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

VICTOR SANTANA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 09 CV 5027**
	)	
COOK COUNTY BOARD OF REVIEW,	)	
LARRY ROGERS, JR.,	)	**HONORABLE JUDGE**
JOSEPH BERRIOS,	)	**MILTON I. SHADUR**
BRENDAN F. HOULIHAN,	)	
SCOTT M. GUETZOW,	)	
JOHN P. SULLIVAN,	)	
THOMAS A. JACONETTY,	)	
	)	
Defendants.	)	

Plaintiff's Memorandum in Opposition to Defendants' Three Motions to Dismiss, Memorandum and Motions in Opposition to Plaintiff's Proposed Amended Complaint to Replead RICO-Count V

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A. Statement of Facts

Taking the factual allegations in the Plaintiff's Second Amended Complaint ("Complaint") and in the Plaintiff's Proposed Amended Complaint to Replead RICO-Count V, ("PAC") in the light most favorable to Plaintiff, the following statements of fact are true:

The Cook County Board of Review ("Board of Review," "Board") hears appeals of the assessments of Cook County residents tax valuations. Many residents choose to hire attorneys or property tax consultants to assist them in appealing their property tax assessments, or representing them before the Board of Review. There are many non-lawyer consultants and businesses that assist Cook County residents file for real estate tax reductions at the Board of Review. Compliant 20. Non-lawyer consultants, government agencies, accounting firms and businesses routinely tell Cook County property owners how to fill out the Board of Review's Complaint forms and initiate the process of filing for lower property taxes at the Board of Review. Complaint at 21. Plaintiff has had a real-estate tax consultancy business for almost nine years, wherein he has advised thousands of property owners in Cook County on real estate tax matters. Complaint at 36.

Most of the campaign funds of the Defendant Commissioners consist of donations from lawyers and law firms whose livelihoods depend on the decisions of the Board of Review, and its Commissioners. Complaint at 30. Those attorneys typically are paid a percentage of the tax reductions they are able to secure their clients. Complaint at 35.

The Board of Review has no consistently applied or set method for the adjudication of tax appeal claims, despite the existence of an Illinois law requiring specific and uniform standards be used. Complaint and PAC at 34 and 38. Instead the Board has established and institutionalized a system of pay for play. PAC at 37. Real estate tax appeal lawyers that

contribute to the campaign funds and campaign committees of the Commissioners achieve better results for their clients than non-contributing lawyers and non-contributing taxpayers. Complaint at 37. This is because, quite simply, the Board (which does not have a uniform system to adjudicate appeals) adjudicates its appeals in part based upon the contribution levels of the attorney representing each client and property. PAC at 39. Therefore, files that were suspected to be associated with Plaintiff were segregated out, and treated unfairly. PAC at 40.

The members of the Board of Review, including the three Commissioners named in the instant Complaint, and the other individual defendants, employ the Board as a racketeering enterprise, in that they have institutionalized the aforementioned bribery and pay to play as the mandatory regime for the adjudication of real estate tax appeals in Cook County. PAC at 90. Inasmuch as the Board determines the value of properties, including commercial properties, it is an enterprise that has an enormous impact on interstate commerce, and is engaged in activities that affect interstate commerce. PAC at 91.

Defendants committed a series of Racketeering acts. Larry Rogers Jr., Joseph Berrios, Brendan Houlihan, committed bribery, under 720 ILCS 5/33-1(d) and 720 ILCS 5/33-1(e), inasmuch as certain dates (both specified and unspecified in the Complaint), he agreed (through various intermediaries on his staff, and personally) to accept campaign funds in exchange for property tax reductions from 4 attorneys, (who are representative of a trend). The four attorneys were identified by letters (Attorneys A-D) rather than by their legal names. PAC at 95-100. Nonetheless, they all are real people, known to the Plaintiff. Plaintiff fully anticipates that through discovery, the identities of these four (and other) attorneys will become known to all parties. However, Plaintiff's counsel does not think it is proper to place those names on the public record at this stage.

In part through these schemes, Larry Rogers Jr. accumulated close to one million dollars

in campaign contributions from real estate tax appeal attorneys that appear before him. PAC at 102. Much of those campaign contributions were used to pay Defendant Rogers' personal expenditures like meals, and shopping, so that Rogers would not have to report these voluminous expenditures on his submissions to the IRS. PAC at 102.

Similarly, Joseph Berrios accumulated close to three million dollars in campaign contributions from real estate tax appeal attorneys that appeared before him. Complaint at 101. Much of those campaign contributions were used to pay Defendant Berrios' personal expenditures like meals, and shopping, so that he would not have to report these voluminous expenditures on his submissions to the IRS. PAC at 101.

Larry Rogers Jr. also enlisted the help of Defendant Scott M. Guetzow in his illegal schemes. Guetzow and Rogers conspired with each other and others to devise and participate in a scheme, through the use of United States Mail, and interstate wire communications. Complaint at 103. Pursuant to that conspiracy, Rogers paid Guetzow an aggregate of $21,150.56 from the aforementioned campaign funds while he was ostensibly working as a full-time Cook County employee. Complaint at 103. He also paid William O'Shields for political consulting work also while O'Shields was ostensibly a full-time employee. PAC at 103.

Joseph Berrios enlisted the help of Thomas A. Jaconetty, in conspiring to commit various predicate acts. PAC at 104. Berrios and Jaconetty conspired with each other and others to devise and participate in a scheme, through the use of United States Mail, and interstate wire communications. PAC at 104. Pursuant to that conspiracy, Rogers paid Guetzow a sum of money from the aforementioned campaign funds while he was ostensibly working as a full-time Cook County employee. PAC at 104.

Of course, implicit in the scheme to accept contributions from tax attorneys in exchange for favorable rate reductions (thus benefiting the attorneys through their contingency agreements

with their clients) is the flip-side: attorneys and tax consultants, like Plaintiff Victor Santana, would not get such favorable results. This, of course, adversely affected their business. As plead in the Complaint, Victor Santana did *not* contribute to Defendants' campaigns. He paid the price for that omission.

Other attorneys did not withstand pressure and extortion. Attorneys A-D (once again, real people whose identities are known to Plaintiff, and whose identities can be pled in an amended complaint, if necessary) were extorted by Defendants Rogers, Berrios, and Houlihan who, through intermediaries and personally, made it known to those attorneys that their non-payment of large campaign contributions would affect their performance before the Board of Review. PAC at 105-107.

Defendant Berrios went further than the other Defendants in extorting services out of Plaintiff himself. He threatened Santana with fear of economic and reputational harm in exchange for procuring property and political consulting work from Santana for free. PAC at 109.

