Goren*, 156 F.3d at 732. To plead a viable section 1962(d) claim, a plaintiff must allege (1) that each defendant agreed to maintain an interest in or control of an enterprise or to participate in the affairs of an enterprise through a pattern of racketeering activity and (2) that each defendant further agreed that someone would commit at least two predicate acts to accomplish those goals. *Id.*; *Schiffels v. Kemper Fin. Servs.*, 978 F.2d 344, 352 (7th Cir. 1992) ("To allege a conspiracy to violate § 1962(c), Schiffels had to plead that ***each defendant*** agreed to conduct the affairs of an enterprise, ***that each*** agreed to the commission of at least two predicate acts, and that

each defendant knew that those predicate acts were part of a pattern of racketeering activity." (emphasis added)).

This complaint, which makes no such allegations of fact specific to any U.S. Defendant, does not satisfy these requirements. *See Goren*, 156 F.3d at 732 (allegation that individual defendants were owners and had responsibility for policies of company insufficient to state a claim for conspiracy as it did not provide any information about the roles each defendant agreed to play in the alleged enterprise); *see also Chaney v. Dreyfus Serv. Corp.*, 595 F.3d 219, 241 (5th Cir. 2010) (insufficient to rely upon entity's collective knowledge where named individual does not have required knowledge; dismissing allegation of participation in money laundering absent actual knowledge and conduct by named individual within entity).

Typical are the allegations in paragraph 167 that, without differentiation or specificity, "[e]ach defendant committed at least one overt act in furtherance of such conspiracy." Compl. ¶ 167. The complaint fails to plead any supporting facts. Moreover, some of what is alleged is patently untrue even by the complaint's own allegations. For example, as already noted, while it is alleged that unnamed defendants participated in the acquisition of GN-IL "using plaintiff's assignors' money," the complaint itself establishes that the subject acquisition took place in April 2016, before either Assignor deposited funds with the Ghanaian Defendants. *See id.* ¶¶ 8, 92, 98-99.

d. No RICO Violation Caused the Assignors' Damages

Another fundamental defect in the complaint's RICO claim is that it does not, and could not, plead that any RICO predicate act by any U.S. Defendant, or any overt act in furtherance of a RICO conspiracy, was both a "but for" cause and a proximate cause of the Assignors' alleged injuries. *See Holmes v. Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 268 (1992) (plaintiff must show that

defendant's RICO violation "not only was a 'but for' cause of his injury, but was the proximate cause as well").

The Assignors' alleged harm occurred when they deposited funds or invested in the Ghanaian Defendants. The complaint alleges that the Ghanaian Defendants violated contracts and various laws and regulations in Ghana when they did so. However, the complaint does not allege any facts to support the conclusion that this loss would not have occurred but for any conduct of any U.S. Defendant. The complaint further fails to allege "some direct relation between the injury asserted and the injurious conduct alleged." *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010). The focus of this inquiry "is on the directness of the relationship between the [defendant's alleged] conduct and the harm." *Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723, 729 (7th Cir. 2014). Here, no conduct is alleged by any U.S. Defendant, let alone conduct that caused damages to either Assignor.

While the RICO analysis in this case could stop with the Supreme Court's holding that RICO requires a domestic injury, that deficiency is just the start of the myriad of ways in which, as a matter of law, the complaint fails to state a civil RICO case against any one of the U.S. Defendants.

B. The Complaint's Common Law Claims Fail

The complaint also includes 16 counts of common-law claims against the U.S. Defendants, all purportedly based upon the alleged loss by Ms. Sekyere of her $52,219 Ghanaian investment in GCFM and the alleged loss by Mr. Barimah of his $30,000 deposit with GN Bank. Like the RICO claim, these counts rely on lumping all the defendants together as one, without any allegation of conduct by any U.S. Defendant directed at either Assignor. No facts are alleged that could give rise to the existence of a duty to either Assignor by any U.S. Defendant, let alone facts

that show any U.S. Defendant breached such a duty or caused damages in Ghana to either Assignor. These claims, too, are thus properly dismissed.

