IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANT JILL WILLARD YOUNG'S MOTION TO STRIKE PLAINTIFFS' "ADDENDUM OF MEMORANDUM IN SUPPORT OF RICO COMPLAINT"

On July 5, 2016, Plaintiffs filed a frivolous, 64-page "Verified Complaint" consisting of facially preposterous criminal accusations, blatant mischaracterizations of fact, and boilerplate recitations of law that are plainly insufficient to survive dismissal (the "Complaint"). On September 15, 2016, Defendant Jill Young filed her Motion to Dismiss. After the filing of Ms. Young's Motion to Dismiss, Plaintiffs filed a thirty-one page long "Addendum of Memorandum in Support of Rico Complaint," with more than 1,400 pages of attached "exhibits" (the "Addendum"). *See* DKT. 26.

Ms. Young now files this Motion to Strike the Addendum, because it has no legal effect. And even if it were effective, it does not change the merits of Ms. Young's Motion to Dismiss, which should be granted.

I. The "Addendum" has no Legal Effect.

The Addendum—filed *after* Ms. Young was served with the Original Complaint and *after* she filed her 12(b)(6) Motion to Dismiss—has no legal effect. It is not a "pleading" under the Federal Rules of Civil Procedure. Specifically, Federal Rule of Civil Procedure 7(a) says:

Only these pleadings are allowed:

(1) a complaint;

(2) an answer to a complaint;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a crossclaim;

(5) a third-party complaint;

(6) an answer to a third-party complaint; and

(7) if the court orders one, a reply to an answer.

See Fed. R. Civ. P. 7(a). And although a party can amend its complaint as a matter of course after the filing of a responsive pleading, the Addendum cannot be an amended complaint, because it alleges no causes of action against Ms. Young.

Because the Addendum is not a complaint, it is not a valid pleading under the Federal Rules of Civil Procedure, and it should be struck.

II. The "Addendum" does not change the merits of Ms. Young's Motion to Dismiss.

Even if the Addendum were treated as Plaintiffs' Complaint (or some portion of Plaintiffs' Complaint), it does not change the merits of Ms. Young's Motion to Dismiss. The Addendum only refers to Ms. Young in four places, in paragraphs 96, 97, 99, and 107. *See* Addendum, at ¶¶ 96, 97, 99, and 107. In full, those paragraphs state:

> 96. The only matter properly before the court on September 10, 2015 was whether or not Mr. Lester should have the authority to retain Jill Willard Young to assist him in his administration obligations to the estate.
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> 97. Neither individual Plaintiff Candace Curtis nor individual Plaintiff Carl Brunsting was in attendance September 10, 2015, as neither is party to the estate litigation and neither objected to Mr. Lester retaining Jill Young to assist with his fiduciary duty to evaluate the estate's claims. That was the only issue properly before the Court on September 10, 2015 and did not include the matters Mr. Spielman states were discussed and where there was apparently an agreement made to treat the Gregory Lester report as if it were a jury verdict before it was even written.

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> 99. The inescapable conclusion here is that there were improper discussions outside of the presence of the Plaintiffs who were prejudiced by those discussions, involving matters not properly before the Court, wherein there were agreements made between the Court, Jill Willard Young, Neal Spielman, Bradley Featherston, Stephen Mendel and Gregory Lester to produce a fictitious report. They all apparently agreed to follow the as of yet unwritten report as if it were factual, that the false report would be used to further the extortion plot, that mediation would be forced upon Plaintiffs, that the costs of litigation for Plaintiff Curtis would be exacerbated, that there would be extended delay and, that another crony had been hand selected to act first as mediator and then as arbiter. First to "unentrench" Plaintiff Curtis from her stand upon rights and reliance upon the rule of law in the face of this all too obvious public corruption conspiracy and second, to deprive Plaintiff of substantive due process and access to the Court.
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> 107. Mr. Spielman confessed on March 9, 2016 that the attorneys conspired at the hearing on application to retain Jill Young, with the probate Court Judges, the Court's crony administrator Gregory Lester, and Jill Young, entering into an illicit agreement to produce a fictitious "report" and to subsequently treat the fiction as if it were the equivalent of a jury verdict, and this all occurred before the "Report" was even written.

Id.

These "allegations" fail for three reasons. First, they are so implausible that they cannot form the basis for a valid complaint. Second, the assertions—even if somehow true—fail to raise a RICO claim. Third, the allegations are barred by Texas's attorney immunity doctrine—which constitute an absolute bar on suits relating to actions taken in connection with representing a client in litigation.

