No. 22-1472

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ASHLEY ALBERT; ASHLEY BAXTER; KARINA JAKEWAY; MELINDA JABBIE, on behalf of themselves and all others similarly situated,
Plaintiffs-Appellants,

v.

GLOBAL TEL*LINK CORP.; SECURUS TECHNOLOGIES, LLC; 3CINTERACTIVE CORP.,
Defendants-Appellees.

On Appeal from the United States District Court for the District of Maryland, Case No. 8:20-cv-01936-LKG
The Hon. Lydia Kay Griggsby

OPENING BRIEF OF PLAINTIFFS-APPELLANTS

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JURISDICTIONAL STATEMENT

The United States District Court for the District of Maryland ("District Court") had subject matter jurisdiction over the Racketeer Influenced and Corrupt Organizations Act ("RICO") claims of Appellants Ashley Albert, Ashley Baxter, Karina Jakeway and Melinda Jabbie ("Plaintiffs") against Appellees Global Tel*Link Corp. ("GTL"), Securus Technologies, LLC ("Securus"), and 3Cinteractive Corp. ("3CI") (collectively "Defendants") pursuant to 28 U.S.C. §§ 1331 and 1337 and 18 U.S.C. § 1964. The District Court has subject matter jurisdiction over Plaintiffs' Sherman Act claims against Defendants pursuant to 28 U.S.C. §§ 1331 and 1337 and 15 U.S.C. § 1. The District Court also has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2), because the Class on whose behalf Plaintiffs assert claims contains more than 100 persons, the aggregate amount in controversy exceeds $5,000,000, and at least one member of the Class is a citizen of a state different from a Defendant. This Court has jurisdiction under 28 U.S.C. § 1291 because Plaintiffs filed a notice of appeal on April 27, 2022 from the District Court's April 13, 2022 entry of final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

STATEMENT OF THE ISSUES

(1) Whether the District Court erred in dismissing Plaintiffs' RICO claims on the ground that their alleged injuries were derivative of harm suffered by

contracting governments, despite detailed allegations demonstrating otherwise, including how Plaintiffs purchased the products in question at inflated prices directly from Defendants and how contracting governments were injured only after Plaintiffs made such direct purchases.

(2) Whether the District Court erred in dismissing Plaintiffs' RICO claims on the ground that Plaintiffs' alleged injuries were too speculative, despite extensive allegations—including statements from Defendants' former executives—detailing how Defendants' misrepresentations inflated the prices Plaintiffs paid.

(3) Whether the District Court erred in denying Plaintiffs' motion to amend their complaint on the ground that the proposed amendment was "futile," even though the proposed amended complaint contained new allegations further demonstrating the direct and non-speculative nature of Plaintiffs' injuries.

(4) Whether the District Court erred in denying Plaintiffs' motion to amend their complaint on the ground that the amendment was unduly delayed and would prejudice Defendants, even though this was Plaintiffs' first proposed amendment, the motion was made promptly after the dismissal ruling and before discovery commenced, and Defendants did not claim prejudice in their briefing.

STATEMENT OF THE CASE

Defendants GTL and Securus are the dominant providers of telephone calling services for incarcerated individuals (inmate calling services, or "ICS") in the United

States. Four individual consumer Plaintiffs allege a scheme by Securus and GTL to charge consumers inflated prices for certain ICS products called "single calls" by (1) fixing the prices of single calls in violation of the Sherman Act and (2) lying to contracting governments about transaction fees paid to implement single calls in violation of RICO. Plaintiffs and other consumers purchased single calls at inflated prices directly from Defendants.

On June 29, 2020, Plaintiffs filed a 122-page complaint ("Complaint"), on behalf of themselves and nationwide classes of consumers, asserting claims under the Sherman Act and RICO against Securus, GTL, and a third company involved in implementing the scheme, 3CI. JA25-140. After Defendants moved to dismiss pursuant to Rule 12(b)(6), the District Court sustained the Sherman Act claim but granted Defendants' motion to dismiss the RICO claims on September 30, 2021.

In an analysis spanning a single paragraph and a footnote, the District Court held that Plaintiffs failed to demonstrate proximate causation under RICO because their injuries were "derivative" of injuries to contracting governments and overly speculative. JA163-164. The opinion did not meaningfully address Plaintiffs' causation allegations or the contrary RICO precedents cited in Plaintiffs' opposition brief.

Thirty days after this ruling, Plaintiffs sought leave to amend their complaint for the first time, to add allegations further illustrating the direct and non-speculative

nature of their RICO injuries. The District Court denied Plaintiffs' motion, concluding it would be "futile," that Plaintiffs had "unduly delayed" seeking amendment, and that the amendment would "prejudice" Defendants. JA415-417. However, the District Court granted Plaintiffs' alternative request for partial final judgment on the RICO claims pursuant to Rule 54(b) expressly "to allow for an immediate appeal." JA417-419. After acknowledging at oral argument that Plaintiffs had presented "valid and important legal arguments," the District Court stayed the case pending appeal "so that we can come back and then move forward with either RICO Act claims restored to the case or not." JA387-391.

Plaintiffs appeal both the dismissal of their RICO claims and the denial of their motion to amend.

I. Complaint and General Factual Background

The following summary is drawn only from factual allegations in the initial Complaint that are relevant to Plaintiffs' RICO claims on appeal. The summary does not address the allegations underpinning Plaintiffs' surviving antitrust claim. Nor does the summary describe misrepresentations made by Defendants directly to *consumers* because Plaintiffs do not appeal the District Court's holding that such misrepresentations were insufficient to state a claim for lack of materiality and reliance. *See* JA164-165.

A. The ICS Industry

To place phone calls from correctional facilities, inmates must use special inmate calling services. JA27. Inmates cannot choose their ICS provider. JA37. Instead, each local and state government that operates correctional facilities negotiates and enters into an exclusive contract with a single ICS provider. JA37-38.

ICS contracts identify the rates that consumers must pay ICS providers to receive ICS calls. JA38. The contracts also often promise contracting governments a percentage of the revenue—called a "site commission"—that is collected by the ICS provider from each ICS call. JA38. Site commissions average about 50%. JA38.

During the decade preceding the filing of the Complaint, Securus and GTL dominated the ICS market. They provided approximately 80% of all ICS calls in the United States. JA39.

B. Defendants' Single Call Products

Most collect calls made by inmates charge consumers a per-minute rate. JA39. Before receiving such calls, the recipient establishes an account with the ICS provider, which permits the recipient to receive multiple calls from the inmate over time. JA39. In 2017, the average cost of a per-minute collect call from a state prison that lasted a total of 15 minutes was approximately $1.87. JA39.

In 2010, Securus launched a new kind of collect call for inmates: the "single call." JA28. To accept a single call, the call recipient did not need to establish an account and did not pay a per-minute rate. JA28. Instead, Securus charged those call recipients a steep flat price, regardless of the call's duration. JA28.

Securus offered two single call products: PayNow, which charged $14.99 to the recipient's credit card for a call lasting up to 15 minutes, and Text2Connect, which charged $9.99 to the recipient's mobile phone account for a call lasting up to 10 minutes. JA28.

Securus paid much lower site commissions on single calls than on traditional collect calls. JA28. Securus paid site commissions of only $1.60 from each $14.99 PayNow call (i.e., 11%) and only $0.30 from each $9.99 Text2Connect call (i.e., 3%). JA28.

In early 2013, GTL introduced its own single call products. Rather than compete on price with Securus, GTL offered identical single call products at identical prices. GTL marketed Collect2Card, which charged $14.99 to the recipient's credit card for a call lasting up to 15 minutes, and Collect2Phone, which charged $9.99 to the recipient's mobile phone account for a call lasting up to 10 minutes. JA30, JA48-51. And GTL paid contracting governments the same site commissions as Securus from each $14.99 and $9.99 call.

Securus and GTL charged consumers directly for single call products and only paid site commissions to contracting governments after receiving payment from consumers. *See* JA27, JA28, JA38, JA41, JA48-57. When Securus and GTL paid site commissions to contracting governments, those payments were made from the monies that Securus and GTL had collected from consumers. JA27, JA28, JA38, JA41, JA48-57.

Both Securus and GTL contracted with 3CI, a payment processor, to facilitate implementation of their single call products. JA42-43, JA48. 3CI offered Securus's and GTL's single call products to recipients through automated phone systems and also processed the $14.99 and $9.99 charges. JA42-43, JA48-53. In exchange for these services, 3CI was paid a transaction fee from each single call. JA43, JA67.

C. Defendants Misrepresented the Transaction Fees Associated with Their Single Call Products

To justify charging consumers excessive single call prices, Defendants routinely made misrepresentations to contracting governments about the magnitude of transaction fees. JA31, JA66-79. Specifically, Defendants falsely represented to contracting governments that *most* of the revenue from each single call went to pay necessary transaction fees to 3CI. JA31, JA66-79. In actuality, the transaction fees paid by Securus and GTL comprised *less than half* of the $14.99 or $9.99 charged. JA31, JA68-69.

For example, both Securus and GTL repeatedly asserted that $13.19 of the $14.99 charged for each PayNow and Collect2Card call was paid to 3CI as a required transaction fee. JA70-71, JA77-78. In reality, Securus and GTL only paid a $4.35 transaction fee from each PayNow or Collect2Card call—*less than one-third* the amount that Securus and GTL claimed to pay. JA68, JA79.

