IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

JAMES CURTIN,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	1:26-cv-00472-TDS-JGM
v.	)	
	)	
CYBERLUX CORPORATION, et al.,	)	
	)	
Defendants.	)	

PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT HII MISSION TECHNOLOGIES CORPORATION'S MOTION TO DISMISS

I. NATURE OF THE MATTER

This brief opposes the motion to dismiss filed by Defendant HII Mission Technologies Corporation ("HII"). HII does not dispute the conduct the First Amended Complaint (the "Complaint") describes. It argues that the claims are barred by a prior dismissal and, in the alternative, that they are insufficiently pleaded. The Complaint asserts three counts against HII: negligent oversight (Count I), civil conspiracy (Count II), and civil RICO (Count X).

Plaintiff does not oppose dismissal of Counts I and II as against HII, for the reasons stated in Part IV.B, and this brief is directed to Count X. Count X was never asserted against HII in the prior action. It rests on Plaintiff's status as a confirmed federal witness — a status that did not exist when the prior complaint was filed — and on conduct that continued after that filing. It is pleaded against HII both as a participant in the affairs of a racketeering enterprise under 18 U.S.C. § 1962(c) and, independently, as a conspirator under 18 U.S.C. § 1962(d). Neither of HII's arguments reaches it.

II. STATEMENT OF FACTS

The following facts are drawn from the Complaint and from filings in related federal and state proceedings of which the Court may take judicial notice. They are taken as true for purposes of this motion.

A. A firm-fixed-price subcontract, an advance, and its diversion.

In August 2023, HII's predecessor and Cyberlux Corporation ("Cyberlux") entered into Subcontract No. P000043846, a firm-fixed-price subcontract supporting HII's prime task order for the Navy and the General Services Administration. (Compl. ¶¶ 6, 12.) The Government disbursed a $38,700,600 advance. (Compl. ¶ 31.) Within months, $7,417,205.06 of that advance was diverted to purposes unconnected to drone production, including a $3,000,000 acquisition wire, a $213,000 wire to a luxury-automobile dealer, a $994,460 wire to a seventeen-day-old entity, and transfers to Cyberlux's chief executive. (Compl. ¶¶ 31, 76(d)–(f).) The manufacturing cost of each drone was approximately $4,700; the Government was invoiced at $39,428.71 per unit. (Compl. ¶¶ 26, 76(g).)

B. The scheme was designed before the contract existed.

The pricing was not the product of the contract. It preceded it. As pleaded and as sworn in a declaration filed in the interpleader proceeding, the architecture of the scheme — a commission built into the unit price, and an express agreement that the brokers would not be cut out — was transmitted by Cyberlux's chief executive roughly seventeen months before the subcontract was signed. (Compl. ¶¶ 74, 76(c) (citing the sworn Gonzalez Declaration, HII Mission Technologies Corp. v. Cyberlux Corp., No. 3:25-cv-00483-JAG (E.D. Va.), ECF No. 167-1, Ex. B).) The design was to extract from the Government a price far above cost. A unit manufactured for approximately $4,700 was invoiced at $39,428.71 — a markup of roughly 739

percent. (Compl. ¶ 26.) The price was not built from cost. It was assembled from cost plus stacked margins — one for Cyberlux, one for the brokers, and a "safety factor" — and then fixed as a suggested retail figure that one participant described, in his own words, as "a made up number," to be raised or discounted at will. (Ex. A.) The product was the vehicle for the commission, not the reverse. The broker whose cut that price was built to carry — ARG Group, whose principal Gonzalez swore the declaration documenting the design — is itself a claimant in the interpleader, demanding $14,118,618.61 of the funds the subcontract produced. (Compl. ¶ 32.)

C. Termination, and the position HII swore under oath.

The Government issued a stop-work order in December 2023 and terminated the relevant scope for convenience in May 2024; HII terminated the subcontract days later. (Compl. ¶ 38.) Under the subcontract's fixed-price termination terms, the Government had paid for the 392 drones formally accepted on Government inspection reports — approximately $14,954,400, already funded from the advance — and the remaining 1,608 units, in varying states of assembly, were the seller's loss. (Compl. ¶¶ 38, 41.) $22,776,605.40 of the advance was unearned and owed back to the Government. (Compl. ¶¶ 33, 38.)

