No. 17-12806

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETER J. NYGÅRD, NYGÅRD INTERNATIONAL PARTNERSHIP, & NYGÅRD, INC.

Plaintiffs-Appellants

v.

JOHN J. DIPAOLO & THE D&R AGENCY, LLC

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Florida
Case No. 0:17-CV-60027-UU

INITIAL BRIEF OF APPELLANTS PETER J. NYGÅRD, NYGÅRD INTERNATIONAL PARTNERSHIP, & NYGÅRD, INC.

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Case No. 17-12806
Nygård, et al. v. DiPaolo, et al.

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, Appellants Peter J. Nygård, Nygård International Partnership, and Nygård, Inc. hereby certify that the following are persons and entities that have an interest in the outcome of this appeal:

1. Carlton Fields Jorden Burt, P.A. (counsel to Peter J. Nygård, Nygård International Partnership, and Nygård, Inc.)
2. Coffey Burlington, P.L. (counsel to John J. DiPaolo and The D&R Agency, LLC)
3. Coffey, Kendall B. (counsel to John J. DiPaolo and The D&R Agency, LLC)
4. Crockett, Jeffrey B. (counsel to John J. DiPaolo and The D&R Agency, LLC)
5. D&R Agency, LLC
6. DiPaolo, John J.
7. Gruhn, Clifton R. (counsel to Peter J. Nygård, Nygård International Partnership, and Nygård, Inc.)
8. Hiaasen, Scott A. (counsel to John J. DiPaolo and The D&R Agency, LLC)

9. Nygård, Peter J.

10. Nygård, Inc.

11. Nygård International Partnership

12. Reid, Benjamine (counsel to Peter J. Nygård, Nygård International Partnership, and Nygård, Inc.)

13. Ungaro, Ursula The Honorable (District Court Judge)

CORPORATE DISCLOSURE STATEMENT

Appellant Nygård International Partnership is a registered partnership between two Canadian federal corporations, 4093887 CANADA LTD. and 4093879 CANADA LTD, which operates as Nygård International. Neither Nygård International Partnership nor the underlying corporations have parent corporations, none of the entities is publicly held, and no publicly held corporation has any ownership interest in any of the entities. Likewise, Appellant Nygård, Inc. has no parent corporation, it is not publicly held, and no publicly held corporation has any ownership interest in the entity.

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiffs-Appellants Peter J. Nygård, Nygård International Partnership, and Nygård, Inc. respectfully request that the Court hear oral argument in this matter. This appeal involves significant issues regarding the legal standards to be applied in a *forum non conveniens* analysis, and oral argument would aid the Court in parsing the factual record pertinent to those issues. Consequently, oral argument would materially assist the Court in its consideration and determination of this appeal.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CITATIONS

Page

Cases

TABLE OF CITATIONS
(continued)

Page

TABLE OF CITATIONS
(continued)

Page

TABLE OF CITATIONS
(continued)

Page

TABLE OF CITATIONS
(continued)

Page

Statutes

Other Authorities

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The District Court had federal question jurisdiction over this case pursuant to 28 U.S.C. § 1331 because it involves claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.* On May 23, 2017, the District Court entered an order dismissing this case in its entirety on *forum non conveniens* grounds. D.E.47.[1] On June 20, 2017, Plaintiffs-Appellants timely filed their Notice of Appeal of the District Court's dismissal order. D.E.48.

This Court has jurisdiction under 28 U.S.C. § 1291 because it is an appeal from the District Court's final order dismissing this case in its entirety on *forum non conveniens* grounds, finding that it should be litigated against Defendants-Appellees in the Bahamas rather than in a United States court. *See, e.g., Sigalas v. Lido Maritime, Inc.*, 776 F.2d 1512, 1515-16 (11th Cir. 1985) ("Disposition of a case on *forum non conveniens* grounds *per se* is a final order subject to appeal."); *King v. Cessna Aircraft Co.*, 562 F.3d 1374, 1378 (11th Cir. 2009) ("Dismissal of a suit on the basis of *forum non conveniens* is a final, appealable order.").

[1] Citations to the record below refer only to entries on the District Court's Docket. In this Brief, all citations to those docket entries will begin with "D.E." followed by the number of the entry and then, where appropriate, a backslash and the relevant page(s), *e.g.*, a citation to docket entry 22 at page 1 will appear as "D.E.22/1."

STATEMENT OF ISSUES

1. Whether the District Court abused its discretion by not applying the proper presumption of convenience or deference in favor of Plaintiffs' forum choice and/or not holding Defendants to the proper burden on their *forum non conveniens* motion.

2. Whether the District Court abused its discretion in disregarding the operative complaint and failing to view evidence or draw inferences in Plaintiffs' favor while conducting a *forum non conveniens* analysis.

3. Whether the District Court abused its discretion in failing to determine the key issues raised by the claims and defenses, failing to weigh the *forum non conveniens* factors in light of those issues, and failing to develop an adequate record on those issues.

4. Whether the District Court abused its discretion and committed clear errors in weighing the private and public interests in its *forum non conveniens* analysis.

STATEMENT OF THE CASE

NATURE OF THE CASE

This case arises from Defendants' – John J. DiPaolo ("DiPaolo") and The D&R Agency, LLC ("D&R") (collectively, "Defendants") – violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.* ("RICO"). D.E.22. In particular, this matter concerns Defendants' extensive participation in a wide-ranging RICO enterprise centered in New York and Fort Lauderdale, Florida (Defendants' home-district). *Id.* Defendants and other members of the RICO enterprise influenced and attempted to influence witnesses and potential witnesses in actions involving Plaintiffs Peter J. Nygård, Nygård International Partnership ("Nygård Int'l"), and Nygård, Inc. (collectively, "Plaintiffs") through large payments originating from New York to make outrageous statements that Plaintiffs were involved in, among other things, murder-for-hire, fire bombings, and assaults in the Bahamas. *Id.*

Defendants then used those influenced statements, many of which were made in South Florida, in litigation and the press in the United States ("U.S.") and the Bahamas to injure Plaintiffs in their business and property in the U.S. *Id.* Significantly, Defendants have not disputed that they were involved in paying witnesses between $3 and $5 million in exchange for scandalous statements or that the funds for those payments were transferred from New York to the Bahamas, and

there is evidence of Defendants negotiating and making large payments to witnesses. *See* D.E.42/3n.3. Thus, Plaintiffs brought this case to address the illicit conduct of Defendants and other members of the RICO enterprise in paying and offering to pay substantial sums of money to influence witnesses.

In sum, this case is being pursued by a U.S. Plaintiff (Nygård, Inc.) and two Plaintiffs with substantial business in the U.S., all of whom suffered damages in the U.S., against two U.S. Defendants in their home-district to address conduct funded, centered, organized, and carried out largely in the U.S. D.E.22. Despite these facts, the District Court granted Defendants' motion to dismiss for *forum non conveniens*, based principally on the false premise (as well as myriad other factual and legal errors) that this action only challenges a single affidavit by Defendants, which attached several influenced statements and was filed in a Bahamian court.[2]

STATEMENT OF FACTS[3]

I. THE PARTIES TO THIS LITIGATION

Defendants are citizens and residents of Fort Lauderdale, Florida. D.E.22/2;

[2] As explained below, this action alleges RICO violations and a conspiracy. Plaintiffs' claims focus on and require proof of Defendants' intent to "influence" individuals they believed would be witnesses, that funds were sent from a place in the U.S. to a place outside the U.S. in furtherance of "serious crimes," and the general RICO elements. *Infra*/31-35. While it goes without saying that Plaintiffs contest the veracity of influenced statements accusing Plaintiffs of crimes, this case is much broader than the falsity of statements as presented to a Bahamian court.

[3] The facts are taken from the Complaint and *forum non conveniens* briefing.

D.E.47/2. DiPaolo is the president of D&R, which is a licensed agency that holds itself out to the public as offering investigative and protective services. D.E.22/2; D.E.38/4.[4] Nygård, Inc. is a Delaware corporation with its headquarters in New York, Nygård Int'l is a Canadian citizen, and Mr. Nygård is a Canadian citizen residing in the Bahamas. D.E.22/1-2; D.E.47/2. Plaintiffs design, market, and sell women's clothing and carry on substantial business in the U.S. D.E.22/1-2.

II. THE RICO ENTERPRISE AND CONSPIRACY TO INFLUENCE WITNESSES THROUGH PAYMENTS OF MILLIONS OF DOLLARS

As Plaintiffs currently understand the facts, the RICO enterprise here consists of numerous individuals and entities, including the following:

- At the head of the RICO enterprise is Louis Bacon, who masterminds and finances the enterprise and its activities from New York (his state of residence);
- Below Mr. Bacon are Defendants, citizens and residents of Fort Lauderdale, Florida. Defendants seek to influence, through large

[4] *See* https://licensing.freshfromflorida.com/access/individual.aspx?TYPE=INDIVIDUL&CATEGORY=&COUNTY=00&LICENSE=C%201400048&STATUS=IND_DETAIL (showing DiPaolo is licensed as private investigator by Florida Department of Agriculture and Consumer Services); *see also* https://licensing.freshfromflorida.com/access/agency.aspx?TYPE=AGENCY&CATEGORY=&COUNTY=00&LICENSE=A%201400018&STATUS=ORG_DETAIL&ORG_ID=OR1400067 (showing D&R is licensed as a private investigation agency by same agency).

payments coming from Mr. Bacon or his agents, statements from witnesses and potential witnesses to be used in various actions involving Plaintiffs, as well as in the press.

- Livingston Bullard ("Bullard") and Wisler Davilma ("Davilma"), alleged criminal gang members who apparently reside in the Bahamas, provide influenced statements, at least four of which were given in the Southern District of Florida, in exchange for "exorbitant" payments, and seek to influence other witnesses through offers of payment and threats.
- Tazhmoye Lacey-Ann Cummings, Samantha Storr, and Philincia Cleare are involved in extorting Plaintiffs under threat of participating in the RICO enterprise absent payments. Apparently as a reward for their actions, members of the RICO enterprise moved at least one of the women (Ms. Cummings) to the U.S.

