List Interactive, Ltd., et al v. Knights of Columbus et al Doc. 54

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No 17-cv-00210-RBJ

LIST INTERACTIVE, LTD. d/b/a UKnight Interactive, and
LEONARD S. LABRIOLA

Plaintiffs,

v.

KNIGHTS OF COLUMBUS,
THOMAS P. SMITH, JR., and,
MATTHEW A. ST. JOHN,

Defendants.

ORDER

This matter is before the Court on two pending motions: individual defendants Thomas Smith, Jr. and Matthew St. John's motion to dismiss under Rule 12(b)(2) for lack of personal jurisdiction, ECF No. 20, and defendant the Knights of Columbus' motion to dismiss under Rule 12(b)(6) and to strike under Rule 12(f), ECF No. 23. For the reasons below, the Court GRANTS the individual defendants' motion to dismiss [ECF No. 20] and GRANTS IN PART and DENIES IN PART the Knights of Columbus' motion to dismiss and to strike portions of plaintiffs' amended complaint [ECF No. 23]. Accordingly, the Court dismisses defendants Mr. Smith and Mr. St. John from this action and dismisses Claim One and Claim Eight of plaintiffs' amended complaint asserted against defendant the Knights of Columbus.

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FACTS[1]

Plaintiffs in this action are List Interactive, Ltd., d/b/a UKnight Interactive ("UKnight")—a Colorado-based company that designs web systems—and the company's Colorado-based manager, Mr. Leonard Labriola. Am. Compl., ECF No. 15, at ¶¶3–4, 12. They allege that in September of 2011 UKnight reached an agreement with defendant the Knights of Columbus—a 501(c)(8) tax-exempt religious and charitable organization registered in Connecticut—whereby the Knights of Columbus would announce to the broader Knights of Columbus fraternity that UKnight would be the designated vendor for the fraternity's members-only life insurance business. *Id.* at ¶¶5, 17–18.

The Knights of Columbus, however, never did so. Plaintiffs subsequently brought suit against the organization and defendants Mr. Smith and Mr. St. John—the Knights of Columbus' Executive Vice President/Chief Insurance Officer and Direct of Insurance Marketing, respectively. *Id.* at ¶¶6–7. Far from a simple contract dispute, plaintiffs also allege, among other things, that during their dealings with defendants the Knights of Columbus stole UKnights' trade secrets, and that plaintiffs discovered that the Knights of Columbus was running its life insurance business fraudulently. *See id.* at ¶¶31–47. Plaintiffs contend that the Knights of Columbus breached its agreement with UKnight and stole UKnight's system for its own use to prevent a widespread fraudulent scheme from being exposed. *See generally id.*

The "Knights of Columbus" Organization

Before discussing plaintiffs' allegations and the background of this case in greater depth, it is important to explain a little bit about how the Knights of Columbus is organized. As

[1] The following facts are taken from plaintiffs' amended complaint. *See* Am. Compl., ECF No. 15. They are taken as true for purposes of this motion. *See Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008) (plaintiff's allegations assumed to be true for purposes of Rule 12(b)(2) motion when no evidentiary hearing is held); *Robbins v. Wilkie*, 300 F.3d 1208, 1210 (10th Cir. 2002) (court accepts well-pleaded allegations as true for purposes of Rule 12(b)(6) motions).

mentioned above, the Knights of Columbus is a 501(c)(8) tax-exempt religious and charitable fraternity. *Id.* at ¶5. As a 501(c)(8) organization, the Knights of Columbus must provide some form of life insurance for its members. *See* 26 U.S.C. § 501(c)(8)(B) (defining a "[f]raternal beneficiary societ[y]" as "providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents").

Moreover, to qualify for 501(c)(8) tax-exempt status the Knights of Columbus must be organized under the "lodge system." *Id.* § 501(c)(8)(A). Basically that means that two things must be true: first, there must be some kind of "parent" organization; and second, there must be "subordinate" branches (i.e., lodges) that are largely self-governing but nonetheless are chartered by the parent organization to carry out its mission. *See* 26 C.F.R. § 1.501(c)(8)-1 ("Operating under the lodge system means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called lodges, chapters, or the like.").

That seems clear enough. However, a point of contention in this case (and a relevant one at that, see *infra*) has been how to refer to this "parent" organization appropriately in order to distinguish it from the broader association of organizations and individuals it oversees. In other words, when the parties refer to defendant "the Knights of Columbus," do they mean the separate, "parent" organization in Connecticut with whom plaintiffs allegedly struck a deal back in September of 2011, or are they referring to the broader fraternal organization as a whole, sometimes referred to as "The Order of the Knights of Columbus" or simply "The Order?"

For their part, plaintiffs refer to the "Knights of Columbus' as the broader fraternal organization comprised of the parent organization and "constituent local councils, assemblies, independent general insurance agents, and members." ECF No. 15 at ¶5. By contrast, they refer

to the “parent” organization as the Knights of Columbus Supreme Council, which they refer to in shorthand as “KC Supreme” or simply “Supreme.” *Id.* at ¶5 & n.1. Throughout plaintiffs' briefs, then, KC Supreme and Supreme refer to defendants' “national headquarters council and insurance company located in New Haven, Connecticut” with whom UKnight allegedly formed a contract. *Id.* at ¶5.

There are two problems with plaintiffs' labels. First, although plaintiffs bring several claims against KC Supreme (as opposed to the Knights of Columbus), see, e.g., ECF No. 15 at ¶¶122–38 (Claim Five, Six, and Seven), “KC Supreme” is not a named defendant in this action whereas the Knights of Columbus is. Second, and perhaps more importantly, there is no such organization called “KC Supreme.” Rather, as defendant explained during oral arguments, the “Supreme Council” of the Knights of Columbus refers instead to an unincorporated governing body of the broader fraternity that meets annually to discuss and vote on fraternity issues. This body, which is partially comprised of individuals from the “lodges,” is separate from the Board of Directors of the Knights of Columbus as well as from the “parent” organization headquartered in New Haven with whom plaintiffs allegedly dealt.

Despite those problems, it is nevertheless clear that when plaintiffs refer to “KC Supreme” what they really intend to do is to single out the New Haven-based “Knights of Columbus” parent organization that effectively runs the fraternity's insurance business. Accordingly, throughout this order when I refer to “defendant the Knights of Columbus” or simply “the Knights of Columbus,” I will be referring to the parent organization headquartered in New Haven with whom plaintiffs allege they negotiated a contract. To distinguish that organization from what is the broader fraternity comprised of this parent company, the lodges, local members, and agents, I will refer to those entities collectively as the “the Order.”

The Parties' Dealings

Now back to the controversy at hand. From plaintiffs' amended complaint it appears that the events giving rise to this suit began back in the summer of 2011. *Id.* at ¶16. On August 5, 2011 plaintiffs allege the Mr. Labriola e-mailed the Knights of Columbus to outline a proposal for how "the many, fractionated parts of the [Order]" could use UKnight's single online platform for purchases of life insurance and, by so doing, significantly increase the fraternity's membership and sales of the Knights of Columbus' financial products.[2] *Id.*

Following this e-mail, plaintiffs allege that they were contacted by representatives of the Knights of Columbus and invited to New Haven for high-level meetings that would span three days. *Id.* at ¶17. These meeting commenced on September 8, 2011. *Id.* By September 10 the Knights of Columbus allegedly informed UKnight that it was that organization's choice to be the Order's designated vendor. *Id.* at ¶¶17–18. The Knights of Columbus then allegedly offered to make a formal announcement to that effect in exchange for UKnight's incorporating some suggestions by the Knights of Columbus' legal department into its platform. *Id.* Over the next few days, weeks, and months, plaintiffs allege that the Knights of Columbus repeatedly intimated that it would make this announcement in the near future, even going so far as to send UKnight necessary data files to bring all 15,392 local councils onto the network. *Id.* at ¶¶17–20.

By June of 2012 the Knights of Columbus' legal department allegedly finalized the modifications it wished to see in UKnight's platform. *Id.* at ¶18. Two months later in August of 2012 the Knights of Columbus approved those modifications. *Id.* All that was left, according to plaintiffs, was for the Knights of Columbus to subsequently make the announcement it had promised and to then instruct the Order to adopt plaintiffs' system. *See id.*

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[2] Many of these lodges in Texas were already using UKnight's system when UKnight proposed to the Knights of Columbus to use the system Order-wide. ECF No. 15 at ¶15.

