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Attorneys for Defendants Morris, Nichols, Arsht &
Tunnell LLP and Gregory W. Werkheiser

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEVEN ("LASER") HAAS,

Plaintiff,

v.

WILLARD MITT ROMNEY, PAUL TRAUB, BAIN CAPITAL, JOHN & JANE "DOES" 1 THROUGH 10, MORRIS, NICHOLS, ARSHT & TUNNELL, GREG WERKHEISER, BARRY GOLD, MICHAEL GLAZER, COLM F. CONNOLLY, GOLDMAN SACHS, JOHANN HAMERSKI,

Defendants.

Case No. CV 13-07738 SVW (AGR)

Assigned To: Hon. Stephen V. Wilson

NOTICE OF MOTION AND MOTION TO DISMISS FIRST AMENDED COMPLAINT

[F.R.C.P. 8, 9(b), and 12(b)(1), (3), (4) & (6)]

Date: April 14, 2014
Time: 1:30 p.m.
Ctrm: 6

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on April 14, 2014, at 1:30 p.m. or as soon thereafter as counsel may be heard in Courtroom 6 of the above-entitled Court, located at the United States Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Defendants Morris, Nichols, Arsht & Tunnell LLP and Gregory W. Werkheiser (collectively, the "MNAT Defendants") will, and hereby do, move the Court to dismiss the First Amended Complaint [D.I. 6] (the "Complaint") of Plaintiff Steven, a/k/a Laser, Haas ("Haas"), with prejudice, pursuant to Rules 8, 9(b) and 12(b)(1), (3), (4), and (6) of the Federal Rules of Civil Procedure.

The Motion is made on the grounds that:

(1) The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) because this Court lacks subject matter jurisdiction over the claims asserted against the MNAT Defendants. The *Barton* Doctrine and 28 U.S.C. § 1334(e)(2) require any action against the MNAT Defendants to proceed only in the District of Delaware, where the underlying bankruptcy case is pending, and only with leave of the United States Bankruptcy Court for the District of Delaware, which has not been obtained.

(2) The Complaint should be dismissed pursuant to Fed. R. Civ. P. 8 because it fails to provide a short and plain statement of the claim showing that the pleader is entitled to relief.

(3) The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b) because it fails to state a claim upon which relief can be granted, in that:

(a) the Complaint is barred by the doctrine of *res judicata*;

(b) the Complaint is barred by the statute of limitations governing civil claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), codified as Title IX of the Organized Crime Control Act of 1970, 18 U.S.C. §§ 1961-68 claims;

(c) the Complaint fails to allege facts sufficient to support a claim

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under the RICO statute; and

(d) to the extent that Haas's civil RICO claim is based on alleged predicate acts involving fraud, Haas has failed to plead fraud with particularity as required by Fed. R. Civ. P. 9(b).

(4) The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(3) because venue of this action in this District is improper.

(5) The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(5) for insufficiency of process.

The Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Gregory W. Werkheiser and Request for Judicial Notice (the "GWW Decl.") filed concurrently herewith, the records, pleadings and papers on file in this action, any reply papers that may be filed in connection herewith, and on such other evidence and argument as may be presented to the Court at or before the hearing on this matter.

This Motion is made following an e-mail conference pursuant to Local Rule 7-3 between counsel for the MNAT Defendants and Haas, which took place on February 26 and 27, 2014.

DATED: March 5, 2014

GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP

By: /s/ *Matthew N. Falley*
MATTHEW N. FALLEY
Attorneys for Defendants Morris, Nichols, Arsht & Tunnell LLP and Gregory W. Werkheiser

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For over a decade, Plaintiff Steven "Laser" Haas ("Plaintiff" or "Haas"), a prolific *pro se* litigant, pursued mostly frivolous litigation against the Defendants in this action, representatives of the Office of the United States Trustee (the "U.S. Trustee") and others involved in the bankruptcy cases captioned *In re eToys, Inc., et al.*, Case No. 01-00706 (MFW) (the "Bankruptcy Case"), which still remain pending before the Honorable Mary F. Walrath, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Court").[1] During that period, Haas, acting *pro se,* made at least 49 court filings in the Delaware Bankruptcy Court, the United States District Court for the District of Delaware (the "Delaware District Court") and the United States Court of Appeals for the Third Circuit (the "Third Circuit"). All matters in which Haas was involved were litigated to final judgment, including in three Third Circuit appeals.

Haas's campaign of harassing and vexatious litigation in the Delaware Bankruptcy Court was brought to an end when, after Haas ignored repeated warnings from the Delaware Bankruptcy Court to cease his abusive conduct and disregarded prior orders holding that Haas had no standing in the Bankruptcy Case, the Delaware Bankruptcy Court entered an Order, dated December 6, 2012 [D.I. 2490] (the "Delaware Bar Order") [GWW Decl. Ex. 27], prohibiting Haas from making further filings in the Bankruptcy Case.[2] The findings in the Delaware Bar Order include:

- "[S]ince July 2004, Mr. Haas, appearing pro se and acting purportedly on behalf of Collateral Logistics Inc. ("CLI"), has filed dozens of pleadings in this bankruptcy case."

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[1] References to Bankruptcy Case docket appear as "Bk. D.I.___".

[2] *See In re eToys, Inc.,* Case No. 01-0706, Hrg. Tr., Dec. 4, 2012 [GWW Decl. Ex. 26].

- "[B]y Order dated November 10, 2011, the Court held that Mr. Haas did not have standing to be heard on behalf of CLI or himself because he was not a creditor, shareholder or party in interest in this case (D.I. 2459)."
- "Mr. Haas' numerous filings in this case are repetitive, without merit, and border on harassment."

Despite having been barred from further filings in the Delaware Bankruptcy Court, on October 18, 2013, Haas attempted an end-run of the Delaware Bar Order by commencing this action. Haas's original complaint [D.I. 1] (the "Original Complaint") and his first amended complaint, filed on November 6, 2013 [D.I. 6] (the "Complaint" or "First Amended Complaint"), simply repackage the same repetitive, meritless and harassing allegations that Haas had been making for years in the Bankruptcy Case and that have been finally adjudicated and rejected.

Accordingly, Defendants Morris, Nichols, Arsht & Tunnell LLP ("MNAT" or "Morris Nichols") and Gregory W. Werkheiser ("Werkheiser," and collectively, the "MNAT Defendants") respectfully submit that Haas's Complaint and this action should be dismissed with prejudice. The grounds for dismissal include:

(1) The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) because this Court lacks subject matter jurisdiction over the claims asserted against the MNAT Defendants and defendant Barry Gold, the court-appointed Plan Administrator. With respect to the MNAT Defendants and Defendant Gold, both the *Barton* Doctrine and 28 U.S.C. § 1334(e)(2) limit jurisdiction of this action to the District of Delaware, where the underlying Bankruptcy Case is pending.

