

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

CS BUSINESS SYSTEMS, INC., a foreign
for-profit corporation, at al.,

NO. 5: 17-CV-86-OC-40-PRL

Plaintiffs,

v.

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

DWIGHT C. SCHAR, et al.

Defendants.

**PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION AND INCORPORATED MEMORANDUM OF LAW**

Plaintiffs, CS Business Systems, Inc. and James L. Shelton, by and through the undersigned, and pursuant to Federal Rule of Civil Procedure 65(a) and in compliance with Local Rule 4.05 and 4.06, seek a preliminary injunction, stating as follows:

This action is predicated upon Count I (Federal RICO) and Count II (Florida RICO) of their Complaint (Doc. 1), pursuant to the requisite required by the holding in *Alabama v. U.S. Army Corps of Engineers*, 424 F.3d 1117, 1127 (11th Cir. 2005).

Plaintiffs bring this action pursuant to 18 U.S.C. § 1964(a) and Florida Statute § 895.05(1), in compliance with Federal Rule of Civil Procedure 65 and Local Rule 4.05 and 4.06, seeking to enjoin all Defendants from continuing to engage in ongoing activity consistent with racketeering, including: (1) ongoing extortion and embezzlement through the continued use of threats and malicious character assassination, (2) fraudulent use of the mails for the purpose of harassing and intimidating Plaintiffs and Bella Collina lot owners, (3) the interference with Plaintiffs' prosecution of this case through threats and intimidation, (4) the use of internet websites,

telephonic services and mail services to attack Plaintiffs, Plaintiffs' counsel, their businesses, and their involvement in this lawsuit, and (5) the exercise of authority of the offices of the Bella Collina Property Owner's Association for threats, intimidation, and retaliatory lawsuits.

Plaintiffs also seek to enjoin Defendant Randall Greene from: (1) any participation in the governance of the Bella Collina Property Owner's Association, (2) continuing acts of racketeering, including threats of violence and defamation against Plaintiffs and Plaintiffs' counsel, an officer of the Court, and (3) the use of internet websites, telephonic services and mail services to attack Plaintiffs, their businesses, and their involvement in this lawsuit.

Plaintiffs have provided actual notice to each Defendant through their attorney via electronic filing. A memorandum supporting Plaintiffs' Motion for Preliminary Injunction and a proposed Preliminary Order of Preliminary Injunction is incorporated in this Motion. Affidavits are attached from Plaintiffs verifying the allegations in the forthcoming paragraphs.

MEMORANDUM

I. Introduction

This case ostensibly champions the right of the lot owners of Bella Collina to govern their non-profit homeowner's association and own their property. It asks this Court to determine whether real estate developers conspired with felons, lawyers and others illegally to assume the positions of fiduciaries in a non-profit property owner's association for the documented purpose of extorting the property of these lot owners. Much of this exploitation occurred in the context of the greatest real estate recession in history, a time when the victims were especially vulnerable. This extortion is ongoing.

In a larger sense, this case involves the integrity of our justice system. The Defendants coordinated vicious internet attacks, terroristic harassment, threats and abusive use of state and federal legal processes to further their conspiracy. They targeted all who sought a just resolution of these claims. By design, they seek to prevent a substantive determination of the Plaintiffs' rights.

Since the initiation of this case, the Defendants maliciously interfered with the fair adjudication of this case. They orchestrated attacks on the undersigned. They attacked many named Plaintiffs, using abusive legal actions, the internet, mail and texts. They actively interfered with the ability of the Plaintiffs to acquire and maintain legal counsel. They seek to control this litigation through fear while discrediting the Plaintiffs and the undersigned in the eyes of the Court. Randall Greene did so from both a position of that of a fiduciary, utilizing the Bella Collina Property Owner's Association (hereinafter "POA") as his platform, and (as he states) as a representative of the Developer (DCS Real Estate Investments, LLC).

This concerted campaign included the following malicious actions, which Plaintiffs now seek to enjoin:

1. Preoccupy and degrade Plaintiffs' Counsel with derogatory internet postings on a website created explicitly for this purpose to viciously attack and malign Plaintiffs' counsel, E. Timothy McCullough (hereinafter the "undersigned") to destroy the attorney-client relationship and relationships with other potential law firms; and
2. Intimidate named Plaintiffs and the undersigned with frequent, anonymous mailings, phone calls and text messages that are intended to frighten them and to compromise the Plaintiffs' relationship with their attorney.

II. Statement of Facts

i. The Campaign of Internet Threats and Defamation

Prior to the initiation of this lawsuit, the undersigned did not have an internet presence and there were few, if any, reviews posted about him. Since the initiation of this lawsuit, Randall Greene and the DCS Defendants coordinated aggressive and unethical legal actions, including pejoratively laced pleadings, with vicious personal attacks on the undersigned and the Plaintiffs who withstood their onslaught of lawsuits and vituperative comments. Greene and the DCS Defendants conducted a campaign of anonymous derogatory postings on various websites, continuing the pervasive personal attacks outlined in the Complaint.

