UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UBER TECHNOLOGIES, INC., Plaintiff, v. WINGATE, RUSSOTTI, SHAPIRO, MOSES & HALPERIN, LLP, JAY WECHSLER, BANILOV & ASSOCIATES, P.C., NICK BANILOV, IGOR TARASOV, THE LAW OFFICE OF DOMINICK W. LAVELLE d/b/a LAVELLE LAW FIRM, EMILY K. LAVELLE, MICHAEL GERLING, GERLING INSTITUTE, LEONID REYFMAN, AND PAIN PHYSICIANS NY PLLC, Defendants.	Case No. 25-cv-00522-OEM-VMS **PLAINTIFF'S OMNIBUS BRIEF IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS THE AMENDED COMPLAINT**

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Plaintiff Uber Technologies, Inc. ("Uber") respectfully submits this Consolidated Brief in Opposition to the Motions to Dismiss the Amended Complaint filed by Defendants Wingate, Russotti, Shapiro, Moses & Halperin, LLP, and Jay Wechsler ("the Wingate Defendants"); Banilov & Associates, P.C., Nick Banilov, and Igor Tarasov (the "Banilov Defendants"); the Law Office of Dominick W. Lavelle d/b/a the Lavelle Law Firm and Emily K. Lavelle (the "Lavelle Defendants," and together with the Wingate and Banilov Defendants, the "Law Firm Defendants"); Michael Gerling, Gerling Institute, Leonid Reyfman, and Pain Physicians NY PLLC ("Pain Physicians NY," together with Gerling, Gerling Institute, and Reyfman, the "Doctor Defendants," and collectively with the Law Firm Defendants, "Defendants"). Defendants' motions should be denied.

PRELIMINARY STATEMENT

Uber brought this lawsuit to disrupt and remediate a corrupt bribery and fraud scheme. Defendants here are the central players in that scheme, which they use to funnel vulnerable claimants into a series of unnecessary medical treatments—including dangerous back and neck surgeries—so that they can profit from fabricated claims for millions of dollars in supposed non-economic damages. This lawsuit is not an attack on the plaintiffs' bar or the many honest practitioners and medical providers who serve legitimately injured claimants. Defendants are not honest or ethical practitioners or providers; they are fraudsters. Uber's complaint alleges in detail how Defendants routinely breach their professional and ethical duties and enrich themselves at the expense of personal injury defendants like Uber—as well as Defendants' own clients and patients. As part of this scheme, lawyers pay doctors, directly or indirectly, to deliver unnecessary surgeries and injections, to create false medical records, and to influence their testimony regarding the necessity and causation of treatment. The scheme here involves an organized and long-standing pattern of misconduct targeting Uber and others. It involves the corruption of the medical practices in question as well as the broader association-in-fact of primary scheme participants.

Defendants' pattern of misconduct—which Uber alleges involves a wide range of cases and wrongdoers, many of whom are not even parties to any litigation—cannot be dealt with piecemeal in the state courts. Congress enacted the Racketeer Influenced and Corrupt Organizations Act ("RICO") precisely to provide the tools to remediate such wide-ranging and ongoing corruption. Pursuant to that statute, Uber seeks an order that will prevent and restrain violations going forward, thereby protecting all targets of the scheme, including Uber, other personal injury defendants, the courts, and exploited personal injury claimants. Uber also seeks money damages for the significant loss of property it has suffered due to Defendants' scheme.

The Second Circuit has long recognized that RICO is an appropriate tool to police fraudulent conduct arising from a bribery scheme that, among other things, taints state-court litigation. In the thirty-plus years since *United States v. Eisen*, 974 F.2d 246 (2d Cir. 1992), RICO has become an essential and standard tool for law enforcement and civil litigants to remediate fraud schemes similar to the one at issue here. The Second Circuit has also recognized in *Bankers Trust Co. v. Rhoades*, 859 F.2d 1096 (1988), that the types of injury suffered by Uber here—legal fees and other expenses incurred in fighting a pattern of frivolous lawsuits—provide statutory standing to seek the private attorney general remedies that the RICO statute provides. Defendants' arguments in their motions to dismiss are foreclosed by these authorities.

