UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

THOMAS J. HOLMES, et al.,

Plaintiffs,

v. Case No: 14-CV-208

JOHN DICKERT, et al.,

Defendants.

BRIEF IN SUPPORT OF MOTION TO DISMISS

Defendants, John Dickert, City of Racine, Gary E. Becker, Kurt S. Wahlen, Jeffrey A. Coe, James Kaplan, Raymond DeHahn, Gregory T. Helding, David L. Maack, Aron M. Wisneski, Robert E. Mozol, Devin P. Sutherland, Mark L. Levine, Joseph G. LeGath and Gregory S. Bach (collectively, the "Municipal Defendants"), by their attorneys, Meissner Tierney Fisher & Nichols S.C., hereby submit this Brief in Support of Their Motion to Dismiss.

INTRODUCTION

In their Complaint, Plaintiffs, former owners of bars and taverns located in the City of Racine, concoct an incredible tale of a far-reaching conspiracy and political intrigue through which twenty (20) persons, consisting of the City of Racine and certain of its employees, agencies, and officials, and community non-profit corporations and their officers, all conspired to prevent them, and other minorities, from obtaining and/or maintaining their liquor licenses. The purported purpose behind this plot was to ensure that white members of the Racine City Tavern League, Inc. (the "Tavern League") were able to obtain and/or maintain their respective liquor licenses and profit therefrom free of competition from Plaintiffs. According to Plaintiffs,

Defendants engaged in bribery, extortion, money laundering and campaign finance violations, which allegedly injured Plaintiffs and led to their claims for violations of their civil rights (pursuant to 42 U.S.C. §§ 1983 and 1985(3)) as well as violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") (18 U.S.C. §§ 1962(b), (c) and (d)).

After separating the wheat from the chaff in Plaintiffs' 184-paragraph, 50-page Complaint, however, it becomes abundantly clear that the allegations in the Complaint are fatally lacking in numerous respects. Because of these deficiencies, the following claims in Plaintiffs' Complaint should be dismissed: (1) the RICO claims in their entirety; and (2) the § 1983 and § 1985(3) claims, to the extent that (a) Plaintiffs are attempting to assert claims based on others' alleged injuries, (b) Plaintiffs' claims are brought against any of the Municipal Defendants in their official capacity, and (c) Plaintiffs' claims are brought by the Maldonados, whose claims are barred by the statute of limitations. Furthermore, even if certain of these claims were to survive against the Municipal Defendants, collectively, several of these claims fail against certain of the Municipal Defendants individually due to Plaintiffs' failure to adequately plead such claims and/or because such Municipal Defendants are immune from suit.

SUMMARY OF MATERIAL ALLEGATIONS

Plaintiffs are a group of former owners of bars and taverns located in Racine. (Compl., ¶¶9-15).[1] Defendants include, *inter alia*, the City of Racine (the "City"), and various persons allegedly acting in an official capacity for the City including current and former Mayors (John Dickert ("Dickert" or "Mayor Dickert") and Gary E. Becker ("Becker"), respectively), current and former members of the City's Common Council (the "Common Council") and Public Safety and Licensing Committee (the "Licensing Committee") (including Aldermen Jeffrey A. Coe

[1] The allegations in the Complaint are taken as true solely for purposes of the Municipal Defendants' Motion to Dismiss. The Municipal Defendants vigorously dispute the substance of Plaintiffs' claims.

("Coe"), James Kaplan ("Kaplan"), Raymond DeHahn ("DeHahn"), Gregory T. Helding ("Helding"), David L. Maack ("Maack"), Aron M. Wisneski ("Wisneski"), and Robert E. Mozol ("Mozol")), various members and managers of the City's Business Improvement District #1 ("BID" or "BID #1")[2] (including Devin P. Sutherland ("Sutherland"), Mark L. Levine ("Levine"), and Joseph G. LeGath ("LeGath")), the City's former Police Chief, Kurt S. Wahlen ("Wahlen") and the current assistant to Dickert, Gregory S. Bach ("Bach"). (*Id.*, ¶¶16-35).

I. THE ALLEGED CONSPIRACY.

Plaintiffs allege that beginning in 2006 (during Becker's mayoral term), the "Defendants" began to use the "municipal and state liquor licensing ordinances, regulations, and statutes," to engage in a "discriminatory process to disparately treat, restrict and/or remove minority-owned bars from the City of Racine." (*Id.*, ¶38). Specifically, the "Defendants" allegedly denied the issuance and/or renewal of liquor licenses and suspended and/or revoked liquor licenses associated with minority-owned bars and taverns (including Plaintiffs') in areas in which the City planned redevelopment or in which the "predominately minority patrons of the minority-owned bars were not welcome by businesses, property owners, and/or residents." (*Id.*).

This scheme was allegedly executed through bribery, extortion, campaign finance violations and money laundering. For example, Plaintiffs generally allege that, beginning as early as 2006, certain unnamed members of the Tavern League provided "donations" and "earmarked campaign contributions," in excess of statutory campaign contribution limits, to Dickert and other unnamed "Racine political figures" in order to "buy official acts." (*See, e.g.*,

[2] The BID is alleged to have been "created and approved by the Common Council" in order to "preserve and improve the social and economic conditions within the district by bringing together appropriate partnerships of people, organizations, and funds to evaluate, facilitate or implement downtown development projects." (Compl., ¶16(d)). It is further alleged that expenditures for the BID are "funded through special assessments levied against each tax parcel of property within [the] BID #1, as well as additional funds received by [the] BID #1 through gifts, grants, government programs, and other sources." (*Id.*). Members of the Board of Directors of the BID are alleged to be the "1st District Alderperson and property and business owners within [the] BID #1." (*Id.*). Members of the BID Board are appointed by the Mayor with approval by the Common Council. (*Id.*).

id., ¶¶152-54). This "bribe money" was allegedly "fraudulently reported in campaign finance reports by Dickert's campaign staff" and this "fraudulent reporting was known to the core members of the campaign." (*Id.*, ¶41). The "bribe monies" were allegedly deposited into the bank account of Dickert's campaign organization, "The Friends of Dickert." (*Id.*).[3]

The alleged "bribe money" allowed the unnamed members of the Tavern League to "purchase the political favor" of the City and to have "substantial control of the Racine mayoral office, Dickert's official actions and, upon information and belief, certain [unnamed] Defendants who acted at the behest of Dickert with knowledge of or in agreement with the goals and the effects of their actions." (*See, e.g., id.*, ¶¶152-57). In exchange for the receipt of this "bribe money," Dickert (and other unnamed persons acting on his behalf and unspecified City officials): (1) "awarded a number of his Tavern League supporters with city-funded business and appointed others to influential and powerful positions within the city government, thereby expanding the political influence of the Tavern League and providing it with significant control over the BID #1 board, the Downtown Racine Corporation board, and Racine Commerce as a whole" (*Id.*, ¶158); (2) provided "protection for Tavern League members from the Police Department, the Licensing Committee, and the Downtown Racine Corporation, as well as the first opportunity to obtain newly available liquor licenses from minority bar owners" (*Id.*, ¶159); and (3) "colluded with Aldermen, Police Department officials, the Downtown Racine Corporation, BID # 1 board members, and business and property owners to unjustly burden minority bar owners for the

[3] Plaintiffs also allege that Dickert received personal loans made in order to circumvent the maximum allowable campaign contributions. (*Id.*, ¶42). This money was used to "write checks to his campaign under the guise that they were coming from a personal loan Dickert made to his own campaign fund." (*Id.*). The money was then deposited into "The Friends of Dickert" bank account and was "fraudulently reported by Dickert's campaign staff on campaign finance reports, as the true identities of the donors were never revealed." (*Id.*). Plaintiffs' Complaint does not make clear how this allegation relates, in any way, to the widespread conspiracy they otherwise allege.

purpose of extorting their liquor licenses [which were] then made available to white Tavern League members in exchange for their continued public and financial support."[4] (*Id.*, ¶¶41, 169).

The alleged conspiracy was purportedly successful; per the Complaint, "there are no minority-owned bars in the downtown [Racine] area" today. (*Id.*, ¶65).

II. ALLEGEDLY WRONGFUL ACTIONS TAKEN AGAINST PLAINTIFFS.

In order to effectuate this widespread conspiracy, Defendants allegedly engaged in numerous acts designed to "impose[] heightened burdens on minority-owned bars through administrative agencies, the Police Department, and by other means," to "mak[e] it difficult for them to obtain or maintain a liquor license," (*Id.*, ¶46), and to "unfairly target, harass, and discriminate against the Plaintiffs." (*Id.*, ¶148).

Defendants' alleged acts include a laundry list of allegedly wrongful activities such as:

- subjecting Plaintiffs' establishments to increased scrutiny (including focusing excessive police resources);
- exaggerating reports of violence at Plaintiffs' establishments;
- encouraging persons to complain about incidents at Plaintiffs' establishments and recruiting individuals to testify before the Licensing Committee concerning the suspension and/or revocation of Plaintiffs' licenses;
- having off-duty Police Department officers who worked security for Plaintiffs "call in" incidents that would not be called in at "white owned" bars;
- improperly portraying Plaintiffs' establishments as the source of violent acts;
- selectively using security reports relating to Plaintiffs' establishments;

[4] The alleged *quid pro quo* relationship between Dickert and the Tavern League allegedly "benefited Dickert in that it furthered his campaign promise of 'revitalizing' and 'cleaning up' the downtown area and secured him financial support." (*Id.*, ¶44). The Tavern League allegedly benefited by receiving protection "from Police Department and Licensing Committee security" as well as by gaining "access to the limited number of liquor licenses available in Racine." (*Id.*). The Aldermen allegedly benefited because they could claim a "tough on crime" stance with their constituents. (*Id.*). The "white-owned business and property owners represented by the Downtown Racine Corporation financially benefited by maintaining control of what businesses could or could not operate in downtown Racine." (*Id.*).

- disparately disciplining Plaintiffs for claims of "underage alcohol consumption;"
- facilitating the denial and/or revocation of Plaintiffs' liquor licenses to aid the personal interests of "white bar owners;"
- using side agreements (and similar "intimidating and threatening tactics") to prevent Plaintiffs from asserting their statutory due process rights;
- arbitrarily denying liquor licenses to "minority-owned bar applicants;"
- disparately recommending discipline against Plaintiffs during due process hearings; and
- disparately issuing citations for violations of minor City ordinances and using threats to force Plaintiffs to sell desired land near a City redevelopment.

(*See, e.g., id.*, ¶148). The above-identified practices allegedly continue to date. (*See, e.g., id.*, ¶¶43, 65, 67, 161, 165, 173).

Significantly, Plaintiffs do not appear to allege facts suggesting that every one of the above-referenced actions was taken against each of them individually. Rather, Plaintiffs allege the following as it relates to each of them individually.

- The Maldonados. The Maldonados (former owners of The Cruise Inn) were told that they were "in trouble" by Becker. Becker also told the Maldonados to sell their property and advised Jose Maldonado that the City would revoke his liquor license, making his property worthless. Unnamed City employees also told the Maldonados that they were in "deep trouble," and the City began fining the Maldonados for offenses such as "weeds and chipped paint." Because of these events, the Maldonados listed their properties for sale. (*Id.*, ¶¶91-96).

- Davalos. Davalos' former establishment, Cera's Tequila Bar, was improperly reported as the site of a homicide and, as a result of this incident (and other "minor" incidents), Davalos was called before the Licensing Committee for a due process hearing. The Common Council ultimately revoked Davalos' liquor license. (*Id.*, ¶¶97-100).

- Jones. Jones (former owner of Viper's Lounge) was called before the Licensing Committee at least 10 times between 2006 and 2008. Ultimately, in November 2008, the Common Council accepted the Licensing Committee's recommendation that Jones' liquor license not be renewed. Though Jones objected to Kaplan's involvement in the decision due to a perceived conflict of interest, Kaplan participated in the decision. (*Id.*, ¶¶101-05).

- Khampane and Nueakeas. Khampane and Nueakeas (former owners of Ginger's Lounge) were called before the Licensing Committee allegedly due to the volume of incidents at the bar (of which the majority were allegedly minor and non-violent). In 2009, Ginger's entered into a "side agreement" with the City which required Ginger's to employ a number of additional security measures. In 2010, the Licensing Committee held a due process hearing and recommended that Khampane's and Nueakeas's liquor license be revoked. Rather than have their liquor license revoked, Khampane and Nueakeas surrendered their license. (*Id.*, ¶¶106-11).

