UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
VICTOR CARLSTRÖM, STEPHEN BRUNE, VINACOSSA ENTERPRISES AB, VINACOSSA ENTERPRISES LTD, BOFLEXIBILITET SVERIGE AB, SBS RESURS DIREKT AB and SPARFLEX AB.

Plaintiffs,

- Against -

FOLKSAM ÖMSESIDIG LIVFÖRSÄKRING, SWEDBANK AB, SKATTEVERKET, SKANDINAVISKA ENSKILDA BANKEN AB, FINANSINSPEKTIONEN, JENS HENRIKSSON, ERIK THEDÉEN, KATRIN WESTLING PALM and others known and unkown.

Defendants.
----------X

Case No. 19 Cv. 11569 (DLC)

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

LAWRENCE H. SCHOENBACH, ESQ.
Law Offices of Lawrence H. Schoenbach
111 Broadway, Suite 901
New York, New York 10006

Joshua L. Dratel
LAW OFFICES OF DRATEL & LEWIS, P.C.
29 Broadway, Suite 1412
New York, New York 10006
(212) 732-0707
jdratel@dratellewis.com

Attorneys for for Victor Carlström, Stephen Brune , Vinacossa Enterprises AB, SBS Resurs Direkt AB, Boflexibilitet Sverige AB, Vinacossa Enterprises Ltd, and Sparflex AB

– Of Counsel –
Lawrence H. Schoenbach, Esq.
Joshua L. Dratel, Esq.

TABLE OF CONTENTS

TABLE OF AUTHORITIES
CASES

STATUTES

Introduction

This combined Memorandum of Law is respectfully submitted on behalf of all Plaintiffs opposing to the separate motions to dismiss filed by defendants Swedbank AB ("Swedbank") and Jens Henriksson (ECF # 79) ("Swedbank/Henriksson") and Folksam Ömsesidig Livförsäkring (ECF # 82) ("Folksam") with respect to the First Amended Complaint ("FAC") (ECF # 74).

As detailed below, the motions are without merit. Personal jurisdiction exists over all defendants due to their conduct within the Southern District of New York. That conduct constitutes the tortious and unlawful acts alleged in the FAC, as well as their contacts with the forum. Defendants also wholly ignore the FAC's allegations related to Plaintiff Stephen Brune, a U.S. citizen residing at all relevant times within the Southern District of New York ("SDNY"), whose businesses exist in SDNY, and whose interests therein were damaged in SDNY as well.

Defendants' challenges to the causes of action conveniently ignore ample allegations within the FAC that easily clear the very low legal threshold needed to defeat a motion to dismiss at this point in the process. Defendants also attempt a sleight of hand by isolating certain statutory allegations within the causes of action without connecting them to the abundant relevant facts set forth earlier in the FAC. All the causes of action pleaded in the FAC are well and sufficiently pleaded. Defendants' motion for dismissal on grounds of *forum non conveniens* fails because it not only misstates the applicable standard, but also misapplies the balancing required of the Court. That balance weighs overwhelmingly in Plaintiffs' favor due to Brune's U.S. citizenship, Carlström's U.S. residence, and the restrictions on Carlström's travel resulting from his pending asylum petition. Accordingly, it is respectfully submitted that Defendants Folksam's and Swedbank/Henriksson's respective motions to dismiss should be denied in their entirety.

STATEMENT OF THE FACTS

The myriad allegations in the FAC are too voluminous and detailed to digest herein. However, they will be summarized briefly in this Statement of Facts and referenced throughout this Memo of Law in their appropriate context in response to Defendants' specific arguments.

In 2013, Plaintiff Carlström, a highly successful financial broker in Sweden, contracted with Defendant Folksam through his (Plaintiff) company Resurs Direkt, to invest Resurs Direkt's clients funds through Folksam, Sweden's largest insurance and financial services company. The initial investment, made part and parcel of the contract with Folksam, totaled more than One Hundred Fifty Million U.S. Dollars of Resurs Direkt's clients' funds in BlackRock BGF High Yield Bond A2 USD. The BlackRock fund invested all the funds through its New York accounts in the United States. Specifically, at Carlström's insistence, half the funds were invested in U.S. corporate bonds; the balance of the funds was invested in United States Treasury bonds through BlackRock's BGF High Yield Bond investment vehicle. The Funds were maintained at the Bank of New York Mellon in Manhattan. *See* FAC, at ¶¶ 23, 38-42.

The terms of the investment and contract provided that Resurs Direkt and Carlström's commissions would be paid in U.S. dollars from BlackRock in New York to Folksam in Sweden. Folksam would then transfer the payment to Resurs Direkt and Carlström. The Black Rock securities were purchased by Folksam by wire transfer to Black Rock with money deposited by Carlström's clients. The clients' funds were converted into U.S. dollars for the purchase. In return, Black Rock electronically transferred the securities codes to Folksam. *Id*. at ¶¶ 43-44.

Beginning in September 2015, two years after the commencement of the contract, but only months after Carlström expressed to Folksam executives his concerns with respect to

Folksam's corrupt operations, of which Carlström learned as a result of his due diligence investigation of Folksam. Defendant Henriksson, then-Director General of Folksam, unilaterally terminated the contract. Henriksson then began a deliberate, concerted, malicious, and illegal effort to utilize his company, the people within his control, and other professional associates and even Swedish government entities, to destroy Carlström and the companies and individuals – including Plaintiff Brune – with which he was affiliated. *Id.* at ¶ 27.

During the ensuing four years, 2015-2019, continuing through the filing of the FAC, Henriksson, in his personal capacity as well as an executive at Folksam and later Swedbank (where he assumed the Director General position in 2019), has been associated in fact with a racketeering enterprise that included him, Folksam, Swedbank, the other defendants, and several individuals. *Id*. at ¶ 28. During that period, all Defendants,at the behest of Defendant Henriksson and through fraud and extortion, agreed to and did help Henriksson steal Carlström's clients, loot Carlström's companies, malign Carlström's reputation, and ultimately destroy Carlström and his family. Defendants' efforts were in reaction to and retaliation for the information Carlström had gathered through his due diligence investigation of Folksam, and later with respect to Swedbank and SEB. What Carlström found was systemic fraud, money laundering, and tax evasion, as well as a massive kick-back scheme involving the Defendants herein. *Id*. at ¶¶ 29.[1]

In an effort to silence Carlström, Defendant Henriksson enlisted (1) a "team of 15" people at Folksam to defame Carlström and steal Carlström's remaining clients; (2) the Swedish Tax Agency to initiate completely illegitimate, unwarranted, and unjustified serial tax investigations

[1] Carlström's research and investigation also discovered wrongdoing by Swedbank and SEB that has since been corroborated by sovereign banking regulatory authorities. *See* FAC, at ¶¶ 213-17, 241-44,

against Carlström and his companies that continue to this day; (3) the Swedish Financial Supervisory Authority, to deny improperly and without authority the registration of a Carlström company, Boflexibilitet Sverige AB ("Boflex"), which Carlström and Brune developed to issue home mortgages in Sweden and, thereafter, in the United States; (4) Swedbank to cancel a lucrative contract, potentially worth billions of U.S. dollars, that Carlström and his companies had with Swedbank; and (5) several powerful individuals in Sweden to advance and implement various elements of the racketeering enterprise's scheme in their personal, corporate executive, and ministerial capacities. *Id.* at ¶ 31. An overriding objective of the racketeering enterprise was to silence Carlström because his due diligence investigation had uncovered Defendants' corruption, detailed throughout the FAC.

Defendants went to extreme, if not extraordinary, lengths to ensure that Carlström could never reveal the information he uncovered regarding Sweden's financial system and its most important power brokers and government entities. It is those individuals – Defendants – who transition regularly and seamlessly between private financial business and government regulatory authorities through a perpetual revolving door that cements their power and conceals their corruption. *Id*. at ¶¶ 34.

In 2019, Carlström was forced to flee Sweden with his family. With little time to prepare, Carlström first moved to the Netherlands, then the United Arab Emirates and then, finally, to the United States. Once in this country, Carlström petitioned for asylum, seeking refuge from those wishing to do harm not only to his reputation and business, but to him physically. As specifically alleged in the FAC, assassins working at the direction of Defendants and their confederates, or their agents, attempted to take Carlström's life and that of his wife and two young children in

Dubai, and then in New York (twice) and later Los Angeles. Currently, Carlström resides in the United States, moving his domicile constantly, under the protection of private security guards, while he awaits a final decision on his asylum application. *Id*. at ¶¶ 35-37.