But neither that announcement nor that instruction ever came. Instead, plaintiffs allege, the Knights of Columbus continually provided excuses for why it could not make an announcement, and it strung plaintiffs along by reiterating to them that an announcement was imminent. *See id.* at ¶¶29–30. For instance, in November of 2013 representatives of the Knights of Columbus informed UKnight that the Knights of Columbus could not make an announcement at its meeting that month because it had to focus instead on humanitarian needs following the then-recent typhoon in the Philippines. *Id.* at ¶29. Similarly, in December of 2013 after Mr. Labriola e-mailed the Knights of Columbus complaining about how UKnight was suffering financial hardship from these delays, plaintiffs claim that the Knights of Columbus reassured them that everything was on track, and that "we can get back to business in the next few days." *Id.*at ¶30. According to plaintiffs, however, days turned to weeks, weeks to months, and months to years without any announcement. Plaintiffs also claim that despite their attempts to obtain a written contract spelling out in black and white the parties' agreement, the Knights of Columbus refused. *See id.* at ¶¶ 26–28.

Predictably, as the years dragged on with no announcement the parties' relationship soured. For example, on January 24, 2014 plaintiffs contend that Mr. Smith falsely informed a Knights of Columbus Operations Committee meeting in New Haven that Mr. Labriola had lied to him and his agents about money. *Id.* at ¶48. It was during that meeting that the Knights of Columbus had most recently promised to UKnight that it would make its long-awaited formal announcement about adopting UKnight's platform. *Id.* at ¶49. Mr. Smith's comments, however, allegedly "poisoned the atmosphere against UKnight[.]" *Id.* Needless to say, no announcement was made during that meeting. *Id.*

Instead, plaintiffs claim, Mr. Smith contacted them and demanded that Mr. Labriola never speak to many of UKnight's most important customers again, including (1) anyone at the Knights of Columbus in New Haven, (2) any general agent of the Order, and (3) any state council officer within the Order. *Id.* at ¶50. Apparently in an effort to maintain what business relationship the parties had remaining at that point, UKnight claims that it acceded to Mr. Smith's demands. *Id.* at ¶51.

Despite all that a deal was apparently still on the table. Indeed, soon thereafter plaintiffs allege that the Knights of Columbus hired a technology consultant, Mr. Ian Kinkade, to evaluate UKnight's system and then report back to the Operations Committee with comments about how the system performed. *Id.* at ¶52. Mr. Kinkade's comments were apparently quite positive, which motivated the Knights of Columbus to again call a vote to move forward with the announcement. *Id.* Again, however, that vote never happened.

Instead, the Knights of Columbus apparently reversed its decision to take a vote the very next day, deciding that it would conduct a complete survey of all current UKnight subscribers to make sure this was the system it wanted to use. *Id.* UKnight subsequently provided the Knights of Columbus with a survey that plaintiffs claim "overwhelmingly confirmed that UKnight was an outstanding tool[.]" *Id.* at ¶53. Plaintiffs claim that they were again optimistic that an announcement was imminent.

But again, in hindsight, one wasn't. Nevertheless, in early 2015 members of the Knights of Columbus (including Mr. St. John and Mr. Kinkade) traveled to Dallas, Texas (the home of UKnight's other two partners) to meet with UKnight partner and technology manager Terry Clark about moving forward with an announcement. *Id.* at ¶56. According to plaintiffs, however, the Knights of Columbus' (or, at the very least, Mr. St. John's) motivations for

travelling to Dallas were actually quite nefarious. That is, plaintiffs allege that Mr. St. John instructed Mr. Kinkade to stay behind after the parties' meeting to see if he could dive deeper into the inner workings of UKnight's system so that the Knights of Columbus could hire another developer to replicate UKnight's platform for the organization. *See id.*

Allegedly after becoming apprised of what Mr. St. John was attempting to do, someone at UKnight contacted Mr. St. John and asked him to send a "scope of work" document in order to clarify the Knights of Columbus' intentions. *Id.* at ¶57. Mr. St. John allegedly repeatedly refused to do so. *Id.* Instead, plaintiffs allege, Mr. St. John demanded that UKnight provide him with all of *its* strategies, design data, and internal system information so that he could better understand how and what UKnight planned to do with its system. *Id.* Apparently taken aback by Mr. St. John's demand and believing it was a not-so-covert attempt to obtain UKnight's trade secrets, plaintiffs refused. *Id.* at ¶¶57–58. They nonetheless reiterated an earlier proposal they had made whereby Mr. Labriola and Mr. Clark would travel to New Haven to work with Mr. St. John's team to clear up any issues the parties had. *Id.* According to plaintiffs, "[t]his proposal was ignored." *Id.* at ¶58.

A few months later, specifically on January 4, 2016, the parties' relationship officially ended. On that date, plaintiffs allege that Mr. St. John sent Mr. Labriola and Mr. Clark an e-mail in which he asserted that the parties "have not had any contractual relationship," and that "the Knights of Columbus has never conferred official or preferred vendor status on UKnight." *Id.* Mr. St. John then explained that the Knights of Columbus had decided to enlarge its search for a potential vendor, and that UKnight should no longer use the Knights of Columbus' name in any of its business solicitations. *Id.* Soon after Mr. St. John sent that e-mail the Knights of Columbus allegedly hired Mr. Kinkade (i.e., its former technology consultant) to become the

organization's new Director of eBusiness. *Id.* at ¶59. The proverbial straw that broke the camel's back for plaintiffs occurred soon thereafter in April of 2016 when the Knights of Columbus allegedly sent several potential vendors a Request for Proposal that included UKnight's specific design elements and internal workings. *Id.*

Plaintiffs' Allegations of a Fraudulently-Run Insurance Business

What makes this case more than a simple breach of contract or theft of trade secret suit are the allegations plaintiffs make next. During the course of the parties' dealings plaintiffs contend that they discovered that the Knights of Columbus had been running and was continuing to run its insurance business fraudulently. *Id.* at ¶¶31–47. For example, plaintiffs claim that while the events described above were unfolding they were informed by numerous members of the Order in New Jersey, Illinois, and Texas that the Knights of Columbus continually and creatively inflated the background and number of the members on its rolls. *See, e.g.*, *id.* at ¶40. According to plaintiffs, this was a deliberate scheme by the Knights of Columbus to prop up their insurance business by mischaracterizing their risk pool and thereby deceiving ratings agencies, reinsurers, and, importantly, their current and prospective members. *See id.* at ¶¶31–47.

Plaintiffs' allegations on this point are lengthy and numerous. *See, e.g.*, *id.* at ¶¶31–47, 84–94. However, for purposes of the two pending motions the Court need not discuss in any greater depth these allegations of fraud except to point out that plaintiffs allege that the Knights of Columbus continually pushed off an announcement and thereafter sought to reproduce UKnight's system "in-house" or with a different company because they feared that doing business with UKnight would expose their allegedly fraudulent scheme. *See, e.g.*, *id.*at ¶49.

Procedural History

On January 24, 2017 plaintiffs brought suit against the Knights of Columbus, Mr. St. John, and Mr. Smith. Compl. ECF No. 1. Roughly two and half weeks after filing suit plaintiffs amended their complaint. ECF No. 15.

Plaintiffs' amended complaint, which is the operative pleading in this action, asserts eight claims for relief: (1) claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962(c) and (d), against all three defendants, *id.* ¶¶62–103; (2) a claim for breach of contract against the Knights of Columbus, *id.*at ¶¶104–10; (3) a claim for promissory estoppel against the Knights of Columbus, *id.* at ¶¶111–15; (4) a claim for misappropriation of trade secrets under C.R.S. § 7-74-101, *et seq.*, against the Knights of Columbus and Mr. St. John, *id.* at ¶¶116–21; (5) a claim for intentional interference with prospective business relationship against the Knights of Columbus, *id.* at ¶¶122–25; (6) a claim for fraudulent misrepresentation against the Knights of Columbus, *id.* at ¶¶126–33; (7) a claim for negligent misrepresentation against the Knights of Columbus, *id.* at ¶¶134–38; and (8) a claim for slander *pro quod* against the Knights of Columbus and Mr. Smith, *id.* at ¶¶139–43.[3]

Twelve days after plaintiffs filed their amended complaint defendants Mr. Smith and Mr. St. John filed a motion to dismiss under Rule 12(b)(2). ECF No. 20. The very next day the Knights of Columbus filed a motion to dismiss of their own under Rule 12(b)(6) to dismiss Claim One (RICO), Claim Two (breach of contract), Claim Three (promissory estoppel), and Claim Eighth (slander). ECF No. 23. They also seek to strike from the amended complaint paragraphs 1, 31–47, 84–86, and 89–101 as "immaterial, impertinent, and scandalous" under

[3] Mr. Labriola only joins Claim Eight of plaintiffs' amended complaint. Furthermore, although plaintiffs name "KC Supreme" instead of "the Knights of Columbus" in Claims Five, Six, and Seven, KC Supreme is not a named defendant in this action. Accordingly, for the reasons described *supra*, I will construe those claims as being asserted by UKnight against the only entity actually named in this action: the Knights of Columbus.

