**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF ARKANSAS**
**FAYETTEVILLE DIVISION**

**MATTHEW DICKSON and JENNIFER DICKSON, Individually and on behalf of all others similarly situated** — **PLAINTIFFS**

**v.** **No. 5:16-CV-5027 PKH**

**GOSPEL FOR ASIA, INC., GOSPEL FOR ASIA-INTERNATIONAL, K.P. YOHANNAN, GISELA PUNNOSE, DANIEL PUNNOSE, DAVID CARROLL, and PAT EMERICK** — **DEFENDANTS**

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTIONS TO DISMISS PLAINTIFFS' CLAIMS**

Defendants Gospel for Asia, Inc. ("GFA"), Gospel for Asia-International ("GFA-International")[1], and Individual Defendants K.P. Yohannan, Gisela Punnose, Daniel Punnose, David Carroll, and Pat Emerick (collectively the "Individual Defendants"), subject to their motion to compel arbitration, hereby file their *Reply in Support of Their Motions to Dismiss Plaintiffs' Claims*.[2]

## INTRODUCTION

Plaintiffs' Opposition to Defendants' Motions to Dismiss Plaintiffs' Claims (the "Response" or "Resp.") lacks merit. First, Plaintiffs admittedly and explicitly pled that GFA is both the RICO "person" and the RICO "enterprise" in their Complaint. Plaintiffs cannot use

[1] GFA-International does not currently exist.

[2] Defendants filed two motions to dismiss and supporting briefs: (1) *Defendant Gospel for Asia, Inc.'s Brief in Support of Motion to Dismiss Plaintiffs' Claims* (Doc. 26), and (2) *Individual Defendants' and GFA International's Brief in Support of Motion to Dismiss Plaintiffs' Claims* (Doc. 28). Plaintiffs responded to both briefs in one response. Defendants now collectively file this reply in support of both of their briefs.

their Response as a vehicle to amend their Complaint to allege an "association-in-fact" as the RICO "enterprise." Second, the Court should not adopt the group pleading doctrine. The United States Court of Appeals for the Eighth Circuit has not adopted the group pleading doctrine, and other circuits are split over its availability, with the Third, Fifth, and Seventh Circuits all explaining why it does not apply. Moreover, the Eighth Circuit has indicated that group pleading is inapplicable in the RICO context. And even if the group pleading doctrine were to apply, which it does not, Plaintiffs cannot invoke it because they have failed to satisfy its strict requirements. Finally, Plaintiffs are not entitled to discovery before first satisfying their burden to properly plead under the Federal Rules of Civil Procedure.

## ARGUMENTS AND AUTHORITIES

### I. Plaintiffs solely and explicitly identified GFA as the RICO enterprise

Plaintiffs cannot—as they have done here—name GFA as both the RICO "person" and RICO "enterprise." Further, Plaintiffs cannot—as they have also done here—use their Response as an attempt to amend their Complaint to assert an "association-in-fact" as the RICO enterprise for the first time. Because Plaintiffs have failed to allege a RICO enterprise separate and distinct from the RICO person, Plaintiffs' RICO claim should be dismissed with prejudice.

Under settled RICO case law, "the person named as the defendant cannot also be the entity identified as the enterprise." *Atlas Pile Driving Co. v. DiCon Fin. Co.*, 886 F.2d 986, 995 (8th Cir. 1989). The United States Supreme Court has recognized and approved the basic principle that "to establish liability under § 1962(c) one must allege and prove the existence of two distinct entities: (1) a 'person'; and (2) an 'enterprise' that is not simply the same 'person' referred to by a different name." *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 161 (2001).

