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 RULE 12(B)(6) MOTION TO DISMISS

Defendant Jill Willard Young files this Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) seeking the dismissal of all claims asserted by Plaintiffs against her.

Plaintiffs' pro se Complaint purports to assert almost fifty "claims" against more than fifteen defendants, who are lawyers, judges, and other legal professionals who practice in Harris County Probate Court No. 4. But those "claims" consist of fantastical allegations that some or all of the defendants are members in a secret society and "cabal" known as the "Harris County Tomb Raiders," which Plaintiffs also call "The Probate Mafia." *See, e.g.*, Complaint, at ¶¶ 57, 58, 89. Plaintiffs allege the members of this purported shadow organization engage in "Poser Advocacy," supposedly an "exploitation opportunity" to "hijack" "familial wealth." *Id.* at ¶¶ 95–99. In reality, their Complaint is a bizarre, conspiracy-theory-laden attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court.

Against, Ms. Young, Plaintiffs allege "causes of action" for:

- "18 U.S.C. § 1962(d) the Enterprise" (*see* Complaint, at § IV, ¶¶ 35–58);
- "The Racketeering Conspiracy 18 U.S.C. § 1962(c)" (*see id.* at ¶¶ 59–120);

- Three claims for "Honest Services 18 U.S.C. § 1346 and 2" (*see id.* at ¶¶ 121, 122, 123);
- "Wire Fraud 18 U.S.C. § 1343 and 2" (*see id.* at ¶ 123);
- "Fraud 18 U.S.C. § 1001 and 2" (*see id.* at ¶ 123);
- "Theft/Hobbs Act Extortion Texas Penal Codes § 31.02 & 3.03 and 18 U.S.C. § 1951(b)(2) and 2" (*see id* at ¶ 123); and
- Three conspiracy claims for "Conspiracy to Obstruct Justice 18 U.S.A.C. § 371" (*see id* at ¶ 123); "Conspiracy Re: State Law Theft/Extortion – in Concert Aiding and Abetting" (*see id.* at ¶ 132); and "Conspiracy to Violate 18 USC §§242 and 2, & 42 U.S.C. §§983 and 1985) (*see id.* at ¶ 159).

But despite pleading more than ten "claims" against Ms. Young, Plaintiffs make no assertion that she performed even a single wrongful act. And instead of pleading the elements of legal causes of action and supporting those elements with allegations of fact—the minimum standard of pleading required by Rule 8—Plaintiffs' Complaint reads more like an excerpt from *The DaVinci Code*, rattling off fantastical assertions with no connection to plausible facts or valid causes of action. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that a claim should be dismissed as implausible if it does not "**plead[] factual content** that allows the court **to draw the reasonable inference** that the defendant is liable for the misconduct alleged") (emphasis added); *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").

Plaintiffs assert no factual content sufficient to maintain any cause of action against Ms. Young. Instead, Plaintiffs' allegations are implausible, fanciful, and delusional. The Complaint should be dismissed with prejudice.

FACTUAL BACKGROUND

Plaintiffs' allegations appear to relate to a probate matter in Harris County Probate Court, which the Plaintiffs call "Curtis v. Brunsting" (*see* Complaint ¶ 110), although no cause number is ever mentioned and no court is ever identified.

The only matter in which Ms. Young was ever involved with Plaintiff Curtis was *In re: Estate of Nelva E. Brunsting*, No. 412.249 (Harris County Probate Court No. 4) (the "*Brunsting* matter"). Plaintiff Munson was not party to that matter. In the *Brunsting* matter, Ms. Young was attorney for Greg Lester, who had been appointed by Probate Court No. 4 as temporary administrator,[1] to assist Mr. Lester in preparing a written report to the Court.

All of the actions taken by Ms. Young in that matter were in her role as attorney to Mr. Lester. Ms. Young never had a fiduciary relationship with either Plaintiff, and she did not represent any other party in the *Brunsting* matter. Plaintiffs make no allegations to the contrary.