- Fair. Fair (former owner of The Place on 6th) was called before the Licensing Committee for "largely minor incidents" on 19 occasions throughout its operation. "Many" of these incidents were "falsely reported" by neighbors under the influence of the City. Though Fair attempted to address the Licensing Committee's concerns, on July 11, 2011, the Licensing Committee voted to begin a due process hearing to suspend or revoke Fair's liquor license. To avoid this hearing, Fair entered into a "side agreement" whereby Fair agreed to take a number of additional security measures. Subsequently, following a fight in which the Police Department made no arrests, the Licensing Committee referred Fair to a due process hearing. After the due process hearing, the Licensing Committee recommended that Fair's liquor license be revoked. Ultimately, the Common Council adopted this decision. (*Id.*, ¶¶112-17).

- Holmes. Holmes (former owner of Park 6) was "repeatedly" called before the Licensing Committee and Common Council and was forced to enter into "numerous side agreements" and was "subject to three due process hearings" despite the fact that none of the "incidents" were "unusual, distinguishable, or more frequent from incidents at white owned bars." (*Id.*, ¶¶118-30).

After the first due process hearing on August 26, 2010, Holmes' license was suspended for 45 days. At the second due process hearing on December 20, 2010, Wahlen admitted that he did not properly swear to the complaint which initiated the hearing. Despite this, the Licensing Committee voted to revoke Holmes' liquor license. This decision was appealed to the Racine County Circuit Court which ultimately decided that the City's revocation was invalid, a decision which the City appealed. (*Id.*).

On June 20, 2011, the Licensing Committee held a "special meeting" at which time it recommended that Holmes' license not be renewed. Holmes entered into another "side agreement" but, subsequently, in December 2012, vacated Park 6. (*Id.*).

ARGUMENT

I. LEGAL STANDARD.

To survive a Rule 12(b)(6) motion to dismiss, a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Iqbal*, 556 U.S. at 678 ("A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'") (quoting *Twombly*, 550 U.S. at 555)). "Importantly, the Supreme Court's decisions in *Twombly* and *Iqbal* ushered in a requirement that civil pleadings demonstrate some merit or plausibility in complaint allegations

to protect defendants from having to undergo costly discovery unless a substantial case is brought against them." *United States v. Vaughn*, 722 F.3d 918, 926 (7th Cir. 2013); *see also Twombly*, 550 U.S. at 557 (a complaint must contain "allegations plausibly suggesting (not merely consistent with)" an entitlement to relief).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully . . . . When a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (quoting *Twombly*, 550 U.S. at 557) (internal quotation marks omitted). If allegations of a complaint give rise to an "obvious alternative [legitimate] explanation" for the conduct which is allegedly wrongful, the claim fails to meet the plausibility requirement and must be dismissed. *Id.* at 678.

"[H]ow many facts are enough [to survive a motion to dismiss] will depend on the type of case. In a complex antitrust or RICO case a fuller set of factual allegations than found in the sample complaints in the civil rules' Appendix of Forms may be necessary to show that the plaintiff's claim is not 'largely groundless.'" *Limestone Dev. Corp. v. Vill. of Lemont*, 520 F.3d 797, 803 (7th Cir. 2008); *see also Swanson v. Citibank, N.A.*, 614 F.3d 400, 405 (7th Cir. 2010) ("A more complex case . . . will require more detail, both to give the opposing party notice of what the case is all about and to show how, in the plaintiff's mind at least, the dots should be connected."); *Kaye v. D'Amato*, No. 09-1091, 2009 WL 4546948, 357 Fed. Appx. 706, 710 (7th Cir. 2009) ("While dismissal of a RICO claim is appropriate if the plaintiff fails to allege

sufficient facts to state a claim that is plausible on its face, the adequate number of facts varies depending on the complexity of the case.").

Moreover, "[i]f discovery is likely to be more than usually costly, the complaint *must* include as much factual detail and argument as may be required to show that the plaintiff has a plausible claim." *Limestone Dev. Corp.*, 520 F.3d at 803 (emphasis added); *see also Ori v. Fifth Third Bank*, 603 F. Supp. 2d 1171, 1172-73 (E.D. Wis. 2009) ("In complex cases, where discovery is likely to be more costly than usual, it is appropriate for courts to require a relatively full set of factual allegations."); *see also Miranda v. Ponce Fed. Bank*, 948 F.2d 41, 44 (1st Cir. 1991) (civil RICO is "the litigation equivalent of thermonuclear device" and thus, a RICO complaint "must be anchored in a bed of facts, not allowed to float freely on a sea of bombast").

In deciding this Motion to Dismiss, this Court should accept "the well-pleaded facts in the complaint as true;" however, "legal conclusions and conclusory allegations merely reciting the elements of the claim are not entitled to this presumption of truth." *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011).

II. PLAINTIFFS FAIL TO STATE A RICO CLAIM AGAINST ANY OF THE MUNICIPAL DEFENDANTS AS A MATTER OF LAW.

A RICO claim "is a unique cause of action that is concerned with eradicating organized, long-term, habitual criminal activity." *Gamboa v. Velez*, 457 F.3d 703, 705 (7th Cir. 2006). It "does not cover all instances of wrong-doing." *Id.*

A plaintiff has standing to assert a civil RICO claim if he has been "injured in his business or property by reason of a violation of [18 U.S.C.] section 1962." 18 U.S.C. § 1964(c); *see also DeGuelle v. Camilli*, No. 10-2172, 2010 WL 1484236, at *5 (E.D. Wis. Apr. 12, 2010) (stating that a Civil RICO cause of action required a plaintiff to adequately plead "an injury in

his business or property;" "'by reason of;'" "the defendants' violation of section 1962"), *overturned on other grounds*, 664 F.3d 192.

Plaintiffs attempt to allege three causes of action under RICO, 18 U.S.C. § 1962:

- Section 1962(b) makes it unlawful for a person "through a pattern of racketeering activity . . . to acquire or maintain, directly or indirectly, any interest or control of any enterprise which is engaged in, or the activities which affect, interstate or foreign commerce."

- Section 1962(c) makes it unlawful for a person "employed or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity. . ."

- Section 1962(d) makes it unlawful to conspire to violate 18 U.S.C. § 1962(a)-(c).

Although each RICO provision has distinct elements, the existence of an "enterprise" and a "pattern of racketeering" are elements that are essential to each of the RICO provisions. *See, e.g.*, *Jones v. U.S. Bank Nat'l Ass'n*, No. 10C0008, 2011 WL 882758, at *3 (N.D. Ill. Mar. 11, 2011); 18 U.S.C. § 1962(b)-(d). A "pattern of racketeering" requires the commission of *at least two* predicate acts of racketeering activity within a ten-year period. 18 U.S.C. § 1961(5). "Racketeering activity" is defined to mean "any act or threat involving . . . extortion," among other state and federal crimes. 18 U.S.C. § 1961(1).

Because this Court may only consider those predicate acts that have been properly pleaded in determining whether Plaintiffs have properly alleged a pattern of racketeering, the adequacy of Plaintiffs' allegations concerning the predicate acts must be reviewed prior to evaluating the sufficiency of pleading a "pattern of racketeering." *See, e.g.*, *Jepson, Inc. v. Makita Corp.*, 34 F.3d 1321, 1327 (7th Cir. 1994) ("[W]e find the mail and wire fraud allegations in the amended complaint to be wanting in critical respects. Because those defects leave the plaintiffs' RICO claims without the necessary foundation of predicate acts, we agree that dismissal of the case was appropriate.").

A review of Plaintiffs' Complaint reveals several deficiencies in their pleading of the RICO claims. Substantively, Plaintiffs' pleading relating to the alleged "predicate acts" is deficient in that it fails to plead sufficient facts and incorrectly attempts to characterize certain actions as "predicate acts." In turn, Plaintiffs' pleading of a "pattern of racketeering" is correspondingly deficient as it fails to allege that the predicate acts were sufficiently continuous. Moreover, even if Plaintiffs have properly pleaded a "pattern of racketeering" (which, for the reasons set forth below, they have not), their claims fail for the independent reason that Plaintiffs lack standing to assert claims pursuant to RICO §§ 1962(b) and 1962(c) as they have failed to allege that the "pattern of racketeering" was the proximate cause of their alleged injuries. Correspondingly, Plaintiffs' conspiracy claims under RICO § 1962(d) also fail because they have failed to plead a substantive violation of either §§ 1962(b) or 1962(c). Finally, Plaintiffs have improperly pleaded the RICO claims against the Municipal Defendants in their official capacities. For these reasons, all of Plaintiffs' RICO claims must be dismissed in their entirety.

A. <u>Plaintiffs Have Failed to Properly Plead Predicate Acts and Thus, Their RICO Claims Fail to State a Claim as a Matter of Law</u>.

Here, several of the actions ostensibly relied upon by Plaintiffs as predicate acts are improperly pleaded and thus, cannot serve as a predicate act for purposes of determining whether a "pattern of racketeering" exists. As an initial matter, the Complaint is far from a model of clarity as it relates to specifying what conduct Plaintiffs allege are the predicate acts required for liability under RICO.[5] As best the Municipal Defendants can extrapolate, Plaintiffs are claiming two groups of alleged predicate acts: (1) the Liquor License Acts; and (2) the Campaign Acts.

[5] For this reason, at the very least, the Municipal Defendants need a more definite idea of which Plaintiff is asserting which claims against which Defendants. The way the current Complaint is pleaded leaves no way for the Municipal Defendants to discern such basic issues. *See, e.g., Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 983 (11th Cir. 2008) (criticizing a pleading where multiple plaintiffs assert multiple claims against multiple defendants). The Municipal Defendants respectfully request that, at the very least, this Court order Plaintiffs to prepare a "RICO

It appears that Plaintiffs are or may be alleging that the alleged Liquor License Acts and/or the Campaign Acts violate one or all of the following statutes: (1) Chapter 11 of the Wisconsin Statutes ("Wis. Stat. 11") (relating to campaign financing); (2) Chapter 946 of the Wisconsin Statutes ("Wis. Stat. 946") (relating to administration in government); (3) 18 U.S.C. § 1951, the Hobbs Act (relating to extortion); and (4) 18 U.S.C. § 1956 (relating to money laundering) and thus, may be considered predicate acts for purposes of RICO. (*See, e.g.*, Compl., ¶161, alleging that these state and federal statutes that were "designed to prevent *quid pro quo* corruption in Wisconsin municipal governments"); *see also Meier v. Musburger*, 588 F. Supp. 2d 883, 908 (N.D. Ill. 2008) (expressing disapproval of a Complaint which pleads a violation of a statute "as set forth more fully above" as it "leaves it to the reader to divine from its prolix paragraphs exactly what [the statutory violation] consisted of").

However, the Liquor License Acts do not constitute extortion (or any other predicate act), and the Campaign Acts are not predicate acts under RICO and/or are not sufficiently pleaded to satisfy the requirements of *Twombly* or *Iqbal*. Thus, neither the Liquor License Acts nor the Campaign Acts should be considered predicate acts for purposes of RICO.

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case statement" in the format and with the information specified in the RICO Standing Order adopted by the United States District Court for the Eastern District of Louisiana, which is located at http://www.laed.uscourts.gov/LocalRules/RICO.pdf. (last visited May 15, 2014). *See, e.g.*, *Marriott Bros. v. Gage*, 911 F.2d 1105, 1107 (5th Cir. 1990) (RICO case statements may be a "useful, sometimes indispensable, means to understand the nature of the claims asserted and how the allegations satisfy the RICO statute."); *U.S. Mkts., Inc. v. Irvine*, 298 F. Supp. 2d 743, 745 (N.D. Ill. 2004) (per the current practice of the judge, requiring that a plaintiff file a "RICO case statement" identifying specific information). The Municipal Defendants anticipate that the RICO case statement will help further define Plaintiffs' RICO claims and clarify any remaining ambiguities after this Court issues a decision on the Motion to Dismiss.

1. The Liquor License Acts Are Not Predicate Acts or, in the Alternative, Are Not Sufficiently Pleaded.

Plaintiffs appear to allege that their (and others') loss of their liquor licenses are predicate acts of extortion (18 U.S.C. § 1951).[6] (*See, e.g.*, Compl., ¶¶159, 169, alleging that Defendants "extorted" liquor licenses from minority bar owners and acted for the purpose of "extorting" Plaintiffs' liquor licenses). The allegations relating to the Plaintiffs' (and others') loss of their liquor licenses are summarized as follows:

- The Maldonados (former owners of The Cruise Inn) were told that they were "in trouble" by Mayor Becker. Mayor Becker also told the Maldonados to sell their property and advised Mr. Maldonado that the City would revoke his liquor license, making his property worthless. Unnamed City employees also told the Maldonados that they were in "deep trouble," and the City began fining the Maldonados for offenses such as "weeds and chipped paint." Because of these events, the Maldonados listed their properties for sale. (*Id.*, ¶¶91-96).

- Davalos' former establishment, Cera's Tequila Bar, was improperly reported as the site of a homicide and, as a result of this incident (and other "minor" incidents), Davalos was called before the Licensing Committee for a due process hearing. The Common Council ultimately revoked Davalos' liquor license. (*Id.*, ¶¶97-100).