Defendants pattern of racketeering activity is not new. It has continued for the last decade, continues to the present, and will most likely continue into the future. PAC at 109. Defendants have hoped, through their actions, to subvert justice both to benefit their campaign coffers, and themselves personally. PAC at 110. While using their public offices to cloak their activities in a veil of legitimacy, Defendants have filled their campaign coffers, enriched their lifestyles and accumulated political power. PAC at 111. Defendants' created an almost pure pay to play system at the Cook County Board of Review. PAC at 112. Those who contributed the most could expect the highest reductions – which, of course, benefited the attorneys directly under their contingency agreements. PAC at 112. Those who did not contribute, like Plaintiff Victor Santana, by contrast, could not expect substantial justice to be reached. PAC at 112.

In Plaintiff's specific case, in retaliation for his refusal to pay in to the system, through political contributions, Plaintiff was scapegoated. PAC at 113. The Defendants used their nearly unchecked power, and the veil of legitimacy granted by public office, to ban the Plaintiff, publicly slander him, and make him a political scapegoat – destroying his business, property, reputation, and ability to make a living in Chicago. PAC at 114. Each of the Defendants agreed to join the conspiracy, to commit these predicate acts, and played some part in directing the enterprise's affairs. PAC at 115 and 116. Plaintiff's real estate tax consulting business was irrevocably harmed by the pay for play regime, and racketeering activities of the Defendants. PAC at 117. All of this was because Plaintiff refused to be complicit in the employment of Cook County Board of Review as an enterprise for illegal activity. PAC at 118.

B. Pleading Standard

Under Federal Rules of Civil Procedure ("F.R.C.P.") §15(a) courts should freely allow pleading amendments, "in the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment." King v. Cooke, 26 F.3d 720 (7 Cir. 1994). Defendants do not claim that this Motion was unduly delayed, was brought in bad faith, or as a dilatory move, or that allowing the amendments would be prejudicial. They similarly do not suggest that Plaintiff has failed to cure deficiencies depute excessive amendments. Instead, Defendants suggest that the additional Counts, alleging violations of the Racketeering Act (RICO), do not state a claim. As such, Defendants Motion is best addressed like a Motion to Dismiss.[1]

[1] Incidentally, the Court set the matter for a short status specifically because it is anticipated that the Defendants will want to file a surreply to this reply. The Court specifically explained that a surreply would potentially be

Defendants offer two separate motions to dismiss and memoranda under F.R.C.P. 12(b)(6). Defendants Berrios, Jaconetty and Cook County Board of Review offer a "Memorandum of Law of Defendants Berrios, Jaconetty and Cook County Board of Review in Opposition to Plaintiff's Motion for Leave to File a Second Amended Complaint" (the "Memorandum"). Defendants Larry R. Rogers, Jr. and Scott M. Guetzow offer a "Response in Opposition to Plaintiff's Proposed Second Amended Complaint" ("Rogers Response") and Defendants Brendan F. Houlihan and John P. Sullivan offer, "Defendants Brendan F. Houlihan and John P. Sullivan's Response in Opposition to Plaintiff's Proposed Seconded Amended Complaint" ("Houlihan Response").

The Board's Memorandum, Rogers Response and Houlihan's response either deliberately misrepresent, or are simply not familiar with the standards for pleading under F.R.C.P. 8(a) and for bringing a motion under F.R.C.P. 12(b)(6).

Under F.R.C.P. 12(b)(6), dismissal of a complaint is proper where it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim on which relief may be granted. Hickey v. O'Bannon, 287 F.3d 656, 657 (7 Cir., 2002). The standard for dismissal of a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) is where the Plaintiff has failed to state a claim upon which relief can be granted. However, all well-pleaded facts, and any reasonable inferences drawn therefrom, are accepted as true and are construed in favor of the plaintiff. Id.; Stachon v. United Consumers Club, 229 F.3d 673, 675 (7 Cir. 2000).

F.R.C.P. 8(a)(2) requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." In the Federal Courts, unlike in the Illinois state courts, the pleading standard is for notice or claim pleading and not fact pleading. In the

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meaningful, inasmuch as Defendants' replies to Plaintiff's Motion for Leave to Amend were essentially Motions to Dismiss.

Federal system, acts that substantiate a claim must be put into evidence during the course of litigation but not at the initial pleading stage. In other words, claims may be alleged, they do not need to be proven in a complaint nor do facts have to alleged, "this suit is in federal rather than state court, and each sovereign may apply its own procedural rules in its own courts. F.R.C.P. 8 does not require plaintiffs to plead the "elements" of legal theories, or facts corresponding to each element. See Swierkiewicz v. Sorema, 534 U.S. 506, 510-11, 122 S.Ct. 992 (2002); Bartholet v. Reishauer A.G., 953 F.2d 1073, 1077-78 (7th Cir.1992). When state and federal practice differ, federal rules adopted under the Rules Enabling Act prevail. See, e.g., Hanna v. Plumer, 380 U.S. 460, 85 S.Ct. 1136, 14 L.Ed.2d 8 (1965); Walker v. Armco Steel Corp., 446 U.S. 740, 100 S.Ct. 1978, 64 L.Ed.2d 659 (1980)." Christensen v. County of Boone, IL, 483 F.3d 454, 465-466 (7 Cir., 2007).

For over fifty years, the Supreme Court had held that under F.R.C.P. 8, "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L.Ed 2d 80 (1957).

In 2007 in Bell Atlantic Corp. v. Twombly, 550 U.S.544, 127 S.Ct.1955, 167 L.E.2d 929 (2007) the Supreme Court appears to have supplanted the "no set of facts" language in Conley for a "plausibility" standard requiring that a complaint contain, "enough facts to state a claim to relief that is plausible on its face." Id. At 570, 127 S.Ct. 1955. But what "plausible on its face" actually means has been subject to some amount of interpretation.

In Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009), the Supreme Court explained that a complaint cannot contain mere legal conclusions, "a claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id., citing Twombly, at 556. "The plausibility

standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.' " Id., citing Twombly, at 557.

Iqbal suggests a balancing test between mere possibility and plausibility that would amend the pleading standard in Conley v. Gibson, 355 U.S.41. 47 (1957). This said, the courts have been very clear that the plausibility required after Iqbal does not equate to a requirement of possibility-the possibility of success on the merits may seem improbable. Riley v. Vilsack 665 F. Supp.2d 994, 1006 (WD Wisc. 2009). In determining whether a complaint is plausible on its face, the court is not permitted to weigh which of the parties' stories are more plausible. Twombly, 550 U.S. at 570, 127 S. Ct. 1955. This level of scrutiny that would call for a weighing of each parties case may not even be called for at the summary judgment state, "the District Court should not weigh the evidence and determine the truth of the matter but rather determine whether there is a genuine issue for trial." Lewis v. City of Chicago, 496 F.3d 645, 651 (7th Cir. 2007).