None of Defendants' arguments seeking dismissal of Uber's extensively pleaded claims has merit. First, Defendants urge a blanket rule that would immunize any fraudulent scheme effectuated through civil litigation from remediation through RICO. The RICO statute contains no such limitation; to the contrary, it proscribes conduct such as obstruction of justice and witness tampering that typically arises in the litigation context. The narrow judge-made limitation invoked by Defendants from *Kim v. Kimm*, 884 F.3d 98 (2d Cir. 2018), by its own terms applies to retalia-

tory counterclaims or lawsuits involving a single frivolous or baseless lawsuit. Uber's allegations are nothing like that. And nothing in *Kim* suggests protection against RICO for a bribery and fraud scheme designed to fabricate evidence for profit through a pattern of multiple lawsuits and out-of-court conduct. The unfounded extension of *Kim* that Defendants urge would effectively end law enforcement's longstanding reliance on the RICO statute to police fraud effectuated through civil litigation. *See, e.g.*, *United States v. Zemlyansky*, No. 12-cr-171 (S.D.N.Y. Feb. 28, 2012), ECF No. 1 (Taber Decl. Ex. 1); *United States v. Milberg Weiss LLP*, No. 05-cr-587, 2007 WL 3114161 (C.D. Cal. Sept. 20, 2007), ECF No. 353 (Taber Decl. Ex. 2).

Second, Defendants ask this Court to adopt a new rule that a RICO plaintiff lacks standing where it faces the ongoing prospect of incurring additional defense costs in the future. That proposed rule is absurd. It would permit fraudsters engaged in ongoing schemes to escape without penalty so long as they continue their scheme. No precedent supports that result.

Third, Defendants argue that, when RICO defendants commit a series of frauds following a common playbook (that is, a prototypical pattern of racketeering activity), the statute of limitations for all such frauds expires four years after the first predicate act in the scheme. That argument is foreclosed by the Second Circuit's separate accrual rule, which expressly rejects Defendants' theory as unfair and unsuited to RICO violations that, by their nature, cause multiple injuries over time. Binding precedent holds that each new injury—not each new RICO scheme—accrues separately for statute-of-limitations purposes. Because Uber has alleged injuries within the limitations period, its claims are timely. And that includes allegations with respect to older predicate acts, which the RICO statute authorizes for use in proving the racketeering pattern.

Fourth, Defendants contend that the *Noerr-Pennington* doctrine shields their alleged misconduct. That argument fails. Even if this affirmative defense could support a motion to dismiss

(it cannot), *Noerr-Pennington* does not protect intentional misrepresentations. Defendants' court filings were not made to redress genuine grievances but instead served a larger pattern of successive actions pursued essentially to defraud and harass. The First Amendment and *Noerr-Pennington* protect legitimate petitioning, not the corruption of the judicial process through misrepresentations, fabricated records, unnecessary surgeries, bribery, and perjury.

Apart from Defendants' unmeritorious blanket assertions, they advance a grab bag of arguments that Uber's detailed Amended Complaint fails to adequately plead RICO claims alleged against them. Those arguments largely ask this Court to weigh the evidence and draw inferences against Uber's well-pleaded factual allegations. But those arguments are not suitable for the pleading stage, where all of Uber's allegations must be taken as true and all reasonable inferences must be drawn in Uber's favor.

The allegations in Uber's complaint are detailed and well-founded. They are also striking. They reveal Defendants' intentional, corrupt scheme to perpetrate a fraud and extract funds from Uber at the expense of Defendants' own clients and patients. The Amended Complaint pleads an obvious and intolerable fraud being perpetrated through the justice system. RICO provides a means to stop it, and Uber has stated a claim for relief against all Defendants.

STATEMENT OF FACTS

A. Defendants' bribery and fraud scheme.

The scheme described in Uber's Amended Complaint (ECF No. 68) involves the fraudulent transformation of automobile accidents that result in little or no injury—and that should properly be left to New York's no-fault insurance process—into claims for multiple millions of dollars in supposed non-economic damages. New York's no-fault insurance law bars any automotive-related litigation claims unless there is a "substantial injury." N.Y. Ins. Law §§ 5102, 5104. To circumvent that bar, each Defendant in this case is involved in manufacturing false evidence of substantial

injury to initiate and pursue such litigation claims. As discussed below, Defendants Michael Gerling and Leonid Reyfman manufacture such evidence by performing surgery and delivering pain injections that are unnecessary or unconnected to the accidents in question. They do so in exchange for payments sourced from the Law Firm Defendants. Those payments are bribes because they are made and received for the express purpose of inventing false medical records and corruptly influencing testimony from Gerling and Reyfman, each of whom are reasonably expected to be witnesses in the resulting cases. The bribes have their intended effect because Gerling and Reyfman in each case both deliver the desired procedures and create false or misleading medical records justifying such procedures, with the understanding that such records will be used to support their own corruptly influenced testimony.