- Jones (former owner of Viper's Lounge) was called before the Licensing Committee at least 10 times between 2006 and 2008. Ultimately, in November 2008, the Common Council accepted the Licensing Committee's recommendation that Jones' liquor license not be renewed. Though Jones objected to Kaplan's involvement in the decision due to a perceived conflict of interest, Kaplan participated in the decision. (*Id.*, ¶¶101-05).

- Khampane and Nueakeas (former owners of Ginger's Lounge) were called before the Licensing Committee allegedly due to the volume of incidents at the bar (of which the majority were allegedly minor and non-violent). In 2009, Ginger's entered into a "side agreement" with the City which required Ginger's to employ a number of additional security measures. In 2010, the Licensing Committee held a due process hearing and recommended that Khampane's and Nueakeas's liquor license be revoked. Rather than have their liquor license revoked, Khampane and Nueakeas surrendered their license. (*Id.*, ¶¶106-11).

[6] The Municipal Defendants are addressing this issue for the sake of caution and note further that to the extent that Plaintiffs intend to rely on alleged violations of unspecified sections of Wis. Stat. 946, not every violation of an official misconduct statute entails bribery or extortion. *See LaFlamboy v. Landek*, 587 F. Supp. 2d 914, 939 (N.D. Ill. 2008) (stating that official misconduct, *i.e.*, performing acts in excess of an official's lawful authority, cannot constitute racketeering for purposes of RICO).

- Fair (former owner of The Place on 6th) was called before the Licensing Committee for "largely minor incidents" on 19 occasions throughout its operation. "Many" of these incidents were "falsely reported" by neighbors under the influence of the City. Though Fair attempted to address the Licensing Committee's concerns, on July 11, 2011, the Licensing Committee voted to begin a due process hearing to suspend or revoke Fair's liquor license. To avoid this hearing, Fair entered into a "side agreement" whereby Fair agreed to take a number of additional security measures. Subsequently, following a fight in which the Police Department made no arrests, the Licensing Committee referred Fair to a due process hearing. After the due process hearing, the Licensing Committee recommended that Fair's liquor license be revoked. Ultimately, the Common Council adopted this decision. (*Id.*, ¶¶112-17).

- Holmes (former owner of Park 6) was "repeatedly" called before the Licensing Committee and Common Council and was forced to enter into "numerous side agreements" and was "subject to three due process hearings" despite the fact that none of the "incidents" were "unusual, distinguishable, or more frequent from incidents at white owned bars." (*Id.*, ¶119).

  After the first due process hearing on August 26, 2010, Holmes' license was suspended for 45 days. At the second due process hearing on December 20, 2010, Wahlen admitted that he did not properly swear to the complaint which initiated the hearing. Despite this, the Licensing Committee voted to revoke Holmes' liquor license. This decision was appealed to the Racine County Circuit Court which ultimately decided that the City's revocation was invalid, a decision which the City appealed. (*Id.*, ¶¶123-26).

  On June 20, 2011, the Licensing Committee held a "special meeting" at which time it recommended that Holmes' license not be renewed. Holmes entered into another "side agreement." Subsequently, in December 2012, Holmes vacated Park 6. (*Id.*, ¶¶127-30).

- On December 14, 2006, the Common Council revoked the liquor license for 262 Lounge, which had a minority owner. (*Id.*, ¶132).

- On July 9, 2007, the minority owner of Mr. Kool's entered into a side agreement in order to maintain its liquor license. (*Id.*, ¶133).

- On July 15, 2008, the Common Council revoked the liquor license for Rosie's Bar, which had a minority owner. (*Id.*, ¶134).

- On September 24, 2007, the Licensing Committee requested a more detailed business plan for Tinita's. Later, on June 4, 2008, the minority owner of Tinita's entered into a side agreement which required additional security-related measures. (*Id.*, ¶135).

- On September 13, 2010, the Licensing Committee required the white owner of the Blue Rock Lounge & Eatery to enter into a side agreement. Blue Rock served minority customers. (*Id.*, ¶136).

- In September 2012, two applicants, both Hispanic, applied for a liquor license. The Licensing Committee (including Alderman Kaplan) created obstacles to obtaining a liquor license. Nonetheless, the owners were able to obtain a liquor license in early 2013. After the bar opened, the Police Department came to the bar and advised the owners that the bar was "shut down." Upon further inquiry, the owners were advised that their permit was conditional and that they must report to the Licensing Committee. The owners were further told that if the owner's brother dropped his recall efforts against Alderman Kaplan, they would be permitted to open. The recall effort was dropped and the Common Council subsequently approved its permit. (*Id.*, ¶137).

With respect to extortion, 18 U.S.C. § 1951(a) makes it a crime to "obstruct[], delay[], or affect[] commerce, by robbery or extortion or attempt[] or conspire[] to do so . . ." 18 U.S.C. § 1951(a). Extortion is defined as the "obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1952(b). There are three essential elements to a violation of § 1951: (1) "the defendant induced his victim to part consensually with property;" (2) "either through the wrongful use of actual or threatened force, violence or fear or under color of official right;"[7] and (3) "in such a way as to adversely affect interstate commerce." *See United States v. Peterson*, 544 F. Supp. 2d 1363 (M.D. Ga. 2008) (citing *United States v. Smalley*, 754 F.2d 944, 947 (11th Cir. 1985)); *Golden v. Nadler, Pritikin, & Mirabelli, LLC*, No. 05C0283, 2005 WL 2897397, at *5 (N.D. Ill. Nov. 1, 2005) (emphasizing that any "Hobbs Act extortion must be designed to take the victim's property with his consent"); *Dickey v. Kennedy*, 724 F. Supp. 2d 207, 214 (D. Mass.

[7] Although extortion "under color of official right" does not involve the actual or threatened use of force, violence or fear, in either type of extortion the taking of the victim's property must be "wrongful." *Id.*; *see also McCormick v. United States*, 500 U.S. 257, 273 (1991) (in a case in which extortion allegedly occurs "under color of official right," it must be shown that "payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act," *i.e.*, that there has been a *quid pro quo*); *United States v. Giles*, 246 F.3d 966, 971 (7th Cir. 2001) (it must be shown "that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts").

2010) ("Extortion therefore requires that the victim consent to give up his property and yield to an official's authority.").

Critically, the Supreme Court has concluded that there is no extortion in violation of the Hobbs Act when the government is the intended beneficiary of the extortionate acts. *Wilkie v. Robbins*, 551 U.S. 537, 566 (2007). This is true even if the government does not have a lawful or legal claim to the property. *See Peterson*, 544 F. Supp. 2d at 1370 ("A public official who obtains property on behalf of the government does not commit the offense of extortion, even if the government does not have a lawful or legal claim to the property."). This conclusion is based on the premise that "the harm targeted by RICO is that created by public officials who sell public favors for *personal gain, i.e.*, take bribes, not on the harm caused by officials' efforts to obtain property for the government." *Curtis v. Wilks*, 704 F. Supp. 2d 771, 787 (N.D. Ill. 2010) (emphasis added).

None of the alleged Liquor License Acts are alleged to involve public officials selling public favors to Plaintiffs; nor do they involve any *private* or *personal* gain to the alleged members of the Licensing Committee or the Common Council as a *quid pro quo* due to Plaintiffs' (and, perhaps others') surrender of their liquor licenses to the City.[8] Rather, the liquor licenses were obtained *for the City*. Thus, any alleged acts engaged in by any Municipal Defendant in connection with obtaining such licenses cannot be extortion in violation of the Hobbs Act as a matter of law. *See Wilkie*, 551 U.S. at 566; *Peterson*, 544 F. Supp. 2d at 1370; *Curtis*, 704 F. Supp. 2d at 787.

Moreover, even if the alleged Liquor License Acts did allege some potential *private* or *personal* gain to the Municipal Defendants in connection with the Liquor License Acts, which is clearly not the case, at least certain of the alleged Liquor License Acts do not qualify as extortion

[8] The Municipal Defendants assume for the sake of argument that the liquor licenses so qualify.

because Plaintiffs did not consent to surrendering their liquor license. *See, e.g.*, 18 U.S.C. § 1951; *Golden, LLC*, 2005 WL 2897397, at *5; *see also Dickey*, 724 F. Supp. 2d at 214. For example, it is alleged that the owners of Cera's, Viper's Lounge, The Place on 6th, 262 Lounge and Rosie's Bar all lost their liquor licenses as a result of a due process hearing or due to non-renewal rather than through voluntary surrender. (*See* Compl., ¶¶97-105, 112-17, 132, 134).

In sum, *at best*, the Liquor License Acts allege that unnamed members of the Licensing Committee and Common Council acted with an improper racial animus. But, it is firmly established that alleged civil rights violations cannot serve as the basis of a RICO claim as a matter of law. *See, e.g., Jennings v. Emry*, 910 F.2d 1434, 1438 (7th Cir. 1990) (holding that violations of "civil rights and constitutional law" are not predicate acts under RICO); *Bowen v. Olstead*, 125 F.3d 800, 806 (9th Cir. 1997) ("Civil rights violations and injury to reputation do not fall within statutory definition of 'racketeering activity.'"); *see also* (Compl., ¶¶166, 174, 184, alleging in connection with their RICO claims that the "Plaintiffs were foreseeably injured by the intentional acts of the Defendants in that they were deprived of property and their right to equal protection under the laws and equal privileges and immunities under the laws.").

Accordingly, for the above-referenced reasons, none of the Liquor License Acts qualify as predicate acts of extortion in violation of the Hobbs Act as a matter of law.

2. The Campaign Acts Are Not Predicate Acts and/or in the Alternative, Are Not Sufficiently Pleaded Predicate Acts of Racketeering.

Plaintiffs allege three groups of Campaign Acts including:

- Beginning in 2006, unnamed members of the Tavern League used its "political influence" to earn favor with Dickert (and other unnamed "Racine political figures" and "Racine officials") through the payment of "earmarked campaign contributions and other means." (*See, e.g.*, Compl., ¶¶153-54). And, in connection with Dickert's 2009 mayoral campaign, LeGath and Nicholson (and members of the Tavern League) gave "large amounts of money" to unnamed members of Mayor Dickert's 2009 campaign staff. (*Id.*, ¶¶41, 152-54, 169). The contributions allegedly "routinely

exceeded the cash limits for individuals as well as the total contribution limits for individuals." (*Id.*, ¶41). The Tavern League money was "fraudulently reported" in campaign finance reports and was deposited into the bank account of Dickert's campaign organization, "The Friends of Dickert." (*Id.*, ¶¶41, 157). The Tavern League money was given as a *quid pro quo* for providing "powerful positions within the municipal government" to "Tavern League contributors," to provide Tavern League members from Police Department and Licensing Committee scrutiny, and to allow members of the Tavern League to gain access to the limited number of liquor licenses available in Racine. (*Id.*, ¶¶41, 44, 153-60, 169-70, 176-79). "Upon information and belief," the Tavern League money was "laundered by certain Defendants outside the Tavern League and within Dickert's inner circle for the express purpose of knowingly continuing and concealing the nature, use source and effect of these bribes in order to avoid public scrutiny and circumvent campaign finance laws." (*Id.*, ¶157; *see also id.*, ¶41).

- After becoming Mayor in 2009, Dickert continued to accept "bribes" from Tavern League members and continued to fraudulently report the receipt of such funds on campaign finance reports. (*Id.*, ¶43). "These practices continued up to and after the 2011 re-election campaign for Dickert, and likely continue to date." (*Id.*).

- Mayor Dickert elicited personal loans in order to circumvent the maximum allowable campaign contributions. The receipt of these loans were fraudulently reported and were deposited in the bank account of Dickert's campaign, "The Friends of Dickert." (*Id.*, ¶42).

Presumably, these allegations are intended to suggest violations of Wis. Stat. 11, Wis. Stat. 946, 18 U.S.C. § 1951 and 18 U.S.C. § 1956 as predicate acts for purposes of RICO. (*See, e.g.*, *id.*, ¶160). That is not the case.

a. <u>The Campaign Acts, as Alleged Violations of Wis. Stat. 11, Are Not Predicate Acts and, in the Alternative, Are Not Sufficiently Pleaded to State a Violation of Wis. Stat. 11.</u>

With respect to the alleged violations of unspecified sections of Wis. Stat. 11 (relating to campaign finance laws), it is presumed that Plaintiffs are relying upon their bald assertions that certain unnamed individual members of the Tavern League contributed to Dickert's 2009 mayoral campaign, that such contributions "routinely exceeded the cash limits for individuals, as well as the total contribution limits for individuals" and/or that the Tavern League money was "fraudulently reported in campaign finance reports." (*Id.*, ¶41). Plaintiffs may also be relying on

the allegation that Mayor Dickert elicited personal loans which were fraudulently reported. (*Id.*, ¶42).

