06-5698-cv

In the

United States Court of Appeals

For the Second Circuit

ROGER SPOOL, CHILD & FAMILY ADOPTION, BRUCE FERGUSON and CHARLENE FERGUSON,

Plaintiffs-Appellants,

v.

WORLD CHILD INTERNATIONAL ADOPTION AGENCY, JENKINS & POVTAK, SUSAN DIBBLE, DOREEN WHITTAKER, SHARRELL J. GOOLSBY, CARL A. JENKINS, YAROSLAV PANASOV, FOUNDATION OF WORLD CHILD, INC.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW YORK

JOINT APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION, BRUCE AND CHARLENE FERGUSON, Plaintiffs, – against – WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC., JENKINS & POVTAK, SUSAN DIBBLE, DORENE WHITTAKER, SHARRELL J. GOOLSBY, CARL A. JENKINS, YAROSLAV PANASOV, Defendants.	**FIRST AMENDED COMPLAINT UNDER THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT** No. 06-CIV-4243 Judge Charles L. Brieant ECF CASE

Roger Spool, Child & Family Adoption and Bruce and Charlene Ferguson, allege for their complaint as follows:

THE PARTIES

1. Plaintiff Roger Spool [Spool] is a resident of Ulster county New York and is a New York licensed social worker and Executive Director of an adoption agency he founded called Child & Family Adoption [CFA] which is an authorized adoption agency in the State of New York.

2. Bruce and Charlene Ferguson [the Fergusons] are residents of Dutchess county New York and were clients of CFA.

3. World Child International Adoption Agency [World Child] is headquartered in Silver Springs, Maryland and is a non-profit child-placing agency that specializes in international adoption.

4. Foundation of World Child, Inc. [the Foundation] is chartered in Washington, DC and is a non-profit foundation created by the Defendants. Defendant Carl Jenkins is its Executive Director.

5. Jenkins & Povtak is a Maryland law firm.

6. Susan Dibble [Dibble] is a resident of Ulster county New York and a former employee of CFA.

7. Dorene Whittaker [Whittaker] is a resident of Ulster county New York and a former employee of CFA.

8. Sharrell J. Goolsby [Goolsby] is a resident of Maryland and the executive director of World Child.

9. Carl A. Jenkins [Jenkins] is a resident of Maryland and World Child's attorney. He is a partner in the Defendant law firm Jenkins & Povtak.

10. Yaroslav Panasov [Panasov] is a Russian national and the Moscow Representative for World Child. His contact information is listed as the Office Director, World Child Office, Moscow, Russia.

11. Each and every defendant is a "principal" pursuant to 18 USC 2(a)-(b) and each and every defendant is a "co-conspirator" pursuant to 18 USC 371.

RICO JURISDICTION AND VENUE

12. Federal jurisdiction is invoked pursuant to 28 USC § 1331.

13. Venue is proper within this judicial district pursuant to 28 USC 1391(b) inasmuch as a substantial part of the events and omissions giving rise to the claim occurred in this judicial district in that the Plaintiffs allege that World Child's NY Representative Office,

located in New Paltz, New York, constitutes a RICO enterprise as that term is defined in 18 USC 1961(4). All defendants transacted and continue to transact business within this judicial district.

14. Jurisdiction and venue are also properly in this District pursuant to 18 USC 1965(a)-(b).

INTRODUCTION

15. The Plaintiffs repeat and reallege Paragraphs 1 through 14.

16. The Plaintiffs bring this case against the Defendants for violations of the federal RICO statute and the Computer Fraud and Abuse Act; for fraud, breach of fiduciary duty, conversion, tortuous interference with contracts, gross negligence and negligence.

17. Defendant World Child is a large international adoption agency operating in all 50 states and the District of Columbia.

18. Defendant World Child is in the business of procuring Russian, East European, Central American and Chinese children for individuals in the United States to adopt.

19. Defendant World Child procures children utilizing a variety of intermediaries and agents in foreign countries including Defendant Panasov.

20. Defendant Panasov, utilizing personal and family contacts in Russia, secures adoptions from local officials and courts by using a variety of legal and questionable means. Foreign agents like Panasov also provide adoption services to Americans including travel, interpretation, room and board, transportation and even legal representation.

21. Defendant World Child assists adoptive couples with immigration and foreign adoption paperwork, often charging tens of thousands of dollars, while offering no guarantee of a

successfully completed adoption, the healthiness or well-being of the child, or the honesty and integrity of the process.

22. For many years Plaintiffs Spool and CFA worked cooperatively [joint-venture] with Defendants World Child, Goolsby, Jenkins and Panasov to place Russian children into the homes of New York families, including the Fergusons who successfully completed their first Russian adoption through the joint-venture.

23. This arrangement began to unravel when World Child—although receiving more services from Plaintiff Spool and CFA for no additional money—demanded a greater percentage of the joint-venture's generated fees and began to refuse to pay invoices and actively contest the legitimacy of CFA's charges.

24. Ultimately the Defendants secretly colluded with long-time CFA employees Dibble and Whittaker to steal the assets of CFA while Plaintiff Spool was on vacation, and re-direct the joint-venture's past, present and future clients to a new unauthorized and illegal adoption "agency" [NY Representative Office].

25. Defendants Dibble and Whittaker, in carrying out this scheme, utilized Defendant Spool's stolen social work license, the CFA agency license and CFA letterhead to continue servicing the joint-venture's former clients.

26. The NY Representative Office was not authorized by the State of New York to conduct adoption activities and was not staffed by any licensed professionals.

27. Defendants Dibble and Whittaker forged documents and signatures, falsely notarized signatures, submitted unauthorized documents to state and federal officials, utilized

stolen CFA letterhead and improperly substituted documents from one client to another to advance the activities of the NY Representative Office and collect fees from clients.

28. Clients, such as Plaintiff Fergusons, believed that the "relocation" of World Child's New York office was routine and were encouraged by the NY Representative Office to believe that their adoptions were being handled by licensed professionals at a New York authorized adoption agency.

29. Instead, Plaintiff Fergusons' entire case file, including confidential and personal documents, were being subjected to forgery and fraud while the NY Representative Office continued to collect fees from them to process their Russian adoption.

30. Defendants Dibble and Whittaker were eventually investigated by law enforcement and plead guilty to forgery.

31. After their arrest and arraignment, Defendants Dibble and Whittaker continued to operate the NY Representative Office, even after Plaintiff Spool informed Defendant Goolsby that illegal activities were occurring.

32. After her arrest and arraignment, Defendant Dibble continued to work for the NY Representative Office and with Plaintiff Fergusons, forging and faking documents which were ultimately submitted to Defendant Panasov and the Russian government through World Child's Maryland office.

33. When Plaintiff Fergusons traveled to Russia to finalize their adoption, the Russian court discovered the NY Representative Office's deceptions and denied the adoption due to fraudulent documents.

34. Plaintiff Spool and CFA were left with unpaid invoices, lost past, present and future clients, and a damaged reputation which drove CFA to the brink of bankruptcy.

RICO FACTUAL ALLEGATIONS
ROGER SPOOL AND CHILD AND FAMILY ADOPTION, INC.

35. The Plaintiffs repeat and reallege Paragraphs 1 through 34.

36. In August 1994, a medium sized international adoption agency, World Child, partnered with a well-respected New York adoption agency, CFA to expand World Child's international adoption program to New York State.

37. During the next ten years, World Child and CFA worked closely together to build and expand international adoption services throughout New York. Ultimately their joint-venture was handling over 120 international adoptions per year and World Child grew into the fourth or fifth largest international adoption agency in the United States.

38. Throughout this period, World Child located children and processed international dossiers while CFA provided social work services to adoptive parents and conducted home studies and postplacement visits. CFA also did all the marketing for the joint-venture in New York State and assisted New York clients in assembling and processing their international dossiers. CFA hosted and organized dinner parties for foreign adoption and government dignitaries on behalf of the joint-venture and organized a large national gathering in New Paltz, New York for World Child families nationwide.

39. The joint-venture's clients paid two basic fees for their foreign adoption; the agency fee and the foreign program fee. Both of these fees were paid directly to World Child.

40. World Child paid CFA a fixed amount of the agency fee for the services CFA provided to the joint-venture's clients. This amount remained essentially unchanged during the

entire period of the joint-venture despite the fact that CFA provided additional services to the joint-venture's clients.

41. In 2002, Defendants Jenkins and Goolsby informed Spool that they were increasing the foreign program fee charged to clients and were utilizing the increase to cover general agency expenses, while informing clients that the entire fee was necessary to pay foreign affiliates to process their adoptions. These fees were billed to clients directly by World Child and were payable directly to World Child.

42. In the fall of 2003, World Child's payments to CFA grew increasingly delinquent.

43. On February 20, 2004, Goolsby sent a memo to Spool proposing a change in the joint-venture's payment structure which would reduce CFA's per case payments by almost 40%.

44. In the memo, Goolsby expressed concern that CFA's longtime employee, Dibble, who worked on international adoptions as a non-licensed program coordinator, would soon leave and proposed hiring Dibble as a World Child employee.

45. On February 27, 2004, Spool replied seeking clarification on Goolsby's unilateral offer and requesting payment of outstanding invoices.

46. On March 8, 2004, Goolsby sought a proposal from Spool regarding "a fair reimbursement for [CFA's] homestudy license." Goolsby once again proposed that World Child hire Dibble as a World Child employee. Jenkins was copied on this communication.

47. On March 24, 2004, Spool sent Goolsby a letter expressing concern about the $25,000+ in outstanding invoices owed to CFA by World Child and questioned the ability of World Child to pay CFA what it owed.

48. On March 30, 2004, Goolsby replied questioning the amount owed and expressing a desire to discontinue the joint-venture.

49. On April 2, 2004, Jenkins sent Spool a letter on Jenkins & Povtak letterhead accusing CFA of terminating the joint-venture. Jenkins announced that World Child immediately and unilaterally "revokes and renounces any authority you feel you may have had to act on their behalf, including but not limited to contractual abilities or commitments, authorization for payment of debts, dues, claims and representations of any nature whatsoever."

50. The next day, April 3, 2004, Spool left with his wife Lilyan on a one week foreign vacation. They entrusted their two longtime employees, Dibble and Whittaker, with the operation of the CFA office during their absence.

51. Due to the ongoing dispute with World Child, Spool instructed both Whittaker and Dibble not to have any conversations with Jenkins or Goolsby. He specifically admonished his employees not to answer any questions from them and to refer their calls to him on his cell phone.

52. On April 7, 2004, in the middle of Spool's vacation, Jenkins faxed a letter to the CFA office on Jenkins & Povtak letterhead confirming a threatened "shut-off" of World Child operations in New York and offering a "transfer of business matters" including "costs of

telephones, mail handling or incidentals" from CFA to World Child. This letter was copied to Goolsby and was time stamped 18:55 GMT or 1:55 PM.

53. In reality, this conversation between Spool and Jenkins never occurred.

54. Approximately one hour before this fax, at 12:47 PM, a fax from CFA's office was sent to American Long Lines, instructing them to immediately transfer the forwarding of CFA's toll free number to a new number. At the bottom of the fax were Spool and Goolsby's typed names.

55. In reality, Spool never approved this transfer.

56. The next day, April 8, 2004, Dibble emailed Spool announcing that she had accepted another position that she was starting immediately.

57. Later that day, Goolsby announced in a memo on World Child letterhead to "All Current NY Families" that World Child's New York office was relocating. The memo was copied to Dibble.

58. Finally, on April 8, 2004, Jenkins sent a letter on World Child letterhead to American Long Lines in Horsham, Pennsylvania stating that "World Child is no longer sharing office space with Child and Family Adoption, Inc." and requesting that all billing for the toll free number be redirected. Jenkins further stated that Spool "resigned as World Child's authorized NY representative, and consequently, has renounced his authority to act on behalf of World Child." Jenkins concluded the letter stating that Goolsby and Dibble were authorized to make all arrangements with American Long Lines and that Dibble "continues in World Child's NY Representative Office." The letter closed with

"[f]eel free to contact . . . me through my law firm, Jenkins & Povtak, at 301-977-8249, regarding Spool's revocation of authority to act."

59. In reality, Spool never resigned and never revoked his authority to act regarding the American Long Lines account. The toll free number belonged to CFA.

60. The American Long Lines toll free number was a major marking tool for CFA which appeared in its advertisements, yellow pages ad and marketing material.

61. Upon information and belief, on or about April 8, 2004, Dibble and Whittaker, acting at the direction of Jenkins and Goolsby, removed the contents of confidential CFA client and computer files—including case notes—and made copies of child abuse clearances, criminal clearances and other documents. All that remained were empty files.

62. Upon information and belief, on or about April 8, 2004, Dibble and Whittaker, acting at the direction of Jenkins and Goolsby, made unauthorized copies Spool's social work license and CFA agency licenses and removed these copies from the CFA office.

63. Upon information and belief, on or about April 8, 2004, Dibble and Whittaker, acting at the direction of Jenkins and Goolsby, removed office supplies, marketing materials including agency letterhead, and accessed and removed computer files without authorization from the CFA office.

64. Upon information and belief, on or about April 8, 2004, Dibble and Whittaker, acting at the direction of Jenkins and Goolsby, created the NY Representative Office in Dibble's home utilizing the looted assets of CFA.

65. The NY Representative Office was neither a foreign registered corporation nor subsidiary of World Child but a distinct and separate enterprise created to conduct business in New York.

66. The NY Representative Office was staffed by Dibble and Whittaker and utilized the looted assets of CFA in carrying out its activities.

67. On April 6, 2004, Goolsby sent a letter on World Child letterhead announcing that World Child's New York Office had a new address. The letter stated that World Child was "moving" its New York offices and had a new mailing address of World Child International, PO Box 938, New Paltz, New York 12561. The new phone number was 845-895-8279. The letter reassures clients that "some of you may have questions about your individual cases, and if so, you may contact either your case manager directly, or Susan or Dorene at the new, New York office number. . . . All of us at World Child are excited about this new arrangement, and are ready to help with your adoption adventure . . . I felt it was important to let everyone know that even though we are relocating, World Child is still moving forward on your individual case."

68. On or about April 14, 2004, either Dibble or Whittaker, acting through the NY Representative Office, forged Spool's name on a joint-venture client's documents, including Spool's social work license, agency license and home study, which were then submitted to the Immigration and Naturalization Service and placed in the client's foreign dossier package and sent to the Guatemalan government. Whittaker notarized the signature as though Spool was present in front of her.

69. Sometime between April 9, 2004 and August 25, 2004, Dibble and/or Whittaker forged and improperly notarized child abuse clearances for another of the joint-venture's clients.

70. Sometime between April 9, 2004 and August 25, 2004, Dibble and/or Whittaker forged and improperly affixed and notarized CFA's agency license on a home study destined for Russia for yet another of the joint-venture's clients.

71. Neither Spool nor CFA authorized the activities in paragraphs 66 through 70.

72. Upon information and belief, the NY Representative Office collected money from these and similar acts and forwarded the funds to World Child and the Foundation.

73. On April 23, 2004, Jenkins sent an email to Goolsby which was copied to Dibble and Whittaker. The purpose of the email was to discuss the NY Representative Office's operations. The email concluded with the following admonition: "I am sure Dibble and Whittaker want to keep things as smooth and hassle-free as possible; we can work out the details or whatever when things are less hectic, if the issue right now is just keeping the clients' moving thru the system."

74. In May 2004, the NY Representative Office sent letters through the United States mails to CFA's stolen client list inviting past and present CFA clients to World Child's "Tenth Annual" picnic. In reality it was the NY Representative Office's first picnic. The picnic was the same day and location as CFA's long-scheduled tenth annual picnic. The CFA annual picnic was an important marketing and good-will event for CFA during the past decade. This action by the NY Representative Office created a great deal of confusion for CFA's past and present clients.

75. On July 21, 2004, Dibble and Whittaker were arrested and arraigned on felony forgery and stolen document charges. Dibble pled guilty in 2005 to forgery charges involving several CFA clients including the Fergusons.

76. On July 28, 2004, Spool sent a letter to Goolsby informing her that "the recent arrest on felony charges of your personnel in the World Child New York office, is the result of their forging Child & Family documents, stealing, and illegally using my social work license and this agencies state license. These are very serious offenses."

77. During this entire period of time – from April through July 2004 –Spool on behalf of CFA conducted good faith negotiations with World Child to obtain the monies owed from 2003 and 2004. World Child repeatedly rejected Spool's attempts to settle the matter and ultimately gave him nothing on the significant sums owed CFA.

78. As of January 2005, World Child still listed Dibble's telephone number and the New Paltz, New York post office box as the NY Representative Office contact information.

79. On April 19, 2005, Dibble and Goolsby issued a joint communiqué to World Child staff members and affiliates.

80. During this entire period of time, World Child made numerous contacts via interstate federal wires and federal mail to convince CFA clients that World Child would continue to represent them in their adoption in the same manner and with the same professional standards as CFA and that there was essentially no difference between the joint-venture and the NY Representative Office.

81. In addition, during this entire period of time, the NY Representative Office attempted to get CFA's former clients to cancel contractually obligated and pre-paid postplacement

services with CFA and instructed them to request refunds which could be re-directed to post-placement services arranged by the NY Representative Office.

82. The Defendants, employing interstate federal wires and federal mails, submitted adoption documents to the Immigration and Naturalization Service, the State of New York, and foreign governments including Russia and Guatemala, utilizing CFA letterhead to create the impression that CFA, an authorized New York adoption agency, was still working on the file when in fact Dibble had created and oftentimes forged the documents.

83. Throughout this period, the parties communicated extensively utilizing interstate wires and federal or international mails including fax, email, postal mail, express mail systems such as FedEx, local and long distance telephone, toll free telephone, cell phone and international telephone systems.

RICO FACTUAL ALLEGATIONS
BRUCE AND CHARLENE FERGUSON

84. The Plaintiffs repeat and reallege Paragraphs 1 through 83.

85. On January 21, 2003, the Fergusons submitted a World Child application to adopt a child from Russia. They submitted this form to World Child/New York at CFA's address in New Paltz, New York.

86. On or about January 30, 2003, the Fergusons received a letter on World Child letterhead welcoming them to the Russia Program. The letter stated that "it is not acceptable to request a 'healthy' child. Russian medical reports often, if not always, list a medical diagnosis at birth. Most often, these diagnoses do not accurately reflect the health status of the child. . . . Your homestudy must state that you want to adopt a child who is

"as healthy as possible" unless you will consider certain special needs, such as limb deformities, cleft palate, etc." The letter goes on to state that "if you have an arrest record, or if you have any medical conditions or past history of serious medical conditions, please contact us of have your social worker contact us to discuss the wording of your homestudy. . . . Your homestudy must state that you are aware that your child may have undiagnosed medical conditions, and that you are aware that there may be unforeseen delays."

87. The World Child Memo of Understanding offers that "[m]any of our families have enjoyed exchanging information with other families over the internet. Your case manager will be glad to provide you with the e-mail addresses of willing World Child clients who are either in the process of adoption or have completed their adoptions. We strongly discourage our clients from posting on the list serves, as it has the potential of affecting or disrupting adoptions. The list serves are read by foreign government officials, and the officials often do not like what they are reading as it is also possible to misinterpret what has been posted. Past postings have negatively impacted foreign adoptions."

88. On May 12, 2004, the Fergusons paid World Child $12,200.00 in foreign program fees.

89. Throughout the Fergusons' adoption process, letters and faxes from World Child continued to indicate that CFA was an important and integral part of the joint-venture's service delivery in New York and that CFA would assist the Fergusons at every step.

90. On or about April 6, 2004, the Fergusons received a letter on World Child letterhead stating that "World Child's New York Office has a NEW Address." It listed the new

mailing address as World Child International, PO box 939, New Paltz, New York 12561. The new phone number was 845-895-8279. There was no indication whatsoever that this new office was no longer affiliated with CFA, that the NY Representative Office was now being run by unlicensed individuals through a fake adoption agency which was not recognized by the State of New York as an authorized adoption agency. On information and belief, the purpose of this subterfuge was to confuse clients like the Fergusons in order to continue processing adoptions and collecting fees for the direct benefit of the RICO Defendants.

91. On or about April 20, 2004, the Fergusons received a letter from the NY Representative Office indicating that they needed visas. The Fergusons were required to send $850 in a check made payable to World Child International which was sent to World Child International, 113 Park Avenue, Falls Church, Virginia 22046. The letter was signed "Susan Dibble, NY Regional Coordinator" and listed 845-895-8279 as the contact number.

92. On or about July 27, 2004, the Fergusons received a fax from Dibble requesting an additional $550 for visas. The check and documentation were required to be sent by overnight FedEx, Airborne or DHL to World Child's Falls Church Office.

93. In preparation for their trip to Russia to finalize their adoption, the NY Representative Office sent a fax to the Fergusons instructing them to take to Russia "a variety of bills, including approximately twenty bills each of $1s, $5s, $10s, $20s, and $50s. The rest can be $100 dollar bills. Bills that are over ten years old, are very wrinkled, or are torn or written upon, will not be acceptable."

94. World Child orally instructed Plaintiff Bruce Ferguson to bring thousands of dollars in new $100 bills to Russia and to not declare the cash to United States Customs. As soon as he arrived in Russia, Defendant Panasov demanded all of Bruce Ferguson's cash and scrutinized each bill rejecting any that had the slightest imperfection.

95. The World Child contract states that "Russia is a 'gift giving' culture. Gifts represent more than just a thank you or form of appreciation. In many instances they are necessary to establish your credibility or demonstrate your knowledge of another person's status."

96. The Defendants also instructed the Fergusons to provide "Gifts for Russia." Their written memo states "[t]hese are gifts, not bribes. Gifts are part of the Russian way of doing business. . . Please do not bring gifts that are of poor quality, or that do not work properly. If you would be insulted if you received a particular item, or if you would be ashamed to give such a gift to a friend, please don't bring it to Russia! The easiest way to present the gifts is to bring gift bags and tissue paper, rather than wrapping the gifts. Your Russian coordinator will either be cueing you as to what to give to whom, or she will give the gifts for you. She may also combine several smaller gifts into one larger gift."

97. Several of the gifts the Fergusons were instructed to provide went to Defendant Panasov and World Child Moscow Office staff even though the Ferguson's paid over $12,000 in foreign fees toward the operation of that office.

98. On April 12, 2004, the Fergusons paid World Child $1000 for foreign registrations and visas.

99. On May 12, 2004, the Fergusons paid World Child $12,200.

100. On or about May 21, 2004, Dibble forged the Ferguson's homestudy. The homestudy was originally done by CFA in 2003. Although an updated homestudy was necessary for the Fergusons to finalize their adoption in Russia, the NY Representative Office never did it. Instead they re-printed the 2003 homestudy on CFA letterhead and forged the social worker's signature on the report. Dibble then notarized the report and attached an unauthorized copy of CFA's license dated June 25, 2004. Inexplicably, the license was dated almost one month after the signature date on the homestudy report.

101. Upon information and belief, Dibble also forged all of the updated supporting documents needed to finalize the Ferguson's adoption in Russia and these documents were printed on CFA letterhead with forged signatures. One document was a New York State updated Child Abuse Clearance. The NY Representative Office charged the Fergusons $313 to obtain the necessary county and state certifications for documents which were forged by Dibble.

102. In early August, 2004, the Fergusons traveled to Russia to finalize their adoption and pick up their child. They were met in Moscow by Panasov who was their constant companion during their stay in Russia. Panasov provided translation and transportation services for the Fergusons and legally represented them before the local civil court which was conducting the adoption proceeding. The Fergusons were required to entertain and feed Panasov and provide cash and other gifts for him, his staff and his family.

103. On August 10, 2004, the Russian civil court denied the Fergusons adoption based on numerous irregularities in the documents submitted by the NY Representative Office

through World Child's office in Maryland and Defendant Panasov. Unbeknownst to the Fergusons at the time, several of these documents contained Dibble's forgeries.

104. On August 17, 2004, the Fergusons received a fax from Dibble of an email to Dibble indicating that Defendant Panasov was representing them before the Russian courts as their attorney and appealing the adverse trial court decision to the Russian Supreme Court. The Fergusons neither authorized this nor were aware that Panasov was an attorney authorized to practice before the Russian courts.

105. On August 18, 2004, Defendant Panasov filed a handwritten appeal on behalf of the Fergusons. That appeal was denied on August 27, 2004.

106. Upon information and belief, on December 3, 2004, Dibble and the NY Representative Office forged the Ferguson's signatures on a New York State Central Register Database Check. This check is required for international adoptions and contains sensitive and confidential information about an applicant's child abuse and neglect history. This information was not requested by the Fergusons. It was submitted by the NY Representative Office through an affiliated agent called Family Connections in Cortland, New York. The Fergusons know of no legitimate reason why this request was submitted using forged signatures of their names.

107. The Fergusons never received a return of their $3950 agency fee.

108. Throughout this period, the Fergusons communicated extensively with the Defendants utilizing interstate wires and federal and international mails including fax, email, postal mail, express mail systems such as FedEx, local and long distance telephone, toll free telephone, cell phone and international telephone systems.

109. On information and belief, the Defendants deposited the Fergusons' and other clients' foreign program fees, as well as other legally and illegally gained profits from World Child and its affiliates, into the Foundation.

110. On information and belief, the Foundation receives little or no money from individual or outside contributors. Rather the Foundation's assets and income are derived solely from World Child profits and agency fees, stock and bond dividends from assets purchased with those fees, as well as rental income from real estate owned by the Foundation and paid to the Foundation by World Child and its affiliates.

111. The total value of the Foundation's net assets as of June 30, 2003 was almost $1.5 million.

112. On information and belief, only a fraction of the money obtained and controlled by the Foundation is paid out to charitable institutions as the Defendants claim on their IRS Form 990. Rather monies are shifted between the Foundation, Defendant Panasov, World Child and other related entities.

113. On information and belief, the sole purpose for the Foundation's creation was to hide and shelter World Child assets and profits from various plaintiffs who have sued World Child during the past decade. Spool was present at meetings with the Defendants when the creation of the Foundation was discussed. Spool overheard Defendants Goolsby and Jenkins explain that the Foundation was created to shelter assets in order to avoid legal judgments.

RICO ENTERPRISE ALLEGATIONS

114. The Plaintiffs repeat and reallege Paragraphs 1 through 113.

115. The NY Representative Office was created by the Defendants to engage in conduct that constitutes a RICO pattern of racketeering activity. The Plaintiffs allege that the NY Representative Office is a RICO enterprise as that term is defined in 18 USC 1961(4).

116. The NY Representative Office is managed by Dibble and Whittaker and directed and controlled by Jenkins, Goolsby and World Child for the benefit of all the Defendants including Panasov.

117. The Defendants direct and control the affairs of the NY Representative Office, including the solicitation of joint-venture clients and potential clients, to commence and/or continue their international adoption through World Child.

118. The Defendants actively engaged in efforts to conceal the fraudulent and illegal alteration, signing and certification of adoption documents from the Plaintiffs and other joint-venture clients.

119. The Defendants are engaged in activities that affect federal interstate and foreign commerce.

120. The Defendants created the Foundation as a repository for profits gained through a pattern of racketeering activity as that term is defined by 18 USC Section 1961(5).

121. The Foundation is a RICO enterprise as that term is defined in 18 USC 1961(4).

122. The Foundation's most recent IRS Form 990 indicates that the majority of the Foundation's income is "foreign agency adoption fees."

123. The Foundation is managed by Jenkins for the benefit of the RICO Defendants.

124. The Foundation's most recent IRS Form 990 lists Jenkins as its executive director.

RICO PATTERN OF RACKETEERING ACTIVITY

125. The Plaintiffs repeat and reallege Paragraphs 1 through 124.

126. Upon information and belief, the Defendants engaged in the above activities and conduct between January 2004 and at least April 19, 2005. Defendants began overcharging clients for foreign program fees as early as 2002.

127. These activities and conduct constitute a repeated and continuing series of predicate acts under RICO.

128. This series of predicate acts, committed using interstate mail and wire systems, constitutes a "pattern of racketeering activity" as that term is defined in 18 USC 1961(5).

129. The above activities and conduct constitute the following types of "racketeering activity" as that term is defined in 18 USC 1961(1): Federal Principal and Aider and Abettor Liability [18 USC 2]; Federal Mail Fraud [18 USC 1341]; Federal Mail Fraud – Aiding and Abetting [18 USC 1341]; Federal Mail Fraud – Conspiracy [18 USC 1341]; Federal Wire Fraud [18 USC 1343]; Federal Wire Fraud –Aiding and Abetting [18 USC 1343]; Federal Wire Fraud – Conspiracy [18 USC 1343]; Federal Intangible Personal Property Right Deprivation [18 USC 1346]; Federal Racketeering [18 USC 1952]; Federal Racketeering – Aiding and Abetting [18 USC 1952]; Federal Racketeering – Conspiracy [18 USC 1952]; Federal Money Laundering [18 USC 1956]; Federal Money Laundering – Aiding and Abetting [18 USC 1956]; Federal Money Laundering – Conspiracy [18 USC 1956]; Federal Criminally Derived Property [18 USC 1957]; Federal Criminally Derived Property – Aiding and Abetting [18 USC 1957]; Interstate Transport of Stolen Property [18 USC 2314, 2315]; and Federal Criminally Derived Property – Conspiracy [18 USC 1957].

130. The above activities and conduct constitute separate schemes performed by the Defendants at different times and against different parties during the relevant time period. For example, Dibble and Whittaker committed forgery and fraud and stole Spool's social work license, the CFA agency license and CFA letterhead in order to defraud the joint-venture's adoption clients. At or about the same time, Defendants Jenkins and Goolsby used interstate mails and wires to defraud the joint-venture's clients, like the Fergusons, by convincing them that they were continuing to deal with a legitimate, New York licensed adoption agency. Before, during and after these acts, the Defendants transferred World Child profits, collected as fees through clients like the Fergusons and others in New York and elsewhere, into the Foundation in order to hide and shelter the profits and assets derived from the pattern of racketeering activity.

131. The activities and conduct engaged in by each Defendant was related by virtue of the common participants in the creation, operation and management of the NY Representative Office and the Foundation as RICO enterprises; the common victims, including the Fergusons, Spool, CFA and other clients of the NY Representative Office; and the common purpose to defraud the Fergusons and other clients of their money and then to deposit the proceeds into a dubious non-profit foundation in order to protect the illegally derived monies from outside interests.