This campaign was executed by Defendant Randall Greene, who utilized the website host “Pissed Consumer” to create a web page, “<https://mccullough-and-mitchell.pissedconsumer.com>,” with intent to protect the enterprise through the utilization of these tactics and to threaten acts of violence, all in a purportedly anonymous forum. Following the initial post by Defendant Greene, numerous other postings and comments began to flood the site, with each commenter claiming to be a former client of the undersigned or having been approached by the undersigned. All addressed the current lawsuit, referring to facts and issues only known by the Defendants and their lawyers. Further, the site is the “top hit” on Google for any individual who performs a “Google search” on the undersigned.

On March 22, 2017, 20 days after the filing of this lawsuit and only days after service, Defendant Greene anonymously posted a lengthy “review,” referenced as Review #1024209 disparaging the undersigned and threatening violence, stating in pertinent part:

Now it appears that E. TIMOTHY MCCULLOUGH has filed another bogus case against another very, very large and well respected developer, DCS Real Estate Holdings, Dwight C. Schar , Paul Simonson, Randall F. Greene and others alleging the same garbage.

They have no idea that they have just poked at a sleeping bear. **They are going to shread this guy and his dumb clients to bits.** [emphasis added].

Although Defendant Greene posted this threat anonymously, a subpoena served to the site host, Consumer Opinion LLC d/b/a PissedConsumer.com, revealed the following pertinent information regarding Review #1024209 (*a true and correct copy of the document revealing Randall Greene's identity and the post is attached hereto and incorporated herein as Exhibit 1*):

Created by: Anonymous
Full Name: Randall Greene
IP: 174.225.5.137
Email: rgreene@rgdevelopments.com
Tel. Number: 561-317-3354
Poster Status: Anonymous

Defendant Greene's violent threat was reiterated on a subsequent comment to this "review" on April 1, 2017 by an individual utilizing a username "Warren DC Lawyer." *A true and correct copy of this comment is attached hereto and incorporated herein as Exhibit 2.* This individual wrote:

He is about to get roasted in his latest complaint that he filed against the billionaire owners of Bella Collina whereby he accused them of RICO, fraud, and embezzlement just to name a few items. This *** has no clue what he has done by poking at that huge bear, **they are going to rip him and his dead beat clients to shreds.**

This user, who did not register his personal information, is revealed to have an IP Address of 184.88.14.199. *A true and correct copy of the list of IP Addresses for posters on this site is attached hereto and incorporated herein as Exhibit 3.* Notably, this same IP Address posted other comments under different pseudonyms, including the following (*See Exhibit 3 and 4*):

"Same Experience with E. Timothy McCullough . VERY BAD !" (posted by "Billy")

"He is a total nut case. Very, very into conspiracy theories" (posted by "Anonymous")

On May 27, 2017, this same individual also posted a review on the website Avvo, a review website for attorneys. The individual is identified by the same IP Address used on Pissed Consumer and was revealed by Avvo following service of a subpoena. *A true and correct copy of the response from Avvo, stating the review and identity of the reviewer, is attached hereto and incorporated herein as Exhibit 5.* This fraudulent “review” was written from the viewpoint of individual named “Moshe” posing as somebody that the undersigned “solicited” to join this lawsuit and that the lawsuit was actually a hoax and a shakedown complaint.

This individual, at the direction of Defendant Greene, posted yet another fraudulent review meant to dissuade participation in this proceeding, destroy the attorney-client relationship of Plaintiffs and the undersigned, and intimidate Plaintiffs.

Refusing to stop there, yet another threat of violence was posted under the direction of Defendant Greene. An anonymous user utilizing the pseudonym “Lawyers are blood suckers,” whose IP Address is revealed to be 174.208.22.48, and whose post was notably submitted across state lines from the State of Utah (as revealed by the IP Address), wrote “**Don’t worry the mob will thin them out.**” [emphasis added] *A true and correct copy of this post and the revealed IP Address are attached hereto and incorporated herein as Exhibit 6 and 7.* Ironically, the original legislative intent of RICO was to create a tool for government prosecutors to combat organized crime. In a case that the Defendants seek to exonerate themselves of racketeering, they certainly seem to embrace the role.

18 U.S.C. 1959(a) seeks to prevent this exact type of violence, declaring:

(a)Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, ***or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity***, murders, kidnaps, maims,

assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, *or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do.*

Defendant Randall Greene removed any remaining doubt about his involvement as the leader of this malicious campaign on November 15, 2017, in a post on the Pissed Consumer site. This post was made after the undersigned served the aforementioned notices of intent to serve subpoenas to the website to procure the identities of the individuals making these posts, including those threatening violence. Defendant Randall Greene, identifying himself at the end of the post, brazenly stated “The owner and developer of Bella Collina is providing this information to the public in this forum and in others in an effort show that Timothy McCullough’s salacious and false statements should be completely dismissed as his former clients have admitted that this entire case and others filed by him are a complete sham.” *A true and correct copy of this admission is attached hereto and incorporated herein as Exhibit 8*

There are numerous posts on this site and new postings occur every day. Some of these “Anonymous” responses, which can be matched to the IP Addresses provided in the response to the Subpoena by Pissed Consumer. *A true and correct copy of the full list of IP Addresses is attached hereto and incorporated herein as Exhibit 9.* Some of these comments state:

- “we WERE a client of Tim’s as well and we lost our case big time”;
- “He is a total nut case, very into conspiracy theories”;
- “I would stay away.. very odd experiences with this guy and not very smart”;
- “I was in a lawsuit with this guy and he is goofy...I don’t think he realized it but the judge was actually laughing at him. NOT RECOMMENDED”;
- “This guy is one of the worst lawyers”;
- “he lied to us”;
- “he lies to his clients as easily as it is to breathe”;
- “our lawyer friend is with a big firm and he told us that Tim McCulough [same misspelling as AVVO post] could not have been any more wrong and was lying about everything”;

- “We reviewed his case and decided that this was one of the worst cases ever seen, very sloppy and no back up.”
- “Absolutely the dumbest I have ever met and big on conspiracy theories. Total nut job and actually pretty dangerous being in the legal profession.”
- “He is known for filing crazy lawsuits against big developers hoping for a big payday. Most of his complaints should be used as toilet paper”;
- “Awful guy...lies like nothing I have ever seen. Very well known for doling out bad advice”;
- “STAY AWAY!!This guy is a nut job! He tried to get us to join his latest lawsuit and we said no way! Our lawyer told us he is in big trouble for trying to pay a witness in one of his cases for good testimony!” [**DCS Defendants have introduced perjured testimony in the form of a “deposition” by Vincent Soulsby**];
- “I actually thought that nothing happened at all between us and the developer. Well guess what? We lost the case and there actually was nothing going on and this shyster of lawyer was so full ***. Back to when we signed on though, this guy stopped telling us what was going on once he got our check...imagine that?!! Do yourself a favor and stay away from these guys and don’t make the same very expensive mistake that we and others have made and paid dearly for Tim mccullough lying, Tim mccullough bad lawyer, Tim mccullough lied to judge.”

Defendant Randall Greene and the DCS Defendants coached and controlled the individuals who posted these comments and their lawyers crafted language to utilize in their posts. The term “shotgun pleading” derives from Mr. Crosbie’s early pleadings.

Defendant Randall Greene admitted to directing these threatening and fraudulent postings on the Pissed Consumer website on December 7, 2017, entirely removing his mask of anonymity. Defendant Greene stated: “I would like to thank all of our friends and neighbors at Bella Collina who have posted comments of support and back us 100 percent in our defense of these crazy litigation attacks by Orlando Lawyer Timothy McCullough.” *A true and correct copy of this post is attached hereto and incorporated herein as Exhibit 10.* Defendant Greene followed this post with a comment that states “The post here was written by Randall F. Greene of Bella Collina and I stand by this post. We at Bella Collina thank everyone for the support you have given us. For more info on this outrageous legal complaint and others filed by Tim

McCullough, please feel free to call me at 407.469.4000.” *A true and correct copy of this post is attached hereto and incorporated herein as Exhibit 11.* Defendant Greene posted yet another congratulatory comment, stating: “We want thank you friends and neighbors for the comments of support for us and coming out against the person (Timothy McCullough) who selfishly for his own personal gain brought about this abusive and fraudulent legal complaint against us. Thanks again and keep up the good work.” *A true and correct copy of this post is attached hereto and incorporated herein as Exhibit 12.*

This was followed by a comment in which an anonymous individual, likely Defendant Greene, stated: “Get used to it tough guy.” *A true and correct copy of this comment is attached hereto and incorporated herein as Exhibit 13.*

A second website was created¹, also admittedly by Defendant Randall Greene, through the site host EIN Press Wire (hereinafter “EIN”). EIN holds itself out as a distribution platform service that can reach millions of people and mainstream media. “EIN Presswire's distribution footprint reaches millions. And unlike our competitors we combine a press release distribution service with media monitoring and RSS feeds that are used world-wide by journalists, professionals and businesses - everyday - and this means greater effectiveness for you.”²

The EIN posting again seeks to disparage the former Plaintiffs, the Sutherins, as well as the undersigned through statements and rhetoric that seek to dissuade participation in this lawsuit. Such statements, similar to those on Pissed Consumer, include “The owner and developer of Bella Collina is providing this information to the public in this forum and in others in an effort show that Timothy McCullough’s salacious and false statements should be

¹ <https://www.einpresswire.com/article/418401216/bella-collina-residents-apologize-to-bella-collina-developers-for-filing-sham-lawsuit>

² <http://www.einpresswire.com/why-us>

completely dismissed as his former clients have admitted that this entire case and others filed by him are a complete sham.” *A true and correct copy of the web page is attached hereto and incorporated herein as Exhibit 14*

Since the filing of this lawsuit, POA President and DCS employee Randall Greene, and other Defendants, admittedly created websites intended to intimidate Plaintiffs and their counsel through threats to commit crimes of violence, as well as having solicited others to post numerous derogatory comments about the undersigned. The intent of these sites is for Randall Greene, acting on behalf of both the Developer and the POA, to reach as many people as possible to get their message across: do not support this proceeding. These fraudulent and criminal actions are in furtherance of the conspiracy. They advance Greene’s own position in the enterprise.

ii. Anonymous Intimidating Mailings and Text Messages

Since the initiation of this proceeding, Plaintiffs frequently received anonymous letters in the mail in an effort to intimidate them and force them to dismiss the racketeering allegations set forth in the complaint. The undersigned as also received multiple fraudulent, taunting and intimidating text messages and calls from an unknown number directly related to this case.