In determining whether a complaint is properly pled to survive a Rule 12(b)(6) motion, the court is to accept the facts as stated in the complaint as true and not make a determination based upon either probability of success or whether it will be possible for the plaintiff to be able to prove the facts alleged. Pennsylvania Chiropractic Association v. Blue Cross Blue Shield Association, 2010 WL 1979569 (N.D.Ill. 2010) at 7. However, as Judge Easterbrook points out in Vincent v. City Colleges of Chicago, 485 F.3d 919, 923-924 (7 Cir. 2007), a plaintiff's not pleading facts is not a basis for dismissal under F.R.C.P. 12(b)(6) either,

"*a judicial order dismissing a complaint because the plaintiff did not plead facts has a*

> *short half-life…It is disappointing to see a federal district judge dismiss a complaint for failure to adhere to a fact-pleading model that federal practice abrogated almost 70 years ago. As citations in the preceding paragraphs show, however, this is among many similar dispositions that the Supreme Court and this court have encountered recently and been obligated to reverse….Dismissal under Rule 12(b)(6) is reserved for complaints that do not state legally cognizable claims, including the situation in which the plaintiff pleads himself out of court by making allegations sufficient to defeat the suit."* Id.

In order to determine plausibility, the courts examine the facts plead to give, "the plaintiff the benefit of imagination, so long as the hypotheses are consistent with the complaint." Sanjuan v. Amer. Bd. of Psychiatry and Neurology, Inc., 40 F.3d 247, 251 (7th Cir.1994) (citations omitted)." Bissessur v. Indiana University Board of Trustees 581 F. 3d 599, 602-603 (7 Cir. 2009).

The balancing test after Iqbal would seem to be that while legal conclusions are never sufficient, nor is the Plaintiff required to plead and prove evidence as doing so would so plainly violate F.R.C.P. 8(a), "…in the wake of Twombly/Iqbal, a complaint must still comply with Rule 8(a), which prohibits excessively detailed unnecessarily complicated, argumentative, and extraneous facts." Universal Health Group v. Allstate Insurance Company 2010 WL 2278618 at 3.

The plausibility standard of Twombly has not transformed the Federal pleading regime from one of notice pleading to one of fact pleading. "Twombly did not supplant the basic notice-pleading standard" which still requires only a short and plain statement of a claim." Tamayo v. Blagojevich, 526 F.3d 1074, 1082-83 (7th Cir. 2008).

> *"Our system operates on a notice pleading standard; Twombly and its progeny do not change this fact. Cf. Smith v. Duffey, 576 F.3d 336, 339-40 (7th Cir.2009) (noting courts' over reliance*

> *on Twombly). A defendant is owed "fair notice of what the ...claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)."* Bissessur v. Indiana University Board of Trustees 581 F. 3d 599, 603.

A complaint after Twombly and Iqbal, "must provide the defendant with fair notice of what the... claim is and the grounds upon which it rests." Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007) (alteration in original) (citation omitted). "To survive a motion to dismiss, a complaint need not provide detailed factual allegations." Id. at 555-56. The Supreme Court in Twombly did find that a complaint must contain "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." Id. at 555. However, notice pleading remains the pleading standard of the Supreme Court even after Twombly, "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim… 'Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the…claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93 127 S. Ct. 2197 (2007).

While the pleading requirements in the aftermath of Iqbal and Twombly are not free of murkiness, the Court of Appeals for the Seventh Circuit seems to be reading Iqbal and Twombly cautiously. In Smith v. Duffey, 576 F.3d 336, 339-340 (2009), it declined to extend either Iqbal or Twombly as the applicable standard on a ruling granting a F.R.C.P. 12(b)(6) motion to dismiss though Judge Posner refers to Twombly as the "citation *du jour* in Rule 12(b)(6) cases." Id.

This Court pointed out that while both cases are becoming the authoritative standards on F.R.C.P. 12(b)(6) motions to dismiss, the fact patterns of both cases may have uniquely influenced the Supreme Court's decisions to impose heightened pleading requirements in both of them. See also, In re: Ocwen Loan Servicing, LLC Mortgage Servicing Litigation, 491 F.3d 638, 648-649 (7 Cir. 2007)), wherein the Court of Appeals declines to extend the ruling of Twombly to the case before it on the basis that it was not an anti-trust case. As the same Court in Duffey points out,

the heightened pleading standard in Twombly may have resulted from the fact that that case concerned a complex and very costly anti-trust litigation suit wherein it would not have made sense to allow the plaintiff to proceed to discovery without some sense that his complaint had merit. Duffy at 340. The Court in Duffy goes on to discuss Iqbal and point out that because the suit in Iqbal was directed against one of the highest government officials (one of the defendants was the late United States Attorney General John Ashcroft and it was during a time of war) the idea of being able to limit discovery was not enough to drag the very highest of government officials through a lawsuit that may well affect their ongoing functions if the lawsuit were not judged to have some merit even at the very outset. Id.

The Court of Appeals has put to rest any notion that notice pleading under the F.R.C.P. 8 has been abandoned, or that there is in general a heightened pleading standard in all cases, "Bell Atlantic must not be overread." The Court denied that it was "requir[ing] heightened fact pleading of specifics," 127 S.Ct. at 1974; "a complaint...does not need detailed factual allegations." Id. at 1964. Within weeks after deciding Bell Atlantic, the Court reversed a Tenth Circuit decision that required fact pleading. Erickson v. Pardus, 551 U.S. 89, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007) (per curiam). Limestone Development Corp. v. Village of Lemont, Ill. 520 F.3d 797, 803 (7 Cir. 2008).

Other than for the most complex of litigants, the courts have widely held that there is no heightened fact pleading requirement in the aftermath of Iqbal and Twombly, "…in the ordinary case, the burden remains low. So long as the plaintiff avoids using legal or factual conclusions, any allegations that raise the complaint above sheer speculation are sufficient. This view is supported by Erickson, 551 U.S. 89, 127 S.Ct. 2197, a case involving a run-of-the-mill prisoner claim of inadequate medical care in which the Supreme Court did not even discuss whether the claim was "plausible" and stated that the heightened pleading required by the court

of appeals "depart[ed] in [a] stark...manner from the pleading standard mandated by the Federal Rules of Civil Procedure." Riley v. Vilsack 665 F.Supp.2d 994, 1003-1004.