Here, Plaintiffs admit that "it is true that one sentence in the Complaint equates GFA with 'an enterprise.'" Resp. (Doc. 30) at 17 (citations omitted). Plaintiffs then ask this Court to infer that "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.* at 17-18 (citations omitted). In this vein, Plaintiffs attempt to analogize *Atlas* to this case. 886 F.2d 986. Plaintiffs' factual assertion is simply incorrect, and a reading of the Complaint does not indicate that they pled a larger RICO enterprise. Similarly, *Atlas* is easily distinguishable on this same basis. In *Atlas*, the plaintiff explicitly pled an association-in-fact as the RICO enterprise. *Id.* at 995 ("Here, Atlas and Olson alleged that the enterprise was an association in fact consisting of DiCon, LMH, AES, Stroth, and CACC."). Although Plaintiffs here contend that "identifying the 'enterprise' in any RICO case is a fact-intensive exercise," they have tried to avoid the exercise by unequivocally naming GFA as the enterprise: "Defendant [GFA] is an enterprise engaged in and whose activities affect interstate commerce." Complaint ¶ 56. This is the only time the word "enterprise" appears in the Complaint. They do not plead as the enterprise any other person, entity, or association-in-fact (the phrase "association-in-fact" does not even appear in the Complaint). Plaintiffs also expressly name GFA as a Defendant, thereby seeking to hold it liable as a RICO person under Section 1962(c). Complaint ¶ 5. Because Plaintiffs plead that GFA is both a person and the enterprise, they are not permitted to amend their Complaint with their Response, and the RICO claim is fatally flawed and should be dismissed as a matter of law.

**II. This Court should reject the invitation to adopt the group pleading doctrine**

Group pleading is improper and this Court should dismiss Plaintiffs' Complaint based on their improperly group-pled complaint. Plaintiffs incorrectly argue that group pleading is a "well-accepted method of pleading wrongful conduct against corporate officers or directors who

are jointly responsible for issuing fraudulent, group-published information." Resp. (Doc. 30) at 10. First, the Eighth Circuit has not adopted the group pleading doctrine, and has indicated that it is inapplicable in RICO cases, and the better approach is to reject its availability. Second, other circuits are divided on the availability of the group pleading doctrine, but the reasoning of the circuits that have rejected it is more compelling. Third, even if this Court were to adopt group pleading in this case, Plaintiffs' allegations fail to invoke the doctrine. Accordingly, this Court should reject the group pleading doctrine and dismiss Plaintiffs' Complaint.

### *A. The Eighth Circuit has not adopted the group pleading doctrine and indicated that it does not apply in RICO cases, and the best approach is to reject its applicability*

The Eighth Circuit has not adopted the group pleading doctrine.[3] *In re Hutchinson Tech., Inc. Sec. Litig.*, 536 F.3d 952, 961 n.6 (8th Cir. 2008) ("[B]ecause we have held that NECA's complaint is insufficient under the PSLRA we need not consider the issue of whether [the group pleading] doctrine survived the PSLRA or whether the doctrine applies here."); *see also Bank of Montreal v. Avalon Capital Grp., Inc.*, 743 F. Supp. 2d 1021, 1029 (D. Minn. 2010) ("[I]t is not clear that the group pleading doctrine is viable in this Circuit."). Certain district courts in the Eighth Circuit have rejected the doctrine. *In re Hutchinson Tech. Inc. Secs. Litig.*, 502 F. Supp. 2d 884, 901 (D. Minn. 2007) (rejecting validity and availability of the group pleading doctrine); *Remmes v. Int'l Flavors & Fragrances, Inc.*, 389 F. Supp. 2d 1080, 1090 (N.D. Iowa 2005)

[3] When given the opportunity to adopt group pleading outside the securities fraud context, the Eighth Circuit has elected against it. *See, e.g., Streambend Props. II, LLC v. Ivy Tower Minneapolis, LLC*, 781 F.3d 1003, 1013 (8th Cir. 2015) (affirming the district court's conclusion that complainant's attempt to attribute "fraudulent representations and conduct to multiple defendants generally, in a group pleading fashion," were vague allegations that did not satisfy Rule 9(b)); *Quintero Cmty. Ass'n, Inc. v. Fed. Deposit Ins. Corp.*, 792 F.3d 1002, 1010 (8th Cir. 2015) (affirming 12(b)(6) dismissals because "Appellants' shotgun-style allegations of wrongdoing by all the Director Defendants generally, in a group pleading fashion does not satisfy Rule 9(b)." (internal quotation marks, alteration, ellipsis, and citations omitted).

