IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEONARD ROWE, ROWE ENTERTAINMENT, INC., LEE KING, and LEE KING PRODUCTIONS, INC.,	:	
Plaintiffs,	:	Civil Action File No. 1:15-CV-00770-AT
-against -	:	
GARY, WILLIAMS, PARENTI & WATSON, P.L.L.C., WILLIE E. GARY, WILLIAM C. CAMPBELL, SEKOU M. GARY, TRICIA P. HOFFLER, MARIA SPERANDO, and LORENZO WILLIAMS,	:	
Defendants.	:	

PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO MOTIONS TO DISMISS

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PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO MOTIONS TO DISMISS

Plaintiffs Leonard Rowe, Rowe Entertainment, Inc., Lee King, and Lee King Productions, Inc. (collectively, "Rowe") submit this memorandum in opposition to the motions to dismiss filed by defendants Gary, Williams, Parenti & Watson, P.L.L.C. (the "Gary Firm"), Willie E. Gary, William C. Campbell, Sekou M. Gary, Tricia P. Hoffler, and Lorenzo Williams (collectively, the "Gary Defendants") on June 19, 2015 [ECF 25], and by defendant Maria Sperando ("Sperando") on June 22, 2015 [ECF 26].

PRELIMINARY STATEMENT

> *"But he had a suspicion of plausible answers; they were so often wrong."*
>
> -- Arthur C. Clarke, *Rendezvous with Rama* (Roseta Books 2012), loc. 1812

This is a RICO, fraud, and legal malpractice action against the Gary Defendants and Sperando (collectively, the "Gary Lawyers"), who represented Rowe and other black concert promoters in a race discrimination and antitrust case against talent/booking agencies and white concert promoters, *Rowe Entertainment, Inc., et al. v. The William Morris Agency, Inc., et al*., 98 Civ. 8272 (RPP) (S.D.N.Y.) (the "Civil Rights Action").

The Gary Lawyers argue that the complaint should be dismissed for two principal reasons: (i) the allegations are "implausible;" and (ii) the claims are time-barred. The complaint certainly contains shocking allegations that, without supporting evidence, would be "implausible." Yet most of the allegations are supported by uncontested documentary evidence.

Moreover, the implausible nature of the allegations explains why the statute of limitations was tolled when Willie Gary knowingly gave Rowe a false, but plausible, reason as to why the Civil Rights Action had been dismissed. Because Rowe trusted Gary, Rowe had no duty to investigate implausible alternative reasons until he received evidence that those reasons might nevertheless be true.

1. The Allegations are Plausible Because They are Supported by Documentary Evidence.

One of the complaint's central factual allegations, which is exceedingly implausible in the absence of supporting evidence, is that a team of highly skilled lawyers prosecuting a race discrimination case failed to obtain racially derogatory emails confirmed to have been sent by the defendants' employees. Complaint at ¶¶ 3-6, 111-117. The allegation is even more implausible when we learn that the team included Willie Gary, a highly successful black lawyer nationally known as the "Giant Killer" for his victories against large global corporations, Complaint at ¶ 64, and Bill Campbell, the former mayor of Atlanta, Opp. Mem. [ECF 25] at 8.

Yet the docket of the Civil Rights Action confirms that the Gary Lawyers not only failed to obtain racially derogatory emails that were known to exist, but that they engaged in a series of equally implausible acts that guaranteed the presiding judge would never see, or consider, the emails. Complaint at ¶¶ 3-6, 111-117; *see also*, *infra*, at 7-10.

Another central factual allegation of the complaint, which is equally implausible in the absence of documentary evidence, is that the Gary Lawyers settled the *Ford/Visteon* case without authorization from their clients, concealed the actual amount of the settlement from their clients, and stole $51.5 million that should have been distributed to their clients. Complaint at ¶¶ 2(i), 34-43.

Without evidence, that allegation certainly is implausible – as Ms. Sperando asks, why would successful lawyers "risk years of imprisonment for a few pieces of silver." Opp. Mem. [ECF 26] at 17, ¶ 7.

But the documentary evidence nevertheless confirms that the allegation is almost certainly true. First, the *Ford/Visteon* plaintiffs made that precise allegation when they sued the Gary Lawyers in the United States District Court for the Eastern District of Michigan, *Kubik, et al., v. Willie Gary, et al*., Civil Action 03-733350 (E.D. Mich.) (the "*Kubik* Action"). Complaint at ¶ 43.

