IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11593-QQ

LEIGH ANN YOUNGBLOOD-WEST,
Plaintiff - Appellant,

v.

AFLAC INCORPORATED, DANIEL P. AMOS, WILLIAM LAFAYETTE AMOS, JR., CECIL CHEVES, and SAMUEL W. OATES,
Defendants - Appellees.

On Appeal from the United States
District Court for the Middle District of Georgia

APPELLANT'S INITIAL BRIEF (REDACTED)

June 4, 2019

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to the Eleventh Circuit's Rule 26.1, the undersigned counsel for Plaintiff-Appellant Leigh Ann Youngblood-West discloses the following known trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this particular case or appeal:

Aflac Incorporated (NYSE: AFL)

Alston & Bird LLP

Amos, Daniel

Amos Jr., William L.

Bogan III, James

Bondurant, Mixon & Elmore LLP

Boone, Brian D.

Bruce, Gary O.

Butler Jr., James E.

Butler, Wooten & Peak LLP

Carter, Jason J.

Cheves, Cecil

Clark Jr., James C.

Cook, Nicholas J.

Deneen, Lee

Fisher, Jeffrey H.

Floyd, John E.

Garrett Jr., Curtis A.

Gill, Mary C.

Grant, James C.

Harris, Alvin L.

Helmich, David

Hinds, Russel E.

Joffe, Dimitry

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Kilpatrick Townsend & Stockton LLP

Land, Clay D. (U.S.D.J.)

Land, Shannon F.

Laney, Davis A.

Lexstone Fund II L.P.

Oates, Samuel W.

Page, Scrantom, Sprouse, Tucker & Ford P.C.

Pryor, T.C. Spencer

Reid Jr., E. Lowry

Scrantom Jr., William G.

Siegel, David A.

Smith, Michael D.

Synovus Financial Corporation

Versus Funding Partners L.P.

Waldrep, Joseph L.

Waldrep, Mullin & Callahan, LLC

Wooten, Joel

Youngblood-West, Leigh Ann

STATEMENT REGARDING ORAL ARGUMENT

This appeal involves allegations of long-running efforts by the leadership of Aflac Incorporated ("Aflac") [redacted] committed by Aflac's former Chief Medical Director, and a permanent injunction issued by the District Court to protect [redacted] in violation of the First Amendment rights of his victim to speak on these matters of public importance and the public's right to receive such information. Appellant respectfully requests oral argument because she believes it would assist this Court in resolving issues of significant public concern raised on this appeal.

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STATEMENT OF JURISDICTION

This appeal arises from the final judgment entered on March 27, 2019 pursuant to Rule 54(b) in Youngblood-West v. Aflac Inc. et al., 4:18-cv-00083 (the "RICO Action"), and in Amos v. Youngblood-West, 4:18-cv-00068 (the "Breach Action"), consolidated with the RICO Action and designated as a counterclaim therein.

The District Court had original jurisdiction over federal claims in the RICO Action pursuant to 28 U.S.C. § 1331; over related state law claims pursuant to 28 U.S.C. § 1367(a); and over the Breach Action pursuant to 28 U.S.C. § 1332.

Ms. Youngblood-West filed her Notice of Appeal from the final judgment and prior rulings on April 24, 2019. This Court's jurisdiction to consider this appeal arises under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether the District Court erred in dismissing Ms. Youngblood-West's 2018 complaint as implausible and time-barred where she alleged Appellees' long-running concealment of [redacted] revealed and admitted by Dr. Amos himself in 2016;

2. Whether the District Court's rulings premised on the enforceability of the release agreements, including the permanent injunction, are in error because the releases are unenforceable as failing threshold contract formation requirements, vitiated by the antecedent fraud and duress, and contrary to public policy as agreements [redacted];

3. Whether the permanent injunction is also invalid on the First Amendment grounds as violating Ms. Youngblood-West's right to free speech and the public's right to hear information of considerable public importance;

4. Whether the District Court erred in granting Dr. Amos' summary judgment motion without allowing Ms. Youngblood-West any discovery;

5. Whether the District Judge abused his discretion in refusing to recuse himself despite his spouse's interest in the outcome of the case as an intended beneficiary of the challenged release agreement and a member of the law firm that had concealed [redacted], and despite the District Judge's family and social connections to Appellees.

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

On April 15, 2018, William L. Amos, Jr. ("Dr. Amos") applied for a temporary restraining order to prevent Ms. Youngblood-West from publicly filing or commenting on her draft RICO complaint against Aflac, Daniel Amos, Dr. Amos, Cecil Cheves and Samuel Oates alleging their [redacted] committed by Dr. Amos. Dr. Amos also commenced the Breach Action alleging a breach of the confidentiality provisions of two release agreements (the "1992 Release" and the "1993 Release"), and seeking damages and injunctive relief against Ms. Youngblood-West, [redacted].

During a telephonic conference with counsel for both parties late that night, the District Judge issued an oral order prohibiting Ms. Youngblood-West from publicly filing her RICO complaint or making public comments about it pending a preliminary injunction hearing scheduled for April 16, 2018. BA Dkt. 12 Pgs. 3-5.[1]

Following the April 16 hearing, the Court issued a preliminary injunction imposing a gag order on Ms. Youngblood-West and her undersigned counsel and requiring them to file Ms. Youngblood-West's RICO complaint under seal. BA Dkt. 3.

[1] Record references in the RICO Action are designated as "Doc." and in the Breach Action as "BA Dkt."

On May 1, 2018, Ms. Youngblood-West commenced the RICO Action by filing her complaint under seal. On July 9, 2018, she filed her operative amended complaint accompanied by nine exhibits, also under seal. Doc. 26. Aflac and Daniel Amos filed a motion for Rule 11 sanctions against Ms. Youngblood-West's counsel alleging that the original RICO complaint was frivolous (Doc. 21), and a similar motion alleging that the amended RICO complaint was frivolous (Doc. 49), which motion remains pending at the time of the instant appeal.

On July 18, 2018, the District Court granted Appellees' motion to stay discovery in the RICO Action. Doc. 29.

On August 7, 2018, the Court denied Ms. Youngblood-West's motion to dismiss the Breach Action (BA Dkt. 19), affirming the validity of the Releases whose confidentiality provisions served as the basis for the injunction.