(rejecting application of the group pleading doctrine to products liability case); *Bank of Montreal*, 743 F. Supp. 2d at 1029 ("The [group pleading] doctrine is aimed at securities fraud cases, and this case involves common law torts."); *see also Hoyt v. Marriott Vacations Worldwide Corp.*, Civ. No. 12-3093 DSD/JJK, 2014 WL 509903, at *6 (D. Minn. Feb. 7, 2014) ("the allegations of consumer fraud fall far short of Rule 9(b)'s particularity requirements [and] plaintiffs do not differentiate between the six defendants when identifying the allegedly fraudulent statements. Such group[]pleading is not sufficient under Rule 9(b)") (internal citations omitted). Further, the district courts in this circuit that have applied it, have done so only in the securities fraud context. *See, e.g., In re Nash Finch Co. Sec. Litig.*, 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).

Importantly, with respect to RICO, Plaintiffs ignore that the Eighth Circuit and other circuits have indicated that group pleading is not permitted. *See, e.g., Crest Constr. II, Inc. v. Doe*, 660 F.3d 346, 358 (8th Cir. 2011) ("We agree with the district court that while the complaint contains 'various and sundry boilerplate allegations . . . such allegations fail to meet the requirement of identifying two specific predicate acts **for each defendant**.'") (emphasis added); *Craig Outdoor Adver., Inc. v. Viacom Outdoor, Inc.*, 528 F.3d 1001, 1027 (8th Cir. 2008) ("The requirements of § 1962(c) must be established **as to each individual defendant**.") (emphasis added); *see also U.S. v. Persico*, 832 F.2d 705, 714 (2d Cir. 1987) ("The focus of section 1962(c) is on the **individual** patterns of racketeering engaged in by a defendant, rather than the collective activities of the members of the enterprise.") (emphasis added).

With regard to all of Plaintiffs' claims, *Remmes v. Int'l Flavors & Fragrances, Inc.* is instructive because the court unequivocally rejected the availability of the group pleading

doctrine in a products liability, non-securities fraud-based case. 389 F. Supp. 2d 1080, 1090 (N.D. Iowa 2005). In *Remmes*, the plaintiff asserted a fraudulent concealment claim and a conspiracy claim based on the fraud. *Id.* at 1083. Defendants moved to dismiss the fraud-based claims because plaintiff had failed to plead the specific actions of each defendant but instead referred to defendants collectively. *Id.* at 1088. Plaintiff responded that this collective treatment of defendants was proper under the group pleading doctrine. *Id.* at 1089. In rejecting the plaintiff's argument, the court observed that it was confronted with a products liability case, and neither the plaintiff nor the court's own research produced any authority extending the group pleading doctrine from securities cases to products liability cases. *Id.* at 1090. Because "the actions of each defendant [were] left unspecified," the court concluded that plaintiff failed to meet Rule 9(b)'s specificity requirements as to his fraud-based claim. *Id.* *Remmes* militates against employing group pleading in this case, and this Court too should reject the group pleading doctrine.

### *B. While other circuits are divided regarding the availability of the group pleading doctrine, the reasoning of the circuits that reject its applicability is more compelling*

Circuits disagree regarding whether group pleading is permissible and the Third, Fifth, and Seventh Circuits all reject it.[4] The courts rejecting group pleading are persuasive and

[4] *City of Monroe Employees Ret. Sys. v. Bridgestone Corp.*, 399 F.3d 651, 689-90 (6th Cir. 2005) (recognizing that courts are divided on the availability of the group pleading doctrine even in the securities fraud context); *Phillips v. Scientific-Atlanta, Inc.*, 374 F.3d 1015, 1018 (11th Cir. 2004) (declining to rule on applicability of the doctrine, but stating that "the most plausible reading in light of congressional intent is that a plaintiff, to proceed beyond the pleading stage, must allege facts sufficiently demonstrating each defendant's state of mind regarding his or her alleged violations"); *Dunn v. Borta*, 369 F.3d 421, 433-34 (4th Cir. 2004) ("We have never addressed the issue of whether the group pleading presumption should be recognized in this Circuit and . . . we need not decide that issue today."); *Winer Family Tr. v. Queen*, 503 F.3d 319, 337 (3d Cir. 2007) (rejecting group pleading even in the securities fraud context); *Makor Issues & Rights, Ltd. v. Tellabs, Inc.*, 437 F.3d 588, 602 (7th Cir. 2006) (same); *Southland Sec. Corp. v.*

Defendants respectfully suggest that this Court should reject group pleading.