Second, the *Kubik* court, after reviewing privileged communications between the Gary Lawyers *in camera*, determined

> there is *probable cause to believe that a fraud has been attempted or committed* and that the [allegedly privileged] communications at issue were made in furtherance of it.

Exhibit E (2/17/05 *Kubik* decision) at 9 (emphasis added).[1]

Third, the *Kubik* court further determined that the fraud perpetrated on the *Ford/Visteon* plaintiffs might be only one example of a common practice of the Gary Lawyers to defraud their clients:

> [The Gary Firm] may have used a common fraudulent settlement agreement scheme *in a variety of cases*, and that discussions [among the Gary Lawyers] about *the prospective structure of this scheme may have involved advice in furtherance of fraud*.

[1] Exhibits are annexed to the supporting declaration of plaintiffs' counsel, Edward Griffith, executed on September 21, 2015 [ECF 47].

Id. at 8 (emphasis added).

Fourth, shortly after the *Kubik* court compelled the Gary Lawyers to produce documents relating to the fraud allegations, they entered into a July 11, 2005 settlement agreement imposing a gag order on the *Kubik* plaintiffs, preventing them from even talking about the settlement terms or the underlying fraud allegations. *See* Griffith Dec. at ¶¶ 2-3; Exhibit F (*Kubik* dismissal order)

Thus, Rowe's allegations that the Gary Lawyers intentionally concealed racially derogatory emails in the Civil Rights Action and stole $51.5 million from the *Ford/Visteon* settlement may seem "implausible," but they are supported by uncontested documentary evidence and the *Kubik* court's finding of probable cause.

Under these circumstances, the complaint's allegation, made on information and belief, that the Gary Lawyers conspired with the Civil Rights defendants to defraud the Civil Rights plaintiffs is not only plausible, it may be the only rational explanation for the Gary Lawyers' conduct. This is especially true since the Gary Defendants have not offered any alternative explanation for their failure to obtain the racially derogatory emails and other "implausible" conduct in the Civil Rights Action. Nor have they denied that they defrauded their *Ford/Visteon* clients.

2. The Claims are Timely Because the Statute of Limitations was Tolled.

Ironically, even though the Gary Lawyers assert that the complaint's allegations are "implausible," they maintain that Rowe was under a duty to investigate those allegations years before Rowe had any reason to question their implausibility. In fact, Willie Gary misrepresented the reason that the Civil Rights Action was dismissed, telling Rowe that the presiding judge, Hon. Robert P. Patterson, was "racist as can be." Complaint at ¶ 125; Rowe Dec. at ¶¶ 3-9.

That reason might seem implausible to people – especially white people – who are familiar with the culture of the legal community practicing before, and the judges on, the esteemed Southern District of New York in the early 21st Century. Yet Leonard Rowe was not familiar with that culture. To Leonard, a black man who grew up in the segregated South and had experienced overt racism throughout his entire life, Gary's explanation seemed quite plausible. Rowe Dec. at ¶¶ 5-8.

Not only is Gary a black man of Rowe's generation who has experienced racism, he is one of the country's most prominent black attorneys. Rowe naturally considered Gary as an authoritative source regarding the reasons for Judge Patterson's dismissal of the Civil Rights Action. *Id*. at ¶¶ 6-7. Not only did Rowe trust Gary implicitly, he considered Gary's representation that Judge Patterson was a racist to be conclusive. *Id*. at ¶¶ 3-9.

Because Rowe reasonably relied on Gary's false representation that the Civil Rights Action was dismissed due to Judge Patterson's racism, there was no reason for Rowe to investigate the alternative possibility that the dismissal of the Civil Rights Action was due to the Gary Lawyers' fraud – a possibility that, as the Gary Lawyers concede, was implausible until Rowe received evidence to the contrary. By effectively concealing the Gary Lawyers' misconduct from Rowe, Gary's false representations and omissions tolled the statute of limitations.

STATEMENT OF FACTS

The relevant facts are set forth in the complaint, which must be taken as true on a motion to dismiss.

Rowe submits declarations from (i) Leonard Rowe responding to the Gary Lawyers' assertions that he should have discovered the fraud earlier; and (ii) Rowe's counsel, Edward Griffith, annexing documentary evidence in support of the allegedly "implausible" allegations. That evidence is summarized below for the Court's convenience.

