UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUIS CURTIS, ET AL	.	C.A. NO. H-16-1969
	.	HOUSTON, TEXAS
VS.	.	
	.	DECEMBER 15, 2016
CANDACE KUNZ-FREED, et al	.	11:50 A.M. to 1:00 P.M.

TRANSCRIPT of MOTION HEARING
BEFORE THE HONORABLE ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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FOR PLAINTIFF RIK WAYNE MUNSON:	MR. RIK WAYNE MUNSON PRO SE 218 Landana Street American Canyon, CA 94503
FOR DEFENDANTS CANDACE KUNZ-FREED, ALBERT VACEK, JR.:	MR. CORY S. REED MS. ZANDRA FOLEY Thompson Coe Cousins Irons One Riverway Suite 1600 Houston, Texas 77056

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

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P R O C E E D I N G S

THE COURT: Cause No. 16-cv-1969, Candace Curtis, et al, versus Candace Freed, et al. Come on up.

We have a third table over here as well, with a microphone, so, please.

UNIDENTIFIED SPEAKER: This one over here?

THE COURT: Yes. And given the size, I do not mind if you take a seat on this side of the table with your back to me, I understand. I'm not going to be offended, I understand.

Having called Cause No. 16-cv-1969, I'm now going to take the appearance of counsel, starting from my right.

MR. ABRAMS: Good morning, Your Honor. Barry Abrams for the defendant Darlene Payne Smith.

MS. BAYLESS: Bobbie Bayless on my own behalf.

MR. HARRELL: Bob Harrell and Rafe Schaefer on behalf of Jill Young.

THE COURT: Wait. I didn't hear the name.

MR. HARRELL: Jill Young.

THE COURT: Very well.

MS. BECKMAN HEDGE: Hello, Your Honor. Laura Beckman Hedge. I'm here on behalf of Judge Christine Riddle Butts, Judge Clarinda Comstock and Toni Biamonte.

THE COURT: Very well.

MS. CURTIS: Candace Curtis here --

THE COURT: Use the microphone so that --

MS. CURTIS: Candace Curtis on behalf of myself.

THE COURT: Very well.

MR. MUNSON: My name is Rik Munson. I'm a private attorney general plaintiff, pro se.

THE COURT: Very well.

MR. REID: Eron Reid on behalf of Neal Spielman.

THE COURT: I'm sorry, on behalf of?

MR. REID: Neal Spielman.

THE COURT: Counsel?

MR. GREENE: Adraon Greene, Your Honor, on behalf of Stephen Mendel and Bradley Featherston.

THE COURT: Counsel? Oh, right here.

MR. SPIELMAN: Oh, Your Honor, I'm just -- I'm the client -- or the defendant, Neal Spielman.

THE COURT: Oh, very well.

UNIDENTIFIED SPEAKER: I'm likewise a client of Mr. Greene.

THE COURT: Very well.

MR. REED: Cory Reed on behalf of Candace Freed and Al Vacek.

MS. FOLEY: Zandra Foley on behalf of Candace Freed and Al Vacek.

MR. MATHEWS: Bernard Mathews. I'm representing myself, Your Honor.

MR. OSTROM: Your Honor, Jason Ostrom on behalf of my

myself and Gregory Lester.

THE COURT: You said on behalf of yourself?

MR. OSTROM: Myself and Gregory Lester.

THE COURT: Are you an attorney?

MR. OSTROM: I am.

THE COURT: Very well.

MS. ANITA BRUNSTING: Anita Brunsting on behalf of myself.

THE COURT: Very well.

MS. AMY BRUNSTING: Amy Brunsting on behalf of myself.

THE COURT: Very well.

Counsel, for today's hearing there are a number of motions to dismiss and I'm going to call them out, hopefully, and I won't miss them. Defendants Candace Freed and Albert Vacek's motion to dismiss for failure to state a claim.

MS. FOLEY: Yes, Your Honor.

THE COURT: Defendants Candace Freed and Albert Vacek's motion to dismiss for lack of subject matter jurisdiction.

MS. FOLEY: I just said yes, Your Honor.

THE COURT REPORTER: Can you state your name?

THE COURT: Oh, state your name.

MS. FOLEY: Zandra Foley.

THE COURT: Yes, when you speak, state your name again. With this cast of Spartacus before us, the court

reporter will greatly appreciate the assist.

Bobbie Bayless's motion to dismiss for failure to state a claim.

MS. BAYLESS: Bobbie Bayless, yes, Your Honor.

THE COURT: Defendant Brunsting's motion for access to electronic filing. Is that in this?

UNIDENTIFIED SPEAKER: Which one?

THE COURT: Oh, Anita.

MS. ANITA BRUNSTING: Yes.

THE COURT: Is that on today's docket?

MS. ANITA BRUNSTING: I believe that was approved.

THE COURT: Okay. Defendant Jill Willard Young's 12(b)(6) motion to dismiss.

MR. HARRELL: Bob Harrell. Yes.

THE COURT: Defendant Anita Brunsting's Rule 12(b)(6) motion to dismiss for plaintiffs' failure to state a claim.

MS. ANITA BRUNSTING: Yes.

THE COURT: And you are?

MS. ANITA BRUNSTING: I'm Anita Brunsting.

THE COURT: Very well.

Defendant Amy Brunsting's Rule 12(b)(6) motion to dismiss for plaintiffs' failure to state a claim.

MS. AMY BRUNSTING: Amy Brunsting. Yes, Your Honor.

THE COURT: Defendants Mendel and Featherston's Rule 12(b)(6) motion to dismiss for plaintiffs' failure to state a

claim.

MR. GREENE: Adraon Greene. Yes, Your Honor.

THE COURT: Defendant Jill Willard Young's motion to strike plaintiffs' addendum and memorandum in support of RICO complaint.

MR. HARRELL: Bob Harrell. Yes, Your Honor.

THE COURT: And that's on today's --

MR. HARRELL: It's part of the motion to dismiss, so, yes, Your Honor.

THE COURT: Very well.

Defendant Neal Spielman's motion to dismiss.

MR. REID: Eron Reid. Yes, Your Honor.

THE COURT: And there was also Defendant Neal Spielman's motion to dismiss based on lack of subject matter jurisdiction.

MR. REID: Eron Reid. Yes, Your Honor.

THE COURT: I also have in my folder plaintiffs' motion for consolidation of related cases pursuant to 28 U.S.C. Section 1367, Rule 42(a) of the Federal Rules of Civil Procedure and Local Rule 7.6 with supporting memoranda.

MS. CURTIS: Yes, Your Honor. Candace Curtis.

THE COURT: Defendant Judge Christine Butts, Judge Comstock, et al, motion to dismiss complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6).

MS. BECKMAN HEDGE: Laura Beckman Hedge. Yes, Your

Honor.

THE COURT: Plaintiffs' motion for -- I covered that one.

Defendants Mendel and Featherston's joinder in Jill Willard Young's motion to strike plaintiffs' addendum to memorandum in support of RICO complaint.