Use of Anonymous Mailings and Mailbox Tampering

Following the initiation of this proceeding, each current named Plaintiff, as well as former Plaintiffs Sutherin, ITZ Group, Won Y. Shin Trust, and PJS Rentals, received envelopes addressed to their homes. The postmark bore locations in Georgia, Texas, and Arizona. The envelopes were embossed with the words “Personal and Confidential.” This is part of an organized effort to intimidate each Plaintiff into withdrawing from this case.

These mailings contained various docket entries, including notices of withdrawal by some of the named Plaintiffs, along with descriptions stating that “this is not good” and other comments meant to intimidate Plaintiffs into withdrawal, in furtherance of the conspiracy. They were signed “Stan.” *True and correct copies of each letter sent to Plaintiffs are attached hereto and incorporated herein as Exhibit 15.*

These mailings often coincided with the withdrawal of a terrified Plaintiff. Notably, the Sheltons filed an address change with the POA, after which these intimidating mailings appeared at their new address. *See Exhibit 15.*

In addition to sending these anonymous mailings, Plaintiffs who resided in Bella Collina received letters in their mailbox with no postmark. Plaintiffs Brad and Lana Heckenberg and former Plaintiffs Bart and Kathryn Sutherin received pleadings from cases in which the undersigned was involved; in one case, the note was written on Bella Collina letterhead. This constitutes mailbox tampering since the placement of these items in the mailbox was done so by persons other than postal employees. Mailboxes are considered federal property, and federal law (*Title 18, United States Code, Section 1705*), makes it a crime to vandalize them (or to injure, deface or destroy any mail deposited in them).³ Use of the mail in furtherance of a conspiracy is explicitly forbidden by 18 U.S.C. § 1341.

These mailings were part of the battle plan to destroy the will of the Plaintiffs and protect the enterprise. Their effects have been devastating on the morale and confidence of the Plaintiffs, causing extreme emotional distress.

³ <https://postalinspectors.uspis.gov/radDocs/tipvandl.htm>

Text Messages and Calls

Most recently, the undersigned received bizarre text messages and phone calls on his personal cell phone related to the efforts of the conspirators.

The undersigned received a text message on December 2, 2017 from a number with an out of state area code (917-336-2912 – New York City) stating the following:

“Mr Tim Mculough, my husband asked me to send texts you to see if you have seen the Bella Collinas press release and the things on pised consumer that just came New ? He is fearing now great that they make many laughs upon us and not happy for this” (sic) *(A true and correct copy of this message is attached hereto and incorporated herein as Exhibit 16)*

A second message followed, which stated:

“Mr Timm, have you seen Things my husband speaks of to me about? We do not like this making of may laughs upon us as to it bringing much dishonor on him and the other” *See Exhibit 16.*

These texts are believed to be mocking the wife of Plaintiff James Shelton, who is Chinese, and Plaintiff Michael Choo (CSBS), who is Korean, because of their wording and reference to “dishonor,” a notion prominent in Mrs. Shelton’s culture. These messages are a common practice of the Defendants as described in the Sutherin section of the Complaint.

III. Standard of Review

Plaintiffs bring this action pursuant to 18 U.S.C. § 1964(a) and Florida Statute § 895.05(1), in compliance with Federal Rule of Civil Procedure 65 and Local Rule 4.05 and 4.06, seeking to enjoin all Defendants, from continuing to engage in ongoing activity consistent with racketeering.

Plaintiffs also seek to enjoin Defendant Randall Greene from: (1) any participation in the governance of the Bella Collina Property Owner’s Association, (2) continuing acts of

racketeering, including threats of violence and defamation against Plaintiffs and Plaintiffs' counsel, an officer of the Court, and (3) the use of internet websites, telephonic services and mail services to attack Plaintiffs, Plaintiffs' counsel, their businesses, and their involvement in this lawsuit.

This action is predicated upon Count I (Federal RICO) and Count II (Florida RICO) of their Complaint, pursuant to requisite required by the holding in *Alabama v. U.S. Army Corps of Engineers*, 424 F.3d 1117, 1127 (11th Cir. 2005).

Plaintiffs' motion has (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury to Plaintiffs is a certainty if relief is denied; (3) an injury that outweighs the opponent's potential injury if relief is not granted exists; and (4) an injunction would not do harm to the public interest (pursuant to the elements set forth in *Bloedorn*, 631 F.3d at 1229; *Four Seasons Hotels & Resorts*, 320 F.3d at 1210).

a. Injunctive Relief is Authorized Pursuant to 18 U.S.C. § 1964(a)

Plaintiffs filed their *Complaint* in the instant proceeding on March 2, 2017 (Doc. 1), which counts included relief sought under 18 U.S.C. 1962 (Federal RICO Act) and Florida Statute § 895 *et seq* (Florida RICO Act). "Because Florida's RICO statute is patterned after the federal law, the analysis is the same for both." *Walgreen Co. v. Premier Prods. of Am.*, 2012 U.S. Dist. LEXIS 20640, *7, 2012 WL 527169.