132. The Defendants' actions constitute a continuing harm to the Plaintiffs and others. The Defendants started planning this scheme when they offered to hire Dibble in January 2004. The NY Representative Office was created by Dibble and Whittaker in April 2004 at the direction of Jenkins and Goolsby and continued to operate until at least April 2005.

133. The Defendants' actions also constitute a continuing threat of future injury to other clients like the Fergusons and affiliates like the CFA. The Defendants began defrauding their clients as early as 2002, when Defendants Goolsby and Jenkins informed Spool that they would begin overcharging clients for their foreign program fees. The Defendants all conspired to steal the Spools' confidential files, licenses, letterhead and marketing tools beginning in late 2003 and early 2004, and to create the NY Representative Office and operate it without a license beginning in April 2004. The Defendants did not halt or alter the operation of the NY Representative Office even after being informed by Spool in the summer of 2004 that Dibble and Whittaker (the sole employees of the NY Representative Office) were indicted for felony forgery and fraud in connection with the operation of the NY Representative Office.

134. On information and belief, the NY Representative Office continued to forge the Fergusons' signatures on confidential child abuse clearance requests as late as December 2004.

135. The Defendants showed no intention of halting their illegal operations in New York despite stark and clear evidence that fraudulent activity had occurred and was ongoing. Dibble continued her involvement with the Defendants until at least April 19, 2005. There is no reason to believe that the Defendants are not conducting similar fraudulent and illegal activities or that they will not perpetrate similar fraudulent and illegal activities against other clients in the future.

136. The Defendants have, by and through the pattern of racketeering activity alleged herein, victimized the following persons: the Fergusons in the amount of at least $7700 and Spool/CFA of at least $50,000 per year.

137. Upon information and belief, additional victims exist and the instances and identities referenced in this complaint are cited by example and not by restriction.

138. The Plaintiffs have sustained injuries to their respective interests in business and property as a result of the Defendants' activities and conduct.

139. The Plaintiffs are entitled to recover, pursuant to 18 USC 1964(c), treble damages in an amount to be determined by offer of proof at trial. The Plaintiffs are also entitled to recover attorneys' fees and costs of this litigation, as well as damages arising from lost profits and lost business opportunities attributable to the activities engaged in by the Defendants.

FIRST CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR CONTRAVENTION OF 18 USC 1962(b) AND (c)

140. The Plaintiffs repeat and reallege Paragraphs 1 through 139.

141. At all relevant times, the Defendants, each and every one, were RICO "persons" within the meaning of 18 USC 1961(3) and 1964(c).

142. At all relevant times, the NY Representative Office and the Foundation were RICO "enterprises" within the meaning of 18 USC 1961(4).

143. The acts set forth in this complaint constitute conduct engaged in by the Defendants to deprive the Plaintiffs of their interest in business and property by and through commission of federal mail fraud, federal wire fraud, federal racketeering, federal money

laundering, and federal criminally derived property, and therefore constitute "racketeering activity" as that term is defined in 18 USC 1961(1).

144. The Defendants engaged in the aforementioned pattern of racketeering activity using interstate and foreign mail and wire systems with the intent to harm the Plaintiffs' interest in business and property. The Defendants' fraudulent activity injured the Plaintiffs' interest in business and property.

145. The Defendants were "employed by or associated with an enterprise" (the NY Representative Office) that used interstate and foreign commerce to engage in a pattern of racketeering activity. As such each and every Defendant is liable under 18 USC 1962(c).

146. Defendants Goolsby, Jenkins, Dibble, Whittaker, World Child and Jenkins & Povtak acquired and maintained an interest in and/or control over the NY Representative Office and the Foundation. The continued functioning of both these enterprises was accomplished through a pattern of racketeering activity, namely the theft of Spool's license and CFA's business property and license, and defrauding the Fergusons and other joint-venture clients in order to collect money. The monies obtained from the pattern of racketeering activity were deposited into the Foundation in order to sheild it from outside interests. Accordingly each Defendant is liable to the Plaintiffs under 18 USC 1962(b).

147. The Plaintiffs are entitled to recover, pursuant to 18 USC 1964(c), treble damages in an amount to be determined by offer of proof at trial. The Plaintiffs are also entitled to recover attorneys' fees and costs of this litigation, as well as damages arising from lost

profits and lost business opportunities attributable to the activities engaged in by the Defendants.

SECOND CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR CONTRAVENTION OF 18 USC 1962(d)

148. The Plaintiffs repeat and reallege Paragraphs 1 through 147.

149. At all relevant times, the Defendants, each and every one, were RICO "persons" within the meaning of 18 USC 1961(3) and 1964(c).

150. At all relevant times, the NY Representative Office and the Foundation were RICO "enterprises" within the meaning of 18 USC 1961(4).

151. The acts set forth in this complaint constitute conduct engaged in by the Defendants to deprive the Plaintiffs of their interest in business and property by and through commission of federal mail fraud, federal wire fraud, federal racketeering, federal money laundering, and federal criminally derived property, and therefore constitute "racketeering activity" as that term is defined in 18 USC 1961(1).

152. The Defendants' acts were related and continuous. As such they constitute a RICO pattern of racketeering activity as that term is defined in 18 USC 1961(5).

153. The Defendants engaged in the aforementioned pattern of racketeering activity using interstate and foreign mail and wire systems with the intent to harm the Plaintiffs' interest in business and property. The Defendants' fraudulent activity injured the Plaintiffs' interest in business and property.

154. All of the Defendants conspired to violate 18 USC 1962(c) in that each and every Defendant was knowledgeable about the operations of the NY Representative Office and participated directly in the fraudulent acts against the Fergusons and others, the theft of

Spool's social work license, and the theft of CFA's business property and license in order to create the NY Representative Office. The Defendants funneled monies and profits from the NY Representative Office into the Foundation in order to shield assets from potential creditors like the Plaintiffs. The Defendants communicated with each other and with the Plaintiffs about these activities and each committed acts to further the interests of the RICO enterprises. As such each and every Defendant is liable to the Plaintiffs under 18 USC 1962(d).

155. The Plaintiffs are entitled to recover, pursuant to 18 USC 1964(c), treble damages in an amount to be determined by offer of proof at trial. The Plaintiffs are also entitled to recover attorneys' fees and costs of this litigation, as well as damages arising from lost profits and lost business opportunities attributable to the activities engaged in by the Defendants.

THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS WORLD CHILD, JENKINS & POVTAK, GOOLSBY, JENKINS AND PANASOV FOR CONTRAVENTION OF 18 USC 1962(A)

156. The Plaintiffs repeat and reallege Paragraphs 1 through 155.

157. At all relevant times, the Defendants, each and every one, were RICO "persons" within the meaning of 18 USC 1961(3) and 1964(c).

158. At all relevant times, the NY Representative Office and the Foundation were RICO "enterprises" within the meaning of 18 USC 1961(4).

159. The acts set forth in this complaint constitute conduct engaged in by the Defendants to deprive the Plaintiffs of their interest in business and property by and through commission of federal mail fraud, federal wire fraud, federal racketeering, federal money

laundering, and federal criminally derived property, and therefore constitute "racketeering activity" as that term is defined in 18 USC 1961(1).

160. The Defendants engaged in the aforementioned pattern of racketeering activity using interstate and foreign mail and wire systems with the intent to harm the Plaintiffs' interest in business and property. The Defendants' fraudulent activity injured the Plaintiffs' interest in business and property.

161. Defendants World Child, Jenkins & Povtak, Goolsby, Jenkins and Panasov engaged in a pattern of racketeering activity as that term is defined in 18 USC 1961(4) by defrauding the Fergusons and other joint-venture clients in order to collect money.

162. Defendants Goolsby, Jenkins, Jenkins & Povtak, and World Child used and invested the proceeds of income derived from the pattern of racketeering activity in a RICO enterprise, namely the Foundation, to hide and shield the proceeds of legal and illegal activities from the Plaintiffs and other outside interests. On information and belief, Defendant Panasov was paid large sums of money from the Foundation. As such each and every Defendant is liable to the Plaintiffs pursuant to 18 USC 1962(a).

FOURTH CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR VIOLATION OF 18 USC 1030(A)

163. The Plaintiffs repeat and reallege Paragraphs 1 through 162.

164. Plaintiffs Spool and CFA hereby allege that certain acts by Defendants Dibble and Whittaker, at the direction of Defendants Goolsby and Jenkins, wherein Dibble and Whittaker accessed and stole the Plaintiffs' computer files without authorization thereby obtaining confidential and protected information concerning interstate and

foreign communications in order to obtain an unfair competitive advantage over CFA, constitute a violation of the Computer Fraud and Abuse Act, 18 USC 1030(a)(4)–(a)(5).

165. The Plaintiffs were damaged by these acts in an amount of at least $50,000 per year since the unauthorized access was discovered in July 2004 and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

FIFTH CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR TORTIOUS INTERFERENCE WITH CONTRACTS

166. The Plaintiffs repeat and reallege Paragraphs 1 through 165.

167. Plaintiffs Spool and CFA hereby allege that the acts set forth in this complaint constitute a tortuous interference with their contracts with clients.

168. The Plaintiffs were damaged by these acts and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

SIXTH CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR CONVERSION

169. The Plaintiffs repeat and reallege Paragraphs 1 through 168.

170. Plaintiffs Spool and CFA hereby allege that the acts set forth in this complaint constitute conversion against them.

171. The Plaintiffs were damaged by these acts and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

SEVENTH CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR TORTIOUS INTERFERENCE WITH A PROSPECTIVE BUSINESS ADVANTAGE

172. The Plaintiffs repeat and reallege Paragraphs 1 through 171.

173. Plaintiffs Spool and CFA hereby allege that the acts set forth in this complaint constitute a tortuous interference with their prospective business advantage over World Child and the NY Representative Office.

174. The Plaintiffs were damaged by these acts and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

EIGHTH CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR FRAUD

175. The Plaintiffs repeat and reallege Paragraphs 1 through 174.

176. The Plaintiffs hereby allege that the acts set forth in this complaint constitute fraud.

177. The Plaintiffs were damaged by these acts and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

NINTH CLAIM FOR RELIEF IN THE ALTERNATIVE AGAINST ALL DEFENDANTS FOR NEGLIGENCE

178. The Plaintiffs repeat and reallege Paragraphs 1 through 177.

179. Plaintiff Fergusons hereby allege that the acts set forth in this complaint constitute negligence.

180. The Plaintiffs were damaged by these acts and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

TENTH CLAIM FOR RELIEF IN THE ALTERNATIVE AGAINST ALL DEFENDANTS FOR GROSS NEGLIGENCE

181. The Plaintiffs repeat and reallege Paragraphs 1 through 180.

182. Plaintiff Fergusons hereby allege that the acts set forth in this complaint constitute gross negligence.

183. The Plaintiffs were damaged by these acts and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

CONCLUSION

WHEREFORE, the Plaintiffs pray for judgment against the Defendants, each and every one of them, as follows:

1. For compensatory damages arising from primary contravention of 18 USC 1962(a), (b), (c) and (d) pursuant to 18 USC 1964(c);

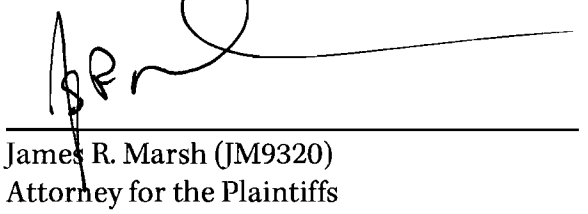
2. For recovery of attorneys' fees and costs pursuant 18 USC 1964(c);

3. For recovery of prejudgment interest pursuant to 18 USC 1964(c);

4. For such other and further relief as the Court finds just and proper.

Dated: June 15, 2006
White Plains, New York

Respectfully submitted,



James R. Marsh (JM9320)
Attorney for the Plaintiffs

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COPY

IN THE UNITED STATES FEDERAL DISTRICT COURT

for the SOUTHERN DISTRICT of NEW YORK

Spool, *et al*, *Plaintiffs* vs. World Child, *et al*, *Defendants*	Case No. 06-CIV-4243

ANSWER of DEFENDANT DIBBLE

Defendant Susan Dibble responds to **Plaintiffs' 1st Amended Complaint** for an **Answer and Affirmative Defenses** as follows:

First Defense

The Defendant, Susan Dibble, generally denies liability under each and every count of the 1st Amended Complaint directed against her.

Second Defense

In furtherance of her denial of liability, Defendant states regarding the numbered paragraphs that Defendant admits paragraphs 1-3, 6-8, 22, and the first sentence of paragraphs 9 & 10. All remaining numbered paragraphs are denied; many assert legal conclusions, any alleged documents speak for themselves, or Defendant has no ability to determine the truth of the averments and therefore they are denied under the Rules.

granted against this Defendant.

Fourth Defense

Plaintiffs' claims are barred by the doctrine of Unclean Hands.

Fifth Defense

Plaintiffs' claims are barred by the affirmative defense of Waiver.

Sixth Defense

Plaintiffs' claims are barred by the affirmative defense of Estoppel.

Seventh Defense

Plaintiffs' claims are barred by the affirmative defense of Accord and Satisfaction.

Eighth Defense

Plaintiffs' claims are barred by the affirmative defense of Fraud.

Ninth Defense

Plaintiffs' claims are barred by the affirmative defense of Release.

Tenth Defense

Plaintiffs' claims are barred by the affirmative defense of Ultra Vires.

Eleventh Defense

Plaintiffs' claims are barred by the affirmative defense of Statute of Frauds.

Twelfth Defense

Plaintiffs' claims are barred by the affirmative defense of Statute of Limitations.

Thirteenth Defense

Defendant owed no duty to Plaintiffs.

Fourteenth Defense

Plaintiffs' claims are barred by the intervening/superseding actions of a third party, which were not the responsibility of the Defendant.

Fifteenth Defense

Plaintiffs' damages, if any, were the result of third parties' actions, which were not and are not the responsibility of the Defendant.

Sixteenth Defense

Plaintiffs' complained-of injuries were not foreseeable.

Seventeenth Defense

Plaintiffs' have not alleged any facts that would allow punitive damages or attorneys' fees to be assed against any of the Defendants.

Eighteenth Defense

Plaintiffs' Complaint should be dismissed for failure to include necessary and/or indispensable parties.

Nineteenth Defense

Plaintiffs' claims are barred by the affirmative defense of Assumption of Risk.

Twentieth Defense

Plaintiffs' claims are barred by the affirmative defense of Breach of Contract.

Twenty-First Defense

Defendant Dibble was not the proximate cause and/or cause-in-fact of Plaintiffs' complained-of injuries.

Twenty-Second Defense

Plaintiffs' claims are barred by the affirmative defense of Improper Venue.

Twenty-Third Defense

Plaintiffs' claims are barred by the affirmative defense of Lack of Subject-Matter Jurisdiction.

Twenty-Forth Defense

Plaintiffs' claims are barred by the affirmative defense of Contributory

Negligence.

Twenty-Fifth Defense

Plaintiffs' claims are barred by the affirmative defense of Illegality.

Twenty-Sixth Defense

The Defendant reserves the right to seek to amend this Answer to assert any and all affirmative defenses, including, but not limited to, those listed in Rule 8 and Rule 12 of the Federal Rules of Civil Procedure, the existence of which is not presently known, but should be revealed by further investigation and/or discovery in this action.

WHEREFORE, the Defendant, Susan Dibble, hereby respectfully requests this Honorable Court:

A. DISMISS the Plaintiffs' Complaint, *with Prejudice*;

B. For attorneys' fees and costs; and

C. For such other and further relief as to this Court may seem just and proper upon the facts and pleadings herein.

Dated: July 12, 2006
Wallkill, New York

Respectfully submitted,

by Defendant Susan Dibble

Susan Dibble

Copy

1119 Rt. 208
Wallkill, New York 12589
845-895-8341

DEMAND FOR A TRIAL BY JURY

Defendant hereby requests a Jury of 12 persons for all counts, and demands strict proof thereof, when trying this matter.

Susan Dibble

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused copies of the foregoing Defendant's Answer to Plaintiffs' 1st Amended Complaint to be sent via U.S. mail to the following addresses on this 12th day of July 2006:

James R. Marsh
81 Main Street, Suite 305
White Plains, New York 10601

Susan Dibble

IN THE UNITED STATES FEDERAL DISTRICT COURT

for the SOUTHERN DISTRICT of NEW YORK

Spool, *et al*,

Plaintiffs

vs.

World Child, *et al*,

Defendants

Case No. 06-CIV-4243

Judge Brieant

an ECF Case

ANSWER of DEFENDANT WHITAKER

Defendant Dorene Whitaker responds to **Plaintiffs' 1st Amended Complaint** for an **Answer and Affirmative Defenses** as follows:

First Defense

The Defendant, Dorene Whitaker, generally denies liability under each and every count of the 1st Amended Complaint directed against her

Second Defense

In furtherance of her denial of liability, Defendant states regarding the numbered paragraphs that Defendant admits paragraphs 1-3, 6-8, 22, and the first sentence of paragraphs 9 & 10. All remaining numbered paragraphs are denied; many assert legal conclusions, any alleged documents speak for

themselves, or Defendant has no ability to determine the truth of the averments and therefore they are denied under the Rules.

Third Defense

The 1st Amended Complaint fails to state a claim upon which relief can be granted against this Defendant.

Fourth Defense

Plaintiffs' claims are barred by the doctrine of Unclean Hands.

Fifth Defense

Plaintiffs' claims are barred by the affirmative defense of Waiver.

Sixth Defense

Plaintiffs' claims are barred by the affirmative defense of Estoppel.

Seventh Defense

Plaintiffs' claims are barred by the affirmative defense of Accord and Satisfaction.

Eighth Defense

Plaintiffs' claims are barred by the affirmative defense of Fraud.

Ninth Defense

Plaintiffs' claims are barred by the affirmative defense of Release.

Tenth Defense

Plaintiffs' claims are barred by the affirmative defense of Ultra Vires.

Eleventh Defense

Plaintiffs' claims are barred by the affirmative defense of Statute of Frauds.

Twelfth Defense

Plaintiffs' claims are barred by the affirmative defense of Statute of Limitations.

Thirteenth Defense

Defendant owed no duty to Plaintiffs.

Fourteenth Defense

Plaintiffs' claims are barred by the intervening/superseding actions of a third party, which were not the responsibility of the Defendant.

Fifteenth Defense

Plaintiffs' damages, if any, were the result of third parties' actions, which were not and are not the responsibility of the Defendant.

Sixteenth Defense

Plaintiffs' complained-of injuries were not foreseeable.

Seventeenth Defense

Plaintiffs' have not alleged any facts that would allow punitive damages or attorneys' fees to be assed against any of the Defendants.

Eighteenth Defense

Plaintiffs' Complaint should be dismissed for failure to include necessary and/or indispensable parties.

Nineteenth Defense

Plaintiffs' claims are barred by the affirmative defense of Assumption of Risk.

Twentieth Defense

Plaintiffs' claims are barred by the affirmative defense of Breach of Contract.

Twenty-First Defense

Defendant Whitaker was not the proximate cause and/or cause-in-fact of Plaintiffs' complained-of injuries.

Twenty-Second Defense

Plaintiffs' claims are barred by the affirmative defense of Improper Venue.

Twenty-Third Defense

Plaintiffs' claims are barred by the affirmative defense of Lack of Subject-Matter Jurisdiction.

Twenty-Forth Defense

Plaintiffs' claims are barred by the affirmative defense of Contributory Negligence.

Twenty-Fifth Defense

Plaintiffs' claims are barred by the affirmative defense of Illegality.

Twenty-Sixth Defense

The Defendant reserves the right to seek to amend this Answer to assert any and all affirmative defenses, including, but not limited to, those listed in Rule 8 and Rule 12 of the Federal Rules of Civil Procedure, the existence of which is not presently known, but should be revealed by further investigation and/or discovery in this action.

WHEREFORE, the Defendant, Dorene Whitaker, hereby respectfully requests this Honorable Court:

A. DISMISS the Plaintiffs' Complaint, *with Prejudice*;

B. For attorneys' fees and costs; and

C. For such other and further relief as to this Court may seem just and proper upon the facts and pleadings herein.

Dated: July 11, 2006
Tillson, New York

Respectfully submitted,

by Defendant Dorene Whitaker

601 Springtown Road
Tillson, New York 12486
845-658-9354

DEMAND FOR A TRIAL BY JURY

Defendant hereby requests a Jury of 12 persons for all counts, and demands strict proof thereof, when trying this matter.

Dorene Whitaker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused copies of the foregoing Defendant's Answer to Plaintiffs' 1st Amended Complaint to be sent via U.S. mail to the following addresses on this 11th day of July 2006:

James R. Marsh
81 Main Street, Suite 305
White Plains, New York 10601

Dorene Whitaker

UNITED STATED DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION BRUCE AND CHARLENE FERGUSON, Plaintiffs, v. WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC. JENKINS & POVTAK, SUSAN DIBBLE, DORREEN WHITTAKER, SHERRELL J. GOOLSBY, CARL JENKINS, YAROSLAV PANASOV Defendants.	MOTION TO DISMISS OF DEFENDANTS WORLD CHILD INTERNATIONAL CORPORATION, THE FOUNDATION OF WORLD CHILD, INC. SHERRELL GOOLSBY, CARL JENKINS AND JENKINS & POVTAK 06 CIV 4243 (CLB)

PLEASE TAKE NOTICE that upon the annexed declaration of DAVID HENRY SCULNICK, ESQ., dated July 14, 2006, and upon all the exhibits and Memorandum of Law annexed hereto and all the proceedings had herein, the undersigned will move this Court at the Courthouse located at 300 Quarropas Street ,White Plains, NY 10601, before the Honorable Charles L. Brieant, on September 15, 2006, at a time to be determined by the Court, for an order pursuant to Rule 12(b)(6) and 12(b)(1) of the Federal Rules of Procedure, to dismiss the complaint as to defendants, World Child International Corporation i/s/h/a World Child International Adoption Agency, The Foundation of World Child, Inc, Sherrell J. Goolsby, Carl

Jenkins and Jenkins & Povtak, and for such other, further and different relief as this Court may deem just and proper.

Opposition papers, if any, shall be served as provided by the rules of the Court.

Dated: New York, New York
July 14, 2006

Respectfully submitted,

GORDON & SILBER, P. C.

By: _____
David Henry Sculnick (DHS 1941)
Attorneys for World Child International Corporation i/s/h/a World Child International Adoption Agency, The Foundation of World Child, Inc, Sherrell J. Goolsby, Carl Jenkins and Jenkins & Povtak
355 Lexington Avenue
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212-834-0600

Local Counsel to:

Jeffrey J. Hines, Esq.
Craig S. Brodsky, Esq.
Goodell, DeVries, Leech & Dann, LLP
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One South St., 20th Fl.
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(410) 783-4000

TO:
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Attorneys for Plaintiffs
81 Main Street, Suite 305
White Plains, New York 10601-1719
914-686-4456

Susan Dibble
1119 Route 208
Wallkill, NY 12589

Dorene Whitaker
601 Springtown Road
Tillson, New York 12486

Yaroslav Panasov
Vavilova Street,
Bldg., No. 23
Moscow 117312
Russian Federation

UNITED STATED DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION BRUCE AND CHARLENE FERGUSON, Plaintiffs, v. WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC. JENKINS & POVTAK, SUSAN DIBBLE, DORREEN WHITTAKER, SHERRELL J. GOOLSBY, CARL JENKINS, YAROSLAV PANASOV Defendants.	MOTION TO DISMISS OF DEFENDANTS WORLD CHILD INTERNATIONAL CORPORATION, THE FOUNDATION OF WORLD CHILD, INC. SHERRELL GOOLSBY, CARL JENKINS AND JENKINS & POVTAK 06 CIV 4243 (CLB)

Defendants World Child International Corporation (wrongfully identified as World Child International Adoption Agency), Foundation of World Child, Inc. Sherrell J. Goolsby, Carl Jenkins and Jenkins & Povtak, by and through undersigned counsel and pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1) hereby move to dismiss this matter. In support thereof, Movants state as follows:

1. Plaintiffs' claims civil RICO failed to state a claim upon which relief can be granted because of a lack of continuity.

2. Plaintiffs' CFAA claims fail to state a claim upon which relief can be granted because Plaintiffs have failed to allege facts which if proven constitute a loss within the meaning

of the CFAA

3. This Court should not exercise supplemental jurisdiction over Plaintiffs' remaining state law tort claims.

4. A Memorandum of Law in support of this Motion to Dismiss is attached hereto and is hereby incorporated by reference.

WHEREFORE in accord with the foregoing, Defendant World Child International Corporation, The Foundation of World Child, Inc. Sherrell Goolsby, Carl Jenkins and Jenkins & Povtak respectfully request that this Honorable Court dismiss this action with prejudice.

Respectfully submitted,

GORDON & SILBER, PC

By: DAVID HENRY SCULNICK (DHS1941)
Attorneys for World Child International Corporation i/s/h/a World Child International Adoption Agency, The Foundation of World Child, Inc, Sherrell J. Goolsby, Carl Jenkins and Jenkins & Povtak
355 Lexington Avenue
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212-834-0600

Local Counsel to:

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Craig S. Brodsky, Esq.
Goodell, DeVries, Leech & Dann, LLP
Attorneys for World Child International Corporation i/s/h/a World Child International Adoption Agency, The Foundation of World Child, Inc, Sherrell J. Goolsby, Carl Jenkins and Jenkins & Povtak
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TO:
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Moscow 117312
Russian Federation

UNITED STATED DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION BRUCE AND CHARLENE FERGUSON, Plaintiffs, v. WORLD CHILD INTERNATIONAL ADOPTION AGENCY, JENKINS & POVTAK, THE FOUNDATION OF WORLD CHILD, INC. SUSAN DIBBLE, DORREEN WHITTAKER, SHERRELL J. GOOLSBY, CARL JENKINS, YAROSLAV PANASOV Defendants.	MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS 06 CIV 4243

Defendants World Child International Corporation (wrongfully identified as World Child International Adoption Agency and hereinafter referred to as "World Child"), The Foundation of World Child, Inc. (hereinafter referred to as the "Foundation"), Sherrell J. Goolsby (hereinafter referred to as "Goolsby"), Carl Jenkins (hereinafter referred to as "Jenkins") and Jenkins & Povtak, by and through undersigned counsel, hereby submit this Memorandum of Law in further support of their Motion to Dismiss.

INTRODUCTION

The present Amended Complaint should be dismissed. Indeed, this matter is a business dispute between two entities (and their employees) that formerly worked together to coordinate adoptions from Russia which has been combined with claims arising from an unsuccessful attempt by Plaintiffs Bruce and Charlene Ferguson to adopt a child from Russia in an effort to

create Federal jurisdiction under the Racketeer Influenced and Corrupt Organization Act (RICO) and the Computer Fraud and Abuse Act. (CFAA). However, this matter is, at its core, nothing more than a business dispute, and when the true nature of this matter is examined closely on its facts, it is clear that there can be no RICO liability as there has been no pattern of conduct sufficient to establish a cause of action for RICO. Further, there can be no liability under the CFAA because Plaintiffs allegations are insufficient to establish loss or damage under the CFAA. Finally, this Court should decline to exercise supplemental jurisdiction over the remaining state law claims.

THE ALLEGATIONS IN THE COMPLAINT

Although Plaintiffs have filed a thirty-three (33) page Amended Complaint alleging myriad of purported wrongdoings, the allegations pertinent to the instant motion can be summarized in a succinct fashion. The salient allegations are as follows:

- Plaintiff Roger Spool ("Spool") is a social worker and a founder of Child and Family Adoption ("CFA"), an adoption agency in the state of New York. (Para. 1).
- World Child is a Maryland adoption agency specializing in international adoptions. (Para. 3).
- The Foundation is World Child's non-profit foundation and Sherrell Goolsby is the executive director of World Child. (Para. 4,8).
- Spool, CFA, World Child and Goolsby worked together to place children adopted from Russia in homes in the United States. (Para. 22).
- Carl Jenkins is General Counsel for World Child and a member in the law firm of Jenkins & Povtak (Para. 5, 9).

- Despite having worked together to successfully place over 1,000 adoptions, in early 2004, CFA and Spool on the one hand, and World Child on the other experienced a deteriorating business relationship. (Paras. 22-23, 37-49).
- In April, 2004, World Child severed its relationship with Spool. (Para. 49-67).

According to the Amended Complaint, the following occurred in April 2004 when World Child and Spools business relationship soured:

- Goolsby terminated CFA's American Long Lines toll free number account (Para 54.)
- Defendant Dibble resigned from CFA (Para. 56).
- World Child and Goolsby advised "all current New York families" that the New York office was relocating (Para. 57).
- Defendants Dibble and Whitaker, acting at the direction of Carl Jenkins, World Child's general counsel (herinafter referred to as "Jenkins") and Goolsby, removed the contents of confidential CFA client and computer files – including case notes – and made copies of child abuse clearances, criminal clearances and other documents. All that remained were empty files (Para. 61).
- Dibble and Whitaker, at the direction of Jenkins and Goolsby copied Spool's social work license, removed office supplies and marketing materials (Paras. 62-63).
- From April – July 2004, World Child operated its NY Representative Office in an unauthorized fashion, using Spool/CFA's license to coordinate adoptions for New York families seeking to adopt children

from Russia, and thereafter, contacted CFA clients, seeking to have them utilize World Child's services for adopting Russian children. (Paras. 67-77).

One such family was Plaintiffs Bruce and Charlene Ferguson. The Fergusons allege, in sum, that they worked with World Child from January 30, 2003 until July, 2004 to adopt a child from Russia. (Paras. 85-101). However, when they went to Russia in early August 2004 to adopt a child, the adoption was denied by the Russian Civil Court, notwithstanding the efforts of Defendant Yaroslav Panasov. (hereinafter referred to as "Panasov"). (Paras. 102-103). After the denial of the adoption by the Russian Civil Court, further appeals were not successful. (Paras. 104-105).

LEGAL ARGUMENT

I. Standards for a Motion to Dismiss.

In evaluating a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6), this Court is obligated to accept as true all well-pleaded factual allegations in the Amended Complaint, and view them in the light most favorable to plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90; Hertz Corp. v. City of New York, 1 F.3d 121, 125 (2d Cir.1993). However, when plaintiffs can prove no set of facts to support a claim which would entitle Plaintiff to relief, a Motion to Dismiss should be granted. Still v. DeBuono, 101 F.3d 888, 891 (2d Cir.1996).

