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**UNITED STATES DISTRICT COURT**

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**SOUTHERN DISTRICT OF CALIFORNIA**

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SCOTT A. MCMILLAN, an  
individual; THE MCMILLAN LAW  
FIRM, APC, a California professional  
corporation,

CASE NO. 16cv2186-WQH-MDD

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ORDER

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Plaintiffs,

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v.

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DARREN D. CHAKER, an individual,  
and as trustee of PLATINUM  
HOLDINGS GROUP TRUST doing  
business as Counter Forensics, *et al.*,

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Defendants.

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HAYES, Judge:

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The matters before the Court are the motion to dismiss and the motion to strike Plaintiffs' third cause of action filed by Defendant Nicole Chaker (ECF Nos. 35, 36); the motion to dismiss and motion to strike filed by Defendant Darren D. Chaker (ECF Nos. 55, 56); the motion to dismiss or alternatively to quash service filed by Defendant Vania Chaker (ECF No. 59); and, the motion for sanctions by Defendant Darren Chaker (ECF No. 66).

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**I. BACKGROUND**

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On December 5, 2016, Plaintiffs Scott A. McMillan and The McMillan Law Firm, APC filed the First Amended Complaint ("FAC") against Defendant Darren D. Chaker, an individual and as trustee of Platinum Holdings Group Trust, dba Counter Forensics; Defendant Nicole Chaker, an individual and as trustee of The Nicole Chaker

1 Revocable Living Trust, U/A dates August 18, 2010; Defendant Vania Chaker, an  
2 individual and as beneficiary of The Island Revocable Trust under Declaration of Trust  
3 dated June 2, 2015; and Defendant Marcus Mack, as trustee of the Island Revocable  
4 Trust under Declaration of Trust dates June 2, 2015. (ECF No. 25). The FAC alleges  
5 two causes of action under the Racketeer Influenced and Corrupt Organizations  
6 (“RICO”) Act pursuant to 18 U.S.C. § 1962(c) and (d) and a civil extortion cause of  
7 action under California law.

## 8 **II. ALLEGATIONS OF THE FIRST AMENDED COMPLAINT (“FAC”)**

9 Plaintiff Scott McMillan is a California licensed attorney practicing law and  
10 operating an unaccredited law school. (ECF No. 25 at ¶5). Plaintiff McMillan Law  
11 Firm, APC is a corporation operated by Scott McMillan. *Id.* ¶ 6. Defendants Vania and  
12 Nicole Chaker are Defendant Darren Chaker’s sister and mother, respectively.

13 Plaintiffs allege that Defendants constitute a RICO enterprise functioning  
14 together “as a continuing unit with a common purpose to obtain the Plaintiffs’ property  
15 under fear induced by falsely imputing a deformity, disgrace, or crimes, and by threats  
16 to do an unlawful injury to the person or property . . . all in violation of Cal. Penal Code  
17 section 523 (extortion).” *Id.* ¶ 88. “The common purpose of the Enterprise members  
18 was to assist each other in the filing of false and meritless lawsuits under federal debt  
19 collection statutes; assist each other in the filing of lawsuits against attorneys who  
20 opposed them . . . and to conduct a campaign of harassment, defamation, and extortion  
21 against attorneys, such as the Plaintiffs, who represented parties adverse to the interests  
22 of the Enterprise members . . . .” *Id.* ¶ 91. “Enterprise member also assisted each other  
23 in committing vandalism against Plaintiff’s property.” *Id.*

24 Defendant Darren Chaker is alleged to have committed multiple acts of  
25 racketeering activity through acts involving extortion in violation of California Penal  
26 Code sections 518, 519, and 523. *Id.* ¶¶ 94-109. Plaintiffs allege that Darren Chaker  
27 sent threatening letters and communications; posted defamatory and fabricated  
28 statements online; sent letters threatening Plaintiffs’ clients; and sent defamatory emails

1 to other attorneys and colleagues of Plaintiff McMillan. *Id.* Plaintiffs allege that these  
2 acts constitute extortion because Defendant “obtained from Plaintiff his intangible  
3 property right to practice law free of threats, and to practice in accordance with the  
4 California Rules of Professional Conduct” and “obtained from Plaintiffs their intangible  
5 property right to practice law and publish court decisions on the internet.” *Id.* at ¶¶ 99-  
6 109.

7 Plaintiffs bring the first cause of action for a violation of RICO, 18 U.S.C. §  
8 1962(c) against Defendant Darren Chaker. *Id.* ¶¶ 84-114. Plaintiffs bring a second  
9 cause of action for conspiracy to violate RICO, 18 U.S.C. § 1962(d) against all  
10 Defendants. *Id.* ¶¶ 115-119. Plaintiffs bring a third cause of action for civil extortion  
11 under California law against Defendants Darren Chaker and Nicole Chaker. *Id.* ¶¶ 120-  
12 133.