The Rogers Response contains a lengthy section on pleading requirements with the heading "Plaintiff's Proposed Second Amended Complaint Again Fails to State a Cause of Action... Under Fed. R. Civ. P. 9(b)." Rogers Response at 5. Plaintiff's PAC could easily survive F.R.C.P 9(b) scrutiny, but it does not have to. Rogers claims that *this Court* has held that civil RICO claims are subject to the F.R.C.P 9(b) standard. Rogers Response at 6. This statement is completely untrue. The Court, in its March 30, 2010 Order dismissing the First Amended Complaint's RICO claims, indicated that "post-Twombly fuller set of factual allegations may be necessary to show that relief is plausible" in the RICO context." Citing Tamayo v. Blagojevich, 526 F.3d 1074, 1082-83 (7th Cir. 2008). However, this Court (and, indeed, the entire Seventh Circuit) has maintained that the specific standards outlined in F.R.C.P 9(b) are reserved for allegations of fraud. Id. As indicated in this Reply previously, Tamayo specifically underscores the fact that absent allegations of fraud, the F.R.C.P. 9(b) standard simply does not apply. Id.

Nonetheless, even assuming *arguendo* that the F.R.C.P. 9(b) standard does apply – Plaintiff has alleged the "who, what, when, and how" of each predicate act. DiLeo v. Ernst & Young, 901 F.2d 624, 627 (7 Cir. 1990). DiLeo, cited by Rogers at 6 in support of the claim that under F.R.C.P 9(b), Plaintiff must allege the "who, what, when and how" of its RICO Complaint, does not have anything to do with RICO. Instead, it deals with securities litigation in which the Plaintiff alleged that the Defendant law firm committed fraud when it painted a rosy picture of its financial status, only to later disclose that there were financial issues that threatened the firm's stability. Id. The plaintiff altogether failed to allege how a mere discrepancy in financial disclosures published at different times was caused by fraud. The Court reasoned, "the complaint offers no information other than the differences between the two statements of the

firm's condition. Because only a fraction of financial deteriorations reflects fraud, plaintiffs may not proffer the different financial statements and rest." Id.

Rogers and Guetzow apparently believe that the Court's ruling in DiLeo stands for the proposition that despite pleading the when, the why, and the how of each predicate act, the Complaint must fail in that it refers to four specific people using pseudonyms- in order to protect their reputations from being tarnished by allegations of foul play contained in public filings. The identities of Attorneys A-D will come out in discovery. (Plaintiff, unaccustomed to giving opposing counsels legal advice, will nonetheless suggest that Defendants ask, in at least one interrogatory, for the identities of Attorneys A-D. This will put to rest any Complaints about being left in the dark about the nature of the RICO count for want of the identities of four individuals).

The Rogers Response points out a number of places between paragraphs 95 and 107 where Plaintiff refers to Attorneys A-D or to "real estate tax attorneys." Defendants fail to point out any prevailing case law requiring Plaintiff to identify each and every person referred to in a Complaint by name. Not even the F.R.C.P. 9(b) standard requires that. But if the Court requires specific names for Attorneys A-D, the Complaint can be amended to supply their names.

Rogers and Guetzow also complain that there are insufficient allegations of a relation between and among the predicate acts. Rogers Response at 7. This is hard to understand: The PAC, at 109-118, describes how Defendants use the Board to extort substantial contributions from those appearing before the Board (including the aforementioned Attorneys A-D) in order to line their campaign coffers, and their own pockets, with illegally obtained cash. Defendants further use the appearance of legitimacy to justify using campaign money for personal purchases, thus avoiding the need to report income to the IRS.

Defendants' claim is made even more difficult to understand by the refusal to do any

meaningful analysis of the law. Defendants simply cite to H.J. Inc. v. N.W. Bell Telephone Co., 492 U.S. 229 (1989), and seem to hope that the citation alone will be enough to sustain Defendants claims, without any pesky analysis being necessary. However, H.J. makes it clear that "congress had a fairly flexible concept of a pattern in mind." *Id.* at 236. "[C]riminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." *Id.* Plaintiff's Complaint meets the standard head-on.

As will be explained, Plaintiff also sufficiently alleges a racketeering enterprise that has a sufficient impact on interstate commerce.

Defendants' Memorandum mentions Iqbal and Twombly frequently but seems to struggle with their meaning and makes no mention of how the Seventh Circuit Court of Appeals and the Supreme Court have interpreted the implications of both cases to F.R.C.P. 8(a) and motions to dismiss under F.R.C.P. 12(b)(6). Much of the Memorandum (other than the *ad hominem* attack and commentary) appears to be wholly unconcerned with legal authority.

Defendants' Memorandum begins with a four-word mention of the plausibility standard of Iqbal as mentioned in the case of Rao v. BP Products North America, Inc. 589 F.3d, 398 (7th Cir. 2009). Defendants' citation of this case is mysterious as it has no discernible bearing or similarity to the case at bar. In Rao the court granted summary judgment of a case alleging RICO violations, which wholly failed to identify an enterprise. Perhaps the Defendants mentioned it because it referred to Iqbal-this is unknowable because the Defendants no where apply the court's ruling in Rao to the case at bar or bother with an explanation for its citation.

Defendants' Memorandum on page 2 cites Brooks v. Ross, 578 F.3d 574, 581 (7th Cir. 2009) which states that a,

> *"plaintiff must provide notice to defendants of her claims. Second, courts must accept a plaintiff's factual allegations as true, but some factual allegations will be so sketchy or implausible that they fail to provide sufficient notice to defendants of the plaintiff's claim. Third, in considering the plaintiff's factual allegations, courts should not accept as adequate abstract recitations of the elements of a cause of action or conclusory legal statements."* Id.

Defendants' reliance on Brooks v. Ross, assuming the Defendants cite Brooks not at all for its language, is nonetheless, misplaced. Brooks involves a "fantastical" allegation of a conspiracy theory against a government entity. See, e.g., Brooks, 578 F.3d at 577, 580-82 (dismissing § 1983 claim against prosecutors and other state officials). In the present case, the Plaintiff is alleging, in detail, the time, place and identity of the parties that are involved in racketeering activities involving the employment of the Cook County Board of Review as an ongoing racketeering enterprise. Unlike the detailed racketeering activities the Plaintiff alleges in Plaintiff's PAC, the allegations in Brooks are too vague and outlandish to provide any fair notice of a valid claim. Moreover, although the Defendants make no argument in their use of Brooks, nothing in the Brooks ruling or dicta, supports Defendants' argument (assuming this is what the Defendants meant to argue)-that the Plaintiff must plead facts.