(2) The Complaint should be dismissed pursuant to Fed. R. Civ. P. 8 because it fails to provide a short and plain statement of the claim showing that Haas is entitled to relief. Instead, it is a rambling and largely unintelligible 690 paragraph, 150 page screed that repeatedly attacks the Defendants and others not

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before this Court over matters that have be finally adjudicated elsewhere.

(3) The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because it fails to state a claim upon which relief can be granted, in that:

(a) the Complaint is barred by the doctrine of *res judicata*;

(b) the Complaint is barred by the statute of limitations governing civil claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-68;

(c) the Complaint fails to allege facts sufficient to support a claim under the RICO statute; and

(d) to the extent that the RICO claim alleges predicate acts involving fraud, Haas has failed to plead with particularity, per Fed. R. Civ. P. 9(b).

(4) The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(3) because venue in this District is improper.

(5) The Complaint should be dismissed as to the MNAT Defendants pursuant to Fed. R. Civ. P. 12(b)(5) for insufficiency of process.

The MNAT Defendants respectfully submit that the dismissal of the Complaint on any of the grounds identified herein should be with prejudice. Further amendments would be futile because the defects in the complaints filed to date are incurable and Haas's track record demonstrates he will continue with his abusive and harassing court filings if given the chance.

II. STATEMENT OF RELEVANT FACTS

A. The Bankruptcy Case

On March 7, 2001, eToys, Inc., n/k/a EBC I, Inc., and certain of its affiliates (collectively, the "Debtors") filed voluntary petitions in the Delaware Bankruptcy Court for relief under chapter 11 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), thereby commencing the Bankruptcy Case.

On March 20, 2001, the U.S. Trustee appointed [Bk. D.I. 55] an official committee of unsecured creditors (the "Committee").

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On April 25, 2001, the Bankruptcy Court approved the Debtors' retention of Defendant Morris Nichols as bankruptcy counsel [Bk. D.I. 252]. Defendant Werkheiser is a Morris Nichols attorney who represented the Debtors during the Bankruptcy Case. (Compl., ¶ 149)

During the Bankruptcy Case, Defendant Barry Gold served as an officer of the Debtors. (Compl., ¶ 83).

On November 1, 2002, the Court entered its Order [Bk. D.I. 1385] (the "Confirmation Order") confirming the Debtors' plan of liquidation [Bk. D.I. 1385-1] (the "Plan"). Pursuant to the Confirmation Order and Plan, Defendant Gold was appointed as plan administrator (the "Plan Administrator") for the Debtors' substantively consolidated post-confirmation estate (the "Post-Confirmation Estate"). Morris Nichols and Defendant Werkheiser were retained as counsel to the Plan Administrator and continue to serve in that capacity. Other provisions of the Confirmation Order and Plan (a) provided for the dissolution of the Committee and established a Post-Effective Date Committee ("PEDC"), which is separately represented in the Bankruptcy Case, and (b) established a bar date for filing of administrative claims in the Bankruptcy Case of May 3, 2003 [Bk. D.I. 1406].

On February 7, 2014, the Plan Administrator filed a motion [Bk. D.I. 2540] (the "Final Decree Motion") in the Bankruptcy Case requesting, *inter alia,* the entry of final decrees in the Debtors' bankruptcy cases. However, in light of Haas's continued prosecution of this action and the likelihood that Haas's harassing conduct will continue in the future, the MNAT Defendants understand that the Plan Administrator will request the Delaware Bankruptcy Court to defer closing the lead bankruptcy case, Case No. 01-0706, pending further proceedings in the District of Delaware necessitated by Haas's continued vexatious litigation tactics.

B. CLI's Engagement in the Delaware Bankruptcy Case

In the Bankruptcy Case, on April 25 and July 9, 2001, the Delaware Bankruptcy Court entered Orders [Bk. D.I. 253 & 515] (the "CLI Retention

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Orders") authorizing the retention of Collateral Logistics, Inc. ("CLI"), to provide certain services to the Debtors in connection with the liquidation of their inventory and equipment. Haas alleges that CLI is a "California Corporation" and that he is the sole owner of CLI. (Compl. ¶ 2)

C. Litigation Relating to CLI's Claims in the Bankruptcy Case

On February 14 and March 5, 2002, CLI filed two proofs of claim in the Bankruptcy Case [Bk. D.I. 902 & 925; GWW Decl. Exs. 1, 2], in which CLI alleged it was owed additional amounts beyond what it had already been paid as compensation and expense reimbursements in connection with its engagement (the "CLI Claims"). Objections were filed to the CLI Claims on August 21 and October 30, 2002 [Bk. D.I. 1188 & 1374] (together, the "Claim Objections"). CLI, through its counsel at the time, filed responses contesting the objections to the CLI Claims on September 20 and November 22, 2002 [Bk. D.I. 1258 & 1436; GWW Decl. Exs. 3, 4].

Proceedings in the Bankruptcy Case relating to the Claim Objections dragged on for nearly three years, owing significantly to CLI's failure to maintain appropriate representation by counsel. During this period, three different sets of law firms appeared on CLI's behalf [Bk. D.I. 902, 2075 & 2155]. Each set of counsel then eventually moved to withdraw, citing, among other things, CLI's failure to fund retainers or pay legal fees and/or an unworkable relationship with Haas [Bk. D.I. 2053, 2108 & 2253]. The Delaware Bankruptcy Court granted each of these motions [Bk. D.I. 2071, 2148 & 2274]. In the third such Order, dated June 6, 2005 [Bk. D.I. 2274] (the "Third Withdrawal Order"), the Delaware Bankruptcy Court also directed CLI to have new counsel appear for CLI by June 20, 2005.

By July 26, 2005, Haas still had not obtained legal representation for CLI and on that date the Delaware Bankruptcy Court entered an Order [Bk. D.I. 2302; GWW Decl. Ex. 13] striking a court filing that Haas, acting *pro se* purportedly for CLI, had filed in connection with the dispute over the CLI Claims. In that Order,

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the Delaware Bankruptcy Court found that: (a) "under applicable law, CLI cannot appear *pro se* in this matter . . . and is specifically prohibited from causing any future filings to be made on the docket in this matter without the benefit of counsel;" (b) "Steven Haas is not a licensed attorney and is prohibited from representing or causing any future filings in this matter on behalf of CLI;" and (c) "[A]ny future filings by CLI *pro se* or Haas on behalf of CLI, shall result in the imposition of sanctions...."

On August 25, 2005, the Delaware Bankruptcy Court entered an Order [Bk. D.I. 2312; GWW Decl. Ex. 15] (the "CLI Claim Disallowance Order") holding "that the CLI Claims, including any administrative claim or other claim it has asserted or may assert against these estates, are disallowed and expunged in their entirety" and finding that "CLI failed to file any fee applications as required by the CLI Retention Orders" and that after disputes arose with CLI as to the amount of fees and expenses, if any, owed to CLI, CLI had filed the CLI Claims not withstanding its agreement to compromise the disputed fees and expenses.