A. Plaintiffs' Addendum, likes the Complaint, is too implausible to state a valid claim for relief.

Plaintiffs' Addendum, like the Complaint, fails to satisfy the plausibility requirements of Rule 12. It is also frivolous and delusional—a separate ground for dismissal.

1. Plaintiffs' Addendum fails to satisfy Rule 12.

Under Rule 12, to properly assert a well-pleaded complaint, Plaintiffs must plead enough facts "to state a claim to relief that is plausible on its face." *Iqbal,* 556 U.S. at 678 (quoting *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 547 (2007)). Plaintiffs' claim is only "facially plausible" if they plead facts that allow the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Further, the Court is not bound to accept as true legal conclusions couched as factual allegations. *Id.* at 678–79 (holding that a complaint "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions"). And "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679.

Here, Plaintiffs' Addendum states only vague, speculative, and implausible allegations against Ms. Young that are insufficient to form the basis of a well-pleaded Complaint. Plaintiffs ask the Court to infer from the fact that Plaintiffs chose not to attend a hearing that the other attendees at the hearing conspired to fabricate the report of the temporary administrator.[1] The implausible leap that Plaintiffs ask this Court merely to assume is not permitted by Rule 12.

2. Plaintiffs' Addendum, like the Complaint, is frivolous and delusional.

As stated in Ms. Young's Motion to Dismiss, this Court has "inherent authority to dismiss a *pro se* litigant's frivolous or malicious complaint . . . ." *See Campbell v. Brender*, 3:10-CV-325-B, 2010 WL 4363396, at *4 (N.D. Tex. Oct. 25, 2010) ("District Courts have the

[1] *See, e.g.*, Addendum, DKT. 26, at ¶ 99 ("The inescapable conclusion here is that there were improper discussions outside of the presence of the Plaintiffs . . . to produce a fictitious report. They all apparently agreed to follow the as of yet unwritten report as if it were factual, that the false report would be used to further the extortion plot, that mediation would be forced upon Plaintiffs, that the costs of litigation for Plaintiff Curtis would be exacerbated, that there would be extended delay and, that another crony had been hand selected to act first as mediator and then as arbiter.").

inherent authority to dismiss a pro se litigant's frivolous or malicious complaint *sua sponte* even when the plaintiff has paid the requiring filing fee."); *see also Neitzke v. Williams*, 490 U.S. 319, 325 & 328 (1989) (holding that a complaint is "frivolous" and should be dismissed when the factual allegations are "fanciful," "fantastic," or "delusional"). To determine "whether a plaintiff's complaint is frivolous, district courts must determine whether the facts alleged are 'clearly baseless,' meaning that the allegations are 'fanciful,' 'fantastic,' or 'delusional.'" *Campbell v. Brender*, 3:10-CV-325-B, 2010 WL 4363396, at *5 (N.D. Tex. Oct. 25, 2010) (citing *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992)).

Like in their Complaint, Plaintiffs' Addendum alleges a bizarre conspiracy theory where practicing litigants, attorneys, and judges plotted against Plaintiffs in open court, apparently making agreements designed to diminish the value of probate estates. Other courts in this Circuit have held that almost identical allegations made by pro se litigants should be dismissed *and* were sanctionable. *See, e.g.*, *Whitehead v. White & Case, LLP*, 12-CV-0399, 2012 WL 1795151, at *2 (W.D. La. Apr. 19, 2012), *report and recommendation adopted*, 12-CV-0399, 2012 WL 1795148 (W.D. La. May 16, 2012) (dismissing a pro se plaintiff's conspiracy claims against judges, magistrate judges, attorneys and law firms, as "frivolous and vexatious" and sanctioning the pro se plaintiff). The Addendum does nothing to remedy the fanciful allegations contained in the Complaint; it merely compounds the impropriety of Plaintiffs' delusions.

B. Plaintiffs' Addendum fails to state facts sufficient to assert a RICO claim against Ms. Young.

None of Plaintiffs' allegations against Ms. Young are sufficient to state a RICO claim.[2]

[2] As shown in Ms. Young's Motion to Dismiss, Plaintiffs have alleged numerous causes of action for which they have no private right of action. *See* Motion to Dismiss, DKT. 25, at pp. 13–15. The only cause of action they assert that they could actually pursue is their RICO claim.

First, none of the allegations actually assert that Ms. Young committed any wrongful act whatsoever. Instead, Plaintiffs complain of Ms. Young's retention as attorney for the temporary administrator. But the Plaintiffs have no right to dictate who the temporary administrator will retain as counsel.