II. Plaintiffs' RICO allegations fail to state a claim upon which relief can be granted as the allegations in the Amended Complaint do not sufficiently allege a pattern of racketeering activity

In Counts I through IV of the Amended Complaint, Plaintiffs seek damages from the Defendants herein by violation of Sections 1962 through 1965 of RICO, 28 U.S.C. 1962, *et seq*.

A. To Properly plead a RICO Claim, Plaintiffs must allege a pattern of continuity.

To state a claim for civil RICO liability, a plaintiff must plead facts which if established, prove a pattern of racketeering activity through at least two predicate acts which are related and amount to or pose a threat of continuing criminal activity. H.J., Inc. v Northwestern Bell Tel. Co., 492 U.S. 229 (1989). In H.J., Inc., the Supreme Court outlined the basic contours of the continuity requirement as follows:

> "'Continuity" is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that is by its nature projects into the future with a threat of repetition...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. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct. Often a RICO action will be brought before continuity can be established in this way. In such cases, liability depends on whether the *threat* of continuity is demonstrated.

492 U.S., 241-242 (Emphasis in original)(internal citations omitted).

Thus, a Plaintiff in a RICO action must allege either an "open-ended" pattern of racketeering activity (*i.e.*) past criminal conduct coupled with a threat of future criminal conduct or a "closed-ended" pattern of racketeering activity (*i.e.*) past criminal conduct extending over a substantial period of time." GICC Capital Corp. v. Technology Finance Group, Inc., 67 F.3d. 463 (2d Cir. 1995).

In this case, it is unclear from the Amended Complaint whether Plaintiffs seek to proceed under an "open-ended" or "closed-ended" theory of continuity. Regardless, the Amended Complaint, even when construed in the light most favorable to the Plaintiffs, satisfies neither the "closed-ended" nor the "open-ended" continuity requirement.

B. "Closed-ended" continuity.

In a RICO claim, "closed-ended" continuity is properly pled and proven by predicate acts that "amount to continued criminal activity" by a particular defendant, and, to satisfy the close-ended continuity requirement, the plaintiff must prove a series of related predicates extended over a substantial period of time; predicate acts extending over a few weeks or months...do not satisfy this requirement. Falco v. Bernas, 244 F.3d.. 286, 321 (2d Cir. 2001); GICC Capital Corp., supra. Put another way, to establish closed-ended continuity, a plaintiff must provide some basis for a Court to conclude that defendants' activities were neither isolated nor sporadic. GICC, 67 F.3d at 466-478 (citing United States v. Interdelicato, 865 F.2d 1370, 1383 (2d. Cir.)(en banc), cert. denied, 493 U.S. 811 (1989)).

In determining whether the alleged activities were isolated or sporadic, it is significant to note that since the Supreme Court decided H. J., Inc., the Second Circuit has never held a period of less than two years to constitute a substantial period of time. GICC, at 467. The duration of a pattern of racketeering activity as measured by the RICO predicate acts that the Defendants commit. Id. ("Actions that do not constitute predicate racketeering activity is not included in the calculation"). In this case, the allegations made by Spool, CFA and the Fergusons fail to satisfy the requisite time period to establish "closed-ended" continuity.

1. Spool/CFA's RICO Claim.

Spool and CFA have failed to alleged facts which if proven, establish closed-ended continuity, as the activities complained of are "isolated" or "sporadic", not continued criminal activity. Specifically, in paragraph 126 of the Amended Complaint, Plaintiffs allege that the Defendants engaged in a series of predicate acts between January 2004 and April 19, 2005. However, there is no specific allegation of a predicate act until April, 2004, when the business dispute between World Child and Spool/CFA arose, and the last predicate act alleged occurred on April 19, 2005. This one year time period is insufficient, as a matter of law, under the case law of the Second Circuit.

Furthermore, it would be inherently inappropriate and unfair for this Court to utilize a time period before April 2004 as until that time, Spool and CFA had a working relationship with World Child and he himself would be part of the alleged enterprise. In this regard, Spool/CFA allege that World Child began overcharging families in 2002. Unless Spool himself was part of this alleged racketeering, no predicate acts could be found to have been committed during this period of time.[1] For these reasons, Counts I through III of the Amended Complaint should be dismissed.

2. The Furguson's RICO Claim.

The Fergusons, their claim of "closed-ended" continuity likewise fails. Indeed, the first date with respect to their claim is January 21, 2003. *See* Complaint ¶ 85. However, it was in

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[1] Ironincally, using Spool's timeframe, he too, should have a claim for a violation of RICO alleged against him by the Ferguson's.

August 2004, that the Ferguson's adoption was denied. Moreover, their attempted adoption cannot be considered to be more than one act as it was one transaction. Therefore, any claim based on closed-ended continuity fails as a matter of law, and Counts I through III should be dismissed.

C. "Open-ended" continuity.

Having failed to properly plead facts which if proven establish "closed-ended" continuity, Counts I through III of the Amended Complaint can only survive dismissal if the Amended Complaint contains allegations of fact which if proven establish "open-ended" continuity. Counts I through III of the Amended Complaint are deficient in this regard, and should therefore be dismissed.

To establish "open-ended" continuity a Plaintiff need not show that the predicate acts extended over a substantial period of time, but must show that there is a threat of criminal activity beyond the period during which the predicate acts were performed. Cofa Credit S.A. v. Windsor Plumbing Supply Co., Inc., 187 F.3d. 229 (2d. Cir. 1999); GICC, 67 F.3d at 466. As a threshold matter, in determining whether a threat of continuity exists, this Court must first look to the nature of the predicate acts alleged or to the nature of the enterprise at whose behalf the predicate acts were performed." Id. In a case such as the instant case, where the enterprise primarily conducts a legitimate business, i.e. international adoptions, there must be some evidence from which it may be inferred that the predicate acts were the regular way of operating that business, or that the nature of the predicate acts themselves implies a threat of continued criminal activity. Id.

On the issue of the implied threat of continued criminal activity, GICC and the cases cited therein mandate a dismissal of Counts I through III of the Amended Complaint. In GICC, the

plaintiff, GICC Capital Corporation, attempted to establish a threat of continuity by alleging that: (1) the Defendants would have continued to loot the Technology Finance Group, Inc., if not for the fact that all available funds had been looted; and (2) Defendant Creative Resources, Inc. would have continued to transfer money overseas had GICC not commenced litigation. Id. at 466.

The Second Circuit found these arguments unpersuasive. In rejecting GICC's arguments, the Court noted that that the alleged scheme was inherently terminable, and stated that it defied logic to suggest that a threat of continued looting activity exists when there was nothing left to loot. Thus, the predicate acts of mail and wire fraud alleged could not have continued once the pool of available funds was exhausted, as the only reasonable conclusion was that Defendant Creative Resources completed its transfer of money. Id. The Court also found that it was inherently speculative as to whether Defendants they would have continued to transfer money overseas.

1. Spool and CFA's RICO Claim

Spool and CFA's cannot establish open-ended continuity as a matter of law based on the allegations in the Amended Complaint. Indeed, Paragraphs 35 – 83, in which Spool and CFA describe their business dispute with World Child, wholly omit any allegation that there is any type of an ongoing raid. Rather, the allegations merely describe a business relationship that deteriorated and resulted in the severing of the relationship. Now, both parties are merely competitors for putative adoptive families in New York.

To the extent Spool and CFA allege that there is a future threat of injury in Paragraph 132 of the Amended Complaint because there is a threat to other affiliates like CFA, this allegation is insufficient to state a claim, as the nearly identical argument was rejected in GICC, supra.

(Rejecting plaintiffs' attempt to allege that the defendants' activities affected multiple victims, including investors whose residual interest were purchased at a discount and other creditors without identifying other victims, or stating in anything but general terms, the nature of their purported injuries insufficient to establish a threat of future harm.)

Moreover, the allegations contained in ¶ 135 (*i.e.*, there is no reason to believe that the Defendants are not conducting similar fraudulent activities and will not perpetrate similar fraudulent and illegal activities against other clients in the future) is simply too vague to establish a continued threat. Accordingly, Spool and CFA have failed to allege facts which if proven establish "open-ended" continuity.

2. The Ferguson's RICO Claim.

With respect to the Fergusons, their claim of open-ended continuity defies logic. Indeed, even a cursory glance of the Amended Complaint clearly reveals that the Fergusons no longer face the threat of harm, as their efforts to adopt through World Child have ended. Further, as with Spool and CFA, the allegations of a threat of future harm to other families simply are too vague to establish a continued threat. As such, the Ferguson's have likewise failed to state a claim under a theory of "open-ended" continuity.

D. RICO was not designed to provide relief for simple business disputes.

Quite simply, Congress' intent in the passing of RICO was to target "long-term criminal conduct". H.J., Inc. 182 U.S. at 242. The present case is not one which is marked by long-term criminal activity, but rather is a manufactured effort by Plaintiffs to combine two completely separate matters into one proceeding in order to invoke the jurisdiction of this Court. Indeed, this matter can be boiled down to a business dispute between Mr. Spool and CFA on the one hand, and the World Child Defendants on the other. Whether there was any wrongdoing as the Parties

severed their business relationship has no bearing as to whether these Defendants engaged in a long-term criminal enterprise. Furthermore, with respect to the Fergusons, RICO certainly does not provide a vehicle for them to recover simply because a Russian Court denied their adoption. There is no allegation at all that any World Child Defendant took any intentional step to prevent the Fergusons from adopting a Russian child. When this matter is evaluated in its full light, it is clear that RICO liability simply does not exist. Counts I through III of the Amended Complaint should be dismissed.

III. Spool's and CFA's CFAA allegations fail to state a claim upon which relief can be granted as Spool and CFA have failed to allege a compensable loss under Section 1030(g).[2]

A. The Allegations of Loss.

In Count IV of the Complaint, Plaintiffs Spool and CFA seek damages for violation of the Computer Fraud and Abuse Act, 18 U.S.C. 1030, and specifically, 18 U.S.C. 1030(a)(4) and (a)(5). Spool and CFA claim, in Paras. 164-165 of the Amended Complaint:

> 164. Plaintiffs Spool and CFA hereby allege that certain acts by Defendants Dibble and Whittaker, at the direction of Defendants Goolsby and Jenkins, wherein Dibble and Whittaker accessed and stole the Plaintiffs' computer files without authorization thereby obtaining confidential and protected information concerning interstate and foreign communications in order to obtain an unfair competitive advantage over CFA constitute a violation of the Computer Fraud and Abuse Act, 18 USC 1030(a)(4)-(a)(5).
>
> 165. The Plaintiffs were damaged by these acts in an amount of at least $50,000 per year since the unauthorized access was discovered in July 2004 and are entitled to compensatory and punitive damages and such other and further relief as the Courts finds just and proper.

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[2] Count IV of the Amended Complaint is asserted only on behalf of Spool and CFA against Defendants.

However, the foregoing allegations fail to state a claim upon which relief can be granted in that the loss alleged by Spool and CFA is not compensable under 18 U.S.C. 1030(g).

B. An "Unfair Competitive Advantage" is not a compensable loss.

Spool's and CFA's allegation of a "loss" in the form of the Defendants obtaining an "unfair competitive advantage" is not compensable under the CFAA. In this regard, civil CFAA claims are based on 18 U.S.C. 1030(g). Section 1030(g) provides:

> Any person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief. A civil action for a violation of this section may be brought only if the conduct involves 1 of the factors set forth in clause (i), (ii), (iii), (iv), or (v) of subsection (a)(5)(B). Damages for a violation involving only conduct described in subsection (a)(5)(B)(i) are limited to economic damages. No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of or the date of the discovery of the damage. No action may be brought under this subsection for the negligent design or manufacture of computer hardware, computer software, or firmware.

As set forth in Section 1030(g), a civil CFAA claim is only cognizable if the conduct involves the factors set forth in subsections (a)(5)(B)(i) through (v). Those subsections provide:

> **(i)** loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least $5,000 in value;
>
> **(ii)** the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;
>
> **(iii)** physical injury to any person;
>
> **(iv)** a threat to public health or safety; or

> **(v)** damage affecting a computer system used by or for a government entity in furtherance of the administration of justice, national defense, or national security;

In the instant case, the only possible applicable subsection is subsection (a)(5)(B)(i), and, therefore, to state a claim upon which relief can be granted, Plaintiffs Spool and CFA must allege a compensable loss. Yet, they have failed to do so.

The term "loss" is defined by 18 U.S.C. 1030(e)(11) as:

> any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.

Section 18 U.S.C. 1030(e)(11).

An unfair competitive advantage, however, is not compensable. Nexans Wires S.A. v. Sark-USA, Inc., 319 F.Supp. 2d 468 (S.D.N.Y. 2004). In Nexans Wires, plaintiff alleged that the defendant wrongfully induced two former employees of the plaintiffs to steal plaintiff's proprietary information. Id. at 470. Plaintiff further alleged that these two former employees, who had full access to plaintiff's computer system, downloaded plaintiff's proprietary information without approval, created back up tapes of the files and deleted confidential business information, thereby causing lost business opportunities resulting from defendants' use of improperly gained information. Id. The Nexan Wires Court determined that the claim that lost revenue was not compensable under 18 U.S.C. 1030(g). 319 F.Supp. 2d. at 477-478. In so holding, the Court relied upon the holding of Register.com, Inc. v. Verio, Inc., 126 F.Supp. 2d 238, 252 n.12 (S.D.N.Y 2000), aff'd 356 F.3d 393 (2d Cir. 2004) that:

> loss of business due to defendants' eventful use of the information, rather than a loss of business because of computer impairment was far too removed from computer damage to count towards the jurisdictional threshold.

Id. at 477.

Applied to the case at bar, it is abundantly clear that Spool's and CFA's allegations of obtaining an unfair competitive advantage are likewise insufficient to state a claim upon which relief can be granted. Indeed, the instant allegations are nearly identical to Nexan Wires in that in this case, it is alleged that the movants, through unauthorized access to the computer, took the data and used data to contact Spool's and CFA's clientele, while, in Nexan Wires, plaintiff alleged it lost revenue as a result of defendants' use of their information to unfairly compete for business. In sum, because there is no allegation of a compensable loss, Count IV of the Plaintiffs' Amended Complaint should be dismissed.

IV. This Court Should Dismiss Plaintiffs' remaining state law claims.

Because Counts I through IV of the Amended Complaint fail to state a claim upon which relief can be granted, all that remains in this case are the state law tort claims set forth in Counts V through IX of the Amended Complaint. These defendants respectfully request that this Court not exercise its discretion over the state law claims. *See* 28 U.S.C. Section 1367.

V. Conclusion.

In accord with the foregoing, Defendants respectfully request that this Honorable Court dismiss this action with prejudice.

Dated : New York, NY
July 14, 2006

Respectfully submitted,

GORDON & SILBER, PC

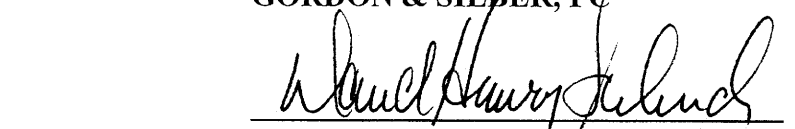

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EXHIBIT A

No parties added @ P

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION, BRUCE AND CHARLENE FERGUSON, Plaintiffs, – against – WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC., JENKINS & POVTAK, SUSAN DIBBLE, DORENE WHITTAKER, SHARRELL J. GOOLSBY, CARL A. JENKINS, YAROSLAV PANASOV, Defendants.	**FIRST AMENDED COMPLAINT UNDER THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT** No. 06-CIV-4243 Judge Charles L. Brieant ECF CASE

Roger Spool, Child & Family Adoption and Bruce and Charlene Ferguson, allege for their complaint as follows:

THE PARTIES

1. Plaintiff Roger Spool [Spool] is a resident of Ulster county New York and is a New York licensed social worker and Executive Director of an adoption agency he founded called Child & Family Adoption [CFA] which is an authorized adoption agency in the State of New York.

2. Bruce and Charlene Ferguson [the Fergusons] are residents of Dutchess county New York and were clients of CFA.

3. World Child International Adoption Agency [World Child] is headquartered in Silver Springs, Maryland and is a non-profit child-placing agency that specializes in international adoption.

4. Foundation of World Child, Inc. [the Foundation] is chartered in Washington, DC and is a non-profit foundation created by the Defendants. Defendant Carl Jenkins is its Executive Director.

5. Jenkins & Povtak is a Maryland law firm.

6. Susan Dibble [Dibble] is a resident of Ulster county New York and a former employee of CFA.

7. Dorene Whittaker [Whittaker] is a resident of Ulster county New York and a former employee of CFA.

8. Sharrell J. Goolsby [Goolsby] is a resident of Maryland and the executive director of World Child.

9. Carl A. Jenkins [Jenkins] is a resident of Maryland and World Child's attorney. He is a partner in the Defendant law firm Jenkins & Povtak.

10. Yaroslav Panasov [Panasov] is a Russian national and the Moscow Representative for World Child. His contact information is listed as the Office Director, World Child Office, Moscow, Russia.

11. Each and every defendant is a "principal" pursuant to 18 USC 2(a)-(b) and each and every defendant is a "co-conspirator" pursuant to 18 USC 371.

RICO JURISDICTION AND VENUE

12. Federal jurisdiction is invoked pursuant to 28 USC § 1331.

13. Venue is proper within this judicial district pursuant to 28 USC 1391(b) inasmuch as a substantial part of the events and omissions giving rise to the claim occurred in this judicial district in that the Plaintiffs allege that World Child's NY Representative Office,

located in New Paltz, New York, constitutes a RICO enterprise as that term is defined in 18 USC 1961(4). All defendants transacted and continue to transact business within this judicial district.

14. Jurisdiction and venue are also properly in this District pursuant to 18 USC 1965(a)-(b).

INTRODUCTION

15. The Plaintiffs repeat and reallege Paragraphs 1 through 14.

16. The Plaintiffs bring this case against the Defendants for violations of the federal RICO statute and the Computer Fraud and Abuse Act; for fraud, breach of fiduciary duty, conversion, tortuous interference with contracts, gross negligence and negligence.

17. Defendant World Child is a large international adoption agency operating in all 50 states and the District of Columbia.

18. Defendant World Child is in the business of procuring Russian, East European, Central American and Chinese children for individuals in the United States to adopt.

19. Defendant World Child procures children utilizing a variety of intermediaries and agents in foreign countries including Defendant Panasov.

20. Defendant Panasov, utilizing personal and family contacts in Russia, secures adoptions from local officials and courts by using a variety of legal and questionable means. Foreign agents like Panasov also provide adoption services to Americans including travel, interpretation, room and board, transportation and even legal representation.

21. Defendant World Child assists adoptive couples with immigration and foreign adoption paperwork, often charging tens of thousands of dollars, while offering no guarantee of a

successfully completed adoption, the healthiness or well-being of the child, or the honesty and integrity of the process.

22. For many years Plaintiffs Spool and CFA worked cooperatively [joint-venture] with Defendants World Child, Goolsby, Jenkins and Panasov to place Russian children into the homes of New York families, including the Fergusons who successfully completed their first Russian adoption through the joint-venture.

23. This arrangement began to unravel when World Child—although receiving more services from Plaintiff Spool and CFA for no additional money—demanded a greater percentage of the joint-venture's generated fees and began to refuse to pay invoices and actively contest the legitimacy of CFA's charges.

24. Ultimately the Defendants secretly colluded with long-time CFA employees Dibble and Whittaker to steal the assets of CFA while Plaintiff Spool was on vacation, and re-direct the joint-venture's past, present and future clients to a new unauthorized and illegal adoption "agency" [NY Representative Office].

25. Defendants Dibble and Whittaker, in carrying out this scheme, utilized Defendant Spool's stolen social work license, the CFA agency license and CFA letterhead to continue servicing the joint-venture's former clients.

26. The NY Representative Office was not authorized by the State of New York to conduct adoption activities and was not staffed by any licensed professionals.

27. Defendants Dibble and Whittaker forged documents and signatures, falsely notarized signatures, submitted unauthorized documents to state and federal officials, utilized

stolen CFA letterhead and improperly substituted documents from one client to another to advance the activities of the NY Representative Office and collect fees from clients.

28. Clients, such as Plaintiff Fergusons, believed that the "relocation" of World Child's New York office was routine and were encouraged by the NY Representative Office to believe that their adoptions were being handled by licensed professionals at a New York authorized adoption agency.

29. Instead, Plaintiff Fergusons' entire case file, including confidential and personal documents, were being subjected to forgery and fraud while the NY Representative Office continued to collect fees from them to process their Russian adoption.

30. Defendants Dibble and Whittaker were eventually investigated by law enforcement and plead guilty to forgery.

31. After their arrest and arraignment, Defendants Dibble and Whittaker continued to operate the NY Representative Office, even after Plaintiff Spool informed Defendant Goolsby that illegal activities were occurring.

32. After her arrest and arraignment, Defendant Dibble continued to work for the NY Representative Office and with Plaintiff Fergusons, forging and faking documents which were ultimately submitted to Defendant Panasov and the Russian government through World Child's Maryland office.

33. When Plaintiff Fergusons traveled to Russia to finalize their adoption, the Russian court discovered the NY Representative Office's deceptions and denied the adoption due to fraudulent documents.

34. Plaintiff Spool and CFA were left with unpaid invoices, lost past, present and future clients, and a damaged reputation which drove CFA to the brink of bankruptcy.

RICO FACTUAL ALLEGATIONS
ROGER SPOOL AND CHILD AND FAMILY ADOPTION, INC.

35. The Plaintiffs repeat and reallege Paragraphs 1 through 34.

36. In August 1994, a medium sized international adoption agency, World Child, partnered with a well-respected New York adoption agency, CFA to expand World Child's international adoption program to New York State.

37. During the next ten years, World Child and CFA worked closely together to build and expand international adoption services throughout New York. Ultimately their joint-venture was handling over 120 international adoptions per year and World Child grew into the fourth or fifth largest international adoption agency in the United States.

38. Throughout this period, World Child located children and processed international dossiers while CFA provided social work services to adoptive parents and conducted home studies and postplacement visits. CFA also did all the marketing for the joint-venture in New York State and assisted New York clients in assembling and processing their international dossiers. CFA hosted and organized dinner parties for foreign adoption and government dignitaries on behalf of the joint-venture and organized a large national gathering in New Paltz, New York for World Child families nationwide.

39. The joint-venture's clients paid two basic fees for their foreign adoption; the agency fee and the foreign program fee. Both of these fees were paid directly to World Child.

40. World Child paid CFA a fixed amount of the agency fee for the services CFA provided to the joint-venture's clients. This amount remained essentially unchanged during the

entire period of the joint-venture despite the fact that CFA provided additional services to the joint-venture's clients.

41. In 2002, Defendants Jenkins and Goolsby informed Spool that they were increasing the foreign program fee charged to clients and were utilizing the increase to cover general agency expenses, while informing clients that the entire fee was necessary to pay foreign affiliates to process their adoptions. These fees were billed to clients directly by World Child and were payable directly to World Child.

42. In the fall of 2003, World Child's payments to CFA grew increasingly delinquent.

43. On February 20, 2004, Goolsby sent a memo to Spool proposing a change in the joint-venture's payment structure which would reduce CFA's per case payments by almost 40%.

44. In the memo, Goolsby expressed concern that CFA's longtime employee, Dibble, who worked on international adoptions as a non-licensed program coordinator, would soon leave and proposed hiring Dibble as a World Child employee.

45. On February 27, 2004, Spool replied seeking clarification on Goolsby's unilateral offer and requesting payment of outstanding invoices.

46. On March 8, 2004, Goolsby sought a proposal from Spool regarding "a fair reimbursement for [CFA's] homestudy license." Goolsby once again proposed that World Child hire Dibble as a World Child employee. Jenkins was copied on this communication.

47. On March 24, 2004, Spool sent Goolsby a letter expressing concern about the $25,000+ in outstanding invoices owed to CFA by World Child and questioned the ability of World Child to pay CFA what it owed.

48. On March 30, 2004, Goolsby replied questioning the amount owed and expressing a desire to discontinue the joint-venture.

49. On April 2, 2004, Jenkins sent Spool a letter on Jenkins & Povtak letterhead accusing CFA of terminating the joint-venture. Jenkins announced that World Child immediately and unilaterally "revokes and renounces any authority you feel you may have had to act on their behalf, including but not limited to contractual abilities or commitments, authorization for payment of debts, dues, claims and representations of any nature whatsoever."

50. The next day, April 3, 2004, Spool left with his wife Lilyan on a one week foreign vacation. They entrusted their two longtime employees, Dibble and Whittaker, with the operation of the CFA office during their absence.

51. Due to the ongoing dispute with World Child, Spool instructed both Whittaker and Dibble not to have any conversations with Jenkins or Goolsby. He specifically admonished his employees not to answer any questions from them and to refer their calls to him on his cell phone.

52. On April 7, 2004, in the middle of Spool's vacation, Jenkins faxed a letter to the CFA office on Jenkins & Povtak letterhead confirming a threatened "shut-off" of World Child operations in New York and offering a "transfer of business matters" including "costs of

telephones, mail handling or incidentals" from CFA to World Child. This letter was copied to Goolsby and was time stamped 18:55 GMT or 1:55 PM.

53. In reality, this conversation between Spool and Jenkins never occurred.

54. Approximately one hour before this fax, at 12:47 PM, a fax from CFA's office was sent to American Long Lines, instructing them to immediately transfer the forwarding of CFA's toll free number to a new number. At the bottom of the fax were Spool and Goolsby's typed names.

55. In reality, Spool never approved this transfer.

56. The next day, April 8, 2004, Dibble emailed Spool announcing that she had accepted another position that she was starting immediately.

57. Later that day, Goolsby announced in a memo on World Child letterhead to "All Current NY Families" that World Child's New York office was relocating. The memo was copied to Dibble.

58. Finally, on April 8, 2004, Jenkins sent a letter on World Child letterhead to American Long Lines in Horsham, Pennsylvania stating that "World Child is no longer sharing office space with Child and Family Adoption, Inc." and requesting that all billing for the toll free number be redirected. Jenkins further stated that Spool "resigned as World Child's authorized NY representative, and consequently, has renounced his authority to act on behalf of World Child." Jenkins concluded the letter stating that Goolsby and Dibble were authorized to make all arrangements with American Long Lines and that Dibble "continues in World Child's NY Representative Office." The letter closed with

"[f]eel free to contact . . . me through my law firm, Jenkins & Povtak, at 301-977-8249, regarding Spool's revocation of authority to act."

59. In reality, Spool never resigned and never revoked his authority to act regarding the American Long Lines account. The toll free number belonged to CFA.

60. The American Long Lines toll free number was a major marking tool for CFA which appeared in its advertisements, yellow pages ad and marketing material.

61. Upon information and belief, on or about April 8, 2004, Dibble and Whittaker, acting at the direction of Jenkins and Goolsby, removed the contents of confidential CFA client and computer files—including case notes—and made copies of child abuse clearances, criminal clearances and other documents. All that remained were empty files.

62. Upon information and belief, on or about April 8, 2004, Dibble and Whittaker, acting at the direction of Jenkins and Goolsby, made unauthorized copies Spool's social work license and CFA agency licenses and removed these copies from the CFA office.

63. Upon information and belief, on or about April 8, 2004, Dibble and Whittaker, acting at the direction of Jenkins and Goolsby, removed office supplies, marketing materials including agency letterhead, and accessed and removed computer files without authorization from the CFA office.

64. Upon information and belief, on or about April 8, 2004, Dibble and Whittaker, acting at the direction of Jenkins and Goolsby, created the NY Representative Office in Dibble's home utilizing the looted assets of CFA.

65. The NY Representative Office was neither a foreign registered corporation nor subsidiary of World Child but a distinct and separate enterprise created to conduct business in New York.

66. The NY Representative Office was staffed by Dibble and Whittaker and utilized the looted assets of CFA in carrying out its activities.

67. On April 6, 2004, Goolsby sent a letter on World Child letterhead announcing that World Child's New York Office had a new address. The letter stated that World Child was "moving" its New York offices and had a new mailing address of World Child International, PO Box 938, New Paltz, New York 12561. The new phone number was 845-895-8279. The letter reassures clients that "some of you may have questions about your individual cases, and if so, you may contact either your case manager directly, or Susan or Dorene at the new, New York office number. . . . All of us at World Child are excited about this new arrangement, and are ready to help with your adoption adventure . . . I felt it was important to let everyone know that even though we are relocating, World Child is still moving forward on your individual case."

68. On or about April 14, 2004, either Dibble or Whittaker, acting through the NY Representative Office, forged Spool's name on a joint-venture client's documents, including Spool's social work license, agency license and home study, which were then submitted to the Immigration and Naturalization Service and placed in the client's foreign dossier package and sent to the Guatemalan government. Whittaker notarized the signature as though Spool was present in front of her.

69. Sometime between April 9, 2004 and August 25, 2004, Dibble and/or Whittaker forged and improperly notarized child abuse clearances for another of the joint-venture's clients.

70. Sometime between April 9, 2004 and August 25, 2004, Dibble and/or Whittaker forged and improperly affixed and notarized CFA's agency license on a home study destined for Russia for yet another of the joint-venture's clients.

71. Neither Spool nor CFA authorized the activities in paragraphs 66 through 70.

72. Upon information and belief, the NY Representative Office collected money from these and similar acts and forwarded the funds to World Child and the Foundation.

73. On April 23, 2004, Jenkins sent an email to Goolsby which was copied to Dibble and Whittaker. The purpose of the email was to discuss the NY Representative Office's operations. The email concluded with the following admonition: "I am sure Dibble and Whittaker want to keep things as smooth and hassle-free as possible; we can work out the details or whatever when things are less hectic, if the issue right now is just keeping the clients' moving thru the system."

74. In May 2004, the NY Representative Office sent letters through the United States mails to CFA's stolen client list inviting past and present CFA clients to World Child's "Tenth Annual" picnic. In reality it was the NY Representative Office's first picnic. The picnic was the same day and location as CFA's long-scheduled tenth annual picnic. The CFA annual picnic was an important marketing and good-will event for CFA during the past decade. This action by the NY Representative Office created a great deal of confusion for CFA's past and present clients.

75. On July 21, 2004, Dibble and Whittaker were arrested and arraigned on felony forgery and stolen document charges. Dibble pled guilty in 2005 to forgery charges involving several CFA clients including the Fergusons.