1. No U.S. Defendants Made Any Fraudulent Statement to an Assignor

The complaint includes multiple common-law counts grounded in fraud or misrepresentation, specifically based on promissory fraud (Counts IV and XIII); intentional and negligent misrepresentation (Counts V, VI, XIV, XV) and fraud by concealment (Counts VII and XVI). Each of these fails as a matter of law.

To state a claim for fraud, a plaintiff must allege: (a) the defendant made a false statement or omission of material fact; (b) the defendant knew of its falsity; (c) the defendant intended to induce the plaintiff (in this case, each Assignor) to act; (d) the plaintiff/Assignor did act in reliance on defendant's statement; and (e) the plaintiff/Assignor suffered damages as a result of that reliance. *Cannon v. Forest Pres. Dist. of Cook Cty.*, No. 14 C 5611, 2015 U.S. Dist. LEXIS 24659, at *8-9 (N.D. Ill. Feb. 26, 2015). A complaint must allege each of these elements with "specific allegations with respect to each defendant." *Id.* at *14.

In this case, no communications whatsoever are alleged between any U.S. Defendant and either Assignor, much less a communication leading to the Assignor's deposit of money with the Ghanaian Defendants. The only specific representations alleged to be made to either Assignor were made by branch managers of GCFM and GN Bank in Ghana. Thus, the complaint alleges that a GCFM branch manager told Ms. Sekyere that her investment would be invested conservatively and that she did not have to check certain boxes on her account application. Compl. ¶¶ 178-80. Likewise, Mr. Barimah met with a branch manager of GN Bank and was informed that his "deposits would be safe; that he would always have ready access to his funds" and that he could withdraw his funds whenever he demanded. *Id.* ¶¶ 231-32. Putting aside whether any of these

statements were made with fraudulent intent (which is not alleged), no statement by employees of the Ghanaian Defendants are properly imputed to the U.S. Defendants.

Yet that is precisely what the complaint attempts. Thus, without differentiating among the defendants, let alone the U.S. Defendants, the complaint makes blanket allegations that parrot elements of the Assignors' claims. *E.g.*, *id.* ¶ 182 (alleging, "Defendants, by and through their representative branch manager, intended that plaintiff's assignor rely on these representations in making her decision to open the investment account"); *id.* ¶¶ 234-35 ("Plaintiff's assignor reasonably relied on defendants' representations…"). No supporting facts are alleged and, as further discussed below, there is no basis to, for example, assert that a branch manager of a Ghanaian bank in Ghana was speaking on behalf of an outside director of a U.S. bank in Chicago. The premise is not just implausible, it is absurd.

2. No U.S. Defendant Owed a Duty of Care to the Assignors

Additionally, fraud by concealment (Counts VII and XVI) and negligence (Counts VIII and XVII) require allegations of fact that would support the existence of a duty to an Assignor. *Cohen v. Am. Sec. Ins. Co*., 735 F.3d 601, 613-14 (7th Cir. 2013) (fraud by concealment requires defendant to have had a duty to disclose fact to plaintiff); *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 430, 856 N.E.2d 1048, 1053 (2006) ("To state a cause of action for negligence, a complaint must allege facts that establish the existence of a duty of care owed by the defendant to the plaintiff, a breach of that duty, and an injury proximately caused by that breach.").

The complaint includes no such allegations as to any U.S. Defendant. Instead, again, it relies on generic conclusions rather than defendant-specific facts. *E.g.*, Compl. ¶ 202 ("Defendants owed assignor a duty of care to prudently, wisely and properly place assignor's life savings in secure low risk and conservative investments as promised."); *id.* ¶ 254 ("Defendants and each of

them owed plaintiff's assignor a duty of care to prudently, wisely and properly maintain his salary deposits"). These conclusory allegations are inadequate. *Intamin, Inc. v. Figley-Wright Contractors, Inc.*, 608 F. Supp. 408, 413 (N.D. Ill. 1985) (negligence claim dismissed where party "has not demonstrated some rational basis for its conclusionary duty-of-care allegations").

