IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 2017-CV-210-RBJ

LIST INTERACTIVE, LTD. D/B/A UKNIGHT INTERACTIVE,
LEONARD S. LABRIOLA

Plaintiffs,

v.

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

Defendants.

REPLY IN SUPPORT OF MOTION TO AMEND

Plaintiff List Interactive, Ltd., d/b/a UKnight Interactive ("UKnight") hereby files its Reply ("Reply") in Support of its Motion to Amend ("Motion"), and states as follows:

INTRODUCTION

Following the Court's July 28th Order, [Doc. No. 54], which dismissed Plaintiff's RICO claim "without prejudice," *id*. at 31, Plaintiff now seeks leave to amend and restate its RICO claim to directly address the framework set forth by the Court, and to assert a claim against the IRS that directly addresses a portion of the Court's rationale for dismissal, namely that *by virtue of their wrongfully claimed 501(c)(8) status*, KC Inc., together with local councils and agents, claim to be a monolithic entity. *See* proposed Second Amended Complaint ("SAC"), *attached as* **Exhibit 1** to Motion.

Defendant, in an effort to avoid any discussion of its criminal acts and cover-up, now cries foul and opposes the Motion on two grounds: futility and undue prejudice. The Federal Rules, however, are intended "to provide litigants the maximum opportunity

for each claim to be decided on its merits, rather than on procedural niceties." *Minter v. Prime Equip. Co*., 451 F.3d 1196, 1204 (10th Cir. 2006) (emphasis added). Defendant's futility arguments amount to a motion to dismiss under Rule 12(b)(6), much of which asserts arguments that could have been raised in its prior motion to dismiss, but were not, and are now barred by Rule 12(g)(2). Defendants then make the wholly conclusory argument that the Motion was brought in bad faith, as well as the claim that the proposed amendment will cause it undue delay. In fact, the only concern of delay resulting from Defendant's 33-page Response (and request for oral argument) is whether the time required by the Court to address Defendant's opposition consumes the time remaining before the December 15, 2017 fact discovery cut-off.

ARGUMENT

Defendant, in its Response, [Doc. No. 66], makes the *ipse dixit* claims that the proposed amendment is a "blatant attempt to create a false scandal," is made in "bad faith," and a "smear." Defendant would now like the Court to *assume* the allegations in the SAC are false—and *therefore* scandalous—but in fact, at this stage of the litigation, the Court must assume they are true. Indeed, as argued in Plaintiff's Emergency Motion for TRO, [Doc. No. 76], Defendant continues to illegally intimidate witnesses in a last-ditch effort to perpetuate its cover-up. None-the-less, Plaintiff *has* expressed concern for the reputational damage Defendant will suffer when these actions are made public, Response, **Exhibit B**, but highlighting the fact that Plaintiff prevailing in this case will cause Defendant reputational damage does not constitute "bad faith." Here, while Defendant states that Plaintiff's allegations are baseless—*and therefore made in bad*

faith—Plaintiff has strong evidence to the contrary, which while normally irrelevant at this stage, *is* relevant to demonstrating that the Motion was not made in bad faith:

- Defendant is actively, and illegally, trying to cover up it membership number inflation by intimidating witnesses, which in fact demonstrate fraud. *See* Emergency Motion for TRO, [Doc. No. 76].

- Email from Bob Ippoliti ("There is no question in fact that Supreme and State of Fl. Are charging, and have been charging for per-capita taxes on members who have not paid dues. In my Council I have members who have never paid dues for as long as 10 years, yet we cannot suspend nor drop them for any reason.nor will they . . . State of Fl. and Supreme last year told me not to carry a balance in a members account. but rather clear all account balances before the next billing cycle."), *attached hereto* at **Exhibit 1**.

- Prior affidavits from whistleblowers included as exhibits to [Doc. No. 16], *attached in <u>unredacted</u> form hereto* at **Exhibit 2**.

Furthermore, as demonstrated in the SAC, there is an extensive factual basis for the claim that Defendant's 501(c)(8) status is improper, and that this has injured UKnight. Most importantly, each of these requested amendments is sought to directly address the legal framework set forth by the Court in its Order. [Doc. No. 54].