D.E.22/1-12. In addition, during the short term of this case, Plaintiffs discovered information suggesting that the RICO enterprise involves far more individuals and entities and ranges across the entire U.S. from New York to California. D.E.42-1/1-7 (Plaintiff's Initial Disclosures listing California-based investigators Jack Palladino, Sarah Ness, and Palladino & Sutherland, who apparently sought to obtain statements regarding Plaintiffs from numerous individuals). Plaintiffs,

however, have been denied any discovery to determine all members of the enterprise and the extent of their conduct throughout the U.S. *Infra*/18-19n.10.

In early-February 2015, Defendants and other members of the RICO enterprise (likely Mr. Bacon) entered an agreement by which Defendants would seek to influence and obtain statements to be used to injure Plaintiffs. D.E.22/16-17. Given that Defendants reside in Florida and Mr. Bacon resides in New York, that agreement was likely entered in the U.S. *Id.*/16-17. Plaintiffs have been denied discovery on this issue.

III. DEFENDANTS CARRY OUT THE RICO SCHEME BY SEEKING TO INFLUENCE STATEMENTS THROUGH "EXORBITANT" PAYMENTS ORIGINATING FROM THE U.S.

A. Secretly Recorded Meeting With Bullard And Davilma

Defendants began their participation in the RICO enterprise by holding a meeting with Bullard and Davilma, during which Defendants negotiated payments of millions of dollars to influence statements that were provided in, among other places, Miami Springs, Florida. *Id.*/7-8. For example, on February 19, 2015, Defendants, Bullard and Davilma, and several unidentified individuals met in the Bahamas to negotiate a price members of the RICO enterprise were willing to pay in exchange for Bullard and Davilma making certain statements. D.E.44-1. Unbeknownst to Defendants at the time, Bullard and Davilma recorded the meeting. D.E.44-4/24,26,43.

After stating that everyone should put their cell phones to the side "to make sure that [no one was] recording," DiPaolo[5] explained that he and other unknown participants were "purposely sent [by Mr. Bacon's attorneys in New York to the Bahamas] to speak with" Bullard and Davilma to get incriminating information regarding Plaintiffs. *Id.*/1-2. He also stated that "two other people that came with us ... from New York ... are here, they may stop in[.]" *Id.*

DiPaolo began negotiating a price for derogatory statements and continually communicated with Mr. Bacon's New York lawyers, who, in turn, apparently communicated with Mr. Bacon, to determine how much they were willing to pay:

> [W]e are here in good faith. We have made transfer of the money ... what they [lawyers in New York and Mr. Bacon] want to do, is they want to evaluate what you have. We are going to tell them what you have. And we will tell, what, what you expect to be paid for this. [I]t is their money[.]
>
> * * *
>
> These are the people we have been directly dealing with, it is a law firm, Gibson Dunn, which is up in New York. And, they have been retained by Mr. Bacon to represent him on this, and other matters. ... He is the one that eventually hired us out of Florida to do the investigation aspect of Nygard here.
>
> * * *
>
> We are dealing with people who are delegated to deal with this. So, now, they are talking to the partners, direct contact with Mr. Bacon negotiating.

[5] The transcript identifies DiPaolo as "JOHN," and Bullard and Davilma are identified by their nicknames, "TOGGIE" and "BOBO," respectively. *Id.*/3.

Id./6,31-34; *id.*/16 (DiPaolo explaining that he "need[ed] to make a phone call to New York. ... to see how much they will be willing to pay"); *id.*/18 (DiPaolo calling Mr. Bacon's New York lawyers to "find out what they feel that is worth"); *id.*/26-31 (DiPaolo speaking with New York lawyers: "Just, for your information ... anything you want them to do, they can do it."); *id.*/73 ("[t]he reason why this stuff is going back and forth and up and down the chain is it is going all the way up to Mr. Bacon and back").

DiPaolo also made clear that the money to be paid to Bullard and Davilma was coming from Mr. Bacon's New York lawyers and that funds could be "wire[d]." *Id.*/19 (DiPaolo explaining that "[t]hey are dealing with lawyers from New York" who would want to evaluate the statements Bullard and Davilma were willing to make before deciding a price); *id.*/26-31; *id.*/24 ("[d]o you [Bullard and Davilma] have a bank account that we could have stuff wired to?"); *id.*/36-40 (DiPaolo negotiating with New York lawyers on price), *id.*/50-53 (discussing possibility of having money "transfer[ed]" to an intermediary); *id.*/72 (discussing payment of "$50,000 [cash], and [ ] wir[e] more to another account").

The transcript also leaves no doubt that Defendants intended the statements to be used against all Plaintiffs here, who were defendants in a New York defamation case brought by Mr. Bacon:

> We are giving that [information] to the law firm up in New York. ... Well, there is a judge in civil court. So, the information, what they

> want to, they wanted to use this information just to show what type of person Nygard is, and you know, it is not just they are looking at the whole thing, Nygard has businesses all over the place. He has made businesses up in New York.

Id./34-35.[6] DiPaolo explained that the "investigation is not solely you guys here in the Bahamas. It is a complete investigation that goes elsewhere. You guys are a portion of it." *Id.*/35.

One of DiPaolo's team members[7] stated that Mr. Bacon's New York lawyers "want to know what they are paying for. It's like doing a drug deal without testing the stuff," making it clear the more damning the statements, the more it would be worth to the enterprise, thereby influencing Bullard and Davilma to make the most outrageous claims they could conjure, such as murder-for-hire plots and fire bombings, so that they would be handsomely rewarded. *Id.*/63. The negotiation did not focus on determining a price for Bullard and Davilma to provide statements or the cost of opportunities or wages lost while attending the meeting; it focused on

[6] On January 14, 2015, Mr. Bacon filed suit in New York state court against Mr. Nygård, Nygård, Inc., and Nygård Int'l. After several iterations, that suit involved defamation claims based on alleged conduct in the Bahamas. D.E.31-5/4-5,8. The court eventually dismissed that suit on *forum non conveniens* grounds, finding that the relevant conduct occurred in the Bahamas. *Id.* Mr. Bacon's appeal of that decision is pending in the Appellate Division of the Supreme Court of New York First Department. *Bacon v. Nygård*, No. 150400/15 (N.Y. App. Div.).

[7] The "team" member is listed as "JIM" in the transcript. *Id.*/63. It appears that "JIM" is James Lawson, who is apparently a member of D&R. D.E.44-5/2.

how much the members of the RICO enterprise were willing to pay for particular statements and activities. As the negotiation broke down, DiPaolo stated:

> [P]eople up in the New York have to feel warm and fuzzy, that they have information that they are willing to buy. And, they are willing to pay exorbitant amounts of money, they have to have something in front of them to show that they have criminal behavior on the part of Nygard[.] They are willing to buy it. They are going to spend incredible amount of money to do it[.]

Id./82. They decided that, for the time being, having a statement would be best, so the parties negotiated a price for such a statement. *Id.*/99/105/110 (stating affidavit was a "goodwill gesture," "good start" before they "move into the next phase").

DiPaolo stated he had $50,000 cash "in hand right now . . . and we have some reserved in, an account. ... [B]ut, there, is more, in the account," which money apparently "was transferred." *Id.*/103-04. DiPaolo then sought to verify that the New York lawyers and Mr. Bacon were willing to pay $50,000 for a statement. *Id.*/110-14. That day, Defendants obtained the first influenced statement from Bullard. D.E.22/7-8.

B. Bullard And Davilma Recant Their Statements And Explain That They Were Given In Exchange For Large Payments

On March 14, 2015, Bullard and Davilma met with attorneys for Plaintiffs and recanted the statements they made during the February 19 meeting. D.E.44-2; D.E.44-3; D.E.44-4. Bullard and Davilma stated that DiPaolo and a member of his team offered to pay a "lump sum of money" for incriminating information against

Plaintiffs, coached them on the statements for which participants in the RICO enterprise were willing to pay, and paid them $50,000. *Id.*/31,44-45,51. Davilma further explained that DiPaolo's team member "asked if we [Bullard and Davilma] could [make up] names on a [so-called] hit list[.]" *Id.*/60; D.E.44-3/3 (explaining "call up" means "'make up' names on the so-called hit list"); *id.*/3 (Davilma explaining that DiPaolo's team member "held up a piece of paper indicating two names" that Defendants wanted him to say were included in a fabricated "hit list").

Bullard stated that DiPaolo and his team made it clear that he and Davilma would be paid in exchange for "false evidence." D.E.44-2/3. Both men explained that members of the RICO enterprise wanted to obtain derogatory information "whether it was true or not[, and t]hey were prepared to pay large sums of money for this." D.E.44-2/3; D.E.44-3/3.

C. Defendants Obtain More Influenced Statements

Nearly one year after the February 19, 2015 meeting, on January 24, 2016, Defendants obtained from Bullard in Miami Springs, Florida, four additional statements. D.E.22/7-8. Roughly two weeks later, on February 4, 2016, Defendants obtained in the Dominican Republic four similar statements from Davilma and another statement from Bullard and Davilma. *Id.* The evidence currently available suggests that Defendants and other members of the enterprise paid Bullard and Davilma $3 to $5 million for those statements; Defendants have

not disputed that fact. *Id.*; *see* D.E.42/3n.3. Also, the statements taken in the Dominican Republic were recorded by the same Fort Lauderdale-based court reporting service as the statements taken in Miami Springs. *Compare* D.E.31-3/19,49,79,83 (showing statements in Miami Springs stenographically recorded by Prestige Reporting Services, Inc.), *with id.*/103,117,129,140,166 (showing Prestige Reporting Services, Inc. stenographically recorded statements taken in Dominican Republic). It thus appears that either Defendants took a Fort Lauderdale court reporter to the Dominican Republic to record statements, or the statements were recorded via video or telephone from Fort Lauderdale. Without discovery, only Defendants and other members of the RICO enterprise know this information.

