UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

MATTHEW DICKSON and JENNIFER DICKSON, individually and on behalf of all others similarly situated,	§	
PLAINTIFFS,	§	
v.	§	CASE NO. 5:16-cv-05027-PKH
GOSPEL FOR ASIA, INC., GOSPEL FOR ASIA-INTERNATIONAL, K.P. YOHANNAN, GISELA PUNNOSE, DANIEL PUNNOSE, DAVID CARROLL, and PAT EMERICK,	§	
DEFENDANTS.	§	

Plaintiffs' Opposition to Defendants' Motions to Dismiss Plaintiffs' Claims

In their Complaint, Matthew and Jennifer Dickson document GFA's solicitation and misdirection of money in exhaustive detail, offering example after example of GFA's explicit promises to apply 100% of every donation to the field, and a breakdown of where the money ends up: in private enterprises like soccer teams and rubber plantations. The Dicksons describe what they know about the roles of K.P. Yohannan and each of the other individual Defendants in GFA's fraudulent scheme, and they provide a detailed example of one of many donations of money they made to GFA over the years based on GFA's representations.

But the Defendants protest that the Dicksons' 42-page Complaint—replete with extensive documentation of false solicitations and misdirections of money—is nevertheless not specific enough to enable them to prepare a defense to the Dicksons' claims for fraud, violations of RICO

and Arkansas' consumer protection statute, and unjust enrichment. The individual Defendants also object to "group pleading" they claim doesn't sufficiently single out each of them, and GFA throws in a technical argument that the RICO claim impermissibly identifies it as both a "person" and an "enterprise" under the statute.

The Court should reject all of Defendants' arguments. Through their Complaint, the Dicksons inarguably provide Defendants with fair notice of their claims—and the host of allegations, taken as true, plausibly and squarely support each claim the Dicksons plead. At the pleading stage and before any discovery has been taken, the Dicksons' allegations as to the individual Defendants are likewise sufficient, and they are also clear enough to support their RICO claim.

Reading through the particularized allegations of the Complaint from beginning to end—and accepting them as true for purposes of the motion—unquestionably allows the Court to reasonably infer Defendants are liable for the misconduct alleged. The Court should therefore deny Defendants' motions to dismiss.

The Complaint's allegations and Defendants' arguments

In elaborate detail, the Dicksons' Complaint documents how Defendants use a Christian organization as a front to attract and exploit the goodwill and generosity of devout Christians. Complaint [Doc. 1] ¶1.

1. Summary of general factual allegations

Defendants operate Gospel for Asia, Inc. ("GFA") as a global Christian missionary organization working in South Asia, primarily within India. *Id*. ¶15. Through mail, radio, website, and in-person solicitations of donations, GFA represents to potential donors that it funds indigenous community development projects, provides desperately needed supplies and

provisions to the poor, and promotes a Christian message. *Id*. Between 2007 and 2013, GFA solicited over $450,000,000 in donations from the United States alone, where the majority of GFA's donors reside. *Id*. Well over one million unique donations are made to GFA each year from tens of thousands of donors who give one time or on a recurring, sponsorship basis. *Id*. However, despite repeated, explicit guarantees from GFA to donors, only a fraction of the donated money supports the people and causes for which it was donated, as Defendants redirect it for their own purposes. *Id*.

GFA acquires money by promising to use 100% of it for donor-specified purposes in the mission field. *Id*. ¶¶16-27. It solicits donations through its website (www.GFA.org), mailed solicitations, radio programming, and at in-person presentations. *Id*. ¶16. In its solicitations, GFA relies on three main types of representations: (1) its "GFA 100% Guarantee" that all money donated "goes to the field" when the donor intends; (2) a purportedly urgent, critical need for immediate donations; and (3) the donor's ability to designate particular projects or items and GFA's commitment to honor the donor's designations. *Id*. ¶16; *see also id*. ¶¶17-27.