In October 2024, HII swore to that position. In its Garnishee's Answer and Plea of Nonjoinder in the Circuit Court of the City of Richmond, Atlantic Wave Holdings, LLC v. Cyberlux Corp., No. CL22-3882-15 (Va. Cir. Ct. Oct. 24, 2024) — the October 2024 sworn filing referenced in the Complaint at ¶¶ 38–39 — HII quoted Subcontract Section 32.1 and represented that its "sole obligation" upon a convenience termination was to pay the percentage of work "actually performed," and that "under no circumstances" would Cyberlux be entitled to lost profits. The same provision gave Cyberlux twenty days from termination to submit a written

claim for termination charges, and provided that "[f]ailure to submit such claim within such time shall constitute a waiver of all claims and a release of [HII's] liability arising out of such termination." HII further swore that it was "unable to state the amount, if any," it owed Cyberlux. That filing is a public record subject to judicial notice.

D. The conversion and the seal.

Four months later, on February 26, 2025, HII executed Modification No. 4 to the subcontract, "To Effectuate a Termination Settlement." It paid Cyberlux $25,769,369.03 (Compl. ¶ 39) for inventory that, under the fixed-price terms HII had just sworn to, was the seller's loss. Modification No. 4 provided, at paragraph 12, that where its terms conflicted with the subcontract's clauses governing "invoicing, payment, delivery, inspection/acceptance, [and] warranty," the settlement "shall control." The fixed-price mechanics HII had defended in October were superseded in writing in February.

Modification No. 4 also acknowledged, at paragraph 1(a), that "pursuant to FAR 49.108-3, the Government expects HII to submit a subcontractor settlement to the Government Contracting Officer for review and approval." That review was the procedural safeguard between the settlement and the public fisc. Paragraph 9 of Modification No. 4, titled "Communications" and drafted by HII, provided that Cyberlux "shall not communicate with the U.S. Navy or the General Services Administration" regarding the performance or termination of the subcontract, and that HII would be the "sole point of contact for such communications… including but not limited to communications regarding the Government Contracting Officer's review of the Agreement." (See Compl. ¶¶ 6, 39.) The clause sealed the contracting officer off from the one party with direct knowledge of where the advance had gone, during the very review meant to test the settlement. By its own terms, the clause survives the agreement's termination.

E. The reporting, the witness, and the campaign.

From November 2024 through May 2026, Plaintiff published investigative reporting documenting the advance diversions, the commission pricing, the wire to the surveillance entity, the receivership, and the question of who owned the drones the Government had paid for. (Compl. ¶ 46.) One of those articles, documenting HII's contract failures and the resulting taxpayer cost, appears at entry 23 of the Exhibit G timeline and is reproduced at Exhibit B. (Ex. B; Compl. Ex. G.) On March 12, 2026, Plaintiff was interviewed for approximately five hours by investigators from the Offices of Inspector General of the General Services Administration and the Department of Defense; he has been a confirmed federal witness since that date, and the investigation was triggered by his reporting. (Compl. ¶ 43.)

On May 27, 2025 — days after Plaintiff published articles naming the actors — a coordinated campaign disclosed Plaintiff's identity, published the personal details of his family, and directed public accusations of espionage and foreign-agent activity at Plaintiff and at a NATO-allied company with which he did business. (Compl. ¶¶ 5, 55.) A named defendant tracked Plaintiff's standing with that company across the following year. The campaign did not end. On May 26, 2026 — five days after Plaintiff served all counsel with notice of this action — Cyberlux transmitted a thread from its official corporate accounts on X and LinkedIn, telling its investor audience the legal environment was "materially improving." The thread paired Plaintiff's legal name with the court's citation-related language from the dismissed action, echoing the campaign's recurring use of Plaintiff's lawful pen name as if it were evidence of wrongdoing. It did not disclose that Plaintiff had filed the present action the day before — a fact Cyberlux possessed, having been served notice through its own counsel five days earlier. Within twenty-one minutes, accounts that had participated in the 2025 campaign resumed attacks on Plaintiff's

professional credibility. (Compl. ¶ 59.) Surveillance of Plaintiff's publications and successor harassment continued through the date of the Complaint. (Compl. ¶¶ 10, 56.)