Rule 12(f). *Id.* In early spring of this year both motions to dismiss became ripe. ECF Nos. 20, 23, 35–36, 42–43. Oral arguments on these motions were held on July 20, 2017. ECF No. 53. The Court apologizes for the delay in getting to these motions.

STANDARD OF REVIEW

I. Rule 12(b)(2).

The court may, in its discretion, address a Rule 12(b)(2) motion based solely on the documentary evidence on file or by holding an evidentiary hearing. S*ee FDIC v. Oaklawn Apartments*, 959 F.2d 170, 174 (10th Cir. 1992). Where the court rules on the motion based only on the documentary evidence before it, the plaintiff may meet its burden with a prima facie showing of personal jurisdiction. *See Benton v. Cameco Corp*., 375 F.3d 1070, 1074 (10th Cir. 2004). The court "tak[es] as true all well-pled (that is, plausible, non-conclusory, and non-speculative) facts alleged" in the complaint, and "any factual disputes in the parties' affidavits must be resolved in plaintiff's favor." *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008). However, when an evidentiary hearing is held in order to resolve factual disputes relating to jurisdictional questions, the plaintiff must prove facts supporting jurisdiction by a preponderance of the evidence. *See Oaklawn*, 959 F.2d at 174.

No party has requested a hearing on the personal jurisdiction motion. The individual defendants have nonetheless both submitted affidavits in support of their respective positions. The Court elects to resolve the motion based on the evidence submitted. Before turning to the merits, however, I will briefly review here the legal framework for analyzing personal jurisdiction.

A. <u>Fourteenth Amendment Due Process and Minimum Contacts</u>.

Typically, to establish personal jurisdiction over an out-of-state defendant "a plaintiff must show that jurisdiction is legitimate under the laws of the forum state and that the exercise of jurisdiction does not offend the due process clause of the Fourteenth Amendment." *Emp'rs Mut. Cas. Co. v. Bartile Roofs, Inc.*, 618 F.3d 1153, 1159 (10th Cir. 2010). Colorado's "long-arm" statute, C.R.S. § 13-1-124, has been interpreted to confer the maximum jurisdiction permitted by constitutional due process. *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187, 1193 (Colo. 2005). Thus, in Colorado, the sole inquiry is typically whether exercising jurisdiction comports with due process under the Fourteenth Amendment. *See id.*

The Due Process Clause of the Fourteenth Amendment "operates to limit the power of a State to assert in personam jurisdiction over a nonresident defendant." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413–14 (1984). In order to exercise jurisdiction, the Supreme Court has held, the out-of-state defendant must have "minimum contacts" with the forum state such that the exercise of jurisdiction does not "offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. State of Wash. Office of Unemployment Comp. and Placement*, 326 U.S. 310, 323 (1945). Minimum contacts must be based on "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Hanson v. Denkla*, 357 U.S. 235, 253 (1958). A defendant's contacts with the forum must be such that the defendant could "reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Minimum contacts may be established in two ways. First, general jurisdiction exists where the defendant has "continuous and systematic" contacts with the forum state such that

exercising personal jurisdiction is appropriate even if the cause of action does not arise out of those contacts. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). Second, specific jurisdiction exists where the cause of action is "related to" or "arises out of" the defendant's activities within the forum state. *See Helicopteros Nacionales*, 466 U.S. at 414 (citation omitted). In such cases, jurisdiction is proper "where the contacts proximately result from actions by the defendant *himself* . . . create a 'substantial connection' with the forum State." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (emphasis in original) (citations omitted). This inquiry "ensure[s] that an out-of-state defendant is not bound to appear to account for merely 'random, fortuitous, or attenuated contacts' with the forum state." *Dudnikov*, 514 F.3d at 1071 (quoting *Burger King*, 471 U.S. at 475).

The burden of proof is on the plaintiff to establish minimum contacts. *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1091 (10th Cir. 1998). "Once the plaintiff establishes minimum contacts, the defendant is responsible for demonstrating 'the presence of other considerations that render the exercise of jurisdiction unreasonable.'" *Alcohol Monitoring Sys., Inc. v. Actsoft, Inc.*, 682 F. Supp. 2d 1237, 1244–45 (D. Colo. 2010) (quoting *Inamed Corp. v. Kuzmak*, 249 F.3d 1356, 1360 (Fed. Cir. 2001)). The Supreme Court has identified the following factors to be considered in this analysis: (1) the burden on the defendant; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental substantive social policies. *Burger King*, 471 U.S. at 476–77.

B. RICO, Nationwide Service of Process, and Personal Jurisdiction.

Although the majority of the claims plaintiffs assert in this action are state law claims, plaintiffs have also filed a federal law claim against the individual defendants and the Knights of Columbus under RICO. ECF No. 15 at ¶¶62–103. Because RICO potentially confers nationwide service of process, personal jurisdiction can also be established by applying slightly different rules than the ones laid out above. *Peay v. BellSouth Med. Assistance Plan*, 205 F.3d 1206, 1209 (10th Cir. 2000) (discussing how "a federal court can assert personal jurisdiction over a defendant in a federal question case"); *Greenway Nutrients, Inc. v. Blackburn*, 33 F. Supp. 3d 1224, 1247 (D. Colo. 2014) ("If Congress statutorily authorizes nationwide service of process under a given statute, then proper service establishes personal jurisdiction over a defendant thereunder, provided that the court's exercise of jurisdiction comports with the Fifth Amendment's Due Process guarantee."); *see also Klein v. Cornelius*, 786 F.3d 1310, 1318 (10th Cir. 2015) (explaining that in "federal question case[s] where [personal] jurisdiction is invoked *based on nationwide service of process*[,]" courts must decide whether the exercise of personal jurisdiction comports with the Fifth Amendment, not the Fourteenth Amendment) (emphasis added).[4]

This "different standard" is a two-fold inquiry. *See, e.g.*, *CGC Holding Co., LLC v. Hutchens*, 824 F. Supp. 2d 1193, 1199 (D. Colo. 2011). First, I must decide "(1) "whether the

[4] Plaintiffs in this case have argued for personal jurisdiction over defendants Mr. St. John and Mr. Smith via nationwide service of process under RICO. As a fallback, they argue that this Court has general jurisdiction or specific jurisdiction over the individual plaintiffs. I therefore discuss and apply, as necessary, both standards of review. *See CGC Holding Co., LLC v. Hutchens*, 824 F. Supp. 2d 1193, 1207 (D. Colo. 2011) (assessing the Colorado long arm statute and the nationwide service of process provision under RICO as alternative bases for personal jurisdiction); *see also United States v. Botefuhr*, 309 F.3d 1263, 1272 (10th Cir. 2002) ("[O]nce a district court has personal jurisdiction over a defendant for one claim, it may 'piggyback' onto that claim other claims over which it lacks independent personal jurisdiction, provided that all the claims arise from the same facts as the claim over which it has proper personal jurisdiction.").

applicable statute potentially confers jurisdiction by authorizing service of process on the defendant[.]" *Peay*, 205 F.3d at 1209. If it does, then I must decide "(2) whether the exercise of jurisdiction comports with due process [under the Fifth Amendment]." *Id.* (emphasis added) (internal quotation marks and citation omitted). *See also id.* ("While service of process and personal jurisdiction both must be satisfied before a suit can proceed, they are *distinct* concepts that require *separate* inquiries.") (emphasis added).

Regarding the first inquiry, "[w]hen a civil RICO action is brought in a district court where personal jurisdiction [via the "minimum contacts" test under the Fourteenth Amendment] can be established over at least one defendant, summonses can be served nationwide on other defendants if required by the ends of justice." *Cory v. Aztec Steel Bldg., Inc.*, 468 F.3d 1226, 1230–31 (10th Cir. 2006) (recognizing that by imposing this "ends of justice" requirement to invoke nationwide service for defendants residing outside the forum in which this other defendant is subject to personal jurisdiction, "Congress expressed a preference that defendants not be unnecessarily haled into unexpected forums"); 18 U.S.C. § 1965(b) ("In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.").