At the outset, even assuming *arguendo* that these allegations stated a valid claim of a violation of Wis. Stat. 11, which is not the case as set forth below, these allegations relating to campaign finance violations do not constitute a predicate act under RICO as only those state law crimes which involve "murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical" can be predicate acts under RICO.[9] *See* 18 U.S.C. § 1961(1)(a); *Crown Heights Jewish Cmty. Council, Inc. v. Fischer*, 63 F. Supp. 2d 231, 238 (E.D.N.Y. 1999) (stating that state law crimes of grand larceny, falsified business records and offering false instruments for filing were not predicate acts under RICO), *aff'd mem.*, 216 F.3d 1071, 2000 WL 794152 (2d Cir. 2000); *see also LaFlamboy*, 587 F. Supp. 2d at 939 (stating that only those violations of Illinois's Official Misconduct Statute that entail bribery or extortion can constitute predicate acts for purposes of RICO).

Moreover, these allegations are entirely devoid of facts sufficient to meet the *Twombly* and *Iqbal* standard. With respect to the campaign contributions, the Complaint specifically fails to identify a single person whose contribution exceeded any cash or contribution limit imposed

[9] Moreover, as the Supreme Court recently expressly declared in *McCutcheon v. Federal Election Comm'n*, ---U.S. ---, 134 S. Ct. 1434 (2013), the aggregate contribution limitation in 2 U.S.C. § 441a violates the First Amendment to the United States Constitution. Pursuant to a stipulation, the Wisconsin Department of Justice recently agreed that the Eastern District of Wisconsin could declare that Wis. Stat. § 11.26(4) (which sets limitations for individual contributions to elected officials) is "facially unconstitutional in violation of the First Amendment to the United States Constitution" and that "the enforcement of Wis. Stat. § 11.26(4)" is "permanently enjoin[ed]." *See Young v. Vocke*, Case No. 13-CV-635, Dkt. #11, 11-1 (May 8, 2014); *see also Wis. Right to Life, Inc. v. Barland*, -- F.3d --- (7th Cir. 2014) (declaring several aspects of Wis. Stat. 11, and the related Government Accountability Board rules, unconstitutional including Wis. Stat. § 11.38(1) (ban on political spending by corporations is unconstitutional); Wis. Stat. § 11.38(1)(a)3 (cap on amount a corporation may spend on fundraising for an affiliated political committee is unconstitutional); Wis. Stat. § 11.01(16) (definitions of "political purposes" is unconstitutionally vague); GAB § 1.42(5) (disclaimer requirement unconstitutional as applied to 30-second radio ads and ads of shorter duration); GAB § 1.28(1)(a) (definition of "political committee" is unconstitutionally vague"); GAB § 1.28(3)(b) (treatment of issue advocacy during 30/60 day preelection period as fully regulable express advocacy if it mentions a candidate is unconstitutional); GAB § 1.91 (imposition of PAC-like registration, reporting and other requirements on all organizations that make independent disbursements is unconstitutional as applied to organizations not engaged in express advocacy as their major purpose).

by law. Moreover, the Complaint contains no detail as to when such campaign contributions were made (other than the vague reference to "during" Mayor Dickert's "2009 campaign"[10]), to whom (other than unspecified individuals on "Dickert's campaign staff and volunteers"), and in what amounts. Similarly, with respect to the loans, the Complaint fails to identify any persons from whom Mayor Dickert allegedly elicited such loans, or from whom he received the loans (other than an unnamed "family member"), when such loans were elicited or received and/or in what amounts.

Such non-specific allegations cannot possibly satisfy the standards of *Twombly* and do not render Plaintiffs' claims in any way "plausible." *See Twombly*, 550 U.S. at 563 n.3 ("Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests."); *cf. Kaye*, 357 Fed. Appx. at 713 (concluding that bribery accusations were wholly unsupported by facts when plaintiff failed to allege even a single communication between officials or any other agreement that would support a reasonable inference of an illicit agreement).

The Complaint also fails to provide any facts supporting the allegation that the money was fraudulently reported in campaign finance reports (or even that the alleged "fraudulent reporting" was known to members of the campaign). (*See* Compl., ¶41, containing only a conclusory statement that the Tavern League money "was fraudulently reported by Dickert's

[10] The allegations that the Tavern League members began the payment of "earmarked campaign contributions" and began using its "political influence to earn favor with Racine political figures" "as early as 2006" and that these activities continue to date suffer from the same pleading deficiencies set forth herein (in fact, if possible, such allegations are even more vague as they do not allege any time frame (other than an eight-year period), any individuals involved, other than unnamed members of the Tavern League and unnamed Racine city officials, any contributions made, the amounts of such contributions, any communications between the Tavern League and the unnamed Racine City officials, etc.). (*See, e.g.*, Compl., ¶¶153, 165). These allegations will not be separately addressed.

campaign staff, including his treasurer, Defendant Jerger"); *Iqbal*, 556 U.S. at 679 ("Legal conclusions must be supported by factual allegations.").

b. The Campaign Acts Are Not Sufficiently Pleaded to State a Claim of Bribery or Extortion.

With respect to alleged violations of Wis. Stat. 946 (bribery)[11] and/or 18 U.S.C. § 1951 (extortion), the allegations are similarly too sparse to adequately plead violations of these statutes. For example, although Plaintiffs allege that unspecified Tavern League "members" contributed to Dickert's 2009 campaign, Plaintiffs provide no facts as to who allegedly contributed "excess" campaign contributions,[12] to whom the contribution was given (other than unnamed members of "Dickert's campaign staff" and/or "volunteers"), in what amounts, or at what time.[13] Without additional facts, it is impossible to determine who is alleged to have initiated the bribe and/or who was extorted. Similarly, Plaintiffs also provide no facts from which to infer that there was some sort of illicit agreement constituting bribery. Nor are there any factual allegations in support of an alleged *quid pro quo* such as any communications between any of the alleged Tavern League members and any of the Municipal Defendants. This

[11] Wis. Stat. § 946.10 provides as follows:

Bribery of public officers and employees. Whoever does either of the following is guilty of a Class H felony:

(1) Whoever, with intent to influence the conduct of any public officer or public employee in relation to any matter which by law is pending or might come before the officer or employee in the officer's or employee's capacity as such officer or employee or with intent to induce the officer or employee to do or omit to do any act in violation of the officer's or employee's lawful duty transfers or promises to the officer or employee or on the officer's or employee's behalf any property or any personal advantage which the officer or employee is not authorized to receive; or

(2) Any public officer or public employee who directly or indirectly accepts or offers to accept any property or any personal advantage, which the officer or employee is not authorized to receive, pursuant to an understanding that the officer or employee will act in a certain manner in relation to any matter which by law is pending or might come before the officer or employee in the officer's or employee's capacity as such officer of employee or that the officer or employee will do or omit to do any act in violation of the officer's or employee's lawful duty.

[12] Although LeGath and Nicholson are alleged to have contributed "large amounts of money to the campaign," the Complaint fails to identify the amounts each allegedly contributed or include any allegation that contributions by either LeGath or Nicholson exceeded the cash or contribution limits for individuals. (*See* Compl. ¶41).

[13] There is a vague reference to contributions given during Dickert's 2009 mayoral campaign (*see* Compl., ¶¶40-41), but the Complaint also generally alleges that unnamed members of the Tavern League also paid earmarked campaign contributions from 2006 and that such contributions are ongoing. (*See, e.g., id.*, ¶153, 165).

is particularly problematic given that campaign contributions can only be considered as extortionate when there is an express or explicit *quid pro quo* agreement. *See Roger Whitmore's Auto. Servs., Inc. v. Lake County, Ill.*, 424 F.3d 659, 671 (7th Cir. 2005) (citing *Evans v. United States*, 504 U.S. 255, 268 (1992)).

These threadbare allegations of bribery and/or extortion, which do not even allege any communications between the unnamed members of the Tavern League providing the alleged improper contributions and Mayor Dickert, cannot satisfy the standard of *Twombly* and *Iqbal*. *See, e.g.*, *Kaye*, 357 Fed. Appx. at 714 (quoting *Iqbal*, 129 S. Ct. at 1952) (without factual allegations "at a minimum, an allegation of some communication between [two defendants] indicating an agreement [to engage in a quid pro quo or an illicit agreement, Plaintiff] has not 'nudged his claims [of bribery] . . . across the line from conceivable to plausible.'"); *Cobbs v. Sheahan*, 319 F. Supp. 2d 865, 871 (N.D. Ill. 2004) ("When a plaintiff seeks to show extortion by a defendant in connection with seeking campaign contributions, she must allege an explicit *quid pro quo* – a threat or promise accompanying the demand for funds."); *see also Fuji Photo Film U.S.A, Inc. v. McNulty*, 640 F. Supp. 2d 300, 318 (S.D.N.Y. 2009) (allegations of bribery were insufficient when they "did not plead any facts regarding how much was paid, when it was paid, or how it was delivered"); *Zigman v. Giacobbe*, 944 F. Supp. 147, 156 (S.D.N.Y. 1996) (allegations of bribery which did not state "one single factual allegation of a specific bribe" paid at any time were "nothing more than vague, general and conclusory allegations insufficient to put a defendant on notice of any alleged wrongdoing. Accordingly, there is alleged no predicate act or bribery sufficient to support the plaintiff's RICO claims."); *see also Limestone Dev. Corp.*, 520 F.3d at 803-04 ("RICO cases . . . are 'big' cases and the defendant should not be put to the expense of big-case discovery on the basis of a threadbare claim."); *see generally United States*

v. McGregor, 879 F. Supp. 2d 1308 (M.D. Ala. 2012) (containing a detailed discussion of the elements of bribery and extortion and the distinction between the two crimes).

c. The Campaign Acts Are Not Sufficiently Pleaded to State a Claim for Money Laundering.

With respect to an alleged violation of 18 U.S.C. § 1956 (money laundering), Plaintiffs appear to be pleading a violation of 18 U.S.C. § 1956(a)(1)(B)(i) which provides that:

> (a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—
> (B) knowing that the transaction is designed in whole or in part--
> (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity . . .
> shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(*See* Compl., ¶157); *see also United States v. Jackson*, 935 F.2d 832, 839 (7th Cir. 1991) ("In a case brought under Sec. 1956(a)(1)(B)(i), the government must prove that the transaction was designed to conceal one or another of the enumerated attributes of the proceeds involved" in the "specified unlawful activity."). A "specified unlawful activity" is defined to include, *inter alia*, "racketeering activity" as defined in 18 U.S.C. § 1961(1).

As set forth above, the alleged violations of campaign finance statutes are not pleaded sufficiently and, in any event, are not "racketeering activity." Similarly, the acts of bribery and/or extortion are also not pleaded sufficiently and thus cannot be considered "racketeering activity." Therefore, these alleged acts cannot serve as the basis of the "specified unlawful activity" for purposes of money laundering and, as a result, there is no money laundering as a matter of law. *See, e.g., United States v. D'Alessio*, 822 F. Supp. 1134, 1146 (D.N.J. 1993) (counts charging money laundering violations had to be dismissed after court dismissed counts which had served as "specified unlawful activity").

Moreover, even if certain of the alleged acts of bribery and/or extortion were pleaded sufficiently, which is clearly not the case, the allegations of "money laundering" are made "upon information and belief," and are merely conclusory legal assertions which do not meet the *Twombly* and *Iqbal* standard. *See, e.g.*, *Twombly*, 550 U.S. at 563 n.3 ("Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests."); *Iqbal*, 556 U.S. at 679 ("Legal conclusions must be supported by factual allegations."). The only facts that are provided as a basis for the alleged violations are meager and non-specific. (*See, e.g.*, Compl., ¶41 ("The bribe monies were deposited in the bank account of Dickert's campaign organization.")). No allegation is made as to who is alleged to have engaged in the money laundering, who had knowledge of the money laundering, whether the deposit was made in order to conceal the "location, the source, the ownership, or the control of the proceeds of specified unlawful activity," when the money laundering allegedly occurred or what amounts of money were allegedly laundered. From these allegations — or more accurately, a lack thereof — there is absolutely no basis to conclude that Plaintiffs have pleaded a plausible claim of money laundering. *See Limestone Dev. Corp.*, 520 F.3d at 803 ("[i]f discovery is likely to be more than usually costly, the complaint *must* include as much factual detail and argument as may be required to show that the plaintiff has a plausible claim.").

As set forth above, it is doubtful that Plaintiffs have sufficiently alleged any predicate acts, much less two within a 10-year period as required by 18 U.S.C. § 1961(5). For this reason, alone, Plaintiffs' RICO claims should be dismissed. However, even if this Court were to conclude that Plaintiffs have properly pleaded certain predicate acts (which the Municipal

Defendants dispute), Plaintiffs still have not pleaded a pattern of racketeering and for this reason, too, Plaintiffs' RICO claims should be dismissed.