III. QUESTIONS PRESENTED

1. Whether res judicata bars Count X, a civil RICO claim never asserted against HII in the prior action and resting on Plaintiff's confirmed-witness status and on conduct that post-dates the prior complaint.

2. Whether the Complaint states a civil RICO claim against HII under 18 U.S.C. §§ 1962(c) and 1962(d).

3. Whether the Complaint pleads injury to Plaintiff's business or property under 18 U.S.C. § 1964(c).

IV. ARGUMENT

A. Standard of review.

On a Rule 12(b)(6) motion, the Court accepts the Complaint's well-pleaded facts as true and draws all reasonable inferences in Plaintiff's favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible when its factual content allows the reasonable inference that the defendant is liable; plausibility does not require excluding every innocent alternative, and a defendant's competing innocent account is not a basis for dismissal. Where the pleaded facts and the documents they incorporate will support more than one reasonable reading, the choice among them belongs to the factfinder on a developed record, not to the Court on the pleadings. HII's characterization of the February 2025 settlement as a routine commercial closeout, and of the communications bar as a benign privity term, is one such reading; as shown below, it is not the only one the record permits, and it therefore cannot be adopted on this motion.

B. Counts I and II are not opposed; res judicata does not bar Count X.

Plaintiff does not oppose dismissal of Count I (negligent oversight) or Count II (civil conspiracy) as against HII. Count I rests on a general duty of care that HII, as a stranger to any relationship with Plaintiff, did not owe him; Count II does not state a freestanding tort. The concession is narrow, and it carries a qualification that bears on Count X.

HII's position is one its own conduct in a related proceeding cannot be squared with. In its motion for relief in the Virginia interpleader, HII invoked the Subcontract's indemnity provisions — under which Cyberlux must indemnify and hold HII harmless against third-party claims "arising out of or relating to any third party claims… to the extent such Claims arise from [Cyberlux's]… intentional misconduct, negligence, or fraud" — and characterized this very action as such a claim, in order to recoup its own defense costs from the interpleaded fund. In doing so it described Plaintiff's claims as alleging that HII "undertook express contractual obligations to exercise oversight" of its subcontractor, that those breaches enabled Cyberlux's continued misconduct, and that they "directly enabled" the "public doxxing of Plaintiff and interference with Plaintiff's business relationships, which foreseeably caused reputational and economic harm." This does not revive the conceded negligence count. It exposes an inconsistency HII cannot hold: it told the Virginia court the same conduct was a third-party claim arising from intentional misconduct, negligence, or fraud — serious enough to shift its defense costs onto Cyberlux and secure its recovery from the fund — while it tells this Court the conduct is too insubstantial to credit. A defendant does not get the benefit of both characterizations. Conceding the tort theory removes a duty-based count; it does not license HII to treat the underlying facts as implausible for purposes of Count X.

Res judicata bars a later claim only where there is (1) a final judgment on the merits in the prior action, (2) an identity of the cause of action, and (3) an identity of the parties or their privies. The doctrine does not reach a claim that could not have been asserted in the first action, and it does not bar claims arising from conduct that had not yet occurred. See *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). Count X fails the second element and falls outside the doctrine for three independent reasons.

1. RICO was never asserted against HII in the prior action. In *Curtin v. Watts*, No. 1:25-cv-00782-TDS-JGM (M.D.N.C.), HII was named only on common-law theories, which were dismissed. No RICO claim, and no claim under 18 U.S.C. § 1513, was asserted against HII there. A civil RICO claim is a distinct cause of action with distinct elements — an enterprise, a pattern of racketeering activity, and a statutory injury — none of which was adjudicated. The point is one of cause-of-action identity and timing, not the rediscovery of old facts.