ARGUMENT

Plaintiffs' claims should be dismissed with prejudice. First, Ms. Young, as attorney only for Mr. Lester, is entitled to immunity from suit under Texas law. *See Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) ("**[A]ttorneys are immune from civil liability to non-clients** for actions taken in connection with representing a client in litigation.") (emphasis added).

Second, Plaintiffs' RICO claims fail for two independent reasons:

(1) The injuries Plaintiffs allegedly suffered were not proximately caused by a violation of RICO, as is required to bring a civil RICO action under 18 U.S.C. § 1964(c);

[1] *See* Exhibit A, Order Appointing Temporary Administrator Pending Contest Pursuant to Texas Estates Code § 452.051, *In re: Estate of Nelva E. Brunsting*, No. 412.249 (Harris County Probate Court No. 4 Jul. 24, 2015).

(2) Plaintiffs have failed to plead a "racketeering activity," namely by not pleading the RICO predicate acts of mail and wire fraud with the particularity required by Fed. R. Civ. P. 9(b);

Third, Plaintiffs' Complaint should be dismissed because they have not pleaded a plausible claim for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that a claim should be dismissed as implausible if it does not "**plead[] factual content** that allows the court **to draw the reasonable inference** that the defendant is liable for the misconduct alleged") (emphasis added).

Fourth, Plaintiffs' Complaint should be denied because it is frivolous, delusional, and implausible. *See 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").

Fifth, Plaintiffs' "Hobbs Act," "Wire Fraud," "Fraud under 18 U.S.C. § 1001," and "Honest Services" claims fail because those statutes do not create private causes of action. *See Moore v. Garner*, No. Civ.A. 6:04-CV-79, 2005 WL 1022088, at *4 (E.D. Tex. 2005).

Sixth, Plaintiffs attempt to impermissibly plead collectively does not satisfy the federal pleading requirements.

I. Under Texas law, Ms. Young is immune from suit.

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)).

"Even 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.)); *see also Highland*

Capital Mgmt., LP v. Looper Reed & McGraw, P.C., No. 05-15-00055-CV, 2016 WL 164528, at *6 (Tex. App.—Dallas Jan. 14, 2016, pet. filed) (dismissing conspiracy and breach of fiduciary claims asserted by party against opposing attorneys because actions alleged were "kinds of actions that are part of the discharge of an attorney's duties in representing a party in hard-fought litigation" (citing *Byrd*, 467 S.W.3d at 482)).

Instead, in Texas, "attorney immunity is properly characterized as a true immunity from suit," and not merely "a defense to liability." *Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 346–48 (5th Cir. 2016). This immunity "not only insulates the [attorney] from liability, but also prevents the [attorney] from being exposed to discovery and/or trial." *Id.* at 346.

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)). But 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).

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.* Indeed, Plaintiffs do not allege **any** conduct of Ms. Young that they claim was wrongful. Thus, Ms. Young is protected by Texas's doctrine of attorney immunity, and this suit against her must be dismissed.

II. Plaintiffs' RICO claims fail.

Plaintiffs' RICO claims, alleging violations of § 1962, should be dismissed under Fed. R. Civ. 12(b)(6) for two independent reasons:

(1) The injuries Plaintiffs allegedly suffered were not proximately caused by a violation of RICO, as is required to bring a civil RICO action under 18 U.S.C. § 1964(c);

(2) Plaintiffs have failed to plead a "racketeering activity," namely by not pleading the RICO predicate acts of mail and wire fraud with the particularity required by Fed. R. Civ. P. 9(b);

Each reason is discussed below.

A. Plaintiffs have not shown they have standing under § 1964(c) to assert civil RICO claims against Ms. Young.

Plaintiffs' RICO claims should be dismissed under Fed. R. Civ. P. 12(b)(6) because Plaintiffs have not pled facts showing they have standing under § 1964(c) to assert a civil RICO claim.