Gerling plays a critical role in the scheme because he regularly performs cervical and lumbar fusion surgeries and related procedures on patients who do not need them. These are significant surgeries. New York appellate courts have held that—as a matter of law—recipients of spinal fusion surgeries were entitled to personal injury damages in the hundreds of thousands or millions of dollars. At the Law Firm Defendants' direction, Gerling performed unnecessary spinal fusion surgery on, among others, a pedestrian plaintiff whose foot was run over (*Barco*), a plaintiff who was sitting at home at the time of the collision and then lied about having been in the vehicle (*Nicolas*), and a plaintiff whose sole claimed injury resulted from her car's gentle bump with a boxed sofa cushion—and where internal dashcam video showed that she was barely jostled (*Gorbacevska*).

The Law Firm Defendants monetize the scheme by using fraudulent lawsuits with the intent to extract artificially inflated settlements from Uber and other victims. The fabricated medical evidence substantially increases Uber's litigation costs and potential exposure of the cases by

preventing summary judgment, and significantly increases the damages floor if a jury finds liability—thereby coercing Uber into settling. The Law Firm Defendants share the illicit proceeds of the scheme with the Doctor Defendants by paying bribes in the form of above-market fees.

Defendants' scores of predicate acts of federal mail and wire fraud and New York witness bribery, across 19 different exemplar fraudulent personal injury litigations, constitute an undeniable pattern of racketeering activity. RICO was designed to reach such conduct. Under 18 U.S.C. § 1962(c), it is unlawful for "any person employed by or associated with any enterprise … to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." Section 1962(d) makes it unlawful for any person "to conspire to violate any of the provisions of subsection … (c) of this section." Each Defendant is liable under one or both of these provisions on multiple grounds.

First, Gerling and Reyfman are liable as primary RICO violators under 18 U.S.C. § 1962(c) because each of them conducts the affairs of their respective medical practices through a pattern of racketeering activity, namely, wire fraud, mail fraud, and receipt of bribes. AC ¶¶ 320–321. Nick Banilov, Igor Tarasov, Emily Lavelle, Jay Wechsler, and their respective firms are similarly liable as primary violators because they participate in the conduct of those same medical practices through the bribes directed at Gerling and Reyfman. *See Reves v. Ernst & Young*, 507 U.S. 170, 184 (1993) ("An enterprise also might be 'operated' or 'managed' by others 'associated with' the enterprise who exert control over it as, for example, *by bribery*." (emphasis added)).

Second, and on these same facts, Gerling, Reyfman, Banilov, Tarasov, Wechsler, and their respective firms and practices are liable as primary violators because together they operate the association-in-fact enterprise arising from their shared long-standing professional, referral, and payment relationships effectuating the scheme through this same pattern of wire fraud, mail fraud,

and bribery. This provides a second and separate basis for primary liability against each such Defendant due to their participation in the conduct of that association's affairs.

Third, each Defendant may also be held liable as a conspirator under 18 U.S.C. § 1962(d) because each one of them agreed to commit predicate acts knowing they were supporting a RICO enterprise. Under Section 1962(d), moreover, each such co-conspirator is responsible for the acts of each other. *Salinas v. United States*, 522 U.S. 52, 63–64 (1997). Because every Defendant entered the conspiracy and acted in concert to effectuate the underlying scheme that caused Uber injury, if any of them is a primary violator, the rest may be held jointly and severally liable as co-conspirators.

The particulars of the scheme and each Defendant's role in it are summarized below.

B. Defendants' scheme aims to circumvent New York's no-fault cap through fabricated medical records and testimony.

Defendants' motive and opportunity to effectuate this scheme stems from this state's no-fault insurance laws. New York's Comprehensive Motor Vehicle Insurance Reparations Act, N.Y. Ins. Law §§ 5101 *et seq.*, "supplant[s] common-law tort actions for most victims of automobile accidents with a system of no-fault insurance." *Matter of Med. Soc'y of State of N.Y. v. Serio*, 100 N.Y.2d 854, 860 (2003). This system seeks to "ensure prompt compensation for losses incurred by accident victims without regard to fault or negligence, to reduce the burden on the courts and to provide substantial premium savings to New York motorists." *Id.* The no-fault system aims to compensate claimants through an administrative rather than litigation process. Automobile accident victims may accordingly recover "from insurers for 'basic economic loss,' including medical expenses," which are "reimbursed based upon a fee schedule which specifies the charges permitted for specific services rendered by particular kinds of providers." *State Farm Mut. Auto. Ins. Co. v.*

Rabiner, 749 F. Supp. 2d 94, 99 (E.D.N.Y. 2010) (citing N.Y. Ins. Law § 5102); *see* AC ¶¶ 29–30. Basic economic loss is capped at $50,000. *Id.*

To bring a personal injury action for pain and suffering damages exceeding the $50,000 no-fault cap, a plaintiff must plead and prove "serious injury" caused by the accident. N.Y. Ins. Law § 5104(a); *see* AC ¶ 31. "Serious injury" is defined by statute as:

> a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than [90] days during the [180] days immediately following the occurrence of the injury or impairment.