In addition, in October 2015, while in the Cayman Islands, Defendants attempted to obtain from Clement Chea a similar influenced statement in exchange for a substantial payment. *Id.*/8. Mr. Chea, however, refused to participate in the RICO scheme. D.E.22/8; D.E.44/6.

IV. DIPAOLO'S AFFIDAVITS

On March 9, 2016, Mr. Bacon and other named plaintiffs (Frederick Smith, Joseph Darville, Romauld Ferreira, and Reverend C.B. Moss) filed suit against Mr. Nygård and another defendant in the Bahamas. D.E.22/9; D.E.37-1/8. That same day, an affidavit signed by DiPaolo was filed in that lawsuit. D.E.22/9. DiPaolo's affidavit attached and largely reproduced the statements Defendants and other

members of the enterprise bought from Bullard and Davilma with money from New York. *Id.*; D.E.31-2/¶¶9,48,50,58,75,80,104-105,111,113-20,124-38,140-43,148-54,156-57.

DiPaolo opens his affidavit by stating that he is from "Fort Lauderdale, Florida." D.E.31-2/1. DiPaolo also explains that he "was among several investigators retained in February 2015," and that the "investigation team . . . was composed primarily of retired FBI and retired Scotland Yard professionals and Bahamian investigation and security professionals." *Id.*/¶¶5-6. DiPaolo mentions several times that there were other "investigators" involved, but fails to identify them, where they are from, or activities in which they were involved. *Id.*/¶¶6,106. Without discovery, only members of the enterprise know that information. DiPaolo concludes his affidavit by stating: "Payments have been made to Bullard and Davilma which reflected [ ] the value of the hard evidence and information provided to the investigators[,]" but the amount is not disclosed. *Id.*/¶160.

On March 23, 2016, a second affidavit signed by DiPaolo was filed in Mr. Bacon's Bahamas litigation. D.E.44-5. That affidavit attempted to address Bullard's and Davilma's recantations, which had been filed in Mr. Bacon's case. *Id.*/1,2. DiPaolo began his second affidavit by stating that he is "of Fort Lauderdale, Florida," and he signed it in Miami, Florida. *Id.*/1,16.

Defendants are not parties to Mr. Bacon's Bahamas case, neither are Nygård, Inc. nor Nygård Int'l. D.E.31-1/1.

V. THE INFLUENCED STATEMENTS ARE USED TO INJURE PLAINTIFFS IN THEIR BUSINESS AND PROPERTY IN THE U.S.

Almost immediately after Defendants and other members of the RICO enterprise purchased statements from Bullard and Davilma through transfers of money from the U.S., the statements were used to injure Plaintiffs in the U.S. D.E.22/12. For example, the initial meetings with Bullard and Davilma took place in late-February 2015. *Id.* On March 3, 2015, Mr. Bacon amended his New York defamation case against Plaintiffs here to allege that Mr. Nygård was willing to use violence against Mr. Bacon and those associated with him – allegations based on Bullard's and Davilma's late-February 2015 statements. *Id.* Similarly, shortly after obtaining the influenced statements, articles began to appear in the press in the U.S. in which those statements were recited. *Id.*/12-13. It appears Defendants and/or other members of the RICO enterprise were feeding the influenced statements to the press with the intent to injure Plaintiffs in the U.S. *See id.*

The purpose of the RICO enterprise began to take hold shortly after Defendants and other members of the RICO enterprise started using the influenced statements. D.E.22/12-13. Plaintiffs began to incur substantial costs in litigation brought by Mr. Bacon and lost several business relationships. *Id.* In late-2015, a banking institution with which Plaintiffs had a long-standing relationship renewed

Plaintiffs' credit facility. *Id.* On March 14, 2016 (just days after the statements were filed in Mr. Bacon's Bahamas Case), that banking institution emailed Plaintiffs regarding the "serious allegations" in the Bahamas case and attached an article from the internet (which was available in the U.S.) discussing several of the statements obtained by Defendants. *Id.* Plaintiffs directed that banking institution to a press release issued in the U.S. that was intended to combat the derogatory statements. *Id.* Nevertheless, roughly two months later, that institution terminated its nearly 20-year relationship with Plaintiffs. *Id.* Funds from that financing were used in the U.S. *Id.* Plaintiffs also lost long-standing accounts and the expansion of business into the U.S. as a result of the litigation in which the statements were used and the negative publicity obtained by the RICO enterprise. *Id.*[8]

COURSE OF PROCEEDINGS AND DISPOSITION BELOW

I. PLAINTIFFS' COMPLAINT SETS FORTH A RICO ENTERPRISE CENTERED IN THE U.S., CONDUCT IN THE U.S., VIOLATIONS OF U.S. AND NEW YORK LAWS, AND DAMAGES IN THE U.S.

On February 27, 2017, Plaintiffs filed their First Amended Verified Complaint, D.E.22 ("Complaint"), which set forth the facts regarding the RICO

[8] On March 29, 2016, Mr. Nygård responded to Mr. Bacon's Bahamas case by filing suit against Mr. Bacon and others, alleging that the plaintiffs in Mr. Bacon's Bahamas case had abused the judicial process by publishing through that case false and libelous materials. D.E.31-4. Defendants are not named as parties in Mr. Nygård's suit, neither are Nygård, Inc. nor Nygård Int'l. *Id.*

enterprise and Defendants' participation therein, as well as claims for RICO violations and a conspiracy. Plaintiffs' Complaint also provided details regarding Defendants' predicate acts in violation of New York Penal Law § 215.00, through the influencing of and attempts to influence witnesses and potential witnesses in litigation against Plaintiffs, and their violations of 18 U.S.C. §§ 1956(a)(2)(A) and (c)(7)(B)(vi), through transfers of money from New York to the Bahamas and potentially other places outside the U.S. in furtherance of their unlawful conduct. *Id.*/3-12. In addition, Plaintiffs' Complaint set forth the damages Plaintiffs suffered in the U.S. *Id.*/12-13.

II. THE PARTIES' INITIAL DISCLOSURES

In early-March 2017, the parties exchanged Initial Disclosures. D.E.42-1; D.E.42-2. Based on the information known to Plaintiffs at the time, their Initial Disclosures listed 26 individuals or entities likely to have discoverable information, of which 11 had U.S. addresses, including:

- Mr. Bacon, the mastermind and financier of the RICO enterprise;
- Mr. Bacon's New York attorneys, who were involved in the negotiation and transfer from the U.S. of millions of dollars spent in furtherance of the RICO enterprise; and
- Defendants and several other investigators, who are also apparently involved in the RICO enterprise.

D.E.42-1/1-7. Given the dearth of information available to Plaintiffs, their Disclosures also listed 11 individuals for whom Plaintiffs do not know current addresses. *Id.* Plaintiffs believe several of those individual currently reside in the U.S., including Ms. Cummings (*see* D.E.22/11), but discovery is required to locate their addresses. The remaining individuals listed in Plaintiffs' Disclosures consist of Plaintiffs, one of which is a U.S. citizen, and an individual associated with Plaintiffs (Leo Thurston). *Id.* Thus, at least 12, and likely more, potential witnesses listed in Plaintiffs' Disclosures are U.S. citizens or residents, including the leader of the RICO enterprise and key participants therein.

Defendants began their Initial Disclosures by telegraphing their forthcoming *forum non conveniens* motion. D.E.42-2/1-2 (stating Defendants intended to file "motions to dismiss" and that "[o]ther than certain parties to this action and Ms. Scandariato, none of the individuals listed below resides in the [U.S.] or is otherwise subject to the Court's jurisdiction"). Ms. Scandariato is apparently a court reporter working for Prestige Reporting Services, Inc., who, at least recorded the statements taken in Miami Springs. D.E.31-3/45,61,89,101 (certificates from Ms. Scandariato). Defendants listed 20 individuals or entities divided under the headings "Parties to this Action," "Parties to the Bahamian Lawsuits," and "Other Individuals." *Id.*/2-6. Conspicuous for their absence are, among other key individuals and entities, Mr. Bacon – a party to the Bahamian cases and certainly

an individual with relevant knowledge, as he heads and finances the RICO enterprise – and his New York law firm – with which Defendants negotiated the "exorbitant" payments for influenced statements. *Id.*

III. DEFENDANTS' *FORUM NON CONVENIENS* MOTION

On April 7, 2017, Defendants filed a Motion to Dismiss for *Forum Non Conveniens* ("*Forum* Motion"), D.E.38, to which they attached over 800 pages of documents, D.E.37.[9] Plaintiffs' Response explained, among numerous arguments, that given the nature of the RICO enterprise and the issues raised by Defendants' motion, discovery was crucial to determine the extent and location of the actions of Defendants and others engaged in the enterprise.[10] D.E.44/n.3,n.9,13,n.16,16,17.

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[9] Defendants simultaneously filed a Motion to Stay Discovery. D.E.39. Because Defendants on the same day filed their Motion to Stay and *Forum* Motion, which attached over 800 pages of documents, including a declaration regarding Bahamian law, and the time to respond fell over two religious holidays, Plaintiffs requested an unopposed ten-day extension of time to respond to the *Forum* Motion (Plaintiffs responded to the Motion to Stay in the time allotted under the Local Rules). D.E.40. The District Court found that a ten day extension was "lengthy" and gave Plaintiffs only five additional days to respond to the two motions, which required analysis of hundreds of pages, extensive research, and attempting to consult foreign counsel. D.E.41. Defendants had apparently been working on their *Forum* Motion for roughly two months or more. *See* D.E.21/3n.2.

[10] In prior motions to dismiss, Defendants attached and relied upon hundreds of pages raising numerous factual issues (D.E.21; D.E.31), while at the same seeking to prevent Plaintiffs from obtaining any discovery. Plaintiffs explained the inequity of Defendants' position and the need for discovery to develop an adequate record, especially considering that the vast majority of the relevant evidence is in the possession of Defendants and third-parties associated with the RICO enterprise.

