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October 18, 2013

VIA ECF

Honorable J. Paul Oetken
United States District Court, Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *The Honorable Otto J. Reich, et al. v. Betancourt Lopez, et al., No. 13-cv-5307*

Dear Judge Oetken:

We represent the Honorable Otto Reich (“Ambassador Reich”) and Otto Reich Associates, LLC (together, “Plaintiffs”), and write in response to defendants Betancourt and Trebbau’s pre-motion letter dated October 15, 2013 (hereinafter, the “Pre-Motion Ltr.”)¹

Ambassador Reich is a former public servant who spent many years representing the United States throughout Latin America and the Caribbean. Ambassador Reich has never been in a lawsuit, much less as a plaintiff. He now brings claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.* (“RICO”), and related state law claims, for real injuries to his business and property.

Contrary to defendants’ assertions, this case represents a quintessential RICO case. This is *not* a situation where common law tort claims have been improperly recast as a RICO claim. Rather, Plaintiffs have alleged in detail the existence and operation of an extensive and ongoing criminal scheme directed from the United States and designed to unlawfully secure Venezuelan energy-industry contracts; that defendants use United States institutions, including the courts, media and financial institutions to perpetuate that scheme; and that Plaintiffs have been injured in the United States by defendants’ actions.

Defendants’ corrupt business practices have been something of an open secret. (*See, e.g.*, Compl. at ¶¶ 77-80.) In an attempt to cover up their criminal activity and salvage their reputations in the United States, defendants have spent the past two years manipulating the American courts and media as a means of intimidating their critics. In 2012, defendants targeted Ambassador Reich when they intentionally and maliciously injured Ambassador Reich’s business and property in the most effective way they knew how, *i.e.*, by falsely claiming that Ambassador Reich worked for them. (Compl. ¶¶ 103, 116.)

Ambassador Reich seeks to hold defendants accountable for their illegal and improper conduct here before a United States federal court that he knows cannot be bullied² or

¹ This letter incorporates by reference the arguments set forth in Plaintiffs’ response to defendant Francisco D’Agostino Casado’s October 15, 2013 pre-motion letter.

compromised by defendants' wealth, influence and power. Because defendants do not – and cannot – set forth a meritorious basis to dismiss Plaintiffs' claims, this Court should deny defendants their requested relief.

First, the Complaint sufficiently alleges each element of a RICO claim. As alleged, defendants, independently and through Derwick Associates,³ paid millions of dollars in kickbacks to Venezuelan government officials to secure energy contracts in violation of the Travel Act and the Foreign Corrupt Practices Act. (Compl. ¶¶ 4, 11, 120-152.) Using the United States as a base of operations, defendants funneled the ill-gotten profits to bank accounts in the United States. (Compl. ¶¶ 54, 65, 76.) Defendants then embarked upon a campaign of fraud and intimidation to silence anyone who would interfere with or expose their unlawful conduct, including Plaintiffs. (Compl. ¶¶ 81-92.) This ongoing scheme was intended to protect and perpetuate defendants' illegal activities, and was calculated to (and did) cause direct injury to Plaintiffs in violation of 18 U.S.C. § 1964. (Compl. ¶¶ 103-106, 114-119, 152.) Plaintiffs' allegations, taken together, fulfill each element of a RICO claim. *See United States v. Daidone*, 471 F.3d 371, 376 (2d Cir. 2006). To require more of Plaintiffs at this stage of the litigation and under these circumstances – where the best information is in defendants' possession, and by its very nature, carefully concealed – would unfairly require Plaintiffs to “prove their case” on their Complaint, rather than at trial after discovery.

Relatedly, there is no merit to defendants' assertion that Plaintiffs lack standing. (Pre-Motion Ltr. at 1-2.) The Complaint pleads the existence of a scheme to defraud, in the direct service of which defendants made knowingly false statements over the wires, causing the loss of specific, identifiable business and property of Plaintiffs. (Compl. ¶¶ 103-106, 114-119, 152.)⁴ Plaintiffs have alleged injury from two predicate acts of wire fraud, including monetary damages. *United States v. Shellef*, 507 F.3d 82, 109 (2d Cir. 2007).

Second, and also unavailing, is defendants' argument that the alleged predicate acts are not related or continuous. (Pre-Motion Ltr. at 2). As alleged in the Complaint, the predicate acts of wire fraud were specifically intended to prevent the disclosure of defendants' ongoing bribery and kickback scheme and to help ensure its perpetuation. (Compl. ¶ 139.) *See United States v. Pizzonia*, 577 F.3d 455, 466 (2d Cir. 2009). Further, the case law is clear that activity is continuous if, as here, there is a “relationship between the alleged racketeering acts” that relate to an ultimate unlawful goal. *See Fresh Meadow Food Servs., LLC v. RB 175 Corp.*, 282 Fed. Appx. 94, 99 (2d Cir. 2008) (wire and mail fraud acts separated by four years found to be

² It cannot be a coincidence that since the Complaint was filed, Ambassador Reich has been accused falsely of being part of a plot to murder the Venezuelan president. *See* Nathan Crooks, “Venezuela’s Maduro Cancels New York Trip on Alleged Threats,” available at <http://www.bloomberg.com/news/2013-09-26/venezuela-s-maduro-cancels-un-speech-over-new-york-threats.html> (last accessed October 16, 2013). Moreover, at least three other individuals identified in the Complaint as being critical of defendants have been the subject of character attacks in the press and on the Internet.