18 U.S.C. 1964(a) provides that "The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from

engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.”

“While the many authorities cited above render this interpretation a close call, the Court will follow the persuasive interpretation of the *Now v. Scheidler* decision in the Seventh Circuit as it appropriately tracks the plain language of the statute. The Eleventh Circuit has cautioned district courts not to consult legislative history (including failed amendments) when the plain meaning is clear. [*CBS, Inc. v. Primetime 24 Joint Venture*, 245 F.3d 1217, 1225, 1227-28 (11th Cir. 2001)]. Therefore, the Court finds that RICO authorizes the injunctive and declaratory relief that Plaintiffs are seeking.” *In re Managed Care Litig.*, 298 F. Supp. 2d 1259, 1283, 2003 U.S. Dist. LEXIS 22066, *38, 17 Fla. L. Weekly Fed. D 292

“The Court finds the reasoning in *Scheidler* to be persuasive. Other courts have found that injunctive relief is available to private litigants in a civil federal RICO action.” *Absolute Activist Value Master Fund Ltd. v. Devine*, 2016 U.S. Dist. LEXIS 52263, *13-14 (M.D. Fla).

b. Standard for Preliminary Injunction

For a court to enter a TRO or a preliminary injunction, the movant must show “(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.” *Four Seasons Hotels and Resorts, B. V. v. Consorcio Barr, S.A.*, 320 F.3d 1205, 1210 (11th Cir. 2003); *see also Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225 (11th Cir. 2005).

In considering a motion for preliminary injunctive relief, a district court may rely on affidavits and hearsay materials that would not be admissible as evidence for entry of a permanent injunction. [*Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995)]. *Weinrib v. Considine*, 2009 U.S. Dist. LEXIS 137776, *13

c. Bond Requirement

Plaintiffs have set forth sufficient facts on which the Court can make a reasoned determination as to the amount of security which must be posted pursuant to Federal Rule of Civil Procedure 65(c) and in compliance with Local Rule 4.05(b)(3)(ii).

However, Plaintiffs request that this Court waive the bond requirement for Counts 1 and 2 (RICO). “A court has discretion to issue a preliminary injunction without requiring the movant to give security.” *Herb Reed Enters., LLC v. World Famous Platters Rd. Shows I LLC*, 2014 U.S. Dist. LEXIS 22046, *16. The actions that Plaintiffs seek to enjoin are founded in Counts 1 and 2 of the Complaint. Enjoining these actions will not cause any Defendant monetary damage.

In the event that this Court determines that a bond is necessary, Plaintiffs are able and willing to obtain one.

IV. Argument

Claims I and II (RICO)

a. Plaintiffs’ Claim 1 and Claim 2 are likely to succeed on the merits

“To demonstrate a substantial likelihood of success on the merits, the plaintiff must make a showing of likely or probable, but not certain, success at trial.” *R. Miller Architecture, Inc. v. Edgington Enters.*, 2006 U.S. Dist. LEXIS 54635, *13, 81 U.S.P.Q.2D (BNA) 1819, 1823 (M.D. Fla).

Plaintiffs have plead, with particularity, Federal and State RICO. As shown in the forthcoming paragraphs, Plaintiffs possess significant evidence to prove their claims and have made a showing of likely success at trial.

Agreement to Conspire

In Count I and II of their Complaint, Plaintiffs sought relief through the Federal and Florida RICO Acts.

On May 14, 2012, Defendants Greene, Simonson, Arrighi, J. Ryan, and other individuals met in a boathouse owned by Defendant Dwight Schar (located at the time at 1375 South Ocean Blvd, Palm Beach, Florida). *A true and correct copy of an e-mail chain from Defendant Simonson coordinating this meeting is attached hereto and incorporated herein as Exhibit 16.* At this meeting, the “Bella Collina Project” was discussed, including how, after purchasing the community from the original developer, DCS would recover the lots that were owned by individuals for the purpose of relaunching the community in full. Schar’s multi-million dollar budget for this illegal venture was also discussed at this meeting. *A statement by Bill Boylan, an individual with personal knowledge of this meeting and other instances of racketeering, is attached hereto and incorporated herein as Exhibit 17.*

Plaintiffs have alleged that Defendant Michael J. Ryan, through a letter dated August 25, 2014, outlined the agreement to conspire. *A true and correct copy of this correspondence is attached hereto and incorporated herein as Exhibit 18.* The letter, which states in pertinent part, that the Bella Collina Club (hereinafter “the Club”) and the Bella Collina POA have an agreement that the Club funds collection activity and attorney’s fees that the POA brings on behalf of both. The purpose of this effort is to recover lots for DCS Real Estate Investments, LLC (hereinafter “DCS”), the owner of the Bella Collina development. Any lot recovered would

be conveyed directly to DCS if clear title existed, or sent to a holding company to “put us [Defendants] in a better bargaining position to acquire clear title.”