On September 6, 2018, the Court consolidated the Breach Action with the RICO Action, designating the former as a counterclaim. Doc. 57.

On September 7, 2018, the Court issued an order partially unsealing the record and allowing certain filings to be published with Ms. Youngblood-West's allegations redacted and while keeping her complaint sealed. Doc. 59.

On October 5, 2018, the District Court denied Ms. Youngblood-West's motion seeking recusal of the District Judge. Doc. 79.

On October 22, 2018 the District Court granted Aflac, Daniel Amos, Dr. Amos and Mr. Cheves' motions to dismiss the RICO Action as implausible, time-barred and released. Doc. 88.

On November 7, 2018, the Court granted Dr. Amos' motion to dismiss Ms. Youngblood-West's counterclaims to the Breach Action. Doc. 97.

On November 13, 2018, the Court denied Ms. Youngblood-West's motion for leave to file a whistleblower complaint with the SEC (Doc. 103), and granted Mr. Oates' motion to dismiss the RICO Action. Doc. 104.

On November 16, 2018, the District Court denied Ms. Youngblood-West's motion to dissolve the preliminary injunction. Doc. 106. Ms. Youngblood-West appealed from that order on December 14, 2018 pursuant to 28 U.S.C. § 1292(a)(1), Appeal No. 18-15196-QQ. (In response to jurisdictional questions from this Court, Dr. Amos filed amended counterclaims and Ms. Youngblood-West filed answers admitting Dr. Amos' amended jurisdictional allegations.)

On November 30, 2018, Dr. Amos filed a motion for summary judgment in the Breach Action seeking a permanent injunction to enforce the Releases. Doc. 112. On December 14, 2018, Ms. Youngblood-West's undersigned counsel filed a declaration pursuant to Rule 56(d) asking the Court to "defer considering the motion or deny it" and "allow time . . . to take discovery" (Doc. 117-2), which the Court denied on December 19, 2018. Doc. 118.

On March 27, 2019, the Court granted Dr. Amos' summary judgment motion, issued the permanent injunction (Doc. 145), and directed the entry of a final judgment pursuant to Rule 54(b), which was entered on March 27, 2019. Doc. 146. Ms. Youngblood-West filed a timely notice of appeal from the final judgment and prior rulings on April 24, 2019. Doc. 152.

On May 24, 2019, this Court dismissed Appeal No. 18-15196-QQ as mooted by the District Court's issuance of the permanent injunction.

II. FACTUAL BACKGROUND

On September 30, 2016, Dr. Amos, a former Chief Medical Director and Board member of Aflac, met with his former patient Ms. Youngblood-West and

[redacted]

[redacted]

thereafter, Aflac began to harass Ms. Youngblood-West's husband Scott Youngblood, a decorated veteran of the Vietnam War where he served as a Green Beret Captain, forcing his resignation in 1989 despite a stellar and loyal 13-year career as Aflac's corporate pilot for John Amos.

[2] Dr. Amos' uncle, the late John Amos, served as the first CEO and Chairman of Aflac then and until his death in 1990; Dr. Amos' late father William Amos, Sr., also served as Aflac's Board member; Cecil Cheves was Dr. Amos' lawyer and a member of the local law firm of Page Scrantom, an outside counsel to Aflac.

[redacted]

[redacted]

[redacted]

[redacted]

Ms. Youngblood-West put herself through a nursing school while caring for her son diagnosed with a serious

chronical disease and for her husband suffering from cancer. She obtained her Bachelor's and Master's degrees in nursing, and a DEA registration in 2010. While working as an ER nurse, she became professionally familiar with the controlled substances used in ER procedures. Based on her training and experience, Ms.

[redacted]

[redacted]

The District Court eventually dismissed Ms. Youngblood-West's RICO Action as implausible, time-barred and released, while granting Dr. Amos' motion for summary judgment and issuing the permanent injunction enforcing the confidentiality provisions of the Releases, leading to this appeal.

STANDARD OF REVIEW

The Court of Appeals reviews *de novo* the District Court's orders (i) granting Appellees' motions to dismiss Ms. Youngblood-West's RICO complaint, (ii) granting Dr. Amos' motion to dismiss Ms. Youngblood-West's counterclaims, and (iii) denying Ms. Youngblood-West's motion to dismiss the Breach Action. See American Dental Assoc. v. Cigna Corp., 605 F.3d 1283, 1288 (11th Cir. 2010) ("We review *de novo* the district court's grant of a motion to dismiss under Rule12(b)(6) for failure to state a claim, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff.").

"We review the district court's grant of summary judgment *de novo*, applying the same legal standards that bound that court and viewing all facts and reasonable inferences in the light most favorable to the nonmoving party." U.S. v. RF Properties of Lake County, Inc., 433 F.3d 1349, 1355 (11th Cir. 2005).

"We review for abuse of discretion a district court's decision to grant a permanent injunction, but in conducting that review, we consider all underlying legal determinations, including the propriety of the entry of summary judgment, *de novo*." Barrett v. Walker Cnty. Sch. Dist., 872 F.3d 1209, 1221 (11th Cir. 2017); see also News America Marketing In-Store v. Emmel, 429 Fed. Appx. 851, 856 (11th Cir. 2011) ("Because we are vacating the district court's summary judgment for News America, we must also vacate the permanent injunction the district court entered on its behalf.").

The District Court's discovery decisions are reviewed for abuse of discretion. See Burger King Corp. v. Weaver, 169 F.3d 1310, 1315 (11th Cir. 1999).

"We review Judge['s] decision not to recuse himself under section 455(a) and section 455(b) for abuse of discretion." United States v. Bailey, 175 F.3d 966, 968 (11th Cir. 1999).

"A district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the determination, or makes findings of

fact that are clearly erroneous." Martin v. Automobili Lamborghini Exclusive, Inc., 307 F.3d 1332, 1336 (11th Cir. 2002). "A district court may also abuse its discretion by applying the law in an unreasonable or incorrect manner." Klay v. United Healthcare, 376 F.3d 1092, 1096 (11th Cir. 2004).