ARGUMENT

POINT I

THE COURT POSSESSES PERSONAL JURISDICTION OVER DEFENDANTS

A. *The Standard of Review Regarding the Sufficiency of a Complaint*

As a threshold matter, Defendants sprinkle through their motions attacks on the credibility of the facts alleged in the FAC. *See*, *e.g.*, Swedbank/Henriksson, at 1, 4 n.3; Folksam, at 2, 13. Yet, while Defendants acknowledge in passing the important standard that controls review of the factual allegations in the FAC, *i.e.*, *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), they ignore the implications of that standard: that any challenges to credibility are premature and not a factor in deciding Defendants' motions to dismiss.

Consistent with Rule 8(a)(2), Fed.R.Civ.P., in order to survive a motion to dismiss pursuant to Rule 12(b)(6), "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*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)) (emphasis added). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. (citing *Twombly*, 550 U.S. at 556); *see Arista Records, LLC v. Doe 3*, 604 F.3d 110, 119 (2d Cir. 2010) (rejecting "notion that *Twombly* imposed a heightened standard that requires a complaint to include specific evidence" of each allegation). As a result, in considering a motion to dismiss, a court accepts as

true all factual allegations in the complaint and draws all reasonable inferences in the plaintiffs' favor. *See Goldstein v. Pataki*, 516 F.3d 50, 56 (2d Cir. 2008).

In addition, while a "given set of [allegations] may well be subject to diverging interpretations, each of which is plausible[,]" *Anderson News, L.L.C. v. Am. Media, Inc.*, 680 F.3d 162, 184 (2d Cir. 2012) (citing *Anderson v. Bessemer City*, 470 U.S. 564, 575 (1985)), even in such a case, "[t]he choice between two plausible inferences that may be drawn from factual allegations is not a choice to be made by the court on a Rule 12(b)(6) motion." *Id*. at 185. Indeed, "[a] court ruling on such a motion may not properly dismiss a complaint that states a plausible version of the events merely because the court finds a different version more plausible." *Id*.; *see also Twombly*, 550 U.S. at 556 ("a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of the facts alleged is improbable, and that recovery is very remote and unlikely") (internal quotation marks omitted).

Accordingly, a court's function on a motion to dismiss is "not to weigh the evidence that might be presented at a trial but merely to determine whether the complaint itself is legally sufficient." *Goldman v. Belden*, 754 F.2d 1059, 1067 (2d Cir. 1985).

B. *The Court Possesses Personal Jurisdiction Over Defendants*

Defendants contend the Court lacks personal jurisdiction over them in this matter. *See* Swedbank/Henriksson, at 5-8; Folksam, at 8-13. Evaluating a defendant's claim that a court lacks personal jurisdiction involves a two-step inquiry. The initial step requires a determination whether there is a "statutory basis for exercising personal jurisdiction." *Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 128 (2d Cir. 2013) (citation omitted). In that context, "[f]ederal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons." *Daimler*

AG v. Bauman, 571 U.S. 117, 125 (2014). Thus, the forum state's personal jurisdiction statute governs unless a federal statute "specifically provide[s] for national service of process." *PDK Labs, Inc. v. Friedlander*, 103 F.3d 1105, 1108 (2d Cir. 1997) (citation omitted).

The second step involves the Court's consideration whether exercise of personal jurisdiction over a defendant is consistent with due process. *Licci ex. rel Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 167-68 (2d Cir. 2013). Application of these two steps to the FAC make it clear that the Court possesses personal jurisdiction over all Defendants herein.

1. *New York State's Long-Arm Statute Confers Jurisdiction Over Defendants*

New York State's "long-arm statute," CPLR §302, provides, in pertinent part, personal jurisdiction if a defendant "(1) transacts any business within the state or contracts anywhere to supply goods or services in the state; or (2) commits a tortious act within the state, . . .; or (3) commits a tortious act without the state causing injury to person or property within the state . . ."

Here, all three sections apply to confer jurisdiction over Defendants. In determining whether jurisdiction exists under §302(a)(1), "a court must decide (1) whether the defendant transacts any business in New York and, if so, (2) whether this cause of action arises from such a business transaction." *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 246 (2d Cir. 2007) (internal quotation marks and citation omitted).

Addressing subsection (2) first, the FAC alleges that the causes of action arise from Defendants' conduct and business within the jurisdiction. *See* FAC, at ¶¶ 43, 69, 344. In determining whether a defendant "transacts business" within New York State, the Second Circuit has noted that "[a] defendant need not physically enter New York State in order to transact business, so long as the defendant's activities [there] were purposeful." *Licci*, 673 F.3d at 61

(internal quotation marks and citation omitted). Elaborating in another case, the Second Circuit instructed that "[p]urposeful activities are those with which a defendant, through volitional acts, avails itself of the privilege of conducting activities within [New York.]" *Eades v. Kennedy, PC Law Offices*, 799 F.3d 161, 168 (2d Cir. 2015) (citation omitted). A "single" purposeful activity is sufficient to establish jurisdiction. *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 170 (2d Cir. 2010) (citation omitted). *See also Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp.3d 679, 697 (S.D.N.Y. 2018) (a single meeting may establish personal jurisdiction under N.Y.C.P.L.R. §302(a)(1) if the meeting played a "significant role in establishing or substantially furthering the relationship of the parties") (quotation marks and citation omitted).

Minimum contacts with New York involve "[f]irst, [that] the defendant . . . purposefully availed itself of the privilege of conducting activities within [New York] or . . . purposefully directed its conduct into [New York]," and "[s]econd, [that] the plaintiff's claim[s] . . . arise out of or relate to the defendant's [New York] conduct." *U.S. Bank Nat'l Ass'n v. Bank of Am. N.A.*, 916 F.3d 143, 150 (2d Cir. 2019) (internal quotation marks and citations omitted). Under the "transact[ing] business" provision of §302, the "totality of the defendant's activities within the forum'" are considered "to determine if the defendant's 'transacted business' can be considered purposeful." *Millennium Prod. Grp., LLC. v. World Class Freight, Inc.*, 2018 WL 1247384, at *2–3 (E.D.N.Y. Mar. 9, 2018).

Here, Defendant Folksam, in addition to the conduct alleged in the FAC, has purposefully availed itself of the privileges of conducting activities within New York by instituting litigation as a plaintiff in SDNY. *See, e.g., In re General Motors Corp. Securities Litigation*, 05 Civ. 8088 (RMB) (Docket Sheet) (multi-district lawsuit consolidated with Folksam's prior-filed Complaint

in SDNY).[2] In *Fischbarg v. Doucet,* 9 N.Y.3d 375 (2007), the New York Court of Appeals found sufficient contacts because defendant(s) therein "contacted plaintiff here to retain him and thereby projected themselves into our state's legal services market." *Id*., at 382, citing *Parke-Bernet Galleries v. Franklyn*, 26 N.Y.2d 13, 18 (1970). The Court in *Fischbarg* added that "thereafter, on their own volition, [defendants] continued their communications with plaintiff here, utilizing his services and thus 'invok[ing] the benefits and protections of [our] laws relating to' the attorney-client relationship." *Id*., citing *Mayes v. Leipziger*, 674 F.2d 178, 184 (2d Cir.1982). Here, in pursuing litigation in SDNY (and elsewhere in the U.S., *see* **post**, at 12), Folksam has done the same; it has projected itself into the New York and federal courts.

In addition, the forum contacts of a member of a conspiracy may be imputed to co-conspirators when the Complaint alleges that "(1) a conspiracy existed; (2) the defendant participated in the conspiracy; and (3) a co-conspirator's overt acts in furtherance of the conspiracy had sufficient contacts with a [forum] to subject that co-conspirator to jurisdiction in that [forum]." *Charles Schwab Corp. v. Bank of Am. Corp.*, 883 F.3d 68, 87 (2d Cir. 2018); *In re Platinum and Palladium Antitrust Litigation*, 14 Civ. 9391 (GHW) 2020 WL 1503538 (S.D.N.Y. March 9, 2020); *Contant v. Bank of America Corp*., 386 F. Supp.3d 284, 291-92 (S.D.N.Y. 2019) ("[s]pecific jurisdiction may exist where a defendant's connection to the forum state arises from their participation in a conspiracy connected to the forum state by a co-conspirator's acts in furtherance of the conspiracy"); *FrontPoint Asian Event Driven Fund, L.P. v. Citibank, N.A.*, No.