A. Documentary Evidence Establishes that the Gary Lawyers Intentionally Concealed the Racially Derogatory Emails.

The docket of the Civil Rights Action establishes that the Gary Lawyers engaged in a series of intentional acts designed to conceal racially derogatory emails sent and received by the employees of the principal defendants in the Civil

Rights Action, The William Morris Agency ("William Morris") and Creative Artists Agency ("CAA"). First, the summary judgment opposition memorandum drafted and signed by former Atlanta mayor Bill Campbell asserts:

> Defendant booking agencies fail to address the raw, ugly, unvarnished racial animus uncovered during discovery. *The racial epithet "nigger" was used 349 time in emails of employees of CAA and [William Morris]. Ex. 31.*

Exhibit G (summary judgment opposition excerpts) at 15.

Reading that assertion, a judge would expect that the racially derogatory emails were annexed to a supporting declaration as "Ex. 31." But Campbell and the other Gary Lawyers couldn't do that because they had never obtained the emails. Instead, "Ex. 31" consists of an altered version of the memorandum from the Civil Rights Plaintiffs' e-discovery firm confirming the existence of emails containing racially derogatory terms such as "nigger," "spook", "spade," and "coon" (the "E-Discovery Memorandum"). Exhibit H (altered version of E-Discovery Memorandum submitted by the Gary Lawyers as "Ex. 31").

Of course, any first year law student would know that the E-Discovery Memorandum was inadmissible hearsay. Is it plausible that skilled trial lawyers would submit a clearly inadmissible memorandum in support of their critical assertion that the William Morris and CAA emails established "raw, ugly, unvarnished racial animus?" Yet that is precisely what they did.

Second, not only did the Gary Lawyers submit the E-Discovery Memorandum knowing that it was inadmissible, they submitted it in a manner guaranteed to assure that Judge Patterson would disregard it. Other than their bare citation to "Ex. 31" on page 15 of the brief, their opposition papers do not refer to the E-Discovery Memorandum. First year litigation associates learn that evidence must be annexed to an authenticating declaration. That Bill Campbell failed to do is totally implausible. Yet that is precisely what he did.

Third, not only did the Gary Lawyers fail to submit a declaration describing the E-Discovery Memorandum, they intentionally removed the first and seventeenth pages before they filed it in opposition to the summary judgment motions. The first page of any memorandum, of course, sets forth basic information such as the memo's date, author, recipients, and an introductory paragraph describing the topic, in this case the scope of the email search and its results. By submitting an altered version of the memorandum with its critical first page removed, the Gary Lawyers guaranteed that Judge Patterson and anyone else who reviewed "Ex. 31" would have no idea what it was. Exhibit H.

If the first page had been included, at least Judge Patterson would have had basic information about the email search and the results identifying racially derogatory terms. That experienced litigators would remove the first page of a memorandum that they claimed proved "raw, ugly, unvarnished racial animus" is

totally implausible. Yet that is precisely what the Gary Lawyers did.[2]

Finally, the court's e-discovery protocol allowed counsel to the Civil Rights Plaintiffs to review the results of the electronic email searches before they were turned over to William Morris and CAA for a privilege review. Complaint at ¶ 74. Yet the Gary Lawyers permitted their e-discovery firm that conducted the searches on behalf of plaintiffs to produce the resulting emails to William Morris and CAA, in direct violation of plaintiffs' rights under the e-discovery protocol. *Id*. at ¶¶ 140-42.

Each of these acts regarding the E-Discovery Memorandum and the email searches, considered separately, is difficult to explain without attributing intentional malice to the Gary Lawyers. When the acts are considered in combination, the complaints' allegation that the Gary Lawyers intentionally concealed the emails from Judge Patterson is not only plausible, it is the only rational explanation for the Gary Lawyers' conduct.

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[2] The evidence establishes that the Gary Lawyers were in possession of the entire E-Discovery Memorandum, but removed the missing pages before filing it as "Ex. 31." First, the fax transmission header on "Ex. 31" contain page numbers, "2/18" through "16/18" and "18/18." *See* Exhibit H. The first page of the fax, "1/18," and the seventeenth page, "17/18," are missing. *Id*. Second, the opposition brief asserts that the word "nigger" appears 349 times in the derogatory emails. Exhibit G at 15. A count of the number of times that word is identified on the altered version of the memorandum filed as "Ex. 31," however, reveals only 78. The only explanation for this evidence is that the Gary Lawyers removed the first and seventeenth pages and forgot that the removal of those pages decreased the number of times "nigger" was reported.