Defendants made these misrepresentations to contracting governments in multiple ways:

- During negotiations over ICS contracts with contracting governments, Securus and GTL executives routinely asserted that *most* of the charges for single calls comprised necessary transaction fees paid to 3CI. JA71-74, JA96-97, JA106, JA115-118, JA124-127.
- These ICS contracts misrepresented and/or omitted both how much would actually be paid from single calls to 3CI and how much Securus and GTL would actually receive from such calls in revenue. JA74-75, JA96, JA106, JA115-118, JA124-127.
- In monthly commission reports provided to contracting governments, Securus and GTL misrepresented and/or omitted both the true value of the transaction fees paid to 3CI and the actual revenue that Securus and GTL retained from single calls. JA75-77.
- The public websites for Securus's PayNow and GTL's Collect2Card both falsely state that each single call charging $14.99 involves a "Transaction Fee" of $13.19 and a "Call Fee" of $1.80. JA77-79.

D. Defendants' Misrepresentations to Contracting Governments Harmed Consumers

Most contracting governments raised significant concerns about Defendants' exorbitant single call prices during ICS contract negotiations. A former Securus

executive, who was personally involved in negotiating ICS contracts, explained that "the vast majority of governments that contracted with Securus raised concerns about the high prices charged to consumers for Securus's single calls and specifically wanted to know why those particular calls were so expensive and how the revenues from those single calls were allocated." JA73. Similarly, a former GTL executive explained that "many county and other local governments raised concerns with Securus and GTL about the high price of single calls." JA73.

Two former Securus executives and a former GTL employee asserted that Defendants systematically made misrepresentations about transaction fees in direct response to concerns expressed by contracting governments about the high prices. JA71-73. A former Securus executive explained that "if a contracting government raised concerns about the cost of" single calls, his sales team "would falsely inform the contracting government" that the "vast majority" of the $14.99 and $9.99 charged to consumers "was necessarily paid to a third-party vendor (i.e. 3CI) to cover transaction fees." JA72. A former GTL employee explained that to persuade contracting governments to accept inflated single call prices, "GTL informed governments that the high price of single calls was not the result of those companies collecting substantial profit from single calls but rather a direct consequence of sizable transaction fees that were an unavoidable part of the cost of implementing those calls." JA73.

As a former Securus executive put it, these misrepresentations "were effective in persuading" governments to accept the inflated single call prices. JA73. The former Securus executive explained that "in response to the substantial pushback from contracting governments regarding the price of" single calls, "the company's salesforce successfully relied on misrepresentations regarding the enormity of unavoidable transaction fees . . . to counter such concerns and persuade governments to ultimately accept the single call rates." JA73.

Indeed, a former GTL manager explained that, had contracting governments learned "that the actual value of transaction fees paid to a third-party vendor to implement single calls was less than half of the price charged to consumers for those single calls," then "the majority of those governments would have insisted on lowering the price of single calls to consumers." JA82. A former Securus executive similarly asserted that had contracting governments been informed of the true value of the transaction fees, those governments "would have insisted" on "lowering the price of single calls to consumers." JA82.

Because Defendants' single call products were nationwide programs that charged uniform rates across the country, pressure from multiple contracting governments opposing excessive single call prices would have caused Securus and GTL to make nationwide reductions to those prices. JA82.

II. Defendants' Motion to Dismiss

Plaintiffs' case was initially assigned to the Honorable Paul W. Grimm. On September 18, 2020, Defendants filed a pre-motion letter requesting permission to move to dismiss Plaintiffs' claims pursuant to Rule 12(b)(6). ECF No. 57. The four-page letter dedicated less than a page to the RICO claims. *Id.*

Shortly thereafter, the District Court held a telephone conference to discuss the planned motion. ECF No. 59. At that conference, for which no official transcript exists, the District Court asked Plaintiffs' counsel if they intended to amend their complaint in response to Defendants' pre-motion letter, and expressed a preference that Plaintiffs' counsel not seek an amendment immediately following the filing of Defendants' full motion. JA316. Plaintiffs responded that they did not intend to amend at that time. JA316. In a subsequent joint stipulation so-ordered by Judge Grimm, Plaintiffs confirmed that they "have opted to not amend their complaint prior to the filing of Defendants' motion(s) to dismiss," but further "advise[d] without stipulation that they otherwise reserve all rights under Federal Rule of Civil Procedure 15" to amend their complaint. JA144.

Defendants filed their motion to dismiss in October 2020. In relevant part, Defendants argued that Plaintiffs' RICO claims, to the extent they were based on alleged misrepresentations to governments, failed because Plaintiffs' "alleged injuries derive entirely from supposed injuries to someone else—the various

governments that contracted directly with Securus and GTL—and thus are too indirect to establish proximate causation." ECF No. 72-1 at 25.

After Defendants' motion was fully briefed, the case was reassigned to the Honorable Lydia Kay Griggsby. On September 30, 2021, without hearing argument, Judge Griggsby denied Defendants' motion to dismiss with respect to Plaintiffs' Sherman Act claim but granted the motion with respect to their RICO claims. JA158-165. In a sparse opinion, the District Court concluded that Plaintiffs had not adequately alleged that Defendants' misrepresentations to contracting governments proximately caused Plaintiffs' injuries. JA163-164. The District Court held that Plaintiffs "allege injuries that are contingent on, or derivative of, harm suffered by a third party—namely, the contracting governments." JA163. Notably, the District Court did not identify which "harm suffered by . . . the contracting governments" Plaintiffs' injuries were "contingent on" or "derivative of." JA163. The Court also held that Plaintiffs "only speculate about what actions the contracting governments might have taken if defendants had not made the alleged misrepresentations and/or omissions." JA164. In reaching that conclusion, the opinion does not reference or analyze the Complaint's allegations concerning the effects of Defendants' misrepresentations on contracting governments.

III. Plaintiffs' Motion to Amend

Thirty days after the District Court's motion to dismiss ruling, Plaintiffs moved for leave to amend their Complaint to address the bases for the Court's dismissal of their RICO claims. ECF No. 103. Plaintiffs had not amended previously, nor had discovery commenced.[1] ECF No. 103-1.

The proposed amended complaint ("PAC") added allegations further clarifying that Plaintiffs' injuries were not "derivative" of harm suffered by contracting governments. Those new allegations include:

- Single call prices charged to consumers and site commission rates paid to contracting governments are independent of each other. JA192, JA237. Defendants' decisions regarding how much revenue collected from consumers should be allocated to contracting governments were separate and apart from those regarding how much to charge consumers in the first place. JA192, JA237.

- The injuries to consumers from inflated prices and the injuries to contracting governments from reduced commissions typically move in opposite directions. JA192, JA237-238. For example, if Securus had reduced the price of PayNow calls from $14.99 to $1.00, the injury to consumers would have been eliminated, meanwhile contracting governments would have suffered even greater injury due to even lower site commissions. JA192, JA237-238.

- Although contracting governments were separately harmed by Defendants' scheme, consumers were more directly harmed because site commission payments are contingent on consumers first purchasing single calls directly from Defendants. JA191-192, JA238.

[1] Plaintiffs had served a handful of document preservation subpoenas on third parties prior to the District Court's motion to dismiss ruling.

- Contracting governments lack standing under RICO to recover overcharges paid by consumers for single calls. JA177-178, JA239.

The PAC also addressed the District Court's conclusion that Plaintiffs' injuries are too speculative. *First*, the PAC attached sworn declarations from Brian Gunter, a former Securus executive, and Ron Meadows, a former GTL manager, that bolstered key allegations from the Complaint. JA300-311. While the Complaint had contained multiple statements from Gunter and Meadows, it had not identified these two witnesses by name or position.

In their declarations, Gunter and Meadows each describe their extensive experience negotiating ICS contracts on behalf of Securus and GTL. As Securus's Director of Sales, Gunter managed accounts with 650 contracting governments across 44 states, and he "personally negotiated ICS contracts with hundreds of" them. JA301. He was responsible for selling single call products to those governments and, in doing so, he personally made misrepresentations regarding transaction fees. JA301-304. Meadows, meanwhile, first served as Deputy Sheriff of Marion County, Indiana for 25 years, where he negotiated ICS contracts with Securus. JA308. He then joined GTL as a Product Manager, where he witnessed GTL's nationwide approach to negotiating single call prices with contracting governments. JA308-310.

Based on their extensive firsthand knowledge, both Gunter and Meadows attested that they were "confident" that the majority of contracting governments

"would have insisted on . . . lowering the price of single calls to consumers" had those governments known the true value of the transaction fees. JA234-235, JA304, JA310. Both Gunter and Meadows describe how contracting governments consistently expressed concerns over the high price of single calls, and that to neutralize these concerns, Securus and GTL asserted that the high prices were due to unavoidable transaction fees. JA184-185, JA224-226, JA303-304, JA309. According to Gunter and Meadows, these misrepresentations convinced the governments to include inflated single call pricing in their ICS contracts. JA225, JA234-235.

Second, the PAC contains new allegations showing that contracting governments were often *required* by statute or regulation to obtain the lowest possible prices for ICS calls. JA185-187. The PAC identifies six examples of such statutes and regulations. *See* JA185-186. New Mexico, for example, enacted legislation that requires the award of ICS contracts to the provider that can offer "the lowest cost of service to inmates or any person who pays for inmate telecommunication services." JA185-186.