But, after it receives the money, GFA diverts and misdirects almost all of it. *Id*. ¶¶28-41. For example, in 2013 (the most recent year for which audited financial data is available), GFA worldwide collected around $115,000,000 in donations (more than $90 million from the U.S.), but spent only $14,644,642 on services and relief under GFA's mission to support the poor and needy of India—directly contrary to donor designations and GFA's promises. *Id*. ¶29 & Ex. 1, 5 & 6. From 2003 through 2014, GFA solicited and collected approximately $700,000,000 from U.S. donors. *Id*. ¶38. During this period, "Believers Church"—created and controlled by Defendant K.P. Yohannan—bought and operated (1) a 2,300-acre for-profit rubber plantation, the Cheruvally Rubber Estate, in Kerala, India; (2) Caarmel Engineering College, a for-profit

undergraduate institute in Kerala, India, of which K.P. Yohannan is the "patron"; (3) Believers Church Medical College Hospital, a for-profit, 500-bed teaching hospital established in Kerala in 2014, of which K.P. Yohannan is the "patron"; (4) at least six for-profit primary schools in Kerala, for which K.P. Yohannan is patron; and (5) sponsorship of a football (soccer) club playing the Myanmar National League. *Id.*

During this period, GFA also built a 350-acre, $45 million compound in Wills Point, Texas, using at least $20 million from the cash reserves of its affiliated entity GFA-India, which consisted of donations to GFA solicited under the promise of GFA's 100% to-the-field guarantee and subject to the designations of donors. *Id*. ¶¶39-40. Thus, money donated from the United States designated for specific charitable purposes in "the Field" in fact was spent in the United States to develop the Wills Point compound. *Id*. ¶40.

In the Complaint, one of the many examples the Dicksons provide of GFA misdirecting money its donors designated for a specific purpose is "Widows and Abandoned Children." *Id*. ¶34. Between 2010 and 2013, GFA collected more than $4.2 million dollars designated by donors to support "Widows and Abandoned Children." *Id.* During that time, GFA, per disclosures on "FC-6 forms" submitted to the government of India, spent only $31,265 for the welfare of widows, and $0.00 for the welfare of orphans—less than 1% of what GFA collected for this purpose. *Id.*

2. The Dicksons' individual allegations

Matthew and Jennifer Dickson made several donations to GFA over the course of several years. *Id*. ¶42. They made each such donation only after learning of GFA's guarantee that it would apply 100% of every donation exactly as the Dicksons designated. *Id*.

For example, in May of 2013, the Dicksons decided to donate $25 to GFA's "Widows and Abandoned Children" fund in honor of Matthew's mother as a Mother's Day present. *Id*. ¶43. The Dicksons viewed a webpage on GFA's website discussing the "Widows and Abandoned Children" fund. *Id.*

On May 12, 2013, with the understanding that GFA would apply 100% of their $25 donation to the "Widows and Abandoned Children" fund in the Field, the Dicksons made the donation through GFA's website. *Id*. ¶44. GFA provided the Dicksons with a receipt reciting the GFA 100% guarantee and noting that the $25 donation was designated to the "Widows and Abandoned Children" fund. *Id*. & Ex. 4.

Every single donation the Dicksons made to GFA was made only with the understanding, based entirely on Defendants' representations, that 100% of the donation would be applied exactly as designated by the Dicksons. *Id*. ¶45. As detailed above, however, Defendants misdirected money the Dicksons donated to GFA to purposes the Dicksons did not designate. *Id*. Had the Dicksons known that Defendants would not apply 100% of every donation exactly as they designated, they would not have donated to GFA. *Id*.

On behalf of themselves and a proposed Class of other donors, the Dicksons bring four claims against Defendants: violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961-1968 ("RICO" or "the Act") (Complaint [Doc. 1] ¶¶55-61); fraud (Complaint [Doc. 1] ¶¶62-68); violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101, et seq. ("ADTPA") (Complaint [Doc. 1] ¶¶69-73); and unjust enrichment (Complaint [Doc. 1] ¶¶74-77).

3. The Defendants' arguments

Defendants bring two motions to dismiss: GFA filed its own motion [Docs. 25 & 26] ("GFA's Motion"), and the remaining Defendants filed a separate motion [Docs. 27 & 28] ("MTD"). These motions both claim that—notwithstanding the particularized allegations of the Complaint—the Dicksons fail to plead with the level of specificity required by Rule 9(b). Unlike GFA, the MTD Defendants complain the Dicksons don't allege enough details about each of them. Also, GFA's Motion urges dismissal of the RICO claim based on a technical argument that RICO forbids the naming of a statutorily-defined "person" as the requisite "enterprise."