1. The "Ends of Justice."

As the Tenth Circuit has explained, this "ends of justice" inquiry under RICO is "a flexible concept uniquely tailored to the facts of each case." *Cory*, 468 F.3d at 1232; *see also Greenway Nutrients, Inc.*, 33 F. Supp. 3d at 1248 (explaining that "the Tenth Circuit has not

provided a bright line rule for the ends of justice analysis") (internal quotation marks and citation omitted).

However, while this inquiry is "flexible" and has been rarely clarified, it is not completely amorphous. For instance, as the Tenth Circuit has explained, the mere fact that "all defendants [may be] . . . amenable to suit in one forum" by itself cannot defeat a finding that the ends of justice require nationwide service of process. *Cory*, 468 F.3d at 1232. Similarly, a plaintiff's mere assertion that he "has sustained damages and litigation costs" in the forum is not enough to justify nationwide service of process under RICO. *Id.*; *see also Hart v. Salois*, 605 F. App'x 694, 699 (10th Cir. 2015) (unpublished), *cert. denied*, 136 S. Ct. 544 (2015) (concluding that the plaintiff failed to show that the ends of justice required nationwide service of process where he merely recited the Tenth Circuit's holding in *Cory* described above). Finally, an unsubstantiated assertion that the plaintiff has "limited economic resources" to litigate the case elsewhere is likewise "insufficient . . . to justify resort to national process available under RICO." *See Goodwin v. Bruggeman-Hatch*, 13-CV-02973-REB-MEH, 2014 WL 3057115, at *1 (D. Colo. July 7, 2014).

2. The Fifth Amendment's Due Process Standard.

To reiterate, when a court finds that a federal statute does indeed confer nationwide service of process it must nevertheless still determine whether the exercise of jurisdiction under that statute comports with "due process" under the Fifth Amendment. *See Klein v. Cornelius*, 786 F.3d 1310, 1318 (10th Cir. 2015). This inquiry is a bit unique. That is, the court does not solely decide the same traditional "minimum contacts" issue under the Fourteenth Amendment described *supra*. *Id.* Instead, as the Tenth Circuit and numerous other circuits have recognized, "[w]hen the personal jurisdiction of a federal court is invoked based upon a federal statute

providing for nationwide or worldwide service, the relevant inquiry is whether the respondent has had sufficient minimum contacts *with the United States*." *Application to Enforce Admin. Subpoenas Duces Tecum of S.E.C. v. Knowles*, 87 F.3d 413, 417 (10th Cir. 1996) (emphasis added) (citing cases from the First, Fifth, Sixth, and Ninth Circuits).

Since its decision in *Knowles*, however, the Tenth Circuit has clarified this standard. Rejecting the so-called "national contacts" test that other circuits have adopted to decide whether the exercise of personal jurisdiction comports with the Fifth Amendment, the circuit has instead laid out a more rigorous test that does not completely abandon traditional due process concerns under the Fourteenth Amendment. *Peay*, 205 F.3d at 1212 ("Like the Eleventh Circuit, we discern no reason why the Fourteenth Amendment's fairness and reasonableness requirements should be discarded completely when jurisdiction is asserted under a federal statute.") (internal quotation marks and citation omitted); *see also In re Fruehauf Trailer Corp*., 250 B.R. 168, 200 (D. Del. 2000) (recognizing this circuit split and collecting cases).

Thus, under Tenth Circuit precedent, "[t]o establish that jurisdiction does not comport with Fifth Amendment due process principles, a defendant must first demonstrate that his liberty interests actually have been infringed." *Peay v. BellSouth Med. Assistance Plan*, 205 F.3d 1206, 1212 (10th Cir. 2000) (international quotation marks omitted). To do this, the defendant must "show that the exercise of jurisdiction in the chosen forum will 'make litigation so gravely difficult and inconvenient that [he] unfairly is at a severe disadvantage in comparison to his opponent.'" *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985)).

The court in *Peay* subsequently laid out five factors that must be considered in deciding whether "defendant has met his burden of establishing constitutionally significant inconvenience[.]" *Id*. (internal quotation marks and citation omitted). They are:

> (1) the extent of the defendant's contacts with the place where the action was filed;
> (2) the inconvenience to the defendant of having to defend in a jurisdiction other than that of his residence or place of business, including (a) the nature and extent and interstate character of the defendant's business, (b) the defendant's access to counsel, and (c) the distance from the defendant to the place where the action was brought;
> (3) judicial economy;
> (4) the probable situs of the discovery proceedings and the extent to which the discovery proceedings will take place outside the state of the defendant's residence or place of business; and
> (5) the nature of the regulated activity in question and the extent of impact that the defendant's activities have beyond the borders of his state of residence or business.

Id. Importantly, the circuit has recognized, "it is only in highly unusual cases that inconvenience will rise to a level of constitutional concern." *Id.* (quoting *Republic of Panama v. BCCI Holdings (Luzembourg) S.A.*, 119 F.3d 935, 947 (10th Cir. 1997)).

If a defendant meets this high bar by "successfully demonstrat[ing] that litigation in the plaintiff's chosen forum is unduly inconvenient, then jurisdiction will comport with due process only if the federal interest in litigating the dispute in the chosen forum outweighs the burden imposed on the defendant." *Id.* (internal quotation marks and citation omitted). To decide that question, courts must consider the following: "the federal policies advanced by the statute, the relationship between nationwide service of process and the advancement of these policies, the connection between the exercise of jurisdiction in the chosen forum and the plaintiff's vindication of his federal right, and concerns of judicial efficiency and economy." *Id.* (quoting *Republic of Panama*, 119 F.3d at 948). Finally, the circuit has explained, "[w]here . . . Congress has provided for nationwide service of process, courts should presume that nationwide personal jurisdiction is necessary to further congressional objectives." *Id.*

C. Rule 12(b)(6).

To survive a Rule 12(b)(6) motion to dismiss, the complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A plausible claim is a claim that "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While the Court must accept the well-pleaded allegations of the complaint as true and construe them in the light most favorable to the plaintiff, *Robbins v. Wilkie*, 300 F.3d 1208, 1210 (10th Cir. 2002), conclusory allegations are not entitled to be presumed true, *Iqbal*, 556 U.S. at 681. However, so long as the plaintiff offers sufficient factual allegations such that the right to relief is raised above the speculative level, he has met the threshold pleading standard. *See, e.g.*, *Twombly*, 550 U.S. at 556; *Bryson v. Gonzales*, 534 F.3d 1282, 1286 (10th Cir. 2008).

D. Rule 12(f).

Rule 12(f) provides that "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). However, the court will typically do so in its discretion only "when the allegations have no bearing on the controversy and the movant can show that he has been prejudiced." *Seybold v. Weld Cnty. Sheriff's Office*, No. 08-cv-00916-DME-MJW, 2008 WL 4489269, at *1 (D. Colo. Oct. 1, 2008); 5A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, § 1382 (3d. ed.). Indeed, as a general matter, "motions to strike under Rule 12(f) are disfavored." *See Kimpton Hotel & Rest. Group L.L.C. v. Monaco Inn, Inc.*, 2008 WL 140488, *1 (D. Colo. Jan.11, 2008).

ANALYSIS

As mentioned above, the individual defendants and the Knights of Columbus have filed separate motions to dismiss. ECF Nos. 20, 23. I discuss and decide the individual defendant's motion first followed by the Knights of Columbus' motion.

I. The Individual Defendants' Motion to Dismiss [ECF No. 20].

Mr. Smith and Mr. St. John's motion seeks dismissal of all claims filed against them for want of personal jurisdiction (i.e., Claims One, Four, and Eight). Specifically, they argue that this Court has neither general jurisdiction nor specific jurisdiction because neither individual has systemic contacts nor sufficient "minimum contacts" with Colorado. Furthermore, they argue, even though RICO potentially confers nationwide service of process (and, thereby, personal jurisdiction if doing so does not conflict with the Fifth Amendment), plaintiffs have not proven that the "ends of justice" require nationwide service of process here. Plaintiffs counter that RICO actually confers nationwide service of process and therefore personal jurisdiction over all defendants where, as here, one defendant (i.e., the Knights of Columbus) is subject to general jurisdiction in the forum state. As a fallback, plaintiffs contend that this Court has either general or specific jurisdiction over the individual defendants. I agree with the individual defendants.