B. Plaintiffs Have Failed to Properly Plead a Set of Continuous Predicate Acts Sufficient to Allege a "Pattern of Racketeering" and Thus, Their RICO Claims Fail to State a Claim as a Matter of Law.

To establish a pattern of racketeering activity, Plaintiffs must allege facts showing continued criminal activity or the threat thereof, including a relationship between the predicate acts commonly referred to as the "continuity plus relationship" test. *See Edgenet, Inc. v. GS1 AISBL*, 742 F. Supp. 2d 997, 1016 (E.D. Wis. 2010); *Roger Whitmore's Auto. Servs.*, 424 F.3d at 672. "The test requires the predicate acts be related and pose a threat of continued criminal activity." *Edgenet*, 742 F. Supp. 2d at 1016; *H.J., Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989). There are two types of continuity: closed-ended and open-ended. *See, e.g., H.J., Inc.*, 492 U.S. at 241 (continuity is "both a closed-and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition"). Plaintiffs' Complaint establishes neither.

1. Plaintiffs Have Failed to Sufficiently Plead Closed-Ended Continuity.

"Closed-ended continuity exists where related predicate acts take place over a 'substantial period of time.'" *Edgenet*, 742 F. Supp. 2d at 1016 (quoting *H.J., Inc.*, 492 U.S. at 241); *Midwest Grinding Co. v. Spitz*, 976 F.2d 1016, 1024 (7th Cir. 1992) (finding that predicate acts that are a "one-shot" scheme occurring over "at most . . . nine months" does not meet the definition of closed-ended continuity); *Roger Whitmore's Auto Servs.*, 424 F.3d at 673 (alleged predicate acts that "spanned at most about two years" insufficiently continuous to form a pattern"). "When the acts extend over only a few weeks or months, and the threat of future

criminal conduct is not imminent, the plaintiff fails to establish a closed ended continuity." *Shepard v. Lustig*, 912 F. Supp. 2d 698, 706 (N.D. Ill. 2012).

The Seventh Circuit uses certain factors, the "*Morgan* factors," to assess continuity: (1) the number and variety of predicate acts and the length of time over which they were committed; (2) the number of victims; (3) the presence of separate schemes; and (4) the occurrence of distinct injuries. *See Morgan v. Bank of Waukegan*, 804 F.2d 970, 975 (7th Cir. 1986); *see also Shepard*, 912 F. Supp. 2d at 707. Courts must attempt to apply these factors to achieve a "natural and commonsense" result, consistent with Congress's concern with long-term criminal conduct. *Roger Whitmore's Auto Servs.*, 424 F.3d at 673 (citations omitted).

Although none of the factors is necessarily dispositive, the duration of the predicate acts, part of the first factor, is "[p]erhaps the most important." *Id.*; *see also Midwest Grinding Co.*, 976 F.2d at 1024 ("The first factor, duration, is perhaps the closest thing we have to a bright-line continuity test . . . ."). Plaintiffs allege a widespread conspiracy from 2006 through the present, presumably relying on both the Liquor License Acts and the Campaign Acts as predicate acts. (*See, e.g.*, Compl., ¶¶38, 153). As described above, however, none of these predicate acts were sufficiently pleaded and/or the alleged acts do not constitute predicate acts for purposes of RICO and thus, cannot be considered within the "continuity" analysis.

Moreover, even if this Court were to consider the Campaign Acts, after stripping away the conclusory assertions relating to allegations of bribery, extortion, money laundering and/or campaign finance violations, Plaintiffs, *at best*, have alleged predicate acts relating to bribery, extortion, money laundering and/or campaign finance violations in connection with Dickert's 2009 mayoral campaign (though, as set forth above, these allegations, too, are deficient). (*See, e.g.*, Compl., ¶¶40-42). This duration, the length of a single mayoral campaign, is insufficient to

satisfy closed-ended continuity. *See, e.g.*, *Roger Whitmore's Auto. Servs.*, 424 F.3d at 673-74 (refusing to find closed-ended continuity when the racketeering scheme was associated with a single campaign, which "spanned at most about two years"); *see also Vicom, Inc. v. Harbridge Merch. Servs., Inc.*, 20 F.3d 771, 780-81 (7th Cir. 1994) (refusing to conclude that a time period of less than nine months was sufficient to establish closed-ended continuity). Similarly, the number and variety of such Campaign Acts also weigh against a finding of continuity, particularly given the short duration. *See, e.g.*, *Roger Whitmore's Auto. Servs.*, 424 F.3d at 673 (noting that "several different instances of mail fraud," "various phone calls" and a "handful of face-to-face meetings" was a "fairly small number of predicate acts [which] cuts against showing continuity").

The number of victims and the injuries allegedly suffered by the victims in this case (including Plaintiffs) also counsels against a finding of continuity. Here, even reading the Complaint broadly, Plaintiffs have identified approximately fourteen individuals who were victims of the alleged "conspiracy." (*See, e.g.*, Compl., ¶¶91-137). The Seventh Circuit has explicitly concluded that such a small number of victims "does not help [a plaintiff's] case for continuity." *Roger Whitmore's Auto. Servs.*, 424 F.3d at 673 (stating that "the victims of the defendants' activities were confined to a small group – the dozen or so approved towers from 1997 to 1999 – which does not help [plaintiff's] case for continuity"); *Shepard*, 912 F. Supp. 2d at 707-08 (a finding that only the seven named Plaintiffs were victims counsels against a finding of continuity).

Moreover, the type of injury alleged, presumably the loss of Plaintiffs' liquor licenses and/or cessation of their businesses, are not "distinct" such that this factor weighs in favor of a finding of continuity. *See, e.g.*, *Midwest Grinding*, 976 F.2d at 1025 (finding no continuity

when, *inter alia*, only one type of injury, loss of business, was alleged); *Shepard*, 912 F. Supp. 2d at 708 ("While each Plaintiff suffered a separate injury, these injuries could not fairly be characterized as distinct; each Plaintiff was induced to invest with [a company] by defendants and sustained the injuries of not receiving interest, as promised, and losing their investments in [the company].").

Finally, "[a]lthough a RICO pattern may be established on the basis of a single scheme, 'it is not irrelevant, in analyzing the continuity requirement, that there is only one scheme," *Roger Whitmore's Auto. Servs.*, 424 F.3d at 674. Here, Plaintiffs succinctly state only one alleged over-arching scheme: "The Defendants, including the City of Racine and several powerful individuals, both within and outside of the municipal government, have conspired to drive local minority-owned establishments – specifically, bars and taverns – out of Racine." (Compl., ¶2; *see also id.* ¶4, "the Defendants' scheme to eliminate minority-owned bars and the minority patrons from Racine;" *id.*, ¶140, "Beginning as early as 2006, the Defendants and their co-conspirators entered into a continuing agreement and conspiracy to eradicate minority-owned bars with minority patrons from downtown Racine . . ."). Thus, this factor, too, suggests that there is no RICO pattern. *See Roger Whitmore's Auto.*, 424 F.3d at 674 ("[T]he fact that we are faced with a single, isolated scheme with a confined set of victims also supports the conclusion that [plaintiff] has not shown closed-ended continuity. . ."); *Midwest Grinding*, 976 F.2d at 1025 (finding no continuity when, *inter alia*, there was only one scheme); *Shepard*, 912 F. Supp. 2d at 708 (stating that the identification of a "single fraudulent scheme" was a consideration in the conclusion that Plaintiffs failed to allege a closed-ended scheme); *Luis v. Smith Partners & Assocs.*, No. 12C2922, 2012 WL 5077726, at *5-6 (N.D. Ill. Oct. 18, 2012) (a single scheme of forcing plaintiffs to vacate their property weighed against a finding of continuity).

After considering the *Morgan* factors collectively, Plaintiffs have failed to sufficiently allege "closed-ended continuity" for purposes of RICO.

2. Plaintiffs Have Failed to Sufficiently Plead Open-Ended Continuity.

"Open-ended continuity exists where, even despite a short duration, there is a demonstrable threat of continuity." *Edgenet*, 742 F. Supp. 2d at 1016 (quoting *H.J., Inc.*, 492 U.S. at 241); *Roger Whitmore's Auto. Servs.*, 424 F.3d at 673 ("[A]n open-ended period of racketeering is a course of criminal conduct that lacks the duration and repetition to establish continuity. A plaintiff may nevertheless satisfy continuity by showing past conduct that by its nature projects into the future with a threat of repetition.").

Open-ended continuity may be established by a "specific threat of repetition extending indefinitely into the future," or by showing the predicates "are a part of an ongoing entity's regular way of doing business." *Edgenet*, 742 F. Supp. 2d at 1016 (internal quotations omitted); *see also Vicom*, 20 F.3d at 782 (open-ended continuity exists when "(1) a specific threat of repetition exists, (2) the predicates are a regular way of conducting [an] ongoing legitimate business, or (3) the predicates can be attributed to a defendant operating as part of a long-term association that exists for criminal purposes").

Plaintiffs have not sufficiently alleged and are unable to sufficiently allege that open-ended continuity exists. First, the allegations that the conspiracy to rid downtown Racine of minority-owned bars is "ongoing" are merely conclusory statements and thus, are "not to be given the assumptions of truth under *Iqbal*." *Edgenet, Inc.*, 742 F. Supp. 2d at 1016; *see also Vicom*, 20 F.3d at 783 ("A threat of continuity cannot be found from bald assertions such as 'James Elliot continues his racketeering activities.'"); (*see also* Compl., ¶66, "The conspiracy to rid downtown Racine of minority-owned bars is ongoing"; *id.*, ¶¶165, 173, "By reason of the

Defendants' commission of the aforementioned acts, a continuing and direct relationship exists between the Defendants' intentional acts and the injury caused to the Plaintiffs. Further, the Defendants' acts constitute a threat of continuing activity in violation of Section 1962.").

Moreover, it is simply not plausible that the conspiracy could be continued. Plaintiffs have described a scheme wherein Defendants acted to rid Racine of minority-owned bars and taverns. This scheme has a clear and terminable end point and, allegedly, Defendants have been successful in reaching this conclusion. Plaintiffs' Complaint specifically alleges that: "Today, there are no minority-owned bars in the downtown area." (Compl., ¶65). Under such circumstances, when the conspiracy is alleged to be completed, there is no "open-ended continuity." *See, e.g.*, *Vicom*, 20 F.3d at 782 ("In assessing whether a threat of continued racketeering activity exists, we have made clear that schemes which have a clear and terminable goal have a natural ending point. Such schemes, therefore, cannot support a finding of any specific threat of continuity that would constitute open-ended continuity."). And, there are no continuous predicate acts alleged that could support an open-ended continuity.

Accordingly, as set forth above, Plaintiffs' RICO claims fail for failure to plead "continuity."

C. Plaintiffs' RICO Claims Under §§ 1962(b) and 1962(c) Fail to State a Claim Against Each of the Municipal Defendants as a Matter of Law.

Even if this Court views the entire alleged scheme as having properly pleaded predicate acts and a "pattern of racketeering," Plaintiffs' RICO claims under §1962(b) and (c) also fail to state an actionable claim against the Municipal Defendants for completely separate and independent reasons. First, Plaintiffs' jumbled morass of allegations fails to allege that each Municipal Defendant, individually, engaged in a pattern of racketeering and that such pattern of racketeering harmed each individual Plaintiff. Second, even considering the allegations of the

Complaint collectively, which is improper, Plaintiffs have failed to properly allege an injury and thus, they lack standing to assert claims under § 1962(b) and (c).

1. Plaintiffs Fail to Plead that Each Municipal Defendant Committed at Least Two Predicate Acts and that Such Predicate Acts Harmed Plaintiffs.

In order to allege a § 1962(b) and (c) claim against each of the Municipal Defendants, Plaintiffs must allege that each Municipal Defendant *individually* engaged in a "pattern of racketeering." *See, e.g.*, *DeFalco v. Bernas*, 244 F.3d 286, 306 (2d Cir. 2001) ("The requirements of section 1962(c) must be established as to each individual defendant."); *United States v. Persico*, 832 F.2d 705, 714 (2d Cir. 1987) ("The focus of section 1962(c) is on the individual patterns of racketeering engaged in by a defendant, rather than the collective activities of the members of the enterprise, which are proscribed by section 1962(d)."); *Guaranteed Rate, Inc. v. Barr*, 912 F. Supp. 2d 671, 684 (N.D. Ill. 2012) ("In alleging a RICO pattern, liability is limited to persons who have 'personally committed' at least two predicate acts of racketeering. Accordingly, [plaintiff] must, at a minimum, describe two predicate acts of fraud *by each RICO Defendant . . .*"); *Roger Whitmore's Auto. Servs., Inc. v. Lake County*, No. 99C2504, 2002 WL 959587, *2, *5 (N.D. Ill. May 9, 2002) (stating that "[t]he requirements of § 1962(c) must be established as to *each* individual defendant" and dismissing RICO claims which did not satisfy this standard for each defendant). Each Plaintiff must also individually allege that each specific Municipal Defendant's RICO violation proximately caused harm to that Plaintiff. *See Anza*, 547 U.S. at 456-61; *Penn. Chiropractic Ass'n v. Blue Cross Blue Shield Ass'n*, No. 09C5619, 2010 WL 3940694, *2 (N.D. Ill. Oct. 6, 2010) ("[A] defendant is liable under RICO only for those actions that proximately caused a plaintiff's injury.").