76. On July 28, 2004, Spool sent a letter to Goolsby informing her that "the recent arrest on felony charges of your personnel in the World Child New York office, is the result of their forging Child & Family documents, stealing, and illegally using my social work license and this agencies state license. These are very serious offenses."

77. During this entire period of time – from April through July 2004 –Spool on behalf of CFA conducted good faith negotiations with World Child to obtain the monies owed from 2003 and 2004. World Child repeatedly rejected Spool's attempts to settle the matter and ultimately gave him nothing on the significant sums owed CFA.

78. As of January 2005, World Child still listed Dibble's telephone number and the New Paltz, New York post office box as the NY Representative Office contact information.

79. On April 19, 2005, Dibble and Goolsby issued a joint communiqué to World Child staff members and affiliates.

80. During this entire period of time, World Child made numerous contacts via interstate federal wires and federal mail to convince CFA clients that World Child would continue to represent them in their adoption in the same manner and with the same professional standards as CFA and that there was essentially no difference between the joint-venture and the NY Representative Office.

81. In addition, during this entire period of time, the NY Representative Office attempted to get CFA's former clients to cancel contractually obligated and pre-paid postplacement

services with CFA and instructed them to request refunds which could be re-directed to post-placement services arranged by the NY Representative Office.

82. The Defendants, employing interstate federal wires and federal mails, submitted adoption documents to the Immigration and Naturalization Service, the State of New York, and foreign governments including Russia and Guatemala, utilizing CFA letterhead to create the impression that CFA, an authorized New York adoption agency, was still working on the file when in fact Dibble had created and oftentimes forged the documents.

83. Throughout this period, the parties communicated extensively utilizing interstate wires and federal or international mails including fax, email, postal mail, express mail systems such as FedEx, local and long distance telephone, toll free telephone, cell phone and international telephone systems.

RICO FACTUAL ALLEGATIONS
BRUCE AND CHARLENE FERGUSON

84. The Plaintiffs repeat and reallege Paragraphs 1 through 83.

85. On January 21, 2003, the Fergusons submitted a World Child application to adopt a child from Russia. They submitted this form to World Child/New York at CFA's address in New Paltz, New York.

86. On or about January 30, 2003, the Fergusons received a letter on World Child letterhead welcoming them to the Russia Program. The letter stated that "it is not acceptable to request a 'healthy' child. Russian medical reports often, if not always, list a medical diagnosis at birth. Most often, these diagnoses do not accurately reflect the health status of the child.... Your homestudy must state that you want to adopt a child who is

"as healthy as possible" unless you will consider certain special needs, such as limb deformities, cleft palate, etc." The letter goes on to state that "if you have an arrest record, or if you have any medical conditions or past history of serious medical conditions, please contact us of have your social worker contact us to discuss the wording of your homestudy.... Your homestudy must state that you are aware that your child may have undiagnosed medical conditions, and that you are aware that there may be unforeseen delays."

87. The World Child Memo of Understanding offers that "[m]any of our families have enjoyed exchanging information with other families over the internet. Your case manager will be glad to provide you with the e-mail addresses of willing World Child clients who are either in the process of adoption or have completed their adoptions. We strongly discourage our clients from posting on the list serves, as it has the potential of affecting or disrupting adoptions. The list serves are read by foreign government officials, and the officials often do not like what they are reading as it is also possible to misinterpret what has been posted. Past postings have negatively impacted foreign adoptions."

88. On May 12, 2004, the Fergusons paid World Child $12,200.00 in foreign program fees.

89. Throughout the Fergusons' adoption process, letters and faxes from World Child continued to indicate that CFA was an important and integral part of the joint-venture's service delivery in New York and that CFA would assist the Fergusons at every step.

90. On or about April 6, 2004, the Fergusons received a letter on World Child letterhead stating that "World Child's New York Office has a NEW Address." It listed the new

mailing address as World Child International, PO box 939, New Paltz, New York 12561. The new phone number was 845-895-8279. There was no indication whatsoever that this new office was no longer affiliated with CFA, that the NY Representative Office was now being run by unlicensed individuals through a fake adoption agency which was not recognized by the State of New York as an authorized adoption agency. On information and belief, the purpose of this subterfuge was to confuse clients like the Fergusons in order to continue processing adoptions and collecting fees for the direct benefit of the RICO Defendants.

91. On or about April 20, 2004, the Fergusons received a letter from the NY Representative Office indicating that they needed visas. The Fergusons were required to send $850 in a check made payable to World Child International which was sent to World Child International, 113 Park Avenue, Falls Church, Virginia 22046. The letter was signed "Susan Dibble, NY Regional Coordinator" and listed 845-895-8279 as the contact number.

92. On or about July 27, 2004, the Fergusons received a fax from Dibble requesting an additional $550 for visas. The check and documentation were required to be sent by overnight FedEx, Airborne or DHL to World Child's Falls Church Office.

93. In preparation for their trip to Russia to finalize their adoption, the NY Representative Office sent a fax to the Fergusons instructing them to take to Russia "a variety of bills, including approximately twenty bills each of $1s, $5s, $10s, $20s, and $50s. The rest can be $100 dollar bills. Bills that are over ten years old, are very wrinkled, or are torn or written upon, will not be acceptable."

94. World Child orally instructed Plaintiff Bruce Ferguson to bring thousands of dollars in new $100 bills to Russia and to not declare the cash to United States Customs. As soon as he arrived in Russia, Defendant Panasov demanded all of Bruce Ferguson's cash and scrutinized each bill rejecting any that had the slightest imperfection.

95. The World Child contract states that "Russia is a 'gift giving' culture. Gifts represent more than just a thank you or form of appreciation. In many instances they are necessary to establish your credibility or demonstrate your knowledge of another person's status."

96. The Defendants also instructed the Fergusons to provide "Gifts for Russia." Their written memo states "[t]hese are gifts, not bribes. Gifts are part of the Russian way of doing business... Please do not bring gifts that are of poor quality, or that do not work properly. If you would be insulted if you received a particular item, or if you would be ashamed to give such a gift to a friend, please don't bring it to Russia! The easiest way to present the gifts is to bring gift bags and tissue paper, rather than wrapping the gifts. Your Russian coordinator will either be cueing you as to what to give to whom, or she will give the gifts for you. She may also combine several smaller gifts into one larger gift."

97. Several of the gifts the Fergusons were instructed to provide went to Defendant Panasov and World Child Moscow Office staff even though the Ferguson's paid over $12,000 in foreign fees toward the operation of that office.

98. On April 12, 2004, the Fergusons paid World Child $1000 for foreign registrations and visas.

99. On May 12, 2004, the Fergusons paid World Child $12,200.

100. On or about May 21, 2004, Dibble forged the Ferguson's homestudy. The homestudy was originally done by CFA in 2003. Although an updated homestudy was necessary for the Fergusons to finalize their adoption in Russia, the NY Representative Office never did it. Instead they re-printed the 2003 homestudy on CFA letterhead and forged the social worker's signature on the report. Dibble then notarized the report and attached an unauthorized copy of CFA's license dated June 25, 2004. Inexplicably, the license was dated almost one month after the signature date on the homestudy report.

101. Upon information and belief, Dibble also forged all of the updated supporting documents needed to finalize the Ferguson's adoption in Russia and these documents were printed on CFA letterhead with forged signatures. One document was a New York State updated Child Abuse Clearance. The NY Representative Office charged the Fergusons $313 to obtain the necessary county and state certifications for documents which were forged by Dibble.

102. In early August, 2004, the Fergusons traveled to Russia to finalize their adoption and pick up their child. They were met in Moscow by Panasov who was their constant companion during their stay in Russia. Panasov provided translation and transportation services for the Fergusons and legally represented them before the local civil court which was conducting the adoption proceeding. The Fergusons were required to entertain and feed Panasov and provide cash and other gifts for him, his staff and his family.

103. On August 10, 2004, the Russian civil court denied the Fergusons adoption based on numerous irregularities in the documents submitted by the NY Representative Office

through World Child's office in Maryland and Defendant Panasov. Unbeknownst to the Fergusons at the time, several of these documents contained Dibble's forgeries.

104. On August 17, 2004, the Fergusons received a fax from Dibble of an email to Dibble indicating that Defendant Panasov was representing them before the Russian courts as their attorney and appealing the adverse trial court decision to the Russian Supreme Court. The Fergusons neither authorized this nor were aware that Panasov was an attorney authorized to practice before the Russian courts.

105. On August 18, 2004, Defendant Panasov filed a handwritten appeal on behalf of the Fergusons. That appeal was denied on August 27, 2004.

106. Upon information and belief, on December 3, 2004, Dibble and the NY Representative Office forged the Ferguson's signatures on a New York State Central Register Database Check. This check is required for international adoptions and contains sensitive and confidential information about an applicant's child abuse and neglect history. This information was not requested by the Fergusons. It was submitted by the NY Representative Office through an affiliated agent called Family Connections in Cortland, New York. The Fergusons know of no legitimate reason why this request was submitted using forged signatures of their names.

107. The Fergusons never received a return of their $3950 agency fee.

108. Throughout this period, the Fergusons communicated extensively with the Defendants utilizing interstate wires and federal and international mails including fax, email, postal mail, express mail systems such as FedEx, local and long distance telephone, toll free telephone, cell phone and international telephone systems.

109. On information and belief, the Defendants deposited the Fergusons' and other clients' foreign program fees, as well as other legally and illegally gained profits from World Child and its affiliates, into the Foundation.

110. On information and belief, the Foundation receives little or no money from individual or outside contributors. Rather the Foundation's assets and income are derived solely from World Child profits and agency fees, stock and bond dividends from assets purchased with those fees, as well as rental income from real estate owned by the Foundation and paid to the Foundation by World Child and its affiliates.

111. The total value of the Foundation's net assets as of June 30, 2003 was almost $1.5 million.

112. On information and belief, only a fraction of the money obtained and controlled by the Foundation is paid out to charitable institutions as the Defendants claim on their IRS Form 990. Rather monies are shifted between the Foundation, Defendant Panasov, World Child and other related entities.

113. On information and belief, the sole purpose for the Foundation's creation was to hide and shelter World Child assets and profits from various plaintiffs who have sued World Child during the past decade. Spool was present at meetings with the Defendants when the creation of the Foundation was discussed. Spool overheard Defendants Goolsby and Jenkins explain that the Foundation was created to shelter assets in order to avoid legal judgments.

RICO ENTERPRISE ALLEGATIONS

114. The Plaintiffs repeat and reallege Paragraphs 1 through 113.

115. The NY Representative Office was created by the Defendants to engage in conduct that constitutes a RICO pattern of racketeering activity. The Plaintiffs allege that the NY Representative Office is a RICO enterprise as that term is defined in 18 USC 1961(4).

116. The NY Representative Office is managed by Dibble and Whittaker and directed and controlled by Jenkins, Goolsby and World Child for the benefit of all the Defendants including Panasov.

117. The Defendants direct and control the affairs of the NY Representative Office, including the solicitation of joint-venture clients and potential clients, to commence and/or continue their international adoption through World Child.

118. The Defendants actively engaged in efforts to conceal the fraudulent and illegal alteration, signing and certification of adoption documents from the Plaintiffs and other joint-venture clients.

119. The Defendants are engaged in activities that affect federal interstate and foreign commerce.

120. The Defendants created the Foundation as a repository for profits gained through a pattern of racketeering activity as that term is defined by 18 USC Section 1961(5).

121. The Foundation is a RICO enterprise as that term is defined in 18 USC 1961(4).

122. The Foundation's most recent IRS Form 990 indicates that the majority of the Foundation's income is "foreign agency adoption fees."

123. The Foundation is managed by Jenkins for the benefit of the RICO Defendants.

124. The Foundation's most recent IRS Form 990 lists Jenkins as its executive director.

RICO PATTERN OF RACKETEERING ACTIVITY

125. The Plaintiffs repeat and reallege Paragraphs 1 through 124.

126. Upon information and belief, the Defendants engaged in the above activities and conduct between January 2004 and at least April 19, 2005. Defendants began overcharging clients for foreign program fees as early as 2002.

127. These activities and conduct constitute a repeated and continuing series of predicate acts under RICO.

128. This series of predicate acts, committed using interstate mail and wire systems, constitutes a "pattern of racketeering activity" as that term is defined in 18 USC 1961(5).

129. The above activities and conduct constitute the following types of "racketeering activity" as that term is defined in 18 USC 1961(1): Federal Principal and Aider and Abettor Liability [18 USC 2]; Federal Mail Fraud [18 USC 1341]; Federal Mail Fraud – Aiding and Abetting [18 USC 1341]; Federal Mail Fraud – Conspiracy [18 USC 1341]; Federal Wire Fraud [18 USC 1343]; Federal Wire Fraud –Aiding and Abetting [18 USC 1343]; Federal Wire Fraud – Conspiracy [18 USC 1343]; Federal Intangible Personal Property Right Deprivation [18 USC 1346]; Federal Racketeering [18 USC 1952]; Federal Racketeering – Aiding and Abetting [18 USC 1952]; Federal Racketeering – Conspiracy [18 USC 1952]; Federal Money Laundering [18 USC 1956]; Federal Money Laundering – Aiding and Abetting [18 USC 1956]; Federal Money Laundering – Conspiracy [18 USC 1956]; Federal Criminally Derived Property [18 USC 1957]; Federal Criminally Derived Property – Aiding and Abetting [18 USC 1957]; Interstate Transport of Stolen Property [18 USC 2314, 2315]; and Federal Criminally Derived Property – Conspiracy [18 USC 1957].

130. The above activities and conduct constitute separate schemes performed by the Defendants at different times and against different parties during the relevant time period. For example, Dibble and Whittaker committed forgery and fraud and stole Spool's social work license, the CFA agency license and CFA letterhead in order to defraud the joint-venture's adoption clients. At or about the same time, Defendants Jenkins and Goolsby used interstate mails and wires to defraud the joint-venture's clients, like the Fergusons, by convincing them that they were continuing to deal with a legitimate, New York licensed adoption agency. Before, during and after these acts, the Defendants transferred World Child profits, collected as fees through clients like the Fergusons and others in New York and elsewhere, into the Foundation in order to hide and shelter the profits and assets derived from the pattern of racketeering activity.

131. The activities and conduct engaged in by each Defendant was related by virtue of the common participants in the creation, operation and management of the NY Representative Office and the Foundation as RICO enterprises; the common victims, including the Fergusons, Spool, CFA and other clients of the NY Representative Office; and the common purpose to defraud the Fergusons and other clients of their money and then to deposit the proceeds into a dubious non-profit foundation in order to protect the illegally derived monies from outside interests.

132. The Defendants' actions constitute a continuing harm to the Plaintiffs and others. The Defendants started planning this scheme when they offered to hire Dibble in January 2004. The NY Representative Office was created by Dibble and Whittaker in April 2004 at the direction of Jenkins and Goolsby and continued to operate until at least April 2005.

133. The Defendants' actions also constitute a continuing threat of future injury to other clients like the Fergusons and affiliates like the CFA. The Defendants began defrauding their clients as early as 2002, when Defendants Goolsby and Jenkins informed Spool that they would begin overcharging clients for their foreign program fees. The Defendants all conspired to steal the Spools' confidential files, licenses, letterhead and marketing tools beginning in late 2003 and early 2004, and to create the NY Representative Office and operate it without a license beginning in April 2004. The Defendants did not halt or alter the operation of the NY Representative Office even after being informed by Spool in the summer of 2004 that Dibble and Whittaker (the sole employees of the NY Representative Office) were indicted for felony forgery and fraud in connection with the operation of the NY Representative Office.

134. On information and belief, the NY Representative Office continued to forge the Fergusons' signatures on confidential child abuse clearance requests as late as December 2004.

135. The Defendants showed no intention of halting their illegal operations in New York despite stark and clear evidence that fraudulent activity had occurred and was ongoing. Dibble continued her involvement with the Defendants until at least April 19, 2005. There is no reason to believe that the Defendants are not conducting similar fraudulent and illegal activities or that they will not perpetrate similar fraudulent and illegal activities against other clients in the future.

136. The Defendants have, by and through the pattern of racketeering activity alleged herein, victimized the following persons: the Fergusons in the amount of at least $7700 and Spool/CFA of at least $50,000 per year.

137. Upon information and belief, additional victims exist and the instances and identities referenced in this complaint are cited by example and not by restriction.

138. The Plaintiffs have sustained injuries to their respective interests in business and property as a result of the Defendants' activities and conduct.

139. The Plaintiffs are entitled to recover, pursuant to 18 USC 1964(c), treble damages in an amount to be determined by offer of proof at trial. The Plaintiffs are also entitled to recover attorneys' fees and costs of this litigation, as well as damages arising from lost profits and lost business opportunities attributable to the activities engaged in by the Defendants.

FIRST CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR CONTRAVENTION OF 18 USC 1962(b) AND (c)

140. The Plaintiffs repeat and reallege Paragraphs 1 through 139.

141. At all relevant times, the Defendants, each and every one, were RICO "persons" within the meaning of 18 USC 1961(3) and 1964(c).

142. At all relevant times, the NY Representative Office and the Foundation were RICO "enterprises" within the meaning of 18 USC 1961(4).

143. The acts set forth in this complaint constitute conduct engaged in by the Defendants to deprive the Plaintiffs of their interest in business and property by and through commission of federal mail fraud, federal wire fraud, federal racketeering, federal money

laundering, and federal criminally derived property, and therefore constitute "racketeering activity" as that term is defined in 18 USC 1961(1).

144. The Defendants engaged in the aforementioned pattern of racketeering activity using interstate and foreign mail and wire systems with the intent to harm the Plaintiffs' interest in business and property. The Defendants' fraudulent activity injured the Plaintiffs' interest in business and property.

145. The Defendants were "employed by or associated with an enterprise" (the NY Representative Office) that used interstate and foreign commerce to engage in a pattern of racketeering activity. As such each and every Defendant is liable under 18 USC 1962(c).

146. Defendants Goolsby, Jenkins, Dibble, Whittaker, World Child and Jenkins & Povtak acquired and maintained an interest in and/or control over the NY Representative Office and the Foundation. The continued functioning of both these enterprises was accomplished through a pattern of racketeering activity, namely the theft of Spool's license and CFA's business property and license, and defrauding the Fergusons and other joint-venture clients in order to collect money. The monies obtained from the pattern of racketeering activity were deposited into the Foundation in order to sheild it from outside interests. Accordingly each Defendant is liable to the Plaintiffs under 18 USC 1962(b).

147. The Plaintiffs are entitled to recover, pursuant to 18 USC 1964(c), treble damages in an amount to be determined by offer of proof at trial. The Plaintiffs are also entitled to recover attorneys' fees and costs of this litigation, as well as damages arising from lost

profits and lost business opportunities attributable to the activities engaged in by the Defendants.

SECOND CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR CONTRAVENTION OF 18 USC 1962(d)

148. The Plaintiffs repeat and reallege Paragraphs 1 through 147.

149. At all relevant times, the Defendants, each and every one, were RICO "persons" within the meaning of 18 USC 1961(3) and 1964(c).

150. At all relevant times, the NY Representative Office and the Foundation were RICO "enterprises" within the meaning of 18 USC 1961(4).

151. The acts set forth in this complaint constitute conduct engaged in by the Defendants to deprive the Plaintiffs of their interest in business and property by and through commission of federal mail fraud, federal wire fraud, federal racketeering, federal money laundering, and federal criminally derived property, and therefore constitute "racketeering activity" as that term is defined in 18 USC 1961(1).

152. The Defendants' acts were related and continuous. As such they constitute a RICO pattern of racketeering activity as that term is defined in 18 USC 1961(5).

153. The Defendants engaged in the aforementioned pattern of racketeering activity using interstate and foreign mail and wire systems with the intent to harm the Plaintiffs' interest in business and property. The Defendants' fraudulent activity injured the Plaintiffs' interest in business and property.

154. All of the Defendants conspired to violate 18 USC 1962(c) in that each and every Defendant was knowledgeable about the operations of the NY Representative Office and participated directly in the fraudulent acts against the Fergusons and others, the theft of

Spool's social work license, and the theft of CFA's business property and license in order to create the NY Representative Office. The Defendants funneled monies and profits from the NY Representative Office into the Foundation in order to shield assets from potential creditors like the Plaintiffs. The Defendants communicated with each other and with the Plaintiffs about these activities and each committed acts to further the interests of the RICO enterprises. As such each and every Defendant is liable to the Plaintiffs under 18 USC 1962(d).

155. The Plaintiffs are entitled to recover, pursuant to 18 USC 1964(c), treble damages in an amount to be determined by offer of proof at trial. The Plaintiffs are also entitled to recover attorneys' fees and costs of this litigation, as well as damages arising from lost profits and lost business opportunities attributable to the activities engaged in by the Defendants.

THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS WORLD CHILD, JENKINS & POVTAK, GOOLSBY, JENKINS AND PANASOV FOR CONTRAVENTION OF 18 USC 1962(A)

156. The Plaintiffs repeat and reallege Paragraphs 1 through 155.

157. At all relevant times, the Defendants, each and every one, were RICO "persons" within the meaning of 18 USC 1961(3) and 1964(c).

158. At all relevant times, the NY Representative Office and the Foundation were RICO "enterprises" within the meaning of 18 USC 1961(4).

159. The acts set forth in this complaint constitute conduct engaged in by the Defendants to deprive the Plaintiffs of their interest in business and property by and through commission of federal mail fraud, federal wire fraud, federal racketeering, federal money

laundering, and federal criminally derived property, and therefore constitute "racketeering activity" as that term is defined in 18 USC 1961(1).

160. The Defendants engaged in the aforementioned pattern of racketeering activity using interstate and foreign mail and wire systems with the intent to harm the Plaintiffs' interest in business and property. The Defendants' fraudulent activity injured the Plaintiffs' interest in business and property.

161. Defendants World Child, Jenkins & Povtak, Goolsby, Jenkins and Panasov engaged in a pattern of racketeering activity as that term is defined in 18 USC 1961(4) by defrauding the Fergusons and other joint-venture clients in order to collect money.

162. Defendants Goolsby, Jenkins, Jenkins & Povtak, and World Child used and invested the proceeds of income derived from the pattern of racketeering activity in a RICO enterprise, namely the Foundation, to hide and shield the proceeds of legal and illegal activities from the Plaintiffs and other outside interests. On information and belief, Defendant Panasov was paid large sums of money from the Foundation. As such each and every Defendant is liable to the Plaintiffs pursuant to 18 USC 1962(a).

FOURTH CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR VIOLATION OF 18 USC 1030(A)

163. The Plaintiffs repeat and reallege Paragraphs 1 through 162.

164. Plaintiffs Spool and CFA hereby allege that certain acts by Defendants Dibble and Whittaker, at the direction of Defendants Goolsby and Jenkins, wherein Dibble and Whittaker accessed and stole the Plaintiffs' computer files without authorization thereby obtaining confidential and protected information concerning interstate and

foreign communications in order to obtain an unfair competitive advantage over CFA, constitute a violation of the Computer Fraud and Abuse Act, 18 USC 1030(a)(4)-(a)(5).

165. The Plaintiffs were damaged by these acts in an amount of at least $50,000 per year since the unauthorized access was discovered in July 2004 and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

FIFTH CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR TORTIOUS INTERFERENCE WITH CONTRACTS

166. The Plaintiffs repeat and reallege Paragraphs 1 through 165.

167. Plaintiffs Spool and CFA hereby allege that the acts set forth in this complaint constitute a tortuous interference with their contracts with clients.

168. The Plaintiffs were damaged by these acts and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

SIXTH CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR CONVERSION

169. The Plaintiffs repeat and reallege Paragraphs 1 through 168.

170. Plaintiffs Spool and CFA hereby allege that the acts set forth in this complaint constitute conversion against them.

171. The Plaintiffs were damaged by these acts and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

SEVENTH CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR TORTIOUS INTERFERENCE WITH A PROSPECTIVE BUSINESS ADVANTAGE

172. The Plaintiffs repeat and reallege Paragraphs 1 through 171.

173. Plaintiffs Spool and CFA hereby allege that the acts set forth in this complaint constitute a tortuous interference with their prospective business advantage over World Child and the NY Representative Office.

174. The Plaintiffs were damaged by these acts and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

EIGHTH CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR FRAUD

175. The Plaintiffs repeat and reallege Paragraphs 1 through 174.

176. The Plaintiffs hereby allege that the acts set forth in this complaint constitute fraud.

177. The Plaintiffs were damaged by these acts and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

NINTH CLAIM FOR RELIEF IN THE ALTERNATIVE AGAINST ALL DEFENDANTS FOR NEGLIGENCE

178. The Plaintiffs repeat and reallege Paragraphs 1 through 177.

179. Plaintiff Fergusons hereby allege that the acts set forth in this complaint constitute negligence.

180. The Plaintiffs were damaged by these acts and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

TENTH CLAIM FOR RELIEF IN THE ALTERNATIVE AGAINST ALL DEFENDANTS FOR GROSS NEGLIGENCE

181. The Plaintiffs repeat and reallege Paragraphs 1 through 180.

182. Plaintiff Fergusons hereby allege that the acts set forth in this complaint constitute gross negligence.

183. The Plaintiffs were damaged by these acts and are entitled to compensatory and punitive damages and such other and further relief as the Court finds just and proper.

CONCLUSION

WHEREFORE, the Plaintiffs pray for judgment against the Defendants, each and every one of them, as follows:

1. For compensatory damages arising from primary contravention of 18 USC 1962(a), (b), (c) and (d) pursuant to 18 USC 1964(c);
2. For recovery of attorneys' fees and costs pursuant 18 USC 1964(c);
3. For recovery of prejudgment interest pursuant to 18 USC 1964(c);
4. For such other and further relief as the Court finds just and proper.

Dated: June 15, 2006
White Plains, New York

Respectfully submitted,

James R. Marsh (JM9320)
Attorney for the Plaintiffs

MARSH MENKEN & WEINGARDEN PLLC
81 Main Street – Suite 305
White Plains, New York 10601-1719
Phone (914) 686-4456
Fax (914) 206-3998
Email JamesMarsh@MMWLaw.us

UNITED STATED DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION BRUCE AND CHARLENE FERGUSON, Plaintiffs, v. WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC. JENKINS & POVTAK, SUSAN DIBBLE, DORREEN WHITTAKER, SHERRELL J. GOOLSBY, CARL JENKINS, YAROSLAV PANASOV Defendants.	**RULE 7.1 STATEMENT** 06 CIV 4243 (CLB)

Defendants, World Child International Corporation i/s/h/a World Child International Adoption Agency and The Foundation of World Child, Inc, hereby make the following disclosure to the Court pursuant to FRCP 7.1:

World Child International Corporation i/s/h/a World Child International Adoption Agency is a 501(c)(3) non-profit organization charted in and maintaining its principal place of business in the State of Maryland, and The Foundation of World Child, Inc. is a 501(c)(3) non-profit organization chartered in and maintaining its principal place of business in the District of Columbia.

Dated: New York, New York
July 14, 2006

Respectfully submitted,

GORDON & SILBER, P. C.

By: _____
David Henry Sculnick (DHS 1941)
Attorneys for World Child International Corporation i/s/h/a World Child International Adoption Agency, The Foundation of World Child, Inc, Sherrell J. Goolsby, Carl Jenkins and Jenkins & Povtak
355 Lexington Avenue
New York, NY 10017
212-834-0600

Local Counsel to:

Jeffrey J. Hines, Esq.
Craig S. Brodsky, Esq.
Goodell, DeVries, Leech & Dann, LLP
Attorneys for World Child International Corporation i/s/h/a World Child International Adoption Agency, The Foundation of World Child, Inc, Sherrell J. Goolsby, Carl Jenkins and Jenkins & Povtak
One South St., 20th Fl.
Baltimore, MD 21202
(410) 783-4000

TO:
Marsh, Menken & Weingarden, PLLC
Attorneys for Plaintiffs
81 Main Street, Suite 305
White Plains, New York 10601-1719
914-686-4456

Susan Dibble
1119 Route 208
Wallkill, NY 12589

Dorene Whitaker
601 Springtown Road
Tillson, New York 12486

Yaroslav Panasov
Vavilova Street,
Bldg., No. 23
Moscow 117312
Russian Federation

Dorene Whitaker
601 Springtown Road
Tillson, New York 12486

Yaroslav Panasov
Vavilova Street,
Bldg., No. 23
Moscow 117312
Russian Federation

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

GREER E. HALLEY, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides in the County of Essex, New Jersey

That on the 17th day of July, 2006 deponent served the within 7.1 Disclosure on:

Marsh, Menken & Weingarden, PLLC
Attorneys for Plaintiffs
81 Main Street, Suite 305
White Plains, New York 10601-1719
914-686-4456

Dorene Whitaker
601 Springtown Road
Tillson, New York 12486

Susan Dibble
1119 Route 208
Wallkill, NY 12589

Yaroslav Panasov
Vavilova Street,
Bldg., No. 23
Moscow 117312
Russian Federation

at the address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in the official depository under the exclusive care and custody of the United States Post Office with the State of New York.

GREER E. HALLEY

Sworn to before me this 17th
day of day of July, 2006

Notary Public

DAVID H. SCULNICK
Notary Public, State of New York
No. 31-4614061
Qualified in New York County
Term Expires December 31, 2007

IN THE UNITED STATES FEDERAL DISTRICT COURT

for the SOUTHERN DISTRICT of NEW YORK

Spool, *et al*,

Plaintiffs

vs.

World Child, *et al*,

Defendants

Case No. 06-CIV-4243

Judge Brieant

DEFENDANTS' MOTION TO DISMISS COMPLAINT

Defendant Dorene Whitaker moves to **Dismiss** the **Plaintiffs' 1st Amended Complaint** and for reasons, sates as follows:

1. Defendant asserts this Court lacks subject matter jurisdiction because there is no federal question and the Plaintiffs fail to state a claim upon which relief can be granted.
2. In that regard, Defendant adopts the grounds and basis of the Brief filed by the other defendants, World Child® International, *et al* herein, as if fully set forth below.
3. Defendant, moreover, believes the case, *Watral v.Silvernails Farm*, 51 Fed. Appx. 62, (2002, USDC-SDNY) to be instructive.