2. The claim could not have been brought when the prior complaint was filed. The § 1513 predicate that anchors Count X depends on Plaintiff's status as a person who provided information to federal investigators about a possible federal offense. That status arose on March 12, 2026 (Compl. ¶ 43) — more than seven months after the prior complaint was filed on July 31, 2025. A claim whose elements had not yet come into existence cannot have been brought in the earlier action, and res judicata does not bar it.

3. Count X rests on a continuing course of conduct, much of it after the prior action was filed and after its dismissal, and footnote 2 mischaracterizes the Complaint. HII asserts that the only post-dismissal conduct pleaded is paragraph 59, and that paragraph 59 "does not mention HII." Both halves are incorrect. Paragraph 59 pleads that on May 26, 2026 — one day short of the first anniversary of the May 27, 2025 campaign — Cyberlux publicly weaponized

the dismissal of the prior action — the action HII was a defendant in and which HII's own brief calls "the First Action" — as part of a "materially improving" narrative that drew the harassment network back within twenty-one minutes. Once HII's membership in the enterprise is established (Part IV.C), that act is attributable to it as a co-conspirator's act in furtherance of the enterprise; it need not name HII. See *Salinas v. United States*, 522 U.S. 52, 64 (1997). And paragraph 59 is not the sole post-dismissal allegation: the Complaint also pleads surveillance and successor harassment continuing "through the date of this filing" (Compl. ¶¶ 10, 56) and a cease-and-desist transmitted in May 2026 (Compl. ¶ 56). These are not isolated post-dismissal acts but a continuing course the Complaint pleads as running through the date of filing; and because much of that conduct post-dates the filing of the prior action on July 31, 2025, it could not have been litigated there regardless of the dismissal. More fundamentally, the enterprise's concealment objective is itself ongoing: the diverted funds remain unrecovered and undisclosed to the contracting officer, and the conduct directed at the witness whose reporting threatens that concealment continues into the present. Conduct that post-dates the prior judgment, and an objective still being pursued, are not matters the prior judgment could have resolved. HII runs its same-operative-facts analysis only for Count I; it never runs it for Count X. The omission cannot carry a dismissal of a claim the analysis never addressed.

C. The Complaint states a civil RICO claim against HII.

HII frames RICO as a tool misused against ordinary commercial conduct. The frame does not fit the pleaded facts. The question the Complaint raises is whether concealing material facts from a federal contracting officer — during a review the parties themselves acknowledged was required under FAR 49.108-3 — is ordinary commercial conduct. It is not. What is pleaded is an integrated, multi-year scheme to obtain a grossly inflated contract from the Government, to

divert the proceeds, and to conceal the diversion, with the Government as victim. The enterprise's elements are pleaded as facts, not labels.

1. The enterprise.

An association-in-fact enterprise requires a common purpose, relationships among those associated, and longevity sufficient to pursue the purpose. *Boyle v. United States*, 556 U.S. 938, 946 (2009); *United States v. Turkette*, 452 U.S. 576, 583 (1981). The Complaint pleads each, and two sworn court records close the loop between design and result. The purpose was to extract from the Government a price for the drones far above their cost — units manufactured for approximately $4,700 each and invoiced at $39,428.71, a 739% markup over manufacturing cost (Compl. ¶ 26) — and then to obtain, divert, and conceal the resulting funds through a settlement the contracting officer could not independently test. The commission architecture at the center of that purpose was designed before the subcontract existed: the 2022 communications among Cyberlux's chief executive and the brokers — pleaded in the Complaint at ¶¶ 74 and 76(c) and submitted herewith as Exhibit A — show a unit price built to carry a commission and an express decision to keep the brokers in — the association regulating its own membership to preserve itself, which is the continuing-unit conduct *Boyle* describes. (Compl. ¶¶ 74, 76(c).) The communications also show how the price was set: not from cost but by reference to what the Government and its allies were paying for a comparable loitering munition, the participants benchmarking the unit price against the Switchblade system — itself priced in the tens of thousands of dollars per unit — and one of them observing that they might be pricing "too low." (Ex. A.) That design was not theoretical. Years later it produced a set of sworn claims filed against the interpleaded funds — ARG Group ($14,118,618.61), WeShield / Assure Global ($5,310,034.76), Fairwinds Technologies ($2,348,542.40), and Maadarani individually

($1,062,576.98), among others — each contingent on contract proceeds and each predating the subcontract. (Compl. ¶ 32.) Those communications show the architecture created; the interpleader claims show it operating as designed. That is a functioning enterprise across time, not a label.