Plaintiffs' Complaint does not attempt in any meaningful manner to tie particular predicate acts with particular Municipal Defendants, much less allege that each of the Municipal

Defendants' predicate acts satisfied the requirements of a "pattern of racketeering" or identify which of the Municipal Defendants' pattern of racketeering caused harm to each particular Plaintiff. The Complaint is completely devoid of these critical elements. There is no support for Plaintiffs' attempts to aggregate claims by each individual Plaintiff against each of the Municipal Defendants such that a claim is validly stated. Accordingly, Plaintiffs' § 1962(b) and 1962(c) claims should be dismissed. *See Penn. Chiropractic Ass'n,* No. 09C5619, 2010 WL 1979569, *11 (N.D. Ill. May 17, 2010) (granting motion to dismiss a § 1962(c) claim by multiple plaintiffs against multiple defendants and noting that "under the Complaint's allegations in their current form, all plaintiffs may not lump together all defendants in a single section 1962(c) claim").

2. Plaintiffs Lack Standing to Assert a RICO Claim Under § 1962(b) Because They Failed to Allege the Municipal Defendants' Actions Caused Them Harm.

Even if this Court were inclined to consider Plaintiffs' § 1962(b) claim collectively against all Municipal Defendants, this claim should still be dismissed as Plaintiffs lack standing to assert such a claim.

In order to state a claim under § 1962(b), Plaintiffs must allege: "(1) that Defendants acquired or maintained an interest in an enterprise through a pattern of racketeering activity; and (2) that Plaintiff suffered an injury through Defendants' acquisition or maintenance of the enterprise that is separate from the injuries that resulted from the predicate acts." *Xinos v. Kappos*, 270 F. Supp. 2d 1027, 1032 (N.D. Ill. 2003) (citations omitted); *Midwest Grinding Co. v. Spitz*, 716 F. Supp. 1087, 1090-91 (N.D. Ill. 1989) ("[U]nder 1962(b), the plaintiff must plead facts tending to show that the acquisition or control of an interest injured the plaintiff."), *aff'd*, 976 F.2d 1016 (7th Cir. 1992). "An injury under Section 1962(b) may be shown, for example, where the owner of an enterprise infiltrated by the defendant as a result of racketeering activities is injured by the defendant's acquisition or control of his enterprise." *Vanderbilt Mortg. and*

Fin., Inc. v. Flores, 735 F. Supp. 2d 679, 700 (S.D. Tex. 2010) (quoting *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1190 (3d Cir. 1993)).

The Complaint alleges that Plaintiffs' injuries, the loss of their respective liquor licenses, were caused by actions of the Licensing Committee and/or the Common Council. Plaintiffs' § 1962(b) claim does not allege that it was the Tavern League's acquisition of control over the alleged RICO enterprise that caused their injuries; rather, it is the alleged actions of the Licensing Committee and/or the Common Council which allegedly caused each of Plaintiffs' respective injuries, *i.e.*, the loss of their liquor licenses (if they may be called as such) that caused their injuries. Tellingly, the allegations as to the cause of Plaintiffs' injury are exactly the same with respect to Plaintiffs' §§ 1962(b) and 1962(c) claims. (*Compare* Compl., ¶¶165-66 and 173-74).

At best, these are allegations that Plaintiffs were injured due to "predicate acts" (though these allegations, too, are insufficient). Accordingly, the RICO claims predicated on an alleged violation of § 1962(b) should be dismissed. *See Lightning Lube, Inc.*, 4 F.3d at 1191 ("Here, Lightning Lube alleges in terms of a section 1962(b) injury that the employees of Witco are engaged in a pattern of racketeering . . . Such an allegation clearly is insufficient because it merely parrots the same injury that section 1962(c) is meant to remedy and fails to explain what additional injury resulted from the person's interest or control of the enterprise."); *Xinos*, 270 F. Supp. 2d at 1032 (to properly allege a § 1962(b) claim, "Plaintiffs must allege an injury that is separate from the injuries that resulted from the predicate acts.").

3. Plaintiffs Lack Standing to Assert RICO Claims Under § 1962(c) Because They Fail to Allege the Municipal Defendants' Actions Caused Them Harm.

In order to properly plead standing to pursue a claim pursuant to 18 U.S.C. § 1962(c), Plaintiffs must allege that they were injured in their "business or property by reason of a

violation of [RICO]." 18 U.S.C. § 1964(c). The "by reason of" language "requires a showing of 'but for' causation and proximate cause." *DeGuelle v. Camilli*, 664 F.3d 192, 199 (7th Cir. 2011). Thus, Plaintiffs must allege "some direct relation between the injury asserted and the injurious conduct alleged." *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992). The Seventh Circuit has emphasized that "[a]ny recoverable damages occurring by reason of a violation of § 1962(c) will flow from the commission of a predicate act, . . . [and] that a showing of RICO injury requires proof of a concrete financial loss and does not encompass mere injury to a valuable intangible property interest." *Evans v. City of Chicago*, 434 F.3d 916, 932 (7th Cir. 2006); *see also Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 457 (2006) (stating that a compensable injury flowing from a violation of § 1962(c) is the "harm caused by predicate acts").

Courts employ the proximate cause test due to the following policy concerns: (1) "[T]he less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors;" (2) "[R]ecognizing claims of the indirectly injured would force courts to adopt complicated rules apportioning damages among plaintiffs removed at different levels of injury from the violative acts, to obviate the risk of multiple recoveries;" and (3) "[T]he need to grapple with these problems is simply unjustified by the general interest in deterring injurious conduct, since directly injured victims can generally be counted on to vindicate the law as private attorneys general, without any of problems attendant upon suits by plaintiffs injured more remotely." *Holmes*, 503 U.S. at 269-70.

Here, even generously assuming that Plaintiffs have properly pleaded the Campaign Acts as predicate acts, which is not the case, the Campaign Acts are too attenuated from Plaintiffs'

injuries, *i.e.*, the loss of their liquor license, to be the "proximate cause" of Plaintiffs' injuries. Each of Plaintiffs' alleged injuries, if any, were proximately caused by the actions of the Licensing Committee and/or the Common Council (or, by their own actions to the extent certain Plaintiffs voluntarily surrendered their liquor licenses such as Maldonado, Khampane, Nueakeas and Holmes). However, as explained, these "Liquor License Acts" are not predicate acts for purposes of RICO. And, moreover, Plaintiffs' Complaint is devoid of any allegations that directly link the members of the Licensing Committee and/or the Common Council to any of the alleged predicate Campaign Acts of bribery, extortion and/or money laundering and/or how each Plaintiff was directly harmed by these acts. *See Anza*, 547 U.S. 457 (stating that the relevant inquiry to determine proximate cause is "whether the alleged violation led directly to the plaintiff's injuries").

Critically, there are no specific allegations linking the alleged illegal contributions or bribes to Mayor Dickert and the denial or surrender of any of the Plaintiff's liquor licenses by the Licensing Committee or the Common Council, indisputably separate arms of municipal government than the mayor's office.[14] (*See, e.g.*, Compl., ¶¶16.a, 16.b and 16.c). There are no allegations that the Licensing Committee or Common Council revoked any Plaintiff's liquor license or took any other action adverse to any Plaintiff at the direction or behest of Mayor Dickert and/or as a result of any alleged illegal contributions or bribes that Mayor Dickert allegedly received. In fact, there are no specific facts asserted anywhere in the Complaint regarding any communications between Mayor Dickert and any member of the Licensing Committee or the Common Council (or even the Licensing Committee or the Common Council as a whole) regarding any of the Plaintiffs' licenses. There are no allegations that the Licensing

[14] In fact, it would be impossible for at least certain of the Plaintiffs, including the Maldonados, Davalos and Jones, to have been injured by the alleged "bribes" to Mayor Dickert, as their loss of liquor licenses occurred prior to Mayor Dickert taking office in 2009. (*See, e.g.*, Compl., ¶¶41, 91-105).

Committee or the Common Council received any bribes or any money that was contributed to Mayor Dickert's campaign for reelection or any other benefit related to the alleged excessive contributions or bribes, including as a *quid pro quo* for revocation of any Plaintiff's liquor license or any other adverse action against Plaintiffs. This is a significant fatal flaw in Plaintiffs' RICO claim and one that likely cannot be cured.

Without a more direct link between the alleged predicate acts and the alleged injuries, this Court will be in the unenviable position of attempting to determine the apportionment of damages between any alleged injury resulting from the bribery, extortion and/or money laundering and those resulting from independent actions. *See, e.g., Holmes*, 503 U.S. 269-70 (expressing concern about requiring courts to apportion damages and to ascertaining the amount of damages caused by defendants' actions); *James Cape & Sons Co. v. PCC Constr. Co.*, 453 F.3d 396, 403 (7th Cir. 2006) (refusing to find proximate causation when a court could never be certain the cause of injury which could have occurred "for any number of reasons unconnected to the asserted pattern of fraud."); *see also Kaye v. D'Amato*, No. 05-CV-982, 2008 WL 5263746, *11 (E.D. Wis. Dec. 18, 2008) (refusing to find proximate cause when there was no way to determine whether the alleged injury would have occurred absent the predicate act). In the absence of such allegations, Plaintiffs do not have standing to assert a § 1964(c) RICO claim.

D. Plaintiffs' RICO § 1962(d) Claim Fails to State a Claim as a Matter of Law Because Plaintiffs Failed to Plead a Violation of RICO §§ 1962(b) or 1962(c) or, in the Alternative, Plaintiffs Failed to Adequately Allege a Conspiracy.

It is well-settled that a plaintiff's RICO conspiracy claim pursuant to 18 U.S.C. § 1962(d) rises or falls based upon the success of the allegations (and/or proof) of violations of § 1962(b) and § 1962(c). *See, e.g., Meier*, 588 F. Supp. 2d at 911-12 (stating that "[t]he cases are uniform in holding that failure to make out a substantive RICO claim requires dismissal of a conspiracy

claim based on the same nucleus of operative fact" and collecting cases). "The reason for this rule is obvious: A conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense under § 1962(a), (b), or (c)." *Id.* Accordingly, here, Plaintiffs' failure to adequately plead a § 1962(b) or a § 1962(c) claim dooms their RICO conspiracy claim as well.

Further, even if Plaintiffs had properly pleaded a RICO § 1962(b) or § 1962(c) claim, which they have not, they have failed to properly allege a RICO conspiracy claim under § 1962(d). To state a claim for conspiracy under § 1962(d), Plaintiffs must allege that "(1) the defendant agreed to use or invest racketeering income in an enterprise, or, through a pattern of racketeering activity, to acquire or maintain an interest in or control of an enterprise or to participate in the affairs of an enterprise, and (2) the defendant further agreed that, in furtherance of this goal, someone would commit at least two predicate acts constituting a pattern." *Slaney v. Int'l Amateur Ath. Fed'n*, 244 F.3d 580, 600 (7th Cir. 2001). "[T]he touchstone of liability under § 1962(d) is an agreement to participate in an endeavor which, if completed, would constitute a violation of the substantive statute." *Goren v. New Vision Int'l, Inc.*, 156 F.3d 721, 732 (7th Cir. 1998). "The defendant need not personally commit a predicate act; rather, a plaintiff must allege that the defendant agreed that someone would commit at least two predicate acts in furtherance of the conspiracy." *DeGuelle*, 664 F.3d 192, 204 (7th Cir. 2011).

Plaintiffs' allegations relating to the RICO conspiracy are little more than conclusory legal assertions; indeed, Plaintiffs fail to plead any adequate facts indicating that all Municipal Defendants agreed to participate in "an endeavor which, if completed, would constitute a violation of [RICO §1962(b) and (c)]." *Goren*, 156 F.3d at 732. For example, Plaintiffs' assert that "Defendants knowingly agreed or conspired to subject minority-owned bars frequented by

minority patrons to increased scrutiny" and that the "Defendants had knowledge of and were complicit with a plan to unfairly and unjustly harass minority bar owners through the imposition of administrative and financial burdens, or intended that their actions would result in the revocation of their liquor licenses and/or the removal of these individuals' businesses from downtown Racine." (Compl., ¶¶178-79). However, for the reasons set forth above, these actions are not "predicate acts," *i.e.*, violations of RICO § 1962(b) or § 1962(c), and thus, even if Defendants agreed to commit such acts, this in no way reflects a conspiracy to violate RICO.