### 13 **III. LEGAL STANDARD ON RULE 12(B)(6)**

14 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state  
15 a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule of  
16 Civil Procedure 8(a) provides that “[a] pleading that states a claim for relief must  
17 contain . . . a short and plain statement of the claim showing that the pleader is entitled  
18 to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where  
19 the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable  
20 legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

21 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’  
22 requires more than labels and conclusions, and a formulaic recitation of the elements  
23 of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
24 (quoting Fed. R. Civ. P. 8(a)). When considering a motion to dismiss, a court must  
25 accept as true all “well-pleaded factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662,  
26 679 (2009). However, a court is not “required to accept as true allegations that are  
27 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.”  
28 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “In sum, for a

1 complaint to survive a motion to dismiss, the non-conclusory factual content, and  
2 reasonable inferences from that content, must be plausibly suggestive of a claim  
3 entitling the plaintiff to relief.” *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir.  
4 2009) (internal quotation marks omitted).

5 **IV. MOTIONS TO DISMISS BY DARREN CHAKER AND NICOLE CHAKER**  
6 **(ECF Nos. 35, 56)**

7 Defendant Darren Chaker contends that the FAC should be dismissed with  
8 prejudice for failure to state a claim. Defendant Darren Chaker contends that the RICO  
9 cause of action pursuant to 18 U.S.C. §1962(c) must be dismissed because Plaintiffs fail  
10 to adequately allege facts to support the predicate act of extortion. (ECF No. 56-1 at  
11 10). Defendant Darren Chaker contends that Plaintiffs fail to state a claim for extortion  
12 because Plaintiffs do not allege facts to show that Defendant Darren Chaker obtained  
13 property from Plaintiffs. *Id.* at 13. Defendant Darren Chaker further contends that  
14 Plaintiffs lack standing because the FAC fails to allege cognizable damages. *Id.* at 18.  
15 Defendant Darren Chaker contends that the second cause of action for RICO  
16 conspiracy, 18 U.S.C. § 1962(d), fails for the same reasons as the first cause of action.  
17 Defendant Darren Chaker contends that the Court should decline to exercise  
18 supplemental jurisdiction over the state law claim. *Id.* at 19-20.

19 Defendant Nicole Chaker also contends the FAC should be dismissed for failure  
20 to state a claim.<sup>1</sup> (ECF No. 35). Defendant Nicole Chaker contends that her alleged  
21 conduct is protected by the Noerr-Pennington doctrine. (ECF No. 35-1 at 13-16).  
22 Defendant Nicole Chaker contends that the RICO causes of action should be dismissed  
23 because Plaintiffs fail to adequately plead an enterprise with an effect on interstate  
24 commerce, a pattern of racketeering, cognizable damages, or sufficient conduct or

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26 <sup>1</sup> Defendant Nicole Chaker files a request for judicial notice of document in the  
27 record of a district court case from the United States District Court for the Central  
28 District of California. (ECF No. 35-3). Plaintiffs’ also file a request for judicial notice  
of court documents in other cases. (ECF No. 45-1). The Court denies the request for  
judicial notice as unnecessary. *See, e.g., Asvesta v. Petroutsas*, 580 F.3d 1000, 1010  
n. 12 (9th Cir. 2009) (denying request for judicial notice where judicial notice would  
be “unnecessary”).

1 participation in enterprise affairs. *Id.* at 18-25. Defendant Nicole Chaker contends that  
2 the claim under § 1962(d) necessarily fails if the § 1962(c) claim is dismissed. *Id.* at  
3 24. Defendant Nicole Chaker contends that Plaintiffs do not sufficiently allege any  
4 cognizable injury to support the cause of action for civil extortion. *Id.* at 25. Defendant  
5 Nicole Chaker contends that she is “protected by the litigation privilege under  
6 California Civil Code § 47.” *Id.* at 29.