Recovered lots would be entered into a “matrix” created by Defendant Paul E. Simonson, manager of DCS, to determine where the lots would be conveyed to and if the POA would see any distribution of proceeds. *See Exhibit 18*. Notably, the lots sued for by the POA were never conveyed to the POA and Michael Ryan stated that “in almost every instance a settlement will dictate that the balances outstanding to The Club or the POA after applying the recovery should be written off,” thereby depriving the POA of outstanding balances while DCS recovers the lot. *See Exhibit 18*. Michael Ryan sums up the common goal of the conspirators: “In summary, The Club funds this effort and DCS wants Lots.” *See Exhibit 18*

Acts of Racketeering

In concert with Michael Ryan’s plan, an “Agreement to Fund Collection Activities” was entered into by the Club and the POA, with Randall Greene as signatory for the POA and Paul Simonson as signatory for the Club, DCS Capital Investments, LLC, and DCS Investment Holdings, GP, LLC. *A true and correct copy of this Agreement is attached hereto and incorporated herein as Exhibit 19.*

The Ryan Law Group, of which Michael Ryan is a member, was retained by both the POA and DCS in order to file the lawsuits necessary acquire lots for DCS. *A true and correct copy of the agreement between the Ryan Law Group and DCS is attached hereto and incorporated herein as Exhibits 20.* The Ryan Law Group then filed hundreds of lawsuits against lot owners, with virtually every case ultimately settling, the lots being conveyed to DCS or a holding company, and the POA being deprived of funds. *A copy of the Lake County, Florida court docket identifying each lawsuit filed by the DCS-controlled POA is attached hereto and*

incorporated herein as Exhibit 21. These lawsuits were predicated upon false assessments created by the DCS-controlled POA board (which was possible because the POA was never turned over as required by Florida law), deflated lot values through the creation of false comparables, and immense pressure placed on the lot owner by DCS to settle the lawsuit that was filed against them by the POA, effectively extorting lots that would be conveyed to DCS and not the POA that was suing for them.

As outlined in the agreement drafted by Michael Ryan, holding companies were created for the sole purpose of receiving encumbered lots prior to clear title conveyance to DCS. These companies included DCS I – V (individual numbered corporations) and Rocking Red H, LLC, a Florida LLC managed by Cullen D’Ambrosio, a member of the Ryan Law Group and Defendant in this action. *A true and correct copy of the documents for Rocking Red H, LLC and DCS I-V are attached hereto and incorporated herein as Exhibits 22 (RRH) and 23 (DCS).* Each lot conveyed to these holding companies was the product of a settlement agreement which contained a six figure liquidated damages clause effectively silencing the individual from communicating about the loss of their property.

Concurrently, Defendant Rick Scharich received and conveyed numerous encumbered lots from settlements, as well as purchased tax deeds to convey to DCS. *An accounting of lots conveyed to Rocking Red H, LLC is attached hereto and incorporated herein as Exhibit 24, an accounting lots conveyed to Scharich, notices of applications of tax deed filed by Scharich and tax deeds conveyed to Scharich is attached as Exhibit 25, and an accounting of lots conveyed to DCS Real Estate Investments, LLC is attached as Exhibit 26.*

This is ongoing. The most recent conveyances DCS received from Rocking Red H, LLC were on November 15, 2017, for Bella Collina lots 74 and 98. These lots were conveyed for

little consideration and in many instances, the POA is forced to write off debt, as outlined by Michael Ryan in Exhibit 18.

Evidence of the POA writing off debts to benefit the conspiracy is located in an e-mail chain, which e-mails were sent September 3, 2014 and September 4, 2014. In this e-mail, Randall Greene, President of the POA, instructed David Burman, president of Aegis, the community management association, to write off the HOA assessments on a home obtained by Richard Arrighi, Defendant in this action and associate of DCS. *A true and correct copy of this e-mail is attached hereto and incorporated herein as Exhibit 27.* This was not the only write off. *A true and correct copy of other instances of POA write offs is attached hereto and incorporated herein as Exhibit 28.* Such actions harm the POA and its members because the POA is deprived of revenue that then reflects upon its members by virtue of rising costs and assessments. Further, the community dwindles with each lot conveyed to DCS. When applied to the hundreds of lots that DCS has acquired, utilizing the Michael Ryan statement that much debt is written off (Exhibit 18), Plaintiffs, as POA members, irreparably suffer.

Elements of RICO

RICO has four elements that must be proven in order to successfully prosecute a RICO claim. The four elements of a RICO claim are: (1) conduct; (2) of an enterprise; (3) through a pattern; (4) of racketeering activity. *Smart Sci. Labs., Inc. v. Promotional Mktg. Servs.*, 2008 U.S. Dist. LEXIS 118270, *9, at *11 (citing *Williams v. Mohawk Indus., Inc.*, 465 F.3d 1277, 1282-83 (11th Cir. 2006));

Simply put, Plaintiffs contend that Defendants utilized the Bella Collina POA to acquire lots for the new developer DCS to resell at profit. Plaintiffs have alleged that an agreement to conspire exists (Exhibit 18), concerted overt acts consistent with the plan detailed in the

agreement have occurred, the common goal of the conspiracy (“DCS wants lots” – Exhibit 18) is ongoing and overwhelmingly succeeding, all while the non-profit POA sues individual lot owners for the benefit of two for-profit corporations (the Club and DCS).