I. PLAINTIFF'S CLAIM AGAINST THE IRS SHOULD PROCEED

Plaintiff explains in detail, Motion at 5-8, why the IRS claim is necessary, both to address the framework set forth in the Court's Order, [Doc. No. 54], as well as to address the damage caused by enhanced competition due to Defendant's wrongful 501(c)(8) claim as revealed during discovery to date. *See, e.g.*, **Exhibit 3** at p. 4 (Defendant's internal presentation produced in discovery discussing "rebuild and deploy in-house" UKnight's services). Initially, Defendant advances the red herring that Plaintiff is not allowed to challenge how Defendant "fraudulently obtained" its tax-exempt status, because this status was granted 77 years ago. Response at 3, 4 (*purporting* to quote SAC ¶ 2). Defendant misquotes the SAC, and in fact, Plaintiff never alleges that this status

was fraudulently obtained, but rather fraudulently "maintained." SAC ¶ 2. For the reasons argued below, each of Defendant's arguments against adding the IRS claim fail:

A. Plaintiff Has Article III Standing

First, Defendant misapprehends the holdings in the *Fulani* line of cases. Indeed, as the D.C. Circuit plainly stated in *Fulani v. Brady*, "[u]nquestionably, there is such a concept as competitor standing. That standing has been recognized in circumstances where a defendant's actions benefitted a plaintiff's competitors and thereby caused the plaintiff's subsequent disadvantage." *Id*., 935 F.2d 1324, 1327 (D.C. Cir. 1991). As that court continued, "[i]n the *Data Processing* line of cases, the government's actions benefitted the plaintiffs' competitors and disadvantaged the plaintiffs. Thus, cessation of the government's actions would redress the plaintiffs' disadvantage." *Id*.

While, on the facts presented there, the D.C. Circuit ultimately held that Ms. Fulani lacked standing, Chief Judge Mikva issued a dissent that was extremely critical of the court's statements regarding causation and redressability, calling it "baffling":

> First, the majority pays only lip service to the injury alleged by the appellants, ignoring the Supreme Court's command to base standing analysis on the allegations actually made by a party seeking judicial redress. Second, it misreads seminal decisions in the standing area, adopting a constricted reading inconsistent with judicial practice. And third, the majority spins out a novel theory of redressability that, if taken seriously, would send legitimate suitors away from the federal courts in droves.
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> . . .
>
> [T]he majority then goes critically awry by saying that "an injury will not be fairly traceable to the defendant's challenged conduct . . . where the injury depends . . . on independent intervening or additional causal factors." This is not, and has never been, the law.

Id. at 1333. To the extent the *Fulani* line of cases can be read to pose any hurdle to Plaintiff's standing in this case (and they should not), Chief Judge Mikva's persuasive

dissent illustrates why this Court, and the Tenth Circuit, should not follow their lead. And, contrary to Defendant's argument, even the D.C. Circuit majority recognized that "the Second Circuit accepted Fulani's theory of competitor standing in the context of a parallel case, *Fulani v. League of Women Voters Educ. Fund*., 882 F.2d 621 (2d Cir. 1989)." *Fulani v. Brady*, 935 F.2d at 1328 (emphasis added).

Here, Defendant relies entirely on the *ipse dixit* argument that Plaintiff and Defendant are not competitors, and that therefore competitor standing should not apply. Response at 6. In fact, the SAC alleges that (and explains why) UKnight and Defendant are direct competitors. SAC ¶¶ 122-25. Defendant's disagreement with this allegation raises a disputed issue of fact, not an issue of law that may be resolved under Rule 12(b)(6), let alone in opposition to a motion to amend. Plaintiff, as a competitor disadvantaged by the Government's actions, does have standing to bring this claim against the IRS, and Defendant entirely fails to address the case law cited by Plaintiff establishing this. *See* Motion at 5-7 (citing *Clarke v. Securities Indus. Ass'n*, 479 U.S. 388 (1987); *Arnold Tours, Inc. v Camp*, 400 U.S. 45 (1970); *and Association of Data Processing Serv. Orgs. v. Camp*, 37 U.S. 150 (1970)).