The RICO statute states "[a]ny person injured in his business or property by reason of a violation of [RICO] may sue." 18 U.S.C. § 1964(c). And a RICO plaintiff must show he has standing to sue. *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 606 (5th Cir. 1998). To plead standing, a plaintiff "must show that the [RICO] violation was a but-for and proximate cause of the injury." *Allstate Ins. Co. v. Plambeck*, 802 F.3d 665, 676 (5th Cir. 2015) (citing *Bridge v. Phoenix Bond & Indemn. Co.*, 553 U.S. 639, 654 (2008)); *Holmes v. Securities Investor Protection Corp.*, 559 U.S. 1, 9-10 (1992) ("[P]roximate cause is thus required," which means there must be "some direct relation between the injury asserted and the injurious conduct alleged."). The focus of proximate cause analysis is "directness"—whether "the injury or damage was either a direct result or a reasonably probable consequence of the act." *Plambeck*, 802 F.3d at 676; *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."). Plaintiffs do not plead facts showing

they suffered any financial loss that directly resulted from any alleged RICO violation by Ms. Young. *See Gil Ramirez Grp., L.L.C.*, 786 F.3d at 408.

In *Firestone*, the beneficiaries of the Firestone family estate and trust asserted RICO claims against the executor and trustee. *Firestone v. Galbreath*, 976 F.2d 279, 282 (6th Cir. 1992). The court affirmed the district court's dismissal of the RICO claims for lack of standing, noting that the estate, not the beneficiaries, suffered the direct harm. *Id.* at 285 (citing *Holmes*, 559 U.S. at 9-10). The alleged harm inflicted by the executor and trustee flowed only indirectly to the beneficiaries through the harms inflicted upon the decedent and her estate. *Id.* (reasoning that the beneficiaries were similar to shareholders who sue for acts aimed at a corporation—"the shareholder's injury is only indirect because the decrease in the value of the corporation precipitates the drop in the value of the stock") (citing *Gaff v. FDIC*, 814 F.2d 311 (6th Cir. 1987); *Warren v. Manufacturer's Nat'l Bank*, 759 F.2d 542 (6th Cir. 1985)). Thus, the *Firestone* beneficiaries lacked direct injury, and therefore standing, to pursue their individual RICO claims. *Id.*

Like the aggrieved beneficiaries in *Firestone*, Plaintiffs here could, at most, only suffer indirect harm through their allegations of "poser advocacy" by some secret society that allegedly includes Ms. Young. The rationale underlying the direct relationship requirement is plainly applicable here, as the estates "can be expected to vindicate the laws by pursuing their own claims." *See Holmes*, 503 U.S. at 269–70 (holding broker dealers could be relied upon to bring suit against alleged securities fraud co-conspirators); *Anza*, 547 U.S. at 460 ("If the allegations are true [that defendants are defrauding the State of New York], the State can be expected to pursue appropriate remedies."). In short, by alleging that Ms. Young caused harm to the estates through "poser advocacy," which in turn caused harm to Plaintiffs, Plaintiffs improperly ask the

Court to go "beyond the first step."[2] *See Hemi Group, LLC v. City of New York, N.Y.*, 559 U.S. at 10 ("Because the City's theory of causation requires us to move well beyond the first step, that theory cannot meet RICO's direct relationship requirement.").

Because Plaintiffs' have not shown their injuries were directly caused by a violation of RICO, they have failed to satisfy the proximate causation requirement necessary to establish RICO standing. Thus, Plaintiffs' RICO claims should be dismissed.

B. Plaintiffs have not satisfied Rule 9(b) because they have not pleaded facts showing Ms. Young engaged in a "racketeering activity."

Plaintiffs' RICO claims should also be dismissed under Fed. R. Civ. P. 9(b) because the allegations do not show Ms. Young engaged in any "racketeering activities" sufficient to trigger the RICO statute.