(footnote continued on next page)

IV. THE DISTRICT COURT'S DISMISSAL ORDER

On May 23, 2017, without an evidentiary hearing, the benefit of any discovery, or oral argument, the District Court entered its Order on Motion to Dismiss (the "Order"), granting Defendants' *Forum* Motion. D.E.47. The District Court essentially adopted all Defendants' arguments, including several based on indisputable misstatements of fact and law, while ignoring many pertinent facts, Plaintiffs' Complaint, and applicable law. *Id.* The District Court ordered this case closed. *Id.*/25. On June 20, 2017, Plaintiffs filed their Notice of Appeal. D.E.48.

STANDARD OF REVIEW

A district court's *forum non conveniens* determination is reviewed for an abuse of discretion, and its "[f]actual determinations are reviewed for clear error." *SME Racks, Inc. v. Sistemas Mecanicos Para Electronica, S.A.*, 382 F.3d 1097, 1100 (11th Cir. 2004); *Leon v. Millon Air, Inc.*, 251 F.3d 1305, 1310 (11th Cir. 2001) (citing *Szumlicz v. Norwegian Am. Line, Inc.*, 698 F.2d 1192, 1196 (11th Cir. 1983)); *Tazoe v. Airbus S.A.S.*, 631 F.3d 1321, 1330 (11th Cir. 2011). A district court abuses its discretion when it "fail[s] to apply the strong presumption that a

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D.E.25/4,7; D.E.34/4n.1,6,12,8n.10,16,18n.16,20; D.E.42/7,12,18. To obtain vital information, Plaintiffs served Defendants with discovery aimed at the issues raised by the Complaint and Defendants' arguments, to which Defendants largely failed to respond, D.E.42/7, but, before Plaintiffs could move to compel, the District Court dismissed this matter, D.E.47.

United States citizen will not be ousted from the courts of this country," "'does not weigh the relative advantages of the respective forums but considers only the disadvantages of one,'" or otherwise "applies the wrong legal standard." *SME Racks*, 382 F.3d at 1100 (quoting *La Seguridad v. Transytur Line*, 707 F.2d 1304, 1307 (11th Cir. 1983)); *Kostelac v. Allianz Global Corp. & Specialty AG*, 517 F. App'x 670, 673 (11th Cir. 2013). In short, a "district court by definition abuses its discretion when it makes an error of law." *Prophet v. Int'l Lifestyles, Inc.*, 447 F. App'x 121, 123-24 (11th Cir. 2011) (internal citations omitted).

SUMMARY OF THE ARGUMENT

It is true that Mr. Nygård and Mr. Bacon are on opposing sides of litigation in the Bahamas. Although many of Defendants' statements about that litigation in their unsworn papers are inaccurate, the more important point is that those disputes are, at most, a backdrop for this federal action filed in Fort Lauderdale, Florida.

Defendants are not parties to any action in the Bahamas and nothing decided in any Bahamas litigation will bind them. Nygård, Inc. is a Delaware corporation with New York headquarters and, thus, a U.S. citizen. Nygård, Inc. also has no action pending in the Bahamas, and it, along with the other Plaintiffs, sued Defendants in their hometown, in their federal district, and in the state where they are licensed investigators. Nygård, Inc. and the other Plaintiffs alleged in their verified complaint that Defendants committed RICO violations, including bribery,

to obtain false and influenced statements that have been publicized to the world. Nygård, Inc. and the other Plaintiffs have been damaged as a result of that conduct.

Defendants are engaging in a massive bribery scheme involving millions of dollars from the U.S., in which they attempt and sometimes succeed in obtaining statements accusing Plaintiffs of some of the worst imaginable conduct. Some of Defendants' illegal activity occurred in their home-district, where Plaintiffs chose to sue them. Nevertheless, Plaintiffs were deprived of their chosen forum without a hearing, much less an evidentiary hearing.

Given these and other facts discussed below, errors abound in the District Court's Order. To begin, the District Court made numerous findings that are belied by the undisputed facts and its own contrary findings. No less than twice, the District Court accurately stated that Plaintiff Nygård, Inc. is a U.S. citizen, but then inaccurately found that none of the Plaintiffs is a U.S. citizen. Likewise, the District Court discussed two cases pending in the Bahamas, in which neither Nygård, Inc., Nygård Int'l, nor Defendants are parties, but then found that all Plaintiffs and Defendants are parties to those cases. Similarly, after discussing the New York defamation case brought by Mr. Bacon against Plaintiffs here, the District Court concluded that Mr. Bacon was the defendant and Plaintiffs here brought the defamation suit. In addition, the District Court largely ignored the

Complaint and Plaintiffs' theory of the case; instead, it chose to accept Defendants' version of the facts and theory of the case.

Using those faulty premises as the foundation for its analysis, the District Court engaged in a series of legal errors. Chief among those errors is the District Court's refusal to provide Nygård, Inc.'s (a U.S. citizen) choice of forum the "strong presumption" of convenience to which it is entitled and failure to afford any of the Plaintiffs a proper level of deference. In the same vein, the District Court failed to hold Defendants to their burden of presenting "positive evidence of unusually extreme circumstances" showing that "material injustice is manifest" from litigating in Plaintiff's chosen forum, or any lesser burden, given that the District Court nowhere mentions such burdens and weighed in Defendants' favor factors they did not even argue. The District Court also failed to delineate the issues raised by Plaintiffs' claims or develop an adequate record regarding any of the issues presented. Rather, the District Court simply accepted Defendants' alternative factual narrative, while rejecting Plaintiffs' allegations and theory and denying Plaintiffs an opportunity to take discovery regarding the issues raised.

These errors pervade the District Court's Order, infecting its analysis of every factor it considered. As a result, the District Court relied on inaccurate facts, considered irrelevant issues, and disregarded applicable law in finding that the scales tipped in favor of dismissal. When the actual facts, relevant issues, and

pertinent law are considered, the only reasonable conclusion is that this case, which involves a U.S. Plaintiff, U.S. Defendants, significant conduct in the U.S., key evidence in the U.S., and was brought in the U.S. Defendants' home-district alleging claims under U.S. law and damages in the U.S., belongs in a U.S. court.

ARGUMENT AND CITATIONS TO AUTHORITY

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY FAILING TO GIVE PLAINTIFFS' FORUM CHOICE A "STRONG PRESUMPTION" OF CONVENIENCE OR DEFERENCE AND FAILING TO HOLD DEFENDANTS TO THEIR BURDEN

A plaintiff's "choice of forum should rarely be disturbed 'unless the balance [of the private interests] is strongly in favor of the defendant.'" *SME Racks*, 382 F.3d at 1101 (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)). "This presumption in favor of the plaintiffs' initial forum choice in balancing the private interests is at its strongest when the plaintiffs are citizens, residents, or corporations of this country." *Id.*; *Wilson v. Island Seas Invs., Ltd.*, 590 F.3d 1264, 1269 (11th Cir. 2009); *Esfeld v. Costa Crociere, S.p.A.*, 289 F.3d 1300, 1311 (11th Cir. 2002) (citing *Koster v. (American) Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 524 (1947)).

For *forum non conveniens* purposes, "[w]hen a United States citizen sues in a United States District Court, he is suing in his home forum." *Kostelac v. Allianz Global Corp. & Specialty AG*, 517 F. App'x 670, 673-74 (11th Cir. 2013); *Reid-Walen v. Hansen*, 933 F.2d 1390, 1394 (8th Cir. 1991). Thus, a citizen of Virginia

bringing suit in a Florida federal district court is entitled to a "strong presumption" in favor of its chosen forum even though not a citizen of that district. *Id.*; *Prophet*, 447 F. App'x at 125 (finding *forum non conveniens* dismissal improper because district court did not apply proper deference owed to residents of Pennsylvania suing in Southern District of Florida). Even a foreign plaintiff's choice of forum is entitled to deference. *Wilson*, 590 F.3d at 1269; *Kostelac*, 517 F. App'x at 673-74.

A defendant seeking to oust a U.S. plaintiff from a U.S. court bears an extraordinary burden:

> [I]n this Circuit we have long mandated that district courts require positive evidence of unusually extreme circumstances, and should be thoroughly convinced that material injustice is manifest before exercising any such discretion as may exist to deny a United States citizen access to the courts of this country.

SME Racks, 382 F.3d at 1101 (quoting *La Seguridad*, 707 F.2d at 1308 n.7 (internal quotation marks omitted)). And, even in cases involving only foreign plaintiffs, a defendant shoulders a heavy burden to show inconvenience of the chosen forum. *Wilson*, 590 F.3d at 1269 (quoting *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430 (2007)).

Also, as in this case, when a defendant is sued in its home-district, courts should be skeptical of a *forum non conveniens* motion and should "weigh strongly against dismissal" the fact that a defendant is seeking to transfer a case from a presumably convenient forum to a foreign country. *Frederiksson v. HR Textron*,

Inc., 484 F. App'x 610, 612 (2d Cir. 2012); *Reid-Walen*, 933 F.2d at 1395; *Peregrine Myanmar Ltd. v. Segal*, 89 F.3d 41, 46 (2d Cir. 1996) ("the court starts with a presumption in favor of the plaintiff's choice of forum, especially if the defendant resides in the chosen forum"). Further, when a plaintiff's forum choice is motivated by practical concerns, such as obtaining jurisdiction over a defendant, more weight should be given to that choice. *Iragorri v. United Techs. Corp.*, 274 F.3d 65, 73 (2d Cir. 2001).