MR. GREENE: Adraon Greene. Yes, Your Honor.

THE COURT: And Defendant Jill Willard Young's motion for sanctions.

MR. HARRELL: Bob Harrell. And we filed it. I don't know if it's technically on the docket today but --

THE COURT: For today. Okay. Thank you.

Defendant Jason Ostrom's motion to dismiss complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

MR. OSTROM: Yes, Your Honor. Jason Ostrom.

THE COURT: Motion to dismiss Defendant Bernard Mathews.

MR. MATHEWS: Bernard Mathews. That is correct, Your Honor.

THE COURT: Very well.

And Defendant Gregory Lester's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

MR. OSTROM: Jason Ostrom. Yes, that's correct.

THE COURT: And, finally, Defendant Darlene Payne Smith, motion to dismiss for lack of subject matter

jurisdiction and failure to state a claim.

MR. ABRAMS: Barry Abrams. Yes, Your Honor.

THE COURT: Okay. Did I miss anyone's motion to dismiss?

MS. FOLEY: Your Honor, Zandra Foley. We also had a motion to dismiss for lack of subject matter jurisdiction that was filed separately from the motion to dismiss for failure to state a claim.

THE COURT: Very well.

Anyone else on this side, did I miss your motion that was under consideration for today?

MS. BECKMAN HEDGE: Laura Beckman Hedge, Your Honor. The defendants, Judge Butts, Judge Comstock, and Toni Biamonte joined in the motion that you mentioned earlier that Jill Willard Young filed, striking -- motion to strike plaintiffs' addendum of memorandum in support of RICO complaint.

THE COURT: Very well.

MS. BECKMAN HEDGE: Thank you.

THE COURT: Well, to be most efficient, we have a lot of 12(b)(6) motions, which I assume making similar arguments. There may be individual facts for each defendant. So, why don't we pick someone to present a motion, perhaps the first one that was filed, and then we can move from that and you can tell me if there are specifics, but you do not need to reurge the essence of the legal arguments in the first motion. That

way we can save a little time.

Mr. Harrell, I see you rising to your feet.

MR. HARRELL: Yes, Your Honor. If it please the Court, we're prepared to give an overview of the motions and the law. And if it please the Court, our lawyer, Rafe Schaefer, would like to make that presentation.

THE COURT: All in accord with that? Any objections from any of the defendants? Very well.

MR. SCHAEFER: Thank you, Your Honor. My name is Rafe Schaefer with Norton Rose Fulbright, along with Bob Harrell. We represent Defendant Jill Willard Young, who is in the courtroom here today, who is an attorney with the law firm of MacIntyre, McCulloch, Stanfield and Young here in Houston. She practices probate law.

Plaintiffs in this matter have sued, as you can see, more than 15 defendants who are lawyers, judges, other legal professionals, like court reporters, and other participants in a probate matter who practice in Harris County Probate Court No. 4.

Plaintiffs' claims in their complaint consist of an allegation that the defendants collectively are members of a secret society and what plaintiffs call a cabal that they call Harris County Tomb Raiders Association. They also call it the Harris County Probate Mafia.

Plaintiffs' allegation comes down to a RICO

claim, and plaintiffs allege that the folks in this courtroom are members of a shadow organization that engage in poser advocacy. And plaintiffs appear to say that poser advocacy is the fake practice of law by the attorneys and lawyers -- or the attorneys and judges and court reporters in this room that's designed to, in plaintiffs' words, highjack familiar wealth from decedent's estates in the probate system.

Effectively, Your Honor, the best I can tell, plaintiffs allege that the folks in this room are in this probate mafia and they engage in the fake practice of law in Probate Court No. 4 to generate attorneys' fees, which plaintiffs say defund the estates in the probate court. And that's plaintiffs' theory of the case and theory of how they're entitled to damages.

Against Ms. Young, plaintiffs purport to allege ten causes of action. They allege a RICO cause of action; three claims for honest services fraud; a claim for wire fraud; a claim for fraud under 18 U.S.C. Section 1001; a Hobbs Act claim; and three conspiracy claims.

Now, those claims all fail for three very simple reasons. The first reason they fail is a reason that applies to everyone in this room; and that is, that plaintiffs have simply failed to state a claim on which relief can be granted under Twombly and Iqbal and the plausibility standard of Rule 12, but also just that plaintiffs' complaint itself is

delusional and fanciful and this Court should use its inherent powers to dismiss that complaint.

The second basis and the second reason plaintiffs' complaint should be dismissed also applies to everyone in this room, and it's that plaintiffs have failed to show they have standing to sue for RICO and the other causes of action that they've sued for are criminal causes of action that aren't privately actionable in federal court. And we've cited a lot of case law, that they can't bring it. And so the only claim that they really can bring is the RICO claim, and they've alleged no direct injury that would give them standing to sue.

The third reason why plaintiffs' complaint should be dismissed against Ms. Young is -- particularly Ms. Young and some other folks in here, but Ms. Young is protected by Texas's attorney immunity doctrine, which I'll talk about very briefly, Your Honor. I mentioned plaintiffs' allegations. They appear to relate to a probate matter in Harris County Probate Court No. 4. Plaintiffs call that the Curtis v. Brunsting matter. They don't ever mention a cause number. I think, Your Honor, since they've sued Ms. Young, the only matter Ms. Young was ever involved in that involved plaintiff Curtis is the matter of *In re: Estate of Nelva Brunsting*, which is in Probate Court No. 4.

But Plaintiff Munson wasn't a party to that matter. He wasn't a beneficiary to that estate. He doesn't

have any relationship to Ms. Young. He doesn't appear to have standing to sue at all in this matter.

In the Brunsting matter, Ms. Young, my client, was an attorney for Temporary Administrator Lester, who is also a defendant here today. Temporary Administrator Lester was appointed by Probate Court No. 4 to prepare a single written report. Ms. Young assisted him as his attorney in preparation of that single report, and that's all she did. All of the actions taken by Ms. Young in that probate matter were in her role as attorney to Ms. -- I'm sorry, to Mr. Lester. The plaintiffs don't dispute that. Ms. Young never had a fiduciary relationship with either plaintiff. Plaintiffs don't dispute that.

In fact, nowhere in their entire complaint do plaintiffs allege Ms. Young committed a single wrongful act or did anything other than act as an attorney for Temporary Administrator Lester.

So, I want to go through very briefly, Your Honor, the three bases for dismissal that I mentioned earlier. The first is that plaintiffs' complaint doesn't state a claim for relief. And that's under Twombly and Iqbal, but also just that it's delusional, Your Honor, and that this Court should use its powers to dismiss that. Under Rule 12, as this Court knows, plaintiffs' complaint must be dismissed under Twombly and Iqbal if it's too implausible to state a claim for relief.

This means that the Court should ignore all legal conclusions in the complaint, and it has to look at whether the well-pleaded facts permit the Court to infer more than the mere possibility of misconduct.