Applicable legal standards

The Court is amply familiar with the legal standard that governs motions to dismiss. In *White v. Volkswagen Corp. of Am., Inc.*, 2013 WL 685298, *2 (W.D. Ark. Feb. 25, 2013), Your Honor summarized it as follows:

> In ruling on a motion to dismiss, the Court accepts as true all of the factual allegations contained in a complaint and reviews the complaint to determine whether its allegations show that the pleader is entitled to relief. *Schaaf v. Residential Funding Corp.*, 517 F.3d 544, 549 (8th Cir.2008). All reasonable inferences from the complaint must be drawn in favor of the non-moving party. *Crumpley–Patterson v. Trinity Lutheran Hosp.*, 388 F.3d 588, 590 (8th Cir.2004). Complaints should be liberally construed in the plaintiff's favor and "should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Rucci v. City of Pacific*, 327 F.3d 651, 652 (8th Cir.2003) (quoting *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957)). Nevertheless, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). Pleadings that contain mere "labels and conclusions" or "a formulaic recitation of the elements of the cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 129 S.Ct. at 1949.

White, 2013 WL 685298, *2 (citations and quotations in original).

Elaborating on *Twombly* and *Iqbal*, Your Honor has noted:

> "*Twombly* and *Iqbal* did not abrogate the notice pleading standard of [Federal] Rule [of Civil Procedure] 8(a)(2). Rather, those decisions confirmed that Rule 8(a)(2) is satisfied 'when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for a misconduct alleged.'" *Hamilton v. Palm*, 621 F.3d 816, 817 (8th Cir. 2010) (quoting *Iqbal*, 556 U.S. at 678). Where the facts alleged, taken as true, "raise a reasonable expectation that discovery will reveal evidence" in support of a plaintiff's claim, the Court should deny a motion to dismiss. *Twombly*, 550 U.S. at 556.

Parrish v. Bentonville School Dist., 2015 WL 9275739, *1 (W.D. Ark. Dec. 21, 2015) (citations and quotations in original).

And, in connection with the standard of pleading under Fed. R. Civ. P. 9(b), Your Honor has observed:

> "Rule 9(b) is to be read in the context of the general principles of the Federal Rules, the purpose of which is to simplify pleading." … The reason why particularity in pleading is required for fraud claims, such as those established under the ADTPA, is "to enable the defendant to respond specifically and quickly to the potentially damaging allegations."

White, 2013 WL 685298, *7 (quoting *United States ex rel. Costner v. United States*, 317 F.3d 883, 888 (8th Cir. 2003)) (citations omitted).

Argument and Authorities

Under a straightforward application of the applicable standards, it is quickly apparent that the Dicksons' Complaint satisfies all pleading requirements, mandating denial of Defendants' motions to dismiss.

1. The Dicksons plead with sufficient specificity to support all their claims

The thrust of Defendants' motions is their assertion that Rule 9(b) applies to all the Dicksons' claims, and the Dicksons' allegations purportedly do not meet the Rule's standard of particularity. "In other words, Rule 9(b) requires plaintiffs to plead the who, what, when, where,

and how: the first paragraph of any newspaper story. … Plaintiffs have not done so.'" GFA's Motion [Doc. 26] at 4 (quoting *Freitas v. Wells Fargo Home Mortg.*, Inc., 703 F.3d 436, 439 (8th Cir. 2013) (citation omitted).

In actuality, the Dicksons' Complaint includes enough of such specifics for at least a full newspaper or magazine article, much less a paragraph. So Defendants take aim at the Dicksons' individual allegations, engaging in a tortuous exercise in hairsplitting designed to create the impression that the Dicksons' detailed description of the donation they offer as a representative example—their 2013 Mothers' Day donation made online to GFA's "Widows and Abandoned Children" fund—somehow falls short of the "who, what, when" standard. *Compare* GFA's Motion [Doc. 26] at 6-8 *with* Complaint [Doc. 1] ¶¶42-45. It isn't fair notice of fraud, say Defendants, unless the Dicksons can reproduce in the Complaint an image of the *exact* webpage they viewed on May 12, 2013, which webpage *must also* prominently display GFA's "100%" label—notwithstanding its display elsewhere on the website and in the receipt GFA sent the Dicksons for the donation, and notwithstanding that the content of the webpage very clearly solicits donations of money *only* to widows and abandoned children (and, of course, says nothing of rubber plantations and soccer teams). *See* GFA's Motion [Doc. 26] at 6-8; *compare id. with* Complaint [Doc. 1] ¶¶42-45 & Ex. 4;¶ 29; ¶¶38-40.

