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.

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Plaintiffs List Interactive, Ltd. d/b/a UKnight Interactive ("UKnight") and Leonard S. Labriola file this Response to Defendants Matthew St. John's and Thomas Smith's Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(2), [Doc. No. 20] ("Motion"), and in opposition thereto state as follows:

INTRODUCTION & LEGAL STANDARD

Defendants argue that this Court cannot exercise personal jurisdiction over Mr. Smith and Mr. St. John in this case. To establish personal jurisdiction over Defendants, Plaintiffs must show that defendants "have 'minimum contacts' with the forum state, such that having to defend a lawsuit there would not 'offend traditional notions of fair play and substantial justice.'" *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008) (Gorsuch, J.) (quoting *Int'l Shoe Co. v. Washington*, 326

U.S. 310, 316 (1945)) (internal quotation marks omitted). However, in RICO cases, the traditional notions of personal jurisdiction are substantially expanded, as argued below. 18 U.S.C. § 1965. 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.

ARGUMENT

A. THERE IS JURISDICTION IN THIS DISTRICT UNDER THE RICO ACT

Initially, the RICO violations alleged in the Amended Complaint are deemed to be torts committed in Colorado because there is undisputed jurisdiction over Defendant Knights of Columbus, one of the RICO co-conspirators in this case. As a result, the RICO statute provides nationwide jurisdiction over the remaining conspirators.

As one RICO treatise explains:

> Venue and jurisdictional principles rarely raise difficult issues in civil racketeering litigation, primarily because the venue and jurisdictional provisions of the statute are extremely broad and were deliberately designed by Congress to be expansive and favorable to those pursuing RICO claims. The statute's general emphasis is on ease of access to the courts, multiple potential locations for venue and trial, and an uncommon breadth in access to defendants and witnesses.

Civil RICO Practice Manual 3d. (2012), § 5.10. Specifically, the RICO statute, 18 U.S.C. § 1965, provides, in relevant part:

> (a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.
>
> (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.

18 U.S.C. § 1965 (emphasis added).

Defendants address nationwide service of process under RICO only obliquely in a footnote. *See* Motion at 2 n.1. Presumably this is an attempt to minimize the issue, and to permit them to provide only cursory legal support for their conclusory statement that the Amended Complaint "[does] not satisfy the ends of justice standard." *Id*. However, the two cases they cite in support of this footnote, *Cory v. Aztec Steel Bldg., Inc*., 468 F.3d 1226 (10th Cir. 2006), and *Goodwin v. Bruggeman-Hatch*, 2014 WL 382183 (D. Colo. 2014) are entirely inapposite—and, in fact, *Cory* actually supports the exercise of nationwide jurisdiction under RICO in this case.

First, the *Bruggeman-Hatch* case can be easily distinguished, as there the Court declined to exercise nationwide jurisdiction under RICO solely because the racketeering acts alleged against the dismissed defendants were extraterritorial, and therefore fell entirely outside the ambit of the RICO act. *Id*. The Court in *Bruggeman-Hatch* never analyzed the "ends of justice" standard in light of any applicable, domestic acts of racketeering, as exist in the instant case. *Id*.

While *Cory* can be just as easily distinguished, dicta in that opinion strongly supports the exercise of nationwide jurisdiction over Mr. Smith and Mr. St. John in this case. In *Cory*, the Tenth Circuit criticized the District of Kansas for improperly skipping immediately to the "ends of justice" analysis under 18 U.S.C. § 1965(b), without first conducting the required foundational analysis under § 1965(a). *Cory*, 468 F.3d at 1231. Because the District of Kansas improperly skipped directly to § 1965(b) analysis of the "ends of justice," without first determining whether the court had personal jurisdiction over at least one defendant based on its contacts with the district, the Tenth Circuit held

that the result of this incomplete analysis was that the "ends of justice" test was not met. *Id*. However, in dicta, the Tenth Circuit clearly stated that where the court finds (as here[1]) general jurisdiction over at least one defendant, then the courts should look to antitrust precedent to determine whether the ends of justice requirement is met with regard to other defendants—an analysis outside the scope of the holding in *Cory*. *Id*.