[2] In deciding a motion to dismiss, a court may consider documents of which judicial notice may be taken. *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002).

16 CIV. 5263 (AKH), 2018 WL 4830087, at *7 (S.D.N.Y. Oct. 4, 2018).[3]

Consistent with §302(a)(2), the FAC alleges that Defendants committed tortious acts within New York State. *See* FAC, at ¶¶ 44, 69, 302-310, 311-330, 331-32, 344(b), 346(c). Under §302(a)(3), there are multiple bases for jurisdiction. The earned commissions due Plaintiffs for the Black Rock investments were "property within New York State." *See* FAC, at ¶¶ 44, 107. Also, the injuries to (and attempts to injure) Carlström while he was residing in New York, *see* FAC, at ¶¶ 4(e), 311-330 clearly satisfy §302(a)(3). Thus, "specific personal jurisdiction properly exists where the defendant took intentional, and allegedly tortious, actions expressly aimed at the forum." *Siegel v. HSBC Holdings, PLC*, 17 Civ. 6593 (DLC), 2018 WL 501610, at *2 (S.D.N.Y. Jan. 19, 2018), quoting *In re Terrorist Attacks on September 11, 2011*, 714 F.3d 659, 674 (2d Cir. 2013).[4]

2. *Jurisdiction Exists Pursuant to Rule 4(k)(2), Fed.R.Civ.P.*

Rule 4(k)(2), Fed.R.Civ.P., provides jurisdiction over defendants even if, assuming *arguendo*, the Court concludes New York's long-arm statute does not apply. Rule 4(k)(2) operates as a "federal long-arm statute," *BMW of N. Am. LLC v. M/V Courage*, 254 F. Supp.3d

---

[3] That principle is fully consistent with the doctrine that a defendant is liable for injuries caused by the actions of a co-conspirator. *See, e.g., Schaffer v. Comm'r*, 779 F.2d 849, 851 (2d Cir. 1985) ("[o]ne who participates with others in a joint enterprise may be held criminally and civilly liable for all the actions taken by any participant in furtherance of the venture.").

[4] While "personal jurisdiction permitted under [New York's] long-arm statute may theoretically be prohibited under due process analysis," the Second Circuit "expect[s] such cases to be rare[,]" and has noted that it is not aware of any "such decisions in this Circuit[]" because New York's long-arm statute closely tracks the requirements for minimum contacts under the Constitution. *Licci*, 732 F.3d at 170. Here, Defendants have not proffered any reason why their contacts with New York and conduct (and/or its effects) within New York would satisfy New York's long-arm requirements, but not those of due process.

591, 598–99 (S.D.N.Y. 2017), and "permits federal courts to exercise personal jurisdiction over a defendant that lacks contacts with any single state if the complaint alleges federal claims and the defendant maintains sufficient contacts with the United States as a whole." *Id*., *citing Havlish v. Royal Dutch Shell PLC*, No. 13-CV-7074 (GBD), 2014 WL 4828654, at *4 (S.D.N.Y. Sept. 24, 2014).

Thus, personal jurisdiction is established when "(1) the claim arises under federal law, (2) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction, and (3) exercising jurisdiction is consistent with the United States Constitution and laws." *BMW*, 254 F. Supp.3d at 598-99 (citation omitted). *See also Siegel v. HSBC Holdings, PLC*, 2018 WL 501610, at *3. As the Court in *BMW* noted, analysis of Rule 4(k)(2) "calls for an inquiry into 'the quality and nature of the defendant's contacts with the forum state under a totality of the circumstances test,' and into whether 'the defendant purposefully availed itself of the privilege of doing business in the forum and could foresee being haled into court there.'" 254 F. Supp.3d at 599, *quoting Licci*, 732 F.3d at 170.

Here, Plaintiffs have alleged claims arising under federal law. As for the second prong, Defendants, "[b]y arguing that [they] ha[ve] no presence in the United States and did not engage in transactions in New York sufficiently related to the instant dispute, . . . ha[ve] in fact established the second necessary predicate for personal jurisdiction pursuant to Fed. R. Civ. P. 4(k)(2)." *BMW*, 254 F. Supp. 3d at 599. Thus, Defendants claim they are "not subject to jurisdiction in any state's courts of general jurisdiction."

The "minimum contacts" analysis pertinent to Rule 4(k)(2) "contemplates a defendant's contacts with the entire United States, as opposed to the state in which the district court sits."

RegenLab USA LLC v. Estar Techs. Ltd., 335 F. Supp. 3d 526, 546 (S.D.N.Y. 2018) (emphasis added); *accord BMW*, 254 F. Supp. 3d at 599. In that regard, in addition to the litigation Folksam has pursued as a plaintiff in SDNY, it has also appeared as a plaintiff in other litigation in the federal courts. *See, e.g., Folksam Omsesidig Sakforsakring, et al. v. Lennartson*, 98 Civ. 699 (TSE) (E.D.Va.) (Docket Sheet).

In addition, the exercise of personal jurisdiction pursuant to Rule 4(k)(2) must be "reasonable." *Freeplay Music, LLC v. Nian Infosolutions Private Ltd.*, 2018 WL 3639929, at *16 (S.D.N.Y. July 10, 2018), *report and recommendation adopted*, 2018 WL 3632524 (S.D.N.Y. July 31, 2018). Here, given Defendants' activities within New York and the U.S., *see* FAC, at ¶¶ 36, 344(b), 346(c), and **ante**, at 10, exercise of personal jurisdiction over Defendants pursuant to Rule 4(k)(2) is eminently, legally reasonable. The due process "reasonableness" analysis involves examination of (1) the burden on the defendant, (2) the interests of the forum state, (3) the plaintiff's interest in obtaining relief, (4) the "interstate judicial system's interest in obtaining the most efficient resolution of controversies," and (5) "the shared interests of the several States in furthering fundamental substantive social policies." *U.S. Bank*, 916 F.3d at 151 n.5 (internal quotation marks and citations omitted). *See also In re Platinum and Palladium Antitrust Litigation*, 2020 WL 1503538, at *24-25 (personal jurisdiction established by co-conspirators' conduct comported with due process).

The first factor is the primary one. *Id*. Here, given Defendant's resources and operations in the U.S., *see* FAC, at ¶¶ 14, 69, including hiring attorneys for its affirmative SDNY litigation, it is reasonable to exercise personal jurisdiction over them. It would also be efficient to litigate all claims against all Defendants in the same forum. It does not "offend traditional notions of fair

play or substantial justice" to hold Defendants accountable for their grave misconduct in this district. *U.S. Bank*, 916 F.3d at 156.

3. *Personal Jurisdiction Exists Over Defendants Pursuant to 18 U.S.C. §1965(b)*

Defendants ignore entirely 18 U.S.C. §1965(b), which is located within the Racketeering Influenced and Corrupt Organizations Act's ("RICO") provisions, and establishes personal jurisdiction over all defendants in an action "in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, . . ." In *Elsevier Inc. v. W.H.P.R., Inc.*, 692 F. Supp. 2d 297 (S.D.N.Y. 2010), the Court concluded that §1965(b) permits personal jurisdiction over all defendants "where the ends of justice so require" if personal jurisdiction based on minimum contacts exists for at least one defendant. *Id*., at 314-15.

The "ends of justice" requirement is satisfied when "the RICO claim could not otherwise be tried in a single action because no district court could exercise personal jurisdiction over all of the defendants." *Id*. at 315 (collecting cases). Here, since personal jurisdiction exists as to Folksam at the very least, Defendants have not contended "that any other district would be able to hear the RICO claim against all of the Defendants." *Id*. Accordingly, "it would be proper to exercise 'ends of justice' RICO jurisdiction" here. *Id*.

POINT II

THE RICO CLAIMS ARE SUFFICIENTLY PLEADED

Defendants argue that the RICO substantive and RICO conspiracy causes of action (Counts One and Two, respectively) should be dismissed on a variety of grounds related to RICO's several elements. Defendants' claims are without merit because they both ignore clear allegations in the FAC and fail to address material aspects of RICO's essential elements.