N.Y. Ins. Law § 5102(d).

Significantly, proving a serious injury and opening the door to pain and suffering damages requires "expert medical testimony." *Perez v. State of New York*, 215 A.D.2d 740, 741 (2d Dep't 1995). A patient's subjective complaints of pain are not enough to survive summary judgment. *See Toure v. Avis Rent A Car Sys., Inc.*, 98 N.Y.2d 345, 357–358 (2002). But a doctor's testimony that the plaintiff suffered an injury, that the injury was caused by the accident, and that the injury is supported by "objective medical evidence, including MRI and CT scan tests and reports," will suffice to defeat summary judgment and get a multi-million dollar personal injury claim to a jury. *Id.* at 352–353. That is true even if another doctor, reviewing the same medical imaging, concludes that the plaintiff was not injured. *See, e.g.*, *Rabb v. Mohammed*, 132 A.D.3d 527, 527–528 (1st Dep't 2015) (summary judgment on serious injury issue was improper where, even though defendants' radiologist "found that the MRI of the left knee showed no injury," the plaintiff's "treating orthopedist, who reviewed the MRI films," concluded "that [the] plaintiff suffered permanent injuries to his knee").

Medical evidence is also essential to the quantum of damages because certain kinds of medical procedures—including the spinal fusions at issue in this scheme—markedly increase a plaintiff's potential damages. A spinal fusion is a surgical procedure to treat severe spinal injuries that cannot be relieved through less invasive options. AC ¶ 22. In a spinal fusion, the surgeon reinforces a patient's back structure by linking two or more vertebrae in the spine together using bone or bone-like material. *Id.* The two bones then "fuse" and heal as one bone. *Id.* Once the healing process is complete, the fused bones cannot move independently of each other. *Id.* Spinal fusion surgery has serious, long-term consequences for patients. *Id.* ¶ 24. Even after recovering—which can require weeks of significant support at home—the procedure permanently limits mobility between the two fused bones. *Id.* Having a spine that is fused in certain areas can also put additional strain on other areas of the back that have not been fused, causing these areas to break down faster. *Id.* Some patients who undergo successful fusion procedures require additional spinal surgeries in the future. *Id.*

New York appellate courts thus routinely reverse damages awards as inadequate where the plaintiff received a spinal fusion surgery. These courts have held that, as a matter of law, recipients of spinal fusion surgery were entitled to a minimum of hundreds of thousands of dollars in damages for past and future pain and suffering. *See, e.g.*, *Chung v. Shaw*, 175 A.D.3d 1237, 1239 (2d Dep't 2019) (ordering that pain and suffering damages be increased to $250,000 because it was "undisputed that the cervical fusion, inter alia, permanently reduced the plaintiff's cervical range of motion"); *Starkman v. City of Long Beach*, 148 A.D.3d 1070, 1071, 1073 (2d Dep't 2017) (reversing award of $1.25 million for pain and suffering as inadequate where plaintiff "suffered disc herniations and underwent two cervical fusion surgeries" and ordering *additur* to $2.25 million); *Murry v. Witherel*, 287 A.D.2d 926, 928–929 (3d Dep't 2001) (rejecting $35,000 in pain and suf-

fering damages as inadequate because "similar cases" involving "spinal fusion surgery" deemed awards of under $400,000 inadequate). Thus, the decision to recommend and perform a spinal fusion surgery has a significant direct impact on the potential settlement or verdict amount in a New York personal injury action.

C. Defendants' respective roles in the scheme.

The scheme starts with the Law Firm Defendants. Banilov, Tarasov, and Lavelle work for small firms that recruit clients and initiate cases. Wechsler works for the Wingate firm, which is larger, has more resources, and is better able to litigate cases against Uber referred to them by the other lawyers. The Wingate firm is frequently brought in by those other lawyers at a later stage of the litigation. The Wingate firm also independently originates and prosecutes scheme cases.

1. The Law Firm Defendants recruit clients to file lawsuits based on fabricated injuries.

Banilov, Tarasov, and Lavelle. Banilov and Tarasov hold themselves out as solo practitioners. In reality, they work out of the same Brooklyn storefront office space, share commonly employed staff, and regularly appear for one another's clients regardless of which one happens to be the attorney of record. AC ¶ 9. They even share an email address, litigation86street@nypilaw.net, which they both register to receive NYSCEF notifications. *Id.* (Their shared office is located on 86th Street in Gravesend—hence, "litigation86street".) Tarasov and Banilov are primarily responsible for recruiting clients from Brooklyn's large Russian-American community. *Id.* ¶ 279.