B. IRS Code Does Not Preclude Plaintiff's Claim

Next, Defendant argues that 26 U.S.C. § 7428 somehow bars Plaintiff's claim. Response at 10-13. It does not. Indeed, as the D.C. Circuit stated in *Fulani*, "the cited statute [§ 7428] does not preclude expressly the possibility that a third party could file an action under some statute or source of law other than § 7428." *Id.*, 935 F.2d at 1327. Here, Plaintiff challenges the IRS's position under the "unquestionabl[e] . . . concept [of] competitor standing." *Fulani v. Brady*, 935 F.2d at 1327. None of the cases raised by

Defendant address the issue of competitor standing—rather, they all involve mere third-parties upset with rulings of tax-exemption who were never injured thereby, and therefore do not have standing to challenge those rulings. *See generally*, Response 10-13.

C. Defendant Would Not Be Unduly Prejudiced By Amendment

As plainly stated in the Motion, the IRS claim is not, as Defendant contends, one that Plaintiff "held in [its] back pocket." Response at 14. Rather is in direct response to the Court's Order issued less than 3 weeks before filing of the Motion, and based substantially on information uncovered *during discovery* in this case. Motion at 1-2, 5; *see also* **Exhibit 3** (Presentation produced by Defendant during discovery showing Defendant's internal discussion about competing with UKnight).

Defendant also argues that amendment to add the IRS claim would "force the Order to largely restart discovery." Response at 15. It is not at all clear why this would be the case. There are approximately 3 months remaining in fact discovery according to the scheduling order entered in this case, and while the IRS claim would result in a limited number of additional written discovery requests from UKnight to KC Inc., it would not result in any new depositions (for example, Plaintiffs have not yet taken the 30(b)(6) deposition of Defendant, which would address this issue). Defendant's argument here is conclusory, at best.

Finally, the law in the Tenth Circuit is clear: "courts will find prejudice only when an amendment unfairly affects non-movants in terms of preparing their [response] to the amendment." *Bylin v. Billings*, 568 F.3d 1224, 1229 (10th Cir. 2009) (emphasis added). In *Bylin*, the court affirmed leave to amend where the non-moving party had *several days* to respond, and trial was still *weeks away*. *Id.* Here, the situation is far less

prejudicial than those circumstances where amendment was permitted—KC Inc. would not respond at all to the IRS claim as it is not the defendant in that claim; it has months of discovery remaining if it feels the need to take discovery on this issue; and there is nearly one year until the scheduled trial date. Indeed, the only potentially complicating delay related to the IRS claim is the briefing schedule imposed by Defendant's instant opposition to the Motion to Amend (and its request for oral argument). Defendant cannot eat their cake and have it too.

Defendant also presents a straw-man argument to the Court that Plaintiff's IRS claim would impermissibly ask the court or a jury to determine if their members are "Catholic enough." Response at 15. No such determination is requested. Rather, resolution of the IRS claim involves—but does not depend on—resolution of whether Defendant's membership meets the objective membership criteria it requires for itself.

Defendant cites *Colorado Christian University v. Weaver*, 534 F.3d 1245, 1263 (10th Cir. 2008), for the proposition that it would be impermissible to determine if its membership is "Catholic enough" because this would involve the court impermissibly "entangling itself in an interfaith dispute." Response 15 n.1. In *Weaver*, the court held unconstitutional a statute that "expressly discriminates among religions." *Id*. at 1250. But there is no "specter of government censorship" concern here—indeed, if anything this is a question of a whether a self-proclaimed religious organization may set requirements for its own membership, which it undoubtedly has the constitutional right to do. Just as courts have upheld that 501(c)(8) organizations may properly require their members to be Polish Army veterans, not merely of polish ancestry or sympathetic to polish immigrants (and then have that requirement enforced against them), here KC Inc.

has the right to require its members meet certain standards of the Catholic faith. It has done so, and now must be accountable for that decision. *See, e.g., Polish Army Veterans Post 147 v. Comm'r*, 24 T.C. 891; Motion at 8-9; *see also* **Exhibit 4** at p. 68, § 168 (Defendant's stating that members who "fail to remain a practical Catholic in union with the Holy See" or who "fail[s] to pay his dues" shall "ipso facto, forfeit his membership in the Order.").