Third, the PAC includes new statements from government officials and Defendants' competitors. Multiple local government officials—including a county contracts administrator, a sheriff's office technology lieutenant, a legislative aide, a buyer for a county procurement office, and the captain of a sheriff's office—

confirmed that contracting governments were concerned about the prices of single calls. JA177, JA235-236. And the CEO and President of a competitor to Defendants attested that contracting governments would insist on lower single call prices if informed that those prices substantially exceed costs. JA235.

In addition to seeking leave to amend, Plaintiffs' motion requested that, if the amendment was denied, the District Court enter partial final judgment on the RICO claims pursuant to Rule 54(b), or alternatively certify an interlocutory appeal. *See* ECF Nos. 103-1, 120. Following completion of the briefing, the District Court held oral argument.

On April 13, 2022, the District Court denied Plaintiffs leave to amend. JA415-417. The Court held that the proposed amendment would be "futile," that Plaintiffs had "unduly delayed" seeking amendment, and that the amendment would "prejudice" Defendants. JA415-417.

In deeming the proposed amendment "futile," the District Court's opinion states, with a "*see generally*" citation to the entire PAC, that "none of the new allegations that plaintiffs seek to add to the complaint alter the fact that plaintiffs' alleged injuries in this case appear to be contingent upon the harm allegedly suffered by the contracting governments." JA417. The Court again did not specify what "harm" to the governments Plaintiffs' injuries "appeared to be contingent upon."

In finding that Plaintiffs had "unduly delayed," the District Court noted that Plaintiffs "make this request more than one year after this case was filed," even while acknowledging that the motion was made only "30 days after the Court ruled on the defendants' Motion to Dismiss." JA416, JA383-384. The opinion failed to mention that this was Plaintiffs' first proposed amendment. While conceding that "some of the proposed amendments are based upon information recently acquired by plaintiffs," the District Court faulted Plaintiffs because "they have been in possession of other information that they now seek to add to the complaint since before the inception of this litigation," namely the Gunter and Meadows declarations. JA416. Moreover, even though discovery had not yet commenced, the District Court held that the proposed amendment would "prejudice[]" Defendants—an argument never advanced by Defendants themselves in their briefing. JA417.

SUMMARY OF ARGUMENT

I. The District Court's Order Dismissing Plaintiffs' RICO Claims Should Be Reversed

Contrary to the District Court's order on the motion to dismiss, Plaintiffs' injuries are neither derivative of any injuries to any governments, nor are Plaintiffs' injuries speculative. Additionally, no intervening cause severed the causal chain between Defendants' misrepresentations and Plaintiffs' injuries.

Not Derivative: Courts bar RICO damages that are purely "contingent on or derivative of harm suffered by a different party." *Slay's Restoration, LLC v. Wright*

Nat'l Flood Ins. Co., 884 F.3d 489, 494 (4th Cir. 2018). This test of "derivative" injury is narrow and literal: a "derivative victim" is a victim whose "injury was passed on by another party that had a more direct relationship with the defendant." *Trollinger v. Tyson Foods, Inc*., 370 F.3d 602, 615 (6th Cir. 2004). Here, Plaintiffs' harms could not possibly have been derivative of any harm to contracting governments for three reasons:

1. Plaintiffs have pled repeatedly—and Defendants have never disputed—that Plaintiffs purchased the overpriced single call products at issue *directly from the Defendants*. JA26-28, JA30-32, JA42-43, JA48-51, JA80. Indeed, the primary purpose of Defendants' misrepresentations to contracting governments was to allow Defendants to directly overcharge the Plaintiffs.

2. Plaintiffs' injuries cannot have been "passed on" by contracting governments because those governments were financially injured *after* Plaintiffs had been injured; contracting governments were paid lower site commission from monies that Defendants first collected from consumers from the sale of single calls. JA41, JA56.

3. The elimination of contracting governments' financial injuries—by, for example, substantially raising the site commission percentage—would have no impact on Plaintiffs' injuries, as Plaintiffs would still pay $14.99 or $9.99 per call. Plaintiffs' injuries cannot be derivative of contracting governments' injuries if

elimination of that governmental injury would have had no bearing on the harm to Plaintiffs.

The mere fact that contracting governments received Defendants' misrepresentations does not make Plaintiffs' injuries derivative. The civil RICO statute only recognizes injuries that are to a "business or property by reason of a violation of" 18 U.S.C. § 1964(c), and the mere act of being deceived does not constitute such an injury. Moreover, Supreme Court precedent establishes that a plaintiff "may recover through RICO whether or not it is the direct recipient of the false statements." *Bridge v. Phx. Bond & Indem. Co.*, 553 U.S. 639, 646 (2008).

Nor does the fact that contracting governments were separately injured (in the form of lower site commissions) mean Plaintiffs' injuries were derivative. A single RICO scheme can *directly* cause two different injuries to two different parties, both of which have standing to pursue their own RICO claims. Here, Plaintiffs and contracting governments were *both* directly injured by Defendants' scheme, and neither injury is derivative of the other. Indeed, except for consumers, no party has standing to bring RICO claims to recover damages stemming from the inflation of single call prices.

Not Speculative: Plaintiffs' causation allegations are not speculative. To plausibly allege proximate causation, Plaintiffs need not show that *every* defrauded contracting government would have insisted on lower single call prices in the

absence of Defendants' misrepresentations. Rather, because those prices were uniform nationwide, Plaintiffs need only plausibly allege that a "sufficient number of contracting governments" would have insisted on lower single call prices to compel Defendants to reduce them. JA81-82.

The Complaint amply meets that standard. The Complaint contains statements from former executives of Securus and GTL asserting that: the "vast majority" of contracting governments raised concerns about the high prices of single calls; Securus and GTL executives neutralized those concerns by significantly misrepresenting transaction fees; those misrepresentations "were effective in persuading" contracting governments to accept the $14.99 and $9.99 prices; and Defendants' single call prices would have been lower absent those misrepresentations. JA72-73, JA81-82.

The Complaint also describes how contracting governments negotiated rates for per-minute calls that were far cheaper than the price of Defendants' single calls. JA82. The reason for this significant price discrepancy is that contracting governments were not subjected to misrepresentations from Defendants about transactions fees when negotiating per-minute rates. Accordingly, had Defendants disclosed that, after the deduction of actual transaction fees, their single call prices remained substantially greater than the per-minute rate, "contracting governments would have required a reduction of those single call prices." JA82.

No Intervening Cause: Plaintiffs also refute Defendants' argument (not addressed by the District Court in the challenged Orders on appeal) that Defendants' persuasion of contracting governments to accept inflated single call prices somehow constituted an "intervening cause." In sustaining Plaintiffs' *antitrust* claim, the District Court correctly concluded that decisions by contracting governments to accept Defendants' overpriced single calls are not intervening causes. JA162. That holding applies with equal force to Plaintiffs' RICO claims. Contracting governments made those decisions in reliance on Defendants' misrepresentations, and those decisions were the intended and foreseeable consequences of those misrepresentations.

II. The District Court's Order Denying Plaintiffs' Motion to Amend Should Be Reversed

Federal Rule of Civil Procedure 15(a) provides that a "court should freely give leave when justice so requires." It is the Fourth Circuit's "policy to liberally allow amendment in keeping with the spirit of Federal Rule of Civil Procedure 15(a)." *Galustian v. Peter*, 591 F.3d 724, 729 (4th Cir. 2010). The Fourth Circuit has advised that courts should be "especially" inclined to grant leave to amend when it is the "first time" plaintiffs "have sought to amend their claim." *Scott v. Fam. Dollar Stores, Inc.*, 733 F.3d 105, 112 (4th Cir. 2013). "Leave to amend a pleading should be denied *only when* the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would

be futile." *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999) (citation omitted).

Under this liberal standard, the District Court should have allowed Plaintiffs' proposed amendment. The new allegations in the PAC address the concerns that the District Court raised in dismissing Plaintiffs' RICO claims. The PAC contains three additional categories of allegations supporting that proximate causation is not speculative:

1. The PAC attaches sworn declarations from two former executives of Defendants. In their declarations, these executives—who routinely negotiated contracts containing single call products with local governments—unequivocally swear that those governments would have lowered single call prices absent Defendants' misrepresentations.

2. The PAC contains new allegations showing that many state and local governments across the country have adopted statutes and regulations that *require* contracting governments to secure the lowest possible ICS prices.

3. The PAC includes new statements from multiple third-party witnesses—including the CEO and President of a competitor and five local government officials—indicating that contracting governments would have insisted on lower single call prices had those governments learned that those prices substantially exceeded actual costs. JA32, JA86-88.

Moreover, the PAC further clarifies that Plaintiffs' alleged injuries could not possibly be derivative of any economic injury to contracting governments, including by explaining how decisions regarding how much revenue collected from consumers should be allocated to contracting governments were separate and apart from those regarding how much to charge consumers in the first place. JA88. Indeed, faced with these new allegations in the PAC, Defendants abandoned the argument—which they made in their initial motion to dismiss—that Plaintiffs' alleged injury derived from a financial injury to contracting governments.

Finally, Plaintiffs' proposed amendment was not unduly delayed and would not have prejudiced Defendants. This was Plaintiffs' first and only request to amend the Complaint, and the request was timely—filed less than one month after the District Court's ruling on the motion to dismiss. And because discovery has not even begun, the proposed amendment could not have possibly prejudiced Defendants.