On September 1, 2005, Haas, still purporting to act for CLI, filed an appeal [Bk. D.I. 2315; GWW Decl. Ex. 28] from the CLI Claim Disallowance Order, docketed in the Delaware District Court as Case No. 05-cv-00728-KAJ. The PEDC moved to dismiss the appeal on October 18, 2005 [D. Del. Case No. 05-00728-KAJ, D.I. 5 & 6], arguing that Haas could not prosecute the appeal for CLI and that Haas lacked appellate standing as an individual. On November 14, 2005, the Delaware District Court entered an order dismissing the appeal [D. Del. Case No. 05-00728-KAJ, D.I. 18; GWW Decl. Ex. 29].

Undeterred, on December 16, 2005, Haas, purporting now to appeal individually and on behalf of CLI, filed a notice of appeal [D. Del. D.I. 21; GWW Decl. Ex. 30] to the Third Circuit, where the appeal was docketed as Case No. 05-5359. [GWW Decl. Ex. 37]. On January 19, 2006, the Third Circuit dismissed the appeal for failure to prosecute. [GWW Decl. Ex. 38].

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D. Non-Party Haas's Attempted Participation in the Alber Litigation

Meanwhile, on December 15, 2004, another *pro se* litigant, Robert K. Alber, who claimed to be a shareholder of Debtor eToys, Inc., n/k/a EBC I, Inc., objected [Bk. D.I. 2138] to a proposed partial settlement between the Post-Confirmation Estate and Goldman, Sachs & Co. [Bk. D.I. 2128] (the "First GS Settlement"). The First GS Settlement related to the PEDC's attempt to recover a retainer payment that the Debtors made to Goldman, Sachs & Co. prior to the commencement of the Bankruptcy Case in connection with services Goldman, Sachs & Co. was then providing as the Debtors' investment banker.

Soon thereafter, Alber also filed two motions [Bk. D.I. 2145 & 2178] seeking sanctions and other relief against the Plan Administrator, counsel for the Committee and the PEDC, Defendant Morris Nichols and certain Morris Nichols attorneys, including Defendant Werkheiser. In the second of Alber's motion, Alber accused Morris Nichols and the targeted Morris Nichols attorneys of "Violations of [Bankruptcy] Code §327(a) and [Bankruptcy] Rule 2014 [Bk. D.I. 2178, at 1]"

Haas, purporting to act for CLI, inserted himself into the Alber litigation, a matter in which CLI had no direct interest and Haas had no individual standing. Between March 1st and August 22, 2005, Haas made at least eight filings [Bk. D.I. 2212, 2214, 2215, 2216, 2291, 2292, 2293 & 2307; GWW Decl. Exs. 5-11, 14] in the Delaware Bankruptcy Case in connection with the Alber litigation. Haas's filings during this period included the same baseless attacks that Haas continues to press in this action.

By Order, dated June 27, 2005 [Bk. D.I. 2296; GWW Decl. Ex. 12], the Delaware Bankruptcy Court granted a motion to strike certain filings that Haas had made purportedly for CLI and directed that CLI could only appear through counsel.

On October 4, 2005, following extensive briefing and a trial, the Delaware Bankruptcy Court entered its Opinion [Bk. D.I. 2319; GWW Decl. Ex. 16] and Order [Bk. D.I. 2320; GWW Decl. Ex. 17] (together, the "October 4, 2005

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Decision") with respect to the Alber litigation. *See In re eToys, Inc.,* 331 B.R. 176 (Bankr. D. Del. 2005). In its ruling, the Delaware Bankruptcy Court denied several motions filed by Haas purportedly on behalf of CLI.[3] The Delaware Bankruptcy Court held that "CLI, as a corporation, may not file pleadings or appear except through counsel." *Id.* at 185. Further, the Delaware Bankruptcy Court struck all of the pleadings that Haas filed after March 15, 2005, in violation of the Court's scheduling order. *Id.* at 184 n.2.

Once again, Haas, now also purporting to act in his individual capacity, appealed to the Delaware District Court [Bk. D.I. 2326]. *See In re eToys, Inc.,* Case No. 05-cv-00829-KAJ (D. Del.) [GWW Decl. Ex. 31]. And, once again, motions were filed requesting that Haas's appeal be dismissed because of Haas's inability to act *pro se* for CLI and his lack of individual appellate standing. The Delaware District Court agreed and dismissed Haas's appeal. *See* Mem. Order, dated Aug. 30, 2006 [D. Del. Case No. 05-cv-00829-KAJ, D.I. 37; GWW Decl. 32].

Haas's second appeal to the Third Circuit followed. *See In re eToys, Inc.,* Case No. 06-4308 (3d Cir.) [GWW Decl. Ex. 39]. On May 16, 2007, the Third Circuit summarily affirmed the Delaware District Court, noting its "complete agreement with the District Court's analysis and decision that Haas lacks standing to appeal from the Bankruptcy Court's order." *In re eToys, Inc.,* 234 Fed. Appx. 24, 2007 WL 1433668, *1 (3d Cir. May 16, 2007) [GWW Decl. Ex. 40]. Thereafter, Haas petitioned for rehearing *en banc,* a request the Third Circuit denied ten days later.

Meanwhile, an appeal of the October 4, 2005 Decision filed by Alber was dismissed by the Delaware District Court on February 27, 2007, for failure to prosecute. *See In re eToys, Inc.,* D. Del. Case No. 05-00830-SLR, D.I. 55, 2007 WL 625850 [GWW Decl. Exs. 34, 35]. Alber ***and Haas*** (despite the Delaware

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[3] Alber's motions were granted in part as to Morris Nichols and otherwise denied as to Morris Nichols and their other targets.

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District Court's prior order holding he had no standing) moved for reconsideration and those motions also were denied on June 12, 2007. *See In re eToys, Inc.,* Case No. 05-00830-SLR (D. Del.), D.I. 63, 2007 WL 1686704. Alber appealed to the Third Circuit, where Haas filed a brief in support of Alber's appeal. *See In re eToys, Inc.,* Case No. 07-2360 (3d Cir.) [GWW Decl. Ex. 41]. On January 30, 2008, the Third Circuit affirmed the Delaware District Court in all respects via an unpublished *per curiam* opinion and assessed costs against Alber. *See In re eToys, Inc.,* 263 Fed. Appx. 235, 2008 WL 241367 (3d Cir. Jan. 30, 2008) [GWW Decl. Ex. 42]. Haas, whose own related Third Circuit appeal by then had rejected, then filed a petition for rehearing *en banc,* which the Third Circuit later denied.