Here there is nothing in the complaint but boilerplate legal conclusions, Your Honor. There are no allegations of wrongful acts by Ms. Young. There are no allegations of wrongful acts, you know, pleaded with any sort of specificity that can identify an alleged actual wrongful act by plaintiffs, other than plaintiffs' allegation that there's this probate mafia engaging in poser advocacy, but there's no actual examples of what that is or how that took place.

THE COURT: Is the operative complaint Document No. 1?

MR. SCHAEFER: Yes, Your Honor.

THE COURT: Very well.

MR. SCHAEFER: Other courts in this district have dismissed RICO cases very similar for this exact same reason. There's a matter that we cited to in our motion to dismiss called *Freeman v. Texas*, which is a 2008 case decided by Judge Rosenthal, where Judge Rosenthal dismissed is a complaint alleging a probate court was a RICO enterprise comprised of judges who, quote, conspired against pro se litigants that virtually looted the pro se litigant's homestead through a probate proceeding. And the Court -- Judge Rosenthal held that even if all of those allegations were true, they failed to

state a racketeering activity because plaintiff hadn't alleged sufficient facts to raise a colorable claim that any violation of any of the predicate RICO acts had actually occurred. So, the Court held in light of the absence of any well-pleaded facts sufficient to state a RICO claim, that claim was dismissed.

The same is true here, Your Honor. But in addition to just being implausible on its face, the complaint is frivolous and delusional, and just a facial reading of the complaint shows the Court that that's true. And this Court has inherent authority to dismiss a pro se litigant's frivolous or malicious complaint.

To determine whether a complaint is frivolous or malicious, a court has to look at the complaint and see whether the allegations are clearly baseless, which means the allegations are fanciful, fantastical, or delusional. Here, again, plaintiffs allege that the folks in this courtroom are members of a secret society called the Harris County Tomb Raiders that defraud estates through poser advocacy by all these mafia members -- probate mafia members. Your Honor, these allegations are fanciful and delusional.

I would direct you to a very recent decision from an order from Judge Hoyt, who considered an almost identical case, called *Sheshtawy versus Conservative Club of Houston*. We have cited that. I have the order, if you would like to see a

copy of it.

There the Court was considering, you know, almost identical allegations, Your Honor, although dealing with Probate Court No. 1 instead of Probate Court No. 4. And the Court held in that order that the allegations that Probate Court No. 1 in Harris County and all the litigants and parties in that court were a RICO enterprise. The Court said that legal theory is, quote, "pure zanyism." The same is true here. We've cited the *Sheshtawy* order in our briefing. You now have a copy of it. This allegation, too, is pure zanyism. It's fanciful, it's delusional, and it fails to state a claim for relief that can be granted by this Court.

The second basis that -- for why plaintiffs' claim fails, is they don't have standing to sue on any of the causes of action they've alleged. First, I want to talk about RICO. And, again, this applies to everyone in this courtroom. Plaintiffs don't have standing to bring suit under RICO, because RICO requires a direct injury in order for a party to sue. A plaintiff can only sue if they can show some RICO violation was a direct and but for cause of the injury. The court in *Sheshtawy*, in that same order I just handed to you, Your Honor, held that plaintiffs had failed to show they had standing to bring a RICO case because, quote, "Routine litigation conduct cannot become a basis for a RICO suit."

That's all that's going on here. Ms. Young

represented Temporary Administrator Lester, who was appointed by the Court. But even if they alleged real allegations of wrongdoing, their assertion that the way there's damage is through this poser advocacy that defunds estates, it's not actionable by them individually as potential beneficiaries of the estate. There's a Sixth Circuit case that we've cited to titled *Firestone*, Your Honor. And in that case the beneficiaries of the Firestone Tire family estate asserted RICO claims against the executor of the estate and the trustee of the estate. And the Sixth Circuit affirmed the district court's dismissal, saying that those plaintiffs, the beneficiaries, didn't have standing to sue. The alleged RICO harm was that the executor of the estate and the trustee of the estate had lowered the value of the estate, such that when the estate paid out, the beneficiaries of the estate didn't get as much money as they should have.

The Court said this is basically like a corporate -- like a corporate -- corporation versus shareholder lawsuit, and there aren't derivative claims here where shareholders can bring the claims. The injury is to the estate. Like when a corporation is injured, the injury is to the corporation. The shareholders to a corporation can't bring suit for an injury that happens to the corporation, just like the beneficiaries of an estate can't bring suit for harm to the estate.

Here it couldn't be more clear. The allegation is all of these people engaged in this advocacy that lowered the value of the estate. If that is a real harm that is really actionable, it's the estate's claim. It's not these individuals' claim.

And then, again, for everyone in this room, Your Honor, the other claims asserted by plaintiffs, the Hobbs Act claim, wire fraud, fraud under 18 U.S.C. Section 1001, honest services fraud, none of those causes of action create -- I'm sorry, none of those statutes create private causes of action. They're all federal criminal statutes that can only be brought by the government. We've cited a plethora of case law in our motion to dismiss, showing that plaintiffs can't bring those claims. That hasn't been responded to. And they should be dismissed.

The third reason that is particular to Ms. Young for why plaintiffs' claims should be dismissed is that Ms. Young is protected by Texas's attorney immunity doctrine. Under Texas law, an attorney is immune from civil liability to a non-client, quote, "for actions taken in connection with representing a client in litigation even when that conduct is wrongful conduct in the underlying litigation." That's a Texas Supreme Court case that held that, *Cantey Hanger versus Byrd*. Here, again, there's no allegation that Ms. Young did anything other than assist Temporary Administrator Lester in his

preparation of this report. That is action she took as an attorney for someone else. She didn't owe a fiduciary duty to plaintiffs. She is immune from suit under Texas's attorney immunity doctrine.

Your Honor briefly mentioned earlier the motion for sanctions that we had filed. Actually in the *Sheshtawy* matter that I mentioned to you, the Court yesterday -- Judge Hoyt yesterday issued an order granting sanctions against the plaintiffs in that matter. We served plaintiffs with our motion for sanctions on September 27th, 2016. Under Rule 11, the safe harbor provision, we waited until October 27th, 2016, to file that motion. Plaintiffs haven't even bothered to respond to that motion. Thus, we ask that when this Court dismisses plaintiffs' complaint, it also grant the motion for sanctions.

THE COURT: Very well.

MR. SCHAEFER: Thank you, Your Honor.

THE COURT: Let's start from my right. Counsel, are there any individual arguments that need to be made on behalf of your client other than what have been asserted by way of this general background?

MR. ABRAMS: The only factual point --

THE COURT: Name and client.

MR. ABRAMS: Thank you, Your Honor. Barry Abrams for Darlene Payne Smith. The only factual point I want to make is

there's one -- only one paragraph in the complaint mentioning Ms. Smith. And the conduct attributed to Ms. Smith was opposing a motion for protection, which is conduct as a lawyer in a litigated matter that falls within the immunity. That's the only factual allegation with regard to Ms. Smith. I join in all the other arguments counsel has made.