ARGUMENT

I. The District Court Erred in Dismissing Plaintiffs' RICO Claims

The District Court erred in holding that the Complaint fails to plausibly allege that the RICO scheme proximately caused Plaintiffs' injuries. The District Court ignored both the Complaint's detailed allegations and binding legal precedent in concluding that Plaintiffs (1) "allege injuries that are contingent on, or derivative of, harm suffered by a third party—namely, the contracting governments," JA163, and

(2) "only speculate about what actions the contracting governments might have taken if defendants had not made the alleged misrepresentations and/or omissions," JA164. In actuality, the Complaint plausibly alleges injuries to Plaintiffs that were directly caused by Defendants' misrepresentations and that are not speculative. Accordingly, the District Court's order granting Defendants' motion to dismiss Plaintiffs' RICO claims should be reversed.

A. The Legal Standards

"[T]he grant of a motion to dismiss for failure to state a claim" is reviewed "de novo" by the Fourth Circuit, "applying the same standards as the district court." *Fairfax v. CBS Corp.*, 2 F.4th 286, 291 (4th Cir. 2021) (citation omitted).

A complaint will survive a motion to dismiss as long as it contains facts sufficient to "nudge[]. . . claims across the line from conceivable to plausible." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007). A complaint can be plausible "even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" *Twombly*, 550 U.S. at 556 (citation omitted). Indeed, the Fourth Circuit has urged district courts to "be careful" at the motion to dismiss stage "not to subject the complaint's allegations to the familiar 'preponderance of the evidence' standard." *SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 425 (4th Cir. 2015). When assessing plausibility, courts "accept as

true all well-pled facts in the complaint and construe them in the light most favorable to [plaintiffs]." *Id.* at 422 (citation omitted).

B. Plaintiffs' Injuries Were Not Derivative

The District Court's holding that Plaintiffs' injuries were derivative is factually and legally incorrect. Plaintiffs' injuries were *directly* caused by Defendants' misrepresentations.

(1) Injuries Are Deemed Derivative Only When They Are "Passed On" by a More Direct Victim

RICO provides a private right of action to "[a]ny person injured in his business or property by reason of a violation" of RICO's substantive restrictions, 18 U.S.C. § 1964(c). While a "directly injured party should receive a complete recovery" under RICO, *Knight v. Knight*, No. 6:15-cv-1808, 2016 WL 4543227, at *6 (W.D. La. May 2, 2016), courts prevent recovery for RICO damages that are "derivative of harm suffered by a different party." *Slay's Restoration*, 884 F.3d at 494. A "derivative victim" is a victim "whose injuries are 'purely contingent on the harm suffered by 'direct victims.'" *Canyon Cnty. v. Syngenta Seeds, Inc.*, 519 F.3d 969, 981 (9th Cir. 2008) (citation omitted). In such cases, "the plaintiff lacks standing because the injury was passed on by another party that had a more direct relationship with the defendant." *Trollinger*, 370 F.3d at 615.

The Supreme Court has made clear that a plaintiff's injury is derivative only when a person *other than the plaintiff* was *directly* injured such that there would be

no injury to the plaintiff in the absence of the injury to that person. That principle was established in the seminal RICO case *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992). In that case, the complaint alleged that defendants "manipulated [the] stock of six companies . . . ; that the broker-dealers bought substantial amounts of the stock with their own funds; that the market's perception of the fraud in July 1981 sent the stocks plummeting; and that this decline caused the broker-dealers' financial difficulties resulting in their eventual liquidation." *Id.* at 262-63. The plaintiff in *Holmes* was not a broker-dealer that had purchased the manipulated stock—but rather an entity suing on behalf of the broker-dealers' customers who never purchased the stock and were only injured when the broker-dealers went bankrupt. *Id.* The Supreme Court held that proximate cause was *not* met under such circumstances: the broker dealers were the "directly injured victims," whereas the "nonpurchasing customers" were only "indirectly" harmed as they were injured "only insofar as the stock manipulation first injured the broker-dealers and left them without the wherewithal to pay customers' claims." *Id.* at 271.

In determining the scope of RICO standing, multiple courts have adopted the "indirect purchaser rule" employed in federal antitrust cases, which "authorizes suits by *direct* purchasers but bars suits by *indirect* purchasers," *Apple Inc. v. Pepper*, 139 S. Ct. 1514, 1520 (2019), who only suffered an injury because "direct purchasers had passed on illegal overcharges to them." *Kloth v. Microsoft Corp.*, 444 F.3d 312,

320 (4th Cir. 2006). Indeed, "the majority of federal courts to address the issue have applied the [indirect purchaser] rule to RICO claims." *In re Zantac (Ranitidine) Prods. Liab. Litig.*, 546 F. Supp. 3d 1216, 1223 (S.D. Fla. 2021); *see also Trollinger*, 370 F.3d at 616 ("While indirect purchasers lack standing under RICO and the antitrust laws to sue for overcharges passed on to them by middlemen, direct purchasers do have standing."); *NCNB Nat'l Bank of N.C. v. Tiller*, 814 F.2d 931, 937-38 (4th Cir. 1987) ("An indirectly injured party should look to the recovery of the directly injured party, not the wrongdoer for relief. This principle applies to RICO cases."), *overruled on other grounds by Busby v. Crown Supply, Inc.*, 896 F.2d 833, 841 (4th Cir. 1990). "Hence, the central and dispositive issue is whether plaintiffs are 'direct purchasers.' If so, they are entitled to pursue both their antitrust and RICO claims." *McCarthy v. Recordex Serv.*, 80 F.3d 842, 855 (3d Cir. 1996).

(2) Plaintiffs' Injuries Cannot Be Derivative of Any Harm to Contracting Governments

Here, Plaintiffs' injuries could not possibly have been derivative of any harm to contracting governments (or any other entity) for three distinct reasons.

First, Defendants injured Plaintiffs by *directly* overcharging them for single call products. JA26-28, JA30-32, JA42-43, JA48-51, JA80. Plaintiffs have pled repeatedly—and Defendants have never disputed—that Plaintiffs purchased single calls *directly from the Defendants.* JA26-28, JA31-32, JA80, JA84. In other words, Plaintiffs are "direct purchasers." Contracting governments, meanwhile, never

purchased single call products from the Defendants and never sold single call products to Plaintiffs or anyone else. Defendants made misrepresentations to contracting governments about single call prices so that those governments would allow *Defendants themselves to directly overcharge the Plaintiffs*.

Indeed, in sustaining Plaintiffs' antitrust claim, the District Court recognized that because Plaintiffs "paid Securus and GTL directly for these calls as the consumers of the ICS service," Plaintiffs "allege an injury in this case that is sufficiently direct." JA162. Under the Supreme Court's reasoning in *Holmes*, Plaintiffs' overpayments *cannot* be derivative of a harm to contracting governments because Plaintiffs were the "directly injured victims" of Defendants' RICO scheme to overcharge for single call products. *Holmes*, 503 U.S. at 262.

Second, any financial harm suffered by contracting governments as a result of Defendants' RICO scheme occurred *after* their scheme had already harmed Plaintiffs. The only financial harm that contracting governments suffered from Defendants' misrepresentations was reduced site commission payments. Plaintiffs' injuries could not have derived from reductions to those commission payments because site commissions were paid to contracting governments only *after* Plaintiffs had been overcharged. When paying site commissions, Defendants transmitted to contracting governments part of the $14.99 or $9.99 that had first been collected from consumers. JA41, JA56. Indeed, the Complaint defines a site commission

payment as a "specified percentage of revenue . . . that is earned from the ICS calls made from prisons or jails." JA172. If anything, the chronology establishes that the financial harm to contracting governments was contingent on Defendants first overcharging consumers for single call products.

Third, the alleged financial injuries to Plaintiffs and to contracting governments resulting from Defendants' RICO scheme were independent. In fact, those injuries were so distinct that they could move in *opposite* directions. If, for example, Defendants had increased site commissions to 100%, any financial harm to contracting governments would have been eliminated, as those governments would have collected *all* the revenue (*e.g.* $14.99 or $9.99) from each single call. But Plaintiffs' harm would have stayed the same: they still would have paid $14.99 or $9.99 for each single call. Plaintiffs' injuries cannot be derivative of contracting governments' injuries if elimination of the governments' injuries would have had no bearing on the harm to Plaintiffs.

The above three factors firmly establish that Plaintiffs were directly injured by Defendants' RICO scheme. Those factors also distinguish Plaintiffs' RICO claims from those alleged in cases relied on by the District Court and Defendants. The District Court, for example, relied solely on *Slay's Restoration* to conclude that Plaintiffs' allegations were "derivative" of contracting governments. JA163. In that case, a consulting firm made misrepresentations to an insurance processor, which

passed those misrepresentations on to an insurance company, which in turn made lower payments to a building owner, which resulted in lower payments to a general contractor, which in turn made lower payments to the plaintiff. 884 F.3d at 494. The Fourth Circuit appropriately found that the plaintiff's alleged injuries were "derivative" of more direct victims' harm. Unlike Plaintiffs in this case, the plaintiff in *Slay's Restoration* never transacted directly with the defendants; the plaintiff's injury postdated financial injuries to third parties; and had the injuries to those third parties never materialized, the plaintiff too would have been uninjured.