B. The *Kubik* Court Found Probable Cause that the Gary Lawyers Defrauded their Clients.

One of the complaint's most shocking allegations is that the Gary Lawyers defrauded their *Ford/Visteon* clients by settling that case without their clients' authorization, concealing the actual amount of the settlement, and stealing $51.5 million that should have been distributed to their clients as part of the settlement. Complaint at ¶¶ 2(i), 34-43. In the *Kubik* Action, the Gary Lawyers' former *Ford/Visteon* clients made the same allegation. *See*, *supra,* at 3-5.

The *Kubik* court described the allegation as:

> [the Gary Lawyers] and [Ford and Visteon] *entered into a secret agreement whereby [the Gary Lawyers] were to receive $51.5 million* in exchange for Plaintiffs permanently dropping their claims against both [Ford] and [Visteon] and for [the Gary Lawyers] agreeing never again to pursue any litigation against [Ford] or [Visteon] *and that Plaintiffs, whom [the Gary Lawyers] never told of this agreement, never received any of the $51.5 million that [The Gary Lawyers] in fact, received*.

Exhibit I (11/3/04 *Kubik* decision) at 2-3 (emphasis added).

The *Kubik* court determined not only that this "secret agreement" allegation is supported by evidence, but that it is supported by "probable cause." *See*, *supra*, at 4 (quoting 2/17/05 *Kubik* decision (Exhibit E) at 9). The *Kubik* court further determined that the Gary Lawyer's "secret agreement" agreement might be part of a common practice of the Gary Lawyers to defraud their clients. *Id*. at 4-5 (quoting Exhibit E at 8).

Before the *Kubik* court made those determinations, however, the Gary Lawyers tried to conceal their misconduct by withholding discovery and asserting that the "secret agreement" allegation was implausible. In particular, they moved for Rule 11 sanctions, asserting that their former *Ford/Vistion* clients lacked a good faith basis to support their "secret agreement" allegation. Exhibit I (11/3/04 *Kubik* decision) at 22. Just as the Gary Lawyers have attacked the "plausibility" of Rowe's allegations in this action, the Gary Lawyers "impugn[ed] the plausibility" of the "secret agreement" allegation in the *Kubik* Action, asserting that the allegation was "illogical" and "border[s] on the absurd." *Id*. at 24.

Fortunately, one of the *Kubik* plaintiffs, Patricia Harsen, stumbled upon a two-page spreadsheet that had inadvertently been placed in a box of her personal papers that she retrieved from Gary's local Michigan counsel in the *Ford/Visteon* case. Exhibit I (11/3/04 *Kubik* decision) at 26. The spreadsheet indicates the following as the settlement's "[t]otal [p]ackage [d]eal":

> 1) A gross settlement to Plaintiffs in the amount of $10 million;
>
> 2) That [the Gary Lawyers] received $3,309,771.55 as a 1/3rd contingency fee on that $10 million such that the net settlement to Plaintiffs was *$6,619,543.11*;
>
> 3) *That [the Gary Lawyers] received, as "legal fees," an additional $6 million for "programs*";

4) *An expenditure of $51.5 million for "[p]rogrammatic [r]elief"*; and

5) A grand total of *$67,684,478.45*.

Id. at 26 (emphasis added) (quoting from sealed Exhibit J to the *Kubik* plaintiffs' sealed response to the Gary Lawyers' Rule 11 motion).[3]

Thus, of a total settlement of almost $68 million, the Gary Lawyers retained over $61 million and distributed less than $6.8 million to their clients collectively. In other words, the Gary Lawyers retained over 90% of the settlement, distributed less than 10% to their clients, and concealed the settlement amount from their clients.

Ms. Harsen had more evidence of the Gary Lawyers' proclivity for misconduct. When she inadvertently discovered the spreadsheet, she immediately informed Gary's Michigan local counsel, Curt Rundell. Exhibit I (11/3/04 *Kubik* decision) at 26 (quoting from *Kubik* plaintiffs' sealed Exhibit L). Rundell stated:

> *if [Ford], [Visteon], or Willie Gary knew* that Harsen had "their case[-]closed files, with all that information, . . . *[Harsen] could find [her]self in a body bag.*

Id. (emphasis added).