³ Derwick Associates is defined in the Complaint to include Derwick Associates USA, LLC and Derwick Associates Corporation, and those entities' predecessors, successors, assigns, and affiliates. (Compl. ¶ 28.)

⁴ The Complaint pleads, with particularity, the details of the individual communications that were fraudulent, including who the alleged speaker was and the dates and substance of the alleged communications. *See Philip Morris Inc. v. Heinrich, et al.*, No. 95-0328, 1997 U.S. Dist. LEXIS 20199, at *30 (S.D.N.Y. Dec. 18, 1997); Compl. ¶¶ 104-106, 115-116.

continuous). Indeed, the alleged enterprise continues today, as defendants persist in their efforts to illegally secure energy-related contracts. (Compl. ¶¶ 66-67.)

Third, the Complaint does not allege an extraterritorial enterprise. (Pre-Motion Ltr. at 2.) The Complaint alleges that: (i) defendants directed the activities of Derwick Associates from the United States (Compl. ¶ 28); (ii) defendants sent their ill-gotten profits to banks in the United States (Compl. ¶¶ 55, 65, 76); (iii) defendants used United States (not Venezuelan) courts to silence those individuals they believed threatened to expose their unlawful scheme (Compl. ¶¶ 81-92); and (iv) defendants' communications constituting wire fraud were initiated in the United States, to individuals in the United States, concerning a victim who is an American citizen residing and doing business in the United States (Compl. ¶¶ 103, 115.) That is more than sufficient under Second Circuit law. *See Chevron Corp. v. Donziger*, 871 F. Supp. 2d 229 (S.D.N.Y. 2012) (RICO enterprise was domestic where scheme was allegedly conceived and orchestrated in and from United States, and acts in furtherance were committed in United States by Americans and in Ecuador by both Americans and Ecuadorians).

Fourth, Plaintiffs have sufficiently alleged their state law claims.⁵ Contrary to defendants' contention that the phrase "Otto Reich is working for us" is innocuous (Pre-Motion Ltr. at 3), statements tying an individual to a corrupt organization can be defamatory. *See, e.g., Bufalino v. Associated Press*, 692 F.2d 266, 269 (2d Cir. 1982). To that end, the Complaint pleads extensively (and defendants do not deny) that Derwick Associates had a widely reported reputation for corruption that existed prior to the defamatory statements. (Compl. ¶¶ 77-80.) Whether the defamatory statements alleged in the Complaint are found to be defamatory is a question for the finder of fact. *See Karedes v. Ackerley Group, Inc.*, 423 F.3d 107, 113 (2d Cir. 2005). Regarding the claim for tortious interference with prospective economic advantage, the Complaint specifically pleads that but for defendants' actions, Banco Venezolano would have entered into a consulting relationship with Plaintiffs. (Compl. ¶¶ 104-06, 168.)

Fifth, defendants cannot seriously contend that there is no basis for personal jurisdiction over them absent Plaintiffs' RICO claim. (Pre-Motion Ltr. at 3.) Plaintiffs allege that defendants reside and/or own property in New York, conduct business from New York and a substantial part of the communications, transactions and events underlying Plaintiffs' claims occurred in New York. (Compl. ¶¶ 19-21, 28.) As recently as last year, defendants Betancourt and Trebbau (along with Derwick Associates) commenced suit in New York Supreme Court, New York County.⁶

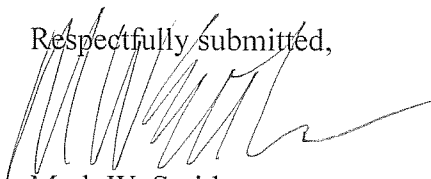
Finally, Plaintiffs' Complaint was not filed for an improper purpose. Neither Ambassador Reich nor any attorney at this firm shared the Complaint with any member of the press, or issued any substantive statements to the press concerning the allegations or claims set forth in the Complaint. Moreover, lawsuits presented for the vindication of important social rights are a hallmark of the American legal system. *See, e.g., Sussman v. Bank of Israel*, 56 F.3d 450, 459 (2d Cir. 1995).

Plaintiffs respectfully request that the Court deny defendants' request for leave to file a motion to dismiss, instruct defendants to file their answers, and allow this case to move forward.

⁵ Regardless of which state's law is ultimately applied by the Court, the allegations in the Complaint are sufficient to establish Plaintiffs' state law tort claims, for the reasons set forth above.

⁶ *Derwick Associates Corp., et al. v. John Does 1-10*, Index No. 653345/12 (Sup. Ct., New York Co.).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark W. Smith', written over the typed name below.

Mark W. Smith

cc: Frank H. Wohl, Esq. (Counsel for Leopoldo Alejandro Betancourt Lopez)
Joseph A. DeMaria, Esq. (Counsel for Pedro Jose Trebbau Lopez)
Shawn Rabin, Esq. (Counsel for Francisco D'Agostino Casado)