"In open-ended cases that rely on alleging the threat of continuity, plaintiffs can meet their burden by establishing either that the racketeering acts themselves include a specific threat of repetition extending indefinitely into the future, or that the predicate acts or offenses are part of an ongoing entity's regular way of doing business." *Smart Sci. Labs., Inc. v. Promotional Mktg. Servs.*, 2008 U.S. Dist. LEXIS 118270, *13. Plaintiffs have not only established that there is a specific threat of repetition extending indefinitely into the future as there is no finite date for DCS to acquire each lot and home in the community, but also that the predicate acts alleged have become “par for the course” for the ongoing DCS and the DCS-controlled POA board’s regular way of doing business as these same actions have continuously occurred. Hundreds of lots have been extorted, and Plaintiffs have been subjected to an onslaught of intimidation tactics and harassment both before and especially subsequent to the filing of this proceeding.

“A RICO enterprise exists where a group of persons associates, formally or informally, with the purpose of conducting illegal activity.” *Walgreen Co. v. Premier Prods. of Am.*, 2012 U.S. Dist. LEXIS 20640, *8, 2012 WL 527169. “A RICO enterprise must (1) have a common or shared purpose; (2) function as a continuing unit; and (3) have an ascertainable structure distinct from that which is inherent in the conduct of a pattern of racketeering activity.” *United States v. Bledsoe*, 674 F.2d 647, 663-4(8th Cir), cert. denied, 459 U.S. 1040, 74 L. Ed. 2d 608, 103 S. Ct. 456 (1982); *San Jacinto Sav. Asso. v. TDC Corp. of Florida*, 707 F. Supp. 1579, 1581, 1989 U.S. Dist. LEXIS 2731, *3

“To plead the existence of an enterprise, it is sufficient simply to identify it.” *Seville Industrial Machinery Corp. v. Southmost Machinery Corp.*, 742 F.2d 786, 790 (3rd Cir. 1984), cert. denied, 469 U.S. 1211, 84 L. Ed. 2d 327, 105 S. Ct. 1179 (1985). Plaintiffs went above and beyond in identifying the enterprise. Plaintiffs provided the written agreement, concretely describing the conspiracy, provided documentation showing how the conspiracy utilized the POA board as an enterprise as well as operated as an association-in-fact enterprise, provided documentation showing the concerted actions taken in furtherance of the conspiracy, and revealed the common goal (“DCS wants lots” – Exhibit 18). At minimum, Plaintiffs have adequately identified the enterprise.

A successful "pattern of racketeering activity" charges that "(1) the defendants committed two or more predicate acts within a ten-year time span; (2) the predicate acts were related to one another; and (3) the predicate acts demonstrated criminal conduct of a continuing nature." *Walgreen Co. v. Premier Prods. of Am.*, 2012 U.S. Dist. LEXIS 20640, *8, 2012 WL 527169.

Plaintiffs alleged that DCS extorted the lots they recovered, sent numerous telephone, mail and e-mail communications across state lines (Rick Scharich is an individual based out of Michigan, numerous deed conveyances occurred out of state), defrauded mortgagors through the usage of holding companies (Rocking Red H, LLC, Scharich, etc.) and intimidated and harassed Plaintiffs to the point of silence. Each of these acts occurred within a 10 year time span, each is related to one another (“DCS wants lots” – Exhibit 18) and is described at length in the foregoing and forthcoming paragraphs. This conduct is of a continuing nature and worsening exponentially since the filing of this action.

In addition to proving these elements, a successful RICO plaintiff must establish: "(1) the requisite injury to 'business or property' and (2) that such injury was 'by reason of' the

substantive RICO violation." *Williams v. Mohawk Indus., Inc.*, 465 F.3d at 1282-83; *Walgreen Co. v. Premier Prods. of Am.*, 2012 U.S. Dist. LEXIS 20640, *8-10, 2012 WL 527169.

The substantive RICO violations in the instant case: decimated the lot values of Plaintiffs; greatly diminished the value of the community that Plaintiffs collectively spent millions to buy into; forced Brad and Lana Heckenberg to convey their lots to DCS while being intimidated into silence by virtue of a settlement agreement with exorbitant liquidated damages for merely speaking about the litigation; seek to deprive CSBS and the Sheltons of their lots; subjected Plaintiffs to derogatory internet postings and websites created solely for that purpose, including **multiple threats of violence**; mailed and physically stuffed, into their home mailboxes, intimidating unmarked letters addressed directly to the named Plaintiffs in this case, and have sent numerous text messages and made phone calls to the personal cell phone of the undersigned.