Defendants Memorandum also states on page 2, without citing a single supporting legal authority and in contravention to established case-law that, "RICO and RICO conspiracy claims also implicate heightened pleading requirements." The obvious reason the Defendants do not provide any support for their statement is because it is against the weight of the court's rulings and the rulings of the Seventh Circuit Court of Appeals. Twombly nowhere holds that a plaintiff must allege sufficient to meet a summary judgment standard at the pleading stage. See Riley v.

Vilsack, 665 F. Supp. 2d 994, 1005 (W.D. Wis. 2009):

> *"To defeat a motion for summary judgment, a plaintiff must show that a reasonable jury could render a verdict in his favor. If a plaintiff were required to allege facts satisfying that standard in his complaint, it would establish even more draconian pleading requirements than the code pleading regime rejected by the Federal Rules in 1938."*

Defendants Memorandum makes a chorus of the statement that the Plaintiff has not pled any factual allegations, even going so far at one point as to say that Plaintiff's PAC lacks "even the slightest factual detail." Page 4. Page after page of the Memorandum asserts the absence of "any factual allegation" in a tiresome and Pavlovian manner. Interspersed with this chorus line the Defendants' misrepresents Twombly, with string cites to assert that PAC fails to have "any factual allegation." Nothing in Twombly or its progeny requires the Plaintiff either to prove its damages or plead its evidence at this pleading stage.

In this case, the Plaintiff has pled enough facts to provide fair notice to the Defendants of its claims. For example, throughout the PAC, the Plaintiff alleges that specific attorneys, on specific dates, gave specific amounts of money to Board of Review Commissioners in the form of bribes with the expectation that their case files would receive preferential treatment and that they did.

The exact terms of the bribery and extortionate actions alleged in terms of the conversations that took place, between the Defendants and lawyers A, B, C and D, or the exact reductions in property tax achieved, or which specific properties achieved the reductions, in PAC are not required to be specified as that would require that the Plaintiff plead and prove evidence on the face of a complaint-a standard at war with the notice pleading requirements that are still in effect in the Northern District of Illinois, in the aftermath of Iqbal and Twombly, as discussed

above.

Defendants' Memorandum goes into an extensive commentary, taking up several pages of an attack on PAC, often assuming facts not in evidence (as no discovery schedule has even been established in this case) and then arguing against them, as if assuming Plaintiff's evidence from PAC. It would be preposterous to rebut Defendants commentary as the Plaintiff is not required to plead and prove its evidence at this stage of the litigation. Defendants' arguments are better reserved for a motion for summary judgment at the conclusion of full and complete discovery because they assume facts not in evidence and misunderstand the pleading standards of F.R.C.P. 8.

On page 2 of the Defendants' Memorandum and almost by slight of hand, the Defendants construct a straw-man argument and then proceed to spend a considerable amount of time dismantling it, "Where, as here, at least some of the claims underlying the RICO charge sound in fraud, plaintiffs must please the facts underlying those allegations with sufficient particularity to satisfy Fed. R. Civ.P. 9(b)." What specifically does "sound in fraud" mean? Either the PAC pleads fraud or it does not. Defendants provide string cites of cases to support its allegations that the PAC, presumably because it sounded in fraud, "must specify the time, place and content of alleged fraudulent communications on which they base their RICO claim." F.R.C.P. 9(b)'s pleading standards "do not apply to predicate acts that do not allege fraud." Board of Trustees of Ironworkers Local No. 498 Pension Fund v. Nationwide Life Ins. Co., 2005 WL 711977 (ND Ill.2005). at 3. Defendant incorrectly states that all pleadings related to civil RICO must be plead under F.R.C.P. 9(b). RICO actions are subject to the same pleading standards as are other actions. It is only allegations of fraud in a civil RICO complaint that are subject to the heightened pleading standard of F.R.C.P. 9(b). See also, Young v. West coast Indus. Relations Ass'n, 763 F.Supp. 64, 67 (Del. 1991), In re Insurance Brokerage Antitrust

Litigation, 2007 WL 1062980 (D.C. NJ, 2007) and Slaney v. International Amateur Athletic Federation, 244 F.3d 580 (7 Cir. 2001). Plaintiff's pleading of predicate acts involving bribery, extortion and money laundering are simply not allegations of fraud.

Only one of the Plaintiff's claims, the theft of honest services alleges fraud. Defendants' arguments against the PAC's allegations of violations of honest services by the Defendants are difficult to argue against only because the Defendants do not posit an argument.

Honest services fraud came to be used mostly in cases of public corruption wherein public officials, often through the acceptance of bribes and kickbacks, took official action furthering their own financial interests at the expense of those to whom they owed a fiduciary duty. Skilling v. U.S, 561 U.S.,___, 130 S.Ct. 2896, 2926 (2010). The Court in Skilling ruled that honest services fraud only applies to cases of bribery and kickbacks. Id. at 2931. PAC pleads with specificity that the Defendants, Rogers and Guetzow used funds obtained by bribery (the bribery of lawyers and other parties that appear before the Board of Review) to pay themselves for political consulting work, such self-dealing puts their self-interests before the people of Cook County to whom they owe a fiduciary duty and denies the people of Cook County, who pay for the salaries of Rogers and Guetzow, their honest services. Similarly in the case of Rogers and O'Shields and Berrios and Jaconetty. The PAC also, specifies, the time, the amount, the place and of course the parties involved-satisfying the specificity requirements for averments of fraud of F.R.C.P. Rule 9(b) as likely required in Borsellino v. Goldman Sachs, Inc., 477 F.3d 502, 507 (7 Cir. 2007).

C. Standard for Pleading RICO

Plaintiff, further, has properly alleged civil RICO counts against each Defendant. The RICO statute states that:

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. 18 U.S.C. § 1962(c).

The four primary elements of this subsection, as set out by the Supreme Court, are "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985).. Participating in the "conduct of the enterprise" extends only to those who have some part in directing enterprise's affairs. Reves v. Ernst & Young, 507 U.S. 170, 179 (1993).However, such conduct is not relegates only to managers. Reves, 507 U.S. at 184. An "enterprise" for RICO purposes may include "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). A pattern must include two or more acts within a period of 10 years, plus continuity. H.J. Inc. v. Northwestern Bell Telephone Co., 492 US 229 (1989). Continuity exists where either there has been repeated conduct over a closed period of time, or where the racketeering activity by its nature projects into the future with a threat of repetition. Dudley Enterprises, Inc. v. Palmer Corporation, 822 F. Supp. 496 (N.D. Ill. 1993) quoting H.J. Inc, 492 U.S. at 241. Racketeering activity includes extortion, bribery, money laundering and theft of honest services (as described in Plaintiff's Complaint). 18 U.S.C. § 1961.