The roles within that enterprise are pleaded and documented. Cyberlux was the party whose diversion the settlement protected. HII was the party that structured the conversion, drafted the communications bar, and served as the sole channel to the Government. And while the enterprise's concealment objective remained ongoing — the diverted funds unrecovered and undisclosed to the contracting officer — HII used the settlement it structured to position itself as the party that closed out and narrated the matter to the Government. A defendant's management of its own exit from an ongoing concealment is participation in the enterprise, not separation from it. HII's characterization of "the Cyberlux Enterprise" as a mere label ignores the facts pleaded under it.

2. HII's conduct and HII's agreement.

HII argues it did not operate or manage the enterprise and so cannot be liable under *Reves v. Ernst & Young*, 507 U.S. 170 (1993). Designing the conversion of a fixed-price contract into a cost-type settlement, and drafting the clause that controlled what the contracting officer could learn, is participation in the conduct of the enterprise's central concealment mechanism — not the mere performance of one's own tcontract. But the Court need not resolve the *Reves* question, because Count X is independently pleaded under § 1962(d). A conspirator need not operate or manage the enterprise, need not commit a predicate act, and need not perform any overt act; it is enough that the defendant agreed that the enterprise's objective be pursued. *Salinas*, 522 U.S. at 63–65.

HII says the Complaint pleads no agreement and does not explain how or when one was reached. HII answered that question itself, under oath. In its October 2024 filing it swore that "since May of 2024, [HII] and Cyberlux have engaged in ongoing communications in an attempt to agree on the amount, if any, owed to Cyberlux," that the matter "remains unresolved," and that HII was "unable to state the amount, if any," it owed. That is a documented negotiation running from the May 2024 termination to the February 2025 settlement. The "how and when" HII says is missing is in HII's own sworn record. The shape of the result confirms what the negotiation produced: a party that swears it owes nothing beyond work performed, and four months later pays $25,769,369.03 for unfinished inventory while its own settlement instrument converts the payment basis from the fixed price to cost-type mechanics inconsistent with the designation it had just defended (Compl. ¶ 39), has done something other than apply the contract it defended. The usefulness of that inventory had itself been in dispute. A sworn summary-judgment filing in the interpleader records that the December 2023 stop work arose from a dispute among HII, FEDSIM, and Cyberlux "over the utility of the drones in the battlefield theatre." (Compl. ¶ 37.) HII was a party to that dispute, and then paid cost-type value for the same inventory. The twenty-day claim bar gave HII a second, independent reason it owed nothing: Cyberlux's failure to submit a compliant termination claim within the subcontract's window worked, by the contract's own terms, "a waiver of all claims and a release of [HII's] liability" (Compl. ¶ 38). That release had operated months before HII swore, in October 2024, that it could not state any amount it owed — a complete contractual defense HII held and did not invoke. And $22,776,605.40 of the advance was unearned and owed back to the Government (Compl. ¶¶ 33, 38), with HII holding the default-termination remedies it left unexercised (Compl. ¶¶ 38, 40). A party that owed Cyberlux nothing under the terms it had sworn to, and that was positioned to return unearned

funds to the Government, instead executed a settlement paying Cyberlux $25,769,369.03. That inversion — from owing nothing and holding funds due back to the public, to paying the defaulting counterparty — is not the ordinary operation of a fixed-price closeout. And HII did not structure the payment to fall on itself. By Modification No. 4, it submitted that payment to the contracting officer for review and approval as a contractor settlement under FAR 49.108-3 (Compl. ¶ 39), placing the cost before the Government even as it continued to hold the unearned advance owed back to that same Government. The incentive an arm's-length party ordinarily has — to limit what it pays out of its own funds — was therefore absent. Read in Plaintiff's favor, as Rule 12 requires, those facts plausibly support the inference of an agreement to pursue the enterprise's concealment objective, rather than the independent operation of a closeout.