E. Haas Continues to Harass Defendants in the Bankruptcy Court

Haas's harassing conduct continued unabated.[4] On December 1, 2005, Haas filed a series of pleadings attacking Judge Walrath and other parties involved in the Bankruptcy Case. First, Haas asserted that Judge Walrath's conduct in holding a hearing on appellees' motions to strike certain record designations "borders upon criminal intent to Obstruct Justice.! [sic]" [Bk. D.I. 2359; GWW Decl. Ex. 18]. Second, Haas moved to disqualify Judge Walrath, claiming that she was prejudiced against him and Alber and was showing "biased favoritism towards felonious offenders in the extreme." [GWW Decl. Ex. 18, ¶¶ 3 & 4]. Third, Haas essentially rehashed his allegations that the Delaware Bankruptcy Court had rejected in the October 4, 2005 Decision and attacked the bankruptcy judge, the U.S. Trustee's trial attorney assigned to the case and Defendants in this action, among others [Bankr. D.I. 2363; GWW Decl. Ex. 19].

After the various appeals concluded, Haas resumed making periodic abusive filings in the Delaware Bankruptcy Court. For example, on December 30, 2008,

[4] Although not directly at issue in this action, Haas throughout this period published defamatory comments about the Defendants herein and others involved in the Bankruptcy Case. Haas's defamatory internet postings continue even today.

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Haas filed a rambling 45 page diatribe [Bk. D.I. 2420; GWW Decl. Ex. 21] attacking (among others) Defendant Morris Nichols, Defendant Gold and the U.S. Trustee. The substance of this document, to the extent discernible, relates to the same accusations that the Delaware Bankruptcy Court had rejected in the October 4, 2005 Decision. On November 3, 2011, Haas filed 163 pages of documents [Bk. D.I. 2453; GWW Decl. Ex. 23], attempting again to level the same accusations. The Delaware Bankruptcy Court thereafter denied the motion, holding that Haas "is not a creditor, shareholder, or party in interest in this case" and that "[his] Motion raises issues already addressed by the Court in its Opinion and Order dated October 4, 2005." *See* Order, dated November 10, 2011 [Bk. D.I. 2459; GWW Decl. Ex. 24].

On October 24, 2012, Haas changed tactics yet again. He filed a 46 page document [Bk. D.I. 2478; GWW Decl. Ex. 25] styled as an "EMERGENCY MOTION" for, among other things, payment of an administrative expense claim he was now asserting as an individual (rather than for CLI) for alleged services rendered and expenses incurred *circa* 2001-02. Haas once again leveled baseless accusations of fraud on the court and perjury, all of which had been raised and rejected in connection with the October 4, 2005 Decision.

Thereafter, on December 4, 2012, a hearing was convened on Haas's most recent "emergency motion." After advising Haas at the hearing that, because of his misconduct, he would be barred from making further filings in the Bankruptcy Case without leave of court, on December 6, 2012 the Delaware Bankruptcy Court entered the Delaware Bar Order. [GWW Decl. Ex. 27].

F. Haas Files Suite in this Court to Evade the Delaware Bar Order

Haas commenced the instant action on October 18, 2013, not coincidentally less than a month after the Delaware Bankruptcy Court approved a second settlement between the Post-Confirmation Estate and Goldman, Sachs & Co. of litigation pending since 2002 that was the last significant unresolved matter in the

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Bankruptcy Case. *See* Order, dated September 20, 2013 [Bk. D.I. 2528; GWW Decl. Ex. 44]. Haas no doubt perceived that Bankruptcy Case was coming to an end and seized on the device of this baseless civil RICO lawsuit as a means to continue litigating claims he was enjoined from filing in Delaware.

III. ARGUMENT

A. This Action Should Be Dismissed for Lack Of Subject Matter Jurisdiction

As to the MNAT Defendants, the District of Delaware has exclusive jurisdiction over this action and this action may proceed only with leave of the Delaware Bankruptcy Court, which has not been obtained. First, the doctrine established long ago by the Supreme Court in *Barton v. Barbour,* 104 U.S. 126 (1881), mandates dismissal of this action. In *Barton*, the Supreme Court held that "before suit can be brought against a court-appointed representative, leave of the court by which he was appointed must be obtained." *Id.* at 127 (internal quotations omitted). In the Ninth Circuit, the *Barton* doctrine has been held to protect any court-appointed official who represents an estate,[5] as well as professionals representing such an official.[6]

To the extent the allegations in the Complaint can be deciphered, they appear to attack Defendant Gold, the court-appointed Plan Administrator for alleged misconduct during the Bankruptcy Case as an officer of the Debtors and as the court-appointed Plan Administrator, and the MNAT Defendants for alleged

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[5] *See Beck v. Fort James Corp. (In re Crown Vantage, Inc.),* 421 F.3d 963, 970 (9th Cir. 2005) ("We join our sister circuits in holding that a party must first obtain leave of the bankruptcy court before it initiates an action in another forum against a bankruptcy trustee or another officer appointed by the bankruptcy court for acts done in the officer's official capacity.").

[6] *See In re Media Group, Inc.,* Nos. NC-05-1432-SlMa, 01-45924, 2006 WL 6810963, *6 (9th Cir. BAP 2006) ("Clearly, the *Barton* Doctrine prohibits a party from initiating legal action against a trustee or her professionals in a non-bankruptcy forum without prior leave from the court.").

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misconduct as counsel to the Debtors and the Plan Administrator. Without leave of the Delaware Bankruptcy Court, Haas is foreclosed under *Barton* from pursuing such a suit in this Court.

Second, as to the MNAT Defendants, 28 U.S.C. § 1334(e)(2), vests exclusive jurisdiction in the District of Delaware. Section 1334(e)(2) provides in relevant part that "[t]he district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction . . . over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327."[7] 28 U.S.C. § 1334(e)(2). Applying section 1334(e)(2), courts have held that it requires various actions against estate professionals to proceed in the district where the bankruptcy case is pending.[8]

The crux of Haas's claims against the MNAT Defendants seems to be based on their alleged "cover up of their represent[ation]" of various entities at the same time they represented the Debtors and, thus, fundamentally concerns their representation of the Debtors in the Bankruptcy Case.[9] Section 1334(e)(2), thus, requires that this action proceed exclusively in the Delaware of Delaware.

B. <u>The Complaint Should Be Dismissed Under Fed. R. Civ. . 8(a)</u>

The Complaint should be dismissed under Rule 8(a) of the Federal Rules of

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[7] Section 327 addresses the employment of professionals by a trustee or debtor-in-possession. *See* 11 U.S.C. § 327.

[8] *See, e.g., Schwab v. Oscar (In re SII Liquidation Co.),* 2012 WL 4327055, at *5 (Bankr. N.D. Ohio Sept. 20, 2012) (malpractice as debtors' counsel); *In re Sundance Self Storage-El Dorado LP,* 482 B.R. 613 (Bankr. E.D. Pa. 2012) (reconsideration of fee award to debtors' counsel).