A. Personal Jurisdiction Under RICO is not Properly Exercised Here.

To begin, plaintiffs are incorrect that RICO confers nationwide service of process and therefore personal jurisdiction over all defendants in an action merely because one defendant is subject to jurisdiction in the forum state. To the contrary, as the Tenth Circuit has explained as recently as 2015, although RICO *potentially* confers nationwide service of process if one defendant is already subject to jurisdiction in the forum state, RICO still requires that a plaintiff prove that the "ends of justice" require doing so. *See Hart*, 605 F. App'x at 699; *Cory*, 468 F.3d

at 1231. What's more, even if a court should find that nationwide service of process is required by the ends of justice, it must still determine before exercising personal jurisdiction under a federal statute such as RICO whether doing so comports with due process under the Fifth Amendment. *Cory*, 468 F.3d at 1232–33.

Plaintiffs' argument on this point seriously short-circuits that analysis by ignoring completely the "ends of justice" requirement. Perhaps more troubling, however, is the fact that if plaintiffs' description of how jurisdiction under RICO works were correct it would mean that Congress could effectively override the Constitution by doing away with individualized due process analysis by providing for personal jurisdiction over a defendant merely because a court has jurisdiction over his co-defendant. *See Peay*, 205 F.3d at 1210 ("Thus, *provided that due process is satisfied*, [a statute] confers jurisdiction over defendants by authorizing service of process on them.") (emphasis added).

Plaintiffs' argument regarding jurisdiction under RICO is therefore unavailing. Furthermore, their misunderstanding of RICO's service of process provisions means that they provide no argument on whether the "ends of justice" require nationwide service of process here or whether due process under the Fifth Amendment has been satisfied in this specific case. Accordingly, I find that they have failed to meet their burden of proving that RICO confers nationwide service and jurisdiction in this case. *See, e.g.*, *Goodwin v. Bruggeman-Hatch*, 13-CV-02973-REB-MEH, 2014 WL 3057115, at *5 (D. Colo. July 7, 2014) (concluding that because the "[p]laintiff has not explained how the ends of justice require this Court to assert personal jurisdiction over" the defendant "he has not shown why the preference against haling [the defendant] into an unexpected forum is overcome here"); *see also Cory*, 468 F.3d at 1232–

33 (“Without federal statutory authorization for nationwide service, we need not proceed to the Fifth–Amendment inquiry.”).

B. **This Court has Neither General nor Specific Jurisdiction Over Either Individual Defendant.**

As mentioned above, as a fallback position plaintiffs argue in the alternative that jurisdiction is proper over Mr. St. John and Mr. Smith because these defendants have had systemic contact with Colorado subjecting them to general jurisdiction or because each has had sufficient minimum contacts with Colorado arising out of the claims against them in this suit. *See* ECF No. 35 at 1–2 (“Regardless of whether this Court looks to the RICO statute or the standard “minimum contacts” analysis, Defendants have sufficient contacts with this District for the Court to exercise personal jurisdiction over them.”); ECF No. 15 at ¶10 (“[A]ll defendants have regular and ongoing business contacts . . . in the District of Colorado . . . subjecting *each* to general jurisdiction within this District.”) (emphasis added). Again, I disagree.

For starters, plaintiffs’ allegations and the individual defendant’s affidavits attached to their motion reveal that, at best, Mr. Smith and Mr. St. John have only ever had sporadic and isolated contact with Colorado. *See, e.g.*, ECF No. 20-1 at ¶¶5–10 (revealing that Mr. St. John does not reside in Colorado, that he does not conduct any personal business in Colorado, that he has traveled to Colorado only once, that he directs calls and e-mails to the Orders’ agents in Colorado only a few times per year, and that over the past six years he had only a few conference calls involving Mr. Labriola who was in Colorado at the time); ECF No. 20-3 at ¶¶5–8 (revealing that Mr. Smith has made infrequent business trips to Colorado over the past decade with the last one occurring in August of 2011, that he does not conduct personal business in Colorado, that he occasionally communicates via e-mail with Colorado-based members of the Order during the year, and that he sends “form letters” that members of the Order in Colorado receive once a

month). General jurisdiction is therefore off the table. *See Goodyear*, 564 U.S. at 919 (general jurisdiction requires "continuous and systemic" contact with the forum such that the defendant is "essentially at home in the forum State.") (internal quotation marks omitted).

Nor can plaintiffs meet their burden of establishing specific jurisdiction over either individual defendant.[5] Even accepting plaintiffs' allegations as true, which I must, the contact the individual defendants have had with this forum related to the causes of action plaintiffs assert consisted of only a handful of e-mails and calls with Mr. Labriola while he happened to be in Colorado at the time.[6] *See, e.g.*, ECF No. 20-1 at ¶10; ECF No. 15 at ¶58; *see, e.g.*, *Far W. Capital, Inc. v. Towne*, 46 F.3d 1071, 1077–80 (10th Cir. 1995) (holding that a Nevada-based company's "ten-to-twenty scattered contacts" with a company in Utah during the parties' contract negotiations were insufficient to establish jurisdiction especially because the "focal point" of the parties' relationship was in another state).

Indeed, most of the individual defendants' conduct related to the claims against them in this case occurred in Texas or Connecticut and, crucially, was specifically directed at those two states. For example, with plaintiffs' slander claim against Mr. Smith plaintiffs' sole allegation is that Mr. Smith made a comment *internally* to the Knights of Columbus in *Connecticut* for the

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[5] Further persuading me that plaintiffs have failed to meet their burden of establishing jurisdiction is the fact that, in arguing for specific jurisdiction, they improperly rely, in part, on contacts Mr. Smith and Mr. St. John had with Colorado that bear no relation to the causes of action plaintiffs have filed against them in this suit. *See* ECF No. 35 at 5–6 (citing evidence of meetings Mr. Smith had in Colorado that occurred before 2000); *Helicopteros Nacionales*, 466 U.S. at 414 (defendant's contacts must be related to plaintiff's cause of action).

[6] These contacts really only involve Mr. St. John. Just look at plaintiffs' claim for slander against Mr. Smith. They allege that he made a defamatory comment to the Knights of Columbus Operations Committee in Connecticut in 2014 "*despite having never met or spoken with Mr. Labriola*[.]" ECF No. 15 at ¶48. What's more, although plaintiffs frequently allege that Mr. Smith and Mr. St. John had other contact with "UKnight," they do not specify where this contact occurred, how it occurred, or who at UKnight they contacted (i.e., was it Mr. Labriola in Colorado or UKnights' other two partners in Texas?). *See, e.g.*, *id.* at ¶50 (alleging that "Mr. Smith demanded that UKnight agree in writing that Mr. Labriola would never again speak with UKnight's most important customers").

sole purpose of preventing a committee of that organization from voting then and there to adopt UKnight's system. ECF No. 15 at ¶48. Similarly, one of plaintiffs' main allegations regarding Mr. St. John's alleged misappropriation of trade secrets took place when Mr. St. John traveled to *Texas* in order to meet with Mr. Labriola's partner, Mr. Clark, to allegedly "steal" UKnight's system *from that state*. *Id.* at ¶56. UKnight also only ever specifically alleges that it was doing business with local Knights of Columbus councils in the Dallas area when these events unfolded, meaning that if UKnight's existing business was hurt by defendants the effects would be predominately if not entirely felt in Texas. *See id.* at ¶15.

Plaintiffs' allegations contained within their RICO claim (asserted against the Knights of Columbus but also against the individual defendants) are also insufficient to establish specific jurisdiction. After all, although plaintiffs appear to allege that the Knights of Columbus perpetrated frauds nationwide and that Mr. St. John and Mr. Smith played some undefined role in that scheme, they do not allege any facts that show that these two individual defendants purposefully directed their racketeering activities at Colorado specifically by, for instance, perpetrating frauds against Colorado-based assemblies, councils, agents, or members. *See, e.g*., ECF No. 15 at ¶¶31–47 (alleging incidents of fraud by the Knights of Columbus *generally* and then specifying portions of the scheme that took place in New Jersey, Texas, and Illinois).