[3] The phony settlement agreements that the Gary Lawyers forced each of the *Ford/Visteon* clients to execute included confidentiality provisions preventing each client from disclosing the amount of their individual settlements. As a result, most of the docket entries in the *Kubik* Action setting forth the details of the Gary Lawyers' fraud are sealed. *See* Griffith Dec. at ¶ 4.

When Harsen's husband asked Rundell what the $51.5 million was for, Rundell responded:

> The $51.5 million was money Willie [Gary] was to receive from . . . [Visteon] for programs.

Id. at 27. After Rundell was questioned whether this was legal, he stated:

> Willie [Gary] is doing things that no other attorney has thought of doing and[,] believe me, he has himself covered.

Id.

In light of this and other evidence, the *Kubik* court had no trouble denying the Gary Lawyers' Rule 11 motion. *Id*. at 30. The *Kubik* court subsequently ordered the Gary Lawyers to produce the withheld documents, and the Gary Lawyers thereafter quickly settled the case pursuant to a confidential settlement agreement imposing a gag order on the *Kubik* plaintiffs. *See*, *supra*, at 4-5; Exhibit D at 8; Griffith Dec. at ¶ 3.

In their motion to dismiss, the Gary Defendants cynically assert that the "secret agreement" allegation in the *Kubik* Action is "completely unrelated" to Rowe's fraud allegations in this action. Opp. Mem. [ECF 25] at 18. Yet in both cases, the Gary Lawyers were representing plaintiffs in discrimination lawsuits against major American corporations. In both cases, the Gary Lawyers entered into "secret agreements" with those major American corporations – secret agreements that benefited the Gary Lawyers at the expense of the Gary Lawyers' clients.

C. Other Former Clients Have Accused the Gary Lawyers of Similar Fraudulent Schemes.

Rowe and the *Kubik* plaintiffs are not the only former clients to accuse the Gary Lawyers of similar fraudulent schemes, *i.e*., of entering into "secret agreements" with the clients' adversaries to enrich Gary and his firm at the expense of the client.

First, the *Kubik* court itself found:

> [The Gary Firm] may have used *a common fraudulent settlement agreement scheme in a variety of cases*.

Exhibit E (2/17/05 *Kubik* decision) at 8 (emphasis added). Unfortunately, the evidence on which the *Kubik* court made that finding was filed under seal and the *Kubik* plaintiffs and their counsel are under a strict gag order not to discuss the case. Once discovery begins in this action, however, Rowe will be able to obtain the currently sealed documents and other evidence in the *Kubik* case.

Second, other former clients have publicly accused the Gary Firm of similar fraudulent schemes. Marietta Goodman and Sharron Mangum, for example, were black employees of Coca-Cola and members of a class of black employees prosecuting a race discrimination class-action against Coca-Cola. Exhibit J (Ms. Goodman's web-article describing Gary's fraud). Gary solicited them and other black Coca-Cola employees to opt-out of the class so that Gary could "get them a better deal." *Id*. Gary told them that the class-action lawyer "was a white man

who didn't care about any of [the black employees]," and in contrast, Gary "would fight harder for [them] because . . . he was black." Gary promised that whereas the white lawyer "would get [them] peanuts," he would "get [them] millions." *Id*.

After two years of little progress or communication from Gary, the clients were getting restless. Gary flew them in his private jet to Florida, where he met with them at his lavish beach-front mansion. Exhibit J. Gary told them to be patient, that Coca-Cola knew they had to pay, and that "he had gotten Coca-Cola almost to the point in settlement talks where he wanted them." *Id*. Just two weeks later, however, the Gary Lawyers called each of their Coca-Cola clients to report that their cases were not so strong after all and that they should opt back into the original class-action or accept whatever nominal settlement they could get. *Id*.