Moreover, Plaintiffs' statements that "Defendants knowingly agreed or conspired to facilitate the unlawful payment of bribe monies to Dickert and other Racine officials" and that "Defendants acquiesced to or knowingly promoted the carrying on of the unlawful activity of bribing public officials by intentionally concealing or disguising the nature or source of such contributions, or by failing to properly account for loans or other monetary contributions in campaign finance reports" are nothing more than conclusory legal assertions which are entitled to no weight. (Compl., ¶¶176-77); *see also Iqbal*, 556 U.S. at 679 (legal conclusions are not entitled to a presumption of truth). Indeed, the Complaint is completely devoid of any facts (other than the conclusory statements cited) that Defendants such as Becker, Wahlen, Coe, Kaplan, DeHahn, Helding, Maack, Wisneski, Mozol, Sutherland, Levine and/or LeGath played any part in any alleged bribery, campaign finance reporting and/or any campaign finance issues. In short, given the conclusory nature of the conspiracy claims, they fail as a matter of law. *See, e.g.*, *McCauley*, 671 F.3d at 616 (a court is not bound to accept as truth conclusory legal allegations). Accordingly, for the foregoing reasons, Plaintiffs' RICO conspiracy claims under § 1962(d) should also be dismissed.

E. Plaintiffs' RICO Claims Against the Municipal Defendants in their Official Capacities Should Be Dismissed Because a Municipality Cannot Be Held Liable Under RICO as a Matter of Law.

Putting aside the substantive arguments for dismissal set forth above, Plaintiffs' claims against the Municipal Defendants in their official capacities should also be dismissed. Courts have consistently concluded that municipalities and their employees sued in their official capacities cannot be liable under RICO — although these courts apply different rationales to reach this conclusion. *Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 404-05 (9th Cir. 1991); *Laflamboy*, 587 F. Supp. 2d at 938; *Curtis v. Wilks*, 704 F. Supp. 2d 771, 786 (N.D. Ill. 2010) ("a municipality cannot be held liable under RICO;" granting summary judgment as to RICO claim against Village and defendants sued in their official capacity); *Gentry v. Resolution Trust Corp.*, 937 F.2d 899, 914 (3d Cir. 1991); *see also Reyes v. City of Chicago*, 585 F. Supp. 2d 1010, 1014 (N.D. Ill. 2008); *Lathrop v. Juneau & Assocs., Inc. P.C.*, 220 F.R.D. 330, 334 (S.D. Ill. 2004) ("The Court dismisses the RICO claims against the City of Granite City. Municipalities are not liable for civil RICO claims . . . . Because the City of Granite City cannot be held liable under RICO for the reasons stated above, the suit against the government officials in their 'official capacity' also cannot be maintained."); *Pelfresne v. Vill. of Rosemont*, 22 F. Supp. 2d 756, 761 (N.D. Ill. 1998); *Simstad v. Scheub*, No. 07-CV-407, 2010 WL 3894017, at *14 (N.D. Ind. Sept. 30, 2010); *SKS & Assocs. v. Vill. of Oak Lawn*, No. 10 C 1083, 2010 WL 3735733, at *1 (N.D. Ill. Sept. 16, 2010). As some courts have recognized in refusing to allow municipal liability, the RICO statute would unfairly punish "the very taxpayers and citizens for whose benefit the wrongdoer [i]s being chastised." *Lancaster*, 940 F.2d at 404 (quoting *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 263 (1981)).

Plaintiffs have improperly asserted their RICO claims against the City of Racine as well as the following Municipal Defendants in their official capacities: Dickert, Becker, Wahlen, Coe, Kaplan, DeHahn, Helding, Maack, Wisneski, Mozol, Sutherland, Levine, LeGath and Bach. Because RICO claims cannot be asserted against the City and/or a municipal official in his or her official capacity as a matter of law, these claims should be dismissed.

III. CERTAIN OF PLAINTIFFS' § 1983 AND § 1985(3) CLAIMS FAIL TO STATE A CLAIM AS A MATTER OF LAW.

As set forth below, Plaintiffs' § 1983 claims must be dismissed for failure to state a claim as a matter of law because Plaintiffs lack standing to pursue such claims. Additionally, because Plaintiffs have asserted claims both against the City and the Municipal Defendants in their official capacity, the claims against the Municipal Defendants in their official capacities must be dismissed as duplicative of the claim against the City. Finally, the Maldonados' § 1983 and § 1985(3) claims are barred by the applicable six-year statute of limitations.

A. Plaintiffs Have Standing Only to Assert Claims Based Upon Violations of Their Own Individual Civil Rights.

The Complaint appears to contain claims by each Plaintiff based upon the alleged violations of the civil rights of the other Plaintiffs. (*See, e.g.*, Claim for Violations of 42 U.S.C. § 1985(3) and Claim for Violation of 42 U.S.C. § 1983, which do not differentiate among Plaintiffs). It is well-settled that Plaintiffs may only sue for the deprivation of their own civil rights. *See, e.g., City of Glendale v. Vill. of River Hills*, No. 10-C-57, 2011 WL 2262491, at *3 (E.D. Wis. June 6, 2011) (stating that a litigant does not have standing to assert the constitutional rights of a third party under § 1983, but instead, must assert his own legal rights) (citing *Massey v. Helman*, 196 F.3d 727, 739 (7th Cir. 1999)). Therefore, to the extent that Plaintiffs are

attempting to sue for violations of § 1983 and § 1985(3) due to injuries to other Plaintiffs (and/or any other unnamed parties), those claims must be dismissed.

B. <u>All of Plaintiffs' § 1983 and § 1985(3) Claims Against the Municipal Defendants in Their Official Capacities Should Be Dismissed Because They Are Duplicative of Claims Asserted Against the City.</u>

The Supreme Court has held that civil rights claims against a municipal official in his or her official capacity are not against the actual official, but are against the office that the official holds. *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) ("Official-capacity suits . . . generally represent only another way of pleading an action against an entity of which an officer is an agent . . . It is *not* a suit against the official personally, for the real party in interest is the entity.") (emphasis in original) (internal quotations omitted); *see also Brandon v. Holt*, 469 U.S. 464, 471-72 (1985). Therefore, in cases where a plaintiff sues both the municipality and a municipal official in their official capacity, the official capacity claim against the individual defendant should be dismissed as duplicative or redundant of the municipal entity claim. *See, e.g., Harris v. City of Chicago*, No. 96-CV-3406, 1998 WL 59873, at *10 (N.D. Ill. Feb. 9, 1998) (dismissing plaintiffs' §§ 1983 and 1985(3) claims against the individual defendant in his official capacity because "the claims against [defendant] in his official capacity duplicate the claims against the City"); *Atheists of Florida, Inc. v. City of Lakeland, Fla.*, 779 F. Supp. 2d 1330, 1344 (M.D. Fla. 2011) ("[B]ecause Plaintiffs assert identical claims against the City itself, those claims against Defendant Fields in his official capacity are 'redundant' and must be dismissed."); *Cooper v. City of Plano*, No. 4:10-CV-689, 2011 WL 4100721, at *4 (E.D. Tex. Aug. 19, 2011) (holding official capacity claims were redundant of claims against the City and should be dismissed); *Cotton v. District of Columbia*, 421 F. Supp. 2d 83, 86 (D.D.C. 2006) (calling duplicative cases

suing government officials in their official capacity "redundant" and an "inefficient use of judicial resources").

In this case, Plaintiffs have improperly asserted § 1983 and § 1985(3) claims against the following Municipal Defendants in their official capacities: Dickert, Becker, Wahlen, Coe, Kaplan, DeHahn, Helding, Maack, Wisneski, Mozol, Sutherland, Levine, LeGath and Bach. Because Plaintiffs have asserted the identical claims against the City, the claims against these individual Defendants in their official capacities are redundant and should be dismissed as a matter of law.

C. The Maldonados' § 1983 and § 1985(3) Claims Against All Municipal Defendants Are Barred by the Applicable Statute of Limitations.

Claims filed under § 1983 and § 1985(3) are subject to a six-year statute of limitations. *Gray v. Lacke*, 885 F.2d 399, 409 (7th Cir. 1989); *Saldivar v. Cadena*, 622 F. Supp. 949, 958 (W.D. Wis. 1985). "Sections 1983 and 1985 claims accrue when a plaintiff knew or should have known that his constitutional rights were violated." *Johnson v. Ill.*, No. 95C1281, 1996 WL 672251, at *3 (N.D. Ill. Nov. 14, 1996) (citing *Kelly v. City of Chicago*, 4 F.3d 509, 511 (7th Cir. 1993)).

In the Complaint, the Maldonados allege that beginning in 2006, certain Defendants improperly discriminated against them by threatening to revoke their liquor license, directing them to sell their property and imposing fines for minor offenses. (Compl., ¶¶91-95). They further allege that all of these events culminated in the Maldonados being forced to sell their property. (*Id.*, ¶¶95-96). However, the Maldonados fail to note that the date they sold their property was January 18, 2007. (*See id.*, ¶¶91-96; Warranty Deed).[15] Thus, the alleged

[15] As shown by the attached Warranty Deed that was recorded with the Racine County Register of Deeds on January 18, 2007, the Maldonados conveyed their property to the Redevelopment Authority of the City of Racine on January 9, 2007. The Court may take judicial notice of matters of public record without converting a Rule 12(b)(6) motion

violations of their constitutional rights—the forced sale of their property and the alleged discriminatory acts that predated the sale—occurred, at the latest, in January 2007. At that point, the Maldonados knew of the alleged violations and their claims accrued at that time. *See Woods v. City of Rockford*, No. 08-2638, 2010 WL 697352, 367 Fed. Appx. 674, 678 (7th Cir. 2010) (holding that the alleged equal-protection violations that resulted in the subsequent nonrenewal of the plaintiffs' liquor license accrued before the license was lost). Because the Maldonados did not file suit until 2014, their § 1983 and § 1985(3) claims are time-barred and should be dismissed. *See id.*

IV. PLAINTIFFS' CLAIMS AGAINST CERTAIN OF THE INDIVIDUAL DEFENDANTS FAIL TO STATE A CLAIM AS A MATTER OF LAW.

For reasons related to those set forth above, Plaintiffs' claims against certain of the individual Municipal Defendants are also deficient and must be dismissed (either in whole or in part).

A. Plaintiffs' § 1983 Claims Against Certain Defendants Fail to State a Claim.

1. There Are No Allegations of Personal Involvement or Participation in an Alleged Constitutional Deprivation on the Part of the Municipal Defendants.

Any § 1983 claims that do not allege personal involvement or participation in an alleged constitutional deprivation by a particular defendant must be dismissed. *See, e.g., Eades v. Thompson*, 823 F.2d 1055, 1063 (7th Cir. 1987); *Brown v. Ill. Dep't of Public Aid*, 318 F. Supp. 2d 696, 700 (N.D. Ill. 2004) (prior to *Twombly* and *Iqbal* dismissing § 1983 claim where plaintiff's "allegations of unequal treatment [were] made generally ***against all defendants***, [and]

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into a motion for summary judgment. *Jones v. Int'l Ass'n of Bridge Structural Ornamental and Reinforcing Iron Workers*, 864 F. Supp. 2d 760, 773 (E.D. Wis. 2012). Courts routinely take judicial notice of documents relating to the ownership of property. *See, e.g., Johnson v. Wells Fargo Bank, N.A.*, No. 3:13-cv-1793, 2014 WL 717191, at * 3 (N.D. Tex. Feb. 24, 2014) (taking judicial notice of an assignment of deed of trust because it was a matter of public record on file with the clerk's office).

fail[ed] to allege the element of personal involvement necessary for individual liability under § 1983.") (emphasis added) (internal quotations omitted).

Here, the allegations that particularly reference the following Municipal Defendants fail to even meet this most basic requirement and thus, the § 1983 claims against these Municipal Defendants must be dismissed:

(1) Becker (*see* Compl., ¶¶17, 38, 39, 94);
(2) Wahlen (*see id.*, ¶¶21, 121, 124-25);
(3) Sutherland (*see id.*, ¶29);
(4) Levine (*see id.*, ¶¶30, 113);
(5) LeGath (*see id.*, ¶¶31, 41, 74, 87, 138);
(5) Bach (*see id.*, ¶¶35, 41); and
(6) Dickert (*see id.*, ¶¶18, 39-45, 153-54, 156-60, 168-70, 176).