At bottom, then, even accepting plaintiffs' allegations as true, I agree with the individual defendants that the only connection this case appears to have to Colorado as it pertains to them is that it was foreseeable that their alleged actions would be indirectly felt in Colorado by UKnight and Mr. Labriola because UKnight is incorporated here and Mr. Labriola resides here. Those bare connections to this forum, however, are not enough to justify haling these defendants into this Court. *See, e.g.*, *Spyderco, Inc. v. Kevin, Inc*., 16-CV-03061-CMA-NYW, 2017 WL

2929548, at *3 (D. Colo. July 7, 2017) (collecting cases holding that the mere fact that tortious actions are committed knowing that they would cause economic injury in a state is insufficient to establish conduct "purposefully directed" at that forum and therefore specific jurisdiction). Accordingly, the Court GRANTS the individuals' motion to dismiss and dismisses them from this lawsuit.

II. The Knights of Columbus' Motion to Dismiss [ECF No. 23].

Next, I address the Knights of Columbus' motion to dismiss. ECF No. 23. As mentioned *supra*, that motion seeks dismissal of four claims filed against the Knights of Columbus: (1) plaintiffs' RICO claim (Claim One); (2) plaintiffs' breach of contract claim (Claim Two); plaintiffs' promissory estoppel claim (Claim Three); and plaintiffs' slander claim (Claim Eighth). Furthermore, the Knights of Columbus moves to strike paragraphs 1, 31–47, 84–86, and 89–101 of plaintiffs' amended complaint. I discuss the parties' arguments on each claim below.

A. RICO (Claim One).

With respect to plaintiffs' RICO claims, the Knights of Columbus makes two main arguments for dismissal. First, it argues that plaintiffs have failed to sufficiently plead a distinct "person" and "enterprise" as required under RICO. Second, it argues that plaintiffs have failed to sufficiently plead damages proximately caused by the Knights of Columbus' alleged racketeering. I find the Knights of Columbus' first argument for dismissal persuasive.

In order to state a claim under RICO a plaintiff must sufficiently allege that a "person" conducted the affairs of a distinct "enterprise" through a pattern of racketeering. *See, e.g.*, *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 160 (2001); *George v. Urban Settlement Servs*., 833 F.3d 1242, 1249 (10th Cir. 2016); *see also Yellow Bus Lines, Inc. v. Local Union* 639, 883 F.2d 132, 139 (D.C. Cir. 1989) ("Logic alone dictates that one entity may not serve as

the enterprise and the person associated with it because ... 'you cannot associate with yourself.'") (citation omitted).

Moreover, typically when a corporation is pled as the RICO "person," an "enterprise" alleged to consist merely of the corporation and its employees or the corporation and its subsidiaries and agents is deemed insufficiently distinct to satisfy this requirement.[7] *See George*, 833 F.3d at 1249 ("Finally, it's true that a defendant corporation, acting through its subsidiaries, agents, or employees typically can't be both the RICO 'person' and the RICO 'enterprise.'").

The Seventh Circuit's decision in *Fitzgerald v. Chrysler Corporation*, 116 F.3d 225 (7th Cir. 1997) provides a good example of this. *Fitzgerald* involved a consumer class action for warranty fraud against the Chrysler Corporation. *Id.* at 226. In the main, the plaintiffs in that case alleged that the Chrysler Corporation sold extended warranties to consumers of its motor vehicles that it secretly and fraudulently predetermined not to honor. *Id.* The plaintiffs subsequently brought a claim against the Chrysler Corporation under RICO, alleging that the Chrysler Corporation was a RICO "person" conducting through a pattern of racketeering the affairs of a RICO "enterprise" comprised of what the plaintiffs referred to as the "Chrysler Family"—i.e., the Chrysler Corporation, various subsidiaries of the Chrysler Corporation, independent Chrysler dealerships, and trusts controlled by Chrysler. *Id*.

Rejecting that "enterprise" as one sufficiently distinct from the Chrysler Corporation itself, the Seventh Circuit noted that RICO was not intended to cover alleged frauds perpetrated by "a free-standing corporation such as Chrysler merely because Chrysler does business through agents, as virtually every manufacturer does." *Id.* at 227. After all, Judge Posner reasoned, these "agents" of the Chrysler Corporation who composed the remainder of the alleged "Chrysler

[7] However, a party *can* serve as both the RICO "person" and *part of* the RICO "enterprise." *See, e.g.*, *George*, 833 F.3d at 1249–51.

Family" and therefore the remainder of the alleged "enterprise" amounted, at most, to mere conduits for the Chrysler Corporation's business playing an incidental role, if any, in the alleged fraud. *Id.* at 227–28. They were therefore no different for purposes of RICO than employees of the Chrysler Corporation who, along with the Chrysler Corporation, could not constitute an "enterprise" separate and distinct from the "Chrysler Corporation" itself. *Id.*

Given the holdings of cases such as *Fitzgerald*, then, it does not matter whether a corporation conducts its business through its own employees or through independent agents for purposes of RICO's distinctiveness requirement. Rather, so long as these entities are mere ancillary components of the corporate RICO "person" and do nothing more with respect to the alleged pattern of racketeering than carry out the corporation's ordinary business (even though it may be fraudulent), they cannot be joined with the corporation itself to create a sufficiently distinct RICO "enterprise." *Id.*; *see also Brannon v. Boatmen's First Nat. Bank of Okla.*, 153 F.3d 1144, 1149 (10th Cir. 1998) (holding that a subsidiary was not a RICO person sufficiently distinct from a RICO enterprise comprised of the subsidiary's parent because "[n]othing in plaintiffs' allegations indicate[d] how the relationship between [the subsidiary] and [the parent] allowed [the subsidiary] to perpetrate or conceal the alleged mail fraud."). Put simply, as Judge Posner did in *Fitzgerald*, the word "enterprise" in the context of RICO "connotes more." *Fitzgerald*, 116 F.3d at 228.

Here, plaintiffs allege that the Knights of Columbus conducted the affairs of "The Order" through a pattern of racketeering. *See* ECF No. 15 at ¶¶62–68. They therefore allege that the Knights of Columbus as a RICO "person" conducted the affairs of a RICO "enterprise" consisting essentially of the Knights of Columbus "Family"—i.e., the Knights of Columbus, its

subordinate parts, and its agents. *See id.*; *supra* Part I. As described above, this is an insufficiently distinct "enterprise" to satisfy RICO's distinctiveness requirement.

Indeed, much like how the independent car dealerships and agents in *Fitzgerald* merely carried out the Chrysler Corporation's business of selling warranties (albeit, allegedly fraudulent ones), it appears from plaintiffs' allegations that these constituent parts of the fraternity—including thousands of local councils, assemblies, field agents, and general agents—merely carry out the Knights of Columbus' business of selling insurance (albeit, an allegedly fraudulent product). In other words, although plaintiffs allege that the Knights of Columbus' sale of insurance was done fraudulently, they do not sufficiently allege that any other component of the alleged "enterprise" played any role other than an incidental one in perpetuating these alleged crimes.

In an effort to save their claim plaintiffs contend that they have sufficiently alleged a distinct enterprise here because the Supreme Court's seminal decision in 2001 in *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158 (2001) greatly lessened RICO's distinction requirement. In essence, they argue that post-*Cedric Kushner* all that a plaintiff must allege to satisfy this requirement is some nominal legal distinction between the RICO person and the RICO enterprise. Thus, where, as here, a plaintiff alleges a RICO person (i.e., the Knights of Columbus) that it is legally distinct from some constituent part of the alleged RICO enterprise (i.e., the local councils and agents that are separate legal entities), RICO's distinction requirement has been met. I disagree.

In my view, plaintiffs read *Cedric Kushner* too broadly. In *Cedric Kushner*, the Supreme Court merely ruled on the narrow issue of whether an *individual* as a RICO "person" was sufficiently distinct from a corporate RICO "enterprise" consisting merely of that individual's

wholly- owned company. *Cedric Kushner*, 533 U.S. at 160. Reasoning that because an individual and his company are separate legal entities with differing legal rights and responsibilities, the Court unanimously held that the distinction requirement under § 1962(c) was met. *Id*. at 163.

However, in reaching that decision the Court specifically acknowledged that it was *not* ruling on the issue presented here—that is, whether a corporation as a RICO "person" is sufficiently distinct from a RICO "enterprise" comprised of "the corporation, together with all its employees and agents[.]" *Id.* at 164 ("We do not here consider the merits of these cases, and note only their distinction from the instant case."); *id.* (noting that cases involving this issue "involve[] quite different circumstances which are not presented here").