This is not a defect that can be fixed. The Assignors were not customers of GN-IL and so neither the bank, its outside directors nor its former CEO owed them any duty. *In re Peregrine Fin. Grp. Customer Litig.*, No. 12 C 5546, 2014 U.S. Dist. LEXIS 135076, at *33 (N.D. Ill. Sep. 25, 2014) ("banks do not owe a duty of care to non-customers"). Indeed, the absence of any relationship whatsoever between any U.S. Defendant and either Assignor is fatal to these claims. *Woodard v. Am. Family Mut. Ins. Co.*, 950 F. Supp. 1382, 1393 (N.D. Ill. 1997) ("[T]here is no basis for finding a duty of care owed to Wright. He has no relationship with any of the defendants, contractual or otherwise."); *Dix v. Edelman Fin. Servs., LLC*, No. 17 CV 6561, 2018 U.S. Dist. LEXIS 33350, at *12 (N.D. Ill. Feb. 28, 2018) ("[T]he FAC offers no facts under which Edelman owed a duty of care to Plaintiff" where "Plaintiff never even communicated directly with [defendant]."). Nor does plaintiff make any allegation that Dr. Nduom, even as the "Chairman" of the Ghanaian Defendants, owed a duty of care to customers of those entities under Ghanaian law (which would govern those relationships).

Because no duty of care exists between the U.S. Defendants and the Assignors, neither can maintain their fraud by concealment and negligence claims against the U.S. Defendants. *Rosenberg v. Cottrell, Inc.*, No. 05-0545-MJR, 2007 U.S. Dist. LEXIS 106694, at *8 (S.D. Ill. May 3, 2007) ("Because there was no duty owed, there is no negligence.").

3. No U.S. Defendant Assumed Control of the Assignors' Property

e complaint's conversion counts (Counts IX and XVIII) fail as to the U.S. Defendants because the complaint does not allege that any one of the U.S. Defendants has assumed control,

dominion or ownership of either Assignor's property. *Cirrincione v. Johnson*, 184 Ill. 2d 109, 114, 703 N.E.2d 67, 70 (1998) (listing elements). To the contrary, the allegation is that the Assignors deposited their money with the Ghanaian Defendants and it was, accordingly, the Ghanaian Defendants to which the Assignors directed their requests for refund. *See* Compl. ¶¶ 95-96, 98, 101.[3]

Moreover, and materially, the funds of both Assignors were allegedly deposited into accounts, whether at GN Bank or GCFM. The law is clear in that regard that "[b]ank accounts are such intangible property for which an action for conversion will not lie as a matter of law." *Gen. Motors Acceptance Corp. v. Hartigan Cadillac, Inc.*, No. 86 C 4923, 1990 U.S. Dist. LEXIS 896, at *9 (N.D. Ill. Jan. 29, 1990) (dismissing conversion count); *see also, e.g.*, *Sharp v. Bank of Am., N.A.*, No. 19 C 5223, 2020 U.S. Dist. LEXIS 62316, at *17 (N.D. Ill. Mar. 31, 2020) (dismissing conversion claim, reasoning: "Sharp's conversion claim fails because it can be summed up as a mere obligation to pay money. When Sharp deposited his funds with BANA, their relationship became that of debtor and creditor."), *citing Travelers Cas. and Sur. Co. of Am. v. Paderta*, No. 10 C 0406, 2010 U.S. Dist. LEXIS 135865, at *13 (N.D. Ill. Dec. 23, 2010) ("[W]hen money is deposited with a bank, title to it passes and the bank becomes a debtor to the extent of the deposit; and to that extent, the depositor becomes a creditor." (internal quotation marks omitted)). Thus, even had the Assignors deposited money with any U.S. Defendants (and they did not), no claim for conversion would lie as a matter of law.