Defendants also avoid RICO's explicitly expansive application. Even in the civil context, the Supreme Court has recognized that RICO is an "aggressive initiative" for fighting crime, which should be "read broadly." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497-98 (1985). A RICO claim must allege that Defendants (1) conducted the affairs of (2) an enterprise affecting interstate or foreign commerce (3) through a pattern of racketeering activity, 18 U.S.C. § 1962(c), and that (4) Plaintiffs suffered an injury to their business or property that (5) was proximately caused by Defendants' RICO violation, 18 U.S.C. §1964(c). *D'Addario v. D'Addario*, 901 F.3d 80, 96 (2d Cir. 2018); *see also World Wrestling Entm't, Inc. v. Jakks Pac., Inc.*, 530 F. Supp. 2d 486, 496 (S.D.N.Y. 2007) (RICO plaintiff need satisfy only Rule 8's plausibility standard). Because Defendants do not allege deficiencies with respect to all of those elements, this Memo of Law in opposition will address only those contested in Defendants' motions.

A. *The FAC Sufficiently Describes and Defines the RICO Enterprise and Each Defendant's Membership and Participation Therein*

1. *The FAC Sufficiently Pleads the RICO Enterprise's Structure*

Defendants argue that the FAC does not adequately plead the RICO enterprise's structure. *See* Swedbank/Henriksson, at 20. However, in so doing, Defendants focus on technical statutory language cited in the causes of action, and not, as required, on the FAC's abundant factual recitations that are incorporated in those causes of action. As the Second Circuit has instructed, "it is well-settled that a complaint must be read as a whole, not parsed piece by piece to determine whether each allegation, in isolation, is plausible." *Pension Ben. Guar. Corp. ex rel. St. Vincent Catholic Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 732 (2d Cir. 2013) (quotation marks and citation omitted). Consequently, analysis of the principles

with respect to a RICO enterprise, coupled with examination of the FAC, demonstrates that Defendant's contention is entirely unavailing.

The FAC alleges an "association-in-fact" RICO enterprise. *See* FAC, at ¶¶ 28, 31-32, 338-344. RICO's definition of a racketeering enterprise includes "any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. §1961(4). As the Supreme Court has explained, consistent with RICO's objectives, "[t]he term 'any' ensures that the definition has a wide reach, and the very concept of an association in fact is expansive." *Boyle v. United States*, 556 U.S. 938, 944 (2009) (internal citation omitted).

Subsequently, the Second Circuit has noted that "[t]he Supreme Court has . . . further instructed that, in accordance with the law's purposes, the RICO statute is to be 'liberally construed,' giving a broad and flexible reach to the term 'association-in-fact.'" *D'Addario*, 901 F.3d at 100 (quoting *Boyle*, 556 U.S. at 944). In accordance with that doctrine, "the Supreme Court has rejected attempts to graft onto the statute formal strictures that would tend to exclude amorphous or disorganized groups of individuals from being treated as RICO 'enterprises.'" *Id*.

Thus, an association-in-fact enterprise requires only three structural features: "(1) a shared purpose, (2) relationships among the associates, and (3) 'longevity sufficient to permit these associates to pursue the enterprise's purpose.'" *Id*. (quoting *Boyle*, 556 U.S. at 946). *See also Boyle*, 556 U.S. at 948 ("an association-in-fact enterprise is simply a continuing unit that functions with a common purpose").

Here, the FAC clearly pleads each of these elements. For instance, ¶¶ 27-29, 339 identifies the enterprise's shared purpose. At ¶¶ 27-29, 340, the FAC explains the relationships among the associates. The FAC also describes a time frame – four years – that achieved the

longevity enabling the enterprise to pursue its purpose. Moreover, the structure of the enterprise is plainly set forth at ¶¶ 78- 82, 340-41. It clearly describes each Defendant's role and participation in the scheme.

Swedbank/Henriksson wrongly asserts that the FAC does not adequately allege that Henriksson "organized and managed" the enterprise, *see* Swedbank/Henriksson, at 20. The FAC, at ¶ 27, amply explains Henriksson's managerial role, which is all that RICO requires. *See Reves v. Ernst & Young*, 507 U.S. 170 (1993); **post**, at 18. Likewise, Henriksson's assertion, at 13, that his co-conspirators did not act at his direction is refuted completely by the FAC, *see* FAC, at ¶¶ 28, 81, but is, in any event, a factual issue not properly posed in a motion to dismiss.[5]

In fact, an association-in-fact enterprise need not have "a leader or hierarchy[;]" nor does it require that its "participants ever formulate[] any long-term master plan or agreement." *Id*. at 941; *see also United States v. Burden*, 600 F.3d 204, 215 (2d Cir. 2010) (Court "mindful that 'the existence of an association-in-fact is oftentimes more readily proven by what it does, rather than by abstract analysis of its structure'") (quoting *United States v. Coonan*, 938 F.2d 1553, 1559 (2d Cir. 1991)); *Equinox Gallery Ltd. v. Dorfman*, 306 F. Supp. 3d 560, 571 (S.D.N.Y. 2018) (a complaint need not "allege that a particularly organized structure existed" and "the existence of an enterprise may be inferred from evidence showing that persons associated with the enterprise engaged in a pattern of racketeering activity").

Relationships among the enterprises's members (and among Defendants) may be inferred

[5] While Henriksson is represented by the same attorneys that represent Swedbank – Henriksson is Swedbank's current Director General (having assumed that position in August 2019), *see* FAC, at ¶ 218 – his specific misconduct detailed in the FAC was committed while he was Director General of co-Defendant Folksam.

from individuals' "repeated and overlapping participation in the pattern of racketeering activity." *United States v. Veliz*, 623 F.App'x 538, 542 (2d Cir. 2015); *see also Boyle*, 556 U.S. at 946 (association-in-fact enterprise may be "inferred from the evidence showing that persons associated with the enterprise engaged in a pattern of racketeering activity," and "the evidence used to prove the pattern of racketeering activity and the evidence establishing an enterprise 'may in particular cases coalesce'" (citation omitted)).

Here, the FAC details the professional and personal relationships among Defendants and other members of the enterprise (and their confederates), including the professional revolving door that existed between the institutional and individual Defendants and members. *See* FAC, at ¶ 34, 87. Indeed, the FAC spans the period of time from which Henriksson was Director General of Defendant Folksam through the time he assumed the same position at Defendant Swedbank. *Id*., at ¶ 218. In addition, "[m]embers of the group need not have fixed roles; different members may perform different roles at different times," "[t]he group need not have a name [or] regular meetings[,]" and "nothing in RICO exempts an enterprise whose associates engage in spurts of activity punctuated by periods of quiescence." *Boyle*, 556 U.S. at 948. Here, application of those principles compels the conclusion that the FAC sufficiently pleads an association-in-fact RICO enterprise consisting of Defendants and their confederates and associates.

The FAC also alleges the enterprise's common purpose(s), *see* ¶¶ 77-84, 342, although "[t]he common purpose element . . . does not require the enterprise participants to share all of their purposes in common." *In re Nat. W. Life Ins. Deferred Annuities Litig.*, 635 F. Supp.2d 1170, 1174 (S.D. Cal. 2009) (citing *Odom v. Microsoft Corp*., 486 F.3d 541, 552 (9th Cir. 2007)). Also, "[t]here is no need for a [RICO] plaintiff to prove that each conspirator had contact

with all other members." *Schwartz v. Lawyers Title Ins. Co.*, 970 F. Supp. 2d 395, 404-05 (E.D. Pa. 2013). The FAC sufficiently pleads a RICO enterprise, and Defendants' arguments to the contrary are entirely without merit.

2. *The FAC Sufficiently Alleges Each Defendant's Participation in the Enterprise*

Swedbank contests the sufficiency of the FAC's allegations of its participation in the RICO enterprise. *See* Swedbank/Henriksson, at 4. Nevertheless, Swedbank acknowledges that the FAC sets forth Swedbank's involvement at ¶¶ 185-95. Those paragraphs plainly describe Swedbank's participation in the enterprise through its communications with other Defendants and its fraudulent termination of its relationship with Plaintiffs's business ventures. Those paragraphs sufficiently allege Swedbank's participation consistent with the governing case law.

In the controlling Supreme Court decision, *Reves v. Ernst & Young*, 507 U.S. 170 (1993), which Defendants fail even to cite, much less discuss or distinguish, the Court explained that what has been termed the "operation or management" test, *id*., at 185, for a §1962(c) violation requires an allegation that a particular defendant "conduct[ed] or participate[d], directly or indirectly, in the conduct of [the] enterprise's affairs." *Id*., at 177. *See also id*., at 179 ("the word 'participate' makes clear that RICO liability is not limited to those with primary responsibility for the enterprise's affairs[,] but some part in directing that enterprise's affairs is required.").