In *Southland Sec. Corp. v. Inspire Ins. Solutions, Inc.*, the United States Court of Appeals for the Fifth Circuit expressly rejected the group pleading doctrine based on logic directly the opposite of that employed by Plaintiffs here. *See* 365 F.3d 353, 365-66 (5th Cir. 2004). The court observed that "it is inconceivable that Congress intended liability of any defendants to depend on whether they were all sued in a single action or were each sued alone in several separate actions." *Id.* at 365. Moreover, the court stated that:

> The "group pleading" doctrine conflicts with the **scienter** requirement of the PSLRA because, even if a corporate officer's position supports a reasonable inference that he likely would be negligent in not being involved in the preparation of a document or aware of its contents, the PSLRA state of mind requirement is severe recklessness or actual knowledge.

*Id.* (emphasis added).

Here, Plaintiffs argue that they clear their pleading burden by offering a forty-two page complaint "replete with extensive documentation of false solicitations and misdirections of money." *See* Resp. (Doc. 30) at 1. Even where a complaint is "long-winded, even prolix," it may nonetheless not be pled with particularity; "[i]ndeed, such a garrulous style is not an uncommon mask for an absence of detail." *Southland*, 365 F.3d at 362 (citing *Williams v. WMX Tech., Inc.*, 112 F.3d 175, 178 (5th Cir. 1997)). This is particularly true here where all Plaintiffs' claims are fraud-based and group-pled.

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*Inspire Ins. Solutions, Inc.*, 365 F.3d 353, 365-66 (5th Cir. 2004) (same); *but see In re Cabletron Systems, Inc.*, 311 F.3d 11, 41 (1st Cir. 2002) ("This circuit has recognized a very limited version of the group pleading doctrine for securities fraud"); *Schwartz v. Celestial Seasonings, Inc.*, 124 F.3d 1246, 1254 (10th Cir. 1997) (holding that group pleading applies in the securities fraud context before the passage of the 1995 Private Securities Litigation Reform Act ("PSLRA")); *Wool v. Tandem Computers Inc.*, 818 F.2d 1433, 1440 (9th Cir. 1987).

Each of Plaintiffs' causes of action is based on alleged fraud, each is subject to Rule 9(b) pleading standards, and each involves knowing or intentional conduct. *See, e.g.*, *McAnally v. Gildersleeve*, 16 F.3d 1493, 1497 (8th Cir. 1994) (citing *Greenwood v. Dittmer*, 776 F.2d 785, 789 (8th Cir. 1985)) (stating that to establish common law fraud, a plaintiff must prove "a false representation of a material fact with knowledge or belief on the part of the defendant that the representation is false. The false representation must be made with the intent to induce the other party to rely on that representation."); *Cincinnati Life Ins. Co. v. Mickles*, 148 S.W.3d 768, 779 (Ark. 2004) ("Deceit or fraud requires scienter, an intent to misrepresent."); *see also Individual Defendants' and GFA International's Brief in Support of Motion to Dismiss Plaintiffs' Claims* (Doc. 28) at 5-12. Here as in *Southland*, Plaintiffs should not be allowed to avoid or diminish Rule 9(b)'s particularity requirements, much less as to multiple defendants. This is particularly compelling here, as the Court noted in *Southland*, because it is inarguable that if Plaintiffs separately sued each defendant, they would be required to plead with particularity as to each defendant and each claim. *See Southland*, 365 F.3d at 365. Therefore, the allegations are fatally flawed and group pleading is insufficient.

### *C. Even if it applied, which it does not, Plaintiffs' allegations fail to invoke the group pleading doctrine*

Finally, even if this Court were to adopt the group pleading doctrine and apply it in a non-securities fraud context, which Defendants respectfully suggest it should not do, Plaintiffs' allegations are insufficient to invoke it here. Plaintiffs must do more than plead Defendants' corporate titles, family membership, length of employment, and/or affiliation/role to invoke the doctrine. Thus, for this reason as well, this Court should dismiss Plaintiffs' Complaint.

The United States District Court for the Eastern District of Michigan rejected the group pleading doctrine and determined that, even if it applied, the group-pled complaint before it

would fail. *D.E.&J Ltd. P'ship v. Conaway*, 284 F. Supp. 2d 719, 731-32 (E.D. Mich. 2003). The court succinctly described the heightened pleading requirements applicable under the doctrine:

> [T]he mere fact that an individual defendant is an officer or director of the corporation is not enough to invoke [the] group pleading doctrine. Rather, the plaintiff must allege with specificity facts demonstrating a **specific** defendant's personal involvement in the preparation of the allegedly misleading statements or direct "operational involvement" with the company; conclusory allegations that the defendant was 'involved in the day to day operations' are insufficient.