If anything, the Court in dicta raised doubts about whether the distinction requirement would be met under these circumstances. *Id.* For instance, the Court noted that while it made sense that RICO covered an individual conducting the affairs of an enterprise comprised of just his wholly-owned company because of the way the statute is phrased, it commented that it was "less natural to speak of a corporation as 'employed by' or 'associated with' . . . [the] oddly constructed entity" comprised of "the corporation, together with all its employees and agents"—i.e., plaintiffs' alleged RICO "enterprise" in this case. *Id.*

To rely too much on this passing comment by the Court, however, would be to make the same mistake plaintiff does of reading *Cedric Kushner* for something it's not. Luckily, however, I need not rely on this dictum because the Tenth Circuit has clarified since the Supreme Court's decision in *Cedric Kushner* that cases like *Fitzgerald* remain good law. For example, just last year the circuit cited cases including *Fitzgerald* approvingly in laying out the law, which I describe above, "that a defendant corporation, acting through its subsidiaries, agents, or

employees typically can't be both the RICO 'person' and the RICO 'enterprise.'" *George*, 833 F.3d at 1249 (citing *Fitzgerald*, 116 F.3d at 226–28).

Not only confirming that *Cedric Kushner* did not overturn cases like *Fitzgerald*, *George* also provides a factual scenario that serves as a good contrast to the instant case and helps prove my point. In *George*, the Tenth Circuit held that a plaintiff sufficiently pled a distinct RICO person and enterprise where the plaintiff alleged that Bank of America ("BOA") had joined together with an *entirely separate business*, Urban Settlement Services ("Urban"), as well as several other entities to fraudulently deny loan modifications to qualified borrowers under the Home Affordable Modification Program. *Id.* at 1248–51.

In reaching that conclusion, the Tenth Circuit reasoned that cases like *Fitzgerald* were distinguishable because the plaintiffs in *George* were not alleging that BOA merely conducted its *own* business and, moreover, their allegations did not suggest that Urban was merely an *agent* of BOA. *Id.* at 1250. Rather, the court explained, the plaintiffs alleged that both BOA and Urban "performed distinct roles within the enterprise while acting in concert with other entities to further the enterprise's common goal of wrongfully denying HAMP applications[.]" *Id.* Similarly, the court recognized, the plaintiffs had alleged that "the relationship between BOA and Urban *enhanced* the enterprise's ability to thrive and avoid detection[,]" which was an allegation notably missing in cases like *Fitzgerald*. *Id.* (emphasis added).

Here, plaintiffs make no allegations that the Knights of Columbus carried out its scheme by working with any separate business or entity other than itself, its "lodges," or its agents. Similarly, unlike in *George*, plaintiffs do not allege that these constituent parts of the Order enhanced the alleged fraudulent scheme in any way. Rather, per plaintiffs' allegations, this was

a scheme perpetrated solely by the Knights of Columbus that the rest of the Order unwittingly carried out.

Accordingly, finding that plaintiffs have failed to sufficiently plead a distinct RICO "person" and "enterprise," the Court GRANTS defendant Knights of Columbus' motion to dismiss plaintiffs' RICO claim. I do note that plaintiffs informed the Court during oral arguments that should the Court find their RICO allegations wanting that they would subsequently request leave to amend their RICO claim to add "substantial additional allegations." I am not sure why plaintiffs would have held back their "good stuff" if they had some. In any event, I ask that plaintiffs not merely soup up their facts if it would not make a material difference under the legal framework set forth in this order. In other words, please do not return to RICO unless you really have the goods. But I will leave the door open a crack by dismissing the RICO claim without prejudice. [8]

B. Breach of Contract (Claim Two).

Next, the Knights of Columbus seek to dismiss plaintiffs' breach of contract claim. Its main argument for dismissing this claim is simple: accepting plaintiffs' allegations in their amended complaint as true that the Knights of Columbus agreed in September of 2011 to make an announcement about UKnight after it accepted certain changes (which occurred in August of 2012), plaintiffs' breach of contract claim is time-barred under either Colorado's or Connecticut's three-year statute of limitations for express contracts.[9] Alternatively, the Knights

[8] Plaintiffs filed a substantive RICO claim under 1962(c) and a claim for a RICO conspiracy under § 1962(d). "A conspiracy claim under 18 U.S.C. § 1962(d) fails when the substantive claim based on § 1962(c) is without merit." *BancOklahoma Mortg. Corp. v. Capital Title Co.*, 194 F.3d 1089, 1103 (10th Cir. 1999).

[9] The Knights of Columbus also argue that plaintiffs' theory is that the organization agreed to make an announcement in February of 2012. *See* ECF No. 15 at ¶112(b)(2). It is more plausible from plaintiffs'

of Columbus argue, if the agreement was to make this announcement at some unidentified later date, plaintiffs' breach of contract claim fails as a matter of law because the alleged contract between the parties was too indefinite. I disagree with both arguments.

Before I explain why, I must first decide which state's law governs plaintiffs' state law claims. "In a diversity action, a federal district court must apply the substantive law of the state in which it sits . . . including principles regarding choice of law."[10] *Vandeventer v. Four Corners Elec. Co., Inc.*, 663 F.2d 1016, 1017 (10th Cir. 1981). Under Colorado choice of law rules, courts must apply "the law of the state with the most significant relationship with the occurrence and the parties." *Id.*; *Wood Bros. Homes, Inc. v. Walker Adjustment Bureau*, 601 P.2d 1369, 1373 (Colo. 1979). Here, because the Knights of Columbus is located in Connecticut, it was supposed to perform its contractual obligations there, and because plaintiffs allege that the parties' negotiations took place in Connecticut, I conclude that Connecticut law applies. ECF No. 15 at ¶¶5, 17–18; *see also Mountain States Adjustment v. Cooke*, No. 15-0605, 2016 WL 2957746, at *4 (Colo. App. May 19, 2016) (explaining that "in 1984, the [Colorado] General Assembly adopted the Uniform Conflict of Laws—Limitations Act, sections 13–82–101 to –107, C.R.S.2015, which effectively treats limitation periods as substantive law" subject to Colorado's choice of law rules).

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complaint, however, that the Knights of Columbus agreed to make an announcement after UKnight made certain changes to its platform which, plaintiffs allege, took place by August of 2012. *See id.* at ¶18.

[10] I apply Colorado's (i.e., the forum's) choice of law rules to decide which state's law governs plaintiffs' state law claims even though plaintiffs have asserted a RICO claim and, therefore, invoke federal question jurisdiction, supplemental jurisdiction over the state law claims, and, in the alternative, diversity jurisdiction over the state law claims. *See BancOklahoma Mortg. Corp. v. Capital Title Co.*, 194 F.3d 1089, 1103 (10th Cir. 1999) (applying the forum state's choice of law rules rather than federal common law choice of law rules to state law fraud and breach of fiduciary duty claims even though a claim under RICO was brought and also noting that the same outcome would result if only supplemental jurisdiction was claimed over those state law claims).

That conclusion is significant with respect to the Knights of Columbus' first argument for dismissal because, I find, the Knights of Columbus misinterprets and therefore misapplies Connecticut's statute of limitations for oral contracts. The Knights of Columbus argues that Connecticut's three-year statute of limitations for express, oral contracts found at C.G.S. § 52-581(a) would apply here.[11] *See* ECF No. 23 at 12 n.2. However, as Connecticut courts have explained, Connecticut also has a six-year statute of limitations for "simple" contracts that has been interpreted to also apply to some oral contracts. *See Cupina v. Bernklau*, 551 A.2d 37, 39 (Conn. App. Ct. 1988) (citing C.G.S. §52-576).

The key issue in determining which limitations period governs is whether or not the alleged oral agreement was "executory." *Id.* A contract is "executory" if both parties still have obligations to perform under it. *Id.* If a contract is executory, Connecticut courts have held, Connecticut's three-year statute of limitations applies. *Id.* By contrast, if a contract is "executed" because one party to the agreement has already performed its "part of the contract completely[,]" Connecticut's six-year statute of limitations found at C.G.S. § 52-576 applies. *Id.* (holding that because one party to the agreement had already made all of her payments and that at the time of the breach "[a]ll that remained was for the defendant to repay the plaintiff," that the contract was not executory, and the trial court properly determined that the six-year statute of limitations applied); *John H. Kolb & Sons, Inc. v. G & L Excavating, Inc.*, 821 A.2d 774, 780 (Conn. App. Ct. 2003).