Under Rule 9(b), fraud claims must meet the heightened pleading requirements of Rule 9(b), which requires a plaintiff to plead allegations of fraud "with particularity." FED. R. CIV. P. 9(b); *Shandong Yinguang Chem. Indus. Joint Stock Co. v. Potter*, 607 F.3d 1029, 1032 (5th Cir. 2010) (per curiam) ("Rule 9(b) requires the 'who, what, when, where, and how' to be laid out.") (citation omitted); *ABC Arbitrage Plaintiffs Grp. v. Tchuruk*, 291 F.3d 336, 350 (5th Cir. 2002) (to satisfy the particularity standard, a party must "specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent") (internal quotation marks and citations omitted).

By imposing a "higher, or more strict, standard than . . . basic notice pleading" on fraud claims, *Sushany v. Allwaste, Inc.*, 992 F.2d 517, 521 (5th Cir. 1993), Rule 9(b) ensures that a defendant "has sufficient information to formulate a defense; it protects defendants from harm to

[2] It is worth noting that, although Plaintiffs allege that Defendants somehow "hijacked" estates by recouping attorneys' fees for time that was merely spent as sham advocacy, Ms. Young has yet to be paid a single cent for her representation of Temporary Administrator Lester.

their reputation and goodwill; it reduces the number of frivolous suits; and, it prevents plaintiffs from filing a claim and then attempting to uncover unknown wrongs through discovery." *United States ex. rel. Foster v. Bristol-Myers Squibb Co.*, 587 F. Supp. 2d 805, 819 (E.D. Tex. 2008).

RICO claims require that a defendant commit a "pattern of racketeering activity." *Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer*, 90 F.3d 118, 122 (5th Cir. 1996). A "[r]acketeering activity consists of two or more predicate criminal acts" listed in 18 U.S.C. § 1961(1). *Abraham v. Singh*, 480 F.3d 351, 355 (5th Cir. 2007) (citation omitted); *Zastrow v. Houston Auto Imports Greenway Ltd.*, 789 F.3d 553, 559 (5th Cir. 2015). The predicate acts can be certain state or federal crimes. *See* 18 U.S.C. § 1961(1). But theft, common law fraud, and other garden-variety torts are not racketeering activities. *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"); *Toms v. Pizzo*, 4 F. Supp. 2d 178, 183 (W.D.N.Y.), *aff'd*, 172 F.3d 38 (2d Cir. 1998) ("[S]imple theft is not one of the crimes constituting a predicate act for purposes of establishing a pattern of racketeering activity."); *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'"); *Stangel v. A-1 Freeman N. Am., Inc.*, No. CIV.A. 3:01-CV-2198M, 2001 WL 1669387, at *1 (N.D. Tex. Dec. 27, 2001) ("breach of a settlement agreement, interference with a contract, conversion of property, and intentional infliction of emotional distress" are not racketeering activities).

Plaintiffs have made no assertion of any predicate acts of Ms. Young they claim constitute RICO predicate acts, although they vaguely assert "causes of action" for wire fraud,

mail fraud, and Hobbs Act violations.[3] But to adequately plead mail fraud, wire fraud, or violations of the Hobbs Act, Plaintiffs must allege "the particulars of time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby." *Tel-Phonic*, 975 F.2d at 1139 (emphasis added) (citing Fed. R. Civ. P. 9(b)). RICO claims must be dismissed when they rest on predicate fraud claims that are not pled with particularity. *See id.*; *Elliott*, 867 F.2d 877, 882 (5th Cir. 1989); *St. Germain*, 556 F.3d at 263. Here, Plaintiffs have not pled the time, place, or content of any alleged misrepresentations by Ms. Young, nor have they pled what Ms. Young obtained by making the alleged misrepresentation.

In sum, Plaintiffs fail to state even a single individualized fraud allegation against Ms. Young. *See Del Castillo*, 2015 WL 3833447, at *6 ("A complaint does not satisfy the requirements of *Iqbal* and *Twombly* by lumping together all defendants, while providing no factual basis to distinguish their conduct."); *Dimas*, 2010 WL 1875803, at *8 (dismissing RICO claims, in part, because the complaint failed to specify the role each Defendant played in the alleged scheme). Thus, because Plaintiffs have failed to plead facts showing Ms. Young engaged in a "racketeering activity," their RICO claims should be dismissed.