Defendants claim that Plaintiff has not alleged the existence of an enterprise. However, given that an enterprise is no more than a person or group of people, it is hard to imagine what Plaintiff would have to allege, other than the fact that each individual defendant is a person, and that together, as members of the Board of Review, they made a group of people. This is, indeed, what Plaintiff has alleged in paragraphs 88-93 of PAC.

Plaintiff has also alleged the requisite interstate commerce. To satisfy the interstate commerce requirement, only a slight effect on interstate commerce is required. U.S. v. Beasley, 72 F.3d 1518 (11 Cir. 1996). However, in this case, the Defendants' ongoing racketeering activities of bribery and official misconduct have a massive impact on interstate commerce. A part of a business' decision to do business in Cook County or even to domicile here is based upon the costs of doing business. Assessed real estate property taxes whether it is for a Boeing or a hundred person steel fabricator have a substantial impact on business and decisions concerning where businesses will locate themselves. Cook County is home to many Fortune 500 companies and even smaller companies that affect interstate commerce. Therefore the actions of the Defendants are not merely injurious to the Plaintiff but constitute a pattern of illegal activity with an exponential effect upon interstate commerce.

A 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. 18 U.S.C.A. § 1961(5). To establish a pattern of fraudulent acts, and thus, continuity, a plaintiff must demonstrate that there has been a series of related predicate acts over a substantial period of time or ones which threaten repetition in the future." Miller v. Gain Financial, Inc., 995 F.2d 706, 708 (7 Cir. 1993) Miller v. Gain Financial, Inc., 995 F.2d 706, 708 (7 Cir. 1993).

The courts "analyzes four specific factors when determining whether a pattern exists: '(1) the number and variety of predicate acts and the length of time over which they were committed; (2) the number of victims; (3) the presence of separate schemes; and (4) the occurrence of distinct injuries.' " Wade v. Hopper, 993 F.2d 1246, 1251 (7 Cir. 1993), certiorari denied 114 S.Ct. 193, 510 U.S. 868, 126 L.Ed.2d 151, quoting U.S. Textiles, Inc. v. Anheuser-Busch Cos., 911 F.2d 1261, 1266 (7 Cir. 1990). In this case, the Plaintiff alleges the existence of a pattern. Plaintiff

alleges separate occurrences in which Defendants employ the Cook County Board of Review as racketeering enterprise. PAC at paragraphs 95-118.

Plaintiff further alleges in PAC at paragraphs 95-118 that the Defendants have engaged in a pattern of bribery, extortion, theft of honest services and money laundering over a period of several years and continuing through the present. This conduct satisfies the continuity requirement stated in H.J., Inc. at 239.

Allegations of facts that meet the plausibility requirement of Twombly and are consistent with F.R.C.P. 8, may sound conclusory by comparison to state fact pleading standards. It is possible to see, as Justice Souter noted in his dissent in Iqbal, "the majority's holding that the statements it selects are conclusory cannot be squared with its treatment of certain other allegations in the complaint as nonconclusory." Iqbal, 129 S. Ct. 1950, 1961. Perhaps the proper application of the standards of Iqbal, Twombly along with this court's precedent, may not always be self-evident. However, in this case, the Plaintiff pleads RICO with sufficient specificity as to the specific predicate acts, the identity of the parties involved, the dates and notice to the Defendants of what is alleged to have taken place. To provide any more specificity would violate F.R.C.P. 8.

D. Standing

To plead a claim under RICO (18 U.S.C. 1962 *et seq*) a plaintiff must allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. at 496. RICO protects "any person injured in his business or property by reason of a [pattern of racketeering activity]" 18 U.S.C. 1964(c). This means that there must be "some direct relation between the injury asserted and the injurious conduct alleged." Holmes v. Securities Investor Protection Corp, 503 U.S. 258, 269 (1992).

The Seventh Circuit has consistently held that the statute must be given the broad effect mandated by its plain language. Morgan v. Bank of Waukegan, 804 F.2d 970 (7 Cir. 1986). Simply put, "If the defendant engages in a pattern of racketeering activity in a manner forbidden by these provisions, and the racketeering activities injure the plaintiff in his business or property, the plaintiff has a claim under § 1964(c)." Sedima v. Imrex Company, Inc., 473 U.S. 479, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). In December 2009, this court ruled that plaintiff riverboat gambling casino operators had standing to sue former Illinois governor Rod Blagojevich and other defendants for violations of RICO for using the office of governor for unlawful enrichment, "proximate cause is a flexible concept that that does not lend itself to a black-letter rule that will dictate the result in every case." Bridge v. Phoenix Bond & Indem. Co., 553 U.S. 639, 128 S.Ct. 2131, 2134, 170 L.Ed.2d 1012 (2008) (internal quotation marks and citation omitted). The key factor is whether there is

> *"some direct relation between the injury asserted and the injurious conduct alleged." Id. The casinos allege in their complaint that the Johnston defendants conspired with others to make payments to Blagojevich in return for his agreement to sign, and not veto the two Racing Acts (and, perhaps, to importune legislators to vote for one or both of them), and that as a result, the Acts were adopted. See Compl. ¶ 64. Due to the adoption of the Acts, the casinos allege, they were required to pay around $89 million that they otherwise would not have had to pay. That is a sufficient allegation of proximate causation."* Empress Casino Joliet Corp v. Blagojevich, 674 F.Supp.2d 993, 1001 (Il N.D. 2009).

All three of the Defendants' pleadings, commonly assert that, "Plaintiff lacks standing for their RICO claims because their alleged damages are too remote from the alleged RICO violations." Taking the well-pleaded allegations of the Complaints as true, however, as the Court

must do in deciding Defendants' motions to dismiss, Pennsylvania Chiroptractic Association v. Blue Cross Blue Shield Association, 2010 WL 1979569 (N.D.Ill. 2010) at 7, the PAC pleads a short, direct connection between the RICO predicate acts - including extortion and bribery - and the RICO damages suffered by the Plaintiff.

RICO's proximate cause requirement derives from and incorporates the principles of proximate cause in common-law tort jurisprudence. In Holmes v. Securities Investor Protection Corp., the U.S. Supreme Court set out the proximate cause requirement under RICO in great detail, explaining that "[a]t bottom, the notion of proximate cause reflects 'ideas of what justice demands, or of what is administratively possible and convenient.' " 503 U.S. 258, 268 (1992) (quoting W. Keeton et al., Prosser and Keaton on Law of Torts § 41 (5th ed. 1984)). While proximate cause requires "some direct relation between the injury asserted and the injurious conduct alleged," id., the Holmes Court recognized that RICO's proximate cause requirement incorporates general common-law principles, and explained that the phrase "by reason of" in the RICO statute, see 18 U.S.C. § 1964(c), should have the same meaning as the identical phrase in Section 4 of the Clayton Act. 503 U.S. at 267.