THE COURT: Very well.

Ms. Bayless?

MS. BAYLESS: Yes, Your Honor. Bobbie Bayless on my own behalf.

The only point I will make is that factually the only allegation made against me -- I represent one of the Brunsting siblings. And the only allegation made against me is that I withdrew or passed a hearing on a motion for partial summary judgment that I had filed on my client's behalf when he resigned as executor. So, not only did it need to be passed, because at that point there was a vacancy in that position and it would have only been a partial hearing on a partial motion for summary judgment on only his individual claims and not the estate's claims until that vacancy could be filled, but it's also my own motion and I can pass at any time I want to. And that is the allegation against me.

THE COURT: Very well. Ms. Hedge?

MS. BECKMAN HEDGE: Yes, Your Honor. May I approach the lecturn?

THE COURT: Yes.

MS. BECKMAN HEDGE: Thank you. Laura Beckman Hedge. I represent Judge Comstock, Judge Butts, and Toni Biamonte.

Your Honor, there's -- I want to talk about some specific things to my clients and then there's just a few other additional arguments that I would like to add to what's already been discussed that hasn't actually been covered, but that I would want the Court to consider in its ruling.

The claims that have been made against the judges and against the court reporter who -- Toni Biamonte, Your Honor, was a substitute court reporter, not the one that's normally assigned to this probate judge, but actually covered a single hearing and for that has been sued in this case.

They have all been accused of being blatantly corrupt, conspiring to loot assets, exploiting the elders of society, and unjustly enriching the attorneys in this case. The predicate acts that have been alleged in this case against the judges is referral of a case to what the plaintiffs refer to Judge Davidson as an extortionist, thug mediator, and removing a motion for summary judgment from a hearing docket.

With regard to Mr. Biamonte, he has been alleged to have knowingly and willfully destroyed some unidentified material evidence. Your Honor, when a response was filed to our motion to dismiss, the grounds that were given why Mr. Biamonte was sued was because they were not satisfied with

his response concerning the unavailability of a transcript from the single hearing that he recorded. They said that he was sued because he didn't respond to their e-mail. Clearly that is frivolous, and I would argue sanctionable, Your Honor, for bringing him into this lawsuit.

The plaintiffs have sued my clients for at least 15 different claims. With respect to the subject matter jurisdiction argument, counsel's already covered the fact that there was no direct injury. You must have a tangible financial loss. Even the plaintiffs have stated in their pleadings that they are suing for threats of injury to property rights of what Ms. Curtis has, as she has defined, an expectancy interes

Mr. Munson has no expectancy interest, period. He has identified himself as the domestic partner of Ms. Curtis.

Further, Your Honor, they have alleged fraud, various counts of fraud. They are unspecified. And under Rule 9(b), it requires specificity. They have to state the who, what, when, where, and how. They have a 59-page complaint, 217 paragraphs. They have not been specific and have not met the requirements. There has not been any unlawful act alleged. There are no facts supporting any actionable predicate act. The numerous claims they've made are generalized, and they are not predicate acts of racketeering activity. The claims against my client to which I would refer, and I'm not going to

list them all by name, I'll just refer to them by number, Claims 12, 38, 23, 44, 46, and 47.

The judges, Your Honor, have a unique immunity in this case, and that is judicial immunity. There is case law cited in our motion concerning judicial immunity. The plaintiffs have attempted to get around the judicial immunity argument, because they know it's a winner, by trying to contend that the actions were nonjudicial. However, when you look at the acts they've actually complained of, they are clearly judicial. The factors that are considered are: Is the action normally performed by a judge? Did the act occur in the courtroom? Does the controversy center on a pending case before a judge? Does the act arise from an exchange with the judge in his or her official capacity?

Now, importantly, Your Honor, those factors are construed broadly in favor of immunity, and not all of them are required. In fact, just one factor alone would be sufficient for a finding of judicial -- that there was a judicial act.

The only two exceptions to judicial immunity are: Number one, if it's nonjudicial; or, number two, if the judicial act was taken in a complete absence of jurisdiction. There has been no allegation that any of the actions taken were done in a complete absence of jurisdiction. And there's certainly no facts supporting that.

Additionally, Your Honor, the judges are entitled

to the Eleventh Amendment protection and governmental immunity for claims for them acting in their official capacity. The Fifth Circuit in *Kirkendall versus Grambling* at 4 F.3d 989, that involved a case of RICO violations against three judges and the court's secretary. The court in that case found that they were entitled to judicial immunity and that the court's secretary was entitled to quasi-judicial immunity. The court in that case rejected the plaintiffs' arguments that immunity did not apply as frivolous.

The actions complained of, Your Honor, concerning the judges, that they have obstructed justice by removing the summary judgment motion from the calendar and creating what they call stasis, for conspiring to redirect the litigation away from the public record to a staged mediation, which, Your Honor, actually never took place. Those actions that I've just described, those are functions normally performed by a judge. Clearly what they are complaining about are judicial acts.

Your Honor, I want to turn now to Toni Biamonte, the substitute court reporter. He is entitled to official immunity. He is entitled to that because they have sued him as the, quote, "official court reporter for the probate court." They have not alleged that he's been sued in any individual capacity. When you sue an official in their official capacity, it is the same as suing the county. And Harris County cannot be liable for a RICO violation. And the reason for that is

because, number one, they cannot form the mens rea to commit a criminal act, and intent is required under RICO. And, number two, because RICO is punitive in nature. And municipal entities have common law immunity from punitive damages.

In fact, Your Honor, it was mentioned a minute ago that Judge Hoyt issued an order yesterday of sanctions. And I just want to direct the Court to one thing in particular. And I do have a copy of that order, if it please the Court.

And, Your Honor, I apologize. We do not have a copy of that for the plaintiffs. But I can get that for them as soon as the hearing is over.

MR. SCHAEFER: Your Honor, Rafe Schaefer. I've got a copy. I can pass one on.

MS. BECKMAN HEDGE: Your Honor, what I would just like to point the Court to, on the first page of the order granting sanctions, when the Court granted it, it said it's based on the following findings of fact and conclusions of law. And the one paragraph in here that I want to my highlight for the Court is Paragraph 18. And I just want to read two sentences out of that.

"This motion for a new trial comes on the backdrop of additional claims that were frivolous and that Mr. Cheatham and Mr. Gabel" -- those were the lawyers for the plaintiffs, Your Honor -- "should have known lacked basis. Those include the following: One, there was no basis for

breach of a fiduciary duty claim against opposing attorneys, such as CCJ attorneys; two, there is a litigation privilege in Texas for opposing attorneys like CCJ attorneys with no general fraud exception; three, that the honorable judges and court coordinator are entitled to immunity; four, Harris County, as a governmental entity, cannot be liable under RICO."