III. Plaintiffs have not satisfied Rule 12(b) because they have not pleaded a plausible claim for relief.

Plaintiffs' RICO claims should also be denied because the Complaint fails to state a plausible, valid claim for relief under the RICO statute.[4] Plaintiffs rely on implausible and conclusory allegations, unsupported by any factual assertions whatsoever. *Ashcroft v. Iqbal*, 556

[3] As shown in Section C, Plaintiffs' wire fraud, mail fraud, and Hobbs Act claims fail, because they cannot be asserted as private causes of action.

[4] As shown in Part V of this Section, all of the "causes of action" Plaintiffs assert other than RICO do not afford a private right of action. Thus, this section focuses on Plaintiffs' failure plead a valid RICO claim.

U.S. 662, 678 (2009) (holding that a claim should be dismissed as implausible if it does not "**plead[] factual content** that allows the court **to draw the reasonable inference** that the defendant is liable for the misconduct alleged") (emphasis added). Plaintiffs' Complaint pleads no factual content to support any of their fantastical allegations.

To survive a Rule 12(b)(6) motion to dismiss, 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 "facially plausible" only 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. In other words:

> A legally sufficient complaint must establish more than a "sheer possibility" that plaintiffs' claim is true. It need not contain detailed factual allegations, but it must go beyond labels, legal conclusions, or formulaic recitations of the elements of a cause of action. . . . . If there are insufficient factual allegations to raise a right to relief above the speculative level, . . . the claim must be dismissed.

Martin v. Magee, CIV.A. 10-2786, 2011 WL 2413473, at *4 (E.D. La. June 10, 2011) (internal quotations and citations omitted) (citing *Iqbal* and *Twombly*).

Plaintiffs' Complaint does not plead enough facts to state a plausible claim for relief against Ms. Young. Other Courts in this jurisdiction have rejected identical claims. *See Freeman v. Texas*, No. H-08-2050, 2008 WL 4155346, at *2 (S.D. Tex. Sept. 2, 2008) (Rosenthal, J.). In *Freeman*, two pro se plaintiffs alleged:

> Plaintiff claims a probate court enterprise comprised of judges and lawyers who conspired against pro se litigants, including himself. He claims that this enterprise has "virtually looted" his mother's homestead through the guardianship proceeding and denied him due process of law. Even if true, these allegations fail to state a "racketeering activity" because Plaintiff has failed to allege sufficient facts to raise a colorable claim that any violation of one of the numerous criminal statutes constituting racketeering activity has occurred. In light of the absence of any allegation that raises the possibility of a RICO violation, Plaintiff's claim under RICO must be DISMISSED.

Id. at *2 (internal footnotes omitted). Here, Plaintiffs' Complaint—devoid of any well-pleaded facts—consists of nothing more than conclusory conspiracy theories. It should be dismissed.

IV. Plaintiffs' Complaint is frivolous and delusional.

Plaintiffs' Complaint should also be denied because it is frivolous and delusional. This is a wholly separate basis on which the Court should dismiss the Complaint, through this Court's "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 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, 112 S.Ct. 1728, 118 L.Ed.2d 340 (1992)).

Here, Plaintiffs' Complaint resorts to concocting conspiracy theories and hypothesizing the existence of shadow organizations engaging in "poser advocacy" through a cabal of probate mafiosos. Other courts in this Circuit have held that almost identical allegations made by pro se

litigants should be dismissed *and* were sanctionable. *See 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).

Plaintiffs' allegations are fanciful, fantastic, and delusional—at best. They also appear to constitute an attempt by Plaintiffs to seek revenge for being on the losing end of trust and estate determinations that were already fully litigated in Texas state court. But whether Plaintiffs' motivations in filing the Complaint are one or the other (or anything in between), their allegations should be dismissed.

V. Plaintiffs' claims for "Hobbs Act," "Wire Fraud," "Fraud under 18 U.S.C. §1001," and "Honest Services" fail because those statutes do not create private causes of action.