Emily K. Lavelle works at the Lavelle Law Firm, with offices in Brooklyn and on Long Island. *Id.* ¶¶ 10–11. Like Banilov and Tarasov, Lavelle recruits clients who experienced minor auto accidents—or in some cases, nonexistent accidents—for the scheme. For example, Lavelle filed a complaint alleging that her client, George Nicolas, was "severely injured" in a car accident when in fact Nicolas was sitting at home at the time of the crash. *Id.* ¶¶ 219–220.

Banilov, Tarasov, and Lavelle refer the clients to Gerling and Reyfman for unnecessary medical treatment and the preparation of false medical records and false testimony regarding injury and causation. AC ¶¶ 280, 283. They use the proceeds of the scheme—their cut of the fraudulently obtained settlements or judgments—to pay or arrange for payment of Gerling's and Reyfman's substantially above-market fees. *Id*. They also draft and file knowingly false case-initiating documents asserting that their uninjured clients were "seriously injured" in minor or nonexistent accidents. *E.g.*, *id.* ¶¶ 60–61, 83, 121, 135, 150, 220, 240.

Wechsler and the Wingate Firm. The Wingate firm is a comparatively large New York personal injury firm, with more than thirty partners and associates. The firm advertises that its "attorneys work closely with doctors and other professionals, bringing together the best expert witnesses to assist in preparation and trial of our cases."[1] Banilov, Tarasov, and Lavelle regularly refer clients with claims against Uber to the Wingate firm because of that firm's more significant resources. AC ¶ 278; *see, e.g.*, *id.* ¶¶ 90, 123, 161, 169, 242. However, the Wingate firm also sources its own claimants in cases that it pursues itself. In those instances, the Wingate firm also makes payments (bribes) to Gerling and Reyfman for purposes of delivering unnecessary treatment to its clients and influencing their testimony to manufacture false evidence of substantial injury. Thus, while Wingate in many cases starts its representation after medical treatment has been delivered, it is fully cognizant that its continued representation is for the purpose of monetizing the corrupt procurement of false medical evidence by Banilov, Tarasov, and Lavelle in furtherance of the overall scheme.

[1] https://www.wrshlaw.com/attorneys/. The Court may "take judicial notice of information publicly announced on a party's website, as long as the website's authenticity is not in dispute." *Yourman v. Wildlife Conservation Soc'y*, No. 24-cv-337, 2024 WL 4198501, at *2 n.1 (E.D.N.Y. Sept. 15, 2024).

Jay Weschsler is a Wingate lawyer who regularly represents personal injury plaintiffs referred by Banilov, Tarasov, or Lavelle. He is regularly involved in cases where claimants who suffer no injury receive medically unnecessary treatments from Reyfman and Gerling. He was the Wingate attorney who misrepresented his reason for withdrawal in *Gorbacevska*. AC ¶¶ 75–76. He also represented the plaintiffs in *Clarke*, *Khalilova*, *Asamov*, and *Tagiyev*. *Id.* ¶¶ 105, 161, 252. Wechsler is integrally involved in the fraudulent scheme and the relationship between the Lawyer Defendants and Gerling. For example, in *Gorbacevska*, he was retained by the plaintiff on December 18, 2020, just a month after the case was filed and nearly a year before Wechsler filed the Amended Complaint adding Uber.

Wingate uses the false medical evidence it procures (or that is procured by the other lawyers) in prosecuting claims against Uber and other personal injury defendants. AC ¶¶ 106, 162, 253. It files false and fraudulent bills of particulars and similar pleadings asserting the existence of false injuries. *E.g.*, *id.* ¶¶ 66–67. The Wingate firm enters fee-splitting agreements with the other lawyers to share the proceeds of the scheme and to incentivize the continued development of false and fraudulent cases by those firms. *Id.* ¶ 278. Finally, Wingate conceals the scheme by obstructing ordinary litigation discovery directed at the Doctor Defendants. For example, after counsel for Uber subpoenaed Gerling's deposition in the *Gorbacevska* case to learn why he performed a cervical fusion on the uninjured plaintiff, the Wingate firm unilaterally adjourned the deposition and immediately withdrew from the case on false pretenses so that the deposition could not easily be rescheduled. AC ¶¶ 74–77.

2. Gerling and Reyfman provide medically unnecessary treatment to clients and false medical records and testimony for their attorneys.