Your Honor, there is precedent. As I just read, even Judge Hoyt agrees, that there is immunity that applies and that Harris County cannot be liable. And, therefore, Toni Biamonte in this case cannot be liable.

Finally, Your Honor, there is another immunity that applies here and that is called qualified immunity. It requires the plaintiff to allege that there has been a constitutional violation. There has been no such allegation made and certainly no facts to support it. In, *Bagby versus King*, a case out of the Western District of Texas, the court there held that the claims against the judges, the district clerk, the appeals court clerk were barred by judicial or qualified immunity. In that particular case, Your Honor, there were allegations regarding the way that the case had been handled and the disposition of the cases.

Finally, Your Honor, with respect to the failure to state a claim, which is applicable to all of the defendants here, a few additional points I just want to add. One is that the plaintiffs have failed to allege a conspiracy. They have

used only conclusory language throughout their complaint. The civil conspiracy that they have alleged is a derivative tort. It requires an agreement to commit predicate acts. There are no allegations of any agreement and certainly no facts to support that.

Additionally, Your Honor, they have failed to allege the existence of an enterprise or of an association, in fact, also required for a RICO violation. They contend that Probate Court 4 is an enterprise because it's involved in various aspects of interstate and foreign commerce by a adjudicating suits involving persons and property outside of Texas. A conclusion, Your Honor. There is no facts to support that there is an enterprise in Probate Court 4. It is not a legal entity and cannot be an enterprise.

Additionally, Your Honor, they have also not pled that there has been any pattern of racketeering activity. They only make conclusory allegations.

Thank you, Your Honor. I appreciate your time.

THE COURT: Continuing to move to my left as to defendants as to specific facts or arguments that need to be articulated on behalf of the defendants that you represent -- I don't need to hear a repeat. If you want to adopt what has been said, note that; and if there's anything additional that you need to say, let me know that. So, first, counsel.

MR. REID: Your Honor, Eron Reid for Neal Spielman.

My client represented Amy Brunsting in the Probate Matter 4. The only allegations -- the specific factual allegations him are for his conduct in the March 9th status conference hearing. That's the only additional thing I would add is covered under the attorney immunity.

THE COURT: Very well. Hold it. Anything else?

MR. REID: Nothing other than I adopt everything else.

THE COURT: Very well.

Counsel?

UNIDENTIFIED SPEAKER: Yes, sir --

THE COURT: Hold on.

UNIDENTIFIED SPEAKER: I'm sorry.

THE COURT: I'm going to go here, across the front.

MR. GREENE: Your Honor, Adraon Greene for Defendants Stephen Mendel and Bradley Featherston. The only thing we would like to add, Your Honor, is our clients also represented Mrs. Anita Brunsting as of November 2014. All of the acts alleged against my clients arose from that representation, specifically disseminating -- the dissemination of voice recordings, which they're required to do under the Texas Rules of Civil Procedure, because those voice recordings are witness -- are witness statements.

The objection that was filed to trust distributions, which the court in the probate court sustained, because the court found that that request for a distribution

was not for the health, education, maintenance, and support of any trustee, instead it was for a request to pay attorney's fees.

And, finally, the last act was simply to schedule mediation, which obviously pursuant to the representation of Mr. Brunsting, they thought that was the appropriate thing to do. Otherwise, Your Honor, we adopt all the previously made arguments.

THE COURT: Very well. Coming around this way.

MS. AMY BRUNSTING: Me?

THE COURT: Yes, ma'am.

MS. AMY BRUNSTING: Amy Brunsting.

THE COURT: Why don't you have that mike -- there you go. Thank you.

MS. AMY BRUNSTING: Amy Brunsting. There are just two issues that haven't been addressed yet. The first one is regarding the recordings on the phone. The plaintiff has not shown any evidence or provided any facts that show that I had any knowledge or handling or anything to do with those recordings. Yet I'm accused of doing wiretapping and possessing these things, and I have never seen them. So, there's no basis in fact on that.

And the other one is that they refer to a heinous extortion instrument, which in reality is a qualified beneficiary trust that was prepared for my mother by her and

her attorneys. I had no authority -- I had no business doing any of the preparation of that document at all. That was done while my mother was alive. And that was her private affairs.

On my mother's death, my sister Anita and I became trustees of the Brunsting Family Trust, and that is the only reason that I'm being involved in all of this. But prior to that time, I had no fiduciary responsibility towards the plaintiff. One of the plaintiffs, I've never met before, Mr. Munson. Until this case happened, I had never met him, had any kind of dealings with him. I have no fiduciary responsibility to him that I know of. I've never had any kind of business dealings with him at all. And they cannot -- or have not explained how -- with any kind of facts, as to how I'm connected to him.

THE COURT: And you represent yourself?

MS. AMY BRUNSTING: Yes, sir.

THE COURT: Very well. Ma'am?

MS. ANITA BRUNSTING: Anita Brunsting, representing myself. And I adopt what's been said.

THE COURT: Very well.

Counselor?

MR. OSTROM: Yes, Your Honor. I've got two clients, myself and Mr. Lester. I'm going to break them out separately. With regard to myself, I'm a little different situated than the other parties to this proceeding, because I, in fact, was the

attorney for Ms. Curtis in the underlying proceeding.

The other unique part about it, is that I was terminated before most of the alleged predicate acts that she complains of. So, my termination of role and role in the case has ceased and her facts really don't go to me. To the extent that the facts do go to me, it involves the movement of the case and filing the pleading in Probate Court 4 that asserts claims as to a trust and the defects in a trust. That's important, because we're talking about damage under RICO and her claims, as I understand, still exist. The same claims that she believes she's been harmed or deprived of are still currently pending. They're active claims. The same -- the pleadings she complains that I didn't adequately represent her in support of a conspiracy with the other counsel assert the same claims, and it's still pending. So, I can't see how she can indicate that I've harmed her in any way.

With regard to Mr. Lester, we adopt, and myself, we adopt the arguments already presented. Thank you.

THE COURT: Very well.

MR. MATHEWS: Your Honor, Bernard Mathews, Your Honor. I guess I am alleged to be -- oh, I'm sorry.

THE COURT: No, no. Microphone.

MR. MATHEWS: You can't hear.

I guess I'm alleged to be one of the card carrying members of the probate mafia in Houston, which I would

have to say I would be proud to be a part of in this particular case, because all I can see is hardworking attorneys and court officials trying to bring some resolution to this very bitter dispute between the siblings of this trust.

I personally had about two months of involvement in this case back in 2012 when I represented Anita and Amy Brunsting. I made an appearance in Judge Hoyt's court with respect to a motion to lift a lis pendens so a fair market value sale could occur, and then later communicated some financial information to Ms. Bayless. I'm had no direct representation of the defendants, and I had nothing whatsoever to do with the probate proceedings in Court 4.

So, I would then, again, adopt the attorney immunity doctrine on behalf of both Ms. Brunstings here and all the other arguments which have been made.

THE COURT: Thank you, counselor.