And none of these allegations show that Plaintiffs have been injured by a violation of RICO. *See Allstate Ins. Co. v. Plambeck*, 802 F.3d 665, 676 (5th Cir. 2015) (holding that a RICO plaintiff must show he has standing to sue and that, to plead standing, a plaintiff "must show that the [RICO] violation was a but-for and proximate cause of the injury"); *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 459, 460 (2006) ("When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries.").

But most crucially, the Plaintiffs' Addendum still fails to assert the "pattern of racketeering activity," that is required to allege a RICO claim. *Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer*, 90 F.3d 118, 122 (5th Cir. 1996). The only assertion made in the Addendum against Ms. Young is that she somehow conspired *with the Probate Court itself* to act as attorney to a temporary administrator who submitted a false report. *See* Addendum, at ¶¶ 97, 99, and 107. This is not a "pattern of racketeering activity." *Abraham v. Singh*, 480 F.3d 351, 355 (5th Cir. 2007) (holding that racketeering activity must "consist[] of two or more predicate criminal acts" listed in 18 U.S.C. § 1961(1)).

And even if Plaintiffs' fallacious assertions were true, Plaintiffs allege nothing more than the "garden-variety tort" of common law fraud, which is insufficient to state a RICO claim. *See St. Germain v. Howard*, 556 F.3d 261, 263 (5th Cir. 2009) (holding plaintiffs pled facts showing nothing more than "violations of the rules of professional responsibility," not "the requisite

predicate *criminal* acts under RICO"); *Fleet Credit Corp. v. Sion*, 893 F.2d 441, 445 (1st Cir. 1990) ("[A]cts of common law fraud that do not implicate the mails (or the wires) do not constitute 'racketeering activity'").

C. Plaintiffs' Addendum cannot avoid Texas's attorney immunity doctrine.

Finally, Plaintiffs' Addendum makes no difference because Plaintiffs still cannot avoid the effect of Texas's attorney immunity doctrine. Under Texas law, "attorneys are immune from civil liability to non-clients 'for actions taken in connection with representing a client in litigation.'" *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)).

Here, the only facts alleged by Plaintiffs relate to conduct Plaintiffs allege occurred when Ms. Young was acting as attorney for Temporary Administrator Lester. *See* Addendum, at ¶¶ 96, 97, 99, and 107. And "[e]ven conduct that is 'wrongful in the context of the underlying suit' is not actionable if it is 'part of the discharge of the lawyer's duties in representing his or her client.'" *Id.* (quoting *Toles v. Toles*, 113 S.W.3d 899, 910-11 (Tex. App.—Dallas 2003, no pet.)). And a plaintiff cannot evade attorney immunity by simply "labeling an attorney's conduct 'fraudulent.'" *Id.* at 483 (quoting *Alpert*, 178 S.W.3d at 406). Instead, the only exceptions to an attorney's "true immunity from suit" are if an attorney engages in conduct that is "entirely foreign to the duties of an attorney," or if the conduct "does not involve the provision of legal services and would thus fall outside the scope of client representation." *Byrd*, 467 S.W.3d at 482 (quoting *Poole v. Hous. & T.C. Ry. Co.*, 58 Tex. 134, 137 (1882)).

Here, there are no allegations that Ms. Young engaged in any conduct that was "entirely foreign to the duties of an attorney." *Id.* at 482. Nor do Plaintiffs allege Ms. Young was

engaging in conduct that did not involve the provision of legal services. *Id.* Thus, Plaintiffs' Addendum makes no difference, and this suit against Ms. Young should be dismissed.

III. Conclusion

For the reasons stated above, this Court should strike the Plaintiffs' Addendum. In the alternative, Plaintiffs' Addendum does not change the merits of Ms. Young's Motion to Dismiss, and the Court should dismiss Plaintiffs' claims against Ms. Young with prejudice.

Dated: October 3, 2016

Respectfully submitted,

/s/ Robert S. Harrell

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ATTORNEYS FOR DEFENDANT JILL WILLARD YOUNG

CERTIFICATE OF CONFERENCE

I certify that on October 3, 2016, I conferred with Plaintiffs about the relief requested in this Motion. Counsel for Plaintiffs declined to withdraw the Addendum, requiring the submission of this Motion to the Court.

/s/ Robert S. Harrell
Robert S. Harrell

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above document has been served on October 3, 2016, in accordance with the Federal Rules of Civil Procedure.

/s/ Robert S. Harrell
Robert S. Harrell