(3) No Other Party Has Standing to Recover for Plaintiffs' Injuries

In *Holmes*, the Supreme Court limited recovery under RICO to "direct" victims for several important policy reasons. Chief among them was that "directly injured victims can generally be counted on to vindicate the law as private attorneys general." *Holmes*, 503 U.S. at 269-70. The Supreme Court affirmed in *Bridge* v. *Phx. Bond Co*. that a plaintiff may appropriately recover for injuries under RICO when "no more immediate victim is better situated to sue." 553 U.S. at 658.

Other than Plaintiffs and other consumers, no party—including the contracting governments—has standing to bring RICO claims to recover damages stemming from the inflation of Defendants' single call prices. If Plaintiffs and other consumers are barred from recovery, no one will recover for their alleged injuries or

hold Defendants to account for their fraudulent price inflation. Such an outcome would contravene the Supreme Court's jurisprudence articulated in *Holmes*.

(4) Misrepresentations to Third Parties Can Directly Injure Plaintiffs

Unable to successfully identify a *financial* injury to contracting governments from which Plaintiffs' injuries derive, Defendants also argued that Plaintiffs' injuries are derivative of contracting governments' *abstract* injury of being lied to by Defendants. ECF No. 72 at 27 Specifically, Defendants argued that Plaintiffs' injuries were derivative of the fact that contracting governments received and were fraudulently induced by Defendants' misrepresentations. ECF No. 76 at 18. This argument contravenes established law in two critical ways.

First, being lied to in and of itself does not constitute a cognizable RICO injury. The civil RICO statute only recognizes injuries that are to a "business or property by reason of a violation of section 1962." 18 U.S.C. § 1964(c). Pleading an injury to a business or property "requires proof of concrete financial loss, and not mere injury to a valuable intangible property interest." *Borg v. Warren*, 545 F. Supp. 3d 291, 312 (E.D. Va. 2021). The mere act of being deceived or fraudulently induced does not amount to a "concrete financial loss" under RICO. *See, e.g.*, *Impress Commc'ns. v. Unumprovident Corp.*, 335 F. Supp. 2d 1053, 1065 (C.D. Cal. 2003) (alleging "fraudulent inducement . . . does not save them from the requirement to allege an injury cognizable under RICO").

Furthermore, the law is clear that plaintiffs may bring RICO claims based on misrepresentations *to entities other than the plaintiff*. The Supreme Court explicitly held in *Bridge* that an injured party "may recover through RICO whether or not it is the direct recipient of the false statements." 553 U.S. at 646. In that case, a county government was fraudulently induced into selling tax liens to the defendants. *Id.* at 658. The plaintiffs argued they were injured because the county government would have sold the same tax liens to them absent defendants' misrepresentations. Importantly, the plaintiffs never received any misrepresentations from the defendants. Nonetheless, the Supreme Court held that the plaintiffs' injury was "the direct result of [defendants'] fraud." *Id.* at 658. The Court explained that "first-party reliance" is *not* necessary to "ensure that there is a sufficiently direct relationship between the defendant's wrongful conduct and the plaintiff's injury to satisfy the proximate-cause principles articulated in *Holmes*." *Id.* at 657-58.

The Supreme Court in *Bridge* situated its holding within a "long line of cases in which courts have permitted a plaintiff directly injured by a fraudulent misrepresentation to recover even though it was a third party, and not the plaintiff, who relied on the defendant's misrepresentation." *Id.* at 656. Since *Bridge*, that line

of cases has grown longer still, including other RICO cases where the "third party" was a government entity.[2]

The alleged facts here are very similar to *Bridge*: local governments were fraudulently induced by Defendants into contracting with Defendants, and Defendants in turn injured Plaintiffs. In fact, in the instant case, the causal link between Plaintiffs' injuries and Defendants is *stronger* than in *Bridge*. The plaintiffs in *Bridge* never interacted with the defendants; their injury came when the county government sold liens to the defendants rather than to them. Here, Defendants directly overcharged Plaintiffs.

(5) A RICO Scheme May Directly Injure Multiple Parties

In their motion to dismiss, Defendants argued that Plaintiffs' injuries must necessarily be derivative because contracting governments were also financially injured in the form of lower site commissions. ECF No. 76 at 17-18. However, the mere fact that *both* Plaintiffs and contracting governments suffered financial injuries

[2] *See, e.g.*, *Carlin v. DairyAmerica, Inc.*, No. 1:09-cv-0430, 2016 WL 232315, at *12 (E.D. Cal. Jan. 19, 2016) (defendant's misrepresentations to a federal agency proximately caused the depression of plaintiffs' compensation); *Saint Luke's Health Network, Inc. v. Lancaster Gen. Hosp.*, 967 F.3d 295 (3d Cir. 2020) (defendant's false statements to state government proximately caused injury to plaintiff); *Harmoni Int'l Spice, Inc. v. Hume*, 914 F.3d 648, 652 (9th Cir. 2019) (defendant's sham-filings with a government agency proximately caused plaintiff's injury); *Nemet v. Volkswagen Grp. of Am., Inc.*, 349 F. Supp. 3d 881, 906 (N.D. Cal. 2018) (defendant's false statements to regulators proximately caused plaintiff's injuries).

due to Defendants' RICO scheme does *not* indicate that Plaintiffs' injuries are derivative of contracting governments' injuries.

The case law is clear that a single RICO scheme can cause two different injuries to two different parties. If one of those injuries is derivative of the other, then only the directly injured party has standing to file a RICO claim. But if *both* parties were directly injured (and thus neither injury is derivative), then *both parties* have standing to pursue their own RICO claims.

In *Harmoni International Spice, Inc. v. Hume*, for example, the Ninth Circuit held that defendants were wrong to "assume there can be only one direct victim entitled to recover damages under RICO." 914 F.3d 648, 652 (9th Cir. 2019). There, defendants filed a sham request for the Commerce Department to investigate the plaintiff. When the plaintiff filed a RICO claim, defendants argued that their misrepresentations had only directly injured the Commerce Department, not the plaintiff. The Ninth Circuit rejected that argument, holding that *both* the Commerce Department and the plaintiff were direct victims of the scheme and could bring their own claims: "Even if the Department of Commerce could have asserted its own RICO claim to recover the costs it incurred in conducting the [investigation], that would not preclude [the plaintiff] from recovering the costs *it* incurred as a direct result of the defendants' unlawful conduct." *Id.*

This Court reached a similar conclusion in *Mid Atlantic Telecom Inc. v. Long Distance Services, Inc.*, 18 F.3d 260 (4th Cir. 1994). The plaintiff telecom company complained that the defendant, a competing telecom company, lied to the plaintiff's customers about call prices to lure them away. *Id.* The Fourth Circuit found that *both* the plaintiff and the customers had suffered direct injuries, and *both* could bring suit. *Id.*; *see also Painters & Allied Trades Dist. Council 82 Health Care Fund v. Takeda Pharms. Co.*, 943 F.3d 1243, 1258 (9th Cir. 2019) ("the fact that individual patients and TPPs both suffered economic injuries from a drug manufacturer's fraudulent scheme does not mean that one group of plaintiffs should be favored to recover over the other"); *Empire Title Servs. v. Fifth Third Mortg. Co.*, No. 1:10-cv-2208, 2013 WL 1337629, at *13 (N.D. Ohio Mar. 29, 2013) ("the Court cannot reason that dismissal is required because there are allegedly two directly injured victims, and the Court is not aware of legal authority that would dictate it should do so.").

Here, Plaintiffs and contracting governments were *both* directly injured by Defendant's scheme, and neither of their injuries are derivative of the other. As in the *Harmoni* case, just because the contracting governments "could have asserted" their "own RICO claim to recover" site commission payments, "that would not preclude" Plaintiffs "from recovering" overcharges they paid "as a direct result of the defendants' unlawful conduct." *Harmoni*, 914 F.3d at 652.

C. Plaintiffs' Causation Allegations Are Not Speculative

In its motion to dismiss decision, the District Court stated in a footnote that "Plaintiffs only speculate about what actions the contracting governments might have taken if defendants had not made the alleged misrepresentations and/or omissions." JA164. This holding is wrong. The Complaint plausibly alleges how Plaintiffs were damaged by Defendants' misrepresentations with detailed and compelling allegations—including statements from Defendants' *own* former executives.

Plaintiffs' damages theory is straightforward: without Defendants' misrepresentations, enough governments would have demanded lower single call prices to force Defendants to reduce them.[3] The Complaint's well-supported allegations push this damages theory well past the line of plausibility. The Complaint includes statements from Defendants' former executives asserting that: most contracting governments raised concerns about high single call prices; Defendants made misrepresentations to counter those concerns; and Defendants'

[3] Plaintiffs' damages theory does *not* require that *every* contracting government defrauded by Defendants would have insisted on lower single call prices absent Defendants' misrepresentations. Plaintiffs plausibly plead that, because Defendants' single calls "are national programs with nationwide websites that charge uniform rates across the country, pressure from multiple state and local contracting governments opposing unjustified and excessive single call prices would have resulted in Securus and GTL making nationwide reductions to those prices." JA82.

misrepresentations convinced contracting governments to accept the inflated single call prices. JA73, JA81-82.

A former Securus executive, who negotiated ICS contracts with local governments, explained that "the vast majority of governments that contracted with Securus raised concerns about the high prices charged to consumers for Securus's single calls and specifically wanted to know why those particular calls were so expensive and how the revenues from those single calls were allocated." JA73. Similarly, a former GTL executive explained that "many county and other local governments raised concerns with Securus and GTL about the high price of single calls." JA73.