As the Eighth Circuit has held, "[t]he special nature of fraud does not necessitate anything other than notice of the claim; it simply necessitates a higher degree of notice, enabling the defendant to respond specifically, at an early stage of the case, to potentially damaging allegations of immoral and criminal conduct." *Abels v. Farmers Commodities Corp.*, 259 F.3d 910, 920 (8th Cir. 2001). In their Complaint, the Dicksons have inarguably furnished this notice to Defendants.

And this is not at all a case like *White*—a false advertising case brought by a buyer of a third-hand used Volkswagen against a car manufacturer—where Your Honor dismissed fraud-based ADTPA claims after observing "that at no point in the Amended Complaint does White specify what false representations were affirmatively made to her by Defendant, nor does she state that she relied on particular false representations in making the decision to purchase her vehicle." *White v. Volkswagen Corp. of Am., Inc.*, 2013 WL 685298, *7 (W.D. Ark. Feb. 25, 2013). Here, in contrast, the Dicksons plead specifically that:

- They made several donations to GFA over the course of several years only after learning of GFA's guarantee that it would apply 100% of every donation exactly as the Dicksons designated (Complaint [Doc. 1] ¶42);

- They made one such donation in May of 2013—a $25 donation to GFA's "Widows and Abandoned Children" fund in honor of Matthew's mother as a Mother's Day present—and they viewed a webpage on GFA's website discussing the "Widows and Abandoned Children" fund (Complaint [Doc. 1] ¶43);

- Believing that GFA would apply 100% of their $25 donation to the "Widows and Abandoned Children" fund in the Field, the Dicksons made the donation through GFA's website, after which GFA provided the Dicksons with a receipt that recited the GFA 100% guarantee and noted that the $25 donation was designated to the "Widows and Abandoned Children" fund (Complaint [Doc. 1] ¶44 & Ex. 4); and

- The Dicksons made this and every other donation to GFA only with the understanding, based entirely on Defendants' representations, that 100% of the donation would be applied exactly as designated by the Dicksons—and, had they known Defendants would not do what they represented, they would not have donated to GFA (Complaint [Doc. 1] ¶45).

Taking these and the rest of the Complaint's allegations as true, drawing all reasonable inferences in favor of the Dicksons, and liberally construing the Complaint in their favor, the Dicksons respectfully submit they satisfy the pleading standard of Rule 9(b), and, thus, state a claim against Defendants for fraud as to which relief can be granted; through their allegations, they raise a reasonable expectation that discovery will reveal evidence in support of the claim,

requiring denial of Defendants' motions. *Parrish v. Bentonville School Dist.*, 2015 WL 9275739, *1 (W.D. Ark. Dec. 21, 2015); *White v. Volkswagen Corp. of Am., Inc.*, 2013 WL 685298, *2, *7 (W.D. Ark. Feb. 25, 2013). For the same reason, the Court should rebuff Defendants' attacks on the Dicksons' other claims based on the same ostensible lack of specificity. *See, e.g.*, GFA's Motion [Doc. 26] at 8-9.

2. The allegations do not impermissibly "group plead"

The thrust of the MTD is Defendants' blanket assertion that "[g]roup pleading is improper under both Rule 9(b) and Rule 8." MTD [Doc. 28] at 4; *see generally id.* This argument fails, for two reasons.

First, the group pleading doctrine is a well-accepted method of pleading wrongful conduct against corporate officers or directors who are jointly responsible for issuing fraudulent, group-published information.