At a subsequent Coca-Cola shareholders meeting, Sharron Mangum was told that Gary had negotiated a secret $50 million "settlement" payment from Coca-Cola. Exhibit J. Marietta and Sharron have spent years trying to seek justice, but with no resources and an "implausible" allegation that Gary would defraud them by entering into a "secret agreement," they have been unable to obtain any relief. *Id*. They were encouraged when *Kubik* plaintiff Patricia Harsen contacted them to compare notes over Gary's fraud. After it appeared that a settlement was possible in *Kubik*, however, Harsen was instructed by her lawyers to stop communication with Marietta and Sharron. *Id*.

ARGUMENT

DEFENDANTS' MOTIONS TO DISMISS SHOULD BE DENIED

I. THE LEGAL STANDARD.

Dismissal at the pleading stage, before any discovery has been taken, is not appropriate where, as here, a complaint contains

> sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face."

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) ("*Iqbal*") (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) ("*Twombly*").

As set forth below, applying that legal standard to the allegations in the complaint mandates denial of the defendants' motions to dismiss.

II. THE CLAIMS ARE TIMELY BECAUSE THE STATUTE OF LIMITATIONS WAS TOLLED.

"[A]t the motion-to-dismiss stage, a complaint may be dismissed on the basis of a statute-of-limitations defense only if it appears beyond a doubt that Plaintiffs can prove no set of facts that toll the statute." *Lindley v. City of Birmingham*, 414 Fed. Appx. 813, 815 (11th Cir. 2013) (quoting *Telo v. Dean Witter*, 410 F.3d 1275, 1288 (11th Cir. 2005); *FTC v. Centro National Corp*., 2014 U.S. Dist. LEXIS 180549, *20 (S.D. Fla. 2014); *Spadaro v. City of Miramar*, 855 F.Supp.2d 1317, 1335 (S.D. Fla. 2012).

In *Spadero*, the court denied defendants' motion to dismiss the plaintiff's RICO claims because the complaint alleged that defendants had fraudulently concealed their misconduct, thereby raising factual issues as to the tolling of the statute of limitations that precluded dismissal at the pleading stage. *Spadero*, 855 F.Supp.2d at 1335. The *Spadero* court explained that where, as here, the

> [c]omplaint alleges that the statute of limitations should be equitably tolled because Defendants . . . fraudulently concealed their misconduct, . . . *determining the applicability of [the equitable tolling] doctrine necessarily implicates factual issues which cannot be resolved on a motion to dismiss*.

Spadero, 855 F.Supp.2d at 1335 (emphasis added).

As in *Spadero*, the complaint in this action expressly alleges that the statute of limitations for each claim was

> equitably tolled due to the Gary Defendants' fraudulent misrepresentations and omissions, which prevented plaintiffs from suspecting that the Gary Defendants engaged in misconduct and from discovering that misconduct.

Complaint at ¶¶ 176, 184, 192, 199, 207, 214, and 219.

Defendants mistakenly assert that the tolling doctrine does not apply because footnote 143 of Judge Patterson's summary judgment decision discusses the inadmissibility of "Ex. 31" submitted by the Gary Lawyers in connection with the racially derogatory emails. Yet Leonard Rowe and the other Civil Rights Plaintiffs were not lawyers and they were not capable of understanding that

footnote. Complaint at ¶ 126; Rowe Dec. at ¶ 9. And when Rowe asked Gary about the footnote, Gary falsely told Rowe that Judge Patterson's analysis was a blatant error motivated by Judge Patterson's racism. *Id*.; Rowe Dec. at ¶¶ 3-8.

Defendants' assertion that Rowe should have questioned Gary's accusation that Judge Patterson was racist lacks merit and is inconsistent with their own assertion that Rowe's fraud allegations are "implausible." Without any evidence of the Gary Lawyers' fraud, Rowe had no reason to suspect they may have entered into a "secret agreement" with William Morris and CAA. On the contrary, the most plausible explanation for Judge Patterson's decision to Rowe, a black man who grew up in the segregated South, was Gary's explanation that Judge Patterson was motivated by racism. Rowe Dec. at ¶¶ 3-8. Gary's explanation was especially plausible because it came from the "Giant Killer," one of the country's most prominent black attorneys who Rowe trusted implicitly. *Id*.

Defendants' argument that Rowe should have retrieved "Ex. 31" from the New York court docket is also unavailing. Gary expressly told Rowe that the E-Discovery Memorandum and the emails identified in it were "attorneys-eyes-only" and that "Ex. 31" had been filed under seal. Complaint at ¶ 112. And Rowe interpreted the reference to "attorneys-eyes-only" in footnote 143 of Judge Patterson's decision to confirm Gary's representation. Rowe Dec. at ¶ 9. Thus, Rowe had no reason to question Gary's representation that "Ex. 31" was sealed.