[9] Compl., ¶ 121. *See also, e.g.,* Compl., ¶ 84 (alleging that MNAT "confess[ed] to the firms [sic] failure to disclose its conflict of interest … Goldman Sachs issues"), ¶ 189 (accusing MNAT of "lying to become eToys Debtor's counsel"), ¶ 210 (alleging that "MNAT lied in order for MNAT to become eToys DE BK Ct approved 'Debtor's' counsel"), ¶ 365 (alleging "Barry Gold, along with his co-Defendants also conspired to do man **Schemes to Fix Fees** to pay the other Defendants like Traub and Greg Werkheiser/MNAT for assisting the RICO plots & ploys"), 402 (alleging "Paul Traub, MNAT and Barry Gold have confessed that they deceived the court by many false affidavits") & 436 (requesting "disqualification of the parties of Paul Traub, MNAT and Barry Gold and/or any other person, party, firm or likewise who would work in concert with said parties to Obstruct Justice").

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Civil Procedure because it fails to provide "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" Fed. R. Civ. P. 8(a). "Experience teaches that, unless cases are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court's docket becomes unmanageable, the litigants suffer, and society loses confidence in the court's ability to administer justice." *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000) (internal quotation marks omitted).

The Complaint is exceedingly prolix and unintelligible. It strings together a narrative of disjointed factual allegations, opinions, personal attacks and political commentary – all in no particular order. While Rule 8 dismissal "is usually confined to instances in which the complaint is so 'verbose, confused and redundant that its true substance, if any, is well disguised,'" such extraordinary relief is merited here.[10] *Gilibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1969) (quoting *Corcoran v. Yordy*, 347 F.2d 222, 223 (9th Cir. 1965)). The Complaint should be dismissed for failure to comply with the requirements of Rule 8.

C. The Complaint Should Be Dismissed For Failure To State A Claim Upon Which Relief Can Be Granted.

Motions to dismiss should be granted where, as here, a plaintiff has failed to state any valid claim for relief. Fed. R. Civ. P. 12(b)(6). Dismissal under Rule 12(b)(6) is appropriate where there is either a "lack of a cognizable legal theory or

[10] While "it is well established that a court is ordinarily obligated to afford a special solicitude to pro se litigants," *Tracy v. Freshwater*, 623 F.3d 90, 101 (2d Cir. 2010), courts have recognized that "it may be appropriate to charge a pro se litigant with knowledge of, and therefore special status in relation to, particular requirements of [the legal system] with which he is familiar as a result of his extensive prior experience in the courts." *Id.* *See also Tyson v. Wells Fargo Bank N.A.*, No. 12-cv-593-MMA (WMC), 2012 WL 1944617, *2 (S.D. Cal. May 30, 2012) ("Clearly this Plaintiff has prior experience with the judicial system, as he litigated his prior action in multiple jurisdictions. Thus, his *pro se* status does not afford him the normal leniency that is often afforded to *pro se* litigants."). Haas, a sophisticated *pro se,* has made at least 49 court filings relating to the Bankruptcy Case in which he has been an active litigant for more than a decade, and should not receive the leniency customarily afforded *pro se* litigants.

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the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dept.,* 901 F.2d 696, 699 (9th Cir. 1988). A complaint should be dismissed if it does not allege facts sufficient to make out a claim that is "plausible on its face." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007).[11]

1. The Complaint Is Barred By The Doctrine of *Res Judicata*

The Complaint should be dismissed on the basis of *res judicata*, as Haas's allegations have already been finally adjudicated before the Delaware Bankruptcy Court, Delaware District Court and Third Circuit. To the extent decipherable, the Complaint apparently seeks relief based upon alleged misconduct by the parties in connection with the Bankruptcy Case, particularly that portion of the Bankruptcy Case predating of the Confirmation Order and effectiveness of the Plan. Because those allegations were fully adjudicated in the Bankruptcy Case, the Complaint should be dismissed on the basis of the doctrine of *res judicata.*

Res judicata applies when "the earlier suit . . . (1) involved the same 'claim' or cause of action as the later suit, (2) reached a final judgment on the merits, and (3) involved identical parties or privies." *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005). All three elements are present here.

a. The Complaint Involves the Same Claims as Asserted in the Bankruptcy Case

To determine whether two suits involve the same claim for purposes of *res judicata*, the Ninth Circuit examines: (1) whether the two suits arise out of the same transactional nucleus of facts; (2) whether rights or interests established in the prior

[11] "[C]onclusory allegations without more are insufficient to defeat a motion to dismiss for failure to state a claim." *McGlinchy v. Shell Chem. Co.,* 845 F.2d 802, 810 (9th Cir. 1988). Accordingly, the Court need not assume the truth of legal conclusions merely because they are pled in the form of factual allegations. *Ashcroft v. Iqbal,* 556 U.S. 662, 677-79 (2009); *Shaw v. Hahn,* 56 F.3d 1128, 1129 n.1 (9th Cir. 1995). Instead, "for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.,* 572 F.3d 962, 969 (9th Cir. 2009).

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judgment would be destroyed or impaired by prosecution of the second action; (3) whether the two suits involve infringement of the same right; and (4) whether substantially the same evidence is presented in the two actions. *Id.* at 987. Each of those factors is satisfied here.

First, the two suits plainly arise out of the same nucleus of facts. "Whether two events are part of the same transaction or series depends on whether they are related to the same set of facts and whether they could conveniently be tried together." *Western Sys., Inc. v. Ulloa*, 958 F.2d 864, 871 (9th Cir.1992).

Here, Haas repeatedly attacks the MNAT Defendants for actions allegedly taken a decade or more ago in the Bankruptcy Case. Haas's allegations appear to concern the following purported misconduct by the MNAT Defendants:

- Morris Nichols' alleged concealment of conflicts of interest relating to Bain Capital, Mitt Romney, Michael Glazer and "Goldman Sachs"[12] to become Debtors' counsel. *See, e.g.,* Compl., ¶¶ 84, 121, 189, 200, 201, 210, 259, 665 & 674.

- The MNAT Defendants' alleged conflicts of interest arising from Morris Nichols' representation of Bain Capital in an unrelated bankruptcy case. *See, e.g.,* Compl., ¶¶ 110, 121, 124, 196, 206, 211 & 383.

- The MNAT Defendants' involvement in allegedly selling the Debtors' assets to Bain Capital for inadequate value and otherwise advancing Bain Capital's interests in the Bankruptcy Case. *See, e.g.,* Compl., ¶¶ 205, 269, 368 & 369.

- The MNAT Defendants' alleged conflicts of interest arising from representing Goldman Sachs in other, unrelated matters. ¶ 206 & 210.

- The MNAT Defendants' alleged involvement in influencing the Committee's litigation against Goldman Sachs to protect Goldman Sachs. *See, e.g.,* Compl., ¶¶ 220, 221, 260, 269 & 384.

[12] Haas uses the undefined term "Goldman Sachs" throughout the Complaint. It is unclear which "Goldman Sachs" entity he is referencing.

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- The MNAT Defendants' alleged involvement in preventing CLI from recovering everything Haas asserts it was entitled to for services in the Bankruptcy Case. *See, e.g.,* Compl., ¶¶ 116, 228 & 238-53.