7 Plaintiffs contend that the FAC sufficiently alleges extortion pursuant to the  
8 California Penal Code as a predicate act for the RICO claims. (ECF No. 60). Plaintiffs  
9 contend that Defendant Darren Chaker “has obtained the Plaintiffs’ property, i.e. the  
10 right to publicity, the goodwill in the business, the Plaintiff’s ability to practice law, the  
11 Plaintiff’s identity and the Plaintiffs’ logo.” *Id.* at 14-15. Plaintiffs further contend that  
12 the FAC alleges cognizable damages in the form of injury to a business or property. *Id.*  
13 at 20-21. Plaintiffs contend that federal law, state law, and California state courts  
14 define “property” broadly to include the damage to intangible property interests alleged  
15 in the complaint. *Id.* at 20-26. Plaintiffs contend that intangible property rights were  
16 obtained by Defendant Darren Chaker. *Id.* at 26-30. Plaintiffs contend that the Court  
17 should exercise its supplemental jurisdiction over the state law claim of civil extortion.  
18 *Id.* at 30-31. Plaintiffs contend that the Noerr-Pennington doctrine has no applicability  
19 to this case. (ECF No. 43 at 25). Plaintiffs contend that Defendant Nicole Chaker is  
20 not protected by the litigation privilege under California Civil Code section 47.  
21 Plaintiffs contend that the FAC adequately alleges that Defendant Nicole Chaker  
22 conspired to violate § 1962(c). *Id.* at 20. Plaintiffs contend that the FAC adequately  
23 alleges a civil extortion claim. *Id.* at 22-23.

24 **A. RICO, 18 U.S.C. § 1962(c)**

25 “The Racketeer Influenced and Corrupt Organizations (‘RICO’) Act . . . provides  
26 for both criminal and civil liability.” *Odom v. Microsoft Corp.*, 486 F.3d 541, 545 (9th  
27 Cir. 2007) (citing Pub. L. No. 91-452, § 901, 84 Stat. 922 (1970) (codified at 18 U.S.C.  
28 §§ 1961-1968)). “Under RICO’s civil enforcement mechanism, ‘any person injured in

1 his business or property by reason of a violation of [18 U.S.C. § 1962] may sue therefor  
2 in any appropriate United States district court and shall recover threefold the damages  
3 he sustains and the cost of the suit, including a reasonable attorney’s fee . . . .”  
4 *Canyon Cty v. Sygenta Seeds, Inc.*, 519 F.3d 969, 972 (9th Cir. 2008) (citing 18 U.S.C.  
5 § 1964(c)). “Subsections 1962(a) through (c) prohibit certain ‘pattern[s] of racketeering  
6 activity’ in relation to an ‘enterprise.’” *United Bhd. of Carpenters & Joiners of Am. v.*  
7 *Bldg. & Const. Trades Dep’t, AFL-CIO*, 770 F.3d 834, 837 (9th Cir. 2014). “To have  
8 standing under § 1964(c), a civil RICO plaintiff must show: (1) that his alleged harm  
9 qualifies as injury to his business or property; and (2) that his harm was ‘by reason of’  
10 the RICO violation, which requires the plaintiff to establish proximate causation.” *Id.*  
11 (citing *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992); *Sedima,*  
12 *S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985)).

13 Section 1962(c) provides,

14 It shall be unlawful for any person employed by or associated with any  
15 enterprise engaged in, or the activities of which affect, interstate or foreign  
16 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.

17 18 U.S.C. § 1962(c). “The elements of a civil RICO claim are as follows: (1) conduct  
18 (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as  
19 ‘predicate acts’) (5) causing injury to plaintiff’s business or property.” *United Bhd. of*  
20 *Carpenters*, 770 F.3d at 837 (citing *Living Designs, Inc. v. E.I. Dupont de Nemours &*  
21 *Co.*, 431 F.3d 353, 361 (9th Cir. 2005)).

22 “A ‘pattern of racketeering activity’ requires at least two predicate acts of  
23 racketeering activity, as defined in 18 U.S.C. § 1961(1) within a period of ten years.”  
24 *Canyon Cty*, 519 F.3d at 972. “Racketeering activity” as defined by statute includes  
25 “any act or threat involving . . . extortion, . . . which is chargeable under State law.”  
26 18 U.S.C. § 1961(1)(A). To constitute a predicate act of extortion for purposes of a  
27 RICO cause of action, the alleged act must satisfy the generic definition of extortion –  
28 “obtaining something of value from another with his consent inducted by the wrongful

1 use of force, fear, or threats.” *United Bhd. of Carpenters*, 770 F.3d at 843 (citing  
2 *United States v. Nardello*, 393 U.S. 286 (1969)).