SUMMARY OF ARGUMENT

First, the Court's dismissal of Ms. Youngblood-West's RICO Action as implausible is in error because the Court in so ruling contradicted her factual allegations that should be accepted as true, and drew inferences against her rather than in her favor as a nonmoving party. The District Court also erred in finding the RICO Action time-barred by misapplying the injury discovery rule, disregarding the statutory tolling and dismissing the equitable tolling doctrines she pled in the complaint in light of Appellees' concealment of her injuries and causes of action.

Second, the District Court's orders premised on the enforceability of the Releases, including the preliminary injunction, are in error because the Releases fail the threshold contract formation requirements under Georgia law, are voided by the antecedent fraud, duress and collusion, and contravene public policy as agreements [redacted]

Third, the permanent injunction is also invalid on the First Amendment grounds because it violates Ms. Youngblood-West's right to free speech and the public's right to hear information on matters of public importance.

Fourth, the District Court erred in granting Dr. Amos's motion for summary judgment without allowing Ms. Youngblood-West any discovery on the disputed issues concerning the validity of the Releases.

Finally, the District Judge abused his discretion in denying Ms. Youngblood-West's motion for recusal because the Judge disregarded his spouse's interest in the outcome of this case, evaluated his own familial and social ties to Appellees subjectively, and failed to resolve reasonable doubts about his partiality in favor of recusal.

ARGUMENT

I. The District Court erred in dismissing Ms. Youngblood-West's RICO and state law claims as implausible and time-barred.

A. Ms. Youngblood-West plausibly alleges Appellees' concealment of [redacted] in violation of RICO and common law.

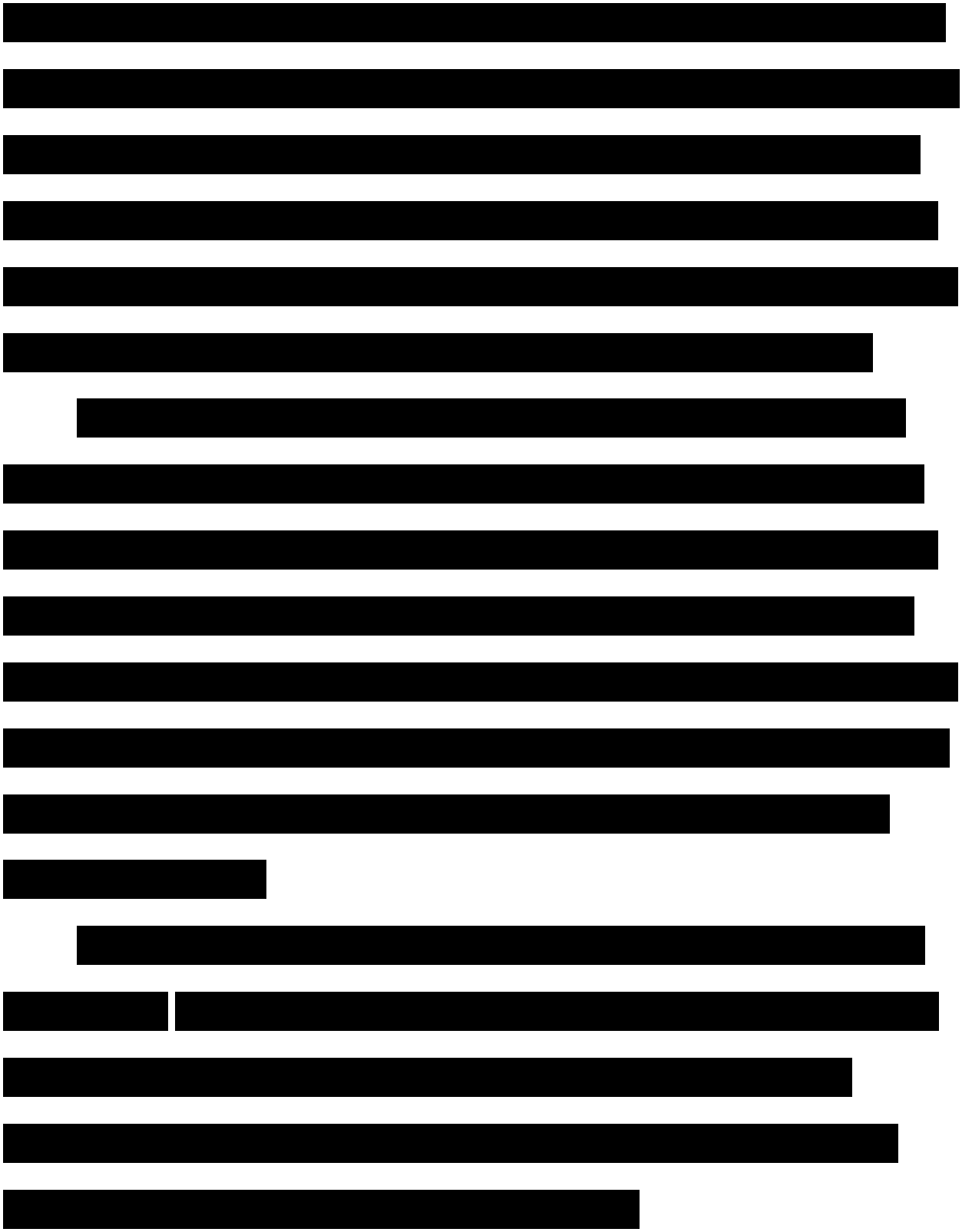
To survive a Rule 12(b)(6) motion to dismiss, a complaint must plead "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal,

556 U.S. 662, 678 (2009). The alleged facts must be accepted as true and all reasonable inferences drawn in plaintiff's favor. Randall v. Scott, 610 F.3d 701, 705 (11th Cir. 2010).

Ms. Youngblood-West [redacted]

The District Court nevertheless concluded that Ms. Youngblood-West's allegations of concealment were *implausible*. This ruling is in error because the Court reached that conclusion by contradicting the complaint's factual allegations and incorrectly construing them in Appellees' favor.

First, the Court ruled that the "allegation of Dan Amos' involvement in the



[redacted]

[redacted]

[redacted]

[redacted]

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[3] [redacted]

B. The complaint is not time-barred.

[redacted] These facts support the timeliness of Ms. Youngblood-West's claims under the injury discovery rule and the statutory and equitable tolling principles she has pled in her complaint. Doc. 26 ¶¶17-36.