II. PLAINTIFF SHOULD BE PERMITTED TO AMEND ITS RICO CLAIM

Initially, in what amounts to a motion to dismiss under Rule 12, Defendant raises the new arguments that the alleged predicate acts sounding in fraud fail under Rule 9(b), and that the witness tampering claim fails. These arguments were not raised in its initial Motion to Dismiss, [Doc. No. 23], and do not address *new* allegations sought through amendment. Accordingly, these arguments are barred by Fed. R. Civ. P. 12(g)(2), which states that "a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion." This is particularly significant when new arguments are raised in opposition to a Motion to Amend, as here, because the claimed pleading deficiencies could have been addressed by the very amendment in question had Defendant raised them in its original Motion to Dismiss. While, on occasion, judicial economy may favor considering successive motions to dismiss each raising new arguments, here the opposite is the case. Defendant simultaneously claims the requested amendment will cause undue delay, while itself exacerbating any such delay because—if its arguments hold water—any dismissal thereon would invite *further* amendment.

Defendant also raises the entirely new arguments that Plaintiff's RICO claim fails the "pattern" and "continuity" requirements—arguments that could have been, but were

not, raised in Defendant's prior Motion to Dismiss. These new arguments, Response at 22-27, do not involve any *new* allegations contained in the proposed Second Amended Complaint, but rather are predicated entirely on Defendant's belated argument that the predicate acts sounding in fraud and witness tampering should not be considered in evaluating the pattern or continuity issues. As argued below, none of these arguments are valid. However, because all of these arguments could have been raised in the prior Motion to Dismiss, and potentially addressed—if found deficient—in the currently sought amendment, they should be barred by application of Rule 12(g)(2).

A. Plaintiff Adequately Pleads Wire Fraud, Bank Fraud, And Funds Obtained By Fraud

Defendant now raises for the first time the argument that Plaintiff's fraud-based predicate act allegations do not comply with Rule 9(b). Response at 17-19. Defendant does not argue any failure with respect to the "who, what or when" of the fraud allegations, but rather argues that Plaintiff does not allege "how these statements were fraudulent." *Id*. at 17. In fact, the alleged acts of wire fraud clearly allege that KC Inc. falsely claims to have 1.75 to 1.9 million members, SAC ¶¶ 104(b), (g-l), that it is falsely representing that its membership is growing, *id*. ¶ 104(c), that it has over 1,500 "full time" field agents, *id*. ¶ 104(d), and that it has the highest possible S&P "AAA" rating. *Id.* ¶ 104(n). The SAC makes clear how these statements are fraudulent because KC Inc.'s membership is only "1.4 million" members, *id*. ¶ 45, its membership is actually "shrinking," *id*. ¶¶ 35-36, that its field agent number is lower than 1,500, *id*. ¶ 47, and that it does not have a "AAA" rating. *Id*. ¶¶ 49, 104(n). The SAC ¶ 106 also plainly states both additional fraudulent statements made by wire *and how they are false*.

Next, Defendant argues that Plaintiff does not explain how anyone relied on these statements, or how anyone was injured as a result. Response at 17-18. While the issue of causation is addressed below, it is important to note that third-party reliance is sufficient for fraud-based RICO predicate acts. *See Bridge v. Phoenix Bond & Indem. Co*., 553 U.S. 639 (2008). Here, again, Plaintiff plainly states who relied on these acts of fraud, and how they were injured. *See, e.g*., SAC ¶¶ 104(b) (fraudulently inducing members to purchase insurance products), 104(m) (fraudulently inducing AM Best to rely on false representations to issue A++ rating), 104(n) (fraudulently inducing Peter Droege to rely on misrepresentation of "AAA" ratings by its web postings), 106 (fraudulently inducing Plaintiff to reveal its trade secrets), 108 ("fraudulently induced hundreds of thousands of members of the Knights of Columbus to send monthly insurance premium payments"), 111 (fraudulently inducing "hundreds of thousands of members of the Knights of Columbus [to] make monthly payments").