Moreover, the "operation or management" element "presents a 'relatively low hurdle for plaintiffs to clear, . . . especially at the pleading stage.'" *D'Addario*, 901 F.3d at 103 (quoting *First Capital Asset Mgmt., Inc. v. Satinwood, Inc.*, 385 F.3d 159, 176 (2d Cir. 2004)). Nor must a plaintiff establish that a defendant had "primary responsibility for the enterprise's affairs," or even a "a formal position in the enterprise[,]" *Reves*, 507 U.S. at 179, or that a defendant

participated in "all of the enterprise's affairs." *In re Express Scripts/Anthem ERISA Litig.*, 285 F. Supp.3d 655, 685 (S.D.N.Y. 2018).

Thus, a plaintiff need allege only that a defendant played "some part" in directing a portion of the enterprise's activities. *Reves*, 507 U.S. at 179; *In re Express Scripts/Anthem ERISA Litig.*, 285 F. Supp.3d at 685. That burden can be satisfied by alleging that a defendant "actively assisted" the leaders of an association-in-fact enterprise as they engaged in racketeering activity. *D'Addario*, 901 F.3d at 104. Here, by doing the other Defendants' bidding by torpedoing Plaintiffs' business ventures, Swedbank's conduct alleged at ¶¶ 185-95 clearly satisfies the low threshold of *Reves*'s "operation or management" test. Nor does the timing of that conduct – 2018 – insulate Swedbank from liability. *See* Swedbank/Henriksson, at 4. Swedbank's conduct in 2018, along with the enterprise's subsequent unlawful activity, constitutes"operation or management" and imposes RICO liability. Further, as detailed **post**, at 27-30, the precepts of conspiratorial liability dictate that by joining the conspiracy (and enterprise) Swedbank thereby incurred liability for acts by co-conspirators prior to Swedbank's entry.

3. *The FAC Sufficiently Sets Forth the RICO Pattern of Racketeering Activity With Respect to Each Defendant*

Defendants argue that the FAC does not allege the requisite "pattern of racketeering" activity because either the elements of the predicate acts of racketeering are not pleaded adequately, or connected to a specific Defendant, or that the predicate acts do not allege violations occurring within U.S. jurisdiction. As set forth *seriatim*, each of those contentions must be rejected.

Title 18 U.S.C. § 1961(5), defines a "pattern of racketeering activity" as "at least two acts

of racketeering activity, one of which occurred after the effective date of [the RICO statute] and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity." In addition to the requirement of two predicate offenses, each defendant's "pattern of racketeering activity" must "amount to or pose a threat of continued criminal activity." *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989). In evaluating that prerequisite, a court must examine whether each Defendant's predicates exhibit either "closed-ended or open-ended" continuity. *Reich v. Lopez*, 858 F.3d 55, 60 (2d Cir. 2017).

Here, the predicate offenses listed in the FAC possess both open-ended and close-ended continuity (although only one is required). Predicate offenses manifest "open-ended continuity" if they "by [their] nature project[] into the future with a threat of repetition." *Reich*, 858 F.3d at 60 (citation omitted). Conversely, close-ended continuity is established if the predicate offenses "extend[ed] over a substantial period of time" in the past. *H.J. Inc.*, 492 U.S. at 242.

As the Second Circuit has explained, open-ended continuity "can be established in several ways." *Reich*, 858 F.3d at 60 (citation omitted). For example, predicate offenses that "by their very nature" present a threat of future criminal activity establish continuity. *Id.* Alternatively, allegations that the predicate offenses are related to an "enterprise . . . [that] projects criminal activity into the future" will also suffice. *Id.*; *see also United States v. Aulicino*, 44 F.3d 1102, 1111 (2d Cir. 1995) (open-ended continuity may be established by "the acts of the defendant or the enterprise"); *United States v. Kaplan*, 886 F.2d 536, 542-43 (2d Cir. 1989) (defendant's "demonstrated willingness to facilitate corruption" was sufficient to find threat of continued activity). Even a single criminal episode (encompassing at least two predicate offenses) can be sufficient to demonstrate open-ended continuity if there existed a basis to infer that similar

crimes would occur in the future *See Beauford v. Helmsley*, 865 F.2d 1386 (2d Cir. 1989) (en banc), *vacated and remanded*, 492 U.S. 914, *adhered to on remand*, 893 F.2d 1433 (2d Cir. 1989).[6]

Here, the FAC *expressly* alleges that the predicate offenses are continuing, and threaten to continue, until Carlström is dead or at least intimidated or harrassed into silence, and his (and the other Plaintiffs') businesses and finances completely ruined. *See* FAC, at ¶¶ 78, 303, 338. Thus, Defendants' claim that open-ended continuity is lacking, *see* Swedbank/Henriksson, at 18-19, is frivolous by the very terms of the FAC.

The FAC also establishes "close-ended" continuity. As the Supreme Court has noted, "[a] party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time." *H.J. Inc.*, 492 U.S. at 242. Here the FAC alleges a variety of predicate offenses occurring over a four-year span – well exceeding the Second Circuit's general threshold of two years. *See Reich*, 858 F.3d at 60.

Other relevant factors include the number and variety of predicate acts, the number of participants and victims and the presence of separate schemes. *Kriss v. Bayrock Grp., LLC*, No. 10 Civ. 3959, 2016 WL 7046816, at *15 (S.D.N.Y. Dec. 2, 2016) (citing *Kalimantano BmbH v. Motion in Time, Inc.*, 939 F. Supp. 2d 392, 412 (S.D.N.Y. 2013)). Again, here the FAC easily satisfies those criteria: it includes a variety of and numerous predicate offenses, ¶¶ 344-46, and multiple participants and schemes designed to achieve the enterprise's goals. *Id*. at ¶¶ 13-21.

---

[6] Predicate acts that are "inherently unlawful, such as murder or obstruction of justice," and serves an "inherently unlawful goal[]," create sufficient risk that a defendant's unlawful conduct will continue. *Aulicino*, 44 F.3d at 1111. *See* FAC, at ¶¶ 311-330, 344(b) (alleging attempted murder and conspiracy to murder).

That diversity of predicate offenses, participants, and schemes renders frivolous as well Swedbank/Henriksson's contention, at 19, that the enterprise had but a single goal that was completed when Carlström was purportedly "silenced" in May 2019 – an odd and insupportable claim considering Carlström's status as a plaintiff *in this case*. As the FAC clearly sets forth, at ¶¶ 34, 82-84, the enterprise's multifaceted objectives have yet to be accomplished notwithstanding the injury it and its misconduct have inflicted on Plaintiffs thus far.

In asserting that the FAC does not allege the elements of the predicate offenses with respect to each Defendant, *see* Swedbank/Henriksson, at 11-18; Folksam, at 16-18, once again Defendants would improperly isolate the statutory allegations contained within the causes of action, and cherry-pick certain paragraphs of the FAC without also incorporating the comprehensive factual recitation that comprises the first part of the FAC. *See* **ante**, at 14. In that regard, with respect to mail and wire fraud, the elements, including that communications occurred within the Southern District of New York, are alleged in the FAC in detail at ¶¶ 105-7, 116, 344. *See* Swedbank/Henriksson, at 12; Folksam, at 17. Likewise, each Defendants' connection with those schemes to defraud Plaintiffs is alleged in detail at ¶¶ 93-119, 123-130.[7]

As a result, Folksam's assertion, at 13, that there was no connection between Folksam and those persons committing the predicate offenses cannot survive even a cursory reading of the FAC. Plaintiffs have clearly alleged that Folksam Director General Henriksson, as well as the legion of Folksam employees, were enlisted to further the racketeering enterprise's objectives

[7] Defendants' reference to certain fraudulent schemes described in the Complaint, *i.e.*, at ¶¶ 48-76, 245-65, 266-73, misunderstands the purpose of including them in the Complaint. They are not alleged as predicate offenses, or as schemes that caused injury to Plaintiffs. Instead, they explain Defendants' motivation in targeting Plaintiffs. It was because Carlström had uncovered those criminal schemes, and Defendants' participation in them.

through unlawful conduct related to Plaintiffs' customers and other business relations. *See, e.g.*, FAC, at ¶¶ 27-32, 39-45, 79-81, 91-95. In addition, Swedbank/Henriksson's contention, at 12 n.10, that certain mail and wire communications were not fraudulent – although some plainly were, *see* FAC, at ¶¶ 105-107, 146 – is irrelevant, as mail and wire fraud do not require that the actionable communications themselves be fraudulent, but simply that they further the fraudulent scheme. *See, e.g., Schmuck v. United States*, 489 U.S. 705, 712 (1989); *United States v. Muni*, 668 F.2d 87, 90-91 (2d Cir. 1981).