Dismissal of a claim pursuant to Rule 12(b)(6) on the statute of limitations grounds is only proper if it is "apparent from the face of the complaint" that the claim is time barred. La Grasta v. First Union Sec., Inc., 358 F.3d 840, 845 (11th Cir. 2004). In Morton's Mkt., v. Gustafson's Dairy, Inc., 198 F.3d 823, 832 (11th Cir. 1999), this Court stated in reversing summary judgment (emphasis added throughout unless otherwise indicated):

> In fact, we have held, along with a majority of the circuits, that *the issue of when a plaintiff is on 'notice' of his claim is a question of fact for the jury*. . . . We have also held on numerous occasions that, as a general rule, *the issue of when a plaintiff in the exercise of due diligence should have known of the basis for his claims is not an appropriate question for summary judgment*. Smith v. Duff and Phelps, Inc., 891 F.2d 1567, 1572 (11th Cir. 1990) (due diligence is jury issue); Durham v. Business Management Assocs., 847 F.2d 1505, 1509 (11th Cir. 1988) (factual issue of due diligence involves state of mind not resolvable by summary judgment).

In light of Ms. Youngblood-West' factual allegations in her complaint and the reasonable inferences drawn therefrom in her favor, the District Court's dismissal of her claims as time-barred on a Rule 12(b)(6) motion was in error.

1. Appellees' active concealment prevented Ms. Youngblood-West from discovering her injuries and causes of action.

"Under the injury discovery rule, unless tolled, the statute of limitation under RICO is four years from the date the plaintiff knew it was injured." Pacific Harbor Capital, Inc., v. Barnett Bank, 252 F.3d 1246, 1251 (11th Cir. 2001).

[redacted]

[redacted]

[redacted]

[redacted]

3. Ms. Youngblood-West has pled and is entitled to rely on the equitable tolling and equitable estoppel doctrines.

All Appellees intentionally concealed Ms. Youngblood-West's injuries and deterred her from bringing her claims, which concealment tolls the applicable statutes of limitation and estops Appellees from relying on them in defense.

The Supreme Court in Rotella v. Wood, 528 U.S. 549, 560-61 (2000), did not "unsettle the understanding that federal statutes of limitations are generally subject to equitable principles of tolling, . . . and *where a pattern remains obscure in the face of a plaintiff's diligence in seeking to identify it, equitable tolling may be one answer to the plaintiff's difficulty.*"[5]

[4] [redacted]

[5] See Cook v. Deltona Corp., 753 F.2d 1552, 1562-63 (11th Cir. 1985) ("Principles of equitable tolling are read into every federal statute of limitation. . . . Equitable

The Complaint alleges Ms. Youngblood-West's diligence and extraordinary circumstances for the equitable tolling to apply, Doc. 26 at ¶¶ 27-35. Cf. Villarreal v. R.J. Reynolds Tobacco Co., 839 F.3d 958, 972 (11th Cir. 2016) (absent active concealment, "the general test applies: a plaintiff seeking equitable tolling must prove diligence and extraordinary circumstances').

Moreover, Ms. Youngblood-West alleges "active concealment" of her causes of action by Appellees, and "in these circumstances we apply the familiar equitable modification to statutes of limitation: the statute does not begin to run until the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his right." Id. (quoting Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924 (5th Cir. 1975)). As alleged in the Complaint, the facts which would support her RICO Action were neither apparent nor should have been apparent to Ms. Youngblood-West prior to her September 2016 meeting with Dr. Amos precisely because each of the Appellees took steps to conceal them.

In Reeb, 516 F.2d at 930, this Court stated that "a party responsible for such wrongful concealment is estopped from asserting the statute of limitations as a

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estoppel arises where the parties recognize the basis for suit, but the wrongdoer prevails upon the other to forego enforcing his right until the statutory time has lapsed. The doctrine of equitable tolling, on the other hand, is grounded in the fraudulent concealment of harm which gives rise to the right to sue.").

defense. Mr. Justice Black gave a classic statement of this corollary in Glus v. Brooklyn Eastern District Terminal, 1959, 359 U.S. 231, 79 S.Ct. 760, 3 L.Ed.2d 770: '. . . no man may take advantage of his own wrong. Deeply rooted in our jurisprudence this principle has been applied in many diverse classes of cases by both law and equity courts and has frequently been employed to bar inequitable reliance on statutes of limitations.'"

Under Georgia law, [redacted]

[redacted]

4. The Complaint is timely under the "separate accrual" rule.

Ms. Youngblood-West also relies on the "separate accrual" rule, which provides that "if a new RICO predicate act gives rise to a new and independent injury, the statute of limitation clock will start over for the damages caused by the new act. See Klehr, 521 U.S. at 190, 117 S.Ct. at 1991." Lehman v. Lucom, 727 F.3d 1326, 1331 (11th Cir. 2013). The Complaint alleges that the threats of criminal prosecution made by Aflac and Daniel Amos' counsel in 2018 in an attempt to bully Ms. Youngblood-West into dropping her lawsuit constitute new

[redacted]

II. The District Court's rulings premised on the enforceability of the Releases are in error.

Every one of the District Court's appealed-from rulings is premised in whole or in substantial part on the enforceability of the Releases and should be reversed because the Releases are not enforceable for three independent reasons, as demonstrated in Part II.A below.

[redacted]

A. The Releases are unenforceable on three independent grounds.

1. The Releases do not constitute valid contracts because they lack a counterparty.

Neither Release constitutes a "contract," which "the Georgia Code defines as 'an agreement between *two or more parties* for the doing or not doing of some specified thing. O.C.G.A. § 13-1-1.'" Coleman v. H2S Holdings, LLC, 230 F. Supp. 3d 1313, 1319 (N.D. Ga. 2017). O.C.G.A. § 13-3-1 provides that, to constitute a valid contract, "there must be *parties* able to contract." "A binding contract exists only where *both parties* have assented to all the terms." McKeena v. Capital Resource Partners, IV, 650 S.E.2d 580, 584 (Ga. Ct. App. 2007). See also Bagwell-Hughes Inc. v. McConnell, 224 Ga. 659, 661-62 (Ga. 1968) ("The *first* requirement of the law relative to contracts is that there must be a meeting of the minds of the parties, and mutuality.").