MS. FOLEY: Zandra Foley for Candace Freed and Al Vacek. They are the lawyers who drafted the trust agreements in this case, and so they were not a part of any lawsuit in Probate Court 4. They are not a party, and they never represented any of the parties in Probate Court 4. So, I adopt the arguments that have been made everyone else. However, with respect to the immunity, that wouldn't apply to my clients. But something kind of similar would, and that is the *Barcelo* case, *Barcelo versus Elliot*, which is a Texas Supreme Court

case from 1996. And that case essentially held that beneficiaries are not permitted to sue the estate planning lawyer, simply because it relies on the age old rule of privity. Meaning you have to have privity with the lawyer in order to sue them. And so that argument is a little bit different.

The only other thing I'll mention is that specifically with respect to Mr. Munson, in response to our motion to dismiss the plaintiff, in Paragraph 69, specifically states, "One thing plaintiffs and defendants appear to agree on is that Munson is not a party to any of the prior lawsuits nor is he a beneficiary of the Brunsting family trust, and that" -- and he's quoting our motion -- "it is inconceivable that he could be injured as a result of V & F's," that's Vacek and Freed, "drafting of the estate planning documents." And based on that admission and all the other arguments, we believe that these claims should be dismissed.

THE COURT: Very well. And?

MR. FEATHESTON: Your Honor, I'm Brad Featherston.

THE COURT: Very well. And?

MR. MENDEL: I'm represented by Mr. Greene, Your Honor.

THE COURT: Very well.

All right. You heard the motions to dismiss, the presentation, Ms. Curtis; is that correct?

MS. CURTIS: Yes.

THE COURT: That gives you the opportunity to respond to any of the arguments that you've heard regarding why your case -- why your cause of action should be dismissed. If you want to stand at the table, that's fine, but just pull the mike up, so that we can hear you.

And, first of all, just to get this clear, so I understand, are you a licensed attorney?

MS. CURTIS: No, sir.

THE COURT: Okay. So, you're just an individual representing yourself and you filed this law enforcement on behalf of yourself?

MS. CURTIS: Yes, I did.

THE COURT: Very well. You may proceed.

MS. CURTIS: I'd like for Mr. Munson to respond to these, if it's okay.

THE COURT: Okay. Now, Mr. Munson, are you an attorney?

MR. MUNSON: No, sir.

THE COURT: Okay. Mr. Munson cannot represent you. He's not an attorney. And so to the extent that there is a response by you, it has to come from you. And Mr. Munson, to the extent that he has causes of action, he can assert those or respond to those on his own behalf, but he's not allowed to speak for you. Do you understand?

MS. CURTIS: Yes.

THE COURT: All right. So with that being said, do you have anything you wish to say to me?

MS. CURTIS: Okay. May I wait until he's done?

THE COURT: Yes.

MS. CURTIS: Okay.

THE COURT: And you're Mr. Munson?

MR. MUNSON: Yes, sir, I am.

THE COURT: And, Mr. Munson, you're going to come up to the podium. Very well. And you told me you're not an attorney, correct?

MR. MUNSON: No, sir.

THE COURT: And you're representing yourself in this matter?

MR. MUNSON: Yes, sir.

THE COURT: Very well.

MR. MUNSON: I'm representing myself, and I'm a private attorney general representing the public interests as well.

THE COURT: What does that mean, a private attorney general?

MR. MUNSON: Well, the RICO statutes under 1964(c) provide a private cause of action for private plaintiffs. 1963 is the cause of action for public prosecutors. The Congress when they drafted the RICO statutes mentioned in the

legislative committee reports, that they didn't believe that -- and it's in all kinds of case law, that they didn't believe that the public prosecutor resources were adequate to address organized crime. They didn't say why they didn't think they were adequate, and I'm not going to address those issues.

THE COURT: But that's what your explanation as to what private attorney general is for --

MR. MUNSON: A private attorney general is someone who advances a matter in the public interest.

THE COURT: All right. So, now in regards to the arguments articulated on behalf of the defendants who are seeking motions to dismiss, what is your response on behalf of yourself, not on behalf of Ms. Curtis, because you cannot represent --

MR. MUNSON: I'm aware of that. Okay.

THE COURT: Okay.

MR. MUNSON: But they are the same issues, technically speaking.

THE COURT: Very well.

MR. MUNSON: All of these defendants have entered plenary admissions in this matter, and you've heard them all repeat them today. They insist a probate matter, that this arises from a probate matter. *Curtis v. Brunsting* in the Fifth Circuit, that's -- I'm been in Texas for five years. And when I see the Brunsting Trust, there is no probate. If we read the

wills, which none of these defendants who claim probate even bother to do, you'll find out that everything that the will authorized to be done was completed five days before the so-called probate matter was filed. The inventory was submitted on April 4th. It was approved and filed with a drop order on April 5th. Five days later, the same day Judge Hoyt issued an injunction to Mrs. Curtis in the probate -- in the trust related case in the federal court, Bobbie Bayless filed her probate matter.

Now, nothing in the so-called probate matter addresses anything but the trust, and none of the claims contained in the so-called probate matter are contained in the list of inventory and assets. There is no probate matter. *Curtis v. Brunsting* is related to the Brunsting Trust. It is not property belonging to the estate of Nelva Brunsting or Elmer Brunsting. That was settled by the Fifth Circuit Court of Appeals. And I don't think we're going against the Fifth Circuit in regard to that judgment in this case.

I'm not here to try the case, but there is no probate matter, because there's no jurisdiction in the probate court. We have two problems with 12(b)(6) and 12(b)(1). The first one is 12(b)(6) relies upon --

THE COURT REPORTER: Can you slow down?

MR. MUNSON: Okay. Have to rely upon the statement of facts made in the complaint. All of the defendants offer a

contrary view of the facts. They're not allowed to do that under 12(b)(6). They can do that under a factual challenge under 12(b)(1), but they have to support it with affidavits and documents outside the record. They do none of those things.

So, the whole idea of immunity is based upon subject matter jurisdiction. Nothing in the probate court involved anything but the Brunsting Trust. If you were to ask these defendants to identify a probate claim pending in the probate matter, the only thing that comes out of their mouth is trust. The trust is not an asset belonging to the estate. I have no have interest in the probate. There was no probate. It was completed before the probate matter was filed. I have no interest in the trust. However, I have an interest in my household.

Plaintiff Curtis and I are domestic partners. And this case is robbing assets from my home and redirecting them to courts in Texas in order for her to defend her property interest. It is not an expectancy. It is a property right. The expectancies come from the estate. Now, I heard one of the lawyers mention Foster (phonetic). There was a will challenge in Foster. There's no will challenge in the Brunsting case. If you read the wills, none of the five Brunstings are heirs to the estate. Only the trust is an heir to the estate. The Fifth Circuit did read the will. But none of these defendants in their 200 some pages of motions to dismiss, they all say

probate matter, probate matter, probate matter. Not one of them mentions the will. The reason for that is to give the lie to the claim that it's a probate matter.