The law is clear that a defendant can commit a predicate offense by aiding and abetting its commission, *Stochastic Decisions, Inc. v. DiDomenico*, 995 F.2d 1158, 1168 (2d Cir. 1993); *4 K & D Corp. v. Concierge Auctions, LLC*, 2 F. Supp. 3d 525, 537 (S.D.N.Y. 2014), and can also, as discussed **ante**, at 9, and **post**, at 27-30, be liable for predicate offenses as a conspirator. Whether Swedbank or Henriksson made specific false statements, *see* Swedbank/Henriksson, at 13, is not relevant as long as they were members of the conspiracy and the enterprise, which the FAC unquestionably alleges sufficiently. *See* FAC, at ¶¶ 28, 31-32, 338-344. As the FAC makes clear, Defendants Henriksson and Swedbank directed others to make fraudulent statements in furtherance of the enterprise. *Id.* at ¶¶ 91, 105, 112. Regarding those allegations that involve fraud, Plaintiffs have satisfied Rule 9(b)'s requirement that *scienter* be alleged with respect to each Defendant. *Id.* at ¶¶ 81, 83, 91, 105, 107, 110, 112-15, 126, 158, 192, 227 & 341.

Jurisdiction in SDNY also exists for the other predicate offenses alleged, as pleaded in the FAC. *See*, Travel Act, ¶¶ 13, 19; Money Laundering, ¶¶ 32, 55; Hobbs Act, ¶¶ 346; Conspiracy to Murder, ¶¶ 311-330. As a result, Defendants' focus on cases in which the pattern of racketeering was extraterritorial are inapposite, as the FAC sets forth sufficient predicate

offense conduct within the U.S.

Also, with respect to mail and wire fraud, the Second Circuit has recognized that focusing simply on a defendant's location would "effectively immunize offshore fraudsters from mail or wire fraud." *Bascuñàn v. Elsaca*, 927 F.3d 108, 123 (2d Cir. 2019) ("*Bascuñàn II*"). Thus, "while a defendant's location is relevant to whether the regulated conduct was domestic, the mail and wire fraud statutes do not give way simply because the alleged fraudster was located outside the United States." *Id*. A domestic violation occurs as long as "(1) the defendant used domestic mail or wires in furtherance of a scheme to defraud, and (2) the use of the mail or wires was a core component of the scheme to defraud." *Id*., at 122 (footnote omitted).[8] As alleged in the FAC, *see* ¶¶ 42-44, , both are present here.

Regarding money laundering, Defendants inaccurately claim the "specified unlawful activity" is not identified. *See* Swedbank/Henriksson, at 17. However, the FAC, at ¶ 344(d) expressly lists fraud and extortion, with the facts spread throughout the FAC, *e.g*., at ¶¶ 93-119, 121, 132. The same is true with respect to money laundering withing the jurisdiction of the U.S., and Defendants' requisite mental state. *Id*. at ¶¶ 196-202, 346(e) & (f). Similarly, regarding the Hobbs Act (18 U.S.C. §1951) racketeering acts, the jurisdictional predicate for the extortion and the property extorted is set forth in the FAC, at ¶¶ 112-117, 121, 132, 217 & 346(g).

Judged by standards for reviewing a motion to dismiss, Defendants' claims that the

---

[8] In that footnote, the Court in *Bascuñàn II* noted that in its prior decision in *European Community v. RJR Nabisco, Inc.*, 764 F.3d 129, 142 (2d Cir. 2014), *rev'd on other grounds*, ___ U.S. ___, 136 S. Ct. 2090 (2016), it stated "[i]f domestic conduct satisfies every essential element to prove a violation of a United States statute that does not apply extraterritorially, that statute is violated even if some further conduct contributing to the violation occurred outside the United States." Again, that applies as well to the conduct alleged herein throughout the FAC.

FAC's allegations should not be credited are immaterial.[9] Frankly, Defendants know better. In that context, Folksam's argument, at 12, that "the tangential relationship between the [Black Rock] investment and the alleged misconduct cannot make the former" a basis for jurisdiction simply defies logic as well the factual weight of the FAC. Indeed, the denouement of the commissions due on that investment was the initial spark that set the engine of the RICO enterprise in motion. *See* FAC, at ¶¶ 107.

Moreover, contrary to Defendants' contention that certain misconduct alleged in the FAC is time-barred, *see* Swedbank/Henriksson, at 11, n.9, all of the predicate offenses alleged are within the applicable statute of limitations. As §1961(5), quoted **ante**, at 19-20, provides, unlawful conduct committed within ten years of an offense within the statute of limitations qualifies as a valid RICO predicate act.

Also, in *United States v. Persico*, 832 F.2d 705 (2d Cir. 1987), the Court held that for a substantive RICO charge, an allegation that the Defendant at issue committed at least one predicate act within the limitations period was sufficient to bring all prior offenses covered by §1961(5) properly within that RICO charge. *Id*., at 714. Consequently, none of the conduct or predicate offenses set forth in the FAC's substantive RICO cause of action are time-barred.[10]

---

[9] While Swedbank/Henriksson argues, at 14 n.11, that the attempted intrusion into Carlström's hotel room in New York, *see* FAC, at ¶¶ 312, did not necessarily involved a weapon or dangerous instrument, it was attempted with the goal, alleged in the FAC, to "[c]ause[] physical injury to any person who is not a participant in the crime." N.Y.P.L. §140.30(2). As such, it would still qualify as a predicate felony for conspiracy to murder (under the alternate theory proposed as part of ¶ 344(b) of the FAC).

[10] The four-year statute of limitations applicable to civil RICO pertains to RICO *injury*, and "each time a plaintiff suffers an injury caused by a violation of 18 U.S.C. §1962, a cause of action to recover damages based on that injury accrues to plaintiff at the time he discovered or should have discovered the injury." *See Bankers Trust Co. v. Rhoades*, 869 F.2d 1096, 1102 (2d

4. *The FAC Alleges Cognizable RICO Injuries to Plaintiffs' Business or Property*

Defendants also argue that the FAC does not state a cognizable RICO injury suffered by Plaintiffs, and particularly that no such injury is alleged to have occurred within the U.S. *See* Swedbank/Henriksson, at 9-11; Folksam, at 14-15. Yet defendants are incorrect on both counts. The concept of RICO injury encompasses the injuries enumerated in the FAC: deprivation of their money or property in the form of commissions, clients, and their business operations. *See* FAC, at ¶¶ 78-81, 96, 107, 120-122. *See, e.g., Blue Cross and Blue Shield of New Jersey, Inc. v. Phillip Morris Inc.*, 36 F. Supp.2d 560, 569 (E.D.N.Y. 1999) ("[m]oney constitutes 'property' within the meaning of RICO[,]" and injuries plaintiffs sustained in their businesses were actionable as well); *In re American Honda Motor Co., Inc. Dealerships Relations Litigation*, 941 F. Supp. 528, 538-40 (D.Md. 1996).

Also, Defendants' contention that other injuries, such as to Bowflex and Sparflex, are too speculative to qualify under RICO, reads §164(c) far too narrowly. For example, in *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 648 (2008), the Supreme Court held that plaintiffs alleged a valid RICO injury in that they "lost the opportunity to acquire valuable liens." *See also In re American Honda Motor Co.,* 941 F. Supp. at 538-40 (injury in the form of lost prospective profits not proscribed under RICO at the pleading stage). In *In re American Honda Motor Co.,* 941 F. Supp. at 542, the Court also reiterated the Supreme Court's caution in *National Org. for*

Cir. 1988). Here, all of Plaintiffs' injuries accrued within the requisite four-year period, including the commissions Folksam refused to pay Plaintiff Resurs Direkt. While the breach of contract injury may have accrued in 2015, *see* FAC, at ¶¶ 93, Plaintiffs' *RICO injury* did not accrue until Defendants' began committing the charged predicate offenses – which commenced subsequently within the limitations period – and Plaintiffs discovered them (even later, and within the limitations period). *See* FAC, at ¶¶ 94-119.

Women, Inc. v. Scheidler, 510 U.S. 249 (1994), that "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." 510 U.S. at 256.