3 In *Scheidler v. National Organization for Women, Inc.*, the Supreme Court  
4 considered whether the use or threat of force, violence or fear to cause a party to “‘give  
5 up’ property rights, namely, ‘a woman’s right to seek medical services from a clinic, the  
6 right of the doctors, nurses or other clinic staff to perform their jobs, and the right of the  
7 clinics to provide medical services free from wrongful threats, violence, coercion and  
8 fear” constituted Hobbs Act extortion or a state extortion offense for purposes of a  
9 RICO predicate act. 537 U.S. 393, 400-01 (2003). The Court determined that although  
10 “[t]here was no dispute . . . that petitioners interfered with, disrupted, and in some  
11 instances completely deprived, respondents of their ability to exercise their property  
12 rights . . . such acts did not constitute extortion because petitioners did not ‘obtain  
13 respondents’ property.” *Id.* at 404-05. The Court further stated, “Petitioners may have  
14 deprived or sought to deprive respondents of their exclusive control of their business  
15 assets, but they did not acquire any such property. Petitioners neither pursued nor  
16 received ‘something of value from’ respondents that they could exercise, transfer or  
17 sell.” *Id.* (citing *Nardello*, 393 U.S. at 290)).

18 In this case, Plaintiffs allege that the requisite predicate acts are multiple acts of  
19 extortion in violation of California Penal Code sections 518, 519, and 523.<sup>2</sup> An act of  
20 extortion which is chargeable under state law can constitute racketeering activity  
21 sufficient to support a RICO claim. *See* 18 U.S.C. § 1961(1)(A). However, to plead  
22 extortion as a predicate act, Plaintiffs must allege facts to show that the act involved  
23 “obtaining something of value from another.” *United Bhd. of Carpenters*, 770 F.3d at  
24 843; *Scheidler*, 537 U.S. at 410 (“[W]here as here the Model Penal Code and a majority  
25 of States recognize the crime of extortion as requiring a party to obtain or to seek to  
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27 <sup>2</sup> Plaintiffs allege the cause of action pursuant to 18 U.S.C. § 1962(c) solely  
28 against Defendant Darren Chaker. Plaintiffs do not allege the cause of action pursuant  
to 18 U.S.C. § 1962(c) against Defendant Nicole Chaker. (ECF No. 25 at 33; ECF No.  
43 at 6).

1 obtain property, as the Hobbs Act requires, the state extortion offense for purposes of  
2 RICO must have a similar requirement.”). Plaintiffs allege that various acts by  
3 Defendant Darren Chaker constitute state extortion offenses and predicate acts under  
4 RICO because Defendant Darren Chaker obtained from Plaintiffs the “intangible right  
5 to practice law and publish decisions on the internet” and the “intangible property right  
6 to practice law free of threats, and to practice in accordance with the California Rules  
7 of Professional Conduct.” (ECF No. 25 at ¶¶ 99-109). The Court concludes that these  
8 factual allegations are insufficient to establish that Defendant Darren Chaker obtained  
9 something of value from Plaintiffs. *Scheidler*, 537 U.S. at 410. Because Plaintiffs fail  
10 to sufficiently allege a predicate act, Plaintiffs fail to state a claim pursuant to 18 U.S.C.  
11 § 1962(c). *See, e.g., United Bhd. of Carpenters*, 770 F.3d at 837 (stating that a plaintiff  
12 must properly allege a predicate act to state a claim under RICO). The motion to  
13 dismiss the cause of action under 18 U.S.C. § 1962(c) filed by Defendant Darren Chaker  
14 is granted.

15 **B. RICO Conspiracy, 18 U.S.C. § 1962(d)**

16 Plaintiffs bring a RICO conspiracy cause of action against all Defendants and  
17 allege that

18 commencing in 2004 and during and continuing at all times to the present,  
19 RICO defendants conspired to violate section 1962(c), i.e. each defendant  
20 agreed that a conspirator (DARREN) would conduct or participate in the  
21 affairs of the Enterprise through a pattern of racketeering, including acts  
22 involving extortion in violation of California state law, as more fully  
23 described in the First Claim for Relief.

24 (ECF No. 25 at ¶ 116).

25 A civil RICO cause of action is available for a violation of 18 U.S.C. § 1962(d).  
26 *See* 18 U.S.C. § 1964(c). Pursuant to 18 U.S.C. § 1962(d), it is “unlawful for any  
27 person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this  
28 section.” 18 U.S.C. § 1962(d). In *Howard v. Am. Online Inc.*, the Ninth Circuit Court  
of Appeals held that “Plaintiffs cannot claim that a conspiracy to violate RICO existed  
if they do not adequately plead a substantive violation of RICO.” 208 F.3d 741, 751  
(9th Cir. 2000). The Court has determined that Plaintiffs did not adequately plead a

1 substantive violation of 18 U.S.C § 1962(c). The motions to dismiss the RICO  
2 conspiracy cause of action under 18 U.S.C. § 1962(d) filed by Defendants Nicole  
3 Chaker and Darren Chaker are granted.