4. In that case, the court determined for a closed-ended RICO claim to exist, there must be: (a) at least 2 years of continuous violations, which Plaintiffs clearly do not assert; and (b) there must be multiple "victims" – in this Complaint, because Child & Family Adoption is essentially the *alter ego* of Roger Spool, there is only one entity – the Ferguson's claim(s) clearly are not in the nature of a RICO action. *Id. at 64.*
5. If the Plaintiffs' claims were to be antecedent to the alleged events of 2004, then the Fergusons would be required to name both Spool and CFA as defendants also, in order to state a jurisdictional claim.[1]
6. The court further determined in "*Silvernails*", that to demonstrate an open-ended RICO claim, there must be a showing of a threat of continuity, "...that the nature of predicate acts themselves implies a threat of continued criminal activity." *Id.* at 66.
7. Out of the Plaintiffs' own mouths, the alleged wrongdoings are over at this point; there are no other plaintiffs; and all 'damages' flow from one event, (not multiple acts).
8. Upon its face, Plaintiffs' First Amended Complaint presents no showing of facts sufficient to warrant jurisdiction under the federal RICO statute. Without these "federal jurisdiction" allegations, it is doubtful whether any of these Plaintiffs could state an actionable claim and the Court should

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[1] Defendant notes, *en passant*, that the Fergusons' previously adopted [successfully] a Russian child through Spool, CFA and World Child in 2000, presenting then the very same documents before a different territorial Russian court as the complained-of documents, herein.

view this concoction of conclusory statements for what they really are: apples and oranges, cobbled together in a transparent attempt to manufacture an entré into an otherwise unavailable form, to force defendants to engage in expensive litigation of simple business disputes.

9. The federal court should not grant *supplemental* jurisdiction simply because jurisdiction cannot be had elsewhere; there needs to be an underlying predicate that jurisdiction actually exists, somewhere.

10. Plaintiffs have already once amended their Complaint, without reaching a threshold assertion that rises to a claim upon which relief can be granted or to subject matter jurisdiction – it should be dismissed, with prejudice.

WHEREFORE, the Defendant, Dorene Whitaker, hereby respectfully requests this Honorable Court:

A. DISMISS the Plaintiffs' Complaint, *with Prejudice*;

B. For attorneys' fees and costs; and

C. For such other and further relief as to this Court may seem just and proper upon the facts and pleadings herein.

Respectfully submitted,

by Defendant Dorene Whitaker

601 Springtown Road
Tillson, New York 12486
845-658-9354

ATTACHMENT REQUEST & JOINDER

Defendant, Susan Dibble, requests by this Attachment hereto that she be Joined in the Defendant's **Motion** to **Dismiss** the **Plaintiffs' 1st Amended Complaint**, *supra*., and hereby adopts as her own both the arguments and reasoning of Defendant Whitaker, and Defendants World Child, *et al.*

Respectfully submitted,

by Defendant Susan Dibble

Susan Dibble

1119 Route 208
Wallkill, NY 12589
845-895-8341

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused copies of the foregoing Defendant's Motion to Dismiss with Attachment, of Plaintiffs' 1st Amended Complaint to be sent via U.S. mail to the following addresses on this 19th day of July 2006:

James R. Marsh
81 Main Street, Suite 305
White Plains, New York 10601

David H. Sculnick
50 Main Street, Suite 100
White Plains, NY 10606

Dorene Whitaker

DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL CHILD & FAMILY ADOPTION BRUCE & CHARLENE FERGUSON Plaintiffs vs. WORLD CHILD INTERNATIONAL, et al, Defendants	)	Case No.: 06-CIV-4243 Judge Charles L. Brieant ECF Case **LIMITED SPECIAL APPEARANCE OF DEFENDANT YAROSLAV PANASOV FOR PURPOSE OF DISMISSAL**

Defendant Yaroslav Panasov hereby appears for the limited and special purpose of moving to dismiss him from this case due to lack personal jurisdiction, insufficiency of process and insufficiency of service of process, and in support of his claims, states as follows:

1. The Defendant was not properly served with "process" under the Federal Rules of Civil Procedure, and for a factual predicate, attaches hereto his Declaration as *Exhibit 1*, incorporated herein as if fully set forth below.
2. Rule 4(c)(1), *Fed.R.Civ.Pro.*, requires that a "Summons" be attached, which should "...bear the Seal of the Court, state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant...." [Rule 4(a)]. There was no summons attached to the Original Complaint presented to your Defendant on June 6, 2006. (*See, Exhibit 1*)
3. Rule 5(a), *Fed.R.Civ.Pro,* requires "... No service need be made on parties in default... except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4." Upon information and belief, the Plaintiffs herein have amended their original complaint, and have not presented such an Amended Complaint to your Defendant, with or without a Summons.
4. Where proper service has not been obtained, the party is not properly before the Court for purposes of adjudication. *In re City of Philadelphia*, 123 F.R.P. 515 (1988, USDC-EDPA); *Schroeder v. Kochanowski*, 311 F.Supp.2d 1241 (2004, USDC-KS).

5. Consequently, both the actual process [Amended Complaint] and service of process [Summons] are absent as against this Defendant, and he should be removed and dismissed as a party to this action.
6. Further, this Court is lacking in personal jurisdiction – Defendant is a Russian citizen, domiciled in Moscow.

WHEREFORE in accord with the foregoing, Defendant Panasov respectfully requests that this Honorable Court dismiss this action with prejudice.

Respectfully submitted,

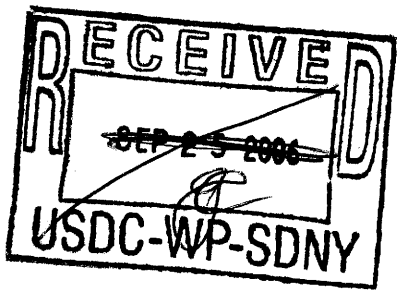
Defendant Yaroslav Panasov
Kholodyl'ny pereulok,
Bldg., No. 3A building 3
Moscow 115191
Russian Federation
011-7-495-778-7985

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of July, 2006, a copy of the foregoing Motion to Dismiss was mailed via first class mail, postage prepaid, to:

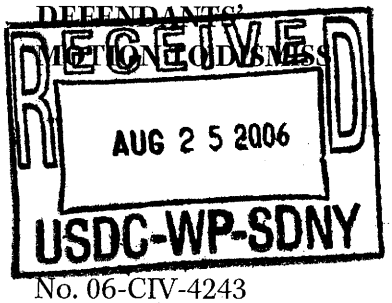
James R. Marsh, Esquire
MARSH, MENKEN & WEINGARDEN, PLLC
81 Main Street, Suite 305
White Plains, New York 10601-1719

Yaroslav Panasov



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION, BRUCE AND CHARLENE FERGUSON, Plaintiffs, – against – WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC., JENKINS & POVTAK, SUSAN DIBBLE, DORENE WHITAKER, SHARRELL J. GOOLSBY, CARL A. JENKINS, YAROSLAV PANASOV, Defendants.	**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTIONS TO DISMISS**



No. 06-CIV-4243
Judge Charles L. Brieant

ECF CASE

The Plaintiffs, by and through their attorney James R. Marsh, Esq. of Marsh Menken & Weingarden pllc, hereby respond to the Defendants World Child International Adoption Agency, Foundation of World Child, Inc., Jenkins & Povtak, Sharrell Goolsby, Carl Jenkins, and Doreen Whitaker's motions to dismiss as follows:

DEFENDANT WHITAKER'S MOTION TO DISMISS IS UNTIMELY

Where a responsive pleading has been filed, it is impermissible to file a separate motion to dismiss subsequent to the pleading unless the motion is made pursuant to a motion for summary judgment or a motion for judgment on the pleadings. F.R.C.P. Rules 12(b), 12 (h)(2).

In this case, the Plaintiffs received Defendant Whitaker's answer, which includes a general motion to dismiss under 12(b)(6), on July 14th. Defendant Whitaker then served a purported "Motion To Dismiss" on the Plaintiffs on July 20th. Defendant Whitaker is permitted to join her motion to dismiss with a responsive pleading under F.R.C.P. Rule 12(b), however she

is not permitted to file a subsequent motion to dismiss, according to the Rules. In addition, to the extent Defendant Whitaker raises issues in her 'second' motion to dismiss that were not raised in her first motion to dismiss, she has waived those issues. F.R.C.P. Rule 12(b). Defendant Whitaker should not be permitted a 'second bite at the apple' simply because she failed to consult with an attorney before filing her original responsive papers.

In the event the Court is willing to consider Defendant Whitaker's second motion to dismiss, the Plaintiffs submit this Response as against all the Defendants who have appeared in this case and filed a motion to dismiss against the Plaintiffs.

DEFENDANTS' FACTUAL ALLEGATIONS

The Second Circuit has held that "a district court errs when it considers affidavits and exhibits submitted by defendants or relies on factual allegations contained in legal briefs or memoranda in ruling on motion to dismiss for failure to state (a) claim." *Friedl v. City of New York*, 210 F3d 79 (2d Cir 2000).

The Defendants' motion contains numerous factual allegations that the Defendants characterize as a 'summary' of the Plaintiffs' arguments. In reality these allegations are, at best, a mischaracterization of the Plaintiffs' factual allegations and contain un-alleged assertions favorable to the Defendants that are not contained in the Plaintiffs' First Amended Complaint. These statements are extraneous matter and irrelevant to the Court's determination on a Federal Rules of Civil Procedure Rule 12(b) motion. In addition, such statements are issues of fact for a jury and are not properly contained in a preliminary motion to dismiss.

In deciding whether a complaint states a claim, a "court must accept the material facts alleged in the complaint as true and construe all reasonable inferences in the plaintiff's favor."

Phelps v. Kapnolas, 308 f.3d 180 (2d. Cir. 2002), citing *Hernandez v. Coughlin*, 18 F.3d 133, 136 (2d Cir.1994).

The Plaintiffs' complaint contains factually specific, substantive allegations that the Defendants violated the federal civil RICO statute as well as the CFAA and outlines several state causes of action. The allegations in the complaint relate the names, dates and circumstances surrounding the incidents in question. The Plaintiffs respectfully request that the Court disregard the Defendants' "summary of facts" in total and limit its consideration to the facts contained in the Plaintiffs' First Amended Complaint.

DEFENDANTS' RICO ARGUMENTS

The Defendants allege that the Plaintiffs have not sufficiently alleged a continuing pattern of RICO activity in its complaint, under either a closed-ended or open-ended theory of continuity. In fact, the Plaintiffs have specifically alleged related and continuous corrupt activity by the Defendants beginning in 2002 and continuing to the present day.

Closed-ended continuity

The seminal Supreme Court case, *H.J. Inc. v. Northwestern Bell Telephone*, 109 S.Ct. 2893, 492 US 229 (1989), outlines the requirements for a plaintiff to prove a pattern of RICO activity. The Court explained that "[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. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement." *Id.* at 2902, 242.

The Defendants argue that the Plaintiffs have not pled a sufficiently long period of predicate acts to support a closed-ended continuity argument. The Defendants fail to cite any

source, but the historical axiom that the Second Circuit 'has never held a period of less than two years to constitute a substantial period of time' under RICO. The Second Circuit has, however recognized RICO claims where the predicate series of acts occurred over a period of two years, See *Metromedia v. Fugazy*, 983 F.2d 350 (2d Cir. 1992), over "a matter of years." See *Jacobson v. Cooper*, 882 F.2d 717 (2d Cir. 1989).

The Plaintiffs allege in their complaint "In 2002, Defendants Jenkins and Goolsby informed Spool that they were increasing the foreign program fee charged to clients and were utilizing the increase to cover general agency expenses, while informing clients that the entire fee was necessary to pay foreign affiliates to process their adoptions. These fees were billed to clients directly by World Child and were payable directly to World Child." (Paragraph 41).

The Plaintiffs further allege that the Defendants, beginning in 2002, deposited these clients' foreign program fees into the Foundation, a RICO enterprise created exclusively to shield these and other legally and illegally gained profits from World Child and its affiliates. The Plaintiffs allege that the Defendants deposited the Fergusons' foreign program fees into the Foundation and did not return this fee, even after the Fergusons' adoption failed. Finally, the Plaintiffs allege that the Foundation is worth approximately $1.5 million, has donated little if any of its substantial assets to any charitable cause and that its sole executive director is Defendant Jenkins. (Paragraphs 109-113; 120-124).

The Plaintiffs have alleged a pattern of corrupt activity by the Defendants beginning in 2002 and continuing to this date. The Plaintiffs have specifically alleged in their complaint that the Foundation is a RICO enterprise that is operated solely for the personal benefit of the RICO Defendants and not for any legitimate charitable purpose. The Defendants have been

overcharging clients and depositing their foreign program fees into the Foundation while telling them that the entire fee was being used for foreign expenses for an undetermined period of time. The Fergusons are one of many victims of this particular fraud. The Plaintiffs' complaint does not state that this practice ever stopped. In fact, on information and belief, this practice continues to the present day.[1]

The Plaintiffs' allegations are not confined to the Defendants' acts against the Plaintiffs alone. The Plaintiffs allege (as explained above) that the Defendants overcharged all of its clients in foreign program fees beginning in 2002 and deposited those fees into a RICO enterprise to shield them from outside interests. The Plaintiffs further allege that the Defendants forged documents in at least three other adoptions *about which the Plaintiffs specifically know.* (Paras. 68-70). The Plaintiffs allege that Defendants Dibble and Whitaker were arrested and arraigned on felony forgery charges involving *several* former CFA clients, including the Fergusons. (Para. 75).

On April 8, 2004, the Defendants stole nearly all of CFA's client files. After that date, the CFA plaintiffs' international adoption business was effectively finished. On information and belief, the Defendants processed or attempted to process all of the hundreds of international adoptions contained in those files without a legitimate New York adoption agency license and without registering as a foreign corporation in New York. The Defendants conducted this scheme while using interstate mails to deliberately lead their clients to believe that they were a

[1] The Defendants' assertion that Roger Spool should be alleged as a RICO Defendant is patently ridiculous given the fact that the Plaintiffs specifically allege that the Defendants charged the foreign agency fee directly to clients and clients paid World Child directly for this fee, which was then deposited into a Foundation that exists for the direct personal benefit of the Defendants.

legitimate, licensed adoption agency and charging their clients for legitimate services that were never rendered. (Paras. 49-67, 72, 74, 78-80, 90, 130).

On information and belief, the New York Representative Office continues to operate as an unlicensed adoption agency and an unregistered corporation in the state of New York. The Plaintiffs allege this in their complaint, stating "[u]pon information and belief, additional victims exist and the instances and identities referenced in this complaint are cited by example and not by restriction." (Para. 137).

The Plaintiffs allege in their complaint that the Defendants' practice of inflating its foreign program fees constitutes one feature of a broad, continuing pattern of corrupt activity by the Defendants. The Defendants' behavior, beginning in 2002 and continuing to the present day, evinces an intent by all of the Defendants to enrich themselves personally at the expense of vulnerable clients, their vendors and their agents. The Plaintiffs have specifically alleged a related and continuous series of events that are cited as examples of this pattern.

Specifically, the Plaintiffs have alleged that the Defendants were defrauding their clients since 2002 by unjustifiably charging them excess amounts in foreign program fees and depositing those fees into a private foundation created for their own benefit while informing clients that the fees would be used to pay foreign program expenses (Paras. 41, 109, 120-122), by conspiring to create and creating an unlicensed, unregistered adoption agency in the State of New York and continuing to collect fees from clients without informing them of this fact (Paras. 49-67, 72, 78-79); by marketing the NY Representative Office to CFA's former clients as a continuation of its previous goodwill as CFA, to mislead them into believing that they were continuing to deal with a legitimate licensed agency (Paras. 57-60, 63-64, 66-67, 74, 80, 90, 130);

by forging documents and utilizing stolen and fraudulent certifications to process clients' adoptions, charging clients for legitimate certifications that were never obtained while leading clients to believe they were paying for legitimate services (Paras. 68-70, 72, 75-76, 82, 100-101, 103, 106, 130); and by continuing to employ two agents, namely Dibble and Whitaker, long after they were criminally indicted for forging World Child clients' adoption documents, leading clients to believe that Dibble and Whitaker were running a legitimate, licensed adoption agency. (Paras. 75-76, 78-79, 106, 132-135).

The Defendants failed to pay Plaintiffs CFA and Spool any of the substantial amounts of adoption fees owed to them for their work (Paras. 42-49, 77); conspired to commit and did commit theft of CFA's adoption license, confidential and proprietary adoption files, phone number, letterhead and marketing materials and illegally processed adoptions with these materials to the financial detriment of Spool and CFA (Paras. 49-73, 80-82, 130, 133); and conspired to create, and created two separate RICO enterprises over the course of at least a four year period for the purposes of conducting unlicensed adoptions as an unregistered foreign corporation in New York; and of hiding the illicitly gained profits of all of these RICO activities from outside creditors and to the benefit of the RICO Defendants. (Paras. 54-67; 114-124).

The Defendants deliberately misled their clients, including the Fergusons, about all of these activities in order to continue to collect substantial adoption fees from them (Paras. 41; 57-58; 67; 72-74; 80-82; 90-99). Because the Defendants were located chiefly in Maryland and CFA and CFA's former clients are in New York, nearly all of these activities were conducted

using interstate and international mail and wire systems (see entire "RICO Factual Allegations").

All of the foregoing activities occurred between 2002 and the present day.

Open-ended Continuity

The United States Supreme Court outlined the standard for open-ended RICO continuity in *H.J. Inc. v. Northwestern Bell Telephone*, supra. In order to prove a continuing threat of RICO activity, a Plaintiff must show either (1) "a specific threat of repetition extending indefinitely into the future;" (2) that "the predicates are a regular way of conducting Defendant's ongoing legitimate business;" or (3) the predicates can be attributed to a defendant operating as part of a long-term association that exists for criminal purposes.'" *H.J.* at 2902, 242-243. The predicate acts, therefore, need not be the only way the business is conducted.

Although the Defendants' mantra is true that the Second Circuit has never recognized closed-ended continuity in a RICO case where the alleged predicate acts occurred over a period of less than two years, the Second Circuit has recognized open-ended RICO continuity in several situations where the Plaintiff alleged predicate acts over a limited period of time that envince an ability or intent by Defendants to continue their corrupt behavior. For instance, the *GICC* Court discussed in its opinion its prior ruling in *Beauford v. Helmsley*, 865 F.2d 1386 (2d Cir.) (en banc), vacated and remanded, 492 U.S. 914, 109 S.Ct. 3236, 106 L.Ed.2d 584, adhered to on remand, 893 F.2d 1433, cert. denied, 493 U.S. 992, 110 S.Ct. 539, 107 L.Ed.2d 537 (1989). In that case the Court held, "allegations that defendants had engaged in a one-time mailing of 8,000 copies of fraudulent documents in connection with a condominium conversion plan was sufficient to plead a pattern of racketeering activity, where there was a basis to infer that

similar mailings would occur in the future." *GICC Capital Corp.*, 67 F.3d at 466. The *GICC* Court also discussed *Azrielli v. Cohen Law Offices*, 21 F.3d 512 (2d Cir.1994), where it held that "a series of fraudulent sales of securities over at least one year, coupled with the fact that the defendants 'apparently ha[d] been trying to continue to sell' securities, permitted a jury to find a RICO pattern." *GICC Capital Corp.*, 67 F.3d at 466 (quoting *Azrielli,* 21 F.3d at 521). See also *DeFalco v. Bernas*, 244 F.2d 286 (2d Cir. 2001). See also *NAFTA v. Feniks International House of Trade,* 932 F.Supp. 422 (E.D.N.Y. 1996).

The Plaintiffs allege that the NY Representative Office was operating as an unlicensed and unregistered adoption agency in the state of New York since April 2004. (Para. 65). All of its New York employees were arrested and pled guilty to forging clients' documents. Both of these enterprises constitute the Defendants' "regular way of conducting" its business. The very fact that both RICO enterprises continue to operate constitutes a continued threat of harm by the Second Circuit's standard.

Even if the Plaintiffs did not allege that the Defendants continue to operate both RICO enterprises to the present day, it is obvious that the Defendants continue to pose a threat of harm to their past, present and future clients and vendors like Plaintiffs CFA/Roger Spool.

On July 28, 2004, Plaintiff Spool sent a letter to Defendant Goolsby informing her that 'the recent arrest on felony charges of your personnel in the World Child New York office, is the result of their forging Child & Family documents, stealing, and illegally using my social work license and this agency's state license. These are very serious offenses." (Para. 76).

As the Plaintiffs allege, the Defendants continued to employ both Dibble and Whitaker after receiving this letter, and on information and belief, Defendant Whitaker is currently

employed by World Child. Until at least April 19, 2005, Defendant Dibble was utilizing interstate mails to represent the NY Representative Office to World Child clients. (Para. 79).

In addition, the Defendants continued to process adoption paperwork on behalf of clients, including incredibly the Fergusons, without their consent even after being informed of Defendant Dibble's arrest for the previous forgery of the Fergusons' adoption documents. The Plaintiffs allege that Defendant Dibble and the NY Representative Office once again forged the Fergusons' signatures on confidential child abuse clearance requests as late as December 2004. This was long after Defendant Dibble's arrest for the prior forgery of the Fergusons' adoption documents. (Para. 106).

The Defendants never returned any of the materials that were stolen from the CFA Defendants on April 8, 2004. On information and belief, the Plaintiffs allege that all of these files—approximately 100 of them—were and may continue to be processed utilizing materials and authorizations stolen from CFA's offices on April 8, 2004. (Para. 137). Because the NY Representative Office remains unlicensed in New York, almost none of these adoptions could be processed without the use of forgery and fraud. The Plaintiffs' complaint alleges that the Defendants continued to charge all of their clients, including the Fergusons, substantial sums to 'update' their files, when in fact they were not forwarding the fees to government agencies or performing additional work, but forging documents and affixing stolen certifications on the documents to process them as quickly as possible. (Paras. 66-73).

The Defendants' activities clearly indicate a continuing pattern of collecting unjustified fees from clients by any means necessary, while using interstate mails to deliberately mislead clients about how those fees were being spent. The Defendants then deposited and skimmed

their illicitly gained profits into the Foundation that is currently worth $1.5 million and show little evidence of distributing any of its substantial assets to actual charities. (Paras. 109-112). Plaintiff Spool was present when Defendants Goolsby and Jenkins stated that the Foundation was created for the sole purpose of hiding World Child profits from outside creditors and litigators. (Para. 113).

The Plaintiffs have successfully alleged that the Defendants created both the NY Representative Office and the World Child Foundation as "legitimate RICO enterprises" with the sole purpose of utilizing them to carry on their pattern of racketeering activity. Both RICO enterprises continue to exist and operate. The Defendants continue to charge clients foreign programs fees and substantial adoption fees to process international adoptions through the NY Representative Office.

The Plaintiffs are entitled to discovery to determine what happened to the remainder of the Ferguson's monies, and the CFA Plaintiffs' adoption files and whether the stolen license, letterhead and other authorizations continue to be used.

Defendant's Motion to Dismiss CFA/ Roger Spool's RICO claim

The Defendants imply that the Plaintiff's CFA/Spool's RICO case is not actionable because it involves a finite act, and not a continuing pattern of racketeering activity against the Spools. However, the Defendants' explanation of the Second Circuit's reasoning in *GICC Capital Corp. v. Technology Finance Group*, 67 F.3d 463 (2nd Cir. 1995) as it applies against Plaintiff Spool/CFA's claim is somewhat confusing. The Second Circuit did reject the Plaintiff's continuity argument in that case where the scheme was 'inherently terminable,' as the Defendants had allegedly looted all of the assets in that business. It further rejected the

Plaintiff's vague assertion that there may be other victims. However in that case, the Plaintiff had failed to identify *any* other victims or their injuries. *Id.* at 466-467.

This logic is perplexing given the broad, continued actions of the Defendants in this case. The Plaintiffs in fact allege the NY Representative Office continues to exist and to charge existing and new clients to process adoptions. On information and belief, it continues to overcharge clients for its foreign program fees and to deposit those monies into the Foundation while telling clients that all of the money is being used to cover foreign program expenses. On information and belief, it continues to operate as an unregistered corporation in New York while marketing itself as a legitimate, licensed adoption agency.

In addition, unlike the plaintiff in *GICC*, Plaintiffs CFA and Roger Spool and the Fergusons have in fact identified themselves as separate victims in this case, have explicitly stated their injuries and have identified at least three other known victims of the Defendants' forgery and fraud. (Paragraphs 68-70).

This case is nothing like *GICC*. The fact that the Defendants' "raid" of Plaintiffs' files is terminated does not mean the pattern of RICO activity has ended. Rather, their wholesale looting of Plaintiffs' business assets was merely a predicate act that enabled the Defendants to process nearly 100 adoption files that were the legitimate property of Plaintiffs CFA and Roger Spool for an undetermined period of time. In addition, on information and belief, the Defendants charged all or nearly all of the clients in those adoptions for services it did not provide (unless the Defendants wish to argue that forgery and fraud are 'legitimate adoption services'). This act was also a continuation of the Defendants' prior scheme to overcharge its clients and deposit the monies into its Foundation. The Defendants do not explain how they

feel *GICC* is related to this case on this point, and the Plaintiffs respectfully submit that there is no factual relation from a continuity standpoint.

The Defendants' argument that the Plaintiffs' must show an "ongoing raid" of CFA and therefore an ongoing threat of damages to Plaintiffs Spool/CFA is similarly misplaced. The Supreme Court articulated the standard in *H.J., Inc.,* stating that "Criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." *H.J., Inc.* at 2901, 240, citing 18 U.S.C.A. Section 3575(e). See also *Uniroyal Goodrich Tire Co. v. Mutual Trading Corp.,* 63 F.3d 516 (7th Cir. 1995).

The Plaintiffs need not show a pattern of racketeering activity against the Spools to prevail. The Plaintiffs only must show a series of predicate acts by the Defendants that are related and that envince similar motives or methods. The Plaintiffs have more than adequately met this burden in their complaint.[2]

Defendants' Motion to Dismiss the Fergusons' RICO claim

Similarly, the Plaintiffs need not show an ongoing threat of criminal activity against the Fergusons. The Defendants' claim that the Plaintiffs' "allegations of future harm to other families are simply too vague. . ." conveniently ignores the Plaintiffs' specific allegations that at least three other families were victims of the Defendants' forgery and fraud (Paras. 68-70), and that the Defendants who committed these forgeries continued to be employed long after their

[2] See, e.g., *Kemp v. American Telephone & Telegraph Co.*, 393 F.3d 1354 (11th Cir. 2004), where Plaintiff was overcharged on his phone bill through a deceptive marketing practice. This occurred only once to Plaintiff, but he was able to show that AT&T had engaged in the practice against all of its customers. Plaintiff was awarded $345.15 in actual damages and $1 million in punitive damages.

arrest and arraignment for said fraud. (Paras. 75-76; 78-79; 106; 132-135). Defendant Whitaker, on information and belief, continues to be employed by World Child. In addition, the Plaintiffs allege in the complaint that nearly all of the Spools' adoption files were stolen by the Defendants and processed as legitimate adoptions. These adoptions could not have been processed legitimately, as the Defendants did not have a license to practice adoption in New York after they left CFA. There is nothing vague about this argument, and the Plaintiffs respectfully submit that the Defendants could not possibly show that the rest of these nearly 100 adoptions were processed without some form of forgery or fraud.

The Defendants' argument that the Fergusons' claim must fail because there is "no allegation at all that any World Child Defendant took any intentional step to prevent the Fergusons from adopting a Russian child" is irrelevant. Intentionally preventing a family from adopting a child is not a RICO offense to the Plaintiffs' knowledge. Conspiring to commit mail and wire fraud, and the commission of wire fraud, causing monetary damage to the Plaintiffs, is a RICO offense and it is one of the numerous RICO offenses that the Plaintiff have alleged. The Defendants' repeated attempts to define this matter as a 'business dispute' ignores the Plaintiffs' clear, concise and repeated allegations of widespread conspiracy and fraud by the Defendants against their victims, namely their own clients and vendors.

Finally, the Defendants' assertion that the Defendants have been "primarily conduct[ing] a legitimate business" is ludicrous. Since 2002 the Defendants have been defrauding their clients by overcharging them and using interstate mails to deliberately mislead them about where the funds are being spent. Since early 2004 the Defendants began conspiring to defraud the Spools and CFA out of their legitimately owed adoption fees, and ultimately their business,

and since April 8, 2004, the Defendants have operated an unlicensed and unregistered business in the state of New York and collected substantial fees (at least $10,000 - $20,000 per adoption) from clients for doing so. The Defendants did not inform clients that they are an unlicensed adoption agency, and instead deliberately stated to clients in writing, using interstate mails, that their adoptions would continue to be processed in the exact same manner as when CFA represented them. In addition, since April 8, 2004 the Defendants have committed numerous forgeries and fraud in order to process CFA clients' adoption paperwork while using interstate mails to tell clients that their adoptions were being processed legitimately. The Plaintiffs respectfully submit that NONE of the above constitutes a "legitimate business" as the Defendants suggest. Rather, it represents a longstanding pattern of corruption and deliberate fraud, aimed at personally benefiting the RICO Defendants at the expense of emotionally vulnerable clients, like the Fergusons, who desperately want a child and are willing to pay any price to obtain one without question.

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S CFAA CLAIM

The Defendants cite as support for their motion to dismiss the Plaintiff's CFAA claim the case of *Nexan Wires-SA v. Sark-USA*, Inc. 319 F.Supp.2d 469 (S.D.N.Y. 2004). The Defendants base their argument on this case on the premise that the Plaintiffs only allege damages amounting to an 'unfair competitive advantage' that the Defendants gained by the theft of its entire caseload of adoption files by the Defendants.

The Plaintiffs has suffered damages under the CFAA. As the Plaintiffs allege, "Upon information and belief, on or about April 8, 2004, Dibble and Whitaker, acting at the direction of Jenkins and Goolsby, removed the contents of confidential CFA client and computer files-

including case notes-and made copies of child abuse clearances, criminal clearances and other documents. All that remained were empty files." (Para. 61).

This theft was not discovered by the Spools until at least July, 2004. The Spools to this date have not uncovered the extent of the theft. They have expended many lost hours attempting to determine the extent of the unauthorized access to their computers and the damage caused by it.

CONCLUSION

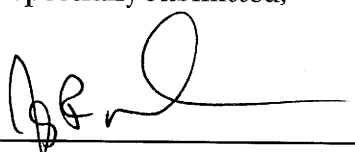
"...a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 78 S.Ct. 99, 355 U.S. 41 (1957).