Defendants also refuse to confront the implications of conspiratorial liability, not only with respect to substantive liability, but also with respect to jurisdictional requirements. The general principle that defendants (even in civil cases) are liable for damages that flow directly from their co-conspirators' conduct applies fully to substantive RICO and RICO conspiracy as well. *See*, *e.g.*, *Frydman v. Verschleiser*, 172 F. Supp.3d 653, 671 (S.D.N.Y. 2016) (civil RICO defendants could be liable for their co-conspirators' wire fraud); 54 Causes of Action 2d 603 ("[p]roximate cause in a civil conspiracy case will not be defeated merely because the damages were not caused by the present defendants in the suit so long as some coconspirator – even a nonparty – engaged in the unlawful conduct in furtherance of the conspiracy").

Guided by those principles, it is clear that the FAC alleges cognizable RICO injuries. Also, the FAC sufficiently alleges injuries within the U.S. For example, at ¶¶ 107-111, the FAC alleges that Plaintiffs were defrauded of their commissions from the Black Rock investment. In *Bascuñàn II*, the Court declared that "[a]bsent extraordinary circumstances, 'when a foreign plaintiff maintains tangible property in the United States, the misappropriation of that property constitutes a domestic injury.'" 927 F.3d at 117, quoting *Bascuñàn v. Elsaca*, 874 F.3d 806, 814 (2d Cir. 2017) ("*Bascuñàn I*"). *See also id.*, quoting *Bascuñàn I*, 874 F.3d at 820 ("the misappropriation of funds held in a bank account is 'analogous to an injury to tangible property . . . [meaning] property that can be fairly said to exist in a precise location'").

As the Circuit explained in *Bascuñàn II*, "[b]ecause the bank accounts were located inside the United States, the alleged theft of funds deposited in those accounts was domestic conduct." 927 F.3d at 117, quoting *Bascuñàn I*, 874 F.3d at 823. Also, mere transfer from U.S. accounts to foreign accounts before the money was misappropriated did not make the injury extraterritorial; rather, it remained domestic. *Id*. In addition, contrary to Defendants' claims, Folksam, at 14-15; Swedbank/Henriksson, at 11, the FAC clearly alleges domestic injury to Plaintiff Brune beyond simply a shareholder interest in Sparflex and Bowflex. *See* FAC, at ¶¶ 82 (alleging Brune's injuries included the loss of his venture capital firm and expenses he paid in support of the business ventures that were also ruined by Defendants' misconduct). *Id*., at ¶¶ 120, 131, 137, 164. As a result, again, Defendants' concentration on extraterritoriality fails, and the cases cited, which set forth general principles and not analogous fact patterns, are simply inapplicable.

5. *The RICO Conspiracy Is Sufficiently Pleaded, and Survives Even If the Substantive RICO Cause of Action Is Dismissed*

A RICO conspiracy is distinct from a substantive RICO violation. Thus, a "plaintiff could . . . sue co-conspirators who might not themselves have violated one of the substantive provisions of § 1962." *Beck v. Prupis*, 529 U.S. 494, 506-07 (2000). *See also Salinas v. United States*, 522 U.S. 52, 65 (1997) (RICO conspiracy requires that defendant agree that two predicate acts would be committed – by any member of the RICO enterprise – in furtherance of that enterprise's affairs); *Baisch v. Gallina*, 346 F.3d 366, 376 (2d Cir. 2003).

As the Second Circuit explained in *Baisch*, the "requirements for RICO[] conspiracy charges under §1962(d) are less demanding" than the requirements for substantive RICO charges under §1962(c). *Baisch*, 346 F.3d at 376-77. Therefore, a plaintiff can institute a viable RICO

conspiracy claim even if the defendant at issue is incapable of committing a substantive RICO offense, unaware of the exact predicates his co-conspirators plan to commit (but agrees that at least two will be committed), and not even involved in the operation or management of an enterprise. *Salinas*, 522 U.S. at 64, *United States v. Applins*, 637 F.3d 59, 76 (2d Cir. 2011).

Also, in the conspiracy context, "[t]o present a plausible claim at the pleading stage, the plaintiff need not show that its allegations suggesting an agreement are more likely than not true or that they rule out the possibility of independent action[.]" *Anderson News, L.L.C.*, 680 F.3d at 184. Thus, "[a]sking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement." *Id*. (quoting *Twombly*, 550 U.S. at 556). Again, as with other aspects of Defendants' motions, the Supreme Court has declared that the "character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole." *Cont'l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962).

In addition, a Defendant can be held liable for any acts that he or his co-conspirators committed in furtherance of the conspiracy, including acts those co-conspirators took before he joined the conspiracy. *See Beck v. Prupis*, 529 U.S. at 507; *see also United States v. Santos*, 541 F.3d 63, 73-74 (2d Cir. 2008); *United States v. Dist. Council of N.Y. City & Vicinity of United Bhd. of Carpenters & Joiners of Am.*, 778 F. Supp. 738, 765 (S.D.N.Y. 1991).[11]

---

[11] Moreover, the statute of limitations for RICO conspiracy is even more permissive than for substantive RICO. *See* **ante**, at 25. For instance, in *Persico*, even though the most recent predicate act charged occurred more than five years before the indictment, the RICO conspiracy charge remained valid because a RICO conspiracy does not require proof of an overt act and, like other such statutes, "the crime of RICO conspiracy is not complete until the purposes of the

Thus, Plaintiffs' RICO conspiracy cause of action survives independent of the disposition of their substantive RICO claim, notwithstanding Defendants' claim – inapplicable in this case for the reasons stated above – that a RICO conspiracy claim fails if the corresponding substantive RICO claim is deficient. *See* Swedbank/Henriksson, at 21; Folksam, at 18.[12]

POINT III

THE CFAA CLAIM IS SUFFICIENTLY PLEADED

While Defendants note that the CFAA cause of action (Count Three) consists of eight sentences, Swedbank/Henriksson, at 21, Folksam, at 19, they do not offer any authority for the proposition that Rule 8 requires more. In addition, Defendants' claim that the CFAA cause of action is not connected to the Defendants is belied by the FAC, at ¶¶ 281, 331-332, which provide sufficient nexus to Defendants.

Regarding the nature of the damages cited with respect to the CFAA cause of action, 18 U.S.C.§1030(e)(8) provides that "the term 'damage' means any impairment to the integrity or availability of data, a program, a system, or information[.]" That definition has been interpreted to include "the costs of investigating security breaches constitute recoverable 'losses,' even if it turns out that no actual data damage or interruption of service resulted from the breach." *University Sports Publications Co. v. Playmakers Media Co.*, 725 F. Supp.2d 378, 387 (S.D.N.Y. 2010), citing *Modis, Inc. v. Bardelli*, 531 F.Supp.2d 314, 320 (D.Conn.2008); *Kaufman v. Nest*

---

conspiracy either have been accomplished or abandoned." 832 F.2d at 713 (other citations omitted).

[12] A plausible conspiracy can be pleaded through either direct or "circumstantial evidence." *Anderson News, L.L.C.*, 680 F.3d at 183-84 (internal quotation marks omitted). The FAC herein contains both.

Seekers, LLC, 2006 WL 2807177, at *8 (S.D.N.Y. Sept. 26, 2006). As a result, in *University Sports*, the CFAA included an audit constituted "loss or damage" because it "focused at least in part on investigating defendants' alleged crimes; it sought to identify evidence of the breach, assess any damage it may have caused, and determine whether any remedial measures were needed to resecure the network." 725 F. Supp.2d at 388. Accordingly, Defendants' motion to dismiss the CFAA cause of action should be denied.

POINT IV

THE NEW YORK STATE COMMON LAW CLAIMS ARE SUFFICIENTLY PLEADED

Defendants challenge Plaintiffs' New York State common law causes of action (Counts Four, Five, Six, and Seven), Folksam, at 20, asserting wrongly that the cause of action for tortious interference with respect to Nord Fondkommission AB (Count Five), *see* FAC, at ¶¶ 95-110, is time-barred. Because Defendants continued to take further steps in a continuous course of conduct inside the limitations period, including with respect to Exceed, which is included in that cause of action, Defendants' motion must be denied. *See Thome v. Alexander & Louisa Calder Foundation*, 70 A.D.3d 88, 108 (1st Dept. 2009).