HII's argument that each party acted only in its own self-interest, and that there was therefore no agreement, inverts the law. The premise is correct; the conclusion does not follow. Each party did act in its own interest — and that is precisely why the agreement formed. Cyberlux's interest was to avoid repaying an unearned advance it had misused. HII's interest was to avoid disclosing to the Government that it had allowed that misuse to occur, that it had transmitted the subcontractor's commission-embedded invoices under a warranty the Complaint alleges was false (Compl. ¶¶ 32, 76(g)), and that it had not reported any of it. Those two interests could be served by the same act: sealing the contracting officer off from the financial record. An association-in-fact is what forms when separate self-interests converge on a single shared mechanism, and here they converged on one clause. Aligned self-interest channeled through one concealment structure is not the absence of an agreement; it is the agreement. *Boyle* requires neither altruism nor a common master.

The communications bar is itself a tell of that agreement. A party with a complete and accurate account to give its customer does not contract to silence the counterparty who shares knowledge of the facts — least of all as to the customer's own review of the settlement. The inference the clause supports is not that the Government never saw the Agreement, which by its own terms was submitted to the contracting officer for review and approval; it is that the officer acted on the prime's account alone, insulated by contract from the one party who knew the advance had been diverted. Approval obtained on a record built to exclude that knowledge is not informed approval, and a term drafted to exclude it is not the product of independent self-interest. It is coordinated concealment — the agreement § 1962(d) requires.

HII's reliance on paragraph 55 is selective. HII quotes the clause that it "did not participate in the retaliation campaign, to Plaintiff's present knowledge," and stops there. The same paragraph pleads that the campaign "served HII's institutional interests as directly as it served Cyberlux's," and that the gag and the campaign served "the same concealment purpose." (Compl. ¶ 55.) The clipped concession is narrow, and it is consistent with conspiracy liability: HII's overt act is the gag, and the campaign is a co-conspirator's act in furtherance of the agreement HII had joined.

Three facts in the record frame the inference the Court must draw in Plaintiff's favor at this stage. First, HII had ample basis to suspect the diversion of the advance: the Welter Declaration documenting $4,417,205.06 in specific unauthorized disbursements was on the public docket for 176 days before HII executed Modification No. 4 (Compl. ¶¶ 39–40), and HII's own surveillance duty under FAR 32.409-3 required it to monitor the advance and report irregularities to the contracting officer. Second, the diverted funds remain unrecovered, and nothing in this record reflects their disclosure to the contracting officer — Modification No. 4

makes no attempt to recover the $22,776,605.40 the subcontractor's own filed spreadsheet acknowledged was owed back to the Government (Compl. ¶¶ 33, 39). Third, HII represents to this Court that the settlement was a routine commercial closeout and that the communications bar "did not affect or preclude the Government's vision" into it. Those facts are not advanced here to charge HII with anything; they are advanced because, taken together and read in Plaintiff's favor as Rule 12 requires, they will not resolve into the single innocent account HII asks the Court to adopt. At a minimum they present competing inferences — the precise circumstance in which dismissal is unavailable.