#### 4 **C. Civil Extortion Under State Law**

5 The civil extortion cause of action alleged by Plaintiffs against Defendants  
6 Darren Chaker and Nicole Chaker does not arise under federal law. The FAC states that  
7 this case is properly in federal court based on federal question jurisdiction<sup>3</sup> and that this  
8 Court has supplemental jurisdiction over the remaining state law claim pursuant to 28  
9 U.S.C. § 1367(a) because it is “so related to the claims in the action within the Court’s  
10 original jurisdiction that they form part of the same case or controversy under Article  
11 III of the United States Constitution.” (ECF No. 25 at 2). The federal supplemental  
12 jurisdiction statute provides:

13 [I]n any civil action of which the district courts have original jurisdiction,  
14 the district courts shall have supplemental jurisdiction over all other  
15 claims that are so related to claims in the action within such original  
jurisdiction that they form part of the same case or controversy under  
Article III of the United States Constitution.

16 28 U.S.C. § 1367(a). “The district courts may decline to exercise supplemental  
17 jurisdiction over a claim under subsection (a) if . . . the district court has dismissed all  
18 claims over which it has original jurisdiction[.]” 28 U.S.C. § 1367(c).

19 Having dismissed the only federal claims asserted against Defendant Darren  
20 Chaker and Nicole Chaker, the Court declines to exercise supplemental jurisdiction over  
21 this state law claim pursuant to 28 U.S.C. § 1367(c). *See San Pedro Hotel Co., Inc. v.*  
22 *City of Los Angeles*, 159 F.3d 470, 478 (9th Cir. 1998). The motions to dismiss the civil  
23 extortion cause of action filed by Defendants Nicole Chaker and Darren Chaker are  
24 granted.

#### 25 **V. MOTIONS TO STRIKE BY DARREN CHAKER AND NICOLE CHAKER**

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27 <sup>3</sup> Plaintiffs also allege, “This Court has subject-matter jurisdiction over this action  
28 pursuant to 28 U.S.C. § 1332.” (ECF No. 25 at ¶ 1). Plaintiffs have failed to allege  
sufficient facts to establish diversity jurisdiction and this statement appears to be in  
reference to 28 U.S.C. § 1331.

1 (ECF Nos. 55, 36)

2 Defendant Darren Chaker filed a motion to strike portions of the FAC pursuant  
3 to Federal Rule of Civil Procedure 12(f). (ECF No. 55). The Court has dismissed the  
4 FAC as to Darren Chaker. Accordingly, the Court denies as moot Defendant Darren  
5 Chaker's motion to strike. (ECF No. 55).

6 Defendant Nicole Chaker filed an anti-SLAPP motion to strike the third cause of  
7 action pursuant to California Code of Civil Procedure section 425.16 and for an award  
8 of attorney's fees pursuant to California Code of Civil Procedure section 425.16(c).  
9 (ECF No. 36). As a result of the Court's decision to decline supplemental jurisdiction  
10 over the state law civil extortion claim, the Court does not reach the merits of this  
11 motion. The Court denies as moot Defendant Nicole Chaker's anti-SLAPP motion to  
12 strike and for attorney's fees and costs. (ECF No. 36).

13 **VI. MOTION TO DISMISS OR QUASH SERVICE BY VANIA CHAKER (ECF**  
14 **No. 59)**

15 "Specially Appearing Defendant" Vania Chaker moves the Court pursuant to  
16 Rule 12(b)(5) for an order dismissing the complaint or alternatively, for an order  
17 quashing defective service. (ECF No. 59). Defendant Vania Chaker contends that  
18 Plaintiffs failed to serve her prior to the Court's February 27, 2017 deadline for service.  
19 *Id.* at 4. Defendant Vania Chaker contends that Plaintiffs failed to serve her by personal  
20 service on February 6, 2017 at 6:02 p.m. as represented to the Court by Plaintiffs. *Id.*  
21 at 3. Defendant Vania Chaker contends that she has "strong and convincing" evidence  
22 that Plaintiff's purported proof of service is fabricated because Defendant Vania Chaker  
23 was not at this location at that time.<sup>4</sup> *Id.* at 3-5. Defendant Vania Chaker further  
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25 <sup>4</sup> Defendant Vania Chaker requests judicial notice of decision of the California  
26 Court of Appeal, Fourth District, Division 1. (ECF No. 59-3). Plaintiffs object to the  
27 request for judicial notice. (ECF No. 64-5). The Court does not rely on this material  
28 in reaching its decision and denies the request for judicial notice. *See, e.g., Asvesta v.*  
*Petroutsas*, 580 F.3d 1000, 1010 n. 12 (9th Cir. 2009) (denying request for judicial  
notice where judicial notice would be "unnecessary"). Additionally, Defendant Vania  
Chaker filed evidentiary objections to declarations filed by Plaintiffs. (ECF Nos. 69-2,  
69-3, 69-4). The Court has reviewed and considered these objections. A ruling on