Failing to use these standards is an abuse of discretion, and simply referencing them without actually applying them is insufficient. *SME Racks*, 382 F.3d at 1102 (finding clear abuse of discretion because, while "district court referenced the presumption in favor of plaintiffs' choice of forum in the introductory portion of its discussion, the district court failed to articulate the relevant standards and failed to apply any presumption in its analysis"); *Kostelac*, 517 F. App'x at 673-74 (finding district court abused its discretion in failing to apply strong presumption in favor of U.S. plaintiff's choice of forum where plaintiff was not resident of forum state); *Tyco Fire & Sec., LLC v. Alcocer*, 218 F. App'x 860, 866 (11th Cir. 2007) ("the failure to account for this presumption when balancing the private interest is an abuse of discretion"); *McLane v. Los Suenos Marriott Ocean & Golf Resort*, 476 F. App'x 831, 833-34, n.2 (11th Cir. 2012) (finding abuse of discretion in *forum non conveniens* dismissal because "nowhere

did the district court point to 'unusually extreme circumstances' or manifest extreme injustice that would merit denying a U.S. citizen access to U.S. courts" and referencing presumption in favor of plaintiff's forum choice without applying it was "not sufficient") (quoting *SME Racks*, 382 F.3d at 1101).

Here, the District Court failed to apply any of these basic standards. **First**, Plaintiff Nygård, Inc. is a U.S. citizen. *Supra*/4. Despite recognizing that fact multiple times, the District Court concluded that all Plaintiffs were foreign, apparently based on the fact that none was a Florida citizen or resident. D.E.47/2,12-13,13n.6. The District Court also subsequently concluded, incorrectly, that none of the Plaintiffs is a U.S. citizen or resident. *Id.*/22. As a result, the District Court applied little to no deference to Plaintiffs' forum choice and certainly not the "strong presumption" required. Further, the District Court mentioned that even if it had applied "substantial deference" (still arguably the wrong standard), it would reach the same conclusion. *Id.*/13n.6. That is insufficient, as the proper presumption and deference must be considered and applied in the actual calculus. That did not happen here. Moreover, the District Court did not weigh the fact that Plaintiffs filed suit in the Southern District because that is Defendants' home-district or question in the least that Defendants were seeking to transfer this case from their home-district to a foreign country. *See* D.E.47. Both these facts should have added weight to Plaintiffs' choice of forum.

Second, the District Court failed to hold Defendants to their burden. Nowhere does the District Court mention "positive evidence of unusually extreme circumstances," nor did it find that "material injustice [was] manifest." *See* D.E.47. There is also no reasonable basis to conclude that the District Court applied such standards without noting them, given that it actually weighed in Defendants' favor factors they had not even argued – cost of attendance of witnesses and view of premises. *Infra*/43-45. Instead, the District Court essentially shifted the burden to Plaintiffs to present evidence supporting their forum choice despite the presumption and deference of convenience weighing in their favor and, many times, in the absence of argument or evidence from Defendants. This was an abuse of discretion. *See La Seguridad*, 707 F.2d at 1306-09 (finding that district court erred in *forum non conveniens* analysis by accepting without evidence statements of defendant's counsel); *see also Zelaya v. De Zelaya*, 250 F. App'x 943, 947-48 (11th Cir. 2007) (same); *Bacon v. Liberty Mut. Ins. Co.*, 575 F.3d 781, 784-85 (8th Cir. 2009) (finding that district court erred by "absolving [the defendant] of its burden of persuasion" in the *forum non conveniens* analysis and requiring the plaintiff "to justify" his forum choice); *Adelson v. Hananel*, 510 F.3d 43, 54 (1st Cir. 2007) (reversing *forum non conveniens* dismissal because "the court erroneously lowered the defendant's burden of proving that the balance of factors justified dismissal of a suit from a

U.S. plaintiff's choice of home forum."); *Rivendell Forest Prods., Ltd. v. Canadian Pac. Ltd.*, 2 F.3d 990, 993 (10th Cir. 1993) (finding district court erred by weighing in defendant's favor factors for which defendant provided no evidence); *Neelon v. Bhart*, 596 F. App'x 532, 534 (9th Cir. 2014) (same); *Prophet*, 447 F. App'x at 125 ("The district court must apply that strong presumption when weighing the private interests, must require the defendants to present "positive evidence of unusually extreme circumstances," and must be "thoroughly convinced that material injustice is manifest" to reach the conclusion the defendants' convenience overrides the plaintiffs' choice of forum.") (internal quotation marks and citation omitted).

It bears repeating that this case involves a U.S. Plaintiff, U.S. Defendants, material conduct in the U.S., was brought in Defendants' home-district under U.S. and New York law, and damages were incurred in the U.S. As a sister-Circuit found, such facts alone are sufficient to affirm denial of a *forum non conveniens* motion, despite ties to a foreign jurisdiction:

> That some of the evidence and witnesses are located in Saudi Arabia will certainly add to [the defendant's] expense and inconvenience in defending this suit. But the facts are insufficient to relegate an American plaintiff to a foreign court when American law, rather than foreign law, is applicable. Here a [U.S.] corporation seeks relief under the trademark and unfair competition laws of this country to enjoin unlawful acts committed here and abroad by another [U.S.] corporation. These facts alone convince us that the district court did not abuse its discretion when it denied the defendant's motion.

Am. Rice, Inc. v. Ark. Rice Growers Cooperative Ass'n, 701 F.2d 408, 417 (5th Cir. 1983). Here, the District Court ignored or misstated the same key facts that were compelling in *American Rice* and committed fundamental errors that have resulted in numerous reversals by this Court. For these reasons alone, the District Court's Order cannot stand.

II. THE DISTRICT COURT ABUSED ITS DISCRETION BY FAILING TO ACCEPT THE ALLEGATIONS OR THEORY OF THE COMPLAINT AND FAILING TO VIEW EVIDENCE AND DRAW INFERENCES IN PLAINTIFFS' FAVOR

When considering a *forum non conveniens* motion, a district court should "assume the truth of [a complaint's] allegations" and draw inferences and view evidence in a plaintiff's favor. *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 93 n.1 (2d Cir. 2000); *USHA (India), Ltd. v. Honeywell Int'l, Inc.*, 421 F.3d 129, 131 (2d Cir. 2005); *Carijano v. Occidental Petro. Corp.*, 643 F.3d 1216, 1222 (9th Cir. 2011); *Wagner v. Island Romance Holidays, Inc.*, 984 F. Supp. 2d 1310, 1312 (S.D. Fla. 2013); *OOO-RM Invest v. Net Element Int'l, Inc.*, 2014 WL 12613283, at *2-3 (S.D. Fla. Nov. 3, 2014); *Edge Sys. LLC v. Aguila*, 2015 WL 11233387, at *3 (S.D. Fla. June 3, 2015). The District Court here claimed that it would take facts from the Complaint and draw inferences and factual conflicts in Plaintiffs' favor. D.E.47/1. In a case like this, where there has been no discovery and much of the evidence is solely within the control of defendants and third-parties, such a

rule makes sense; otherwise, a plaintiff would be at a distinct disadvantage by being generally unable to rebut a defendant's self-serving evidence and arguments.

The District Court did not hold true to the rule or its word. The District Court accepted Defendants' mischaracterization of this case as concerning only statements made to a Bahamian court. D.E.47/2-3,6,13. Thus, the District Court ignored the allegations and theory of the Complaint and Plaintiffs' numerous explanations that this case is about much more than false statements in a single affidavit filed in the Bahamas. Indeed, the District Court did not even consider the allegations regarding Defendants' role in obtaining numerous influenced statements, including statements made in the Southern District of Florida, which were obtained through payments transferred from New York. As described below, the District Court then gave significant weight to Defendants' theory of the case and weighed Defendants' often inaccurate factual statements against Plaintiffs in its analysis.[11] This was error. *In re Air Crash at Taipei Taiwan Multidistrict Litig.*, 153 F. App'x 993, 995-96 (9th Cir. 2005) (finding, among other errors, that district court's misstatement of the plaintiffs' theory of the case "so affected the

[11] Similarly, the District Court did not accept the Complaint's allegations that the statements regarding murder-for-hire plots, fire bombings, and the like were false. Again, this case is much larger than the truth or falsity of statements submitted to a Bahamian court. Regardless, the District Court gave substantial weight to the veracity of the influenced statements.

court's balance of the private and public interest factors as to render that balance unreasonable"); *CTF Central Corp. v. Inter-Continental Hotels Corp.*, 71 F.3d 877, n.8 (5th Cir. 1995) (finding that "district court appeared to incorrectly place the burden of persuasion on [the plaintiff] rather than on the defendant-appellees" by paying "great tribute to the defendants' theory of the case . . . to the detriment of [the plaintiff's] theory of the case").

III. THE DISTRICT COURT FAILED TO DETERMINE THE KEY ISSUES IN THIS CASE, AND FAILED TO DEVELOP AN ADEQUATE RECORD REGARDING ANY OF THE ISSUES PRESENTED

In conducting a *forum non conveniens* analysis, a district court must delineate the issues raised based on the elements of the claims and defenses and develop an adequate record based on the pertinent issues; a district court cannot simply accept a defendants' version of the relevant issues and facts. *La Seguridad*, 707 F.2d at 1308-09; *Zelaya*, 250 F. App'x at 947-48; *Lacey v. Cessna Aircraft Co.*, 862 F.2d 38, 39 (3d Cir. 1988); *see Van Cauwenberghe v. Biard*, 486 U.S. 517, 528 (1988).

Here, the District Court ignored the elements of Plaintiffs' RICO claims and the underlying predicate acts, and thus, it did not delineate the pertinent issues in this case or develop an adequate record regarding any of the issues presented. The general issues relevant to Plaintiff's RICO claims are whether Defendants engaged in the conduct of a RICO enterprise through a pattern of racketeering activity,

including at least two predicate acts, and whether there was an agreement with the objective of the conspiracy or to commit predicate acts. *See Rajput v. City Trading, LLC*, 476 F. App'x 177, 180 (11th Cir. 2012); *Magnifico v. Villanueva*, 783 F. Supp. 2d 1217, 1226-27 (S.D. Fla. 2011) (citing *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985)).