When a contracting government raised concerns about single call prices, the former Securus executive explained that his sales team "would falsely inform the contracting government" that the "vast majority" of the $14.99 and $9.99 charged to consumers "was necessarily paid" to 3CI "to cover transaction fees." JA72. The former GTL executive similarly explained that, to persuade contracting governments to accept single calls, "GTL informed governments that the high price of single calls was not the result of those companies collecting substantial profit from single calls but rather a direct consequence of sizable transaction fees that were an unavoidable part of the cost of implementing those calls." JA73.

The former Securus executive explained that "in response to the substantial pushback from contracting governments regarding the price of" single calls, the company "successfully" deployed "misrepresentations regarding the enormity" of transaction fees "to persuade governments to ultimately accept the single call rates." JA73. Had, instead, those contracting governments been informed of the true value of the transaction fees, the former Securus executive asserted that those governments "would have insisted" on "lowering the price of single calls to consumers." JA81-82. A former GTL executive also explained that had contracting governments learned "that the actual value of transaction fees paid to a third-party vendor" was "less than half of the price charged to consumers," then "the majority of those governments would have insisted on lowering the price of single calls to consumers." JA81-82.

The Complaint contains another set of allegations that support the plausibility of proximate cause: when contracting governments negotiated prices for ICS calls other than single call products, they secured rates that were far cheaper than Defendants' single call products. Each contracting government negotiated a per-minute rate with Securus and GTL that was a mere fraction of the price of their single call products. JA82. In 2017, for example, the average cost of a per-minute collect call from a state prison that lasted a total of 15 minutes was approximately $1.87—which is just 12% of the price for single calls charged by Defendants for the same

duration of time. JA39. The reason for this significant price discrepancy is that contracting governments were not subjected to misrepresentations from Defendants about transactions fees when negotiating per-minute rates. Accordingly, the Complaint plausibly alleges that if Defendants had disclosed that, after the deduction of actual transaction fees, their single call prices remained "substantially greater than the negotiated per-minute rate for calls," "contracting governments would have required a reduction of those single call prices." JA82.

Taken together, and construed in the light most favorable to Plaintiffs, the Complaint's allegations that Defendants' misrepresentations proximately caused Plaintiffs' injuries are plausible and not impermissibly speculative. Indeed, courts routinely deny motions to dismiss RICO claims in circumstances where plaintiffs have made causation allegations with far less support. *See, e.g.*, *Bridge*, 553 U.S. at 644 n.3 (sustaining RICO claim where plaintiffs merely alleged "the loss of property related to the liens they would have been able to acquire, and the profits flowing therefrom, had [defendants] not implemented their scheme"); *Safe Sts. All. v. Hickenlooper*, 859 F.3d 865, 881 (10th Cir. 2017) (reversing district court's grant of a motion to dismiss a RICO claim even though plaintiffs had "provide[d] no factual support" to "substantiate their inchoate concerns as to the diminution in value of their property"); *Astech-Marmon, Inc. v. Lenoci*, 349 F. Supp. 2d 265, 270-71 (D. Conn. 2004) (denying motion to dismiss RICO claim alleging that plaintiff was

injured when competing defendants bribed city officials to secure a contract even though the plaintiff "never submitted an actual bid, produced work plans, or took any threshold step to secure the City work at issue"); *In re Am. Honda Motor Co., Inc. Dealerships Rels. Litig.*, 941 F. Supp. 528, 542 (D. Md. 1996) (holding that although plaintiffs faced "daunting issue of proof" relating to causation, the case did not merit dismissal at the motion to dismiss stage).

Yet the District Court failed even to acknowledge Plaintiffs' causation allegations, let alone accept them as true. Instead, the District Court just asserted, without explanation, that "Plaintiffs only speculate" about what contracting governments would have done absent Defendants' misrepresentations. This is reversible error. *See Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1171 (9th Cir. 2002) ("[I]t is inappropriate at this [pleading] stage to substitute speculation for the complaint's allegations of causation."); *Mid Atl. Telecom*, 18 F.3d at 264 (holding that while plaintiff's causation allegations "are not established," they "are alleged in the complaint, and the plaintiff should have the opportunity to develop support for its claims through discovery").

In finding that Plaintiffs' causation allegations were speculative, the District Court cited to a single trial court decision: *Rojas v. Delta Airlines, Inc.*, 425 F. Supp. 3d 524 (D. Md. 2019). In that case, the plaintiffs were charged a Mexican tourism tax when they purchased airfare from the defendants even though the plaintiffs were

exempt from the tax. The court concluded that the plaintiffs' causation theory was speculative because it assumed the Mexican government would have "dismantled Defendants' alleged scheme" in the absence of defendants' misrepresentations. *Id.* at 542.

Rojas is distinguishable from this case in at least two critical respects. First, the *Rojas* plaintiffs, unlike Plaintiffs here, offered nothing to support their causation allegations: no statements from former employees, Mexican government officials, or any other witnesses, and no indication that the Mexican government ever planned to enforce the tax exemption. *See* Am. Compl., *Rojas*, No. 19-cv-00665 (D. Md. May 21, 2019), ECF No. 89. Second, in *Rojas*, the Mexican government had *already known* about the falsity of defendants' misrepresentations for *eight years* before the plaintiffs filed their complaint. Despite this knowledge, the Mexican government did *nothing*. *See* Mem. in Support of Mot. to Transfer or Dismiss at 27-28, *Rojas*, No. 19-cv-00665 (D. Md. June 7, 2019), ECF No. 94-1. Given that history, it was speculative for plaintiffs to allege, without any basis, that the Mexican government would suddenly change course after eight years of inaction. By sharp contrast, here, the Complaint details how contracting governments consistently raised concerns about single call prices and negotiated far cheaper per-minute rates, and it contains admissions from Defendants' former executives that, absent their own

misrepresentations, those governments would have successfully demanded lower prices. *See* JA39, JA71-72, JA82.

D. The Complaint Does Not Allege an Intervening Cause of Plaintiffs' Injuries

Though not credited by the District Court, Defendants argued below that the decisions of contracting governments are intervening causes that break the causal chain between Defendants' misrepresentations and Plaintiffs' injuries. ECF No. 72 at 26. This argument is without merit. In evaluating Plaintiffs' antitrust claim, the District Court correctly concluded that the contracting governments' decision to accept single calls is not an intervening cause because Plaintiffs are direct purchasers. JA162. Such logic extends to the RICO claims as well. This is particularly true given that contracting governments made those decisions in reliance on Defendants' misrepresentations and those decisions were reasonably foreseeable.

(1) The District Court's Proper Rejection of Intervening Causes Concerning the Antitrust Claim Applies to the RICO Claims

The Supreme Court has held that Congress intended for RICO to incorporate antitrust law's proximate cause standards. *Holmes*, 503 U.S. at 279 ("[T]he Court sensibly holds that the statutory words 'by reason of' operate, as they do in the antitrust laws"); *see also In re Am. Honda*, 941 F. Supp. at 537 n.5 (treating "standing analysis for both RICO and antitrust claims . . . the same" with respect to proximate causation). The Fourth Circuit explained that "because Congress had

modeled the § 1964(c) language after similar language in § 4 of the Clayton Act, it undoubtedly intended that § 1964(c) have the same 'judicial gloss' as had been read into § 4." *Slay's Restoration*, 884 F.3d at 493.

Accordingly, the District Court's decision as to whether an intervening cause precludes Plaintiffs' antitrust claim is highly instructive. In their motion to dismiss, Defendants argued that local governments' decisions to contract with Defendants were intervening causes of Plaintiffs' injuries. ECF No. 72 at 22. The District Court rightly rejected this argument, holding that the "decisions of the contracting governments to contract with Securus and GTL" were not "independent, intervening causes of [p]laintiffs' alleged injuries." JA162. The District Court explained: "While defendants correctly observe that the prices of ICS calls are dictated by the terms of the ICS contracts by and between either Securus or GTL and the contracting governments, plaintiffs also correctly observe that they paid Securus and GTL directly for these calls as the consumers of the ICS services." JA162. The same argument applies with equal force to Plaintiffs' RICO claims.

(2) Contracting Governments' Reliance on Defendants' Misrepresentations Precludes a Finding of Intervening Cause

The mere fact that contracting governments could exercise discretion during negotiations with Defendants does not, in and of itself, constitute an intervening cause. The material issue is *how* contracting governments exercised that discretion in response to Defendants' misrepresentations. The dispositive question is one of

reliance: if contracting governments *relied* on Defendants' misrepresentations to accept the inflated single calls prices, the contracting governments' discretion does not constitute an intervening cause.