They also claim they have no idea what *Curtis v. Brunsting* is. *Curtis v. Brunsting* is the case that was in possession of the Brunsting Trust, beginning on 2-12-20 -- 2-27-2012 and continuing until this remand to the so-called probate matter. You cannot remand a plaintiff for consolidation with a case where she is a defendant. Dicey's rules of parties to action number five says that a plaintiff cannot be a defendant in the same action.

Bobbie Bayless named plaintiff Curtis a defendant in the probate matter. The whole notion that she could be remanded to probate to consolidate with Carl Brunsting in non-litigation, where she was a defendant, is a false thesis.

Under 12(b)(6) the Court is compelled to accept the facts in the complaint. Under 12(b)(1), they can't challenge those facts without support. They've done neither one of those. And yet they come in here insisting a completely different set of facts. Their immunity claims are based upon the notion of subject matter jurisdiction. There is no subject matter jurisdiction over the Brunsting Trust in the probate court. The Fifth Circuit is controlling. They address that. It's only seven pages. But I don't think any of these people

ever read it. I'm not sure they've ever read anything, because they keep repeating themselves like they're broken records. And yet, there is no probate matter.

There was never about a probate matter after the inventory and listed claims were submitted and the matter dropped. In fact, it was a year later that the Brunsting case was remanded to probate and suddenly became the estate of Nelva Brunsting, which the Fifth Circuit said it's not. It was six months later that Carl Brunsting applied for letters testamentary the second time. That's October 17th, 2014. So when it was filed, he filed it individually, but he has no standing as an heir of the estate and as executor for the estate, which was closed, and he had no letters testamentary for.

This is all just one big scam from chumming to bring in people who want to protect their assets, to promising them peace of mind, and then deciding which ones would be subject to redirection to the probate for now to be looted. And the defendants all object to the record of proceedings. But the record of proceedings is conclusive. We believe that on the record this case is subject to -- you know, is ripe for summary judgment on the pleadings, but we also know there is more that we can obtain by discovery.

There's lots of obfuscation in terms of the accounting for the Brunsting Trust. All of these lawyers have

gotten in the way. And if we look at the transcript of the March 9th, I was personally present and witnessed that little charade, I was so offended by the conduct. These grinning jackals, like we're going to rip you off and what are you going to do about it. That's what your misplaced notions of immunity have generated, a bunch of people who have no concern for the administration of justice or the rule of law, and that's what this case is about. It's about public corruption, and that's why I'm here as a private attorney general.

THE COURT: I only have one question. You stated that you were a domestic partner to Ms. Curtis?

MR. MUNSON: Yes.

THE COURT: As to a domestic partner, what legal rights under Texas law does that give you a connection with the issues in this case? I just want to -- because I assume when you say "domestic partner," you didn't use the word "husband" or --

MR. MUNSON: No, or spouse.

THE COURT: Or spouse.

MR. MUNSON: No.

THE COURT: You just said "domestic." So, what legal rights does that give you?

MR. MUNSON: I believe I addressed that in the Docket 89, where I mentioned Judiciary Rule 1927. It's codified at 28 U.S.C. 1927. And it gives you three instances in which

Mrs. Curtis is entitled to compensation for her expenses. Okay? And I have been asked by Mrs. Curtis to step in as act as the trust protector and to assist her in trying to figure out this very, very intentionally convoluted case. I mean, they made a mess of the finances, claimed to have them straightened out and then dumped everything in a big box for --

THE COURT: Hold on. Because I want to make sure we're --

MR. MUNSON: Okay.

THE COURT: -- we're on the same page.

MR. MUNSON: Okay.

THE COURT: You acknowledged early on before you began your remarks, that you cannot represent -- legally represent Ms. Curtis, only an attorney can do that or only Ms. Curtis can do that.

MR. MUNSON: Yes -- well --

THE COURT: Let me finish. In connection with your interest in -- if I heard you correctly, and correct me if I'm wrong, you stated that you were a domestic partner to Ms. Curtis. And I'm trying to get an understanding as to what you are asserting by --

MR. MUNSON: We have shared finances.

THE COURT: Don't interrupt me --

MR. MUNSON: Sorry.

THE COURT: -- by asserting that you are a domestic

partner to Ms. Curtis. So, what --

MR. MUNSON: We have a joint household. We have joined financial considerations. I don't handle any of the finances. I have renters, but I don't collect any of the rents. I have Mrs. Curtis do all of that. Okay? She's my partner. She handles that part of it. I'm a saxophone player.

THE COURT: When you say "partner" --

MR. MUNSON: Yes, domestic partner. We sleep in the same bed. We live together.

THE COURT: Well, I'm not trying to get that familiar. But partner also has a commercial context to it. So, you're not business partners?

MR. MUNSON: No, no, no, not specifically. We do have some plans that are being interfered with, but we're not able to pursue those at the moment.

THE COURT: Okay. Now I understand. Thank you, sir.

MR. MUNSON: And as far as these attorneys claiming that no one can assist without -- I think it was Docket Entry 90, the one -- the document filed untimely, just before this hearing, where they bring up the mention of this unlicensed practice of law. I would love to hear a definition of that, as well as a definition of probate from these defendants. Because my understanding is that I do have standing. And I'm relying on Supreme Court precedent. I did draft all of the drafts for all of the motions in this case, because Mrs. Curtis works in

the daytime. So, I've been involved in this for five years. I've had my time redirected to this matter, and it is all one big public corruption fraud.

THE COURT: Thank you, sir.

Ms. Curtis?

MS. CURTIS: I just know that I'm here today because all of these people are standing between me and my property. And I've been trying to get it and get information about it since right after my mother passed away on November 11th, 2011. As far as I'm concerned, all five of the Brunsting siblings are victims here, because there's attorneys here that have extended them credit to continue to avoid their responsibility.

I was directed to hire an attorney, because my domestic partner was in a coma and I could not prepare for a hearing in October of 2013 properly. So, I failed miserably, and Judge Hoyt directed me to hire an attorney so the discovery process could go forward. And after he got out of the hospital, it was a couple of months before he could even think straight. When you have open heart surgery, it's a serious matter. And we looked high and low to find an attorney to represent me, and couldn't until finally we contacted Mr. Ostrom, who convinced us that he would be the person to take this over and immediately proceeded to do things against my instructions, not keep me informed of what was going on and then somehow managed to get me out of the federal court into

the probate court where there is no jurisdiction and there wasn't.

So, I was stuck in a nightmare for two and a half years and I couldn't get out. I tried to file summary judgment and declaratory judgment motions, which I filed, but I couldn't get a hearing for those. But they could hear whether they were going to have another mediation, so that they could unentrench me from my belief that this property belonged to me and they were holding it. So, that's why I'm here today.

Mr. Munson has been helping me since the very beginning. I've known him for almost ten years now, and that was my only choice.