Here, plaintiffs allege that by August of 2012 they had performed all that was required of them under the parties' agreement—i.e., tailoring their platform's design and rollout plan to the

[11] Plaintiffs argue, and the Court agrees, that the Knights of Columbus' promise to make an announcement as part of the parties' alleged oral contract was *capable* of being performed in one year and therefore that the Statute of Frauds would not void this alleged contract. *See* C.G.S. § 52-550(a)(5).

Knights of Columbus' liking. ECF No. 15 at ¶18 ("UKnight had done everything it had promised, and all that was left was [the Knights of Columbus'] obligations to make the announcement and instruct the Knights of Columbus to adopt . . . UKnight's system."). The parties' agreement was therefore executed by the time the Knights of Columbus allegedly breached the parties' agreement by failing to make an announcement after it approved UKnight's changes in August of 2012. *See id.* Connecticut's *six*-year statute of limitations therefore applies. *See, e.g.*, *Tierney v. Am. Urban Corp.*, 365 A.2d 1153, 1157 (Conn. 1976). And, because plaintiffs' filed their complaint within six years of when they allege that the Knights' of Columbus breached the parties' agreement, plaintiffs' breach of contract claim is not time-barred. *See Tolbert v. Conn. Gen. Life Ins. Co.*, 778 A.2d 1, 5 (Conn. 2001) (explaining that a cause of action for breach of contract accrues in Connecticut when the injury—i.e., the breach—occurs); C.G.S. § 52-576(a).

Furthermore, to the extent the Knights of Columbus seeks dismissal because they argue no contract was formed from the Knights of Columbus' vague agreement to make an announcement at some "indefinite" later date, their motion must also be denied. After all, Connecticut law provides that "[w]hen the terms of a contract's time of performance are indefinite . . . [t]he result generally reached is that the time is neither unlimited nor discretionary" but rather that "the promised performance must be rendered within a reasonable time." *LaVelle v. Ecoair Corp.*, 814 A.2d 421, 430 (Conn. App. Ct. 2003) (internal quotation marks and citation omitted). What's more, "[w]hat is a reasonable length of time is ordinarily a question of fact for the trier." *Id.*

Accordingly, with respect to this theory of breach of contract, three things are true. First, the parties' contract is still enforceable. *See id.* Second, the crucial issue of when the Knights of

Columbus was supposed to make an announcement cannot be resolved at this point. And third, the other important and related issues of when exactly the Knights of Columbus breached the parties' agreement and, therefore, when the statute of limitations began ticking are similarly unanswerable with a Rule 12(b)(6) motion.[12] For those reasons, the Knights of Columbus' motion to dismiss plaintiffs' breach of contract claim is DENIED.

C. <u>Promissory Estoppel (Claim Three)</u>.

Next, the Knights of Columbus seeks to dismiss plaintiffs' promissory estoppel claim . Its argument on this claim is largely the same as the one it makes above with respect to plaintiffs' breach of contract claim. That is, to the extent the Knights of Columbus made a promise in September 2011 to announce UKnight as its preferred vendor, Connecticut's three-year statute of limitations bars plaintiffs' claim. Again, however, the Knights of Columbus misinterprets Connecticut's statute of limitations.

As explained above, the key issue in deciding whether Connecticut's three-year or six-year statute of limitations applies to an oral contract claim is whether or not the alleged contract at the time of breach was executory. *Paul v. Bank of Am., N.A.*, No. 3:11-CV-0081 JCH, 2011 WL 5570789, at *5 (D. Conn. Nov. 16, 2011); *John H. Kolb & Sons, Inc.*, 821 A.2d at 780 ("It is well established, therefore, that the issue of whether a contract is oral is not dispositive of which statute applies. Thus, the defendant's argument that § 52–581 automatically applies to the oral contract between the parties is incorrect. *The determinative question is whether the contract was executed*.") (emphasis added).

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[12] In reality, these questions are irrelevant. Regardless of when after September of 2011 the facts reveal that the Knights of Columbus was reasonably supposed to perform and when the facts reveal it breached the parties' agreement, plaintiffs' claim would not be barred because the six-year statute of limitations applies as I described *supra.*

Importantly, Connecticut courts have also interpreted this same key inquiry to apply "under a theory of promissory estoppel[.]" *See id.* (citing *Torrington Farms Ass'n v. Torrington*, 816 A.2d 736 (Conn. App. Ct. 2003) and applying the six-year statute of limitations to a claim for promissory estoppel). Accordingly, I find that Connecticut's six-year statute of limitations under C.G.S. § 52-576(a) applies because the parties' agreement was executed when plaintiffs allege that the Knights of Columbus made subsequent promises in 2012, 2013, and 2014 to perform. *See* ECF No. 15 at ¶112. Filed within six-years of those promise, plaintiffs' promissory estoppel claim is therefore not time-barred. The Knights of Columbus' motion to dismiss plaintiffs' promissory estoppel is therefore DENIED as well.

D. Slander *Per Quod* (Claim Eight).

The last claim the Knights of Columbus seeks to dismiss is plaintiffs' claim for slander *per quod*. Again, it makes two arguments. First, it argues that plaintiffs have failed to state a claim because they do not plead actual damages resulting from its alleged slander. Second, the Knights of Columbus argues that this claim is barred under the applicable two-year statute of limitations. This time, I agree with the Knights of Columbus' second argument for dismissal.

Under Connecticut law, a plaintiff must bring action for slander "within two years from the date of the act complained of." C.G.S. § 52–597. Importantly, as Connecticut courts have explained, this statute of limitations does not start ticking on the date the plaintiff becomes aware of the allegedly slanderous comment or its effects. *L. Cohen & Co., Inc. v. Dun & Bradstreet, Inc.*, 629 F. Supp. 1425, 1428 (D. Conn. 1986) ("The 'discovery' rule urged by the plaintiff is inconsistent with the express language of C.G.S. § 52–597, which requires that actions for libel or slander be brought "within two years from the date of the act complained of."). Rather, it begins, as the plain language of Connecticut's statute makes clear, on the date the comment was

allegedly made. *Id.*; C.G.S. § 52–597 ("No action for libel or slander shall be brought but within two years *from the date of the act complained of*.") (emphasis added).

Here, plaintiffs have alleged that Mr. Smith made an allegedly slanderous comment about Mr. Labriola on January 24, 2014 during a meeting of the Knights of Columbus Operations Committee. ECF No. 15 at ¶48. Because plaintiffs filed their initial complaint on January 24, 2017—exactly *three* years after they allege Mr. Smith made this comment—this claim, which is asserted against the Knights of Columbus in addition to Mr. Smith, is time-barred. Accordingly, the Court GRANTS the Knights of Columbus' motion to dismiss the Eighth Claim for Relief with prejudice.

E. Motion to Strike under Rule 12(f).

Finally, the Knights of Columbus move to strike paragraphs 1, 31–47, 84–86, and 89–101 of plaintiffs' amended complaint as "immaterial, impertinent, and scandalous" under Rule 12(f). These paragraphs describe the Knights of Columbus' alleged racketeering. They therefore pertain to plaintiffs' RICO claim. While I have dismissed that claim, I have done so without prejudice because plaintiffs represented to the Court during oral arguments that they might amend that claim should it be dismissed, and that doing so would not be futile.

Accordingly, the Court DENIES the Knights of Columbus' motion to strike without prejudice at this time because many of those allegations will remain pertinent. However, that does not mean that some of the colorful language belongs in a pleading. If an amended complaint is filed, the Court expects plaintiffs to exercise professional discretion to avoid excessively aggressive phrasing and histrionics. If plaintiffs do not amend their RICO claim, they nevertheless should consider whether amending their pleading would be a good way to "tone it down." Otherwise, defendants can re-file their motion.

ORDER

For the reasons above, the Court:

1. GRANTS the individual defendants' motion to dismiss [ECF No. 20] and dismisses the claims against Mr. Smith and Mr. St. John without prejudice for lack of personal jurisdiction.

2. GRANTS IN PART and DENIES IN PART the Knights of Columbus' motion to dismiss and to strike [ECF No. 23]. Plaintiffs' First Claim (RICO) is dismissed without prejudice. Plaintiffs' Eighth Claim (slander) is dismissed with prejudice. The motion is otherwise denied.

DATED this 28th day of July, 2017.

BY THE COURT:

R. Brooke Jackson
United States District Judge