The group pleading doctrine "in its broadest form allows unattributed corporate statements to be charged to one or more individual defendants based solely on their corporate titles" and allows plaintiffs "to rely on a presumption that statements in prospectuses, registration statements, annual reports, press releases, or other group-published information are the collective work of those individuals with direct involvement in the everyday business of the company." *Southland Sec. Corp. v. Inspire Ins. Solutions, Inc.*, 365 F.3d 353, 365-66 (5th Cir. 2004) (internal quotations omitted); *see also Wool v. Tandem Computers Inc.*, 818 F.2d 1433, 1440 (9th Cir. 1987) (same); *Makor Issues & Rights, Ltd. v. Tellabs, Inc.*, 437 F.3d 588, 602 (7th Cir. 2006) (recognizing that the doctrine applies when it is reasonable to presume that a corporation conveyed false or misleading information through the "collective actions of the officers.") Under this doctrine, plaintiffs are not required to plead particular facts connecting an individual

defendant to the alleged fraud, such as the defendant making, authoring, or approving an offending misrepresentation, omission, or misleading statement. *Southland*, 365 F.3d at 365-66 (collecting cases).[1]

Where, as here, plaintiffs allege fraudulent statements were made through a corporate website and mailed solicitations, they may appropriately invoke the group pleading doctrine. *Martino-Catt*, 213 F.R.D. at 315 ("the identification of individual sources of statements is unnecessary when the fraud allegations arise from misstatements or omissions in group published documents.") (quoting *In re Aetna, Inc. Sec. Litig.*, 34 F.Supp.2d 935, 949 (E.D. Pa. 1999)). The Complaint is replete with allegations that the fraudulent solicitations at issue in this case were made through group-published documents, such as the GFA website (*see*, *e.g.,* Complaint [Doc. 1] ¶¶16-20, 25-27) and corporate mailings such as the "GFA Christmas Catalog" (*see, e.g.*, Complaint ¶¶17, 20-23 & Ex. 2). Obviously, a corporate entity such as GFA could not publish these solicitations on its own. Rather, it is reasonable to infer they were published in GFA's name under the direct authority of its officers and directors, thereby

[1] In the context of securities fraud claims, courts have struggled with whether the group pleading doctrine survived the heightened pleading standards established by the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u–4, *et seq.* ("PSLRA"). Some courts have held that the PSLRA abolished the doctrine. *See Winer Family Trust v. Queen*, 503 F.3d 319, 336-37 (3rd Cir. 2007) (citing cases and holding that the doctrine did not survive the PLSRA). Other courts, including those within the Eighth Circuit, have held that the PSLRA did not abolish group pleading in securities cases. *See, e.g., In re Nash Finch Co.*, 502 F. Supp. 2d 861, 878 (D. Minn. 2007); *In re Stellent, Inc. Sec. Litig.*, 326 F.Supp.2d 970, 983 (D. Minn. 2004); *Martino-Catt v. E.I. DuPont De Nemours & Co.*, 213 F.R.D. 308, 315 (S.D. Iowa 2003); *see also In re BISYS Sec. Litig.*, 397 F.Supp.2d 430, 439 (S.D.N.Y.2005) (collecting cases and holding that "the majority of courts ... have found that the doctrine is alive and well" in securities cases); *In re Raytheon Securities Litigation*, 157 F.Supp.2d 131, 152 (D. Mass. 2001) (same). The Eighth Circuit has not yet resolved this issue, *In re Hutchinson Technology, Inc. Securities Litigation*, 536 F.3d 952, 961 n.6 (8th Cir. 2008), but that does not matter here because this is not a securities fraud case subject to the heightened pleading standards of the PSLRA. Accordingly, there is no basis for Defendants to suggest that the group pleading doctrine does not apply to the claims in this case.

implicating the group pleading doctrine. *Martino-Catt*, 213 F.R.D. at 315; *Makor Issues & Rights,* 437 F.3d at 602.

More specifically, Plaintiffs allege that each individual defendant is an officer or director of GFA, the corporate entity through which the fraudulent scheme operates. GFA is run by a small, tight-knit group including K.P. Yohannan and his close relatives. K.P. Yohannan is GFA's founder, and, at all material times, he has been a GFA Board Member, its President, and its International Director. Complaint [Doc. 1] ¶7. In those capacities, he serves as "the central and principal actor in making the misrepresentations and engaging in the fraud described in [the] Complaint," and "[a]ll mailings and solicitations for all Gospel for Asia entities are sent out under Yohannan's name and signature." *Id.*; *see also id.* Ex. 2 (GFA Christmas Catalog bearing Yohannan's signature). The Court should therefore reasonably infer the K.P. Yohannan is responsible for the fraudulent statements issued by GFA.