1 contends that the Summons filed by Plaintiffs incorrectly names Vania Chaker as an  
2 individual and as trustee of Vania Chaker Trust. *Id.* at 3. Defendant Vania Chaker  
3 contends she should be dismissed from this action because Plaintiffs have failed to  
4 complete service despite two extensions of time and have failed to establish good cause  
5 for another extension of time. *Id.* at 7.

6 Plaintiffs contend that Defendant Vania Chaker was properly served on February  
7 6, 2017. Plaintiffs contend that the evidence offered in support of Defendant Vania  
8 Chaker's motion is not credible and does not establish that she was not home at the time  
9 stated in the proof of service filed with the Court.<sup>5</sup> (ECF No. 64). Plaintiffs contend  
10 that the Court should find service proper based on the substantial compliance doctrine.  
11 *Id.* at 5-6. Plaintiffs request that the Court deny this motion and order Defendant Vania  
12 Chaker to respond to the complaint within ten days. Plaintiffs request that, if the Court  
13 grants any portion of the motion, the Court extend time for service, designate counsel  
14 for Vania Chaker as agent for service of process, and order that her counsel accept the  
15 service by email. *Id.* at 8.

#### 16 **A. Legal Standard**

17 "Without a proper basis for jurisdiction, or in the absence of service of process,  
18 the district court has no power to render any judgment against the defendant's person  
19 or property unless the defendant has consented to jurisdiction or waived the lack of  
20 process." *S.E.C. v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007). "A federal court is  
21 without personal jurisdiction over a defendant unless the defendant has been served in  
22 accordance with Fed.R.Civ.P. 4." *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986),  
23 amended, 807 F.2d 1514 (9th Cir. 1987) (citing *Jackson v. Hayakawa*, 682 F.2d 1344,  
24 1347 (9th Cir. 1982)). Federal Rule of Civil Procedure 12(b)(5) authorizes a defendant  
25 to move to dismiss the complaint for insufficient service of process. Fed. R. Civ. P.

26 \_\_\_\_\_  
27 these objections is not necessary to resolve this motion.

28 <sup>5</sup> Plaintiffs filed evidentiary objections to the declaration filed by Vania Chaker  
in support of her motion. (ECF No. 64-4). The Court has reviewed and considered  
these objections. A ruling on these objections is not necessary to resolve this motion.

1 12(b)(5). Once a party challenges service, the plaintiff bears the burden to show that  
2 service was valid under Rule 4. *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004).  
3 The court has discretion to dismiss an action or quash service if there is insufficiency  
4 of process or insufficiency of service. *See SHJ v. Issaquah School District No. 411*, 470  
5 F.3d 1288, 1293 (9th Cir. 2006) (citing *Stevens v. Security Pac. Nat'l Bank*, 538 F.2d  
6 1387, 1389 (9th Cir. 1976)).

7 Under Federal Rule of Civil Procedure 4(e), a plaintiff may serve an individual  
8 within a judicial district of the United States by (1) following state law service  
9 requirements, or (2) service may be effected upon an individual by (A) delivering a  
10 copy of the summons and complaint to the individual personally, (B) by leaving a copy  
11 of each “at the individual’s dwelling or usual place of abode” with someone of suitable  
12 age and discretion who resides there; or (C) by delivering a copy of each to an “agent  
13 authorized by appointment or by law to receive service of process.” Fed. R. Civ. P.  
14 4(e).

15 California Code of Civil Procedure section 415.20(a) states,

16 In lieu of personal delivery of a copy of the summons and complaint to the  
17 person to be served...a summons may be served by leaving a copy of the  
18 summons and complaint during usual office hours in his or her office, or  
19 if no physical address is known, at his or her usual mailing address... with  
20 the person who is apparently in charge thereof, and by thereafter mailing  
a copy of the summons and complaint by first-class mail, postage prepaid  
to the person to be served at the place where a copy of the summons and  
complaint were left....