Releases and settlement agreements are no different – they must have at least two parties to constitute a valid contract. "A settlement contract is a contract, and it 'must meet the same requirements of formation and enforceability as other contracts.'" DeRossett Enters. v. GE Capital Corp., 275 Ga. App. 728, 729 (Ga. Ct. App. 2005).

Here, neither Release constitutes a valid contract because neither is an agreement "between two or more parties." The 1992 Release states that "we the undersigned, Scott Youngblood and Leigh Youngblood, individually and as

husband and wife, and each of us, has fully released . . . and . . . hereby release" a number of persons and entities, including Dr. Amos. Doc. 26-2. The Youngbloods do not make an agreement with Dr. Amos or any other counterparty; no such second contracting party appears on the face of the 1992 Release. Dr. Amos is identified only as a released party -- a third-party beneficiary -- but is not a direct contracting party necessary to form a valid agreement in the first instance.

Nor does the 1992 Release impose any contractual obligations on Dr. Amos or anyone else other than the Youngbloods. The Release states that the Youngbloods gave their releases "for value received," but nowhere binds Dr. Amos or anyone else to pay that consideration, or makes anyone liable for any potential non-payment.

The 1993 Release suffers from the same contract formation defect. During the April 16, 2018 hearing, the District Court questioned Dr. Amos' counsel on precisely this issue (BA Dkt. 12 Pg. 12):

> MR. BOGAN: I would say very clearly that Samuel Oates is a third-party beneficiary of this [1993] release contract and that Cecil Cheves is a third-party beneficiary, because they are specifically identified as released parties in paragraph 2.
>
> THE COURT: What category do you contend Mr. Amos falls in in that second agreement?
>
> MR. BOGAN: Mr. Amos falls into the category of a direct contracting party.

Dr. Amos, however, appears in the 1993 Release alongside Messrs. Oates and Cheves as a released party -- a third-party beneficiary of the Release. Neither Dr. Amos nor anyone else is identified as a "direct contracting party" entering into an agreement with the Youngbloods or incurring any contractual duties, including any duty to pay the consideration under the Release. See Doc. 26-3.

The District Court, however, ruled that "*because the agreements identify Dr. Amos as a released party, they are not invalid for lack of a counterparty*." Doc. 88 Pg. 36. This ruling is manifestly in error because it fails to distinguish between the direct contracting parties necessary to form any valid contract and the third-party beneficiaries who are neither necessary nor sufficient to the contract formation. See AT&T Mobility v. National Ass'n for Stock Car Auto, 494 F.3d 1356, 1361 (11th Cir. 2007) ("Georgia law is clear that there must be 'a promise by the promisor to the promisee to render some performance to [the] third person, and it must appear that both the promisor and the promisee intended that the third person should be the beneficiary.'"). Here, there is a promise by the promisor (the Youngbloods) to render some performance to the third parties (the releasees, including Dr. Amos) – but because the *promisee* is missing, no valid contract is formed under Georgia law.

This critical distinction between the direct "contracting parties" necessary for the contract formation and the third-party beneficiaries of a validly formed

contract is beyond peradventure. See, e.g., O.C.G.A. § 9-2-20(b) ("The beneficiary of a contract made *between other parties* for his benefit may maintain an action against the promisor on the contract."); Lawson v. Life of the South Ins. Co., 648 F.3d 1166, 1171 (11th Cir. 2011) (same).

Accordingly, the Releases do not constitute valid contracts because they do not satisfy the first contract formation requirement of having at least two parties to an agreement.[6]

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[6] Dr. Amos' absence as a party to the Releases is not accidental. Both Releases studiously avoid making Dr. Amos a party and impose unilateral obligations on the Youngbloods only, and both contain incomplete or illusory provisions – dead giveaways of their fatal contractual flaws.

Thus, the 1992 Release states: "In the event of a breach of any of the terms or provisions of this release agreement, the undersigned [Youngbloods] shall not be bound by their agreement of confidentiality contained in this release agreement." Doc. 26-2 Pg. 3. Had Dr. Amos been a party, the provision would have read "in the event of a breach by Dr. Amos" -- compare with the next sentence in the same paragraph: "In the event of a breach by the undersigned [Youngbloods]." Id. However, because Dr. Amos is not a party to the Release, the provision as drafted, with its intended lacuna in lieu of Dr. Amos' name, means that the Youngbloods are not bound by confidentiality "in the event of a breach of any of the terms or provisions" by the Youngbloods themselves.

Likewise, the 1993 Release states in paragraph 11 that "[t]his agreement and the prior one [the 1992 Release] may not be modified unless it is done so in writing signed by the party to be bound." Doc. 26-3. However, because there is no counterparty to the Youngbloods, they are the only party "bound" by the Releases; accordingly, this provision gives the Youngbloods the right to modify them unilaterally at any time (which Ms. Youngblood-West did on December 17, 2018, by deleting their confidentiality provisions, Doc. 117-2).

Ms. Youngblood-West have also argued, as a secondary point, that even if Dr. Amos were hypothetically assumed to be a direct contracting party -- contrary to the plain language of the Releases – the Releases would not be effective by their own terms. Each Release states that it "shall become effective upon execution by all parties" but neither one is executed by Dr. Amos. The District Court held, however, that Dr. Amos "alleges that he fully performed his obligations under the settlement agreements by tendering the required payments. Compl. ¶ 31," and that the Releases "became enforceable by [Dr. Amos] when he paid [Ms. Youngblood-West] the stated consideration as alleged in the Complaint." BA Dkt. 19 Pgs. 8, 10.

Dr. Amos, however, did ***not*** in fact allege in his verified complaint that he had paid the consideration under the Releases, and did not offer any evidence of such payments on his motion for summary judgment even after Ms. Youngblood-West had raised the issue. Indeed, Ms. Youngblood-West alleges that the [redacted] she received in 1992 (after Ms. Oates' 40% fee) was paid out of the [redacted] common fund [redacted], which was likely financed behind the scene by Dr. Amos' [redacted] Appellees Aflac and/or Daniel Amos (a reasonable inference in light of Dr. Amos' silence on the subject of the payor's identity and his insistence that he was not involved in the settlement).