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[3] Even as to the Ghanaian Defendants, the complaint fails to plead facts that establish either Assignor had an immediate right to the underlying funds. The Assignors voluntarily transferred funds to the Ghanaian Defendants as investments or deposits. In that case, "[c]ourts have consistently held that there is no conversion where one has voluntarily transferred money to another." *Tahir v. Imp. Acquisition Motors, L.L.C.*, No. 09 C 6471, 2010 U.S. Dist. LEXIS 71125, at *20 (N.D. Ill. July 15, 2010).

4. No Alleged Conduct Supports a Business Tort Against the U.S. Defendants

The complaint also includes putative counts for the business torts of interference with contractual relations and interference with prospective economic advantage. *See* Counts X and XIX (Interference with Contractual Relations) and Counts XI and XX (Interference with Prospective Economic Advantage). It is not clear to whom these counts are directed. Their headings suggest some subset of the defendants, but the allegations are directed generically to "Defendants." No facts are alleged specific to any conduct by any U.S. Defendant.

The gravamen of both these business torts is that a defendant intentionally and unjustifiably interferes in some way with the plaintiff's relationship with a third-party. *HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 131 Ill. 2d 145, 154-55, 545 N.E.2d 672, 676 (1989) (reciting elements of interference with contract); *Roy v. Coyne*, 259 Ill. App. 3d 269, 630 N.E.2d 1024, 1028 (Ill. 1994) (reciting elements of interference with prospective economic advantage). Moreover, both causes of action must be alleged with particularity, including specification of which defendants did what to whom, when and how. *See Desmond v. Taxi Affiliation Servs. LLC*, 344 F. Supp. 3d 915, 925 (N.D. Ill. 2018) ("Defendants are correct that these counts fail to satisfy Rule 9(b)."). The complaint here again fails this standard.

Instead, it once more groups the defendants as one and then parrots the elements of the claim without supporting facts or specificity. *See, e.g.*, Compl. ¶¶ 215, 221, 267, 273. No detail is alleged as to which U.S. Defendants did what, to whom, or when. Each of these counts, like the rest of the complaint, thus fails as a matter of law. *See Desmond*, 344 F. Supp. 3d at 925 ("Defendants are correct that these counts fail to satisfy Rule 9(b). The claims state merely that a group of Defendants … induced an unspecified amount of YCA members to breach their

agreements, at an unspecified time, through unspecified means. And the roles of these Defendants in these activities are left unstated. As such, Counts II and III have not been pleaded with particularity and are dismissed.").

C. The Complaint's Boilerplate Allegations of Agency and Alter Ego Do Not Overcome its Failure to Plead Specific Facts as to Each U.S. Defendant

The ultimate defect of the complaint as to the U.S. Defendants is that none of them had any communication, business relationship or other dealings with either Assignor. Birim Group attempts to avoid the logical consequence of this fact by pleading the conclusion that all corporate forms of every entity in the complaint should be disregarded and every individual defendant should be deemed an alter ego of every other defendant as well as every employee of the corporate defendants. This attempt fails as a matter of fact and law.

Courts do not just disregard corporate forms because of a plaintiff's "information and belief" that they should do so. Rather, corporate distinctions are only disregarded where: (a) there is such a unity of interest and ownership that separate personalities of the corporation and the individual no longer exist; and (b) where adherence to the fiction of separate corporate existence would promote injustice or inequity. *Int'l Fin. Servs. Corp. v. Chromas Techs. Can., Inc.*, 356 F.3d 731, 736 (7th Cir. 2004). Conclusory allegations that recite the elements for disregarding forms and treating defendants as alter egos are insufficient. *Free Green Can, LLC v. Green Recycling Enters., LLC*, No. 10-cv-5764, 2011 U.S. Dist. LEXIS 65132, at *13-14 (N.D. Ill. June 20, 2011) (plaintiff failed to plead alter ego liability where claim alleged financial investment and that "upon information and belief" assets were commingled; noting that plaintiff "has alleged no facts to support these conclusory allegations").