These allegations are nothing more than a repackaging of old allegations that Haas made against the MNAT Defendants in connection with the Alber and CLI Claims litigations. Indeed, virtually all of the alleged events about which Haas complains occurred prior to the October 4, 2005 Decision.[13]

The second factor is also satisfied. The Delaware Bankruptcy Court, the Delaware District Court and the Third Circuit finally adjudicated all of these matters in connection with the Alber litigation and the CLI claims litigation. Each of those Courts considered Haas's allegations and each Court ruled against him. Accordingly, re-litigation of Haas's claims in this Court would raise the possibility of inconsistent judgments and impair previously established rights and interests.

The third factor is met, because, despite Haas's attempts to cast his grievances in the form of a RICO claim, his underlying factual allegations are indistinguishable from those which he has consistently asserted and which were finally adjudicated in the Bankruptcy Case.

Finally, to the extent the Complaint can be deciphered, its contentions appear to be consistent with those Haas made in his prior filings in the Bankruptcy Case. Haas has come forward with no new evidence that would warrant disturbing the finality of the matters previously adjudicated in the Bankruptcy Case.

For these reasons, the Complaint involves the same claims as were raised by

[13] In this Complaint, Haas adds a new allegation that MNAT allegedly signed the settlement agreement with Goldman, Sachs & Co. that recently resolved the PEDC's litigation against Goldman, Sachs & Co. *See,* Compl., ¶¶ 225 & 385. This allegation is unequivocally false. This Court can take judicial notice of the motion to approve the Goldman, Sachs & Co. settlement filed in the Delaware Bankruptcy Case by ***counsel to the PEDC*** on October 2, 2013 [Bk. D.I. 2533; GWW Decl. Ex. 43] (the "GS Settlement Motion"). The settlement agreement, annexed as Exhibit A to the GS Settlement Motion, is executed by Goldman, Sachs & Co.'s counsel, the PEDC's counsel, and Barry Gold. Morris Nichols did not sign for any party.

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Haas in the prior litigations in the Delaware Bankruptcy Court.

b. Haas's Claims in the Bankruptcy Case were Litigated to a Final Judgment on the Merits.

Haas has already had an opportunity to litigate his claims in the Delaware Bankruptcy Court, Delaware District Court and Third Circuit, where they were fully and finally resolved.[14] These orders adjudicate on the merits the CLI Claims and Haas's other allegations against Defendants herein. Though the courts ultimately ruled, in part, against CLI and Haas based on CLI's failure to comply with the courts' requirements that it be represented by counsel and Haas's lack of standing, the prior orders are no less final and effective for *res judicata* purposes. *See, e.g.,* Fed. R. Civ. P. 41(b) (describing involuntary dismissal of action for failure to prosecute or otherwise comply with court rules or a court order as "an adjudication on the merits" unless otherwise stated in the dismissal order);[15] *Owens v. Kaiser Found. Health Plan, Inc.,* 244 F.3d 708, 714 (9th Cir. 2001) (holding that involuntary dismissal of prior action for failure to prosecute was adjudication on the merits supporting application of *res judicata* in subsequent action).

c. Haas's Claims in the Bankruptcy Case and the Complaint Involve Identical Parties or Privies.

Finally, Haas names a host of parties as Defendants to this action, including the MNAT Defendants. These parties substantially are identical to those against whom Haas sought relief during the Bankruptcy Case.[16]

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[14] *See, e.g.,* Order, entered July 26, 2005 [GWW Decl. Ex. 13]; CLI Claim Disallowance Order, dated Aug. 25, 2005 [GWW Decl. 15]; Order, dated Nov. 14, 2005 [GWW Decl. Ex. 18]; Order, dated Jan. 19, 2006 [GWW Decl. Ex. 38]; Order, dated June 27, 2005 [GWW Decl. Ex. 12]; October 4, 2005 Decision [GWW Decl. Exs. 16, 17; Mem. Order, dated Aug. 30, 2006 [GWW Decl. Ex. 32]; Order dated May 16, 2007 [GWW Decl. Ex. 40]; Order, dated Feb. 27, 2007 [GWW Decl. Ex. 35]; Order, dated June 12, 2007 [GWW Ex. 36]; Order dated Jan. 30, 2008 [GWW Decl. Ex. 42]; Order, dated Nov. 10, 2011 [GWW Decl. Ex. 24]; and Delaware Bar Order, dated Dec. 6, 2012 [GWW Decl. Ex. 27].

[15] Bankruptcy Rules 7041 and 9014 make Rule 41(b) applicable to matters and proceedings in the Bankruptcy Case. *See* Fed. R. Bankr. P. 7041 & 9014.

[16] *See, e.g.*, GWW Decl. Ex. 23, at ¶ 67 (seeking removal of Barry Gold,

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d. *Res Judicata* applies to Haas's RICO Claim

"RICO claims can be barred by res judicata if they are 'inconsistent with the crux' of a bankruptcy court decision." *Willis v. Stamps,* Case No. 08-10030, 297 Fed. Appx. 381, 382, 2008 WL 4681573, at *1 (5th Cir. Oct. 23, 2008) (Unpub.) (quoting *Hendrick v. Avent,* 891 F.2d 583, 586-87 (5th Cir. 1990)).[17] "RICO is many things, but it is not an exception to res judicata." *Met-L-Wood,* 861 F.2d at 1016. Moreover, though Haas may have added new allegations of predicate acts in this Complaint, they all ultimately relate to the alleged harm to CLI that was at issue in the prior litigations in which Haas and CLI were involved. The Complaint is barred by *res judicata* because the primary rights at issue in the prior litigations are the same as those Haas seeks to re-litigate here. *See Monterey Plaza Hotel L.P. v. Local 483,* 215 F.3d 923, 928 (9th Cir. 2000) (dismissing RICO claim of hotel owner, despite plaintiff's inclusion of new predicate act allegations, where the primary bases for the alleged pattern of racketeering activity were tort claims that the hotel owner had unsuccessfully litigated in state court).

Here, Haas's claims are not only inconsistent with the "crux" of the prior judgments, they, in substance, are the very same ones that the Delaware Bankruptcy Court, Delaware District Court and Third Circuit finally adjudicated and rejected.

2. The Complaint Should Be Dismissed Because It Is Untimely Under The Statute of Limitations For Rico Claims.

The Complaint should be dismissed because the statute of limitations for any RICO claim based upon the allegations described in the Complaint has long since

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MNAT, and Paul Traub in the Bankruptcy Case).