*Id.* at 732 (E.D. Mich. 2003) (emphasis added);[5] *see also Bank of Montreal*, 743 F. Supp. 2d at 1029 (stating that under the group pleading doctrine a plaintiff must at least plead that defendants were actually involved in preparing the purportedly misleading statements). The *Conaway* court explained that plaintiffs offered, among other things, only "boilerplate conclusions" that defendants (1) were involved with drafting, preparing, and/or approving reports and communications, (2) controlled the content of certain public statements, (3) were "responsible for the accuracy of the public reports and releases," and (4) were in positions to "prevent their issuance or cause them to be corrected." *Id.* at 732. The *Conaway* court concluded that these allegations were "insufficient to invoke the group pleading doctrine." *Id.*

[5] The court also cited numerous cases setting forth a similarly stringent pleading requirement under the group pleading doctrine. *Conaway*, 284 F. Supp. 2d at 732 (*citing Morse v. McWhorter*, 200 F. Supp. 2d 853, 903 (M.D. Tenn. 2000) (application of group pleading doctrine to corporate officers requires specific allegation that the defendant officers "participated in drafting, reviewing, *and* approving the misleading statements") (emphasis in original); *In re Autodesk Inc. Sec. Litig.*, 132 F. Supp. 2d 833, 845 (N.D. Cal. 2000) ("For claims against corporate insiders, a plaintiff must allege that the defendants were involved in the preparation of the allegedly misleading statement."); *In re Oak Tech. Sec. Litig.*, No. 96-20552 SW, 1997 WL 448168, at *11 (N.D. Cal. 1997) ("Since all inside officers in a corporation, by virtue of their positions[,] are involved in daily corporate activities, merely pleading as much is not sufficient to establish their liability under the group pleading exception"); *Molinari v. Symantec*, No. C-97-20021-JW, 1998 WL 78120, at *11 (N.D. Cal. 1998) ("In a company as large as [defendant's], the status of officer or director is not enough in itself to establish involvement in the group 'functionally related' to the alleged fraud.")

Here, as in *Conaway*, even if the group pleading doctrine were to apply, which it does not, Plaintiffs' allegations are insufficient to invoke its application. For instance, Plaintiffs' Response argues the sufficiency of their having averred that "each individual defendant is an officer or director of GFA," and that "K.P. Yohannan is GFA's founder . . . [a] Board Member, its President, and its International Director." Resp. (Doc. 30) at 12 (citing Complaint ¶ 7). The Response also notes their recitation in the Complaint of the other Individual Defendants' official capacities with GFA. *See id.* (listing the remaining Individual Defendants and their respective official roles at GFA) (citing Complaint ¶¶ 8-11). In their Response, Plaintiffs merely recite their initial allegations, made in conclusory fashion and without support, 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." *Id.* (citing Complaint ¶ 12). Plaintiffs have averred no non-conclusory facts demonstrating each Individual Defendants' and GFA-International's involvement, focusing instead on job titles and family relationships. Plaintiffs have also not alleged any Defendant's personal involvement in the preparation of any of the allegedly misleading statements. These allegations are more conclusory than those lodged in *Conaway*, which were insufficient under the group pleading doctrine. *See, e.g.*, *In re Hutchison Tech. Inc. Sec. Litig.*, 502 F. Supp. 2d at 901 ("even if the Court were to find that the group-pleading doctrine was valid, it would not apply to [individual defendants], whose job titles (vice president of business development and chief technical officer, respectively) do not on their face indicate that they bear any responsibility for contributing to or preparing corporate financial statements."); *Bridgestone Corp.*, 399 F.3d at 690 (holding that the complaint, which pleaded little more than the defendant's corporate titles, dates of employment, and attendance at quarterly meetings, was insufficient even under the

group pleading doctrine); *Serabian v. Amoskeag Bank Shares, Inc.*, 24 F.3d 357, 368 (1st Cir. 1994) (allegations that defendants authorized or acquiesced in press releases held insufficient to establish liability for the content of press releases under group pleading doctrine). Therefore, Plaintiffs' allegations are insufficient even under the group pleading doctrine.