21 Cal. Code of Civ. P. § 415.20(a).

22 If a party receives sufficient notice of the complaint, Rule 4 is to be “liberally  
23 construed” to uphold service. *Chan v. Soc’y Expeditions, Inc.*, 39 F.3d 1398, 1404 (9th  
24 Cir. 1994). “However, ‘neither actual notice nor simply naming the defendant in the  
25 complaint will provide personal jurisdiction without substantial compliance with Rule  
26 4.’” *Travelers Cas. & Sur. Co. of Am. v. Brenneke*, 551 F.3d 1132, 1135 (9th Cir. 2009)  
27 (citing *Benny*, 799 F.2d at 492 (citation and quotes omitted)).

## 28 **B. Discussion**

Plaintiffs filed their original complaint on August 29, 2016 (ECF No. 1) and the

1 FAC on December 5, 2016 (ECF No. 25). On December 20, 2016, this Court issued an  
2 order granting Plaintiffs a second extension of time in which to complete service upon  
3 Defendant Vania Chaker. (ECF No. 38). The Order stated, “Plaintiffs’ new deadline  
4 to achieve service on Vania Chaker is Monday, February 27, 2017.” *Id.*

5 On February 27, 2017, Plaintiffs filed Proof of Service of Summons in the  
6 Complaint. (ECF No. 58). The document states that Defendant Vania Chaker was  
7 served by personal service on February 6, 2017 at 6:02 p.m. in San Diego by a  
8 registered process server. (ECF No. 58). Defendant Vania Chaker asserts she was not  
9 served on February 6, 2017. Defendant Vania Chaker provides receipts from purchases  
10 she made in Manhattan Beach, California around the time of service on February 6,  
11 2017 to establish that she was not in San Diego at this time and date.

12 In a declaration filed in support of Plaintiffs’ opposition, the process server states  
13 that on February 6, 2017 around 6 p.m., he observed Vania Chaker at the address stated  
14 in the proof of service document. He states that he

15 jogged up towards the driveway, calling out “Hey you, Vania” or words  
16 to that effect. When I made the statement Ms. Chaker was in speaking  
17 distance to me, and my voice was sufficiently elevated to provide her  
18 notice that I was attempting to contact her. However, upon hearing my  
19 shout, Ms. Chaker, who had exited from the garage . . . made a dash for  
20 the front floor of the house. . . . Ms. Chaker entered the house and closed  
21 the door behind her. . . . I called out service by stating “your served Vania  
22 Chaker”, and I tossed the papers over the fence, . . . I was not able to  
23 actually ‘touch’ her with the papers as she was behind a closed gate, and  
24 I did not intend to go off the public sidewalk onto private property.  
25 However I was within 10 yards of her, and as close as I could get in light  
26 of the barrier imposed by her fence.

27 (ECF No. 64-1 at 4).

28 Based on the statements offered in the declaration by the process server, the  
Court cannot conclude that Plaintiffs delivered a copy of the summons and complaint  
to Defendant Vania Chaker personally. *See* Fed. R. Civ. P. 4(e). Plaintiffs further  
contend that the Court should uphold service as proper under the substantial compliance  
doctrine. In *Travelers Cas. & Sur. Co. of Am. v. Brenneke*, the Ninth Circuit Court of  
Appeals held,

Sufficient service may be found where there is a good faith effort to

1 comply with the requirements of Rule 4(e)(2) which has resulted in  
2 placement of the summons and complaint within the defendant's  
3 immediate proximity and further compliance with Rule 4(e)(2) is only  
prevented by the defendant's knowing and intentional actions to evade  
service.

4 551 F.3d at 1136. While Plaintiffs assert that Defendant Vania Chaker has attempted  
5 to evade service and that the process server left the papers in her proximity, Defendant  
6 Vania Chaker provides evidence that she was not present at the address when the  
7 alleged service was completed. The Court concludes that Plaintiffs have failed to  
8 satisfy their burden to demonstrate that service upon Defendant Vania Chaker was  
9 proper under Rule 4. *See id.* at 1135 (“neither actual notice nor simply naming the  
10 defendant in the complaint will provide personal jurisdiction without substantial  
11 compliance with Rule 4.”). The Court grants Defendant Vania Chaker's motion to  
12 quash service of process. *See Issaquah School District No. 411*, 470 F.3d at 1293

13 However, the Court has determined that Plaintiffs did not adequately plead a  
14 substantive violation of 18 U.S.C § 1962(c). Accordingly, Plaintiffs' claim for a  
15 conspiracy to violate RICO pursuant to 18 U.S.C. § 1962(d) necessarily fails. *See supra*  
16 *Part IV.B; Howard*, 208 F.3d at 751. Conspiracy to violate RICO pursuant to 18 U.S.C.  
17 § 1962(d) is the only cause of action alleged against Defendant Vania Chaker. The  
18 Court dismisses the FAC without prejudice as to Defendant Vania Chaker. (ECF No.  
19 25).