Under these circumstances, the statute of limitations was tolled and the complaint's claims are timely. At a minimum, the complaint's allegations that the Gary Lawyers fraudulently concealed their misconduct raise issues of fact that preclude dismissal on statute of limitations grounds prior to discovery.

III. THE ALLEGATIONS ARE PLAUSBILE.

In determining whether a claim is plausible, the complaint must be liberally construed, assuming the facts alleged therein as true and drawing all reasonable inferences from those facts in the plaintiff's favor. *Twombly*, 550 U.S. at 555. A complaint should not be dismissed simply because the court is doubtful that the plaintiff will be able to prove all of the necessary factual allegations. *Id*. Thus, a complaint will survive a motion to dismiss "even if it appears that a recovery is very remote and unlikely." *Id*. at 556.

Defendants focus their plausibility argument on the complaint's allegation, upon information and belief, that the Gary Lawyers entered into a secret agreement with William Morris and CAA under which the Gary Lawyers received consideration for concealing the racially derogatory emails and taking other steps to assure that the Civil Rights Action would be dismissed. Complaint at ¶ 150. In the absence of supporting evidence, that allegation certainly would be implausible – it is shocking to believe that such prominent and successful lawyers would engage in such a scheme.

Yet, the allegation is supported by a substantial amount of documentary evidence as well as court decisions in the *Kubik* Action finding probable cause that Gary entered into a similar "secret agreement" in the *Ford Visteon* case. *See*, *supra*, at 2-16; Exhibit E (2/17/05 *Kubik* decision) at 8-9; (Exhibit I 11/3/04 *Kubik* decision) at 26-27. That evidence not only makes Rowe's allegation that Gary entered into such a "secret agreement" with William Morris and CAA plausible, but perhaps the most rational explanation for the Gary Lawyers' otherwise implausible conduct. *Id*.

Defendants also complain that Rowe has not filled-in all of the logical details of the "secret agreement" with William Morris and CAA. They also question why the Gary Lawyers chose to file the E-Discovery Memorandum after removing its first and seventeenth pages rather than simply omit the E-Discovery Memorandum from their papers altogether, if they were engaged in a RICO scheme to defraud the Civil Rights Plaintiffs. Opp. Mem. [ECF 25] at 15-17.

Only the Gary Lawyers, William Morris, and CAA are in possession of the information necessary to answer those questions. Rowe tried to obtain some of that information by asking Gary for the Civil Rights Action files after Judge Patterson told Rowe that Gary had them all. Exhibit D (1/24/14 Transcript of hearing before Judge Patterson) at 10:1-5. Gary ignored Rowe's requests until Rowe retained a lawyer to ask for the files, at which point Gary said the files had been destroyed in a hurricane. Complaint at ¶ 19.

The complaint sets forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Accordingly, the motions to dismiss should be denied and Rowe should be allowed to take discovery, which will force the Gary Lawyers to disclose the information they have been concealing from the Civil Rights Plaintiffs for the last ten years.

IV. THE COMPLAINT STATES VALID RICO CLAIMS.

Defendants mistakenly argue that the complaint's RICO claims are deficient because the allegations do not:

(i) plead either "open-ended" or "closed-ended" continuity;

(ii) establish proximate cause; and

(iii) allege actionable RICO injury.

Opp. Mem. [ECF 25] at 17-22.

First, defendants' continuity argument is based on the absurd contention that the Gary Lawyers' scheme in the Civil Rights Action is "completely unrelated" to their scheme in the *Ford/Visteon* case. Opp. Mem. [ECF 25] at 18. Yet both schemes required a "secret agreement" with large corporate defendants in discrimination lawsuits in which the Gary Lawyers represented the plaintiffs. Both "secret agreements" resulted in million dollar payments to the Gary Firm at the expense of the firm's clients.