[17] *See also, e.g., Regions Bank v. J.R. Oil Co., LLC,* 387 F.3d 721, 731-32 (8th Cir. 2004) (RICO claim barred as impermissible collateral attack on final judgment of bankruptcy court); *Feminist Women's Health Ctr. v. Codispoti,* 63 F.3d at 867-68 (finding new RICO claim barred by res judicata because it could have been brought during the prior litigation with due diligence); *Trulis v. Barton,* 107 F.3d 685, 691 (9th Cir. 1995) (unappealed order confirming bankruptcy plan with releases barred later civil RICO claims); *In re Met-L-Wood Corp,* 861 F.2d 1012, 1018 (7th Cir. 1988) (dismissing on *res judicata* grounds a RICO suit because "the suit is a thinly disguised collateral attack on the judgment" of the bankruptcy court).

expired. The Supreme Court has held that a four-year statute of limitations applies to all civil RICO actions. *See Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 156 (1987). The statute of limitations begins to accrue at the time the injury is discovered or should have been discovered. *See, e.g., Pincay v. Andrews*, 238 F.3d 1106, 1110 (9th Cir. 2001).[18]

Here, Haas has effectively pleaded himself out of court by alleging that he was aware of his purported injury well over four years before he filed the Complaint. The allegations that Haas appears to assert as the basis of his purported injury concern events which transpired during the initial stages of the Bankruptcy Case – from 2001 to 2005. Indeed, while Haas's filings in the Bankruptcy Case establish that he was aware of these claims much earlier, Haas admits in the Complaint that he was aware of the facts purportedly giving rise to his claim and raised them at a hearing before the Delaware Bankruptcy Court on March 19, 2009, more than four years before Haas initiated this action. *See* Compl., ¶ 116; Transcript, *In re eToys, Inc.*, Case No. 01-0706 (Bankr. D. Del. Mar. 18, 2009) [GWW Decl. Ex. 22]..

3. The Complaint Should Be Dismissed Because Haas Cannot Establish Standing Under the RICO Statute.

It appears that Haas is attempting to plead a claim against the MNAT Defendants under RICO §§ 1962(c) and (d). If so, he has not succeeded. The standing requirement of section 1964(c) applies to any alleged violation of section 1962 and requires that a plaintiff suffer damage to "***his*** business or property." 18 U.S.C. § 1964(c) (emphasis added). Courts in this Circuit and elsewhere frequently

[18] "[W]hen the statute of limitations defense shows on the face of the complaint, the burden of alleging facts which would extend the statute falls upon the plaintiff." *Porter v. City of Davis Police Dept.*, No. CIV S-06-02099 MCE GGH PS, 2007 WL 4463344, *4 (E.D. Cal. Dec. 17, 2007). *See also American Nurses' Ass'n v. Illinois*, 783 F.2d 716, 727 (7th Cir. 1986) ("[I]f the plaintiff . . . pleads facts and the facts show that he is entitled to no relief, the complaint should be dismissed. There would be no point in allowing such a lawsuit to go any further; it should be dismissed.").

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dismiss RICO claims like this one for lack of standing when individuals attempt to pursue claims that really belong to corporations or other entities.[19]

Haas cannot overcome this hurdle. Haas complains of alleged misconduct that injured CLI, which Haas alleges is a California corporation entirely owned by him. *See* Complaint, ¶ 2. As has been finally adjudicated on multiple prior occasions, it was CLI, not Haas individually, who was engaged in the Bankruptcy Case. Haas, the courts have held over and over again, has no individual standing as to the matters litigated in the Bankruptcy Case.

4. Haas Has Filed to Plead Fraud per Fed. R. Civ. P. 9(b)

"Rule 9(b)'s requirement that '[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity' applies to civil RICO fraud claims."[20] *Edwards v. Marin Park, Inc.,* 356 F.3d 1058, 1065-66 (quoting *Alan Neuman Prods., Inc. v. Albright,* 862 F.2d 1388, 1392 (9th Cir. 1989)). Haas uses the word "fraud" (or a variation thereof) 79 times in the Complaint. Indeed, Haas's list of alleged predicate acts includes "Mail & Wire Frauds" and "Bankruptcy Fraud." Compl., ¶ 351. Yet, the Complaint is devoid of the specific, detailed allegations required by Rule 9(b). For example, Haas posits that the MNAT Defendants were part of a conspiracy to hand over the Debtors'

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[19] *See, e.g., Sparling v. Hoffman Const. Co.,* 864 F. 2d 635, 640– 41 (9th Cir. 1988) (shareholders lacked RICO standing because injuries derived from injury to corporation); *Adams–Lundy v. Ass'n of Prof'l Flight Attendants,* 844 F.2d 245, 250 (5th Cir.1988) (union members lacked RICO standing where "financial improprieties occurred with union funds and directly injured solely the union"); *Roeder v. Alpha Indus., Inc.,* 814 F.2d 22, 29 (1st Cir. 1987) (shareholder lacked standing to bring RICO action based on bribery that injured corporation); *Ahn v. Hanil Dev't, Inc.,* Case No. 10-56386, 471 Fed. Appx. 615, 617, 2012 WL 699454, at *1 (9th Cir. Feb. 6, 2012) (shareholder who alleged harm to his corporation lacked RICO standing); *Pette v. Int'l Union of Operating Engineers,* Case No. 12-09324 DDP, 2013 WL 5573043, at *3 (C.D. Cal. Oct. 9, 2013) (individual union members lacked standing to sue for injuries to union). *See also In re Teledyne Defense Contracting Derivative Litig.,* 849 F. Supp. 1369, 1378 (N.D. Cal. 1993) (dismissing RICO § 1962(d) conspiracy claim upon dismissal of RICO § 1962(c) claim for shareholders' lack of standing to sue for injury to corporation).

[20] To properly plead a fraud based RICO claim, Haas must "state the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentation." *Alan Neuman Prods.,* 862 F.2d at 1393.

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assets to Bain Capital for as little value as possible, but never provides coherent details of when, where and how that allegedly fraudulent scheme was carried out. Accordingly, the Court should ignore such inadequately detailed allegations of fraud in the Complaint when evaluating whether Haas has stated a RICO claim.

D. Venue Is Improper in this District.

Venue of this action in this District is improper both under the general venue statute, 28 U.S.C. § 1391, and the RICO venue statute, 18 U.S.C. § 1965(a). Accordingly, the Complaint should be dismissed.

Section 1391 of title 28 of the United States Code provides that venue is proper in:

> (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
>
> (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
>
> (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

28 U.S.C. § 1391(b).

Here, it is undisputed that not all of the Defendants reside in California. Venue of this action in this District cannot be established under subsection (1). Virtually all of Haas's allegations revolve around the Bankruptcy Case, which has been and remains venued over 3,000 miles away in the District of Delaware. Further, accepting for this motion only that Haas's allegations about Defendants' addresses are correct, the largest concentration of defendants is in the District of Delaware (Traub, MNAT, Werkheiser, Gold and Connolly). Indeed, Haas even

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lists a Delaware address for himself.[21] Only three of the defendants (Romney, Bain Capital and Goldman Sachs) are alleged to reside in California.[22] In short, no basis exists for venue in this District.