Simply stated, the proximate cause analysis must be made in light of broad common-law tort principles, particularly because " 'the infinite variety of claims that may arise make it virtually impossible to announce a black-letter rule that will dictate the result in every case.' " Id. at 272 n.20 (quoting Associated Gen. Contractors v. Cal. State Council of Carpenters, 459 U.S. 519 (1983)).

Plaintiff pleads that Defendants Guetzow and Rogers took part in a racketeering enterprise that harmed Plaintiff directly. By using the Board as a means to illegally secure campaign contributions that subsidized not just campaigns – but Defendants' lavish lifestyles – through bribery and extortion, Defendants harmed Plaintiff directly. Plaintiff refused to buy into

Defendants' illegal enterprise. As a result, he was proverbially tarred and feathered when Defendants defamed him, publicly banned him from the Board's premises, and red-flagged any files that appeared to be associated with him. This was not an indirect effect of Defendants' illegal activity. Rather it was the direct effect of refusing to participate in Defendants' illegal activities. All of the Defendants employ the Cook County Board of Review as racketeering enterprise by institutionalizing a system of pay to play wherein any real estate property tax consultant, like the Plaintiff, cannot operate a business unless he pays the Defendants a "street tax"-he participates in the bribery and extortion.

Nonetheless, all three Defendants claim that since the RICO claim in Plaintiff's previous Complaint was dismissed for failing to show a direct link between the harm alleged and the claimed injury, this Complaint (which cites entirely different predicate acts than the First Amended Complaint) must be dismissed as well. Defendants then proceed to discuss why dismissal of the First Amended Complaint was proper, as if that has some bearing on the Second Amended Complaint. Defendants' logic here as elsewhere in their pleadings is at best, elusive.

The Defendants' pleadings[2] cite Hemi Group, LLC v. City of New York, 130 S.Ct. 983 (2010) and Anza v. Ideal Steel Supply Corp., 547 U.S. 451 (2006). This case is distinguishable from Hemi Group, and other cases relied on by Defendants in their argument that Plaintiff's' alleged link between predicate acts and injury is too attenuated. The cause of injury to the Plaintiff is because of the racketeering activities of the Defendants and their employment of the Cook County Board of Review as a racketeering enterprise for the purposes of using it to demand a street tax upon all businesses and consultants that operate real estate property tax consulting businesses in Cook County. Unlike in both Anza and Hemi, the Plaintiff's injuries are

[2] Defendants' Memorandum does not cite Hemi because the page number cited does not exist.

not derivative of any other person's or entity's injuries. Unlike in Hemi[3], there are no third or fourth parties separate from the Defendants who committed the predicate acts. In this case, proximate cause exists.

This case is similar to Bridge v. Phoenix Bond & Indemnity Co., 128 S. Ct. 2131 (2008). In Bridge, the U.S. Supreme Court applied the common-law principles discussed above to find proximate causation in a scheme in which the defendants, prospective buyers of county tax liens on properties of delinquent taxpayers, sent agents to bid on their behalf, thereby obtaining a disproportionate share of the liens to the plaintiffs' detriment. Id. at 2135. The Court found "a sufficiently direct relationship between the defendant's wrongful conduct and the plaintiff's injury to satisfy the proximate-cause principles articulated in Holmes and Anza. Id. at 2144. The Court in Bridge contrasted the injuries of that plaintiff to those in Holmes and Anza, and found "no independent factors that account for respondents' injury,"- the Court and found that the plaintiffs' alleged injury was "a direct result" and "a foreseeable and natural consequence of [the defendants'] scheme." Id.

Defendants' Memorandum completely misstates PAC when on page 13-14, the Defendant cites several cases from other circuits such as, Hamm v. Rhone-Poulene Rorer Pharmaceuticals, Inc. 187 F.3d 941, 952-53 (8th Cir. 1999), Cullon v. Hibernia Nat'l Bank, 859 F.2d 1211, 1212 (5th Cir. 1998) and Khurana v. Innovative Health Care Systems, Inc., 130 F.3d

[3] Defendants' citation of Hemi is from the plurality's opinion of Justices Roberts, Alito, Scalia, and Thomas a recent Supreme Court opinion analyzing RICO's proximate cause requirement. Justices Breyer, Stevens and Kennedy dissented from the plurality's view of proximate cause that focuses primarily on "directness," applying instead a test based on the common-law notion of the foreseeability of the ultimate injury. 130 S. Ct. 983, 997-98 (2010). The dissenting Justices explained that "an intervening third-party act, even if criminal, does not cut a causal chain where the intervening act is foreseeable and the defendant's conduct increases the risk of its occurrence." Id. at 998. And Justice Ginsburg, concurring only in the judgment, did not "subscrib[e] to the broader range of the Court's proximate cause analysis." Id. at 995. As a plurality opinion, Hemi is not entitled to precedential value beyond the narrow holding - not encompassing "the broader range of the Court's proximate cause analysis" - to which five Justices agreed. See Marks v. United States, 430 U.S. 188, 193 (1977).

143, 149 (5th Cir. 1997) to argue that Plaintiff's alleged injuries are "too remote to constitute the 'direct' injury RICO requires…" page 13. Hamm is distinguishable from the present case because the plaintiff in Hamm sued an employer for damages that included defamation and refusal to participate in a fraudulent scheme. Id. at 953. The PAC does not allege anywhere that the Plaintiff's RICO injuries include reputational harm, that he is an employee of the Defendants or that he was asked to participate in the racketeering activities *per se*. Plaintiff never states that he was asked to bribe real estate tax lawyers or help the Defendants extort them. Plaintiff at no time alleges that he was asked to participate in the Defendants' racketeering activities by bribing or extorting anyone. Plaintiff's files and files thought to be associated with the Plaintiff were red-flagged, he was banned and scapegoated because he did not pay the street tax enacted by the Defendants, which the real estate tax lawyers, A, B, C and D. paid. The Defendants have prevented the Plaintiff from conducting his real estate consultation business because he did not agree to pay the Defendants' street tax either through extortion or bribery.