Plaintiffs allege predicate acts under two statutes – New York Penal Law § 215.00 and 18 U.S.C. § 1956. D.E.22/5-6; D.E.44/16-18. Courts interpreting § 215.00 have explained:

> On its face, the statute requires just two elements of proof: the offer of a benefit to a witness and the agreement or understanding that the witness's testimony will be influenced by such benefit. *See People v. Shaffer*, … 515 N.Y.S.2d 470, 471 (1st Dep't 1987) ("All that is required for a bribery to be completed is the offer or agreement to confer a benefit upon the defendant's agreement or understanding that the witness' testimony will thereby be influenced."). "Understanding," as used in the statute, has long been construed as tantamount to the *defendant's* intent . . . and it is not necessary for conviction that the jury find that the bribe's intended recipient share that intent. ... The statute contains no requirement that the benefit actually be conferred or that the testimony actually be influenced.

United States v. Eisen, 974 F.2d 246, 255-56 (2d Cir. 1992) (certain citations omitted); *People v. Bell*, 535 N.E.2d 1294, 1300 (N.Y. 1989) ("If the evidence is sufficient to support a finding that defendant reasonably should have believed that the person would be a witness and that he intentionally attempted to influence the witness's testimony … the crime is complete.").

Thus, for purposes of § 215.00, the issues are whether ***Defendants*** should have believed that any of the individuals to whom they were offering exorbitant payments in exchange for statements would be a witness and whether ***Defendants*** intended to influence those individuals' testimony or induce them to avoid testifying. The focus of those issues is Defendants' beliefs and intentions, not filings in the Bahamas. *Eisen*, 974 F.2d at 256 ("The essence of bribery is the intent to influence improperly the conduct of another by bestowing a benefit ... as there is no requirement that the intended result be accomplished ... the District Judge properly refused to charge the jury that the fortuity that the testimony, as 'influenced,' turned out to be truthful would be a defense to the charge.").[12]

Likewise, to demonstrate Defendants' predicate acts under § 1956(a)(2)(A), Plaintiffs need show: (1) Defendants "knowingly transmitted or transferred monetary instruments or funds"; (2) "with the intent to promote the carrying on of specified unlawful activity"; and (3) "that the transmittal and transfer of funds was from a place in the United States to a place outside the United States[.]" *United States v. O'Connor*, 158 F. Supp. 2d 697, 725-26 (E.D.

[12] The *Eisen* court also noted that "[b]ecause the Judge's charge required the jury to find that the defendant believed that he was seeking to influence testimony in a false direction, we need not decide if section 215.00 extends to payments to influence a witness to testify truthfully," as the Government had argued. *Eisen*, 974 F.2d at 256 n.3.

Va. 2001); 18 U.S.C. § 1956(a)(2)(A); *United States v. Krasinski*, 545 F.3d 546, 549-50 (7th Cir. 2008); *United States v. King*, 2014 WL 12623415, at *5 (W.D. Okla. Dec. 1, 2014).

For purposes of § 1956(c)(7)(B)(vi), "specified unlawful activity" is "an offense with respect to which the United States would be obligated by a multinational treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States[.]" *United States v. Real Prop. Located at 9144 Burnett Road, SE, Yelm, Wa.*, 104 F. Supp. 3d 1187, 1190 (W.D. Wa. 2015). The multilateral treaty applicable here is the United Nations Convention Against Transnational Organized Crime (the "Convention"), which, in certain circumstances conditions extradition on the presence of "serious crimes" – defined as "conduct constituting an offense punishable by a maximum deprivation of liberty of at least four years[.]" Convention, Arts. 2, 5, 16, 23. Among other potentially applicable "serious crimes" committed by Defendants and other members of the RICO enterprise are organized crime and extortion, neither of which turns on statements made to a Bahamian court. *See* Penal Code (Amendment) Act, 2015, § 90B ("A person who – is a member of an organized criminal group ... commits an offence and is liable on conviction to . . . imprisonment for twenty years."); Penal Code, Chpt. 84, § 346

("Whoever extorts any property from any person by means of threats shall be liable for imprisonment for five years.").

Thus, this case involves much more than the filing of a single affidavit in the Bahamas. The District Court ignored these facts, and simply adopted Defendants' repeated misrepresentations of this case and the issues involved. As a result, the District Court ignored the location of evidence pertinent to Plaintiffs' claims and failed to provide an opportunity to develop a record regarding the critical facts (or even the facts Defendants claimed were pertinent), such as the Defendants' beliefs and intentions in paying and offering to pay millions of dollars to potential witnesses and witnesses, the facts surrounding the transfers of the funds used to make such payments, and Defendants' participation in the RICO enterprise. In fact, even though Plaintiffs had served Defendants with discovery on those very issues – a fact of which the District Court was aware – the District Court dismissed this action before discovery could be compelled. D.E.42/7. The District Court thus abused its discretion. *La Seguridad*, 707 F.2d at 1309 (stating that parties' "[d]iffering theories of recovery and defenses will make different facts relevant to liability; the court cannot determine where dispositive facts will be found until it ascertains which facts will be relevant to liability.").

IV. THE DISTRICT COURT MADE CLEAR FACTUAL ERRORS AND ABUSED ITS DISCRETION IN WEIGHING THE PRIVATE AND PUBLIC INTERESTS

A. The District Court Erred In Weighing The Private Interests

Pertinent private interest factors include: (1) "the relative ease of access to sources of proof"; (2) "access to willing and unwilling witnesses"; (3) "ability to compel testimony"; (4) "the possibility of view of the premises"; and (5) "enforceability of a judgment." *Wilson*, 590 F.3d at 1270 (citing *Gulf Oil*, 330 U.S. at 508). "[S]ome factors may not be relevant in the context of a particular case." *Van Cauwenberghe*, 486 U.S. at 528-29. In weighing the private interests, the District Court:

(1) Ignored the Complaint and Plaintiffs' theory of the case;

(2) Relied on inaccurate factual findings, including that none of the Plaintiffs is a U.S. citizen or resident and that Plaintiffs and Defendants are currently litigating in the Bahamas;

(3) Disregarded pertinent facts, such as the U.S. residence of key witnesses;

(4) Ignored applicable law, which, among other things, required consideration of the U.S. as whole, not just Florida; and

(5) Shifted the burden to Plaintiffs to prove the convenience of their chosen forum, going so far as to weigh in Defendants' favor factors they had not even argued.

Consequently, the District Court abused its discretion in concluding that the private interests weighed in favor of dismissal.

1. Ease of access to sources of proof

The District Court committed several errors in addressing this factor. **First,** the District Court found that the "gravamen of this case is whether false testimony has been offered ... in exchange for money in violation of the RICO Act." D.E.47/14. As explained, this case is much broader than the offering of false testimony, and the District Court's conclusion disregards the Complaint and the issues actually raised by Plaintiffs' RICO claims and theory of the case. *Supra*/29-35.

Second, based on its inaccurate statement of this case, the District Court determined, without analysis, that the key witnesses were Bullard, Davilma, Chea, Cummings, Storr, Clear, DiPaolo, Bacon, and members of Gibson Dunn, as well as Frederick Smith, Reverend Moss, and Neil Hartnell, dismissing as inconsequential all other witnesses listed in Plaintiffs' Initial Disclosures. D.E.47/16. The Court next found that "[v]irtually all of these witnesses are located in the Bahamas," stating that "Bullard, Davilma, Smith, Moss, and Hartnell are located in the

Bahamas; Bacon is in New York but is also in Bahamas, ... Chea, Cummings, Storre, and Cleare are unknown." *Id.* Neither Defendants nor the District Court explained why these witnesses were so important or to what they would potentially testify. In addition, as explained below, at least Ms. Cummings has apparently been moved to the U.S. by members of the RICO enterprise, *supra*/5, and Mr. Bacon has apparently left the Bahamas and may no longer own property there, *infra*/42n.17. As for Messrs. Moss and Hartnell, their status as plaintiffs or defendants in cases in the Bahamas is not central to the issues here, as there are no allegations that they attempted to influence any witnesses against Plaintiffs or were involved in transfers of money from a place in the U.S. And, Defendants made no argument that Mr. Hartnell[13] was a relevant witness here. *See* D.E.38.

More importantly, DiPaolo, other members of D&R, Mr. Bacon, and members of Gibson Dunn are the key participants (known to Plaintiffs at this time) in obtaining and attempting to obtain the influenced statements and in the transfers of money. Similarly, Jack Palladino, Sarah Ness, and agents of Palladino & Sutherland, who also apparently sought to influence potential witnesses, are

[13] Mr. Hartnell is a defendant in Mr. Nygård's Bahamas case. D.E.31-4/1.

located in California. D.E.42-1/1-7. Yet, the District Court gave little weight to those witnesses, all of whom are located in the U.S.[14]

Likewise, while not specifically addressing the issue, the District Court seems to suggest that the bulk of the relevant conduct took place in the Bahamas rather than the U.S. *See* D.E.47/15. This conclusion appears to be based on the District Court's decision to accept Defendants' theory of the case while disregarding Plaintiffs' theory and the Complaint. Thus, the District Court ignored that conduct occurred in the U.S., statements were taken in Florida, Defendants are domiciled in Florida, the numerous connections to New York, documents likely found in the U.S., and U.S. damages.

Third, the District Court found that the only relevant witnesses in Florida are Defendants, and thus, because pertinent evidence is in Bahamas or "well outside Florida, access to evidence weighs heavily in favor of dismissing[.]" D.E.47/17. The proper analysis weighs evidence in the U.S. as a whole against the potential alternate forum. *Wilson*, 590 F.3d at 1271; *Salebuild, Inc. v. Flexisales, Inc.*, 633 F. App'x 641, 643 (9th Cir. 2015). The District Court ignored that law,

[14] Even using the District Court's analysis, 4 of the 12 witnesses it found to be of vital importance are in the U.S. (including Ms. Cummings), meaning that 1/3 of those witnesses are in the U.S., and those U.S.-based witnesses are the most important – Defendants, Mr. Bacon, and the New York lawyers. D.E.47/16. In any event, even the District Court's flawed analysis demonstrates that "virtually all" of the key witnesses are not in the Bahamas. *Id.*/17.

focusing only on Florida, and completely disregarding witnesses in New York and California, as well as other potential witnesses in Florida, such as Ms. Cummings.