Similarly, Yohannan's wife, Gisela Punnose, is a member of GFA's Board of Directors and has been involved in GFA since its inception. Complaint [Doc. 1] ¶8. K.P.'s and Gisela's son, Daniel Punnose, is a member of the GFA Board of Directors and its Vice President. Complaint [Doc. 1] ¶9. David Carroll serves GFA in multiple capacities, including as its Chief Financial Officer, and he is responsible for the overall operations of the U.S. Headquarters of GFA. Complaint [Doc. 1] ¶10. Pat Emerick serves as the Director of the Canadian affiliate of GFA. Complaint [Doc. 1] ¶11. Plaintiffs allege that each of these defendants performs an essential role within GFA and was aware of and provided material assistance to Yohannan and GFA in committing the fraudulent acts and omissions alleged in the Complaint. Complaint [Doc. 1] ¶12. Under the group pleading doctrine, these allegations are sufficient. *In re Nash Finch Co.*, 502 F. Supp. 2d at 878 (holding that the group pleading doctrine was appropriate to "attribute

group published documents, such as press releases, to 'those individuals with direct involvement in the everyday business of the company,'" including its officers) (quoting *In re Stellent, Inc. Sec. Litig.*, 326 F. Supp. 2d 970, 983 (D. Minn. 2004)).

The cases Defendants rely on are inapposite. *See* MTD [Doc. 28] at 4. In *Streambend Props. II, LLC v. Ivy Tower Minneapolis, LLC*, 781 F.3d 1003 (8th Cir. 2015), the plaintiffs alleged that a slew of unrelated corporate and individual defendants engaged in a multifaceted real estate scheme without alleging any particularized facts as to any individual defendant's participation in the scheme. Rather, the plaintiffs only vaguely alleged that all of the defendants engaged in the fraudulent conduct "directly or indirectly through any series or chain of subsidiaries or other entities." 781 F.3d at 1013. The Eighth Circuit affirmed the district court's holding that such allegations were insufficient to satisfy Rule 9(b). *Id.* However, in that case, no part of the alleged fraud was perpetrated through group-published documents such as the website and Christmas Catalog at issue in this case, the various defendants were unrelated to one another, and their specific roles in the alleged fraud were completely undefined.

Quintero Cmty. Ass'n, Inc. v. Fed. Deposit Ins. Corp., 792 F.3d 1002 (8th Cir. 2015) is distinguishable for similar reasons. There, the plaintiffs were investors who lost money in a real estate project due to the alleged fraud and mismanagement of the real estate developer. 792 F.3d at 1005. However, the plaintiffs were unable to sue the developer because he was insolvent, so they sued the bank who lent the developer money, as well as the banks' directors, officers, and sole shareholder. *Id.* The plaintiffs vaguely alleged that the defendants "concocted a scheme with [the developer]," *id.* at 1006, but were unable to plausibly allege how any individual defendant aided and abetted the developer's breaches of fiduciary duties or otherwise show that any defendant knew of or participated in the developer's alleged fraudulent misrepresentations. *Id.* at

1009-10. Accordingly, there was no plausible tie between the individual defendants and any allegedly fraudulent group-published documents sufficient to invoke the group pleading doctrine.

Second, it is well established in the Eighth Circuit that the excruciating level of detail Defendants suggest is lacking from the Complaint as to each individual Defendant's level of participation need not be present at the pleading stage, particularly when no discovery has been conducted. In reversing a district court's order granting dismissal of a RICO claim for failure to plead with specificity, the Eighth Circuit held:

> [T]he plaintiffs are surely correct that a court cannot reasonably expect highly specific allegations before allowing at least a brief discovery period. The facts that would have to be alleged are known to the defendants, but the plaintiffs have not yet had a chance to find them out. (This is especially true of telephone calls, which may leave little or no paper trail.) Where a plaintiff is not a party to a communication, particularity in pleading may become impracticable. For that reason, several of our sister circuits have declined to require, before discovery, the pleading of dates and times of communications in furtherance of a scheme to defraud, where the complaint alleges facts supporting the inference that the mails or wires were used. … Here, although the plaintiffs have been allowed to amend their complaint, they have not had the benefit of discovery. We think it only fair to give them that benefit before requiring them to plead facts that remain within the defendants' private knowledge.