3. Footnote 4 cannot be resolved on the pleadings, and misreads its own clause.

HII calls the gag a provision "common… to preserve contractual privity" that "did not affect or preclude the Government's vision" into the settlement. The clause says otherwise. It is titled "Communications," and it bars Cyberlux from communicating with the Navy or GSA and makes HII the sole point of contact "including… communications regarding the Government Contracting Officer's review." Privity governs who may enforce a contract; it has nothing to do with who may speak to the Government. A clause forbidding one party from communicating with the customer is an information-control provision, and naming it "privity" does not change what it does. As for the "Government's vision": the assertion that the contracting officer's view was unaffected is a contested factual claim, made without support, on a motion where the facts are read in Plaintiff's favor — and it cannot be squared with a clause that gagged the one party who could have told the officer what the records concealed. In all events, privity does not shield conduct that conceals material facts from the Government or that injures third parties; the Subcontract's indemnity provisions expressly contemplate third-party claims arising from fraud — which is how HII characterized this action when it sought its defense costs from the

interpleaded fund. That allocation answers the privity point as well: a contract that requires indemnification against third-party claims is one whose parties anticipated liability to those outside the relationship and apportioned it, and privity — which governs only who may enforce a contract — has never immunized a party from liability to a third party for its own wrongful conduct. Privity the parties themselves contracted around cannot be the absolute bar HII now invokes. The footnote raises a fact question; it does not resolve one.

4. Proximate cause: the witness-retaliation predicate.

HII argues that Plaintiff's injury is too remote from its contracting conduct. Count X does not depend on the attenuated chain HII attacks. Its causal spine is witness retaliation, a predicate expressly enumerated in 18 U.S.C. § 1961(1)(B). Section 1513(e) makes it an offense to harm another in retaliation for providing a law-enforcement officer with truthful information relating to the possible commission of a federal offense; it requires no pending proceeding and no formal designation. The retaliator's knowledge is shown in a defendant's own words: a June 2025 message from Maadarani to Plaintiff's contact at WB Group referring to Plaintiff as "quietly talking to the FBI like he said he did." (Compl. Ex. K.) The motive is pleaded: the agreement was complete by February 2025; Plaintiff's reporting then threatened the concealment; and the campaign followed to protect it. That retaliation took the form of public false accusations against the witness — that his work was fraud, that he was engaged in stock manipulation, and that he was a foreign agent (Compl. ¶ 5) — calculated to destroy the credibility on which his standing depends.

HII's own authority supports causation here. The rule HII invokes — that RICO causation turns on directness rather than foreseeability — is satisfied by the pleaded financing trail: Government trust funds reached the actor who conducted the campaign. See *Hemi Grp.*,

LLC v. City of New York, 559 U.S. 1, 9 (2010). The decisions HII cites involved intervening independent actors who broke the causal chain; here, the funds capitalized the very actor that carried out the retaliation, and no independent decision intervened. The reporting that triggered the campaign is documented and dated: articles published in the weeks before May 27, 2025, including one naming HII's regulatory failure fourteen days before the campaign and one naming a defendant three days before it. (Compl. ¶¶ 46, 55.) The reporting threatened the concealment; the campaign answered it.

5. Pattern.

A pattern requires related predicate acts amounting to or threatening continued criminal activity. *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989). The predicate acts pleaded share a single purpose — obtaining, diverting, and concealing the misuse of the advance — and run continuously from 2021 through 2026. (Compl. ¶ 76.) The financial predicates, the diversion wires and the commission-embedded invoices (Compl. ¶ 76(d)–(g)), establish the enterprise and the pattern; the witness-retaliation predicate (Compl. ¶ 76(j)–(k)) carries the injury. To the extent footnote 9 observes that publishing truthful information is not itself wire fraud, the point is immaterial to the pattern: the campaign is pleaded as retaliation against a witness under § 1513, an enumerated predicate, not as a fraud predicate.

The continuity required by *H.J. Inc.* is satisfied here in its open-ended form, which does not require a closed series of completed past acts where the racketeering activity remains ongoing. *Id.* at 241–42. The concealment the enterprise was organized to achieve is not historical. The diverted funds have not been recovered or disclosed to the contracting officer; the settlement remains before the Government; and the communications bar HII drafted survives the agreement's termination by its own terms. The Complaint further pleads that the suppression

directed at the person assembling the public record continued past the prior dismissal and "through the date of this filing" — the May 2026 corporate transmission, the reactivation of the harassment network, the continued surveillance — including the monitoring of Plaintiff's standing with the very business relationship the campaign had targeted (Compl. ¶ 56; Compl. Ex. K) — and the unanswered cease-and-desist. (Compl. ¶¶ 10, 56, 59, 76(j)–(k).) The witness-retaliation predicate that carries the injury is therefore not a closed historical act but ongoing conduct in service of an objective not yet achieved. An enterprise whose concealment purpose is still being served, by conduct still occurring, presents the paradigm of a threat of continued activity rather than a closed and completed scheme.