The Plaintiffs have specifically pled a continuing pattern of RICO activity by the Defendants that began in 2002 and continues to the present. This is more than enough time to meet the "substantial period of time" test in the Second Circuit, under either the "closed-ended" or "open-ended" theory of liability available under RICO for all the Plaintiffs. In addition, the Plaintiffs have specifically pled a cause of action under the Computer Fraud and Abuse Act.

The Plaintiffs are entitled to seek discovery to prove the allegations in the complaint and to seek additional information to support its allegations. As such the Defendants' motion to dismiss should be denied.

Dated: August 25, 2006
White Plains, New York

Respectfully submitted,



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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

Jennifer McGrath, residing at 22 Orchard Ave, Rye, New York, being duly sworn, says that she is over the age of 18 years, that on the 25th day of August 2006, she deposited in the post office or in a post office box regularly maintained by the government of the United States in the County of Westchester, State of New York, a copy of the foregoing Plaintiffs' Response to Defendants' Motion to Dismiss contained in a securely closed postpaid, priority mail wrapper directed to each of the persons named in the Motion or their attorneys:

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Walkill, NY 12589-3714

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Jennifer McGrath

Sworn before me this 25th day of August 2006

Notary Public
Commission Expires: _____

MITCHELL IAN WEINGARDEN
Notary Public - State of New York
02WE4823811
Qualified in Westchester County
My Comm. Expires June 30, 2010

UNITED STATED DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION BRUCE AND CHARLENE FERGUSON, Plaintiffs, v. WORLD CHILD INTERNATIONAL ADOPTION AGENCY, JENKINS & POVTAK, THE FOUNDATION OF WORLD CHILD, INC. SUSAN DIBBLE, DORREEN WHITTAKER, SHERRELL J. GOOLSBY, CARL JENKINS, YAROSLAV PANASOV Defendants.	)	06 CIV 4243 (CLB)

REPLY MEMORANDUM OF LAW BY JENKINS & POVTAK

Defendant, Jenkins & Povtak, submits this Memorandum of Law in Reply to plaintiffs' opposition and in further support of its Motion to Dismiss.

We respectfully request that the Court allow us to adopt the arguments presented in the Reply submitted by World Child et al., and to apply those same principles and analysis to the claims asserted against Jenkins & Povtak.

The Court is reminded that Jenkins and Povtak is a private law firm, located in Rockville, Maryland. The sole, apparent, connection between that law firm and the wrongs plaintiffs have so cavalierly asserted, is the fact that Carl Jenkins happens to be both a lawyer and partner in the Jenkins firm and the General Counsel for World Child. Scrutinizing the complaint will not reveal any allegation, factually supported or otherwise, that explains why or how the Jenkins & Povtak

law firm could possibly be connected to the allegedly wrongful acts. It seems quite clear that the law firm was named more to create leverage and the risk of embarrassment, than because of any good faith belief that it ought to be required to answer for its "conduct".

To the extent that there are references to Jenkins in the complaint, they are invariably linked, in tone and sequence to Ms. Goolsby. It is painfully obvious that, to the extent that claims have been asserted regarding Jenkins, they are only related to his role and activities in World Child affairs - not his law firm. We have been able to locate 2 references to the law firm in the entire complaint - paragraphs 49 and 52. *It is alleged that on two occasions, Mr. Jenkins wrote* letters to CFA using law firm letterhead. There are no other references; and neither of the references that do appear include any allegations regarding the law firm's *actual conduct.*

Conclusion.

For the reasons spelled out in the World Child Reply, we submit that there is absolutely no legal or legitimate reason why Jenkins & Povtak ought to remain defendants in this litigation

Dated : New York, NY
September 8, 2006

Respectfully submitted,

GORDON & SILBER, PC

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

Talesia Fields, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides in the County of Hudson, New Jersey

That on the 8 th day of September, 2006 deponent served the within Reply Memorandum on:

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at the address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in the official depository under the exclusive care and custody of the United States Post Office with the State of New York.

Talesia Fields
TALESIA FIELDS

Sworn to before me this 8th
day of day of September, 2006

Notary Public

DAVID H. SCULNICK
Notary Public, State of New York
No. 31-4614081
Qualified in New York County
Term Expires December 31, 2007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION BRUCE AND CHARLENE FERGUSON,	:	
Plaintiffs,	:	
v.	:	06 CIV 4243 (CLB)
WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC. JENKINS & POVTAK, SUSAN DIBBLE, DORREEN WHITTAKER, SHERRELL J . GOOLSBY, CARL JENKINS, YAROSLAV PANASOV	:	
Defendants.	:	

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION TO DISMISS OF DEFENDANTS WORLD CHILD INTERNATIONAL CORPORATION, FOUNDATION OF WORLD CHILD, INC., SHERELL J. GOOLSBY AND CARL JENKINS

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Sherrell J. Goolsby and Carl Jenkins

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REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION TO DISMISS OF DEFENDANTS WORLD CHILD INTERNATIONAL CORPORATION, FOUNDATION OF WORLD CHILD, INC., SHERELL J. GOOLSBY AND CARL JENKINS

Defendants World Child International Corporation ("World"), Foundation of World Child, Inc., (the "Foundation"), Sherrell J. Goolsby ("Goolsby") and Carl Jenkins ("Jenkins") (collectively "Defendants") respectfully submit this reply memorandum of law in further support of their motion to dismiss the amended complaint (the "Complaint") of plaintiffs Roger Spool ("Spool"), Child & Family Adoption ("CFA") and Bruce and Charlene Ferguson (the "Fergusons") (collectively "Plaintiffs").

PRELIMINARY STATEMENT

In its moving memorandum, Defendants demonstrated that Plaintiffs' factual allegations, even if credited as true by the Court, do not support RICO claims against Defendants. Defendants laid out their arguments in detail, applied their arguments to the specific allegations of the Complaint, and demonstrated, based on Second Circuit authority, that Plaintiffs' RICO claims fail as a matter of law. Specifically, Defendants established that Plaintiffs have not pleaded facts showing a pattern of racketeering as to Defendants because Plaintiffs have failed to establish either close-ended or open-ended continuity. Defendants have also identified fatal defects in Plaintiffs' claim under the Computer Fraud and Abuse Act (the "CFAA"), including, most strikingly, Plaintiffs' failure to plead a compensable injury.

Rather than directly responding to Defendants' arguments and the authorities cited, Plaintiffs devote their responsive memorandum to a meandering and repetitious listing of the alleged wrongful conduct of Defendants, without any attempt to distinguish, as they must, between the various defendants, or, most importantly, without any regard to which Plaintiffs were injured by which acts. Plaintiffs apparently hope that through prolixity, ambiguity and

repetition, they will cause this Court to overlook the gaping holes in their responsive brief, and in the underlying Complaint that is the subject of this dismissal motion.

Finally, Plaintiffs, like all plaintiffs facing dismissal of a defective pleading, seek discovery that they claim will cure the deficiencies in their Complaint. Plaintiffs are wrong. No amount of discovery will correct the fundamental defects identified by Defendants in their motion. In any event, the purpose of the Federal Rules of Civil Procedure is to shake out baseless RICO claims before a defendant is put to the expense and burden of defending them.

To quote the Second Circuit's decision in *Lerner v. Fleet Bank*, 318 F.3d 113 (2d Cir. 2003), "The creative pleading in the instant [case] serves as a reminder why the Racketeer Influenced and Corrupt Organizations Act's ("RICO") treble damages provisions are not available to remedy every possible injury that can, with some ingenuity, be attributed to a defendant's injurious conduct." *Id.* at 116. Here, Plaintiffs have worked hard, with some degree of ingenuity, to try to turn a garden variety business dispute in which they claim less than $60,000 in damages (one plaintiff claims a mere $7,700), into a RICO claim. Clever pleading aside, this is not a RICO case, and to the extent plaintiffs might have any valid claims against Defendants, those claims should be litigated in the state courts.

ARGUMENT

I. PLAINTIFFS' RICO CLAIMS FAIL AS A MATTER OF LAW

As Defendants established in their moving brief, to plead a pattern, plaintiffs must plead at least two predicate acts, and must show that the predicate acts are related and that they amount to, or pose a threat of, continuing criminal activity. Closed-ended continuity requires a series of related predicate acts extending over a substantial period of time; open-ended continuity requires a threat of continuing criminal activity beyond the period during which the criminal acts were performed. (Def. Mem. at 5-10). Plaintiffs do not dispute that this is the relevant standard.

Defendants have demonstrated that Plaintiffs failed to establish either closed-ended or open-ended continuity. Plaintiffs' response is deficient in an number of respects. First, because Plaintiffs allege RICO claims against multiple defendants, they must allege that *each* defendant committed a "pattern" of racketeering activity. *Cofacredit S.A. v. Windsor Plumbing Supply Co.*, 187 F.3d. 229, 243 (2d Cir. 1999) (pattern established as to certain defendants, but not others); *Wasserman v. Maimonides Med. Center*, 970 F.Supp. 183, 189-90 (E.D.N.Y. 1997) (dismissing RICO claims against all but one defendant for failure to satisfy "pattern" requirement). Plaintiffs, however, fail to distinguish between and among Defendants.

A second, and more telling defect in Plaintiffs' response and their RICO claims as a whole, is that they fail to allege, let alone establish, the relationship between the predicate acts they allege form a pattern of racketeering activity and the injury to each Plaintiff. To bring a cause of action under the RICO statute, each plaintiff must allege that he was "injured in his business or property by reason of a violation of section 1962." 18 U.S.C. § 1964(c). As the Supreme Court stated in *Holmes v. Securities Investor Protection Corp.*, a plaintiff's standing to sue under RICO requires "a showing that the defendant's violation not only was a 'but for' cause of his injury, but was the proximate cause as well." 503 U.S. 258, 268, 112 S. Ct. 1311 (1992).

By failing to explain, let alone allege, how each predicate act was directed at, or caused injury to, each of the eight defendants, Plaintiffs' response attempts to obscure the indisputable fact that Plaintiffs do not have standing to bring RICO claims based upon the predicate acts they argue establish a RICO pattern. As we demonstrate for each plaintiff, the lack of standing and the failure to adequately allege a pattern of racketeering activity with respect to each defendant compels dismissal of Plaintiffs' RICO claims.[1]

[1] Plaintiffs attempt to excuse their failure to meet their pleading burden by pointing out that they have not had discovery. But the argument that discovery will unearth information tending to prove a plaintiff's contention of fraud is precisely what Rule 9(b) was designed to prevent. *Madonna v. United States*, 878 F.2d 62, 66 (2d Cir. 1989). *See also Decker v. Massey-Ferguson, Ltd.*, 681 F.2d 111, 116 (2d Cir. 1982) ("Rule 9(b) will have failed in

A. The RICO Claims of Plaintiffs Spool and CFA Should be Dismissed.

(1) *Plaintiffs Spool and CFA do not have RICO claims based on the alleged predicate acts of defendants World, Goolsby or Jenkins.*

The Complaint alleges a laundry list of wrongful conduct purportedly engaged in by defendants World, and Jenkins and Goolsby on behalf of World, as predicate acts for Plaintiffs' RICO claims. These acts, however, do not support the RICO claims Spool and CFA assert against these defendants because: (i) Plaintiffs Spool and CFA lack standing to bring RICO claims based on these predicate acts, as the acts ascribed to World, Jenkins and Goolsby are not alleged to have been directed at, or as having caused injury to, them; and (ii) to the extent any acts were directed at Spool and CFA, they do not establish a pattern of RICO activity.

The Complaint alleges that World, at the direction, or with the assistance, of Jenkins and Goolsby, collected client fees without informing clients that it was unlicensed and unregistered. (Compl. at ¶ 41). The Complaint does not, however, allege that these fees were collected from Spool or CFA, that this activity was in any way directed at Spool or CFA, or that collecting these fees caused any injury to Spool or CFA. As such, Spool and CFA do not have standing to bring a RICO claim based on this allegedly wrongful conduct.

The same defect and result applies to the following conduct that the Complaint alleges World engaged in at the direction and/or with the assistance of Jenkins and Goolsby: (i) charging excess amounts in foreign program fees and using the Foundation to shelter those fees from its clients; (ii) utilizing stolen and forged documents to process client adoptions; (iii) charging for

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its purpose if conclusory generalizations such as these will permit a plaintiff to set off on a long and expensive discovery process in the hopes of uncovering some sort of wrong-doing or of obtaining a substantial settlement."). "Rule 9(b)'s particularity requirements have "even greater urgency" in civil RICO actions. *Schmidt v. Fleet Bank*, No. 96 Civ. 5030 1998 U.S. Dist. Lexis 1041 at *18 (S.D.N.Y. February 4, 1998), *quoting Morin v. Trupin*, 778 F. Supp. 711, 716 (S.D.N.Y. 1991). Civil RICO is "' the litigation equivalent of a thermonuclear device,'" *Schmidt v. Fleet Bank*, 16 F. Supp. 2d 340, 346 (S.D.N.Y. 1998), *quoting Katzman v. Victoria's Secret Catalogue,* 167 F.R.D. 649, 655 (S.D.N.Y. 1996), and has "an almost inevitable stigmatizing effect on those named as defendants." *Id.* Accordingly, courts must be on the lookout for invalid RICO pleadings and be ready to dismiss them at an early stage. Plaintiffs' hope that discovery will somehow allow them to come up with a valid RICO claim against Defendants is not a sufficient basis to avoid dismissal.

legitimate certifications never obtained; (iv) misleading clients about the services World was providing; and (v) employing criminally indicted employees. (Compl. at ¶¶41, 77, 81-82, 109-113). As is evident from Plaintiffs' own allegations, the foregoing conduct, which is repeated ad nauseam in various iterations in Plaintiffs' opposition was, if it occurred at all, directed at World's clients, and not at Spool and CFA. As such, Spool and CFA cannot, and arguably do not, allege that they were injured by this conduct and therefore they do not have standing to bring RICO claims based on these alleged wrongful acts.

The only conduct that Plaintiffs allege was directed at CFA, and therefore have standing to assert as a basis for its RICO claims, is as follows: (i) World's alleged failure to pay CFA; (ii) World's alleged theft of CFA's files and other business records and materials; (iii) World's alleged use of the stolen materials to the financial detriment of CFA; and (iv) World's alleged marketing to CFA's former clients using the goodwill of CFA (Compl. at ¶¶ 42, 47, 61-64). As to Spool, the Complaint merely alleges that he is owed money by World and that World used stolen CFA materials to his financial detriment.

None of the foregoing conduct establishes a pattern of racketeering activity. Assuming Plaintiffs' allegations to be true, they amount to nothing more than wrongful conduct directed at a single business entity (CFA and its executive director), which occurred over a brief period of time and which has either terminated or has a finite duration.[2] As Plaintiffs themselves argue, CFA's files were stolen on April 8, 2004, and after that date, "the CFA plaintiffs' international adoption business was effectively finished." (P. Mem. at 5). If, as Plaintiffs claim, Defendants were engaged in a scheme to destroy CFA, that scheme was commenced, executed and completed within a matter of weeks or months. Moreover, there is no allegation, or even

[2] The only conduct alleged to have commenced at an earlier date, in 2002, is that World Child charged *its clients* excess amounts in foreign program fees, mislead *its clients* as to those fees, and used the Foundation to shelter the fees from *its clients*. As this activity was neither directed at, or caused injury to, CFA and Spool, they do not have standing to assert these actions to meet the "pattern" requirement.

suggestion, that any other individual or business entity has been, or is at risk of becoming, the target of the activity Plaintiffs allege was directed at CFA (and Spool). As such, this conduct is insufficient to establish either closed-ended or open-ended continuity. The RICO claims of Spool and CFA against World, Jenkins and Goolsby therefore fail as a matter of law.

(2) *Plaintiffs Spool and CFA do not have RICO claims based on the alleged predicate acts of the Foundation.*

Spool's and CFA's RICO claims against the Foundation fare no better. The Complaint alleges that the Foundation: (i) was the recipient of program fees; (ii) was used to shield legally and illegally gained profits from World and its affiliates; and (iii) donated little if any of its substantial assets to any charitable cause. (P. Mem. at 4; Compl. at ¶¶ 109-113; 120-124). None of these allegations establish any activity directed at, or injury to, Spool and CFA. As such, their RICO claims against the Foundation fail as well.

B. The RICO Claims of Plaintiffs Bruce and Charlene Ferguson Should be Dismissed.

As demonstrated above, most of the wrongful conduct that World, Jenkins and Goolsby purportedly engaged in is alleged to have been directed at Spool and CFA.[3] As such, the Fergusons cannot claim that they were injured by this conduct and therefore they do not have standing to bring RICO claims based on these alleged wrongful acts.

The only conduct of World, Jenkins or Goolsby that Plaintiffs allege was directed at the Fergusons is as follows: (i) charging an excess foreign program fee; (ii) utilizing stolen and forged documents to process client adoptions; (iii) charging for legitimate certifications never obtained; (iv) misleading them about the services World was providing; and (v) employing criminally indicted employees. (Compl. at ¶¶ 55-113). The Complaint also alleges that the adoption was not successful, and that the Fergusons are owed "not less than $7,700." A single failed adoption, even one allegedly tainted by wrongful conduct, does not constitute a pattern of

[3] Failing to pay CFA and Spool, stealing CFA's files and using those files to CFA's and Spool's detriment, and using CFA's good will. None of this conduct is alleged to have been directed at the Fergusons.

RICO activity.[4]

The Fergusons' failed adoption does not meet the test for a close-ended pattern of racketeering activity, which requires proof of "a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months...do not satisfy this requirement...." *H.J., Inc., v. Northeastern Bell Tel. Co.*, 492 U.S. 229, 242, 109 S.Ct. 2893 (1989). The Second Circuit "has never held a period of less than two years to constitute a substantial period of time." *Cofacredit*, 187 F.3d at 242 (citations omitted); *Accord Giannacopolous v. Credit Suisse*, 965 F.Supp. 549, 552 (S.D.N.Y. 1997) (surveying cases). Here, the failed Ferguson adoption, a single isolated incident, occurred over a period of less than 19 months.

The failed Ferguson adoption similarly fails to meet the requirements for an open-ended pattern. Where, as here, the enterprise "primarily conducts legitimate business," then the plaintiffs must plead facts "from which it may be inferred that the predicate acts were the regular way of operating that business, or that the nature of the predicate acts themselves implies a threat of continued criminal activity." *Cofacredit*, 187 F.3d at 243. No such allegations are made here. Notwithstanding Plaintiffs' protestations to the contrary in their opposition brief, their own Complaint alleges that World "primarily conducts legitimate business." According to Plaintiffs, World: (i) is "a large international adoption agency operating in all 50 states and the District of Columbia"; (ii) is "in the business of procuring ... children for individuals in the United States to adopt."; (iii) "assists adoptive couples with immigration and foreign adoption paperwork..."; and (iv) during the ten year period beginning in August 1994, it handled "over 120 international adoptions per year and [it] grew into the fourth or fifth largest international adoption agency in

[4] In a desperate attempt to make a failed adoption appear to be part of a massive ongoing scheme, Plaintiffs allege that they have identified "three other known victims of Defendants' forgery and fraud." (P. Mem. at 12; Compl. at ¶¶ 68-70). Plaintiffs' vague allegations of activity that occurred nearly two and one half years ago over a six day period fall far short of establishing a pattern, let alone an ongoing pattern, of racketeering activity.

the United States." (Compl. at ¶¶ 17, 18, 21, 37). Indeed, for proof that World is engaged in a legitimate business, the Court need look no further than plaintiffs Bruce and Charlene Ferguson, who "successfully completed their first Russian adoption" through World. (Compl. at ¶ 22).

According to Plaintiffs' own allegations, the Fergusons, as well as the parents of over 1,200 adopted children, can attest that World is a legitimate business providing a valuable service to children throughout the world and families all across the United States. Given these allegations, open-ended continuity does not exist as a matter of law. *See e.g., Passini v. Falke-Gruppe*, 745 F.Supp. 991, 993 (S.D.N.Y. 1990) (no threat of continuity where plaintiff alleged no factual basis to infer that defendants made practice of defrauding designers); *Continental Realty Corp. v. J.C. Penney Co.*, 729 F.Supp. 1452, 1455 (S.D.N.Y. 1990) (holding "future opportunities to commit fraud are not sufficient to support a finding of continuity or threat of continuity..."); *Bernstein v. Misk*, 948 F.Supp. 228, 237 (E.D.N.Y. 1997)(no open-ended continuity alleged where, aside from plaintiffs' bare allegation, there was no basis to conclude that defendants would continue to commit same criminal acts).

Claims of open-ended continuity are generally looked upon with skepticism when the entire "pattern" consists of a single scheme. To find open-ended continuity on the meager allegations of a single failed adoption would "render the pattern requirement meaningless." *Continental Realty Corp.*, 729 F.Supp at 1455.

As to the Foundation, the Complaint's allegations are wholly inadequate to support a RICO claim by the Fergusons. The Complaint does not allege that the Fergusons had any interaction of any kind with the Foundation.

II. PLAINTIFFS HAVE FAILED TO STATE A CLAIM UNDER THE COMPUTER FRAUD AND ABUSE ACT

Plaintiffs' claim under the CFAA fares no better than their RICO claims. The Complaint expressly and exclusively alleges that CFA's injury was in the form of Defendants obtaining an "unfair competitive advantage." (Compl. at ¶¶164-165).[5] As Defendants have demonstrated, damages in the form of "unfair competitive advantage" are not compensable under the CFAA (Def. Mem. at 11-13). Plaintiffs do not dispute this, and resort to concocting a new, unalleged, injury, claiming in their memorandum of law that they "have expended many lost hours attempting to determine the extent of the unauthorized access to their computers and the damage caused by it." (P. Mem. at 16). This allegation, however, appears nowhere in the Complaint. Accordingly, as it is the Complaint that the Court looks to on a motion to dismiss, Plaintiffs have failed to state a claim under the CFAA.[6]

III. THIS COURT SHOULD DECLINE TO EXERCISE SUPPLEMENTAL JURISDICTION OVER THE REMAINING STATE LAW CLAIMS

With the dismissal of Plaintiffs' federal claims, this Court should dismiss the supplemental state law claims for lack of an independent basis of subject matter jurisdiction. *See* 28 U.S.C. § 1367(c)(3). Generally, where federal claims are dismissed before trial, courts decline to exercise jurisdiction over supplemental state-law claims. *See Carnegie Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988); *Castellano v. Board of Trustees*, 937 F.2d 752, 758 (2d Cir. 1991) (holding if federal claims are dismissed before trial, state law claims should be dismissed as well). Indeed, "it may be an abuse of discretion for a district court to refuse to

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[5] This is not, as Plaintiffs would have the Court believe, Defendants' interpretation or misrepresentation of their claims, but rather the express and exact language used by Plaintiffs in their own Complaint. That the damages claimed were for loss of competitive advantage is highlighted by the fact that Plaintiffs quantify the damages in terms of lost business on an annual basis ("at least $50,000.00 per year"). (Compl at ¶ 165).

[6] Spool's CFAA claim fails for lack of standing. Spool's only connection to this lawsuit is in his capacity as the Executive Director of CFA. (Compl. at ¶ 1). The only computer files the Complaint alleges were stolen, however, were "CFA client and computer files..." (Compl. at ¶ 61). The Complaint nowhere alleges that separate computer

dismiss a pendent state claim after it dismisses a federal claim." *Morse v. University of Vermont*, 973 F.2d 122, 128 (2d Cir. 1992).

There is ample reason for discretionary dismissal here. No activity at all had occurred on the state law claims -- there has been no discovery since the Complaint was filed, and the initial motion practice involves only the federal claims. *Cf. Purgess v. Sharrock*, 33 F.3d 134, 138 (2d Cir. 1994) (in determining whether to dismiss state claims, court should examine amount of time, effort, and money expended on them).

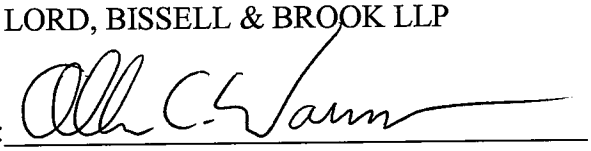
CONCLUSION

For all of the reasons stated above, the Complaint should be dismissed in its entirety.

Dated: New York, New York
September 8, 2006

Respectfully submitted

LORD, BISSELL & BROOK LLP

By: 

ALLEN C. WASSERMAN (AW 4771)
Attorneys For Defendants World Child International Corporation, Foundation of World Child, Inc., Sherrell J. Goolsby and Carl Jenkins
885 Third Avenue, 26th Floor
New York, NY 10022
212.947.4700

records belonging to Spool were stolen or misappropriated. As Spool is not alleged to have been a victim of any computer fraud or abuse, his CFAA claim must be dismissed.

15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ROGER SPOOL, CHILD & FAMILY ADOPTION, BRUCE FERGUSON, and CHARLENE FERGUSON,

Plaintiffs,

-against-

WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC., JENKINS & POVTAK, SUSAN DIBBLE, DORREEN WHITTAKER, SHARRELL J. GOOLSBY, CARL A. JENKINS, and YAROSLAV PANOSOV,

Defendants.

----------X

06 CV 04243 (CLB)

JUDGMENT

Whereas the above entitled action having been assigned to the Honorable Charles L. Brieant, U.S.D.J., and the Court thereafter on October 4, 2006, having handed down a Memorandum and Order (docket #14) granting the motions, dismissing with prejudice the First, Second, Third and Fourth Claims as to all Defendants except Defendant Yaroslav Panosov, and dismissing without prejudice all other Claims, it is,

ORDERED, ADJUDGED AND DECREED: that the motions are granted, the First, Second, Third and Fourth Claims in the Complaint are dismissed with prejudice as to all Defendants except Defendant Yaroslav Panosov, all other Claims are dismissed without prejudice, and the case is hereby closed.

DATED: White Plains, N.Y.
October 11, 2006

J. Michael McMahon

COPIES MAILED BY THE CLERK'S OFFICE

J. Michael McMahon
Clerk Of Court

E.O.D 10/12/06

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROGER SPOOL, CHILD & FAMILY ADOPTION BRUCE AND CHARLENE FERGUSON,

Plaintiff(s),

- against -

WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC. JENKINS & POVTAK, SUSAN DIBBLE, DORREEN WHITTAKER, SHERRELL J. GOOLSBY, CARL JENKINS, YAROSLAV PANOSOV,

Defendant(s).

----------x

06 Civ. 4243 (CLB)

Memorandum and Order

Brieant, J.

Before the Court in this RICO and Computer Fraud and Abuse Act ("CFAA") action are three motions to dismiss the Amended Complaint. By motion filed (Doc. 5) filed July 17, 2006, Defendants World Child International Corporation i/s/h/a World Child International Adoption Agency ("World Child"), The Foundation of World Child, Inc., Sherrell J. Goolsby, Carl Jenkins, and Jenkins & Povtak move to dismiss the Amended Complaint ("Complaint") under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure ("FRCP"). By motion filed July 20, 2006 (Doc. 7), Defendants Doreen Whitaker and Susan Dibble move *pro se* to dismiss the Complaint for failure to state a claim upon which relief can be granted. By motion filed July 21, 2006, defendant Yaroslav Panasov (Doc. No. 8) moves to dismiss the case for lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process.

Background

Plaintiffs allege violations of the federal RICO statute and the Computer Fraud and Abuse Act ("CFAA"), supplemented by common law or state law claims for fraud, breach of fiduciary duty, conversion, tortious interference with contracts, gross negligence and negligence.

The following facts are presumed true for purposes of these motions only. Plaintiff Roger Spool is a social worker in Ulster County, New York, and the Executive Director and founder of plaintiff Child & Family Adoption ("CFA"), which is an authorized adoption agency in New York. Bruce and Charlene Ferguson are residents of Dutchess County and were clients of CFA.

Defendant Carl Jenkins is the Executive Director of Foundation of World Child, Inc. and a partner at the defendant law firm of Jenkins and Povtak, located in Maryland. Mr. Jenkins is an attorney for the World Child Agency. Defendants Susan Dibble and Dorene Whittaker are former employees of Child & Family Adoption. Defendant Yaroslav Panasov is a Russian national and the Moscow representative for World Child.

Defendant World Child International Adoption Agency (true name World Child International Corporation, "World Child" or "World Child Agency") is a non-profit child-placing agency, specializing in international adoption. The Foundation of World Child, Inc., ("the Foundation") is chartered in Washington, D.C., and is a non-profit foundation created by the Defendants. Defendant Sherrell Goolsby is a resident of Maryland and the Executive Director of the World Child.

Defendant World Child is an international adoption agency, which operates throughout the United States and is in the business of finding and presenting Russian, Eastern European, Central American and Chinese children for adoption by residents of the United States. *Complaint at* ¶¶ 17, 18. It assists adopting parents with immigration and foreign adoption paperwork and offers "no guarantee of a successfully completed adoption, the healthiness or well-being of the child, or the honesty and integrity of the process." *Id. at ¶21.* Defendant Panasov is an agent in Russia who facilitates adoptions from Russia, and provides legal services to Americans. *Id. at ¶20.*

Plaintiffs Roger Spool and CFA as a joint venture worked with Defendants for ten years to place Russian children into homes of New York families, including the home of plaintiffs Ferguson, who successfully adopted one child through this means. *Id. at ¶22.* Clients of the joint venture paid two basic fees directly to World Child for their foreign adoption; the agency fee and the foreign program fee. *Id. at ¶39.* World Child then paid CFA a fixed amount of the agency fee for its services. At some time, World Child began to demand a greater percentage of the joint-venture's generated fees and began to refuse payments and to contest the legitimacy of CFA's charges.

Plaintiffs allege that the Defendants ultimately colluded secretly with CFA employees Dibble and Whittaker to steal assets from CFA while plaintiff Spool was on vacation, and then began to redirect clients to World Child's own unauthorized and illegal adoption "agency." Plaintiffs allege that Defendants deliberately misled their clients, including the Fergusons, about

their activities in order to continue to collect substantial adoption fees from them.

The Fergusons traveled to Russia to effect a second adoption through World Child. Their efforts were rejected by Russian authorities based on findings of attempted deception and fraud.