The Tenth Circuit continued to discuss how, had the District of Kansas properly conducted a sequential analysis of § 1965, the "ends of justice" issue *would* have been determined:

> The district court's construction is also not in accord with antitrust legislation. As noted above, the Clayton, Sherman, and Wilson Tariff Acts all prescribe an "ends of justice" analysis for allowing "other parties" to be summoned before the court, "whether they reside in the district in which the court is held or not." 15 U.S.C. §§ 5 (Sherman Act), 10 (Wilson Tariff Act), & 22 (Clayton Act). The Supreme Court has rejected the notion that a confluence of defendants within a single judicial district controls the "ends of justice" analysis. *See Standard Oil Co. of N.J. v. United States,* 221 U.S. 1, 46, 31 S.Ct. 502, 55 L.Ed. 619 (1911) (stating that personal jurisdiction had properly been acquired over nonresident defendants under the Sherman Act's "ends of justice" provision, as one of the many defendants was present within the district); *see also United States v. Standard Oil Co. of N.J.,* 152 F. 290, 296 (C.C.E.D.Mo.1907) (providing further background on the personal jurisdiction issue decided in *Standard Oil,* 221 U.S. at 46, 31 S.Ct. 502, by rejecting the nonresident defendants' argument that "the ends of justice" would be better served if they were summoned into court "in the district of the inhabitancy of a larger number of the defendants").

Id. at 1232. The Tenth Circuit held in *Cory* that, absent any determination that there is general jurisdiction over one defendant in the district, the mere existence of damages and litigation costs incurred by plaintiff in the district did not satisfy the "ends of justice" test to hail all defendants into that district under § 1965(b) alone. *Id*. However, the Tenth

[1] Defendants admit that the District of Colorado has general jurisdiction over defendant Knights of Columbus. Motion at 2.

Circuit elaborated that, in situations where, as here, one defendant is subject to general jurisdiction in the district, "personal jurisdiction had properly been acquired over nonresident defendants . . . as one of the many defendants was present within the district." *Id.* (*citing Standard Oil Co. of N.J.*, 221 U.S. at 46) (emphasis added).

Here, the simple fact that defendant Knights of Columbus is subject to general jurisdiction within the District of Colorado is sufficient, under *Cory* and 18 U.S.C. § 1965(b), to exercise personal jurisdiction over Mr. Smith and Mr. St. John. However, even if that were not the case, the extensive contacts by Mr. Smith and Mr. St. John directed at the District of Colorado, and from which the instant claims directly arise, as argued in **Section B**, *infra*, are more than enough to satisfy any reading of the "ends of justice" requirement.

B. DEFENDANTS' CONTACTS WITH THIS DISTRICT SATISFY DUE PROCESS

Regardless of whether nationwide jurisdiction is appropriate under RICO, Defendants Mr. Smith and Mr. St. John have sufficient contacts with this district to establish specific personal jurisdiction in this case. To establish personal jurisdiction, "defendants must have 'minimum contacts' with the forum state, such that having to defend a lawsuit there would not 'offend traditional notions of fair play and substantial justice.'" *Dudnikov*, 514 F.3d at 1070 (quoting *Int'l Shoe*, 326 U.S. at 316).

Initially, Mr. Smith and Mr. St. John both admit to several contacts with the District of Colorado. Mr. St. John has travelled to Colorado, **Exhibit 1** ¶ 6, engages in telephone and email conversations with agents in Colorado at least monthly, *id*. ¶¶ 7-8, and communicates specifically with Colorado agents several times per year. *Id*. ¶ 9. Mr St. John admits to having made several telephone calls to Mr. Labriola in Colorado, out

of which these claims directly arise. *Id*. ¶ 10. Mr. Smith has made several business trips to Colorado, Exhibit 3 ¶¶ 6-7, and regularly emails with insurance agents in Colorado. *Id*. ¶ 8.

Additionally, the burden that would be imposed on Mr. Smith and Mr. St. John by this Court exercising personal jurisdiction over them would be minimal, and certainly would not "offend traditional notions of fair play and substantial justice." *Int'l Shoe*, 326 U.S. at 316. Mr. Smith and Mr. St. John are both key employees of the Knights of Columbus Supreme Council ("Supreme"), and will be deposed and will be called as witnesses in this case regardless of whether they are individually defendants. They will be deposed in New Haven, Connecticut regardless of whether they are employee-witnesses or defendants. They are represented by the same counsel as Supreme, and presumably Supreme is paying their legal bills and will pay for their travel to Colorado when called as witnesses. Other than limited written interrogatories directed to them personally (which could simply be replaced with subpoenas *duces tecum* if they were merely witnesses), there would be no additional burden on Mr. Smith or Mr. St. John if they remain as defendants in this case. Accordingly, hailing Mr. Smith and Mr. St. John into court in this District would in no way "offend traditional notions of fair play and substantial justice," *id*., and the exercise of jurisdiction over Mr. Smith and Mr. St. John is inherently "'reasonable' in light of the circumstances surrounding the case." *OMI Holdings, Inc. v. Royal Ins. Co. of Can.*, 149 F.3d 1086, 1091 (10th Cir. 1998).