There is no doubt that injuries suffered by Plaintiffs are by reason of the substantive RICO violations and Plaintiffs' RICO claims are likely to succeed on the merits.

b. Plaintiffs Continue to Suffer Ongoing Irreparable Harm

The Eleventh Circuit has stated that irreparable harm or injury is "the *sine qua non* of injunctive relief." [See, e.g. *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (quoting *Northeastern Fla. Chapter of the Ass'n of Gen. Contractors v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir.1990))]. Without a finding of a likelihood of irreparable injury, preliminary injunctive relief is improper and will be reversed on appeal. See *id.* In order to qualify as irreparable, harm or injury must be "actual and imminent." *Id.* In determining whether harm is irreparable, courts consider, *inter alia*, the nature of the harm alleged and the delay of the movant in seeking relief. [See, e.g., *Tom Doherty Associates, Inc. v. Saban Entertainment*,

Inc., 60 F.3d 27, 39 (2d Cir.1995); *Pippin v. Playboy Entm't Group, Inc.*, 2003 U.S. Dist. LEXIS 25415, Case No. 8:02-cv-2329T30EAJ, 2003 WL 21981990, at *2 (M.D. Fla. 2003).] *R. Miller Architecture, Inc. v. Edgington Enters.*, 2006 U.S. Dist. LEXIS 54635, *22-23, 81 U.S.P.Q.2D (BNA) 1819, 1825.

"Preliminary injunctive relief derives from the necessity to restrain or compel conduct in those extraordinary situations where irreparable injury might result from delay or inaction." [citation omitted]. The purpose of this relief is "to preserve the relative positions of the parties until a trial on the merits can be held." *Regions Bank v. Lynch*, 2008 U.S. Dist. LEXIS 128020, *14

Plaintiffs adequately demonstrated that irreparable harm has occurred. The actions of Defendants caused injury that is actual, imminent **and ongoing** (e.g. website postings that assassinate the character of the undersigned while simultaneously commenting on the merits of a case that has yet to move beyond the "motion to dismiss phase"; anonymous mailings to intimidate continue to be received by Plaintiffs).

The plain meaning of "extraordinary" is "beyond what is usual, ordinary, regular, or established."⁴ For one to state that the type of abuse that Plaintiffs and their counsel have endured, **and continue to endure**, from the fiduciaries of a non-profit POA since initiating this proceeding is extraordinary would be an understatement. Denying Plaintiffs the chance at a just and fair adjudication of their claims would not only be a travesty, but cause irreparable harm that no award could make whole again. These abhorrent actions violate every aspect of human decency and constitute several RICO predicate acts, as more particularly described above.

⁴ <http://www.dictionary.com/browse/extraordinary>

c. The threatened harm to Plaintiffs is far outweighs the harm to the Defendants

Potential damage to Defendants caused by a preliminary injunction does not outweigh the threatened injury to Plaintiffs because Defendants are simply being told: (1) to stop hosting websites that contain derogatory and meritless information about Plaintiffs and the undersigned, (2) to stop mailing anonymous letters to Plaintiffs meant to cause intimidation, and (3) to stop sending text messages and phone calls to the personal cell phone of the undersigned.

Further, a preliminary injunction is temporary in duration and Defendants will have a chance to be heard in response to Plaintiffs' request for the issuance of a preliminary injunction.

d. An injunction would not be adverse to the public interest

The public interest is best served by the issuance of a preliminary injunction and such issuance subsequently would not be adverse to the public interest. Rather, the abhorrent actions of Greene and the other Defendants, left to continue, are inherently adverse to the public interest. They seek to control this litigation through fear, discourage participation in and support of the proceeding and harm Plaintiffs and their counsel. This harm is not compensable with monetary damages.

V. Conclusion

Plaintiffs are seeking an injunction from this Court to enjoin Defendants from continuing to engage in ongoing actions of racketeering that are inflicting irreparable harm. Since the initiation of this proceeding, Plaintiffs and their counsel have endured significant abuse, threats, character assassinations, and false accusations.

Accordingly, Plaintiffs seek to enjoin Defendant, Randall Greene, from:

- (1) any participation in the governance of the Bella Collina Property Owner's Association,
- (2) continuing acts of racketeering, including threats of violence and defamation against Plaintiffs and Plaintiffs' counsel, an officer of the Court,
- (3) continuing the use of any website that is utilized to disparage Plaintiffs and their counsel, including the Pissed Consumer site and the EIN site, and
- (4) the use of internet websites, telephonic services and mail services to attack Plaintiffs, their businesses, and their involvement in this lawsuit.

Plaintiffs also seek to enjoin each Defendant from:

- (1) continuing acts of racketeering, including threats of violence and defamation against Plaintiffs and Plaintiffs' counsel, an officer of the Court.
- (2) Continuing the use of any website that is utilized to disparage Plaintiffs and their counsel, and
- (3) Continuing the use of internet websites, telephonic services and mail services to attack Plaintiffs, their businesses, and their involvement in this lawsuit.

Dated: December 14, 2017

Respectfully submitted,

/s/ E. Timothy McCullough
E. TIMOTHY McCULLOUGH, Esq.
Trial Counsel for Plaintiffs
Florida Bar Number: 0033624
7463 Conroy Windermere Rd., Suite A
Orlando, FL 32835
Telephone: (407) 601-6941
Fax: (407) 601-5982
timlaw81@aol.com

CERTIFICATE OF SERVICE

I certify that on December 14, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, of which will send a notice of electronic filing to all counsel of record.

/s/ E. Timothy McCullough, Esq.
Attorney for Plaintiffs