The 1993 Release, too, states that the consideration was [redacted] but does not state whose duty it was to pay that consideration. The check for the [redacted]

portion of that consideration was issued not by Dr. Amos but by Medstrategies, Georgia, Inc., a corporate entity and a releasee under the 1993 Release separate from Dr. Amos (Doc. 26-3); there is no allegation or evidence on the record as to who paid the remainder.

Moreover, "[a] contract signed by one of the parties only, but accepted and acted on by the other party to it, may be just as binding as if it were signed by both parties, *if the obligations of the parties are mutual*." Gruber v. Wilner, 213 Ga. App. 31, 35 (Ga. App. Ct. 1994). Neither Release imposes any duty on Dr. Amos to pay the consideration or to do anything else for that matter, so that there has never been any contractual obligation for Dr. Amos to perform under the Releases.

In sum, the Releases do not constitute valid contracts because there is only one contracting party to them. Even if Dr. Amos were considered a party, he did not execute the Releases as required by their terms to become effective; he did not perform any obligations under the Releases because he had no obligations to perform; and he is not alleged to have paid the consideration under the Releases.

2. The Releases are vitiated by the antecedent fraud, duress and collusion.

Even if the Releases were validly formed and effective contracts, which they are not, they would not be enforceable because of the antecedent fraud, duress and collusion alleged by Ms. Youngblood-West. "Fraud renders contracts voidable at the election of the injured party." O.C.G.A. § 13-5-5. Moreover, "[s]ince the free

assent of the parties is essential to a valid contract, duress . . . by which the free will of the party is restrained and his consent induced, renders the contract voidable at the election of the injured party." O.C.G.A. § 13-5-6.

The District Court's ruling that Ms. Youngblood-West's failure to restore the consideration back to Dr. Amos precludes rescission for the antecedent fraud and duress is in error. *First*, as shown above, there is no allegation or a scintilla of evidence of Dr. Amos' paying any consideration under the Releases, and therefore he is owed nothing in restoration in the first place. See Radio Perry, Inc. v. Cox Comm., 746 S.E.2d 670, 675 (Ga. Ct. App. 2013) ("The object of the rule is theoretically to place the parties in status quo").

Second, "[r]estoration not being 'an absolute rule' in the first place, there is no reason the defrauding party should get all the benefits of such a rule." Crews v. Cisco Bros., 201 Ga. App. 589, 591 (Ga. App. Ct. 1991) (holding that the trial court erred in granting summary judgment on the grounds that appellants could not rescind the contracts because they did not tender); Vivid Investments, Inc. v. Best Western Inn-Forsyth, Ltd., 991 F.2d 690, 692 (11th Cir. 1993) (same); Kobatake v. EI Dupont de Nemours & Co., 162 F.3d 619 (11th Cir. 1998) (a party "need not offer to restore where the defrauding party has made restoration impossible, or when to do so would be unreasonable"); Roundtree v. Davis, 82 S.E.2d 716, 90 Ga. App. 223, 232 (Ga. Ct. App. 1954) ("Restoration is not an absolute rule. . . .

There seems no reason why one who has defrauded another should receive money from one defrauded when the fraudulent party has received benefit from the transaction and has at the time of the trial many times the amount the fraudulent party contends should be restored to him.").[7]

Third, "a party . . . need not offer to restore where the defrauding party has made restoration impossible." Orion Capital v. Westinghouse Elec. Corp., 478 S.E.2d 382, 385 (Ga. Ct. App.1996). Here, Appellees made the tender impossible by disclosing the confidential settlement to the Bank and causing the Bank's pursuit of Ms. Youngblood-West's settlement money, immediately laying claims on them to ensure that Ms. Youngblood-West would not be able to change her mind by tendering back the consideration.

Finally, the merger clause in the Releases likewise does not foreclose Ms. Youngblood-West's claim of antecedent fraud. See City Dodge, Inc. v. Gardner, 232 Ga. 766, 770 (Ga. Sup. Ct. 1974) ("If the contract is invalid because of the antecedent fraud, then the disclaimer provision therein is ineffectual since, in legal contemplation, there is no contract between the parties.")

7 [redacted]

3. The Releases are unenforceable on public policy grounds as [redacted]

The Supreme Court in Town of Newton v. Rumery, 107 S. Ct. 1187, 1192 (1987) reiterated a "well-established" principle that "a promise is unenforceable if the interest in its enforcement is outweighed in the circumstances by a public policy harmed by enforcement of the agreement." The Releases are contrary to public policy for two reasons: [redacted]

First, [redacted]

[redacted]

The District Court, however, ruled that "Georgia law does not support the proposition that a confidentiality agreement is void in its entirety simply because the agreement does not expressly allow a party to 'testify or otherwise comply with a subpoena, court order, or applicable law.' In those cases, the courts have instead found that the confidentiality agreements implicitly allow for such disclosure. It follows that the confidentiality provisions in the settlement agreements here are not void just because they fail to express what Georgia courts would imply under well-established law." Doc. 19 Pg. 11-12.

However, this is not the case of an ordinary confidentiality agreement being merely silent on a parties' right to testify or comply with a subpoena. Here, Dr. [redacted]

they expressly prohibited Ms. Youngblood-West from filing or prosecuting any complaints against Dr. Amos with any agency. Doc. 26-3.

Under Georgia law, "[t]he introduction of an implied term into the contract of the parties . . . *can only be justified when the implied term is not inconsistent with some express term of the contract* and where there arises from the language of the contract itself, and the circumstances under which it was entered into, an *inference that it is absolutely necessary to introduce the term to effectuate the intention of the parties*.'" Higginbottom v. Thiele Kaolin Co., 251 Ga. 148, 149 (Ga. 1983) (internal citation omitted); Barger v. Garden Way, 231 Ga. App. 723, 726 (Ga. Ct. App. 1998) ("An implicit contractual provision exists where such provision is *necessary to effect the full purpose of the contract and is so clearly within the contemplation of the parties* that they apparently deemed it unnecessary to state it."). [redacted]

[redacted]

[redacted]

B. Accordingly, the District Court's rulings premised on the enforceability of the Releases should be reversed.

Because the Releases are unenforceable, the following orders premised on their enforceability are in error and should be reversed for this reason, among others: (1) the order denying Ms. Youngblood-West's motion to dismiss the Breach Action (BA Dkt. 19); (2) the order dismissing Ms. Youngblood-West's counterclaims against Dr. Amos (Doc. 97); (3) the order granting Dr. Amos' motion for summary judgment and the permanent injunction (Doc. 145); (4) the orders granting motions by Dr. Amos, Ms. Cheves and Mr. Oates to dismiss Ms. Youngblood-West's RICO Action on the basis of the Releases (Docs. 88, 104); (5) the order partially unsealing the record while maintaining the seal on Ms. Youngblood-West's allegations (Doc. 59); and (6) the order denying Ms. Youngblood-West's motion to file her SEC whistleblower complaint (Doc. 103).