Gerling. Michael Gerling is a spinal surgeon licensed to practice medicine in New York and New Jersey who owns and controls several medical entities including Gerling Institute. AC

¶ 53. He regularly performs spinal fusion surgeries. He sees ordinary patients through his medical practice and bills them through insurance. *Id.* ¶ 286.

When acting in furtherance of the scheme, however, Gerling makes false diagnoses, performs unnecessary treatment and procedures, and provides false medical records and testimony upon specialized knowledge. *Id.* ¶ 285. He does so in exchange for direct or indirect payments from the Law Firm Defendants, including through third-party funders, and with the understanding that the Law Firm Defendants will continue to funnel patients to him. *Id.* To avoid detection of the scheme, Gerling maintains a separate set of books to track the illicit portion of his business, including the lawyer-directed above-market payments. *Id.* ¶ 286.

Gerling profits from the scheme in two ways. First, he receives—as referrals from the Law Firm Defendants—new patients who are willing to submit to lucrative but medically unnecessary spinal fusion surgeries. *Id.* ¶ 285. A legitimate patient would be less likely to agree to undergo such painful and life-altering surgery without true medical necessity. Second, Gerling bills his attorney-referral patients at exorbitant rates that range from 200% to 800% (or more) of the market rate. *Id.* ¶ 287. For example, in 2022 he billed $366,069.47 for a cervical fusion that should have cost no more than $50,000. *Id.* Gerling is compensated at least in part through direct up-front payments by attorneys on behalf of their clients (or by litigation funders orchestrated by the Law Firm Defendants to facilitate the scheme). Gerling maintains a medical lien over any litigation recovery by his patients, ensuring that his above-market rates will take priority over any recovery by the personal injury claimant.

Gerling helps to inflate such litigation recoveries by providing both medically unnecessary spinal fusion surgery—which, as explained above (at 7–10), considerably increases expected damages—and knowingly and intentionally false medical records and testimony regarding injury and

causation. AC ¶ 291. For example, Gerling attested that it was his "professional opinion, within a reasonable degree of medical certainty, that" the "injuries" of the sofa cushion collision claimant (Gorbacevska), her "recommended treatments," *i.e.*, cervical fusion surgery, and "resultant disability are directly causally related to the above stated accident." *Id.* ¶ 55. He made this statement knowing that it was false: Gorbacevska was riding in a vehicle that slowed down modestly when it bumped a cardboard box containing a couch cushion. She was not injured in her cervical spine or any other part of her body. *Id.* ¶ 56. Gerling similarly attested that another personal injury claimant, Ambrosio Loro, was permanently disabled as a result of an automobile accident in which he was rear-ended in stop-and-go traffic, even though the plaintiff did not report injury at the time, did not seek any medical attention for six months, and his vehicle suffered only a small scratch on the bumper. *Id.* ¶ 226–227, 235. The complete absence of legitimate spinal injuries would have been obvious to Gerling in his assessment of these patients and their medical records.

Gerling is a known fraudster. In *GEICO v. Michael Gerling, M.D.*, No. 23-cv-7693, filed in this District, the plaintiff provided documentary evidence that Gerling had accepted lawyer-sourced kickback payments routed through a phony marketing firm. *Id.* ¶¶ 288–289.[2] The checks have the memo line "ACDF," an acronym for "anterior cervical discectomy and fusion," supporting GEICO's allegation that the checks were lawyer-directed payments to induce Gerling to perform medically unnecessary cervical fusions. Given GEICO's evidence of Gerling's fraud, this Court preliminary enjoined Gerling from prosecuting any no-fault insurance claims against GEICO. *Id.* Justice Joseph Esposito also voiced his frustration with Gerling's history of fraud: "I am sick and tired of certain medical people who come in here and who with unclean hands … try

[2] The Complaint in *GEICO v. Michael Gerling, M.D.*, No. 23-cv-7693 (E.D.N.Y.), is attached to the Declaration of Jacob Taber as Ex. 3.

to pull off what he is trying to do here. I am insulted by it … I am insulted by Dr. Gerling. … [H]e doesn't deserve to be … presented to this jury like he's some kind of an expert medical person, because to me he is bordering on criminality." *Id.* ¶ 290.[3] That criminality is precisely what the RICO statute was intended to remedy.

Reyfman. Reyfman is a pain management physician. *Id.* ¶ 14. Like Gerling, he performs spinal surgeries—including discectomies and annuloplasties. More regularly, he provides pain-management spinal injections in furtherance of the scheme. *Id.* ¶ 46. Treatment guidelines generally require that a patient fail a period of non-surgical "conservative measures," including Reyfman's pain-management injections, as well as physical therapy and massage, before spinal fusion surgery will be appropriate. *See, e.g.*, *Czechowski v. MCS Remedial Servs.*, 175 A.D.3d 1759, 1761 (3d Dep't 2019). Reyfman's provision of such injections is thus necessary to a scheme that centers on artificially inflating the value of personal injury cases through the provision of medically unnecessary spinal fusion surgeries.