Bridge articulates this rule. 553 U.S. at 658-59. In *Bridge*, the defendants' misrepresentations persuaded the county government to sell tax liens to the defendants instead of to their plaintiff competitor. *Id.* The Supreme Court held that the county government's decision-making was *not* an "intervening cause breaking the chain of causation" because the government "accepted petitioners' false attestations." *Id.* at 659. The Supreme Court acknowledged that the county government exercised discretion when responding to bids and that, in the absence of reliance, such discretion could have constituted an intervening cause. *Id*. The Court contemplated the possibility that: "if the county knew petitioners' attestations were false but nonetheless permitted them to participate in the auction," then "arguably the county's actions would constitute an intervening cause breaking the chain of causation between petitioners' misrepresentations and respondents' injury." *Id.* However, the Court concluded that because the county government *had* relied on the defendants' misrepresentations to accept their auction bids, the government's decision-making was not an intervening cause. *Id.*

Lower courts have likewise found that reliance is critical to determining whether a third party's decision-making constitutes an intervening cause. In *In re*

Neurontin Marketing & Sales Practices Litigation, for example, the plaintiff health insurers brought a RICO claim alleging that Pfizer fraudulently marketed the drug Neurontin to physicians to prescribe for off-label use, resulting in plaintiffs paying for excess purchases of the drug. 712 F.3d 21, 27 (1st Cir. 2013). Defendants argued that the physicians' discretion in prescribing Neurontin was an intervening cause that severed the causal chain. The First Circuit disagreed, declining to dismiss the RICO claim even though the physicians "exercise[d] independent medical judgment in making decisions about prescriptions." *Id.* at 39. A key basis for the ruling was Pfizer's "expectation that physicians would base their prescribing decisions in part on Pfizer's fraudulent marketing." *Id.*

The Fourth Circuit conformed to this standard in *Mid Atlantic Telecom*. In that case, the plaintiff telecom company alleged that the defendant, a competitor, lied to the plaintiff's customers about prices to entice them away. 18 F.3d at 263-64. The defendant argued that customers' decisions to switch telecom carriers constituted an intervening act. *Id.* But the Fourth Circuit rejected the argument because those customers' decisions were based on the defendant's fraudulent misrepresentations. *Id.*; *see also Empire Title Servs.*, 2013 WL 1337629, at *11 (holding that plaintiff "sufficiently alleged reliance on the part of the borrowers, and neither the borrowers nor the reliance breaks the causal chain").

Here, the Complaint alleges that contracting governments entirely relied on Defendants' misrepresentations to include their $14.99 and $9.99 single calls in ICS contracts. JA72-74, JA81-83. As detailed in section IV.C above, these allegations are more than plausible, supported by the first-hand knowledge of Defendants' own former executives.

(3) Plaintiffs' Injuries Were the Foreseeable Result of Defendants' Misrepresentations

An intervening cause in a RICO case is "a later cause of independent origin that was not foreseeable." *Painters*, 943 F.3d at 1257; *see also Mid Atl. Telecom.*, 18 F.3d at 263 (RICO proximate cause analysis depends on "the foreseeability that intervening events would cause injury to the plaintiff"); *Johnson v. Scott Cnty. Sch. Bd.*, No. 2:12-cv-00010, 2012 WL 4458150, at *5 (W.D. Va. July 31, 2012) ("A 'defendant will not be relieved of liability by an intervening cause that was reasonably foreseeable, even if the intervening force may have 'directly' caused the harm.'"); *In re Lupron Mktg. & Sales Pracs. Litig.*, 295 F. Supp. 2d 148, 175 (D. Mass. 2003) (intervening cause in a RICO case must be "unforeseeable and completely independent of any act undertaken by the original actor").

Contracting governments' decisions to accept Defendants' prices for single calls were the intended and foreseeable consequence of Defendants' misrepresentations. A former Securus executive explained that the company made misrepresentations regarding transaction fees "in response to the substantial

pushback from contracting governments regarding" single call prices and "to counter such concerns and persuade governments to ultimately accept" those prices. JA73. Similarly, a former GTL executive said such misrepresentations were made to "persuade" contracting "governments to accept single calls in ICS contracts." JA73. Accordingly, contracting governments' decisions to accept inflated single call prices in direct response to, and as foreseeable consequence of, Defendants' misrepresentations do not constitute an intervening cause.[4]

II. The District Court Erred in Denying Plaintiffs' Motion to Amend Their Complaint

The District Court's decision denying leave to amend the Complaint is reviewed for abuse of discretion. *Scott*, 733 F.3d at 112. "A district court abuses its discretion 'by resting its decision on a clearly erroneous finding of a material fact, or by misapprehending the law with respect to underlying issues in litigation.'" *Id.* (citation omitted). In denying leave to amend, the District Court here abused its discretion in both respects.

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[4] The Fourth Circuit recognized in *Slay's Restoration* that proximate cause "turns on the *directness* of the resultant harm, not the *foreseeability* of that harm." 884 F.3d at 493. Yet, while foreseeability of a *plaintiff's harm* alone may not be sufficient to establish proximate cause under RICO, foreseeability remains critical to assessing whether a *third party's conduct* constitutes an intervening cause. The Northern District of California explained that proximate cause under RICO incorporates the "direct injury requirement while leaving room for foreseeability to play a role in determining whether an intervening event severed the causal chain." *City & Cnty. of San Francisco v. Purdue Pharma L.P.*, 491 F. Supp. 3d 610, 654-55 (N.D. Cal. 2020).

Federal Rule of Civil Procedure 15(a) provides that a "court should freely give leave when justice so requires." It is the Fourth Circuit's "policy to liberally allow amendment in keeping with the spirit of Federal Rule of Civil Procedure 15(a)." *Galustian*, 591 F.3d at 729. "[D]ismissal under Rule 12(b)(6) generally is not final or on the merits and the court normally will give plaintiff leave to file an amended complaint." *Ostrzenski v. Seigel*, 177 F.3d 245, 252-53 (4th Cir. 1999). "The federal rule policy of deciding cases on the basis of the substantive rights involved rather than on technicalities requires that plaintiff be given every opportunity to cure a formal defect in his pleading." *Id.*

The Fourth Circuit has noted that courts should be "especially" inclined to grant leave to amend when it is the "first time" the plaintiffs "have sought to amend their complaint." *Scott*, 733 F.3d at 118. "[T]here is authority that a plaintiff should be given at least one opportunity to amend a complaint before a dismissal of the case with prejudice." *Harvey v. Cable News Network, Inc.*, 520 F. Supp. 3d 693, 725 (D. Md. 2021). "[L]eave to amend a pleading should be denied *only when* the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *Edwards*, 178 F.3d at 242.

Under this standard, the District Court should have permitted Plaintiffs' proposed amendment. It was Plaintiffs' first and only request to amend the

Complaint, and the request was timely—filed less than one month after the District Court's ruling on the motion to dismiss and before discovery had begun. Moreover, the proposed amendment is not futile. The new allegations and supporting sworn declarations contained in the PAC address the two concerns raised in the District Court's dismissal of Plaintiffs' RICO claims by more firmly establishing that Plaintiffs' injuries are neither derivative nor speculative.

A. Plaintiffs' Proposed Amendment Was Not Futile

To find a claim futile, the proposed amendment must be "clearly insufficient or frivolous on its face." *Sulton v. Baltimore Cnty.*, No. 18-cv-2864, 2021 WL 82925, at *2-3 (D. Md. Jan. 11, 2021) (citation omitted). This standard is "much less demanding" than the Rule 12(b)(6) standard. *Id*.

The Complaint pled a RICO claim sufficient to survive a motion to dismiss. The PAC, which contains the allegations in the Complaint as well as new allegations that bolster proximate cause, certainly alleges RICO claims that are not "clearly insufficient or frivolous on [their] face." *Id.*

(1) The PAC Further Shows That Proximate Cause Is Not Speculative

Although the Complaint provided more than enough detail to plausibly allege that Defendants' misrepresentations caused Plaintiffs' injuries, the PAC contains extensive *additional* allegations showing that proximate cause is not speculative. These new allegations fall into three categories:

First, the PAC attaches and incorporates sworn declarations from two former executives of Defendants: Brian Gunter, former Director of Sales at Securus, and Ron Meadows, former Product Manager at GTL. These declarations were quoted extensively in the Complaint. However, to shield those executives from potential harassment or reputational harm, Plaintiffs chose not to attach the sworn declarations to, or otherwise disclose the executives' identities in, the Complaint. Yet, following the District Court's dismissal of the RICO claims, Plaintiffs decided to include the declarations in the PAC because the declarants' identities and experiences bolster the weight of their statements.

As Securus's Director of Sales, Gunter's job was to bid for and negotiate contracts with local governments around the country. He managed accounts with 650 local governments across 44 states and "personally negotiated ICS contracts with hundreds of" them. JA301. He was responsible for selling single call products to those governments, and he frequently made the misrepresentations to contracting governments that are the basis of Plaintiffs' RICO claims. JA303-304. The other declarant, Meadows, has experience on both sides of the bargaining table. For 25 years, he served as Deputy Sheriff of Marion County, Indiana, where he negotiated contracts with Securus and raised concerns about single call prices during those negotiations; in response, Securus lied to him, claiming that the "high cost of the single calls was attributable to substantial transaction fees." JA309. Meadows then

worked as a Product Manager at GTL, where he gained insight into the company's nationwide approach to negotiating single calls prices with contracting governments. JA308-310.

Accordingly, Gunter and Meadows are both authorities on how negotiations with contracting governments worked and what those governments cared about. They each have firsthand knowledge of what was intended to happen—and what actually did happen—when Securus and GTL made misrepresentations to contracting governments concerning transaction fees associated with single call products. Based on that knowledge, both declarants swore that the vast majority of contracting governments raised significant concerns about the price of single calls during negotiations; that Securus and GTL neutralized those concerns by making misrepresentations regarding the amount of transaction fees; and that they were each "confident" that Defendants' single call prices would have been lower absent those misrepresentations. JA304, JA310.