III. The permanent injunction is invalid on the First Amendment grounds because it violates Ms. Youngblood-West's right to speak and the public's right to hear about matters of significant public importance.

The permanent injunction issued by the District Court constitutes a prior restraint on Ms. Youngblood-West's free speech, "the most serious and the least tolerable infringement on First Amendment rights." Nebraska Press Assn. v. Stuart, 427 U.S. 539, 559 (1976). As the Supreme Court explained in Alexander v. United States, 509 U.S. 544, 550 (1993):

> Temporary restraining orders and permanent injunctions -- *i.e.*, court orders that actually forbid speech activities -- are classic examples of prior restraints. . . . This understanding of what constitutes a prior restraint is borne out by our cases, even those on which petitioner relies. In Near v. Minnesota ex rel. Olson, supra, we invalidated a court order that perpetually enjoined the named party, who had published a newspaper containing articles found to violate a state nuisance statute, from producing any future "malicious, scandalous or defamatory" publication. Id., at 706. Near, therefore, involved a true restraint on future speech — a permanent injunction.

Any imposition of prior restraints bears a "heavy presumption against its constitutional validity," Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963), and a party seeking to obtain such a restraint bears a correspondingly heavy burden of demonstrating justification for its imposition. See Organization for a Better Austin v. Keefe, 402 U.S. 415, 419 (1971); see also Crosby v. Bradstreet Co., 312 F.2d 483, 485 (2d Cir. 1963) ("We are concerned with the power of a court of the United States to enjoin publication of information about a person, without regard to

truth, falsity, or defamatory character of that information. Such an injunction, enforceable through the contempt power, constitutes a prior restraint by the United States against the publication of facts which the community has a right to know and which [defendant] had and has the right to publish. The court was without power to make such an order").

"An injunction against speech harms not just the speakers but also the listeners," McCarthy v. Fuller, 810 F.3d 456, 462-63 (7th Cir. 2015), because "the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." First National Bank of Boston v. Bellotti, 435 U.S. 765, 783 (1978); see also Stanley v. Georgia, 394 U.S. 557, 564 (1969) ("[T]he Constitution protects the right to receive information and ideas").

The District Court erred in ruling that Ms. Youngblood-West had waived her First Amendment rights by entering into the Releases. In Brady v. United States, 397 U.S. 742, 748 (1970), the Supreme Court stated that "[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." See also Curtis Publishing Co. v. Butts, 388 U.S. 130, 145 (1967) ("Where the ultimate effect of sustaining a claim of waiver might be an imposition on that valued [First Amendment] freedom, we are unwilling to find waiver in

circumstances which fall short of being clear and compelling."); Johnson v. Zerbst, 304 U.S. 458, 464 (1938) ("'[C]ourts indulge every reasonable presumption against waiver' of fundamental constitutional rights . . . and 'do not presume acquiescence in the loss of fundamental rights.'") (citation omitted). "The Supreme Court has held that First Amendment rights may be waived upon clear and convincing evidence that the waiver is knowing, voluntary and intelligent." Leonard v. Clark, 12 F.3d 885, 889-90 (9th Cir. 1993).

The invalid Releases, in the circumstances they were made, are light-years away from "the voluntary, knowing, and intelligent waiver of such important constitutional rights," and the District Court did not "indulge in every reasonable presumption against waiver" but "presume[d] acquiescence in the loss of such rights."

IV. The District Court abused its discretion in granting Dr. Amos's motion for summary judgment without allowing Ms. Youngblood-West any discovery.

The Supreme Court admonished that summary judgment should be granted only "after adequate time for discovery." Celotex Corp. v. Catrell, 477 U.S. 317, 322 (1986).

"*The law in this circuit is clear*: the party opposing a motion for summary judgment should be permitted an adequate opportunity to complete discovery prior to consideration of the motion." Jones v. City of Columbus, Ga., 120 F. 3d 248, 253 (11th Cir. 1997) (ruling that "the district court abused its discretion in deciding

the summary judgment motion even though it had allowed the City to block the plaintiffs' efforts to gain the information they needed through the normal discovery process."); see also Dean v. Barber, 951 F. 2d 1210, 1213-14 (11th Cir. 1992) ("[S]ummary judgment should not be granted until the party opposing the motion has had an adequate opportunity for discovery.").

The District Court abused its discretion in denying Ms. Youngblood-West's Rule 56(d) request for discovery (Doc. 117-2), and erred in granting Dr. Amos' motion while blocking Ms. Youngblood-West' efforts to discover the information she needed to oppose it. The District Court also erred in granting summary judgment because Ms. Youngblood-West raised genuine factual disputes concerning the validity of the Releases. Docs. 127-1, 127-2.

V. The District Court abused its discretion in denying Ms. Youngblood-West's motion for recusal.

Ms. Youngblood-West's affidavit in support of her motion for recusal alleges, firstly, that District Judge's spouse, as a member of the Page Scrantom law firm in 1992-93, is a releasee and an intended beneficiary of the 1993 Release whose validity and legality are challenged in this proceeding. [redacted]

Youngblood-West. Doc. 69-5 Pgs. 1-2.

Even if the District Judge's spouse as a former shareholder of Page Scrantom is not financially liable for the misconduct of other Page Scrantom lawyers, [redacted] The District Judge abused his discretion by considering only the financial interest of his spouse because Section 455(b)(5)(iii) speaks of any "interest that could be substantially affected by the outcome" as a disqualifying factor.