## 20 **VII. MOTION FOR SANCTIONS BY DARREN CHAKER (ECF No. 66)**

21 Defendant Darren Chaker filed a motion for sanctions against Plaintiffs pursuant  
22 to Rule 11 of the Federal Rules of Civil Procedure, or alternatively, the Court's inherent  
23 power. (ECF No. 66). Defendant Darren Chaker contends that sanctions are warranted  
24 because (1) the allegations in the FAC are “factually baseless from an objective  
25 perspective, and were included in the FAC for an improper purpose”; (2) Plaintiffs'  
26 RICO claims are frivolous; and (3) Plaintiffs' RICO claims were brought “for the  
27 improper purpose of naming Darren's mother . . . and sister . . . as Defendants . . . solely  
28 to harass Darren and his family.” *Id.* at 2.

1 Plaintiffs contend that the motion is without merit and that the allegations of the  
2 FAC are proper, non-frivolous, and sufficiently supported by facts. (ECF No. 75).

3 Rule 11 of the Federal Rules of Civil Procedure provides in part,

4 b) Representations to the Court. By presenting to the court a pleading,  
5 written motion, or other paper--whether by signing, filing, submitting, or  
6 later advocating it--an attorney or unrepresented party certifies that to the  
best of the person's knowledge, information, and belief, formed after an  
inquiry reasonable under the circumstances:

7 (1) it is not being presented for any improper purpose, such as to harass,  
8 cause unnecessary delay, or needlessly increase the cost of litigation;

9 (2) the claims, defenses, and other legal contentions are warranted by  
10 existing law or by a nonfrivolous argument for extending, modifying, or  
reversing existing law or for establishing new law;

11 (3) the factual contentions have evidentiary support or, if specifically so  
12 identified, will likely have evidentiary support after a reasonable  
opportunity for further investigation or discovery;...

13 Fed. R. Civ. P. 11(b)(3). When a “complaint is the primary focus of Rule 11  
14 proceedings, a district court must conduct a two-prong analysis to determine (1)  
15 whether the complaint is legally or factually baseless from an objective perspective, and  
16 (2) if the attorney has conducted a reasonable and competent inquiry before signing and  
17 filing it.” *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002) (quotation  
18 omitted). “As shorthand for this test, we use the word ‘frivolous’ to denote a filing that  
19 is both baseless and made without a reasonable and competent inquiry.” *Holgate v.*  
*Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005) (quotation omitted).

20 After reviewing the motion and the submissions of the parties, the Court finds  
21 that the record in this case does not support the imposition of sanctions at this stage in  
22 the proceedings. The motion for sanctions is denied. (ECF No. 66).

### 23 **VIII. CONCLUSION**

24 IT IS HEREBY ORDERED that Defendant Darren Chaker’s motion to dismiss  
25 the First Amended Complaint is granted. (ECF No. 56). The First Amended Complaint  
26 (ECF No. 25) is dismissed without prejudice as to Defendant Darren Chaker.  
27 Accordingly, Defendant Darren Chaker’s motion to strike portions of the First  
28 Amended Complaint pursuant to Federal Rule of Civil Procedure 12(f) is denied as

1 moot. (ECF No. 55).

2 IT IS HEREBY ORDERED that Defendant Darren Chaker's motion for sanctions  
3 is denied. (ECF No. 66)

4 IT IS HEREBY ORDERED that Defendant Nicole Chaker's motion to dismiss  
5 the First Amended Complaint is granted. (ECF No. 35). The First Amended Complaint  
6 (ECF No. 25) is dismissed without prejudice as to Defendant Nicole Chaker. Defendant  
7 Nicole Chaker's anti-SLAPP motion to strike and for attorneys' fees and costs is denied  
8 as moot. (ECF No. 36).

9 IT IS HEREBY ORDERED that Defendant Vania Chaker's motion to quash the  
10 service of process is granted. (ECF No. 59). The Court quashes service upon Defendant  
11 Vania Chaker and grants Plaintiffs sixty (60) days from the date any amended  
12 complaint is filed upon which to perfect service upon Vania Chaker in accordance with  
13 the requirements of Federal Rule of Civil Procedure 4.

14 IT IS FURTHER ORDERED that the First Amended Complaint (ECF No. 25)  
15 is dismissed without prejudice as to Defendant Vania Chaker. Plaintiffs shall file any  
16 motion for leave to file an amended complaint pursuant to Local Rule 7.1 and within  
17 thirty (30) days of the date this Order is issued.

18 DATED: August 28, 2017

19   
20 **WILLIAM Q. HAYES**  
21 United States District Judge  
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