Because the schemes had "the same or similar purposes, results, participants, victims, or methods of commission," they satisfy the continuity requirements as expressed in the case law cited by defendants. Opp. Mem. at 18 n.26 (quoting *H.J. Inc. v. Nw. Bell Tel. Co*., 492 U.S. 229, 242 (1989)). Moreover, the *Kubik* court determined that the Gary Lawyers might be engaged in a common practice of defrauding their clients by entering into secret settlement agreements with their adversaries. *See*, *supra*, at 4-5, 11-14; Exhibit E (2/17/05 *Kubik* decision) at 8.[4]

Second, the defendants' proximate cause argument is similarly flawed. Citing Judge Patterson decision denying Rowe's Rule 60 motion, they assert that Judge Patterson's failure to consider the E-Discovery Memorandum was not a substantial factor in his dismissal of the Civil Rights Action. Yet the Gary Lawyers' fraud was not confined to filing the inadmissible E-Discovery Memorandum. On the contrary, the Gary Lawyers do not contest that they never obtained the underlying emails. Judge Patterson blamed the Gary Firm for their failure to obtain those emails and told

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[4] To the extent further examples of the Gary Lawyer's RICO enterprise of defrauding their clients by entering into secret agreements with their adversaries is warranted, the complaint certainly could be amended to include Marietta Goodman's and Sharron Magnum's allegations that the Gary Lawyers entered into such a "secret agreement" with, or were "bribed" by, Coca-Cola. *See*, *supra*, at 15-16; Exhibit J. Other clients have accused the Gary Lawyers of similar "secret agreement" fraud and published their accounts on the website, www.theclientkiller.org. Those schemes could also be included in an amended complaint.

Rowe that it was Willie Gary's responsibility to obtain them. Rowe Dec. at ¶¶ 21-27; Exhibit D (1/24/14 Transcript) at 8:18 – 10:5.

Third, defendants cynically assert that Rowe has not alleged actionable RICO injury because (i) damages arising from the loss of the Civil Rights Action are "personal injuries" rather than injury to "business or property;" and (ii) providing damages that would have been awarded in the Civil Rights Action is "speculative." Opp. Mem. [ECF 25] at 21-22. Yet, the Civil Rights Plaintiffs sought damages to their concert promotion *businesses* – not personal injuries for racial harassment. And there is no reason why evidence of the damages to those business could not be presented, and determined, in this action.

V. DEFENDANTS' OTHER ARGUMENTS LACK MERIT.

The other arguments raised in the motions to dismiss also lack merit. For example, defendants assert that Rowe's appellate lawyer should have noticed that the E-Discovery Memorandum was inadmissible, had been submitted in an improper manner, and without the underlying emails. Yet Rowe's appellate lawyer, Keila Ravelo, then a Clifford Chance partner, has been indicted herself for defrauding her clients out of millions of dollars! Rowe Dec. at ¶¶ 10-20; Exhibit A (12/22/14 Reuters article, "*NY antitrust lawyer, husband charged with defrauding law firms*"); Exhibit C (3/19/15 Reuters article, "*Can ex-Willkie partner's emails undo $5.7 bln MasterCard settlement?*").

Moreover, Clifford Chance has confirmed that Ravelo committed fraud by entering into a retainer agreement with the Civil Rights Plaintiffs and the Gary Lawyers without its authorization and then concealing that retainer agreement. Rowe Dec. at ¶¶ 12-15; Exhibit B (March 2012 retainer agreement). Thus, Rowe reasonably alleges upon information and belief that Gary enlisted Ravelo to join his fraudulent scheme. *Id*. at ¶¶ 17-20.

Defendants' assertion that the fraud allegations lack specificity also fails. The 63-page complaint sets forth the fraud with more than enough specificity to provide defendants with notice of their fraudulent acts. And defendants exclusively control the information related to those allegations.

CONCLUSION

Defendants' motions to dismiss should be denied.

Dated: September 21, 2015

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CERTIFICATE OF FONT AND POINT SELECTION

I hereby certify that the foregoing was prepared in Times New Roman font, 14 point type, in compliance with Local Rule 5.1(C).

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing has been filed with the U.S. District Court's CM/ECF System and that pursuant thereto, a copy of this pleading has been served upon the following persons by electronic mail:

James F. Bogan III, jbogan@kilpatricktownsend.com
Jeffrey Fisher, jfisher@kilpatrictownsend.com

I further certify that a true and correct copy of the foregoing was emailed and mailed to the following person by U.S. mail, first-class postage prepaid, addressed to:

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Dated: September 21, 2015

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