Reyfman and Gerling have had a professional relationship with one another for nearly twenty years and routinely refer patients back and forth. AC ¶ 300(d). Gerling regularly performed surgeries at Island Ambulatory Surgery Center in Brooklyn, a facility owned and operated by Reyfman—meaning that Reyman would get a cut of the above-market rates that Gerling charged for those surgeries. *Id.* Reyfman and Gerling are also equal partners in 23rd Street SC, LLC d/b/a Hudson Surgery Center, a special purpose vehicle that they created to operate Hudson Surgery Center, an ambulatory surgery center in Manhattan. *Id.*

[3] Justice Esposito made that comment in denying the personal injury plaintiff's motion in limine to limit inquiry into fraud-related allegations. Further action in the case ended shortly thereafter. *Holton v. New York City Transit Authority*, Queens County Index No. 710736/2019. That result highlights the practical problem of attempting to police Defendants' misconduct exclusively through state-court litigation.

Like Gerling, Reyfman provides medically unnecessary treatment to personal injury claimants at the direction of the Law Firm Defendants. *Id.* ¶ 293. He also renders false testimony regarding the existence, severity, and causation of injuries. *Id.*; *see, e.g.*, ¶¶ 49, 102–104, 132–133, 138, 177. For example, Reyfman treated Joshua Lopez, a personal injury claimant who was in a minor motor vehicle accident in which the airbags did not deploy and damage to the vehicle was minimal. *Id.* ¶ 129. Lopez did not request any medical treatment at the scene or pursue it shortly after; he instead walked home. *Id.* Reyfman nevertheless attested to the court that Lopez was injured; that his injury required surgery; and that the car accident caused his injury. *Id.* ¶¶ 132, 138. Reyfman provided such false and fraudulent testimony in furtherance of the scheme and in exchange for above-market payments made or directed by the Law Firm Defendants. *Id.* ¶ 294.

Gerling and Reyfman work closely with one another and with the lawyers to support the scheme. They share resources, including office space, which makes cross-referrals easier—keeping more potential proceeds within the RICO enterprise. *Id.* ¶ 221. Their medically unnecessary treatments (especially spinal fusions) and false medical records and testimony regarding necessity and causation are at the heart of the scheme.

D. The Amended Complaint identifies at least 19 New York personal injury cases in which Defendants colluded to manufacture false medical evidence.

The pattern of misconduct involving these Defendants repeats itself across the 19 pattern cases outlined in the Amended Complaint—five targeting Uber, and the rest targeting other deep-pocketed defendants, like insurers. Beyond their similarities, the particular facts of the cases reveal glaring indicia of a knowing scheme to defraud. To provide just a few examples:

***Gorbacevska v. Zalouk*.** Ludmila Gorbacevska was a passenger in a vehicle that slowed down and hit a cardboard box containing a sofa cushion, which had fallen off the back of a pickup truck. AC ¶ 35. Neither the vehicle nor the sofa cushion was damaged. *Id.* ¶ 36. Video footage

from the car's passenger-facing dash cam shows that Gorbacevska moved only minimally when the car collided with the cardboard box and she did not make contact with any part of the interior of the vehicle. *Id.* Yet Defendants proceeded to manufacture a significant personal injury suit.

Banilov falsified a form MV-104, which Gorbacevska had signed in blank, to say that her car had rear-ended another car (and not just collided with a lightweight cardboard box). *Id.* ¶¶ 39–40. Next, he referred Gorbacevska to providers including Reyfman and Gerling for unnecessary medical treatment. *Id.* ¶¶ 42–43, 46–54. Gerling performed a cervical fusion and spinal graft on Gorbacevska, inserting a titanium plate and screw system into her spine. *Id.* ¶ 57. Banilov filed the initial (false) lawsuit against the driver and obtained some discovery from the driver without Uber's involvement. *Id.* ¶¶ 60–61. When Banilov was ready to add Uber as a defendant, he referred the case to Wingate to file an amended complaint. *Id.* ¶¶ 62–64. All the while, the Law Firm Defendants continued to make false representations to the parties and the Court about the scope and nature of Gorbacevska's alleged injuries. *E.g.*, *id.* ¶¶ 61, 65–67, 69–70.