Gunter, for example, swore that the "overwhelming majority" of the 650 contracting governments with whom he negotiated "expressed concern about the high prices" of Securus's single calls and that, in response, he personally made misrepresentations regarding transaction fees to those governments that "were effective in persuading" them to accept the inflated prices. JA303-304. Such allegations are not speculative; they reflect the personal knowledge of a highly

experienced eyewitness regarding the visible effects of *his own misrepresentations* on hundreds of contracting governments.

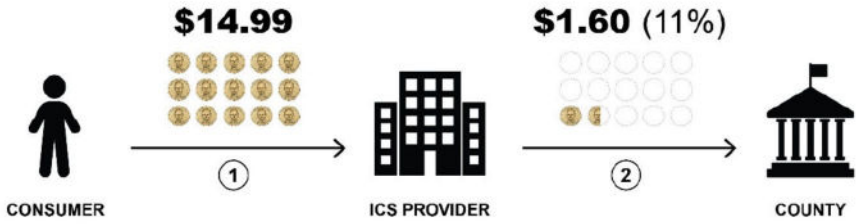
Second, the PAC contains additional allegations showing that state and local governments across the country have adopted statutes and regulations that *require* prices charged to consumers for ICS calls be as low as possible. The PAC specifically identifies six examples. *See* JA185-187. It is not speculative to allege that governments required to obtain the lowest possible ICS prices would have insisted on lowering the price of a single call that cost $14.99—more than *three times* its actual cost.

Third, the PAC includes new statements from contracting government officials and Defendants' competitors that support Plaintiffs' causation allegations. Both the CEO and President of a competitor, for example, related that contracting governments would have insisted on lower single call prices had those governments learned that the prices substantially exceeded the actual costs. JA177, JA235. And officials from *five* local governments emphasized that one of their top priorities was ensuring that ICS prices were as low as possible for consumers. JA235-236.

These new allegations in the PAC, along with the allegations retained from the Complaint, establish that Plaintiffs' causation allegations are concrete and plausible, not speculative.

(2) The PAC Further Demonstrates That Plaintiffs' Injuries Are Not Derivative

The PAC alleges, with further clarity, how Plaintiffs' injuries could not be derivative of economic injury to contracting governments. For example, the PAC alleges that overcharges to Plaintiffs were "independent" of reductions in commission payments to contracting governments. JA192. The PAC explains that the "decision by Securus and GTL regarding how much revenue collected from consumers should be allocated to contracting governments was made separate and apart from Securus and GTL's decision to first extract this excessive revenue from consumers." JA237. The PAC contains the following graphic to illustrate how overcharges to Plaintiffs were not derivative of reduced commission payments to contracting governments:



JA191.

The PAC also details how the injuries to Plaintiffs and the injuries to contracting governments typically moved in opposite directions. JA191-192, JA237-238. The PAC notes that if Defendants had reduced the price of their $14.99 and

$9.99 single calls to $1.00, then Plaintiffs' injuries would have been eliminated while contracting government would have suffered greater economic injuries. JA192-193.

Faced with these compelling new allegations, Defendants abandoned the argument—previously made in their motion to dismiss—that Plaintiffs' injuries economically derived from a *financial* harm to contracting governments. *See* ECF No. 108 at 13. In opposing Plaintiffs' motion to amend, Defendants conceded that the "alleged fraud caused the contracting governments different harm than that suffered by Plaintiffs" and that "the prices to be charged for calls . . . allegedly caused Plaintiffs' injuries." *Id.* at 12-13.

B. The District Court Erred in Finding That Plaintiffs Unduly Delayed Seeking Amendment

The District Court found that Plaintiffs had unduly delayed seeking amendment. JA415. The Court stated that this conclusion was based on the following factors: the proposed amendment came "more than one year after this case was filed"; Plaintiffs had obtained the Gunter and Meadows declarations "before the inception of this litigation"; and Plaintiffs could have sought to amend in response to Defendants' pre-motion letter or motion to dismiss. JA416. But none of these factors warrant denial of the motion to amend.

As a threshold matter, "[d]elay alone is an insufficient reason to deny leave to amend." *Edwards*, 178 F.3d at 242. "Rather, the delay must be accompanied by prejudice, bad faith, or futility." *Id.*

Moreover, Plaintiffs' requested amendment—their first request to amend—came immediately after and in response to the District Court's dismissal of their RICO claims and before discovery had commenced. Fourth Circuit precedent makes clear that an amendment in such circumstances is considered timely. *See Scott*, 733 F.3d at 118 (finding amendment timely three years after filing of initial complaint).

Nor was the amendment improper because a subset of the facts added to the PAC—namely the Gunter and Meadows declarations—were previously known to Plaintiffs. *See Atl. Bulk Carrier Corp. v. Milan Express Co.*, No. 3:10-cv-103, 2010 WL 2929612, at *4 n.4 (E.D. Va. July 23, 2010) (allowing amendment even though "the facts giving rise to" the amendment were known "months ago" and delay in seeking the amendment was "extensive and unexplained"). The decision to withhold the declarations from the Complaint was motivated by a desire to protect the whistleblowers' identities and shield them from potential harassment or retaliation. This legitimate motivation is the opposite of "undue" delay. *See In re Millennial Media, Inc. Sec. Litig.*, No. 14-cv-7923, 2015 WL 3443918, at *13 (S.D.N.Y. May 29, 2015) (acknowledging the "potential[]" for "significant adverse career or personal ramifications" for a witness upon the disclosure of their identity).

Moreover, as the District Court acknowledged, other additional allegations in the PAC were "based upon information recently acquired by plaintiffs" after and in response to the motion to dismiss ruling. JA416.

The District Court also erred in faulting Plaintiffs for not amending immediately in response to Defendants' pre-motion letter. Although the District Court recognized that "plaintiffs certainly had no obligation to amend the complaint before the Court resolved defendants' motion to dismiss," it held that "their decision not to seek to do so until after the parties and the Court have expended significant time and resources to resolve that motion weighs against allowing plaintiffs to amend their complaint at this time." JA416.

But this holding directly contravenes the Fourth Circuit's principle that "[a] dismissal under Rule 12(b)(6) generally is not final or on the merits and *the court normally will give plaintiff leave to file an amended complaint*." *Ostrzenski*, 177 F.3d at 252-53. Indeed, it is entirely proper to seek to add new allegations to address concerns identified by a court in a ruling on a Rule 12(b)(6) motion. *See Consumer Fin. Prot. Bureau v. Access Funding, LLC*, 281 F. Supp. 3d 601, 606-07 (D. Md. 2017) (following Rule 12(b)(6) dismissal, allowing amendment containing new factual allegations that "alter[ed] the court's analysis"). As the District of Maryland explained, courts should be particularly inclined to grant leave to amend *after* a motion to dismiss ruling because "this is the first time Plaintiffs have had the

opportunity to understand the Court's view of the" complaint's deficiencies. *Jien v. Perdue Farms, Inc.*, No. 1:19-cv-2521, 2020 WL 5544183, at *15 (D. Md. Sept. 16, 2020).

C. The District Court Erred in Finding That Amendment Would Prejudice Defendants

Finally, the District Court's finding that Defendants would be prejudiced by the amendment was also contrary to law. Prejudice is typically found only when "significant discovery" has already occurred, the case is close to trial, and the amendment would require new discovery. *Laber v. Harvey*, 438 F.3d 404, 427-28. Indeed, an amendment is not prejudicial "if it merely adds . . . to the facts already pled and is offered before any discovery has occurred." *Id.*

Here, no discovery had occurred, so there could have been no prejudice. Indeed, Defendants did not even argue they were prejudiced by Plaintiffs' proposed amendment in their briefing below. *See* ECF No. 108. And the type of "prejudice" cited by the District Court—"the lapse of time and significant resources already expended to resolve [Plaintiffs'] motion to dismiss," JA417—would categorically preclude *any* amendment following a ruling on a motion to dismiss, directly contravening legal precedent and Federal Rule 15. *See Class Produce Grp., LLC v. Harleysville Worcester Ins. Co.*, No. 16-cv-3431, 2017 WL 2377105, at *9-10 (D. Md. May 31, 2017) ("'[T]he time, effort, and money . . . expended in litigating [a] case' do not constitute 'substantial prejudice.'").

The sole decision cited by the District Court in support of its prejudice finding—*Forstmann v. Culp*, 114 F.R.D. 83, 87 (M.D.N.C. 1987)—is plainly inapposite. JA417. In that case, a court denied a proposed *third* amendment to a complaint, following the grant of summary judgment *after discovery had been completed*. *Forstmann*, 114 F.R.D. at 84, 87. The facts in this case bear no resemblance to those in *Forstmann*.

Accordingly, the District Court abused its discretion by "misapprehending the law" with respect to Plaintiffs' motion to amend. *Scott*, 733 F.3d at 112.

CONCLUSION

For the foregoing reasons, this Court should reverse (1) the District Court's grant of Defendants' motion to dismiss with respect to the RICO claims, or, in the alternative, (2) the District Court's denial of Plaintiffs' motion to amend.

REQUEST FOR ORAL ARGUMENT

In light of the complexity of the issues raised herein, and the importance of articulating clear and uniform legal standards concerning RICO causation and leave to amend a previously unamended complaint, Plaintiffs respectfully request oral argument.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 12,797 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

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June 21, 2022

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2022 I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit by using the CM/ECF system. All participants are registered CM/ECF users, and will be served by the appellate CM/ECF system.

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