To the extent some of Plaintiff's bank fraud allegations, including names, amounts, and dates of these individuals making these payments are not specifically alleged, that is only because "Defendant maintains sole custody and control of the vast majority of the details," *id*. ¶ 112, and Defendant has actively sought to defer discovery on this topic to date. Rule 9(b) permits such details to be omitted when they are exclusively within the custody and control of the opposing party, as here. *George v. Urban Settlement Svcs*., 833 F.3d 1242, 1255 (10th Cir. 2016) (9(b) relaxed due to "plaintiff's inability to obtain information in the defendant's exclusive control"). Additionally, the purpose of Rule 9(b) is "to afford [a] defendant fair notice of a plaintiff's claims," *George*, 833 F.3d at 1255, and Defendant does not claim (nor can it in

good faith) that it does not understand or have fair notice of Plaintiff's allegations. *See, e.g., id*. at 1257 ("Rule 9(b) does not require omniscience; rather the Rule requires that the circumstances of the fraud be pled with enough specificity to put defendants on notice as to the nature of the claim.").

B. Plaintiff Adequately Pleads Extortion And Witness Tampering

Next Defendant argues that Plaintiff's extortion allegations, based on Defendant's "use[of] economic fear of wrongfully withholding death benefits," SAC ¶ 87, is a "made-up allegation[]." Response at 19. If the bare recitation that an allegation is "made-up" was sufficient to satisfy the requirements of Rule 12(b)(6), civil litigation would cease to exist. Plaintiff clearly alleges the method, perpetrator, victims, and amounts extorted by Defendant, which at this stage are assumed to be true. SAC ¶¶ 83-88.

Defendant also claims that extortion fails because it has the legal authority to obtain these funds. Response at 20. Here, Defendant conflates two critical concepts—it *does* have the legal authority to obtain membership dues, but it *does not* have the legal authority to *fraudulently* obtain membership dues for *non-existent members* based on local councils' economic fear of losing access to death benefits! SAC ¶ 85. Defendant's claim that it has the right to defraud its members is strikingly similar to President Nixon's claim that "[w]hen the President does it, that means it's not illegal." *See* April 6, 1977 Interview with David Frost. Accepting these allegations as true, as the Court must at this stage, Plaintiff has properly pleaded the predicate acts of extortion.

Next, Defendant claims that Plaintiff's allegations of the predicate act of witness tampering fail. Response at 20-21. The witness tampering allegations, SAC ¶¶ 113-114,

are identical to those in the First Amended Complaint but were not addressed in Defendant's first Motion to Dismiss. Regardless, here Defendant does not actually advance any reason why these allegations are insufficient other than the statement that the Court "declined to find witness tampering." Response at 20. The Court did not, in fact, make any affirmative finding that witness tampering did not occur. Rather, in the March 2, 2017 hearing, the Court stated that "I don't like that communication [the email alleged to be witness tampering]," but that the Court was not yet "prepared to say," at this early stage of the litigation, that witness tampering had in fact occurred. Response, **Exhibit C** at 18:5. Defendant's attempt to twist these words into an affirmative, definitive rejection of the witness tampering allegation is overreaching.[1]

C. Plaintiff Properly Pleads The "Pattern" Requirement

Next, Defendant raises for the first time the argument that Plaintiff's RICO allegations fail to meet the "pattern" and "continuity" requirements. Response at 23-28. The entirety of these arguments could have been raised in Defendant's first Motion to Dismiss, but were not. And these arguments also require the Court accept Defendant's claim that all of Plaintiff's predicate acts sounding in fraud, as well as extortion and witness tampering, are legally insufficient and should be ignored. For all of the reasons argued above, each of these predicate acts is properly pleaded, and Defendant's arguments about "pattern" and "continuity" similarly fail.