Fourth, the District Court was persuaded by its belief that Plaintiffs here filed suit against Mr. Bacon in New York and asserted "claims for defamation on grounds that Bacon, as well as other Bahamian environmental activists, made false statement concerning Nygård's and his agent's threats and violent behavior." D.E.47/14-15. That is inaccurate and irrelevant. Mr. Bacon brought suit in New York against Mr. Nygård, Nygård, Inc., and Nygård Int'l, and Mr. Bacon asserted claims for defamation, which the New York court found to be based on conduct taking place almost exclusively in the Bahamas. *Supra*/9n.6. Further, Mr. Bacon's New York case has nothing to do with access to sources of proof regarding the RICO violations alleged here.

2. Availability of compulsory process for unwilling witnesses

The District Court's analysis of this factor suffers from many of the same defects as its analysis of the access to proof factor. The District Court stated that "the vast majority of relevant witnesses in this action, including Bullard, Davilma, Frederick Smith, Reverend Moss and Neil Hartnell, are located in the Bahamas." D.E.47/17-18. As just discussed, at best, Bullard and Davilma are pertinent witnesses here, but it is unclear what information Messrs. Moss and Hartnell would have that is pertinent to the issues in this case. Further, Defendants did not even

attempt to explain whether Messrs. Smith and Moss (or Darville or Ferreira), who are aligned with Mr. Bacon, the leader of the RICO enterprise, would voluntarily appear or why tools such as videotaped depositions would not suffice.[15] *Bigio v. Coca-Cola Co.*, 448 F.3d 176, 179 (2d Cir. 2006) ("to the extent there are witnesses abroad who are beyond the court's subpoena power, their testimony can be provided by deposition taken pursuant to letters rogatory"); *Duha v. Agrium, Inc.*, 448 F.3d 867, 877 (6th Cir. 2006).[16]

The District Court also stated that "[o]ther undiscovered percipient witnesses to Nygard's and his agent's misconduct, as described in the allegedly fraudulent DiPaolo affidavit and other false statements offered in the New York and Bahamas Actions, are also likely to be in the Bahamas." D.E.47/18. Again, the District Court's conclusion is based on its improper acceptance, over the allegations of the

[15] Also, the District Court, while not reaching the issue, noted that its determination "is especially true if the Court accepts Defendants' representation that Bullard and Davilma have criminal histories which preclude them from entering the United States." D.E.47/18n.11. In so doing, the Court ignored that Bullard gave four statements in person in the Southern District and it engaged in pure speculation. D.E.44/14.

[16] Again, Defendants are not parties to any litigation in the Bahamas, and it is difficult to imagine how they could be inconvenienced by litigating in their home-district, especially considering that this suit focuses on conduct largely carried out in the U.S., including in their home-district. *See Peregrine Myanmar Ltd.*, 89 F.3d at 47 n.6 (finding a defendant's argument of inconvenience from litigating in her home-district of New York "spurious" "since her home is in New York and there is no indication that it is inconvenient for her to be in New York").

Complaint, of Defendants' mischaracterization of the issues here. And, the District Court ignored that, under its own rationale, undiscovered witnesses to the RICO violations are in the U.S., particularly given that Defendants reside here, Mr. Bacon runs the enterprise from New York, there are apparently other investigators in California doing exactly what Defendants are doing in Florida, and at least four (and potentially more) statements were taken in Florida. Consequently, the District Court weighed in Defendants' favor the existence of hypothetical witnesses, while disregarding relevant witnesses in the U.S. *See Duha*, 448 F.3d at 879 (finding error in district court's weighing of identified witnesses whose relevance was not established by any record evidence).[17]

In sum, the District Court ignored the critical issues and witnesses pertinent thereto, as well as the fact that Bahamian courts could not compel U.S. witnesses to appear in the Bahamas, instead focusing only the purported benefits of the Bahamas. This was error. *Zelaya*, 250 F. App'x at 947 ("The district court abused

[17] In addition, the District Court found that Bacon is "sometimes in the Bahamas" and Chea, Cummings, Storre, and Cleare, are in "unknown" locations. D.E.47/18. It is unclear what the District Court meant by stating that Mr. Bacon is "sometimes" in the Bahamas; he is a New York resident and runs the RICO enterprise from New York, and, according to Defendants, Mr. Bacon "le[ft] the Bahamas" and may no longer own property there. D.E.38/3. To boot, at least one of the women (Ms. Cummings) was apparently flown to California, was offered permanent residence in the U.S., and may have relocated to Miami, Florida, courtesy of members of the RICO enterprise. *See* D.E. 44/13.

its discretion [because]. . . . the order of the district court is devoid of any analysis of the relative advantages and disadvantages of the two fora. . . . The district court mentioned the deference owed to the plaintiff's choice of forum, but then considered only the advantages of a Nicaraguan forum. The district court failed to explain any relative advantages or disadvantages of an American forum."); *Wilson*, 590 F.3d at 1269, 1271 ("'[w]here [a district] court does not weigh the relative advantages of the respective forums but consider only the disadvantages of one, it has abused its discretion'" and for purposes of *forum non conveniens*, the proper forum to consider is the U.S. as a whole; it is improper to consider "just one judicial district") (citation omitted); *Del Monte Fresh Produce Co. v. Dole Foods Co., Inc.*, 136 F. Supp. 2d 1271, 1279 (S.D. Fla. 2001) ("By the same token, if suit is brought in Costa Rica … the parties will lack compulsory process over United States witnesses and evidence."). Further, without the benefit of discovery, it is possible that there are additional U.S. witnesses.

3. Cost of attendance of willing witnesses and possibility of viewing premises

Defendants made no argument regarding the cost of willing witnesses to travel to the Southern District or the purported importance of viewing any premises in the Bahamas. *See* D.E.38. As a result, there is no evidence in the record regarding the cost of witnesses to travel from the Bahamas, New York, California, or elsewhere, and there was no argument or evidence regarding any allegedly

relevant premises. These facts alone should have weighed against dismissal. *La Seguridad*, 707 F.2d at 1309 (explaining a defendant's burden on a *forum non conveniens* motion to present sufficient evidence on the relevant factors); *Lacey*, 862 F.2d at 45 (similar).

Nevertheless, the District Court weighed these factors in Defendants' favor. In so doing, the District Court found it "apparent that numerous witnesses would incur costs to travel from the Bahamas to Florida," while, "[i]n contrast, the majority of the key witnesses are already located in the Bahamas[.]" D.E.47/18. The District Court then stated that "both parties and third party witnesses would save considerable sums by obtaining testimony from willing witnesses in the Bahamas, rather than requiring these witnesses to travel to Florida." *Id.* The Court concluded that the cost "factor weighs heavily in favor of dismissal because Plaintiffs have not identified a single witness located in Florida besides those under Defendants' control[.]" *Id.*/19. Similarly, the District Court stated that "virtually all of the alleged libel or violent events, including threats and hate rallies, occurred in the Bahamas." *Id.* Thus, the Court found that "viewing the locations of any alleged violent assaults or rallies *could* be useful to the trier of fact and, in particular, to assist the trier of fact in assessing whether allegations of hate rallies and violent assaults carried out by Nygård or his agents are, in fact, true." *Id.*

In so finding, the Court again ignored Plaintiffs' theory of the case, did not consider the comparative costs of travel from New York or California to Miami versus the cost of travel from the Bahamas to South Florida, and essentially placed the burden on Plaintiffs to prove these factors without giving them an opportunity to address the issues. The District Court also again neglected to consider the U.S. as a whole, focusing only on Florida, and it did not weigh the purported value of viewing the premises in the U.S. where influenced statements were taken or from where bank transfers were made; the District Court only weighed the potential benefits of the proposed alternative forum. *Zelaya*, 250 F. App'x at 947. Further, it is hard to imagine how a view of any premises would be helpful, as this is not a tort case where the layout of a particular area may be relevant. In addition, the District Court appears to have weighed the same witnesses it considered under the compulsory process factor, thereby essentially finding that those witnesses are both unwilling and willing to appear in South Florida. That juxtaposition highlights the problems caused by Defendants' failure to meet their burden of demonstrating which witnesses were purportedly unwilling to appear voluntarily and the District Court's conclusory acceptance of Defendants' unsupported arguments.

4. Judicial economy

In weighing this factor, the District Court again relied on factual and legal errors. The District Court determined that "there are two active cases pending

between Plaintiffs and Defendants in the Bahamas." D.E.47/19,10,11.[18] Based on this, as well as the Court's acceptance of Defendants' mischaracterization of this lawsuit, the Court concluded that it would be "far more convenient for the parties to resolve all their claims in the Bahamas, especially since the parties could then attempt to consolidate [the so-called Harassment Action (Mr. Bacon's Bahamas case) and Conspiracy Action (Mr. Nygård's Bahamas case)] before the Bahamian court." *Id.*/19-20.

Neither Nygård, Inc., Nygård Int'l, nor Defendants are parties to either of the pending cases in the Bahamas. Further, while the existence of parallel litigation is not a relevant factor in the *forum non conveniens* analysis, the District Court improperly turned the *forum non conveniens* analysis into a determination of which "pending cases should go forward[, and, i]n so doing, the court erroneously lowered the defendant's burden of proving that the balance of factors justified dismissal of a suit from a U.S. plaintiff's choice of home forum." *Adelson*, 510 F.3d at 54; *Centcorp Invs., Ltd. v. Folgueira*, 2014 WL 12584298, at *4 (S.D. Fla. Sept. 4, 2014). Moreover, the District Court's view of this case is misguided, thereby resulting in the District Court drawing parallels that do not exist.