Abels v. Farmers Commodities Corp., 259 F.3d 910, 920 (8th Cir. 2001) (citations omitted). Following *Abels*, district courts within the Eighth Circuit have declined to impose an unreasonably high pleading bar in similar cases before discovery:

> GE also argues that the complaint fails to allege the circumstances of fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure. Although the complaint includes a great deal of factual information regarding the alleged fraud in obtaining and enforcing the patents, GE contends that the complaint still fails to meet the requirements of Rule 9(b) because the complaint does not identify by name the individuals at GE who were responsible for perpetrating the alleged fraud and because the complaint does not allege facts that would show deceptive intent. … The Eighth Circuit has held, however, that Rule 9(b) does not require a complaint to include highly specific allegations with respect to facts that would be known to the defendants but not to the plaintiffs before the plaintiffs have had some opportunity to conduct discovery.

Mitsubishi Heavy Indus., Ltd. v. General Elec. Co., 720 F. Supp. 2d 1061, 1067 (W.D. Ark. 2010) (citing *Abels*, 259 F.3d at 921); *see also Canaan Wildlife Preserve, Inc. v. Chesapeake Energy Corp.*, 2014 WL 794262, * 8 (W.D. Ark. Feb. 27, 2014)("Courts must be sensitive to the fact that application of Rule 9(b) prior to discovery 'may permit sophisticated defrauders to successfully conceal the details of their fraud.'" *Craftmatic Sec. Litigation v. Kraftsow*, 890 F.2d 628, 645 (3d Cir.1989) (citing *Christidis v. First Pennsylvania Mortgage Trust*, 717 F.2d 96, 99–100 (3d Cir.1983)). "Particularly in cases of corporate fraud, plaintiffs cannot be expected to have personal knowledge of the details of corporate internal affairs." *Id*.) (citations in original).

Here, as in *Abels*, the function of Rule 9(b) would not be well served by dismissing the Dicksons' Complaint on grounds that it lacks detail as to each of the individual Defendants and GFA-International. *See* 259 F.3d at 920. The Court should instead deny the motions to dismiss, and permit the case to proceed to the discovery stage.

3. The Dicksons adequately allege an "enterprise" under RICO

RICO makes it "unlawful for any person employed by or associated with any enterprise ... to conduct or participate ... in the conduct of such enterprise's affairs" through the commission of two or more statutorily defined crimes—which RICO calls "a pattern of racketeering activity." *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 161 (2001) (quoting 18 U.S.C. § 1962(c)). "The language suggests, and lower courts have held, that this provision foresees two separate entities, a 'person' and a distinct 'enterprise.'" *Id.*

GFA's only argument for dismissal of the RICO claim is that the Dicksons improperly name it as both a RICO "person"—an entity that violated the Act—*and* as the alleged "enterprise" through which the violation took place. GFA's Motion [Doc. 26] at 4-5. This is a

purely technical argument that elevates form over substance, and the Court should reject it accordingly.

GFA does not (and cannot) dispute that it is properly named as a "person" (or defendant) under RICO. The Act defines a "person" to include "any individual or entity capable of holding a legal or beneficial interest in property." 18 U.S.C. § 1961(3). GFA is a Texas corporation, Complaint [Doc. 1] ¶5, and, as such, is undoubtedly capable of holding a legal or beneficial interest in property. GFA therefore satisfies RICO's definition of a "person" and is a proper defendant under Plaintiffs' RICO claim.

The Supreme Court has recognized that identifying the "enterprise" in any RICO case is a fact-intensive exercise. *Cedric Kushner Promotions, Ltd.*, 533 U.S. at 164. The Act defines an "enterprise" as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4).

In some cases, a corporate employee acts as the "person" under the Act, while the employer corporation serves as a non-defendant RICO "enterprise." *Cedric Kushner Promotions, Ltd.*, 533 U.S. at 164. In other cases, the informal association in fact of multiple entities, including individuals or corporate entities, can serve as the RICO "enterprise." Indeed, this was the fact pattern in *Atlas Pile Driving Co. v. DiCon Financial Co.*, 886 F.2d 986, (8th Cir. 1989), on which GFA relies. GFA's Motion [Doc. 26] at 4.