Discussion

In considering a motion to dismiss under Rule 12(b)(6), the Court is obliged to accept the well-pleaded assertions of fact in the Complaint as true and to draw all reasonable inferences and resolve doubts in favor of the non-moving party. The focus of the Court's inquiry is not whether Plaintiffs will ultimately prevail, but whether the claimants are entitled to an opportunity to offer evidence in support of their claims. Therefore a motion to dismiss must be denied unless it appears beyond doubt that the Plaintiffs can prove no set of facts in support of their claims which would entitle them to relief. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Yaraslav Panasov

Defendant Panasov asserts that this Court has no personal jurisdiction over him as he is a Russian citizen domiciled in Moscow. He also asserts insufficiency of process and service of process, asserting that he was not properly served with the Amended Complaint or Summons. Panasov avers that the original complaint was served without a summons and that he was never served with the Amended Complaint.

Plaintiffs have not apparently opposed Mr. Panasov's motion, which is granted without

prejudice.

Failure to State a Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961, et seq. ("RICO") Claim

> To state a claim for damages under RICO a plaintiff ... must allege the existence of seven constituent elements: (1) that the defendant (2) through the commission of two or more acts (3) constituting a "pattern" (4) of "racketeering activity" (5) directly or indirectly invests in, or maintains an interest in, or participates in (6) an "enterprise" (7) the activities of which affect interstate or foreign commerce. 18 U.S.C. § 1962(a)-(c) (1976).

Moss v. Morgan Stanley, Inc., 719 F.2d 5, 17 (2d Cir. 1983).

This Court concludes that the Plaintiffs have, at most, serious business disputes with the World Child Defendants, but do not present the type of case contemplated when Congress passed the RICO statute. Indeed the view is inescapable that the RICO allegations are present only as a jurisdictional hook to access the federal courts with what may very well be valid state law claims for fraud and breach of contract.

World Child is the RICO enterprise, according to the First Amended Complaint. Mr. Spool concedes that he placed more than 1,000 successful international adoptions with World Child prior to April 2004 when the parties severed their relationships. Certainly, Spool was not himself conducting a RICO enterprise. Only in April 1994 did Defendants commence the claimed of illegal acts complained of. The wrongs inflicted on Spool and CFA were concluded by July 2004. The wrongs inflicted on the Ferguson Plaintiffs, if such they were, were concluded at least by August 2004 when a Russian Court ruled against their second proposed

adoption. The facts alleged will not support a finding of either an open-ended pattern of continuing racketeering activity, or closed ended pattern of past criminal conduct extending over a substantive period of time. See *H.J. Inc. v. Northwestern Bell Telephone,* 492 U.S. 229 (1989); *GICC Capital Corp. v. Technology Finance Group, Inc.,* 67 F. 3d 463 (2d Cir. 1995). Isolated or sporadic acts are insufficient. Here there is no showing that the acts occurred over a substantial period of time, and no evidence of continuity.

The Amended Complaint fails to state a claim under RICO.

Spool's and CFA's Claim under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *"CFAA")*

Defendants contend that Plaintiffs fail to state a claim upon which relief can be granted, under CFAA, because they have failed to allege a compensable loss. The Court agrees. The only loss pleaded is that the individual Defendants obtained an "unfair competitive advantage." Such a loss is not within the express contemplation of the statute. See 18 U.S.C. § 1030(e)(11).

The Amended Complaint fails to state a claim under the CFAA.

Conclusion

The motions are granted. The First, Second, Third and Fourth Claims in the Complaint are dismissed with prejudice as to all Defendants except Panosov. All other claims are dismissed without prejudice. The Clerk shall file a final judgment.

SO ORDERED.

Dated: White Plains, New York
October 4, 2006

Charles L. Brieant, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION, BRUCE AND CHARLENE FERGUSON, Plaintiffs, – against – WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC., JENKINS & POVTAK, SUSAN DIBBLE, DORENE WHITAKER, SHARRELL J. GOOLSBY, CARL A. JENKINS, YAROSLAV PANASOV, Defendants.	**PLAINTIFFS' MOTION FOR RELIEF UNDER FEDERAL RULES OF CIVIL PROCEDURE RULE 60(b)(1)** Case No. 06-CV-4243 Judge Charles L. Brieant

The Plaintiffs, by and through their attorney James R. Marsh, Esq. of Marsh Menken & Weingarden pllc, hereby move this Court, pursuant to Federal Rules of Civil Procedure Rule 60(b)(1) [Rule], for an order to set aside only that portion of the Order of Dismissal issued in this action on October 4, 2006 and entered by the clerk on October 12, 2006 which refers to Defendant Panasov's Limited Appearance, and for leave to file the proposed Response to Defendant Panasov's Limited Appearance, a copy of which is attached to this motion.

This motion is based on this document, the Affirmation of James R. Marsh, Esq., the Proposed Response to Defendant Panasov's Limited Appearance for Purposes of Dismissal, the attached exhibits, and all of the pleadings, papers, and other records on file in this action, and any evidence and argument which may be presented at a hearing on this motion.

INTRODUCTION

That portion of the Court's October 4, 2006 Order of Dismissal concerning Defendant Panasov's Limited Appearance should be set aside because it was based on mistake, inadvertence, or excusable neglect within the meaning of Rule 60(b)(1) since the Plaintiffs did not receive Defendant Panasov's papers until after the Court's September 15, 2006 oral argument on the motions to dismiss. The Plaintiffs were unaware that Defendant Panasov filed a limited appearance until Plaintiffs' Counsel received the mail late in the day on September 15, 2006 and never had a chance to respond to Defendant Panasov's Limited Appearance. In addition, Defendant Panasov's Limited Appearance was improper since it did not include either the exhibit referenced in the papers or an affidavit indicating service on all the parties.

LEGAL ARGUMENT

"A written motion and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court.. . . When a motion is supported by affidavit, the affidavit shall be served with the motion. . ." FRCP Rule 6(d).

Defendant Panasov's Limited Appearance does not set a date for a hearing, but merely purports to be a limited appearance "for purposes of dismissal." In addition, his motion refers to a "Declaration" which he claims supports his argument and is referenced as "Exhibit 1" to his papers. This affidavit was not included with the copy of the papers received by Plaintiffs' counsel on September 15, 2006 and has not been supplied to date. [See Exhibit 1].

Plaintiffs' counsel only received Defendant Panasov's papers late in the afternoon of September 15, 2006 after the Court's hearing on the Defendants' collective motions to dismiss.

At the oral argument, Plaintiffs' counsel was unaware that Defendant Panasov had apparently filed his Limited Appearance in July 2006.

During his oral argument, Plaintiffs' counsel specifically stated that "Yaroslav Panasov, . . . has been served and . . . has also been sent a copy of the Amended Complaint, which we have received confirmation for . . ." [Exhibit 2 p. 22 l. 10]. This statement elicited no further inquiry from the Court or response from opposing counsel.

The Plaintiffs were planning a response to Defendant Panasov's papers when the Court issued its Order of Dismissal on October 4, 2006.

The Plaintiffs are filing this motion within 10 days of the Clerk's September 12, 2006 entry of judgment in this matter. As such, Defendant Panasov will suffer no undue prejudice if that portion of the Court's Order of Dismissal concerning his Limited Appearance were set aside and the Plaintiffs were permitted to respond to his papers.

The Plaintiffs have a meritorious defense to Defendant Panasov's Limited Appearance which is set forth in the proposed Response to Defendant Panasov's Limited Appearance attached to this motion. [Exhibit 3].

Dated: October 23, 2006
White Plains, New York

James R. Marsh (JM9320)
Attorney for the Plaintiffs

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81 Main Street – Suite 305
White Plains, New York 10601-1719
Phone (914) 686-4456
Fax (914) 206-3998
Email JamesMarsh@MMWLaw.us

EXHIBIT 1

DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL CHILD & FAMILY ADOPTION BRUCE & CHARLENE FERGUSON Plaintiffs vs. WORLD CHILD INTERNATIONAL, et al, Defendants	)	Case No.: 06-CIV-4243 Judge Charles L. Brieant ECF Case **LIMITED SPECIAL APPEARANCE OF DEFENDANT YAROSLAV PANASOV FOR PURPOSE OF DISMISSAL**

Defendant Yaroslav Panasov hereby appears for the limited and special purpose of moving to dismiss him from this case due to lack personal jurisdiction, insufficiency of process and insufficiency of service of process, and in support of his claims, states as follows:

1. The Defendant was not properly served with "process" under the Federal Rules of Civil Procedure, and for a factual predicate, attaches hereto his Declaration as *Exhibit 1*, incorporated herein as if fully set forth below.
2. Rule 4(c)(1), *Fed.R.Civ.Pro.*, requires that a "Summons" be attached, which should "...bear the Seal of the Court, state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant...." [Rule 4(a)]. There was no summons attached to the Original Complaint presented to your Defendant on June 6, 2006. (*See, Exhibit 1*)
3. Rule 5(a), *Fed.R.Civ.Pro,* requires "... No service need be made on parties in default... except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4." Upon information and belief, the Plaintiffs herein have amended their original complaint, and have not presented such an Amended Complaint to your Defendant, with or without a Summons.
4. Where proper service has not been obtained, the party is not properly before the Court for purposes of adjudication. *In re City of Philadelphia*, 123 F.R.P. 515 (1988, USDC-EDPA); *Schroeder v. Kochanowski*, 311 F.Supp.2d 1241 (2004, USDC-KS).

5. Consequently, both the actual process [Amended Complaint] and service of process [Summons] are absent as against this Defendant, and he should be removed and dismissed as a party to this action.
6. Further, this Court is lacking in personal jurisdiction – Defendant is a Russian citizen, domiciled in Moscow.

WHEREFORE in accord with the foregoing, Defendant Panasov respectfully requests that this Honorable Court dismiss this action with prejudice.

Respectfully submitted,

Defendant Yaroslav Panasov
Kholodyl'ny pereulok,
Bldg., No. 3A building 3
Moscow 115191
Russian Federation
011-7-495-778-7985

CERTIFICATE OF SERVICE

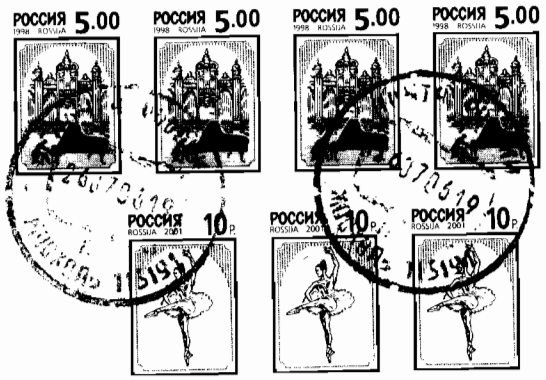
I HEREBY CERTIFY that on this 19th day of July, 2006, a copy of the foregoing Motion to Dismiss was mailed via first class mail, postage prepaid, to:

James R. Marsh, Esquire
MARSH, MENKEN & WEINGARDEN, PLLC
81 Main Street, Suite 305
White Plains, New York 10601-1719

Yaroslav Panasov

FROM:

Yaroslav Panasov
Kholodyl'ny pereulok,
Bldg., No. 3A building 3
Moscow 115191
Russian Federation



TO:

James R. Marsh, Esquire
MARSH, MENKEN & WEINGARDEN, PLLC
81 Main Street, Suite 305
White Plains, New York 10601-1719 USA

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
ROGER SPOOL, CHILD & FAMILY ADOPTION,
BRUCE FERGUSON, CHARLENE FERGUSON,

Plaintiff,

v. 06 CV. 4243 (CLB)

WORLD CHILD INTERNATIONAL ADOPTION
AGENCY, JENKINS & POVTAK, SUSAN DIBBLE,
DOREEN WHITTAKER, SHARRELL J. GOOLSBY,
CARL A. JENKINS, YAROSLAV PANASOV,
FOUNDATION OF WORLD CHILD, INC.,

Defendants.
----------x

U.S. Courthouse
White Plains, N.Y.
September 15, 2006
11:10 a.m.

Before: HON. CHARLES L. BRIEANT

United States District Judge

Sue Ghorayeb, R.P.R., C.S.R.

Official Court Reporter

APPEARANCES

MARSH MENKEN & WEINGARDEN, PLLC
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Attorney for Plaintiffs

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Doreen Whittaker,
Sharrell Goolsby,
Carl A. Jenkins,
Foundation of World Child, Inc.,

GORDON & SILBER, P.C.
BY: DAVID H. SCULNICK, Esq.
355 Lexington Avenue
New York, N.Y. 10017
Attorneys for Jenkins & Povtak

THE CLERK: Roger Spool v. World Child International Adoption Agency.

THE COURT: Who wishes to be heard in support of the motion?

MR. WASSERMAN: Alan Wasserman, Your Honor, for Defendants Foundation of World Child, Inc., World Child International Adoption Agency.

THE COURT: Please take the lectern.

MR. WASSERMAN: Good morning, Your Honor.

THE COURT: You don't represent Defendant Panasov?

MR. WASSERMAN: No, I do not.

THE COURT: And that's just because he claims he wasn't served?

MR. WASSERMAN: I have not been retained to represent him. I've never spoken to him.

THE COURT: All right.

MR. WASSERMAN: I also do not represent the law firm defendant. They are represented by a separate counsel, who is here today, and he will argue on their behalf. That will be Jenkins & Povtak.

THE COURT: All right. You can be heard.

MR. WASSERMAN: Your Honor, this is a motion to dismiss RICO claims and claims under the Computer Fraud and Abuse Act. The Amended Complaint here alleges the usual laundry list of common law claims; fraud, negligence, gross

negligence, tortious interference with contract, tortious interference with prospective business relationships and conversion. And it has become a common occurrence and it is not all that surprising a granted measure, and what that really means is for the treble damages and the attorney's fees, the plaintiffs have added RICO claims, and to back stop their RICO claims, trying to keep the case in this court, have federal jurisdiction, they also have a claim under the -- should I stop?

THE COURT: Go ahead.

MR. WASSERMAN: They have RICO claims and also a claim under the Computer Fraud and Abuse Act.

All of these claims, all of these claims arise from two basic incidents. One is a garden variety business dispute. The corporate plaintiff entities had a business relationship with the defendants for a number of years. Essentially, they are in the business of arranging and facilitating and servicing adoptions. They operate throughout the United States.

According to the Complaint, plaintiffs themselves allege that working together, they arranged over 1,000 adoptions over a period of time.

There came a point in time where there was a disagreement. One party wanted to change the nature of the relationship. They were not able to come to an agreement and

they parted ways.

Now, what the plaintiff will argue is they simply didn't part ways, but that the defendants engaged in all of the unlawful conduct that they have alleged, all the common law claims; that they stole records, they stole clients and engaged in other heinous acts to destroy their business. All of this, if it did occur, occurred over a period of weeks in 1994 -- excuse me, in 2004. That's it. It is a business dispute involving one corporate entity. So, if there is a scheme here, the scheme is that the defendants set out to destroy the plaintiffs by stealing their records, stealing their customers. That is not a RICO claim.

The other plaintiffs, the Fergusons, Mr. and Mrs. Ferguson, their claims focus entirely around the failed adoption of a child. They tried to adopt a child in the -- in Russia, utilized the services of the defendants, the adoption was not successful. The allegations are that the adoption failed because of misrepresentations, the use of forged documents and other activity, which, which may all be true. We deny it, of course, but let's assume it's true.

THE COURT: Before you get any further, what is this, a diversity case?

MR. WASSERMAN: No, no. The jurisdiction --

THE COURT: Jurisdiction is solely based on RICO?

MR. WASSERMAN: Yes.

THE COURT: So, if there is no RICO, there is no lawsuit.

MR. WASSERMAN: Well, it's based on RICO and the computer fraud.

We're here today not to argue that plaintiffs should not have a forum to have their claims heard. We are here today to argue that that should occur across the street. This is not a federal case.

The Fergusons, whose claim again amounts to a single failed adoption claim, approximately $7,700 in damages, that's the full extent of their claim. They want --

THE COURT: One was successful and one was not successful?

MR. WASSERMAN: Well, and that's an important point, Your Honor. In an earlier effort, the Fergusons, working with my clients, successfully adopted a child and they were very happy.

There was a subsequent attempt at an adoption and that failed. Well, based on that, they are claiming this is a RICO conspiracy to defraud people, we are not a legitimate business. Yet, the Complaint alleges that we have had successful adoptions, hundreds of them over years.

Moreover, the plaintiffs, Mr. and Mrs. Ferguson are Exhibit A to the fact that my clients do what they -- that they are in a legitimate business, because they have a child,

an adopted child, and they came to my clients who secured that adoption.

To believe plaintiffs' theory of the case, you would have to believe that overnight a switch was flipped and legitimate businessmen, arranging adoptions throughout the world, and who had been doing it for years and had arranged hundreds of adoptions, suddenly decided it's more profitable to defraud people and not really go through the process, to take their money and have unsuccessful adoptions. Their evidence of that, one failed adoption, that's it.

Why are they here? Because there was a business dispute, we couldn't come to terms with them, and they don't like that, so they alleged the claims that are appropriate, but they go too far. They couldn't resist the seducing treble damages. They were seduced by it, they want to be in this court, because no one wants to be a racketeering defendant. My clients don't. They're not. These are common law claims. There is a proper forum for those claims.

Our argument, which we explain in detail --

THE COURT: I think I asked you this already. There is no diversity jurisdiction or there is?

MR. WASSERMAN: There is not, Your Honor.

THE COURT: And why do you say that?

Let me find out where all these people are in the caption. There is -- what is Child -- Roger Spool is a New

Yorker, right?

MR. MARSH: That's correct, Your Honor.

THE COURT: And what is Child & Family Adoption in the plaintiff's caption?

MR. MARSH: It's also a New York entity, Your Honor. It's also a New York entity.

THE COURT: All right. And the Fergusons are in New York?

MR. MARSH: That's correct, Your Honor.

THE COURT: World Child International Adoption Agency, that's --

MR. SCULNICK: Washington, D.C., Your Honor.

THE COURT: A Washington, D.C. corporation.

MR. SCULNICK: A not-for-profit, yes, I think so.

THE COURT: Yes. The Foundation of World Child, Inc. is -- that's some separate outfit?

MR. SCULNICK: Yes. I believe they are in -- a not-for-profit in Maryland. I may have them reversed. One is in D.C. and one is in Maryland.

THE COURT: All right. And Jenkins & Povtak?

MR. SCULNICK: Is a Maryland law firm.

THE COURT: There is no New York office?

MR. SCULNICK: Correct.

THE COURT: And then it says that Susan Dibble is a resident of Ulster County, so it seems to me -- and that

Doreen Whittaker is a resident of Ulster County.

It seems to me that there is no diversity jurisdiction here and we could proceed only if there is subject matter jurisdiction under RICO or under this computer fraud statute, which is being referred to; is that right?

MR. WASSERMAN: That's correct.

MR. MARSH: That's correct, Your Honor.

THE COURT: Okay. Please continue.

MR. WASSERMAN: Okay. With regard to the RICO claims, as we detail in our papers, the RICO claims are defective in a number of respects, but most importantly for failure to allege a pattern, a RICO pattern.

The allegations in the Complaint do not satisfy either close-ended or open-ended. And what the Complaint does and it's very interesting -- one could argue clever and creative in this respect -- is it takes a finite discrete group of allegations and applies them across-the-board to all of the -- all of the plaintiffs and all of the defendants.

So, for instance, if we focus on the Foundation, Your Honor, which is one of the defendants, the allegation is made that the Foundation receives money from one of the defendants.

THE COURT: The Foundation is the entity?

MR. WASSERMAN: The Foundation is a separate entity.

THE COURT: So that's the enterprise for RICO purposes?

MR. WASSERMAN: No, no.

THE COURT: Who is the enterprise?

MR. WASSERMAN: It is the combination of all of the defendants.

THE COURT: That all of the defendants were operating the Foundation as a RICO enterprise?

MR. WASSERMAN: No. Actually, all of the defendants together formed -- they were the enterprise.

THE COURT: Well --

MR. WASSERMAN: The Foundation was one member, constituent element of the enterprise.

Essentially, all of these people came together to form a RICO enterprise and then engaged in racketeering activity. And, again, the racketeering activity consists of a business dispute, the alleged theft of records, all from one -- one entity, the plaintiff, and a failed adoption.

Most importantly, you have plaintiffs in this case who allege that they were harmed by activity that forms the RICO pattern, which in no way, shape or form is either directed at the plaintiffs or caused them any injury, and therefore they don't have standing to assert a claim based on that activity, let alone use that activity to establish a pattern.

And by way of example with one of the defendants, the Foundation, the claim is that the Foundation received monies from another defendant and that the Foundation did not spend an adequate amount of that money on charitable purposes. There is no claim that the Foundation did anything which in any way adversely affected or injured the plaintiff Roger Spool or Child & Family Adoption or the Fergusons in this case; yet, that activity is alleged as supporting the RICO claims and more particularly the pattern requirement.

There is also a claim that, in connection with adoptions, World Child used forged documents, misrepresented their services, charged hidden fees, a laundry list of activity, but yet it's -- the Complaint alleges repeatedly that that activity is directed at the customers of the defendants, not that it was directed at the plaintiffs, Roger Spool and Child & Family Adoption.

So, while -- taking the Complaint at face value, while the defendants were engaged in wrongful activity, that activity was neither directed at, nor did it cause injury to the plaintiffs, and therefore they have no standing to assert any claims based on that activity, but most importantly that activity cannot form the basis for the RICO pattern, which is essential for their RICO claims to survive.

With respect to the computer fraud claim, and this is stated quite succinctly in our papers, their allegation is

that the theft of computer records led to a competitive disadvantage. That's what they allege in their Complaint.

In our -- in our motion papers, we have cited to authority which states clearly that a competitive advantage or loss of competitive advantage is not a sufficient injury under the Computer Fraud and Abuse Act.

We cite to the Nexans Wires case, Southern District of New York, 319 F.Supp. 2d 468, and that case relies on an earlier Second Circuit -- excuse me, Southern District case, Register.com --

THE COURT: Do you have any Second Circuit authority?

MR. WASSERMAN: Excuse me, Your Honor.

THE COURT: Do you have any Second Circuit authority? Because you know those Southern District cases don't have any precedential value.

MR. WASSERMAN: Well, the Register.com case was affirmed by the Second Circuit. And, essentially, the cases say that the type of injury alleged in the Complaint does not support their claim under the Computer Fraud and Abuse Act.

Now, what they do, not surprisingly, is in their brief they assert an alternative theory of damages, which appears nowhere in their Complaint. And I should note this is their second attempt at a proper Complaint. This is an Amended Complaint we are moving to dismiss.

They also seek -- I'm sorry, Your Honor.

THE COURT: Go ahead.

MR. WASSERMAN: They also seek discovery, because there are facts out there which might somehow buttress their claims. At the end of the day, I'm not standing here to say they should not be heard in a forum. It's not this forum. Not every case is a RICO case; this one surely isn't, it is not, and this Court's time should not be wasted on a case that belongs in another court. Thank you.

THE COURT: Thank you, sir.

Mr. Marsh, you may be heard.

MR. SCULNICK: Your Honor, I have just two words more than I need to.

THE COURT: And who do you represent, please?

MR. SCULNICK: I represent the law firm, Jenkins & Povtak.

THE COURT: Okay.

MR. SCULNICK: I adopt the arguments that have already been made and make the following point with respect to the law firm itself.

There are only two references in the entire Complaint to the law firm. They appear on Page 8. And the reference is that Mr. Jenkins, who in efficiently being a member of that law firm, is general counsel to World Child; on two occasions wrote correspondence to Spool using Jenkins

& Povtak letterhead. That's the only reference in this entire Complaint.

THE COURT: What did the correspondence contain?

MR. SCULNICK: References to the dissolution of the business or a desire to change the nature of the business.

THE COURT: Of what business?

MR. SCULNICK: The relationship of World Child to Spool and Spool's business. There are no allegations that that was either right or wrong, or fair or unfair, or anything else.

The point that I want to make, that I believe arises from the Wasserman v. Maimonides case out of the Southern District, but also the Cofacredit case, is that there is no allegation at all in the Complaint to establish that the law firm entered into any conspiracy itself, committed any predicate acts itself or engaged in any conduct which in and of itself represents damage to the plaintiff.

The mere fact that Mr. Jenkins happens to be a partner in that law firm would not, we submit, in and of itself be enough to demonstrate that the law firm had become a knowing conspirator in this plan or activity.

Thank you, Your Honor.

THE COURT: Thank you, sir.

Plaintiff may now respond.

MR. MARSH: Thank you, Your Honor. Your Honor,

perhaps the best way to start explaining our case is by explaining the parties in the case and the relationship between the parties, which quite frankly confused me for months until I had it all figured out.

Roger Spool, the plaintiff, is the head/CEO of Child & Family Adoption Agency, which is a New York licensed adoption agency. He is both the head of the agency and it is largely based on his credentials that the agency functions; his social work license, his registration as a social worker, and his reputation for doing adoptions over many, many years. That's the first thing.

Bruce and Charlene Ferguson, the other plaintiffs, were a client of both Child & Family and World Child International Adoption Agency.

The relationship between Child & Family and World Child is a complicated one. It's complicated until you understand how an international adoption is done in this country.

World Child International operates, as we said, in all fifty states, they do international adoptions, and in that role they are not licensed in any of the States in which they do business, but they operate by surrogates, by licensed agencies. And when Child & Family Adoption Agency was beginning to get inquiries into international adoption, it turned to World Child to basically conduct, conduct the

international part of the adoption.

The State part of the adoption, which is very important, was retained by Child & Family Adoption; the home studies, the client followup, and, and the --

THE COURT: Which acts first with respect to a particular adoption, the court in Russia or the court in the United States?

MR. MARSH: There is no -- in the area of Russian adoptions, there is no domestic court oversight of those adoptions. Those adoptions are given full faith and credit in this country based on a Russian decree. So, those adoptions are completed in Russia. That's the piece of the work that World Child did. They did the foreign work.

Child & Family Adoption did the State work, if you will, the State home studies, and basically the direct client contact.

THE COURT: And did they submit the State home studies to the Russian court or to some court in the United States?

MR. MARSH: It's the Russian court, Your Honor.

Each, each international jurisdiction, in the way that the law is currently structured, except for Korea, each international adoption is completed in the country of origin. So, a Russian adoption is being completed under Russian adoption law.

An East European adoption, Ukraine, Romania, those are being completed under that international law.

And in this country, certain jurisdictions give full faith and credit. You can just mail that and get a birth certificate, a U.S. birth certificate.

In New York, there is a requirement that you file some papers with the court, but there is no oversight like we have in a domestic adoption.

The Foundation of World Child is an entity that was created by World Child International to handle the foreign fee. This is how World Child makes the majority of its money. It makes the majority of its money by charging clients what's called the foreign fee.

The foreign fee is often 15 to $20,000, it is a huge amount of money, and many things affect the foreign fee. Some of those things are driven by bribery in the foreign countries, quite frankly, and by gifts, which we talk about in our Complaint, and by extra walking around money that's required to get adoptions done in the foreign country.

THE COURT: Do any of those have anything to do with the underlying claim of the plaintiffs?

MR. MARSH: They do, Your Honor, and let me explain why. In 2002, as we allege in our Complaint -- again, because the foreign fee is a large part of it, World Child funnels the foreign fee through this Foundation, which is

ostensibly a charitable foundation, although, we have not been able to discover any charitable purpose.

And, in fact, during a meeting in 2002 with Mr. Spool, the principals of World Child admitted to him that the creation and operation of the Foundation was for two purposes. The first was to shelter their profits from lawsuits against the agency. The agency itself, World Child, is a shell company, and the money, the profits are put -- are run through the Foundation. This was -- Roger Spool was present for this conversation.

The second purpose of the Foundation is basically a retirement account for World Child.

THE COURT: I am puzzled as to how that damaged your clients, or how that obvious misconduct of bribing foreign officials, I fail to see how that's actionable in a private action by your client.

MR. MARSH: Well, it's -- as we allege in our Complaint, under RICO, it's an interposed entity to shield the ill-gotten gains from, from legal action, because --

THE COURT: That doesn't affect Roger Spool, does it?

MR. MARSH: It does, because he has significant damages in this case, and if World Child International --

THE COURT: Not with regard to the bribery. His damages are not due to the bribery.

MR. MARSH: Not due to the bribery, no, Your Honor.

But if World Child is putting all of its assets, if you will, in a separate entity, which is not involved in any of the activities of the underlying RICO claim, then it's an interposed entity that's shielding the assets from legitimate recovery, and that's why we name them.

We don't name them -- although, we do allege that the use was fraudulent, they in terms of being actors in this lawsuit, they're -- I mean all of the parties are interrelated. So, in terms of the Foundation as being an -- quote/unquote -- "actor" in the way that counsel has described it, they are not an actor. They are an entity which is being used to shield the assets and the gains from legitimate lawsuits and process.

And then, also, during this 2002 conversation --

THE COURT: Please, I don't understand how the plaintiffs are aggrieved by that, either of these companies. How are they aggrieved by this practice?

MR. MARSH: Because the Foundation is set up as a separate entity. If we were to get a million dollars -- and people have sued and this is why they did it, because of prior lawsuits.

If we were to sue World Child on its own, and Susan Dibble and all the other parties, and they are judgment proof because that entity has no profits, then we are unable to

recover anything, and we allege that the creation of the Foundation was specifically to shelter those assets from legitimate creditors. We also --

THE COURT: If you recover a legitimate judgment, you are going to sue under the New York debtor and creditor law. But please proceed, because I am having a little difficulty understanding how, unless you have a judgment returned unsatisfied and you couldn't collect it, how you are damaged by that. You don't have a judgment.

MR. MARSH: No. But under the RICO -- under, under RICO, my understanding is that as an interposed entity, they -- the Foundation itself can be liable under RICO, because they are an entity created to shelter these ill-gotten gains. Just like a Swiss Bank --

THE COURT: From the criminal end of it, there is no doubt that that's true, but this is just a civil lawsuit.

MR. MARSH: I believe that they are a legitimate defendant, Your Honor, for those reasons.

THE COURT: Well, we will have to look into it.

Go ahead.

MR. MARSH: In our papers, it's set forth in more detail.

In terms of Jenkins & Povtak, yes, there is an interrelationship between Mr. Jenkins as a partner in this law firm and as a principal in World Child. But in terms of

the allegations here, Your Honor, and it's important to note that we set with specificity that Jenkins & Povtak -- we have reams of documents, Your Honor. We have about 400 pages supporting this Complaint, which we are happy to provide on further litigation.