2. The Alderman Municipal Defendants Are Entitled to Quasi-Judicial Immunity.[16]

Irrespective of the above deficiencies in Plaintiffs' pleading, all alderman Municipal Defendants are entitled to quasi-judicial immunity. In *Reed v. Village of Shorewood*, 704 F.2d 943, 951 (7th Cir. 1983), the Seventh Circuit held that "it is clear" that a local liquor commissioner acts in a judicial capacity when passing on renewal and revocation of liquor license questions. The Court reached this conclusion after reasoning that the commissioner could not revoke a liquor license without "finding that the licensee has violated the law; he may make that finding only after notice and hearing; and shall reduce all evidence to writing and shall maintain an official record of the proceedings. In addition, revocation is . . . appealable to the state Liquor Control Commission." *Id.* at 951 (internal quotations omitted). Because the commissioner was acting in a judicial capacity, the court held that he had absolute judicial immunity for the exercise of his responsibilities as the liquor license commissioner. *Id.* at 951-52.

[16] "The questions of whether . . . absolute immunity under Section 1983 bars a claim is properly brought under Rule 12(b)(6)." *Westbrook v. Indiana*, No. 3:10-CV-526, 2011 WL 4361571, at *2 (N.D. Ind. Aug. 11, 2011).

In this case, the individual Municipal Defendants who served on the Licensing Committee are likewise entitled to absolute judicial immunity from any liability arising from their licensing decisions in connection with due process hearings. Indeed, as alleged in the Complaint, the Licensing Committee exercises ***even more*** judicial acts than those at issue in *Reed*. (*See, e.g.*, Compl., ¶¶52-53). These judicial acts by the Licensing Committee include obtaining a sworn complaint alleging a specific violation of municipal ordinances and/or state statutes, providing written notice provided to the licensee of the alleged causes for suspension or revocation, notifying the licensee of their right to counsel, to produce witnesses, to take testimony under oath and to cross-examine witnesses. (*Id.*). Moreover, the due process hearings are recorded, findings of fact and conclusions of law are issued and there is a right to judicial review of the Licensing Committee's decision under Wis. Stat. § 125.12. (*Id.*); *see also* Wis. Stat. § 125.12. Clearly, the Licensing Committee operates in a judicial manner and its members are entitled to absolute immunity with respect to any of Plaintiffs' alleged loss of liquor licenses as the result of a due process hearing. These Plaintiffs include Davalos (*see* Compl., ¶99), Jones (*see id.*, ¶105), and Fair (*see id.*, ¶117).

3. Certain Alderman Could Not Have Caused any Injuries to Plaintiffs Because They Were Not Members of the Licensing Committee at the Time of the Alleged Injuries.

Notwithstanding any of the above, with respect to certain of the alderman Municipal Defendants (DeHahn, Maack, Wisneski), the Complaint is clear that, to the extent that certain Plaintiffs are relying on the loss of their liquor licenses as a basis for their claims, these particular alderman could not have caused any injuries to them. For example:

- Maack: The Complaint alleges that the Licensing Committee voted to revoke Khampane's and Nueakeaw's liquor license in March 30, 2011 (and subsequently, they surrendered their liquor license) (Compl., ¶¶109-111), that the Licensing Committee and the Common Council voted to revoke Fair's liquor license on October

15, 2012 (*id.*, ¶117), and that in June 2011, the Licensing Committee voted to non-renew Holmes' liquor license (and subsequently, in 2012, Holmes closed his tavern, Park 6). (*Id.*, ¶¶127, 130). The Complaint also clearly alleges that Maack was not on the Common Council or the Licensing Committee on those dates. (*See, e.g., id.*, ¶26, alleging that Maack served as Alderman from 2000 through April 2010; *id.*, ¶16.b, alleging that the Common Council is comprised of fifteen alderpersons, ¶16.c, alleging that the Licensing Committee is made up of Common Council members).

- Wisneski: Plaintiffs plead that the Licensing Committee and the Common Council voted to revoke Fair's liquor license on October 15, 2012 (*Id.*, ¶117), and that Holmes closed his tavern, Park 6, in or around December 2012. (*id.*, ¶130). The Complaint also clearly alleges that Wisneski was not on the Common Council or the Licensing Committee on those dates. (*See, e.g., id.*, ¶27, alleging that Wisneski served as Alderman from 2006 through April 2012; *id.*, ¶16.b, alleging that the Common Council is comprised of fifteen alderpersons, ¶16.c, alleging that the Licensing Committee is made up of Common Council members).

4. The Allegations Against "All Defendants" Are Insufficient to Allege Personal Involvement.

As a final matter, given the complexity of this case, the allegations as to "all defendants" are insufficient to allege the personal involvement necessary to state a claim by each of the above-referenced defendants. *See, e.g., Eades*, 823 F.2d at 1063; *Brown*, 318 F. Supp. 2d at 700 (prior to *Twombly* and *Iqbal* dismissing § 1983 claim where plaintiff's "allegations of unequal treatment [were] made generally *against all defendants*, [and] fail[ed] to allege the element of personal involvement necessary for individual liability under § 1983") (emphasis added) (internal quotations omitted); *Swanson*, 614 F.3d at 405 ("A more complex case . . . will require more detail, both to give the opposing party notice of what the case is all about and to show how, in the plaintiff's mind at least, the dots should be connected."). Accordingly, the § 1983 claims above-referenced Municipal Defendants should be dismissed.

B. Plaintiffs' RICO Claims Against Certain Defendants Fail to State a Claim.

The allegations also fail to state a claim against certain of the Municipal Defendants under RICO §§ 1962(b) and 1962(c). In order to state a claim against the individual Municipal

Defendants pursuant to §§ 1962(b) and 1962(c), Plaintiffs must allege that each individual Municipal Defendant personally engaged in at least two predicate acts, constituting a "pattern of racketeering" which caused injury to the Plaintiffs. *See, e.g.*, *DeFalco*, 244 F.3d at 306 ("The requirements of section 1962(c) must be established as to each individual defendant."); *Persico*, 832 F.2d at 714 ("The focus of section 1962(c) is on the individual patterns of racketeering engaged in by a defendant, rather than the collective activities of the members of the enterprise, which are proscribed by section 1962(d)."); *Guaranteed Rate, Inc.*, 912 F. Supp. 2d at 684 ("In alleging a RICO pattern, liability is limited to person who have 'personally committed' at least two predicate acts of racketeering. Accordingly, [plaintiff] must, at a minimum, describe two predicate acts of fraud *by each RICO Defendant . . .*"); *Roger Whitmore's Auto. Servs., Inc. v. Lake County*, No. 99C2504, 2002 WL 959587, at *2, *5 (N.D. Ill. May 9, 2002) (stating that "[t]he requirements of § 1962(c) must be established as to *each* individual defendant" and dismissing RICO claims which did not satisfy this standard for each defendant).

Plaintiffs have not done so with respect to the following Municipal Defendants:

(1) Becker: The only allegation that even approaches any type of predicate act committed by Becker is that he "threatened" the Maldonados by telling them they were in "trouble" and that they should sell the property because "the City would revoke his liquor license and the property would soon be worthless." (Compl., ¶94). As already stated, these allegations do not constitute a predicate act of extortion. (*See supra, at* Section II.A.1 (citing *Wilkie*, 551 U.S. at 566 and *Peterson*, 544 F. Supp. 2d at 1370). Moreover, even if they did, the alleged predicate act(s) do not constitute a "pattern of racketeering" as the Complaint clearly suggests that these alleged actions occurred only over a period of six months (at most) in 2006. (*See* Compl., ¶94, alleging that "subsequently [to July 3, 2006]," Becker threatened the Maldonados); (*Id.*, ¶96, alleging that the Maldonados listed their property for sale on December 5, 2006); (*See supra*, at Section II.B1, collecting caselaw indicating few predicate acts within a short period of time is not a "pattern of racketeering").

(2) Wahlen: *At best*, the allegations against Wahlen indicate that Wahlen engaged in racially motivated actions (though that, too, is tenuous). (*See* Compl., ¶¶21, 121, 124-25). However, such actions cannot constitute predicate acts under RICO. *See, e.g., Jennings*, 910 F.2d at 1438 (holding that violations of "civil rights and

constitutional law" are not predicate acts under RICO); (*see also supra*, at Section II.A.1, collecting case law indicating that Liquor License Acts are not predicate acts). And, even if these were predicate acts, there is no plausible scenario in which these actions, which occurred, at most, over six months, allege a "pattern of racketeering" against Whalen. (*See supra,* at Section II.B.1, collecting caselaw indicating that the commission of a few predicate acts committed within a short period of time is not a "pattern of racketeering").

(3) Sutherland: The allegations referencing Sutherland do not allege that he engaged in any (much less two) predicate acts or that he engaged in a "pattern of racketeering" which caused injury to each Plaintiff. (*See* Compl., ¶29).

(4) Levine: The allegations referencing Levine do not allege that he engaged in any (much less two) predicate acts or that he engaged in a "pattern of racketeering" which caused injury to each Plaintiff. (*See* Compl., ¶¶30, 113).

(5) LeGath: The allegations referencing LeGath do not allege that he engaged in any (much less two) predicate acts constituting a "pattern of racketeering" which caused injury to each Plaintiff. (*See* Compl., ¶¶31, 41, 87, 138).

(6) Bach: The allegations referencing Bach do not allege that he engaged in any (much less two) predicate acts constituting a "pattern of racketeering' which caused injury to each Plaintiff. (*See* Compl., ¶¶35, 41). The allegations that Bach collected "large amounts of money" and knew about the alleged fraudulent reporting of such money on the campaign finance reports do not constitute predicate acts. *See, e.g., Crown Heights Jewish Cmty. Council*, 63 F. Supp. 2d at 238. Moreover, there are no allegations concerning the number of such acts and no allegations indicating that such alleged acts spanned a sufficient period of time to support continuity sufficient to allege a "pattern of racketeering." (*See supra*, at Section II.B.1, collecting caselaw indicating that the commission of a few predicate acts committed within a short period of time is not a "pattern of racketeering").

(7) Aldermen Municipal Defendants (Coe, Kaplan, DeHahn, Helding, Maack, Wisneski, Mozol): The allegations referencing these aldermen do not allege that any of these alderman Municipal Defendants engaged in any predicate acts or that they each engaged in a "pattern of racketeering" which caused injury to each Plaintiff. (*See* Compl., ¶¶22, 121, containing allegations relating to Coe; *id.*, ¶¶23, 105, 135, 137, containing allegations relating to Kaplan; *id.*, ¶24, containing allegations relating to DeHahn; *id.*, ¶25, containing allegations relating to Helding; *id.*, ¶¶26, 135, containing allegations relating to Maack; *id.*, ¶¶27, 106-11, 122, containing allegations relating to Wisneski; *id.*, ¶28, containing allegations relating to Mozol). And, even assuming that other, more general allegations relating to the Common Council's and/or the Licensing Committee's revocation and/or non-renewal of the Plaintiffs' liquor licenses are read broadly enough to relate to these alderman Municipal Defendants, these allegations, as set forth above, do not constitute predicate acts for purposes of RICO and cannot constitute a "pattern of racketeering."

(*See supra*, *at* Section I.A.1, indicating that the Liquor License Acts are not predicate acts under RICO).

(8) Dickert: The allegations against Dickert all relate to the Campaign Acts. (*See* Compl., ¶¶18, 39-43). For the same reasons set forth above indicating that the Campaign Acts do not allege a "pattern of racketeering" which caused injuries to Plaintiffs as to the Municipal Defendants collectively (*see supra*, at Section I.A.2(a)-(c)), these allegations do not adequately allege that Dickert engaged in a "pattern of racketeering" which caused injuries to Plaintiffs.

Finally, to the extent that Plaintiffs intend to rely upon their numerous generalized allegations against unspecified "Defendants," these allegations do not contain the necessary minimum factual allegations necessary to survive this motion to dismiss Plaintiffs' § 1983 and/or §§ 1962(b) and (c) claims against any of the above-referenced defendants, especially in a complex RICO case. *See Limestone Dev. Corp.*, 520 F.3d at 803. ("In a complex antitrust or RICO case a fuller set of factual allegations" may be necessary to survive a motion to dismiss); *Iqbal*, 556 U.S. at 678 (Rule 8 "demands more than an unadorned, the defendant-unlawfully-harmed-me accusation . . . ."); *Brown*, 318 F. Supp. 2d at 700.

CONCLUSION

For the foregoing reasons, the following claims must be dismissed:

a. the RICO claims, in their entirety;

b. the § 1983 and § 1985(3) claims, to the extent they are brought against any of the Municipal Defendants in their official capacity;

c. the § 1983 and § 1985(3) claims, to the extent that Plaintiffs are attempting to assert claims based on others' injuries;

d. the § 1983 and § 1985(3) claims, which are barred by the applicable statute of limitations, to the extent they are brought by the Maldonados; and

e. Plaintiffs' claims against certain individual Municipal Defendants as set forth above.

Dated this 16th day of May 2014.

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