Likewise, with regard to alter ego or agency to impose vicarious liability, and particularly when the same circumstances are relied upon to establish both the alleged fraud and an agency

relationship, the courts impose a high standard of specificity. *Lachmund v. ADM Inv'r Servs.*, 191 F.3d 777, 783 (7th Cir. 1999) (affirming dismissal and concluding allegations of agency failed to include requisite specificity). This reasoning applies directly here. *See also Maietta v. Ford Motor Co.*, No. 96 C 8347, 1997 U.S. Dist. LEXIS 3788, at *12 (N.D. Ill. Mar. 24, 1997) (dismissing complaint and observing that: "A complaint relying on agency must plead facts which, if proved, establish the existence of an agency relationship. It is insufficient to merely plead the legal conclusion of agency."), citing *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 498, 675 N.E.2d 584, 592 (1996); *SRAM Corp. v. Sunrace Roots Enter. Co.*, 953 F. Supp. 257, 260 n.4 (N.D. Ill. 1997) (plaintiff must allege facts to establish that defendants acted as each other's agent). Furthermore, allegations pled "upon information and belief" are insufficient to satisfy the requirements of Rule 9(b) in this regard and must be disregarded. *See Bankers Tr. Co. v. Old Republic Ins. Co.*, 959 F.2d 677, 684 (7th Cir. 1992) (concluding that when allegations "essential" to a case are made on mere "information and belief," they are properly disregarded).

Birim Group bases all its claims on the premise that the U.S. Defendants are vicariously liable for the conduct of Ghanaian companies and their employees in Ghana on group pleading and conclusions grounded in nothing other than its "information and belief." Thus, the complaint alleges that "Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, each of the defendants was an agent, servant, licensee, employee or alter ego of each of the remaining defendants…." Compl. ¶ 54. As to the corporate defendants, the complaint alleges – again on information and belief – Corporate Defendants have the same shareholders and interlocking directors, *id.* ¶¶ 56-57, commingle and divert funds, *id.* ¶ 59, fail to maintain adequate corporate records, *id.* ¶ 62, and that "each defendant, individually or through its officers, directors and employees, servants, agents, principals, managers, supervisors and colleagues, had on-going

knowledge of the wrongful conduct of said agents, servants, licensees, employees and alter egos, and allowed this wrongful conduct to occur and continue," *id.* ¶ 72. In other words, without specific facts and based on "information and belief," the complaint concludes that each defendant is somehow responsible for everything done by every other defendant and each defendant's employees. There is no lawful basis for this premise and it is properly rejected in its entirety.

CONCLUSION

The complaint in this case is an object lesson in why Rule 9(b) exists and applies to RICO and fraud-based claims. Birim Group bought and paid for the right to bring this complaint, including on behalf of an Assignor who is pursuing the same substantive claim where it belongs – in a Ghanaian court against a Ghanaian defendant. The Assignors losses are $52,219 and $30,000, respectively. So why did Birim Group buy the claims and file such an overblown complaint, invoking RICO, multiple fraud and tort theories? The answer was stated at the outset: because this case is a political smear and not a legitimate use of the Court to resolve a legal dispute.

Rudimentary legal research would have informed Birim Group that RICO has no extraterritorial application and does not apply here. Neither are there adequate jurisdictional amounts to otherwise address the Assignors' claims in federal court. Nonetheless, whomever is behind Birim Group proceeded with a complaint that is loaded with extraneous, unsupported and outlandish accusations, but devoid of pleaded facts that plausibly suggest, under any theory, a relationship between the Assignors' putative damages in Ghana and anything done by any one of the U.S. Defendants. No such facts could be pleaded, because no such relationship exists between the Assignors and any U.S. Defendants, none of whom have so much as communicated with either Assignor. The complaint in this case is properly dismissed and with prejudice.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Ricardo Meza, an attorney, hereby certify that the foregoing **CERTAIN DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS** was electronically filed on April 5, 2021 and will be served electronically via the Court's ECF Notice system upon the registered parties of record.

/s/ Ricardo Meza
Ricardo Meza