**III. Plaintiffs are not entitled to discovery before satisfying their pleading burden**

Plaintiffs both argue the adequacy of their pleadings and that it is "well established" that the "excruciating level of detail" Defendants argue as lacking from the Complaint "need not be present at the pleading stage." *See* Resp. (Doc. 30) at 14. This claim is worded in hyperbole and without merit.

Plaintiffs' reliance on *Abels* is demonstrative of the lack of merit of Plaintiffs' assertions. *See, e.g., Abels v. Farmers Commodities Corp.*, 259 F.3d 910, 920 (8th Cir. 2001) ("The facts that would have to be alleged are known to the defendants . . . . We think it only fair to give them [the benefit of discovery] before requiring them to plead facts that remain within the defendants' private knowledge."). The rationale and circumstances underlying this proposition in *Abels* are not present here.

In *Abels*, the Eighth Circuit held that plaintiffs could not have known information within the defendants' private knowledge. Here, Plaintiffs do not contend that only Defendants have the information necessary for Plaintiffs to properly plead. Indeed, they contend that they have supplied all of the facts necessary to support their claims, and further, that it is all they know: "In actuality, the Dicksons' Complaint includes enough of such specifics for at least a full newspaper or magazine article, much less a paragraph." Resp. (Doc. 30) at 8. Because these claims are erroneous on their face, the Court should dismiss. The Court in *Southland* agreed, holding that "[a]lthough the requirement for particularity in pleading fraud does not lend itself to

refinement, and it need not in order to make sense, nevertheless, directly put, the who, what, when, and where must be laid out *before* access to the discovery process is granted." *Southland*, 365 F.3d at 362 (quoting *ABC Arbitrage Plaintiffs Grp. v. Tchuruk*, 291 F.3d 336, 349 (5th Cir. 2002) (emphasis in original).[6]

Here, Plaintiffs have declined to even attempt to connect any Defendant with misrepresentations or bad acts. Resp. (Doc. 30) at 8. In addition, they have failed to address, much less explain, the following factual inconsistencies and logical errors Defendants have raised:

- The majority of the graphics and exhibits in the Complaint are from 2015 or 2016, post-dating the 2013 donations Plaintiffs claim were fraudulently induced (*see* Doc. 26 at 6);
- The apparent lack of relevance of other exhibits, like the 2015 Christmas catalog and May 2015 Emergency Gram (*see id.*);
- Plaintiffs do not aver that they viewed or relied on an included 2012 webpage (*see id.* at 7);
- Plaintiffs' failure to allege any predicate representation that purportedly induced them to contribute to Bridge of Hope or National Missionary gifts (*see id.*).

These are not claims based on facts solely within the private knowledge of Defendants and that Plaintiffs lack, and thus no lack of knowledge precludes them from accurately pleading these allegations. Rather, these are plain errors of fact and logic in Plaintiffs' allegations which, despite recent opportunity, they have chosen not to correct. Plaintiffs do not contend that discovery will allow them to adequately plead this case; they plead that they have done so. Dismissal of these claims without discovery or re-pleading is therefore appropriate.

[6] Requiring a plaintiff to sufficiently allege a claim subject to heightened pleading requirements prior to accessing the discovery process is consistent with the purpose of Rule 9(b). *See, e.g.*, *Williams v. WMX Tech., Inc.*, 112 F.3d 175, 178 (5th Cir. 1997) ("It does remain clear that ready access to the discovery engine all the while has been held back for certain types of claims. An allegation of fraud is one . . . . We remind that this bite of Rule 9(b) was part of the pleading revolution of 1938. In short, we apply the rule with force, without apology.").

## CONCLUSION

Accordingly, Defendants respectfully request that the Court deny Plaintiffs any discovery before re-pleading, deny them the opportunity to re-plead, dismiss Plaintiffs' claims, and grant any other relief to which Defendants are entitled.

DATED: May 10, 2016.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on May 10, 2016, I electronically filed Defendants' Reply in Support of Their Motion to Dismiss Plaintiffs' Claims with the Clerk of the Court, to be served by operation of the Court's electronic filing system on the attorneys of record.

/s/ Debra K. Brown