Additionally, Defendant's argue that the alleged predicate acts represent "two distinct and unrelated types of conduct." Response at 23. In fact the two "types" of conduct in question—(1) inflating membership numbers and (2) covering it up—are self-

[1] *See also* [Doc. No. 76], outlining Defendant's subsequent and ongoing witness tampering.

evidently related. Again, Defendant attempts to twist RICO jurisprudence to fit their ends. Prior to the Supreme Court's 1989 opinion in *H.J., Inc. v. Northwestern Bell Tel. Co*., 492 U.S. 229, many circuits, including the Tenth Circuit had actually required "multiple schemes" to establish a pattern of racketeering activity. *See, e.g., Torwest DBC, Inc. v. Dick*, 810 F.2d 925, 928-29 (10th Cir. 1987). While multiple related schemes are still permitted, and in fact the norm, since *H.J., Inc*. establishing a "pattern" of racketeering activity requires only continuity plus relationship. *Id*., 492 U.S. at 239. Because Defendant's attempts to eliminate the dozens of predicate acts discussed above fail, there is no question of continuity—these acts are alleged to span the period from 2011 to present, and are specifically alleged to pose a threat that they will continue into the future.[2] *See, e.g*., SAC ¶¶ 115, 125.

The only remaining question is whether there is a "relationship" between them. *H.J., Inc*., 492 U.S. at 239. As the *H.J., Inc*. Court said, relatedness exists where acts "have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." *Id*. at 241. All of the predicate acts alleged comprise either the scheme to inflate membership numbers or the efforts to cover up that scheme—plainly related in terms of "purposes, results, participants, victims," and they "are not isolated events." *Id*. These actions all shared Defendant as a participant, had the shared purpose of inflating membership numbers to improve its insurance sales, and resulted in the same set of thousands of victims harmed by these inflated numbers—including individuals purchasing overvalued insurance policies, local councils extorted to pay per capita fees

[2] In fact, Defendant's felony witness tampering is ongoing. *See* Emergency Motion for TRO, [Doc. No. 76], filed September 25, 2017.

on non-existent members, and UKnight committing itself based on the prospects of these inflated numbers and then being harmed in the cover-up.

This is precisely the kind of long-term pattern of continuing criminal behavior that RICO was designed to address. Furthermore, as the single entity with the most damages caused by this pattern (most of the thousands of individual and local council victims likely have only hundreds to tens-of-thousands of dollars in damages each), Plaintiff is the only victim with a sufficient economic motive to take on the role Congress envisioned as a "private attorney general" to put an end to this ongoing, widespread pattern of harm. *See, e.g.*, **Exhibit 1**, *attached hereto* (email from local council leader Bob Ippolito confirming Defendant is fraudulently collecting membership dues, but that his council's individual damages amount to no more than $20,000). Contrary to Defendant's argument, Response at 28, this is *precisely* the kind of civil case for which RICO was intended.

D. Plaintiff Properly Alleges Proximate Cause

Defendant next re-raises its argument that Plaintiff's injuries were not the proximate result of the racketeering conduct alleged. This argument still fails, because, unlike all of the cases cited by Defendant, there was no intervening party (or parties) between Defendant's actions and Plaintiff's damages. For example, Defendant cites *Hemi Group, LLC v. City of New York*, 130 S. Ct. 983 (2010), claiming it supports lack of causation. In fact, the Court in *Hemi* highlighted that proximate cause was only lacking there because "the defendant's fraud on the third party (the State) has made it easier for a *fourth* party (the taxpayer) to cause harm to the plaintiff (the City)." *Id*. at 990 (parentheticals and emphasis in original). Here, there is no intervening party at all—

Defendant directly caused Plaintiff's damages in order to cover up its scheme. While there is admittedly little case law directly addressing cover-ups and standing, the Seventh Circuit has held that an action taken to cover up a RICO scheme gives the victim of the cover-up (who was not directly harmed by the underlying scheme) standing to sue. *Schiffels v. Kemper Financial Services, Inc*., 978 F.2d 34 (7th Cir. 1992). Here, the situation is even more clear-cut, as Plaintiff was not only directly harmed by the cover-up, but also directly harmed by the scheme itself. SAC ¶¶ 22, 117 (relying on fraudulent misrepresentations of membership numbers in committing all its resources to serving the Knights of Columbus).