The Plaintiffs purport to assert claims against Ms. Young for violation of the Hobbs Act, Wire Fraud, "Fraud under 18 U.S.C. § 1001," and "Honest Services," but those acts do not create private causes of action. Thus, those claims should all be dismissed.

A. The Hobbs Act does not create a private cause of action.

The Hobbs Act does not create a private cause of action. *Moore v. Garner*, No. Civ.A. 6:04-CV-79, 2005 WL 1022088, at *4 (E.D. Tex. 2005) ("Nor does the Hobbs Act create a private cause of action") (citing *Wisdom v. First Midwest Bank*, 167 F.3d 402, 408 (8th Cir. 1999)). This is settled law. *See, e.g., Campbel v. Austin Air Systems, Ltd.*, 423 F. Supp. 2d 61, 72 (W.D.N.Y. September 29, 2005) ("[F]ederal courts have consistently found that the Hobbs Act does not support a private cause of action."); *Barge v. Apple Computer*, No. 95 CIV. 9715 (KMW), 1997 WL 394935, at *1 (S.D.N.Y. July 15, 1997), *aff'd*, 164 F.3d 617 (2nd Cir. 1998) ("[C]ourts that have considered this question have consistently found that the Hobbs Act does

not support a private cause of action."); *John's Insulation, Inc. v. Siska Constr. Co., Inc.*, 774 F. Supp. 156, 163 (S.D.N.Y. 1991) ("There is no implied private cause of action under the Hobbs Act.").

Thus, Plaintiffs' Hobbs Act claim against Ms. Young fails.

B. The Wire Fraud statute does not create a private cause of action.

The wire fraud statute does not create a private cause of action. *See Thompson v. Wells Fargo Bank, N.A.*, CV H-15-598, 2016 WL 164114, at *3 (S.D. Tex. Jan. 14, 2016) (Rosenthal, J.) (citing *Napper v. Anderson, Hensley, Shields, Bradford & Pritchard*, 500 F.2d 634, 636 (5th Cir. 1974) for its holding that there is "no private cause of action under the mail-and wire-fraud statutes, 18 U.S.C. §§ 1341 and 1343"); *see also Morse v. Stanley*, 4:11CV230, 2012 WL 1014996, at *2 (E.D. Tex. Mar. 23, 2012) ("18 U.S.C. § 1343 is a criminal statute pertaining to wire fraud and does not provide Plaintiff with a private cause of action."); *Benitez v. Rumage*, CIV.A. C-11-208, 2011 WL 3236199, at *1 (S.D. Tex. July 27, 2011) (the wire fraud statute "do[es] not provide a private cause of action").

Thus, Plaintiffs' Wire Fraud act claim against Ms. Young fails.

C. The claim for "Fraud under 18 U.S.C. §1001" is not a private cause of action.

Plaintiffs' claim for "Fraud 18 U.S.C. § 1001" fails, as well, because that statute does not create a private cause of action. *See Thompson v. Wells Fargo Bank, N.A.*, CV H-15-598, 2016 WL 164114, at *3 (S.D. Tex. Jan. 14, 2016) (Rosenthal, J.) ("The Thompsons assert causes of action under **18 U.S.C. §§ 1001**, 1010, 1014, 1341, 1343, and 1344. **These federal criminal statutes do not provide a private cause of action**.") (emphasis added). Again, this is settled law. *See Blaze v. Payne*, 819 F.2d 128, 130 (5th Cir. 1987) ("Finding no congressional intent to create a private right of action under § 1001(b), Blaze has failed to state a claim upon which relief could be granted, and the district court's grant of summary judgment was proper."); *Grant*