THE COURT: The defendants in this case have made some very specific legal arguments as to why your case should be dismissed as to their various clients, from judicial immunity to failure to state a claim and a host of issue legal issues that you heard in between. So, in regards to a response to those specific legal assertions by these defendants, judicial immunity, failure to state a claim, do you have any specific response other than what you've put on paper already?

MS. CURTIS: Well, I believe that if there's no jurisdiction, there are no judges, there are no lawyers, and there is no litigation. And if there is no litigation, then there is no immunity. And I don't believe that there is litigation relating to the trust in Probate Court No. 4.

Although, the report from Greg Lester, which was supposed to evaluate the merits of the claims in state court, said nothing about the estate of Nelva Brunsting. All they talked about is the trust and how Ms. Curtis and her brother Carl are going to be disinherited by the no contest clause in this mysterious qualified beneficiary designation, that they can't even produce the original signed document of and for which there are three different signature pages.

So, I'm here because I was at wit's end. I was stuck in probate court and being pushed towards a mediation where they were going to unentrench me from going after what belongs to me, what my parents gave to me that is mine now and they're holding it.

THE COURT: Thank you. And just by way of housekeeping, just I'm trying to get a better sense of the players on the chess board, are you related to these two ladies over here?

MS. CURTIS: These are my two youngest sisters.

THE COURT: Okay. And so --

MS. CURTIS: Carl is my brother, who was represented by Bobbie Bayless.

THE COURT: Is he here?

MS. CURTIS: No.

THE COURT: Okay. So, you have -- all right. Very well. Thank you.

What I would like to do -- what I'm going to do, I'm going to wade into the specific motions to dismiss, to get an understanding as to who is going to remain in this case, maybe none of you, maybe all of you, I don't know. I'm going to -- I wanted to hear your oral arguments. And you cited some additional considerations for me to look at, and so I'm going to do that. Once I made a determination as to what motions to dismiss -- how to dispose of them, being granted, being denied, then we can, if necessary, make a plan going forward as far as some type of managed discovery. Right now I think that would be unwielding given the number of players on this chess board and also given the fact that some of you may not be here -- some of the defendants may not be here. Some of the -- you know, one of the ones that I was troubled by, and I'm going to get a better explanation for it -- and obviously this is oral argument and everything is short-circuited to that, but the court reporter. And to the extent that someone is sitting there just taking down a record, I'm not sure of the legal causes of action to which that person may have subjected himself. And as to some of the attorneys, I'll look at that, as well as the judges, that's separate and apart. But, for instance, the court reporter, who was a substitute court reporter, as described, just sticks out, and I just wanted to see exactly what his involvement was in the case. No need to comment.

And so I just need to dive -- lawyers, representatives say something in court and my review may reveal a different determination, and so that's what I need to do. But because of that alert going off, that maybe there's someone who doesn't belong here, we're going to keep -- we're going to hold off on discovery. Because I don't want people to participate in discovery if they're not going to be here for the long-haul. I think that manages the cost for everyone and conserves resources for the individual clients. So, I think that's the best way to proceed.

Now, having said that, that puts on me a burden of being timely and making sure that these motions to dismiss are disposed of such that the plaintiffs, if this case goes forward, are entitled to some type of discovery for the remaining defendants on the causes of actions that remain. And, so, we cannot delay that process forever, if it's going to go forward. So, I will endeavor to be efficient as I can in getting these motions to dismiss disposed of, so we'll know who's left on the board, and then we can move forward with some type of managed discovery plan that makes sense. That's what I'm going to do.

I assume, before I walked out here, that that covered all of the motions to dismiss. Were there any other motions to dismiss that were not addressed today? All right.

Are there any other motions that were not

addressed today that needed to be addressed?

Mr. Munson, Ms. Curtis, any other motions, pending motions on my docket? All right.

So let me again address the motions that have been presented. Anything else that we need to address before we adjourn today, starting on my right?

MR. ABRAMS: No, Your Honor.

THE COURT: No?

MS. BAYLESS: Well, I do have this question. My name came up a lot more than I expected it to in this hearing, and some things were said which I did not realize were allegations, this allegation that there's no probate proceeding when there is. I don't know if the Court wants to entertain some brief --

THE COURT: No.

MS. BAYLESS: Okay.

THE COURT: I don't want any additional briefing.

MS. BAYLESS: All right. Well, thank you, Your Honor.

THE COURT: To the extent that I dig into this and I determine that additional briefing is necessary on a specific point, my clerk will contact you and ask for it. But as a general rule, I don't want you to submit additional briefing on what you've already briefed. There may be something that I'll dig into that I will ask for additional briefing on, but as of right now, there's no need to submit additional briefing.

Anything else from this side?

MR. HARRELL: No, Your Honor.

THE COURT: Very well.

MS. BECKMAN HEDGE: Nothing, Your Honor.

THE COURT: Ms. Curtis, anything else?

MS. CURTIS: No, Your Honor.

THE COURT: Mr. Munson?

MR. MUNSON: I would like leave, sir -- I'm sorry. I would like leave to file a brief on the public attorney general.

THE COURT: Not necessary. During your presentation you made some specific cites. We have a record. So, I will check that. If it's turns out that I have additional questions, I will have my clerk contact you for additional information. Anything else, Mr. Munson?

MR. MUNSON: Yeah, we do have a private attorney general statute in California. It's government code -- it's California Business and Professions Code 17204 and 17535, which also address the issues.

THE COURT: So, in regard -- and since you cited that to me, I'm just going to ask the question, we're sitting in a Federal District Court in Texas. How does the California statute work in this case?

MR. MUNSON: It mimics the Supreme Court on the subject.

THE COURT: Okay. Very well.

Anything else, issues from this side of the room that the Court needs to be aware of before we adjourn? Yes, ma'am.

MS. AMY BRUNSTING: Amy Brunsting. I just wanted to clarify how many siblings were involved. Candy is the oldest. There's another one --

THE COURT REPORTER: Can she use the microphone?

THE COURT: Hold on. Use the microphone.

MS. AMY BRUNSTING: Sorry. There's five siblings in our family. Candy is the oldest. Carole Brunsting is next. Carl Brunsting is the third. I'm the fourth, Amy Brunsting, and Anita Brunsting. So, we're the five siblings. I think only four of them were mentioned. Just clarity.

THE COURT: You said Candace Brunsting?

MS. AMY BRUNSTING: Candace -- Candy Curtis, I'm sorry.

THE COURT: Okay. All right. Very well. Thank you.

Any other clarifications, any other additional information that I need? Over there?

MR. MUNSON: Standing of a private attorney general under civil rights is different than under RICO. RICO is the only situation where a private attorney general does not also have to be an attorney.

THE COURT: Thank you, sir.

All right. We are adjourned. You are excused.

Happy holidays to you.

(Concluded at 1:00 p.m.)

* * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled cause, to the best of my ability.

/s/ Kathy L. Metzger 6-27-2017
Kathy L. Metzger Date
Official Court Reporter