6. Injury to business or property.

A civil RICO plaintiff may recover for injury to business or property even where that injury derives from a personal injury. *Medical Marijuana, Inc. v. Horn*, 604 U.S. ___, 145 S. Ct. 931, 939 (2025). The Complaint pleads such injury and confines Count X to it: the termination, material diminishment, or commercial unavailability of four identified commercial relationships — WB Group, OTTO, Aurelian Industries, and SOCOM PEO TIS — and the loss of Plaintiff's personally owned and developed intellectual-property portfolio (COEUS, PROTEUS, Cerameta, Anchor 5.0, and Equilibrium Drift 4.0), valued in the Complaint at $73,000,000. (Compl. ¶ 77.) The Complaint expressly routes emotional and reputational harm to Count VIII and does not seek it under Count X. (Id.)

HII's footnote 11 argues that because Plaintiff's advisory entity is not a plaintiff, the injury must belong to a non-party. The injury pleaded is to Plaintiff's own property and his own business — his personally owned intellectual property and his individual professional

relationships — in a market in which his personal credibility is the commercial asset. (Compl. ¶¶ 10, 77.) An injury suffered in a personal capacity is not, for that reason, a non-business injury.

HII's footnote 12 argues that Plaintiff "cannot manufacture his own injury" by withdrawing from opportunities. The withdrawal was compelled, not voluntary. In a market governed by counterintelligence trust, a public accusation of espionage or foreign-agent activity is disqualifying the moment it is made, irrespective of proof. The dynamic is familiar from other trust-dependent roles: a lawyer or judge placed under a credible conflict or ethics cloud must withdraw or recuse whether or not the underlying allegation is ever proven, because in those roles the appearance of compromise is itself disqualifying; an accusation of espionage in a counterintelligence-governed market operates the same way. A foreseeable and intended consequence that forces the target to withdraw in order to limit the damage is the mechanism of the injury, not an independent, intervening cause that severs it. The accusation was the act; the withdrawal was its result.

D. The § 1962(d) conspiracy claim survives independently.

Even if the Court were to find the § 1962(c) claim insufficient, the § 1962(d) conspiracy claim survives. A RICO conspiracy claim does not require that the defendant operate the enterprise, commit a predicate act, or perform any overt act; it requires an agreement that the enterprise's objective be pursued. *Salinas*, 522 U.S. at 63–65. That agreement is pleaded and supported by HII's own sworn account of the negotiation, the structure of the resulting settlement, and the gag clause. (Compl. ¶ 75.) The contention that mere association is insufficient is answered by that evidence: the Complaint pleads participation in an endeavor that, if completed, would violate the statute — not passive association with persons who happened to break the law. The authority HII cites for the contrary does not fit. A § 1962(d) claim fails with

the substantive claim only where no RICO violation is pleaded at all; it does not fall merely because the conspiring defendant did not itself operate the enterprise. The Complaint pleads the violation — an enterprise conducting its affairs through a pattern — and the single deficiency HII identifies in its own § 1962(c) liability is the absence of operation or management, which *Salinas* does not require of a conspirator. An agreement to an endeavor that, if completed, violates the statute is what § 1962(d) reaches.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny HII's motion as to Count X. Plaintiff does not oppose dismissal of Counts I and II as against HII.

Respectfully submitted,

Dated: June 25, 2026

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CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), the undersigned certifies that the body of this brief contains fewer than 6,250 words, excluding the caption, signature block, and certificates, as counted by the word-processing software used to prepare it.

James Curtin

CERTIFICATE OF SERVICE

I certify that on the date set forth below I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: June 25, 2026

James Curtin