Second, the District Judge's familial and social connections with the Appellees, viewed objectively, create an appearance of a deep-seated favoritism towards them under Section 455(a). Doc. 69-5 Pgs. 3-11.

The family connections between the Land and the Amos families can be traced back decades. "Aflac, a company based in Columbus, Georgia, was established in 1955 by John Amos for the purpose of selling various lines of insurance. In 1978, AFLAC entered into an agreement with Underwriters South, Inc., a company owned by *Mr. and Mrs. Donald Land, the son-in-law and daughter of Amos*." Southeastern Underwriters v. Aflac, 210 Ga. App. 444, 445 (Ga. Ct. App. 1993). Their son Donnie Land, Jr., currently works as an in-house

counsel at Appellee Aflac, and the District Judge has acknowledged that Donald Land, Jr., is his distant relative. Doc. 79 Pg. 27-28.

But this is not the only family connection between the District Judge and Appellees. Donnie Land, Jr., not only works for Aflac but is also a grandson of the company's cofounder John Amos, and is therefore a blood relative of John Amos' nephews Appellees Daniel Amos and Dr. Amos. This familial connection between Donnie Land, Jr., and Daniel Amos and Dr. Amos necessarily makes the District Judge himself their relative as well, but the District Judge does not acknowledge or address his family ties with these Appellees.

Third, Ms. Youngblood-West's affidavit also alleges that the Land and the Amos families are among the prominent members of the exclusive Fish House Gang. Doc. 69-5 Pgs. 4-8 ("From his early adulthood Clay Land had been on the list of regulars at the exclusive fried catfish suppers that his great-uncle John organized for more than half a century, that singular opportunity to network, the Fish House Gang.") (quoting David Rose, The Big Eddy Club, The Stocking Stranglings and Southern Justice at 302 (The New Press 2007)).

The District Judge has confirmed in his order dismissing the recusal motion that he "has been invited to these functions over the years and has attended with some regularity." Doc. 79 Pg. 25. The District Judge further states that Daniel Amos, William Amos, and/or Cecil Cheves "may have attended one or more of

these fried-fish suppers in the past," thought the Judge "has no specific recollection of them having done so," and they do not appear on the "most recent invitee list." Id. The District Judge also states that "Defendant Samuel Oates does appear on the recent invitee list," though the District Judge "has no specific recollection of his recent attendance." Id.

The District Judge's decision confirms that the Judge and the individual Appellees have been members of the exclusive Fish House Gang, notwithstanding the Judge's lack of recollection of their attendance, which is not "the sort of objectively ascertainable fact that can avoid the appearance of partiality." Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 860 (1988) (quoting Health Servs. Acquisition Corp. v. Liljeberg, 796 F.2d 796, 802 (5th Cir. 1986)).

The District Judge also describes his membership in the Fish House Gang as nothing more than "attendance at these fish suppers," and the "modern version" of the Fish House Gang as a group of "approximately two-hundred invitees who gather three or four times a year to enjoy fried fish, french fries, hushpuppies, coleslaw, and each other's company [with] no stated business . . . and no stated organizational purpose." Doc. 79 Pg. 25. In the District Judge's opinion, the modern Fish House Gang is a far cry from what it used to be in the "by-gone era" when his late great-uncle Judge John Land and Daniel Amos' and Dr. Amos' late uncle John Amos were in charge.

But the District Judge's description of the "modern version" of the Fish House Gang is no different from how the insiders portrayed the "by-gone era" version of it: "Long after retiring from the bench, [Judge John] Land controlled the shifting list of two hundred men invited to these gatherings: businessmen, attorneys, state officials, and legislators. On the rare occasions that the media asked him about it, he always insisted that the gang was merely a way of getting congenial people from different walks of life together, and that its meetings had no political content. Others claimed that an invitation to catfish with John Land was a sign of approval from Georgia' behind-the-scenes leadership, and perhaps a shortcut to high public office. In 2002, when Sonny Perdue was elected Georgia's first Republican governor for more than a century, he told one of his neighbors: 'Now at last I'll be asked to Fish House.'" David Rose, The Big Eddy Club, at 127; Glenn Vaughn, Here is Lowdown on the "Fish House Gang," Columbus Ledger-Enquirer (Mar. 30, 1988) ("Judge Land . . . and other regulars insist it is not a political organization, 'just a friendly get together.' While it is certainly true no political strategy is discussed by the group as a whole, it is a fact that those seeking or holding political office try hard to get invited.").

Despite the perennial insistence of the Fish House Gang insiders that it is nothing more than "just a friendly get together," objective disinterested observers have consistently viewed it as a "secretive network of politicians, lawyers and

businessmen," "a powerful ad hoc group," a "singular opportunity to network," "a shadowy association," "a private freemasonry," and a "behind-the-scene leadership" group. Doc. 69-5 Pg. 11.

Section 455(a) "sets forth a general rule requiring recusal in those situations that cannot be categorized neatly, but nevertheless raise concerns about a judge's impartiality." United States v. Patti, 337 F.3d 1317, 1321-22 (11th Cir. 2003). The test under Section 455(a) is an objective one, displacing the subjective "in the opinion of the judge" test. In re BellSouth Corp., 334 F.3d 941, 968-69 (11th Cir. 2003) ("Recusal under section 455(a) should follow if the reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality.") (Tjoflat,C.J., dissenting on other grounds). "*Any doubts must be resolved in favor of recusal*." Patti, 337 F.3d at 1321.

An objective disinterested observer fully appraised of the District Judge's family ties to Daniel Amos and Dr. Amos and his membership in the exclusive Fish House Gang to which each one of the individual Appellees belongs as well, would harbor significant doubts about the Judge's impartiality due to his deep-seated favoritism towards Appellees. The District Judge abused his discretion by not addressing his family ties to the Amos Appellees, by considering the Fish House Gang allegations subjectively from the insider's point of view, and by failing to resolve all reasonable doubts in favor of recusal as required by this Court.

CONCLUSION

Ms. Youngblood-West respectfully submits that the District Court's final judgment and prior rulings should be reversed for all the reasons stated above.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Dimitry Joffe, hereby certify that on this 4th day of June 2019, I caused a redacted copy of this response to the jurisdictional question to be sent electronically to the registered participants in this case through the ECF system and an unredacted (sealed) copy by email.

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