v. CPC Logistics Inc., 3:12-CV-200-L BK, 2012 WL 601149, at *1 (N.D. Tex. Feb. 1, 2012), *report and recommendation adopted*, 3:12-CV-200-L, 2012 WL 601128 (N.D. Tex. Feb. 23, 2012) ("Federal courts have repeatedly held that **violations of criminal statutes, such as 18 U.S.C. §§ 1001**, 1505 and 1621, **do not give rise to a private right of action**.") (emphasis added); *Parker v. Blake*, CIV. A. 08-184, 2008 WL 4092070, at *3 (W.D. La. Aug. 29, 2008) ("Section 1001 provides criminal penalties for persons convicted of fraud or false statements during the course of certain dealings with the federal government . . . . As above, this criminal statute, were it applicable to allegations made by plaintiff still would not create a private civil cause of action or entitlement to monetary relief thereunder."); *Doyon v. U.S.*, No. A-07-CA-977-SS, 2008 WL 2626837, at *4 (W.D. Tex. June 26, 2008) (holding that there is "no private cause of action under 18 U.S.C. §§ 1001").

Thus, Plaintiffs' claim for "Fraud 18 U.S.C. § 1001" fails.

D. The claim for "Honest Services" is not a private cause of action.

Plaintiffs allege three claims for "honest services," based on 18 U.S.C. § 1346. *See* Complaint, at ¶¶ 121, 122, 123. But 18 U.S.C. § 1346 does not create a private cause of action, either. *See Eberhardt v. Braud*, 16-CV-3153, 2016 WL 3620709, at *3 (C.D. Ill. June 29, 2016) ("Plaintiff attempts to bring a private right of action under 18 U.S.C. § 1346 and 18 U.S.C. § 1951, but those criminal statutes do not contain an express or implied private right of action."); Alford v. S. Gen. Ins., 7:12-CV-00273-BR, 2013 WL 1010584, at *2 (E.D.N.C. Mar. 14, 2013) (holding that a "claim for honest services fraud under 18 U.S.C. § 1346" must be dismissed "pursuant to Rule 12(b)(6) because a private right of action for a violation of that law does not exist"); *Hooten v. Greggo & Ferrara Co.*, CIV. 10-776-RGA, 2012 WL 4718648, at *6 (D. Del. Oct. 3, 2012) ("18 U.S.C. § 1341 and § 1346 . . . are found in the federal criminal code. Neither § 1341 or § 1346 allow for a private cause of action.").

Thus, Plaintiffs' three claims against Ms. Young for "Honest Services" fail.

VI. Plaintiffs rely on impermissible collective pleading.

"A complaint does not satisfy the requirements of *Iqbal* and *Twombly* by lumping together all defendants, while providing no factual basis to distinguish their conduct." *In re Parkcentral Glob. Litig.*, 884 F. Supp. 2d 464, 471 (N.D. Tex. 2012) ("It is impermissible to make general allegations that lump all defendants together; rather, the complaint must segregate the alleged wrongdoing of No. 1 from another."). And the pleading requirements of Rule 9(b) likewise demand **specific** and **separate** allegations against each defendant. *See Dimas v. Vanderbilt Mortg. & Fin., Inc.*, No. C-10-68, 2010 WL 1875803, at *8 (S.D. Tex. May 6, 2010) ("[W]hile the Complaint makes several general allegations of fraud, it often fails to specify the role each Defendant played in the alleged scheme."); *Unimobil 84, Inc. v. Spurney*, 797 F.2d 214, 217 (5th Cir. 1986) (affirming dismissal of fraud claim for not stating with particularity "what representations each defendant made").

Here, Plaintiffs offer no individualized allegations about any wrongful conduct they allege against Ms. Young. Instead, Plaintiffs' vague and fanciful pleadings are lobbed at all Defendants, with no discernible specific or separate allegations for Ms. Young. This is insufficient to state a claim.

CONCLUSION

For the reasons stated above, this Court should dismiss Plaintiffs' claims against Ms. Young with prejudice.

Dated: September 15, 2016

Respectfully submitted,

/s/ Robert S. Harrell

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ATTORNEYS FOR DEFENDANT JILL WILLARD YOUNG

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Motion to Dismiss has been served on September 15, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Robert S. Harrell
Robert S. Harrell