Nor does RICO § 1965(a) support venue in this District. Section 1965(a) provides: "Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which ***such person*** resides, is found, has an agent, or transacts his affairs." 18 U.S.C. § 1965(a) (emphasis added). Out of all the Defendants, Haas has alleged in the Complaint caption only that "Goldman Sachs" resides in this District. That alone does not establish venue here as to the remaining Defendants. *See Leskinen v. Halsey*, No. 2:10-cv-03363 MCE KJN PS, 2011 WL 4056121, *8 (E.D. Cal. Sept. 12, 2011) (interpreting "person" narrowly); *Doe v. Mitchell*, 2009 WL 838050, *3 (D. Nev. Mar. 26, 2009)(same).

Indeed, Defendant MNAT is a limited liability partnership organized under the laws of the State of Delaware, which maintains its only office in Wilmington, Delaware, and which concentrates on the practice of law in Delaware. Defendant Werkheiser is a partner of Defendant MNAT, who resides in Pennsylvania and who is admitted to the Bars of the State of Delaware and the District of Columbia. This District, therefore, is not a proper venue choice for either MNAT Defendant.

E. <u>The Complaint Should Be Dismissed For Insufficient Process.</u>

The Complaint should be dismissed pursuant to Federal Rule 12(b)(4) for insufficient process, because Haas failed to obtain and/or serve a summons directed to the MNAT Defendants, and also served a summons which was issued in connection with the Original Complaint. Rule 4 of the Federal Rules of Civil

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[21] Haas has used the return address of 108 E Jewel Street, Delmar, Delaware 19840 for court filings since at least October 2006. *See, e.g.*, Notice of Appeal, filed Oct. 2, 2006 [Case No. 08-00829-KAJ, D.I. 39 (D. Del.); GWW Decl. Ex. 33].

[22] Curiously, Haas avers in the Complaint that "Plaintiff suffers from substantial statutory violations occurring in District of ***Southern*** California." (Compl., ¶ 1 (emphasis added))

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Procedure provides in relevant part that "[a] summons must . . . be directed to the defendant." Fed. R. Civ. P. 4(a). Further, Rule 4 provides that "[a] summons – or a copy of a summons that is addressed to multiple defendants – must be issued for each defendant to be served." Fed. R. Civ. P. 4(b). *See Aguilar v. Mission Support Alliance, LLC*, NO. CV-11-5123-EFS, 2012 WL 911421, *2 (E.D. Wash. Mar. 16, 2012) ("Because of the summons' failure to list [defendant's] address and each of the defendants' names, service . . . was deficient.").

Haas has failed to comply with the Rule 4, and process is therefore insufficient. On February 12, 2014, an agent of Haas attempted to serve upon the MNAT Defendants a copy of the Original Complaint together with a summons issued by the Clerk of this Court to Paul Traub. Someone, presumably Haas, scratched out the name and address of Paul Traub, wrote "See Attached" and affixed a copy of the Original Complaint's caption. *See* GWW Decl. Ex. 45.

Furthermore, the summons was issued by the Clerk on October 18, 2013, for the Original Complaint, which Haas never served. There is no record on the Court's docket that a new summons was ever issued for the First Amended Complaint, filed on November 11, 2013. Service of a mismatched summons and complaint is *prima facie* insufficient. *See In re Kutrubis*, 486 B.R. 895, 901 (N.D. Ill. 2013) ("When a new or additional claim for relief is asserted against the same defendant, then a new summons must be served with the amended complaint.").

Under Rule 4(m), Haas had only 120 days (*i.e.,* until February 15, 2014) from the filing of the Original Complaint on October 18, 2013, to complete service. *See* Fed. R. Civ. P. 4(m). Haas's later filed the First Amended Complaint does not reset the 120-day period. *See Bolden v. City of Topeka*, 441 F.3d 1129, 1148 (10th Cir. 2006); *Petty v. Shojaei*, 2013 WL 5890136, *13 n.16 (C.D. Cal. Oct. 31, 2013); *Thongnoppakun v. American Exp. Bank*, No. 2:11-cv-08063-ODW (MANx), 2012 WL 1044076 (C.D. Cal. Mar. 26, 2012). Therefore, Rule 4(m) mandates dismissal.

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F. Dismissal of the Complaint Should be With Prejudice.

Where, as here, a complaint is entirely devoid of merit and cannot be amended to state a cognizable cause of action, dismissal should be granted without leave to amend. "[D]istrict courts are only required to grant leave to amend if a complaint can possibly be saved. Courts are not required to grant leave to amend if a complaint lacks merit entirely." *Lopez v. Smith,* 203 F.3d 1122, 1129 (9th Cir. 2000); *Pirvu v. Yucca Valley Develop. Dep't,* No. EDVC-12-0738-JLQ, 2012 WL 4951209, *1 (C.D. Cal. Oct. 17, 2012) (dismissing complaint without leave to amend where complaint "consists of pages of rambling, disjointed factual allegations, and a recital of legal doctrines, which do not shed light on or strengthen the nature of Plaintiff's claims"). Moreover, where plaintiff's multiple amendments fail to correct fatal defects in a complaint, it should be dismissed with prejudice. *See Sims v. Lee,* No. CV 13-01548 DDP (AJW), 2013 WL 5522008, *1 (C.D. Cal. Oct. 3, 2013) ("Granting leave to amend . . . would be futile because there is no reasonable possibility that plaintiff can plead other facts consistent with those already alleged that would cure the defects in those claims . . . [and] because [certain] allegations are immaterial and frivolous"); *Daniels v. SCME Mortgage Bankers, Inc.,* 680 F. Supp. 2d 1126, 1127, 1131 (C.D. Cal. 2010) (dismissing with prejudice where prior order had already "put Plaintiff on notice" of pleading requirement and "it is highly probable that Plaintiff would not succeed in stating a valid federal claim even if he were able to amend the complaint.").

Haas's Original Complaint [D.I. 1] clocked in at 108 pages and 480 paragraphs, consisting mostly of impenetrable ramblings. His First Amended Complaint [D.I. 6] now before the Court expanded to 150 pages and 690 paragraphs with no more clarity. His proposed second amended complaint [D.I. 10 & 15], which this Court denied Haas leave to file [D.I. 11], had bloated to 340 pages and, once again, was no clearer. Indeed, in denying leave to amend, this Court recognized that "the proposed [second amended complaint], like the previous

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versions of the complaint, would be subject to dismissal under Federal Rule of Civil Procedure 8." [D.I. 11]

Haas has been filing abusive and harassing pleadings in the Bankruptcy Case for years. Like the complaints here, those filings are largely unintelligible and filled with false and abusive personal attacks. There is no reason to think that Haas will suddenly reform his pleading practices if given another chance.

IV. CONCLUSION

For the foregoing reasons, the MNAT Defendants respectfully request that the Court dismiss of the Complaint with prejudice and grant the MNAT Defendants such other and further relief as is just and proper.

DATED: March 5, 2014

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By: */s/ Matthew N. Falley*
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