In *Atlas*, residential subcontractors sued a group of individuals and corporate entities formed to purchase and develop residential real estate. 886 F.2d at 988. The plaintiffs alleged the defendants engaged in a fraudulent scheme by falsely promising to pay the subcontractors for

work associated with developing the property and then foreclosing on the property after the work was performed, leaving the subcontractors unable to collect payment for their services. *Id.*

Like GFA, two of the corporate defendants in *Atlas* argued that they could not simultaneously serve as both the wrongdoing defendant "persons" and as the RICO "enterprise." *Compare Atlas*, 886 F.2d at 995 with GFA's Motion [Doc. 26] at 4-5. The Eighth Circuit rejected this argument. It held that the "person" and the "enterprise" were not identical because the "enterprise" was "an association in fact consisting of five entities" including each of the distinct defendants. *Id.* The Court reasoned that, under the defendants' argument, "[i]f five persons form an association in fact and engage in a pattern of racketeering activity . . . an individual member could never be prosecuted for violating RICO . . . because he or she would not be considered distinct from the enterprise." *Id.* The Court held that such an interpretation would be inconsistent with Congress's intent and contrary to the holdings of other courts. *Id.* (citing cases).

The same is true here. Plaintiffs' Complaint plainly alleges that all defendants, including GFA, colluded as an association in fact—as a RICO "enterprise"—to fraudulently solicit donations that would be secretly diverted for their own purposes. *See, e.g.*, Complaint [Doc. 1] ¶¶1, 5-14, 29, 35-38, 55-61. The fact that each member of the enterprise is named individually as a defendant—including GFA—does not automatically convert them into the enterprise itself; rather, they each remain separate entities distinct from the broader RICO "enterprise" of which they are all members. *Atlas*, 886 F.2d at 995. While it is true that one sentence in the Complaint equates GFA with "an enterprise," Complaint [Doc. 1] at ¶ 56, a reading of the entire Complaint

makes clear that GFA was but one member of a larger RICO "enterprise" comprised of all named Defendants. *Id.* ¶¶1, 5-14, 29, 35-38, 55-61.[2]

Conclusion

Under a straightforward application of the pleading standards, the Court should find the Dicksons allege facts sufficient to support each of their claims. Their Complaint leaves no doubt as to the nature of their allegations, and it is nearly impossible to imagine that Defendants need even a shred of additional detail to prepare their defenses. Accepting the allegations as true, and drawing all reasonable inferences in the Dicksons' favor, there is no question that all Defendants are liable for the misconduct the Dicksons allege under each of their four claims. The Court should therefore deny the motions to dismiss, and this case should proceed to discovery forthwith.

DATED this 29th day of April, 2016.

Respectfully submitted,

/s/ Woodson W. Bassett III
Woodson W. Bassett III
Arkansas Bar No. 77006
wbassett@bassettlawfirm.com
James Graves
Arkansas Bar No. 95172
jgraves@bassettlawfirm.com
BASSETT LAW FIRM LLP
221 North College Avenue
P.O. Box 3618
Fayetteville, Arkansas 72702
479.521.9996
479.521.9600 (fax)

[2]If the Court finds Plaintiffs must further clarify that the RICO "enterprise" the evidence will ultimately establish consists of a broader association including all defendants and is not restricted to GFA, Plaintiffs respectfully request leave to amend in order to remedy this technical issue.

Marc R. Stanley (admitted *pro hac vice*)
marcstanley@mac.com
Martin Woodward (admitted *pro hac vice*)
mwoodward@stanleylawgroup.com
STANLEY LAW GROUP
6116 N. Central Expressway, Suite 1500
Dallas, Texas 75206
214.443.4300
214.443.0358 (fax)

Tom Mills (admitted *pro hac vice*)
tmills@millsandwilliams.com
MILLS AND WILLIAMS, LLP
5910 N. Central Expressway, Suite 980
DALLAS, TEXAS 75206
214.265.9265
214.361.3167 (FAX)

Counsel for Plaintiffs and the Class

Certificate of Service

The undersigned hereby certifies that on April 29th, 2016, the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system and by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

/s/ Woodson W. Bassett III
Woodson W. Bassett III