[18] In addition to this and other factual errors, the Court was under the impression that Clement Chea provided a statement; however, as explained below, Defendants solicited a statement from Mr. Chea in exchange for payment but he refused their offer. D.E.47/6-7, 15; D.E.44/6.

5. Potential for inconsistent rulings

The District Court determined that there is a risk of inconsistent rulings between it and the Bahamian court regarding the "veracity of the DiPaolo Affidavit and its exhibits." D.E.47/20. The District Court also stated that the existence of a request in the Bahamas to enjoin Mr. Nygård from pursuing this case weighed strongly in favor of dismissal. *Id.* The issues here are much broader than statements submitted to a Bahamian court. for an injunction against Mr. Nygård was filed after this case began and was apparently done as a litigation tactic. Under the District Court's rationale, the simple filing, however baseless, of a request to enjoin one of several plaintiffs could provide a basis to throw a U.S. plaintiff that would not be affected by such an injunction out of a U.S. court.[19]

6. Filing separate suit to domesticate foreign judgment

The District Court also found that obtaining a foreign judgment only to turn around and domesticate it in Florida favored dismissal, and that, in any event, the inconvenience to Plaintiffs would not be considered because the Bahamas "offers

[19] The District Court also stated, apparently based on Defendants' representations, that "the court in [Mr. Bacon's Bahamas case] will conduct a four-day evidentiary hearing to determine whether to grant an injunction in connection with the harassment claim." D.E.47/5. There is nothing in the record suggesting that the hearing lasted four days or that the Bahamian court addressed any issue relevant to this case. The District Court speculated on the length and substance of that hearing, and a record needs to be developed regarding the facts of that hearing.

redress for Plaintiffs' injuries and this redress will not be precluded by the possible inconvenience of domesticating any judgment." D.E.47/21. The District Court confused the issues of enforceability of a foreign judgment with the inconvenience of having to return to the U.S. to domesticate a foreign judgment. It is clearly inconvenient to sue Florida citizens in a foreign court based on conduct largely taken in Florida and elsewhere in the U.S. only to return to Florida and file suit to domesticate a foreign judgment. Further, the fact that the Bahamas may be an adequate alternative forum does not mean that a court can forgo considerations of convenience. *See SME Racks*, 382 F.3d at 1099-1100 (stating that adequate alternative forum existed but reversing for failure to apply proper standard of deference to plaintiff's choice of forum in weighing private interests).

7. The District Court's conclusion on private interests

The District Court concluded that it was affording Plaintiffs' choice of forum "some deference," but "on balance, the factors weigh heavily in favor of dismissal." D.E.47/21. Again, the District Court clearly did not provide "strong presumption" in Plaintiffs' favor and did not find that Defendants met their burden. In short, as shown above, the District Court made legal and/or factual errors in its analysis of each of the private interests, in many instances relying on demonstrably false factual findings and ignoring applicable legal standards. Stripped of those errors, each of the relevant factors should have weighed in Plaintiffs' favor, and, in

any event, were certainly not sufficiently weighty to overcome the presumption and deference owed to Plaintiffs' forum choice.

B. The District Court Erred In Weighing The Public Interests

Relevant public interests include: (1) "administrative congestion resulting from cases being tried at a site other than that of their origin"; (2) "the burden of jury duty on a community that has no relationship to the cause of action"; (3) the chosen forum's interest in the dispute"; (4) the alternative forum's interest in the dispute"; and (5) "the difficulties associated with applying foreign law." *Haddad v. RAV Bahamas, Ltd.*, 2008 WL 1017743, at *7 (S.D. Fla. Apr. 9, 2008). As it did in its private interests analysis, the District Court made several factual and legal errors in weighing the public interests, including:

(1) Ignoring Plaintiffs' theory of the case;

(2) Disregarding evidence showing that this case would be tried more quickly in the Southern District of Florida than in the Bahamas;

(3) Finding that Nygård, Inc. is not a U.S. citizen; and

(4) Overlooking the Florida and federal interests inherent in a case where there is a Florida Defendant, a U.S. Plaintiff, and substantial material conduct throughout the U.S. and Florida

As a result, the District Court found that the public interests weighed in favor of dismissal because this case is "quintessentially [a] Bahamian dispute involving

allegations of fraud committed in courts located in the Bahamas, based on testimony related to alleged defamation, violent assaults and death threats occurring in the Bahamas and, often times, against Bahamian citizens and residents." D.E.47/22. The District Court labored under a misapprehension of this case. This suit nowhere alleges fraud on a Bahamian court or defamation; it alleges a scheme by, among others, U.S. Defendants to influence witnesses to damage Plaintiffs in the U.S. and transfers of millions of dollars from the U.S.

1. Administrative difficulties

Stating that it "has one of the busiest dockets in the country," the District Court weighed this factor in favor of dismissal. D.E.47/22. In so doing, the District Court ignored that, based on the evidence before it, this case was scheduled to be tried more quickly than Defendants had argued a complex case in the Bahamas could be tried. *Compare* D.E.38 at 15 (Defendants claiming complex case could be tried in the Bahamas in 24 months); *with* D.E.44/17 (showing that this case was scheduled to be tried in 16 months). The District Court made no effort to weigh the relative docket congestion of the potential fora; it just concluded that it was busy, so the case should be tried elsewhere. This was error, especially considering the substantial nexus between this case and the Southern District. *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1337 (9th Cir. 1984) ("The real issue is not whether a dismissal will reduce a court's congestion but whether a

trial may be speedier in another court because of its less crowded docket. ... [I]t is unfair for a court to subject a United States corporation to the courts of another country merely because plaintiff's home country courts are congested.").

2. Local interests

The District Court began its analysis of the local interests by stating that "Plaintiffs in this action are not United States residents or citizens, so it need not afford great weight to the general interest in allowing United States citizens to bring suit in a United States court." D.E.47/22. The District Court also stated that "the allegedly fraudulent affidavits and statements at issue in this suit relate to threats, rallies, and other violent actions that occurred almost exclusively in the Bahamas[.]" *Id.* In addition, the District Court asserted that issues of international comity favor the Bahamas because this suit puts the Court in position to second guess the integrity of the Bahamas judicial system, and that "Florida's interest is minimal" because the "only apparent connection to Florida is that Defendants are residents of this state." *Id.*/22-23.

The District Court is patently wrong that Nygård, Inc. is not a U.S. citizen and contradicted itself in so finding. Also, there is no need for the District Court to second guess the Bahamas judicial system. In addition, the District Court again focuses only on Florida, as opposed to the U.S. as a whole. And, even assuming Florida was the only relevant place to consider, Florida is not only Defendants'

state of residence, several statements were taken here, it is likely that the conspiracy agreement originated here, payments may have been made here, and Defendants are licensed by the State. Indeed, considering these facts, the District Court's finding that "Florida's interest is minimal" is stunning. Similarly, much more conduct took place in the U.S. – the proper situs for consideration – including the transfers of money, negotiations, and apparently attempts to obtain additional influenced statements.

Thus, both Florida and the U.S. have strong interests here. *Zelaya*, 250 F. App'x at 947; *La Seguridad*, 707 F.2d at 1307; *Lacey*, 862 F.2d 38); *SME Racks, Inc.*, 382 F.3d at 1104 (there is a "'strong federal interest in making sure plaintiffs who are United States citizens generally get to choose an American court,'" as well as a "strong interest when its citizens are allegedly victims and the injury occurs on home soil" and a defendant's home-district has a strong interest in providing a remedy for injuries caused by its citizens) (citation omitted); *Del Monte Fresh Produce Co.*, 136 F. Supp. 2d at 1280 (finding that U.S. "has a strong interest in resolving this dispute because the parties are American corporations" and, while some relevant conduct occurred abroad, under the plaintiff's theory of the case, much of the relevant conduct took place in the U.S.); *see Sport Carriers, Inc. v. Ferro Corp.*¸ 79 F. App'x 336, 337 (9th Cir. 2003) ("[T]he fact that both of the

parties are United States corporations weighs in favor of a United Sates forum."); *Haddad*, 2008 WL 1017743, at *8; *Reid-Walen*, 933 F.2d at 1400.

3. Burdening citizens

The District Court found that "trial in this forum would unfairly burden jurors in the Southern District of Florida" because a "South Florida jury . . . would have little interest in this litigation, which concerns disputes between numerous individuals with connections to the Bahamas." D.E.47/24. The District Court again ignored that Defendants are residents of the Southern District and the conduct that took place in that District. Under such circumstances, a Florida jury clearly has an interest in addressing Defendants' wrongdoing. *Haddad*, 2008 WL 1017743, at *8. In contrast, the Bahamas has little interest in this matter, as Defendants apparently conducted only the February 19, 2015 meeting there and signed two affidavits (one of which was signed in Miami) that were filed there.[20]

4. The District Court's conclusion on public interests

The District Court concluded that the public interests favor dismissal, but it failed to mention Defendants' heavy burden. D.E.47/24. Given the District Court's reliance on improper factual findings and disregard of applicable legal

[20] The District Court also found that it would be required to apply "both United States and Bahamian law," but would not be required to resolve conflicts of law or apply complex issues of Bahamian law," so this factor weighed against dismissal. D.E.47/24.

tenets, it did not properly weigh the public interests, which, like the private interests should have weighed in Plaintiffs' favor.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court reverse the District Court's *forum non conveniens* dismissal with instructions to find that the United States is the proper forum for this matter, or, at the very least, instruct the District Court to allow discovery to develop an adequate record.

Respectfully submitted this 14th day of August, 2017.

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Dated: August 14, 2017

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August, 2017, I caused the foregoing to be electronically filed using the Court's CM/ECF system, which will electronically provide service on all counsel of record via Notice of Docket Activity generated by CM/ECF. I further certify that a copy of this brief was served via First-Class U.S. Mail on this same date upon:

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