POINT V

DEFENDANTS' MOTION TO DISMISS ON GROUNDS OF *FORUM NON CONVENIENS* SHOULD BE DENIED

Defendants seek dismissal of the FAC on the additional ground of *forum non conveniens*. *See* Swedbank/Henriksson, at 22-25, Folksam, at 21-25. Remarkably, in fashioning their argument, Defendants omit critical criteria the Court must consider in exercising its discretion. Defendants also again ignore salient facts – such as Brune's U.S. citizenship – and attempt to

place the burden on Plaintiffs rather than shouldering it themselves (as the doctrine requires). Defendants' legal analysis of its *forum non conveniens* claim is materially incomplete. In *R. Maganlal & Co. v. M.G. Chemical Co., Inc.*, 942 F.2d 164 (2d Cir. 1991), the Second Circuit reaffirmed that "dimissal for *forum non conveniens* is the exception rather than the rule." *Id.*, at 168, citing *Lacey v. Cessna Aircraft Co.*, 862 F.2d 38, 45-46 (3d Cir.1988) (internal quotation marks omitted) (other citations omitted). Also, the Court in *Maganlal* enunciated that

> [b]ecause there is ordinarily a *strong presumption* in favor of plaintiff's choice of forum, that choice will not be overcome *unless the relevant private and public interest factors weigh heavily* in favor of trial in the alternative forum.

942 F.2d at 167-68 (emphasis added), citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981); *Lacey v. Cessna Aircraft Co.*, 932 F.2d 170, 180 (3d Cir. 1991) (other citation omitted). *See also id.*, at 167 (*forum non conveniens* dismissal inappropriate unless "the balance of convenience tilts strongly in favor of trial in the foreign forum"), citing *Schertenleib v. Traum*, 589 F.2d 1156, 1159-60 (2d Cir.1978) (other citation omitted). *See also Allstate Life Ins. Co. v. Linter Group Ltd.*, 994 F.2d 996, 1001 (2d Cir.1993) ("there is . . . a strong presumption in favor of a plaintiff's choice of forum").

Consequently, while a plaintiff's choice of forum is not dispositive, it "is entitled to substantial deference and should only be disturbed if the factors favoring the alternative forum are compelling." *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 101 (2d Cir. 2000), citing *Gulf Oil Corp. v. Gilbert*, 330 U.S 501, 508 (1947) ("plaintiff's choice of forum should rarely be disturbed"). *See also Alcoa S.S. Co. v. M/V Nordic Regent*, 654 F.2d 147, 155 (2d Cir.1980) (in banc) (other citations omitted) (plaintiff's residence is an "important factor to be considered").

In addition, as the Second Circuit noted in *Wiwa*, "that deference increases as the plaintiff's ties to the forum increase." 226 F.3d at 101-02, citing *Murray v. British Broad. Corp.*, 81 F.3d 287, 290 (2d Cir.1996) (domestic plaintiff's choice of forum is entitled to more deference than a foreign plaintiff's); *Piper*, 454 U.S. at 255 n. 23 (noting that choice of forum by its citizens and residents is entitled to greater deference than a stranger's choice). *See also Wiwa*, 226 F.3d at 102 ("a plaintiff's lawful U.S. residence can be a meaningful factor supporting the plaintiff's choice of a U.S. forum") (citations omitted). While Defendants choose to ignore all defendants other than Victor Carlstrom, the fact is that SDNY has been Plaintiff Brune's district of residence the entire time period alleged in the FAC.

In reviewing the case law, the Court in *Wiwa* remarked that

> [d]uring the last two decades, our caselaw and that of the Supreme Court has clearly and unambiguously established that courts should offer greater deference to the selection of a U.S. forum by U.S. resident plaintiffs when evaluating a motion to dismiss for *forum non conveniens*.

226 F.3d at 102, citing *Murray v. British Broad. Corp.*, 81 F.3d 287, 290 (2d Cir. 1996); *Piper*, 454 U.S. at 255 n. 23. In noting a recent ruling on the issue, the Court in *Wiwa* explained that a *forum non convieniens* motion would not prevail in a case instituted by a U.S. citizen even for acts outside the U.S. if "the defendant was unable to 'establish such oppressiveness and vexation . . . as to be out of all proportion to plaintiff's convenience' and where there were no compelling public interest considerations favoring litigation in the alterative foreign forum." 226 F.3d at 201, quoting *Guidi v. Inter-Continental Hotels Corp.*, 224 F.3d 142, 145-46 (2d Cir.2000) (quoting *Koster v. American Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 524 (1947).

Thus, Defendants' burden is formidable, and they have failed to satisfy it for a number of

reasons, including Plaintiff Brune's U.S. citizenship and residence, a fact Defendants conveniently ignore. Plaintiff Carlström's U.S. residence, and his pending asylum petition in the U.S., *see* FAC, at ¶¶ 35, 330, make it impossible for him to travel to Sweden (without forfeiting his asylum application). Defendants' suggestion that Carlström could attend remotely (*see* Swedbank/Henriksson, at 24 n.18; Folksam, at 23 n.20) raises the reciprocal question: why is that not overwhelmingly more inconvenient for Carlström and Brune than for institutions that do not have to appear physically at all, and for an individual defendant capable of travel, all of whom have U.S. lawyers (and in one instance, the same attorneys)? *See Wiwa*, 226 F.3d at 103 ("[i]n deciding whether to dismiss a case brought by a lawful U.S. resident plaintiff for *forum non conveniens*, the district should consider whether, in view of the plaintiff's U.S. residence, such a dismissal would cause plaintiff significant hardship"). Clearly, here it would.

Moreover, Defendants' accusations of forum shopping are spurious. *See* Swedbank/Henriksson, at 23 n.17; Folksam, at 21. As the Second Circuit declared in *Guidi*, the "home forum" for a U.S. citizen for *forum non conveniens* purposes is any "United States court." 224 F.3d at 146-47. *See also Wiwa*, 226 F.3d at 103. It is also, at best, ironic, especially considering that it was Defendants' misconduct that compelled Carlström to flee Sweden and ultimately seek asylum in the U.S. Once here, it was Defendants' agents that traveled to New York and elsewhere to do physical harm to Carlström, causing him to move his domicile regularly for safety purposes. *See* FAC, at ¶ 37. While Defendants argue that certain witnesses are located in Sweden, other critical witnesses – including both individual Plaintiffs – reside in the U.S., as do other witnesses essential to certain causes of action. *See* FAC, at ¶¶ 6-7. Moreover, the volume and location of documents is less important in the digital age because all

are available through electronic means and equally accessible for all parties.[13]

As a result, Defendants fail to meet their considerable burden to establish the compelling reasons necessary for dismissal based on *forum non conveniens*. This is particularly true for a U.S. citizen and a U.S. resident who have each chosen the forum to best hear their Complaint – a Court within their domicile and residence, respectively. It is, frankly, a remarkable affront to Plaintiffs Carlström and Brune to suggest that the very people and entities that for the past four years have done nothing but try to ruin Plaintiffs' collective businesses as well as to destroy Carlström's professional and family life, now suggest they should be afforded the Court's deference and allow the very government they control to provide a fair hearing of Plaintiffs' grievances. Defendants' motion should be denied.

Conclusion

Accordingly, for all the reasons set forth above, it is respectfully submitted that Defendants' motions to dismiss should be denied in their entirety.

Dated: 28 August 2020
New York, New York

Respectfully submitted,

/S/ Lawrence H. Schoenbach
Lawrence H. Schoenbach, Esq.
Law Offices of Lawrence H. Schoenbach

[13] The facts herein are therefore dispositively different than those in *Wilson v. ImageSat International, N.V.*, 2008 WL 2851511, at * 4 (S.D.N.Y. July 30, 2008) (footnotes omitted), in which of 15 plaintiffs, only half were U.S. residents (and only two resided in New York). Similarly, in *Spencer Stuart Human Resources Consultancy (Shanghai) Co., Ltd.*, 17 Civ. 2195 (DLC), 2017 WL 4570791 (S.D.N.Y. Oct. 12, 2017), the plaintiff was a foreign corporate entity, *id*., at *5, and during the litigation its "primary reason for choosing the United States as its preferred forum – although legitimate – [was] no longer decisive" because of defendants' concessions. *Id*., at *6.

111 Broadway, Suite 901
New York, New York 10006
(212) 346-2400
schoenbachlawoffice@att.net

Joshua L. Dratel
Dratel & Lewis
29 Broadway, Suite 1412
New York, New York 10006
(212) 732-0707
jdratel@dratellewis.com

Attorneys for Plaintiffs