The Tenth Circuit's most recent opinion on RICO causation further supports that proximate cause exists here. In *Safe Streets*, the court noted that "a plaintiff who complains of harm flowing merely from the misfortunes visited upon a third person by the defendant's acts [i]s generally said to stand at too remote a distance to recover." *Safe Streets v. Hickenlooper*, Case No. 16-1048 (10th Cir. June 7, 2017). The *Safe Streets* court continued that it did not matter whether the plaintiff there was a "victim of the alleged § 1962 violation" (the Controlled Substances Act violation) because it was still damaged by defendant's actions. *Id*. Here, while Plaintiff was not defrauded into purchasing an insurance policy, it was directly harmed by Defendant's pattern of racketeering activity and its efforts to cover up that scheme.

E. Plaintiff's First Enterprise Is Not A "Cut-And-Paste," Rather It Addresses And Resolves The Court's Concerns

Lastly, Defendant challenges both of the alternative enterprises pleaded by Plaintiff. Defendant calls the first enterprise a simple "cut-and paste from the First Amended Complaint," and argues that therefore it must still fail. Response at 29.

Defendant, however, ignores several critical changes to this first enterprise. For example, the SAC alleges that "KC Inc. knowingly and intentionally used the legal separateness of its local councils to 'independently' certify its membership numbers as the vehicle for its fraudulent scheme," SAC ¶ 67, and that "[t]he relationship between KC Inc. and the legally and functionally distinct local councils which certify the membership numbers enhanced the enterprise's ability to thrive and avoid detection." *Id*. The SAC also adds the critical, 16-line explanation of exactly how "local councils play a critical and central role in the enterprise's ability to thrive and avoid detection . . . ." *Id*. at ¶ 69. Defendant simply ignores these additions. Response at 29-30. In fact, these amendments directly address and satisfy the framework set forth by the Court in its Order, [Doc. No. 54], as explained in detail in Plaintiff's Motion at 11-14.

F. Plaintiff's Second Enterprise Is Properly Pleaded

Regardless of the validity of the first enterprise, however, Plaintiff's proposed amendment also includes a second, alternative, enterprise that directly invalidates the person-enterprise distinctiveness defense raised previously by Defendant. *See* SAC ¶¶ 70-81; Motion at 14-15. Defendant now claims that this second enterprise fails to adequately allege that it "functions as a 'continuing unit,' with a 'common purpose.'" Response at 30 (citing *Boyle v. U.S.*, 556 U.S. 938, 948 (2009)). Defendants, notably, admit that the Knights of Columbus plus AM Best do have a "common purpose," Response at 31, but make the conclusory argument that an enterprise including AM Best would fail on causation grounds. *Id*. They do not explain *why* this is the case, and this argument fails for the same reasons as their broader causation argument as argued above.

Next, Defendant attempts to attack the inclusion of IDI within the second enterprise, admitting that while "again [this enterprise] might satisfy the distinctness and common purpose requirements," it would now somehow fail on continuity grounds. Response at 31 (internal quotation marks omitted). Initially, Defendant's continuity argument is based on their *new* attempt to exclude virtually all of the alleged predicate acts, which should be rejected as argued above. As set forth in the SAC, IDI plays a critical role in concealing the entirety of the pattern of racketeering activity, and profits thereby, therefore sharing a common function and purpose. *See* SAC ¶¶ 72-73, 89-96; Motion at 14-15. As explained by the Supreme Court in *Kushner*, the enterprise may consist of "the person and the victim, or the person and the tool"—here, AM Best is both a victim and a tool, and IDI is a key tool of the enterprise facilitating the cover-up of the racketeering scheme, along with Defendant as the RICO person. *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 162 (2001). Accordingly, because both of Plaintiff's alternative enterprise allegations are valid under RICO, Plaintiff should be permitted to re-state its RICO claim as set forth in the proposed Second Amended Complaint.

WHEREFORE, this 25th Day of September 2017, Plaintiff respectfully requests this Court GRANT its Motion to Amend.

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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2017, the foregoing **REPLY IN SUPPORT OF MOTION TO AMEND** was filed with the Court via the CM/ECF system and served via E-Mail all defense counsel listed with CM/ECF for this case.

/s/ Jeffrey S. Vail