But in terms of these letters, one of the issues in the case is a 1-(800) number that was procured by Roger Spool, that was used in his advertising and in the venture, both his domestic adoption agency and in the joint venture, and for marketing and for client contact.

During the period of time that my clients were on vacation -- and this gets to the substance of the claim -- Mr. Jenkins, using Jenkins & Povtak letterhead, sent a letter, which we have, to a Philadelphia long distance supplier, instructing them to change the routing of that number from Roger Spool to the RICO entity that was created in the State of New York.

Now, counsel will argue that he wasn't -- the law firm itself wasn't acting, but if a law firm itself doesn't act through its letterhead, I don't know how else they act.

There are two instances of Jenkins & Povtak letterhead being used in the furtherance of the RICO activities. This is not just a random, you know, "please, you know, come and call us about settlement." These are specific acts, as we detail, on Jenkins & Povtak letterhead

in furtherance of the RICO conspiracy.

Susan Dibble and Doreen Whittaker, those two individuals are very important to this case, Your Honor, in terms of the role that they played, because they were longtime employees of Roger Spool and Child & Family Adoption. They were trusted employees. They had worked for over a dozen years, at least in the case of Susan Dibble, and they were entrusted with the running of that office.

Sharrell Goolsby and Carl Jenkins were the principals in Maryland, World Child. And Yaroslav Panasov, who has been served and who has also been sent a copy of the Amended Complaint, which we have received confirmation for, was the Russian agent for World Child, the person in the country, basically doing the work in Russia.

During the fall of 2003, World Child, claiming poverty and lack of resources and no cash flow, stopped sending payments to Child & Family Adoption for the work that they were doing. There was a slowdown. There was dispute about certain invoices.

And, Your Honor, there was a great deal of negotiation in the spring of 2004 about the relationship between the entities, between Child & Family Adoption and between World Child Adoption, and there was no resolution of those disagreements. But there was in fact no payment to Child & Family Adoption for a six months period, at least a

six months period, while these issues were being worked out, without conclusion.

My client, Roger Spool, in early April of 2004, left the country for vacation, a ten-day vacation, and these issues were unresolved at that period of time. He was gone approximately seven or eight days, and when he returned, Susan Dibble was gone, Doreen Whittaker was gone, and the entire business had been removed; confidential client files, his social work license, agency letterhead, and over a hundred confidential under New York State law, legally confidential files were missing and dummy files were placed instead. Clients did not know the extent of the damages.

In that eight-day period, Susan Dibble and Doreen Whittaker, at the direction of Sharrell Goolsby, Carl Jenkins, with the assistance of Jenkins & Povtak, basically stole my client's business lock, stock, and barrel. They took everything. This is not a business dispute, this was a theft.

And because they were not licensed in New York, because they could not do the New York piece of the adoption, they had to utilize my client's credentials to continue processing adoptions, and they did that month after month, after month, after month, until at least April of 2005, when we have another document that indicates that Susan Dibble is still on the staff of World Child and still processing

adoptions through the RICO entity.

The clients, Roger Spool and Child & Family Adoption, did not discover the extent of this until they started getting calls from the State Department, from the Russian Embassy, from other individuals questioning acts that they have not taken; confidential child abuse clearances submitted to the State of New York, and on and on, and eventually, in July, they called the police and the District Attorney.

Susan Dibble and Doreen Whittaker eventually pled guilty to fraud and forgery and were indicted. And despite the fact that, in July, my client informed the World Child office that they had been indicted, they continued to function processing confidential documents utilizing these stolen assets.

Enter the clients Bruce and Charlene Ferguson. It's correct, Bruce and Charlene Ferguson did successfully complete an adoption through World Child. That was I believe in 2002 or 2003.

At the time of this adoption, they had no reason to suspect that there was any reason why they shouldn't be or have a successful adoption. And unbeknownst to them, Susan Dibble and Doreen Whittaker forged and fraudulently -- excuse me, fraudulently obtained documents, which were then submitted to the Russian courts, which the Russian courts

began to scrutinize in court and detected the fraud; detected that things didn't line up, things were not consistent; that dates didn't match up; that other things about the documents were inconsistent, and in December denied their adoption.

The Fergusons didn't discover the extent of this fraud until they came back to United States and called Roger Spool and called Child & Family and said, "What happened with my adoption?" And at that point, Child & Family Adoption said, "I don't know." She said, "Well, you submitted these papers in July. You signed this in August." They said, "We didn't do that." And that was only the beginning when they started to discover the extent of the fraud.

Your Honor, we set up two additional instances. This is not, as counsel would say, about one disgruntled client, one instance. There were a hundred adoptions in process.

There are at least two other instances where my client, Roger Spool, was contacted by the -- I believe it was the Guatemalan Embassy, by the Russian Embassy, to say, "Mr. Spool, something is wrong here, why are you sending us this? This doesn't look right." And only through that process was Roger Spool able to say, "Oh, that's the Johnson adoption. That's the Smith adoption. What's going on? What's happening?" That's why this is a RICO case, Your Honor.

And it is because of this guilt, this, this -- they

pled guilty to theft. They pled guilty to fraud. They engaged in this fraud with the knowledge and the intent of World Child, and the profits from that were sheltered in the Foundation as a retirement fund, from what Sharrell Goolsby told my client three years ago, "We're not stopping priming that front until we have $2 million and then we will retire, and that will be our slush fund."

So, there is a clear pattern over a long period of time of fraud, a knowing fraud, purposeful fraud. This is not about a business dispute, Your Honor. My client, Roger Spool, has not received a dime today -- to this date, in terms of the dispute. He is owed money. This is not about a business dispute. This is about an entity stealing a business, and because they were not credentialed, they were not licensed, they are not MSWs, they are not even licensed by the State of New York as a foreign corporation, decided to go out on their own, take whatever they needed to process as many adoptions as possible.

We also have letters to that effect, that the name of the game is volume; keep submitting the paperwork, so we can keep getting paid. And if given a chance, Your Honor, we will prove this in court. We have many documents.

There are many things we don't know, but all of the allegations, the vast majority of the allegations, as set forth in our Complaint, are backed by factual documents,

e-mails, faxes, letters on letterhead, and we would like to have an opportunity to present this to the Court as a RICO case.

THE COURT: All right. Thank you, sir.

MR. MARSH: Thank you, Your Honor.

THE COURT: I will take the motion under advisement. It's marked fully submitted, decision reserved.

I want to say that I think in the defense argument they say that they agree it's triable somewhere, but the claim is not triable under RICO, and I think that's the only issue we have. You can probably avoid that issue by simply starting your lawsuit in the State Court, because the problem you have is, if I agree with you that there is subject matter jurisdiction here, and you might try the case for months, days, and then there is a final judgment, and only then can the defendants raise the issue, and maybe you will find a year and a half down the road, the Court of Appeals has held that there is no subject matter jurisdiction, then you are out of it.

MR. WASSERMAN: Your Honor, can I respond to that.

THE COURT: Very briefly, if you will. That's a tactical issue you might concern yourself with.

MR. WASSERMAN: I was an attorney for one of the defendants in the Lerner v. Fleet Bank, which we cite, which was before Judge Block in the Southern District, and it went

to the Second Circuit.

The first question Judge Block asked during the pre-motion conference --

THE COURT: The Eastern District.

MR. WASSERMAN: -- Eastern District, excuse me -- which was similar to a question you asked a number of attorneys here. You asked in a number of cases, "why do you need these people in the case? It just complicates things. It gives them a defense. It will delay thing."

Judge Block asked the plaintiff's counsel in the Lerner case, "why do you need these claims? Why do you need the RICO claims? What do they give you on top of your other claims?" And then he predicted correctly, "they will make their motion. You will spend a lot of time and money opposing the motion. One side will win, one side will lose, they will appeal, and three years later, four years later" -- well, I will tell you --

THE COURT: It's not that bad. It's about a year and a half.

MR. WASSERMAN: Well, that case is a 1998 case and today we are now first serving our Answer to the Second Amended Complaint eight years later.

THE COURT: Take that up with Congress.

Thank you very much for your attendance today. Have a pleasant weekend.

MR. WASSERMAN: Thank you, sir.

MR. SCULNICK: Thank you, Your Honor.

MR. MARSH: Thank you, Your Honor.

(Case adjourned)

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION, BRUCE AND CHARLENE FERGUSON, Plaintiffs, – against – WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC., JENKINS & POVTAK, SUSAN DIBBLE, DORENE WHITAKER, SHARRELL J. GOOLSBY, CARL A. JENKINS, YAROSLAV PANASOV, Defendants.	)	**PLAINTIFFS' RESPONSE TO DEFENDANT PANASOV'S LIMITED APPEARANCE** Case No. 06-CV-4243 Judge Charles L. Brieant ECF CASE

The Plaintiffs, by and through their attorney James R. Marsh, Esq. of Marsh Menken & Weingarden pllc, hereby responds to Defendant Panasov's Limited Appearance for Purposes of Dismissal as follows:

INTRODUCTION

On June 5, 2006, the Plaintiffs filed their initial complaint in the above-captioned matter. On June 6, 2006, the Defendant Yaroslav Panasov, a Russian national, was personally served with a copy of the summons and initial complaint at a public meeting about international adoption in the Buffalo, New York area. On June 15, 2006, the Plaintiffs filed an Amended Complaint.

On or about July 21, 2006, Panasov filed a Limited Appearance for Purposes of Dismissal. On August 31, 2006, after a diligent search for his address in Moscow, the Plaintiffs served Defendant Panasov with a copy of the Amended Complaint. In the afternoon of September 15,

2006, the Plaintiffs received by mail an incomplete copy of Defendant Panasov's papers which failed to indicate complete service on all parties and lacked the exhibit and any indicia that it was filed with the court.

LEGAL ARGUMENT

Point 1: Defendant Panasov was Properly Served with Plaintiffs' Summons and Complaint

Federal Rule of Civil Procedure Rule 4(c) [Rule] states that "a summons shall be served together with a copy of the complaint." Rule (4)(c)(1). This service may be effected "by any person who is not a party and who is at least 18 years of age." Rule (4)(c)(2).

On June 6, 2006, Defendant Panasov was served with both a summons and the initial complaint by Larry Dow, a professional process server in Williamsville, New York, as evidenced by the attached Return of Service. [Exhibit 1].

Since Defendant Panasov was properly served with the original summons and complaint in this action, his motion to dismiss on these grounds should be denied.

Point #2: Defendant Panasov was Properly Served with Plaintiffs' Amended Complaint

Rule 5(a) states that ". . . every pleading subsequent to the original complaint unless the court otherwise orders . . . shall be served upon each of the parties." Rule 5(b)(1)(B) allows for service by "mailing a copy to the last known address of the person served."

After a diligent search for his address, Defendant Panasov was served with Plaintiff's Amended Complaint via International Federal Express on August 31, 2006. "Panasov" is indicated on the FedEx proof of delivery as the recipient for the papers which were delivered to his work address. [Exhibit 2].

Since Defendant Panasov was properly served with the Amended Complaint in this action his motion to dismiss on these grounds should be denied.

Point #3: This Court has Personal Jurisdiction over Defendant Panasov

Since Defendant Panasov was personally served with the Plaintiffs' original Summons and Complaint while he was in the United States, this Court has personal jurisdiction over him in the instant matter. Rule 4(e)(2), *See Burnham v. Superior Court of California*, 495 US 604 (1990), *See also In re Edelman*, 295 F3d 171 (2d Cir 2002), *Pennoyer v. Neff*, 95 US 714 (1877).

Defendant Panasov was also properly served with the Plaintiffs' Amended Complaint as evidenced by the FedEx proof of delivery. [Exhibit 2].

Defendant Panasov's argument that he was not properly served with the pleadings in this above-captioned matter is utterly baseless and must be rejected. The Plaintiffs respectfully request that this Court reject Defendant Panasov's Limited Appearance for Purposes of Dismissal in its entirety.

Dated: October 23, 2006
White Plains, New York

James R. Marsh (JM9320)
Attorney for the Plaintiffs

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Email JamesMarsh@MMWLaw.us

EXHIBIT 1

United States District Court

SOUTHERN DISTRICT OF NEW YORK

Roger Spool,
Child & Family Adoption,
Bruce and Charlene Fergusen,

V.

World Child International Adoption Agency, Jenkins & Povtak, Susan Dibble, Doreen Whittaker, Sharrell J. Goolsby, Carl A. Jenkins, Yaroslav Panasov

SUMMONS IN A CIVIL CASE

CASE NUMBER:

06 CIV. 4243

BRIEANT

TO: (Name and address of defendant)

Yaraslav Panasov

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

James R Marsh, Esq
Marsh Menken & Weingarden pllc
81 Main Street - Unit 305
White Plains, New York 10601-1718

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON, Clerk

CLERK

JUN - 5 2006

DATE

(BY) DEPUTY CLERK

AO 440 (Rev. 10/93) Summons In a Civil Action -SDNY WEB 4/99

RETURN OF SERVICE

Service of the Summons and Complaint was made by me[1]	DATE 6/6/06
NAME OF SERVER *(PRINT)* Larry Dow	TITLE Process Server

Check one box below to indicate appropriate method of service

[X] Served personally upon the defendant. Place where served: 5125 Main St. Williamsville, NY at the Amherst Lutheran Church parking lot

[ ] Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____

[ ] Returned unexecuted: _____

[ ] Other *(specify)*: _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
	55.00	55.00

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 6/7/06
Date

Larry Dow
Signature of Server

249 Davidson Buffalo, NY
Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

EXHIBIT 2

FedEx Express
Customer Support Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643

Telephone: 901-369-3600

09/01/2006

Dear Customer:

The following is the proof of delivery you requested with the tracking number **790043568088**.

Delivery Information:

Status:	Delivered	**Delivery date:**	Aug 31, 2006 12:04
Signed for by:	.PANASOV		
Service type:	Intl Economy Envelope		

NO SIGNATURE IS AVAILABLE
FedEx Express Proof of delivery details appear below, however no signature is currently available for this FedEx Express shipment. Availability of signature images may take up to 5 days after delivery date.

Shipping Information:

Tracking number:	790043568088	**Ship date:**	Aug 23, 2006
		Weight:	0.5 lbs.
Recipient:		**Shipper:**	
MOSCOW RU		WHITE PLAINS, NY US	
Reference		RICO Amended Complaint	

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1.800.GoFedEx 1.800.463.3339

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION, BRUCE AND CHARLENE FERGUSON, Plaintiffs, – against – WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC., JENKINS & POVTAK, SUSAN DIBBLE, DORENE WHITAKER, SHARRELL J. GOOLSBY, CARL A. JENKINS, YAROSLAV PANASOV, Defendants.	)	**ATTORNEY'S AFFIRMATION IN SUPPORT OF PLAINTIFFS' MOTION FOR RELIEF UNDER FEDERAL RULES OF CIVIL PROCEDURE RULE 60(b)(1) AND PLAINTIFFS' RESPONSE TO DEFENDANT PANASOV'S LIMITED APPEARANCE** Case No. 06-CV-4243 Judge Charles L. Brieant

James R. Marsh, an attorney duly admitted to practice before the courts of the State of New York and the United States District Court for the Southern District of New York, hereby affirms under penalty of perjury as follows:

1. I represent the Plaintiffs in the above-captioned matter.

2. On June 5, 2006, I filed the Plaintiffs' initial Complaint in this matter.

3. On June 6, 2006, I caused the Defendant Yaroslav Panasov, a Russian national, to be personally served with a copy of the summons and initial Complaint at a public meeting about international adoption in the Buffalo, New York area.

4. On June 15, 2006, I filed the Plaintiffs' Amended Complaint in this matter.

5. On August 23, 2006, after a diligent search, I sent a copy of the Amended Complaint by International FedEx to Defendant Panasov's last known address in Moscow, Russia.

6. On August 31, 2006, the Amended Complaint was delivered by FedEx

7. "Panasov" is indicated on the FedEx proof of delivery as the recipient of the Amended Complaint.

8. During the morning of September 15, 2006, this Court held a hearing on the Defendants' collective motions to dismiss.

9. At the oral argument, I was unaware that Defendant Panasov had filed his Limited Appearance with the Court on July 21, 2006.

10. During my oral argument, I specifically stated that "Yaroslav Panasov, . . . has been served and . . . has also been sent a copy of the Amended Complaint, which we have received confirmation for . . ."

11. This statement elicited no further inquiry from the Court or response from opposing counsel.

12. During the afternoon of September 15, 2006, I received by United States mail an incomplete copy of Defendant Panasov's papers which failed to indicate complete service on all parties and lacked the exhibit and any indicia that it was filed with the court.

13. I was planning a response to Defendant Panasov's papers when the Court issued its Order of Dismissal on October 4, 2006.

Dated: October 23, 2006
White Plains, New York

James R. Marsh (JM9320)
Attorney for the Plaintiffs

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AFFIRMATION OF SERVICE

I hereby affirm under penalty of perjury that I served a copy of the foregoing Plaintiffs' Motion for Relief under Federal Rules of Civil Procedure Rule 60(b)(1), the Plaintiffs' Response to Defendant Panasov's Limited Appearance, the Attorney's Affirmation in Support of Plaintiffs' Motion for Relief Under Federal Rules of Civil Procedure Rule 60(b)(1) and Plaintiffs' Response to Defendant Panasov's Limited Appearance, and the exhibits attached thereto, by United States Mail, postage prepaid, on the 23rd day of October 2006, to:

Allen Craig Wasserman
Lord, Bissell & Brook L.L.P.
885 Third Avenue
New York, NY 10022

Allen Craig Wasserman
Owen & Davis
805 Third Avenue
New York, NY 10022

David Henry Sculnick
Gordon & Silber, P.C.,
355 Lexington Avenue
New York, NY 10017

Susan Dibble
1119 Rt. 208
Wallkill, NY 12589

Doreen Whittaker
601 Springtown Road
Tillson, NY 12486

Yaroslav Panasov
Kholodyl'ny pereulok
Bldg., No. 3A Building 3
Moscow 115191
Russian Federation 01174957787985

James R. Marsh (JM9320)

MARSH MENKEN & WEINGARDEN PLLC
81 Main Street – Suite 305
White Plains, New York 10601-1719

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION, BRUCE AND CHARLENE FERGUSON, Plaintiffs, – against – WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC., JENKINS & POVTAK, SUSAN DIBBLE, DORENE WHITAKER, SHARRELL J. GOOLSBY, CARL A. JENKINS, YAROSLAV PANASOV, Defendants.	)	**PLAINTIFFS' MOTION FOR RELIEF UNDER FEDERAL RULES OF CIVIL PROCEDURE RULE 60(b)(1)** Case No. 06-CV-4243 (CLB) Judge Charles L. Brieant

The Plaintiffs, by and through their attorney James R. Marsh, Esq. of Marsh Menken & Weingarden pllc, hereby move this Court, pursuant to Federal Rules of Civil Procedure Rule 60(b)(1) [Rule], for an order to set aside only that portion of the Order of Dismissal issued in this action on October 4, 2006 and entered by the clerk on October 12, 2006 which refers to Defendant Panasov's Limited Appearance, and for leave to file the proposed Response to Defendant Panasov's Limited Appearance, a copy of which is attached to this motion.

This motion is based on this document, the Affirmation of James R. Marsh, Esq., the Proposed Response to Defendant Panasov's Limited Appearance for Purposes of Dismissal, the attached exhibits, and all of the pleadings, papers, and other records on file in this action, and any evidence and argument which may be presented at a hearing on this motion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROGER SPOOL, CHILD & FAMILY ADOPTION, BRUCE FERGUSON, and CHARLENE FERGUSON,

Plaintiffs,

-against-

WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC., JENKINS & POVTAK, SUSAN DIBBLE, DORREEN WHITTAKER, SHARRELL J. GOOLSBY, CARL A. JENKINS, and YAROSLAV PANOSOV,

Defendants.

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06 CV 04243 (CLB)
AMENDED JUDGMENT

Whereas the above entitled action having been assigned to the Honorable Charles L. Brieant, U.S.D.J., and the Court thereafter on October 24, 2006, having handed down an endorsed Plaintiffs' Motion for Relief Under Federal Rules of Civil Procedure Rule 60(b)(1) (docket #16) granting the motion, dismissing with prejudice the First, Second, Third and Fourth Claims as to all Defendants including Defendant Yaroslav Panosov, and dismissing without prejudice all other Claims, it is,

ORDERED, ADJUDGED AND DECREED: that the motions are granted, the First, Second, Third and Fourth Claims in the Complaint are dismissed with prejudice as to all Defendants including Defendant Yaroslav Panosov, all other Claims are dismissed without prejudice, and the case is hereby closed.

DATED: White Plains, N.Y.
October 24, 2006

J. Michael McMahon

J. Michael McMahon
Clerk Of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER SPOOL, CHILD & FAMILY ADOPTION, BRUCE AND CHARLENE FERGUSON, Plaintiffs, – against –	**NOTICE OF APPEAL**
WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC., JENKINS & POVTAK, SUSAN DIBBLE, DOREEN WHITTAKER, SHARRELL J. GOOLSBY, CARL A. JENKINS, YAROSLAV PANASOV, Defendants.	No. 06-CIV-4243 Judge Charles L. Brieant ECF CASE

Notice is hereby given that all Plaintiffs in the above captioned matter, Roger Spool, Child and Family Adoption, and Bruce and Charlene Ferguson, hereby appeal to the United States Court of Appeals for the Second Circuit from this Court's Amended Judgment entered on the 24th day of October 2006, dismissing with prejudice the First, Second, Third and Fourth Claims and dismissing without prejudice the other Claims, as to all Defendants in the above captioned matter, World Child International Adoption Agency, Foundation of World Child, Inc., Jenkins & Povtak, Susan Dibble, Doreen Whittaker, Sharrell J. Goolsby, Carl A. Jenkins and Yaroslav Panasov.

James R. Marsh (JM9320)
Attorney for the Plaintiffs

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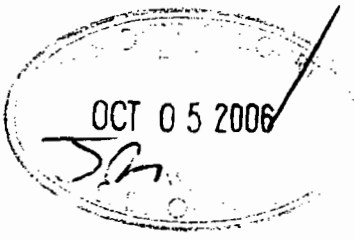

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROGER SPOOL, CHILD & FAMILY ADOPTION BRUCE AND CHARLENE FERGUSON,

Plaintiff(s),

- against -

WORLD CHILD INTERNATIONAL ADOPTION AGENCY, FOUNDATION OF WORLD CHILD, INC. JENKINS & POVTAK, SUSAN DIBBLE, DORREEN WHITTAKER, SHERRELL J. GOOLSBY, CARL JENKINS, YAROSLAV PANOSOV,

Defendant(s).

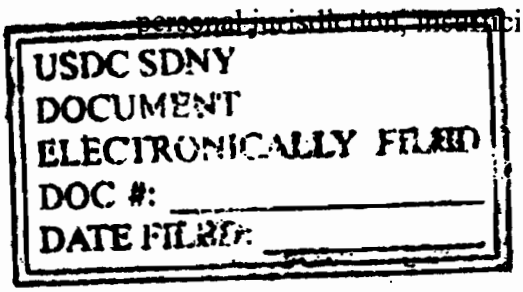
----------x

06 Civ. 4243 (CLB)

Memorandum and Order

Brieant, J.

Before the Court in this RICO and Computer Fraud and Abuse Act ("CFAA") action are three motions to dismiss the Amended Complaint. By motion filed (Doc. 5) filed July 17, 2006, Defendants World Child International Corporation i/s/h/a World Child International Adoption Agency ("World Child"), The Foundation of World Child, Inc., Sherrell J. Goolsby, Carl Jenkins, and Jenkins & Povtak move to dismiss the Amended Complaint ("Complaint") under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure ("FRCP"). By motion filed July 20, 2006 (Doc. 7), Defendants Doreen Whitaker and Susan Dibble move *pro se* to dismiss the Complaint for failure to state a claim upon which relief can be granted. By motion filed July 21, 2006, defendant Yaroslav Panasov (Doc. No. 8) moves to dismiss the case for lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process.



Background

Plaintiffs allege violations of the federal RICO statute and the Computer Fraud and Abuse Act ("CFAA"), supplemented by common law or state law claims for fraud, breach of fiduciary duty, conversion, tortious interference with contracts, gross negligence and negligence.

The following facts are presumed true for purposes of these motions only. Plaintiff Roger Spool is a social worker in Ulster County, New York, and the Executive Director and founder of plaintiff Child & Family Adoption ("CFA"), which is an authorized adoption agency in New York. Bruce and Charlene Ferguson are residents of Dutchess County and were clients of CFA.

Defendant Carl Jenkins is the Executive Director of Foundation of World Child, Inc. and a partner at the defendant law firm of Jenkins and Povtak, located in Maryland. Mr. Jenkins is an attorney for the World Child Agency. Defendants Susan Dibble and Dorene Whittaker are former employees of Child & Family Adoption. Defendant Yaroslav Panasov is a Russian national and the Moscow representative for World Child.

Defendant World Child International Adoption Agency (true name World Child International Corporation, "World Child" or "World Child Agency") is a non-profit child-placing agency, specializing in international adoption. The Foundation of World Child, Inc., ("the Foundation") is chartered in Washington, D.C., and is a non-profit foundation created by the Defendants. Defendant Sherrell Goolsby is a resident of Maryland and the Executive Director of the World Child.

Defendant World Child is an international adoption agency, which operates throughout the United States and is in the business of finding and presenting Russian, Eastern European, Central American and Chinese children for adoption by residents of the United States. *Complaint at* ¶¶ 17, 18. It assists adopting parents with immigration and foreign adoption paperwork and offers "no guarantee of a successfully completed adoption, the healthiness or well-being of the child, or the honesty and integrity of the process." *Id. at ¶21.* Defendant Panasov is an agent in Russia who facilitates adoptions from Russia, and provides legal services to Americans. *Id. at ¶20.*

Plaintiffs Roger Spool and CFA as a joint venture worked with Defendants for ten years to place Russian children into homes of New York families, including the home of plaintiffs Ferguson, who successfully adopted one child through this means. *Id. at ¶22.* Clients of the joint venture paid two basic fees directly to World Child for their foreign adoption; the agency fee and the foreign program fee. *Id. at ¶39.* World Child then paid CFA a fixed amount of the agency fee for its services. At some time, World Child began to demand a greater percentage of the joint-venture's generated fees and began to refuse payments and to contest the legitimacy of CFA's charges.

Plaintiffs allege that the Defendants ultimately colluded secretly with CFA employees Dibble and Whittaker to steal assets from CFA while plaintiff Spool was on vacation, and then began to redirect clients to World Child's own unauthorized and illegal adoption "agency." Plaintiffs allege that Defendants deliberately misled their clients, including the Fergusons, about

their activities in order to continue to collect substantial adoption fees from them.

The Fergusons traveled to Russia to effect a second adoption through World Child. Their efforts were rejected by Russian authorities based on findings of attempted deception and fraud.

Discussion

In considering a motion to dismiss under Rule 12(b)(6), the Court is obliged to accept the well-pleaded assertions of fact in the Complaint as true and to draw all reasonable inferences and resolve doubts in favor of the non-moving party. The focus of the Court's inquiry is not whether Plaintiffs will ultimately prevail, but whether the claimants are entitled to an opportunity to offer evidence in support of their claims. Therefore a motion to dismiss must be denied unless it appears beyond doubt that the Plaintiffs can prove no set of facts in support of their claims which would entitle them to relief. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Yaraslav Panasov

Defendant Panasov asserts that this Court has no personal jurisdiction over him as he is a Russian citizen domiciled in Moscow. He also asserts insufficiency of process and service of process, asserting that he was not properly served with the Amended Complaint or Summons. Panasov avers that the original complaint was served without a summons and that he was never served with the Amended Complaint.

Plaintiffs have not apparently opposed Mr. Panasov's motion, which is granted without

prejudice.

Failure to State a Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961, et seq. ("RICO") Claim

> To state a claim for damages under RICO a plaintiff ... must allege the existence of seven constituent elements: (1) that the defendant (2) through the commission of two or more acts (3) constituting a "pattern" (4) of "racketeering activity" (5) directly or indirectly invests in, or maintains an interest in, or participates in (6) an "enterprise" (7) the activities of which affect interstate or foreign commerce. 18 U.S.C. § 1962(a)-(c) (1976).

Moss v. Morgan Stanley, Inc., 719 F.2d 5, 17 (2d Cir. 1983).

This Court concludes that the Plaintiffs have, at most, serious business disputes with the World Child Defendants, but do not present the type of case contemplated when Congress passed the RICO statute. Indeed the view is inescapable that the RICO allegations are present only as a jurisdictional hook to access the federal courts with what may very well be valid state law claims for fraud and breach of contract.

World Child is the RICO enterprise, according to the First Amended Complaint. Mr. Spool concedes that he placed more than 1,000 successful international adoptions with World Child prior to April 2004 when the parties severed their relationships. Certainly, Spool was not himself conducting a RICO enterprise. Only in April 1994 did Defendants commence the claimed of illegal acts complained of. The wrongs inflicted on Spool and CFA were concluded by July 2004. The wrongs inflicted on the Ferguson Plaintiffs, if such they were, were concluded at least by August 2004 when a Russian Court ruled against their second proposed

adoption. The facts alleged will not support a finding of either an open-ended pattern of continuing racketeering activity, or closed ended pattern of past criminal conduct extending over a substantive period of time. See *H.J. Inc. v. Northwestern Bell Telephone,* 492 U.S. 229 (1989); *GICC Capital Corp. v. Technology Finance Group, Inc.,* 67 F. 3d 463 (2d Cir. 1995). Isolated or sporadic acts are insufficient. Here there is no showing that the acts occurred over a substantial period of time, and no evidence of continuity.

The Amended Complaint fails to state a claim under RICO.

Spool's and CFA's Claim under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *"CFAA")*

Defendants contend that Plaintiffs fail to state a claim upon which relief can be granted, under CFAA, because they have failed to allege a compensable loss. The Court agrees. The only loss pleaded is that the individual Defendants obtained an "unfair competitive advantage." Such a loss is not within the express contemplation of the statute. See 18 U.S.C. § 1030(e)(11).

The Amended Complaint fails to state a claim under the CFAA.

Conclusion

The motions are granted. The First, Second, Third and Fourth Claims in the Complaint are dismissed with prejudice as to all Defendants except Panosov. All other claims are dismissed without prejudice. The Clerk shall file a final judgment.

SO ORDERED.

Dated: White Plains, New York
October 4, 2006

Charles L. Brieant, U.S.D.J.