But the most compelling argument for exercising personal jurisdiction over Mr. Smith and Mr. St. John is that they both intentionally directed tortious conduct toward Colorado from which the instant claims directly arise. Despite Defendants' attempt to re-

style the Amended Complaint to the contrary, Defendants knowingly and intentionally directed their tortious conduct toward this District, including misappropriation of trade secrets, fraud, negligent misrepresentation, and intentional interference with business relationships (none of which claims Defendants have moved to dismiss).

As alleged in the Amended Complaint, the claims arise out of Mr. Smith's and Mr. St. John's dealing with UKnight, a Colorado limited liability company with its headquarters and managing member (Mr. Labriola) both located in Colorado. Amend. Compl. ¶ 3. Defendants knew that UKnight was located in Colorado. **Exhibit 1** ¶ 10. The fraudulent scheme to inflate the membership numbers of the Knights of Columbus was directed by Mr. Smith and Mr. St. John, and directed at Colorado (as well as all other states), from which the instant claims directly arise. Amend. Compl. ¶¶ 31-47; *see also* **Exhibit 1** ¶¶ 7-9 (Mr. St. John admitting he directs his insurance activities toward Colorado); **Exhibit 3** ¶¶ 6-8 (Mr. Smith admitting he directs his insurance activities toward Colorado). As part of this scheme, Mr. Smith and Mr. St. John engaged in the intentional misappropriation of trade secrets owned by UKnight, a Colorado company, from which Plaintiff's trade secrets claim directly arises. Amend. Compl. ¶¶ 56-59, 69-78, 88(c)-(g), 116-121. Additionally, Mr. Smith intentionally directed his slanderous and fraudulent statements toward UKnight, a Colorado company, and Mr. Labriola, a Colorado resident, from which Plaintiffs' slander, fraudulent misrepresentation, and negligent misrepresentation claims directly arise. *Id*. ¶¶ 48-49, 126-143.

As Defendants argue, "jurisdiction over the individual officers and directors must be based on their *individual contacts* with the forum state." *Ten Mile Indus. Park v. W. Plains Serv. Corp.*, 810 F.2d 1518, 1527 (10th Cir. 1987) (emphasis added). Here, each

of the contacts and actions stated above is an individual contact made by Mr. Smith or Mr. St. John. Additionally, despite Defendants' argument to the contrary,[2] it is clear that Defendants knew "that the brunt of the injury would be felt in the forum state," *Dudnikov*, 514 F.3d at 1072, because they knew that UKnight was a Colorado company headquartered in Colorado, and that Mr. Labriola, its managing member, lived in Colorado.

Accordingly, because Mr. Smith and Mr. St. John both purposefully directed their actions toward Colorado, and because the instant claims directly arise out of those actions, this Court may appropriately exercise specific jurisdiction over both Defendants.

CONCLUSION

For all of the reasons and authorities cited herein, Plaintiffs respectfully request this Court deny Defendants' Motion in its entirety. Alternatively, in the event this Court is not convinced that Plaintiffs have presented a *prima fascia* case sufficient to deny Defendants' Motion on the briefs alone, Plaintiffs request limited discovery on these jurisdictional issues, an evidentiary hearing, and oral argument to establish the propriety of personal jurisdiction over Defendants in the District of Colorado.

[2] Defendants' argument that "Plaintiffs do not even claim to *have* Colorado-based activities," Motion at 15, is especially difficult to comprehend considering the plain allegations in the complaint that UKnight is a Colorado company, with its offices and headquarters in Colorado, and with its managing member Mr. Labriola performing his work in Colorado as a Colorado resident. Amend. Compl. ¶¶ 3-4.

Respectfully submitted this 8th day of March 2017.

/s/ Jeffrey S. Vail

Jeffrey S. Vail
VAIL LAW LLC
5299 DTC Blvd., Suite 1101
Greenwood Village, CO 80111
Tel/Fax: (303) 800-8237
E-mail: jvail@vail-law.com
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2017, the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** was filed with the Court via the CM/ECF system and served via E-Mail on the following CM/ECF participants:

L. Martin Nussbaum, mnussbaum@lrrc.com
Edward Gleason, egleason@lrrc.com
Ian Speir, ispeir@lrrc.com
Hermine Kallman, hkallman@lrrc.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
90 S. Cascade Ave., Suite 1100
Colorado Springs, CO 80903
Telephone: 719-386-3000
Facsimile: 719-386-3070

Attorneys for Defendants Knights of Columbus, Thomas P. Smith, Jr., and Matthew A. St. John.

/s/ Jeffrey S. Vail