Defendants pin a great deal of hope on to the fact that the PAC states that Attorneys A-D played into Defendants' scheme, and therefore suggest that since Plaintiff is not an attorney, he cannot be a direct victim of Defendants' racketeering. This misstates PAC. While Plaintiff does not appear before the Board to argue on behalf of his clients, he does operate (or, rather, did operate) a consultation firm that assisted thousands of taxpayers in appealing their assessments. Defendants have prohibited Plaintiff from doing so by red-flagging any form that appears to be connected with him in any way. Defendants did not do this to other consultants (including non-attorneys) who had practices similar to Plaintiff's. Defendants singled out Plaintiff due to the fact that he refused to play into their illegal games (unlike Attorneys A-D). Latching on to the title "attorney" cannot save Defendants where Plaintiff has pled that his injuries stemmed directly

from his refusal to be bribed and extorted – unlike the aforementioned attorneys.

Defendants further claim that Plaintiff "fails to connect this alleged bribery, extortion and money laundering to his claimed injury." It is not clear, based upon this assertion, that Defendants even the read the PAC. The Defendants' employment of the Cook County Board of Review as a racketeering enterprise for the purposes of using it to demand a street tax upon all businesses and consultants that operate real estate property tax consulting businesses in Cook County directly injured the Plaintiff. The PAC claims explicitly that the injury alleged – the ban, the defamation, and the subsequent red-flagging of Plaintiff's files – was a direct consequence of refusing to be extorted and bribed. In sum, what injured the Plaintiff is the fact that the Board of Review adopted bribery and extortion (through implementation of a "street tax") as a mandatory means for the adjudication of real estate tax appeals. The plaintiff has clearly alleged an injury to his business and property (his property tax consulting business) "by reason of" a the Defendants' violation of § 1962.

Plaintiff's' injuries were a foreseeable and natural consequence of the Defendants' predicate acts and their employment of the Board of Review as a racketeering enterprise. Since the causal chain between the predicate acts and Plaintiff's' injuries is short and direct, Plaintiff sufficiently alleges proximate cause.

E. Predicate Acts

Plaintiff has adequately pled sufficient predicate acts to sustain a count for RICO. According to the Complaint, Defendants took part in an enterprise that committed bribery and extortion for the personal benefit of Defendants. Plaintiff plead, among other things, that Defendant Berrios extorted Plaintiff by forcing Plaintiff to perform political consulting services free of charge. Defendants claim that inducing a person to act against their will is not extortion

under RICO. This is a mischaracterization of the Court's position, and the law. Extortion, for the purposes of RICO is defined as "obtaining something of value from another with his consent induced by the wrongful use of force, fear, or threats." Scheidler v. National Organization of Women, 537 U.S. 393 (2003). Defendants apparently proceed from the assumption that services are not a "thing of value." But many people actually paid Plaintiff for his services (although there are much fewer who do so as a result of Defendants' actions). Furthermore, the Seventh Circuit has explicitly ruled that services are a "thing of value." US v. Croft, 750 F.2d 1354 (7 Cir. 1985).

Defendants further claim, incorrectly, that the individual predicate acts were not plead properly. Defendants Rogers and Guetzow claim that Plaintiff has not plead extortion properly inasmuch as an offender must 'obtain or seek to obtain property' from the victim. Citing this Court's March 30, 2010 Order; Scheidler v. National Organization for Women, 537 US 393 (2003). This claim is puzzling: Plaintiff explicitly plead that Defendants sought to obtain political contributions from attorneys practicing before the board, including four attorneys identified as A-D. In Scheidler, the Court determined that conduct that interfered with the plaintiff's business, but did not result in the Defendant actually obtaining property could not be considered extortion. *Id.* That is not what was alleged here: Plaintiff has alleged that Defendants obtained campaign money (that they subsequently put to use lining their own pockets). One struggles to find a better example of obtaining property.

Finally, Plaintiff has appropriately alleged a violation of 18 USC 1346, "Honest Services". Defendants counter by claiming that the recently decided, Skilling v. U.S. Makes it clear that honest services criminalizes only bribes and kickbacks. However, the Complaint, at 103-104 pleads that Defendants committed bribery. Moreover, Skilling, a criminal matter, was decided in large part because "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." Skilling v. U.S., 130 S.Ct. 2891, 2933 (2010).

F. Legislative Background

The injury alleged by the Plaintiff in PAC as a result of the Defendants' scheme was crippling, pervasive and ongoing to the conduct of Plaintiff's real estate tax consulting business. This injury to Plaintiff's business and property falls under the exact umbrella of criminal schemes, RICO was enacted to cover. The Defendants in a breathtaking display of corruption, arrogance and unfathomable greed, have turned a vital and legitimate public office into a racketeering enterprise, employed for their personal enrichment, in stunning breach of the trust of every resident of Cook County, their public office and the laws the State of Illinois and of the United States.

RICO was enacted as Title IX of the Organized Crime Control Act of October 15, 1970, Pub.L. No. 91-452, 84 Stat. 941 (1970) because Congress felt that organized crime posed a serious threat to the nation's economic well-being, and because it was felt that the then existing tools available to fight this problem were inadequate.

> *"The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in*

> *the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.*
>
> *It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."* Section 1 of Pub.L. 91-452.

The courts must not interpret the pleading requirements of RICO so narrowly or foster the enactment of ever increasingly arcane pleading hurdles so that at that most rare of moments when a private citizen stares head on at the titan of a powerful government interest that has been criminalized, that citizen does not stand alone. She stands for us all. This is why in Sedima, 473 U.S. at 498, the Supreme Court admonished that RICO is to be read broadly. To do otherwise, will surely and in time, eviscerate civil RICO for use at those very times and for the very purposes, as in this case, for which it was called into existence.

The sword of RICO falls into the hands of a sole plaintiff because he, exactly like the lone small business owner, who stood up to the Mob in New York, Chicago or Philadelphia and refused to operate his business by payment of a street tax, stands up to the Defendants.

Organized crime used their power and the threat of force to compel payment of street taxes upon immigrant business owners street by street, and block by block in every major metropolitan city. The Defendants use their public office to compel and solicit millions of dollars for themselves and thereby gain even more political influence and power. Ironically, in terms of the dollar value of the assessed valuations of commercial and residential property in Cook County every year, the Defendants likely control a much greater source of revenue, even

adjusted for inflation, than the Mob ever did.

The costs to business owners like the Plaintiff of the corruption of legitimate public office by those who would employ it for racketeering is enormous. There is however, another silent and deadly consequence that makes millions of people lose faith and trust in their government and the laws under which they live. The actions of the Defendants, unchecked and undeterred by laws or decency ultimately undermine representative democracy in the very heart of this proud, great nation.

Respectfully submitted,

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