When the truth came out—after GEICO filed a RICO action exposing Gerling's long history of providing medically unnecessary surgeries in exchange for above-market payments—Uber sought discovery from Gerling about the fraud. *Id.* ¶ 73–74. Rather than risk further exposure of their scheme, Wingate adjourned Gerling's subpoenaed deposition and immediately moved to withdraw as counsel. *Id.* ¶¶ 75–76. Wingate averred that they needed to withdraw because they had seen the dash cam video showing that Gorbacevska was uninjured, but this was a lie: Wingate had received that video years earlier in discovery, and viewed it when it was an exhibit at Gorbacevska's deposition. *Id.* ¶ 77. The real reason for Wingate's withdrawal was to thwart Uber's efforts to uncover this racketeering scheme using the ordinary tools of litigation discovery.

Callum v. Price. Fatima Callum was in a minor car accident during which the airbags did not deploy. *Id.* ¶ 80. She refused medical treatment at the scene and instead drove home with the same driver in the same substantially undamaged car. *Id.* But after retaining the Lavelle Defendants, Callum claimed injuries to her knees, shoulders, and back, all purportedly requiring surgery. *Id.* ¶¶ 83–84. Gerling performed a medically unnecessary two-level spinal fusion surgery, at the Lavelle Defendants' direction. Indeed, the Lavelle Firm was listed as payor on Gerling's medical records. *Id.* ¶¶ 86–87.

Khalilova v. Hakeem. Zarrina Khalilova was in a minor accident. She did seek medical treatment, but imaging did not show any injury and she was discharged with only a painkiller. *Id.* ¶ 114. She then stood for the entire hour-long subway ride home from the ER—something a "seriously injured" person could not have done. *Id.* ¶ 115. After she retained the Banilov Defendants, they referred her to Reyfman and Gerling for unnecessary surgery, including a cervical fusion—which her lawyers paid for when her insurance would not. *Id.* ¶¶ 118–120.

Lopez v. Li Zhen Tang. Joshua Lopez walked home after a minor car accident. *Id.* ¶ 129. He did not seek medical attention; but, after he retained Tarasov, he was directed to start seeing a physical therapist. *Id.* ¶ 131. Then, three months after the accident, Lopez started to see Reyfman for injections and surgery, which Tarasov used as the basis of a phony lawsuit against Uber. *Id.* ¶¶ 132–135.

Abuzahrieh v. Diliddo. Ibrahim Abuzahrieh was in a minor accident but did not seek any medical treatment until after he retained the Banilov Defendants. *Id.* ¶¶ 141–142. He explained how the Banilov Defendants directed and coordinated all of his "treatment": they picked his doctors, scheduled his appointments, and even arranged his transportation. *Id.* ¶¶ 143–146. The

Banilov Defendants also arranged for a third-party litigation funder to lend Abuzahrieh $102,000 to pay Gerling's above-market rate. *Id.* ¶ 148.

Asamov v. Khodjaev. Fazliddin Asamov was in a minor accident and retained the Banilov Defendants. *Id.* ¶ 153. They referred him to Gerling for a diskectomy. *Id.* ¶ 154. Instead of billing Asamov's insurance, Gerling addressed an invoice to the Banilov Defendants for $36,500, which was nearly twice the median rate for a lumbar diskectomy (which was less than $20,000). *Id.* ¶ 156. That above-market rate was a bribe. *Id.* The Banilov Defendants arranged for a litigation funder to lend the surgical fee to Asamov in return for a lien on recovery—ensuring that the financial benefits of the scheme flowed primarily to the Defendants and the funder, not to Asamov. *Id.* ¶ 157.

Ashurov v. Jemmott. Uktam Ashurov was in a minor fender bender that damaged his rear bumper; he declined treatment at the scene, his airbag did not deploy, and he drove his car home. *Id.* ¶ 193. The police report confirms that nobody was injured. *Id.* Three months later, at the direction of the Banilov Defendants, Ashurov first sought medical treatment from Reyfman. *Id.* ¶¶ 194–195. Reyfman then referred Ashurov to Gerling, who performed a medically unnecessary spinal fusion surgery. *Id.* ¶ 197.

Voltchenkov v. Ware. In 2015, Alexandre Voltchenkov was in a head-on collision and received a spinal fusion from Gerling. *Id.* ¶ 203. Four years later, he was rear-ended, resulting in minor damage to both cars' bumpers. *Id.* ¶¶ 201–202. He declined treatment at the scene, did not report any injuries, and drove home from the scene. *Id.* ¶ 202. Even though Voltchenkov was not injured in the second accident, after he retained the Wingate Defendants he received a *second* spinal fusion surgery from Gerling—which the Wingate Defendants paid for. *Id.* ¶¶ 204–205.

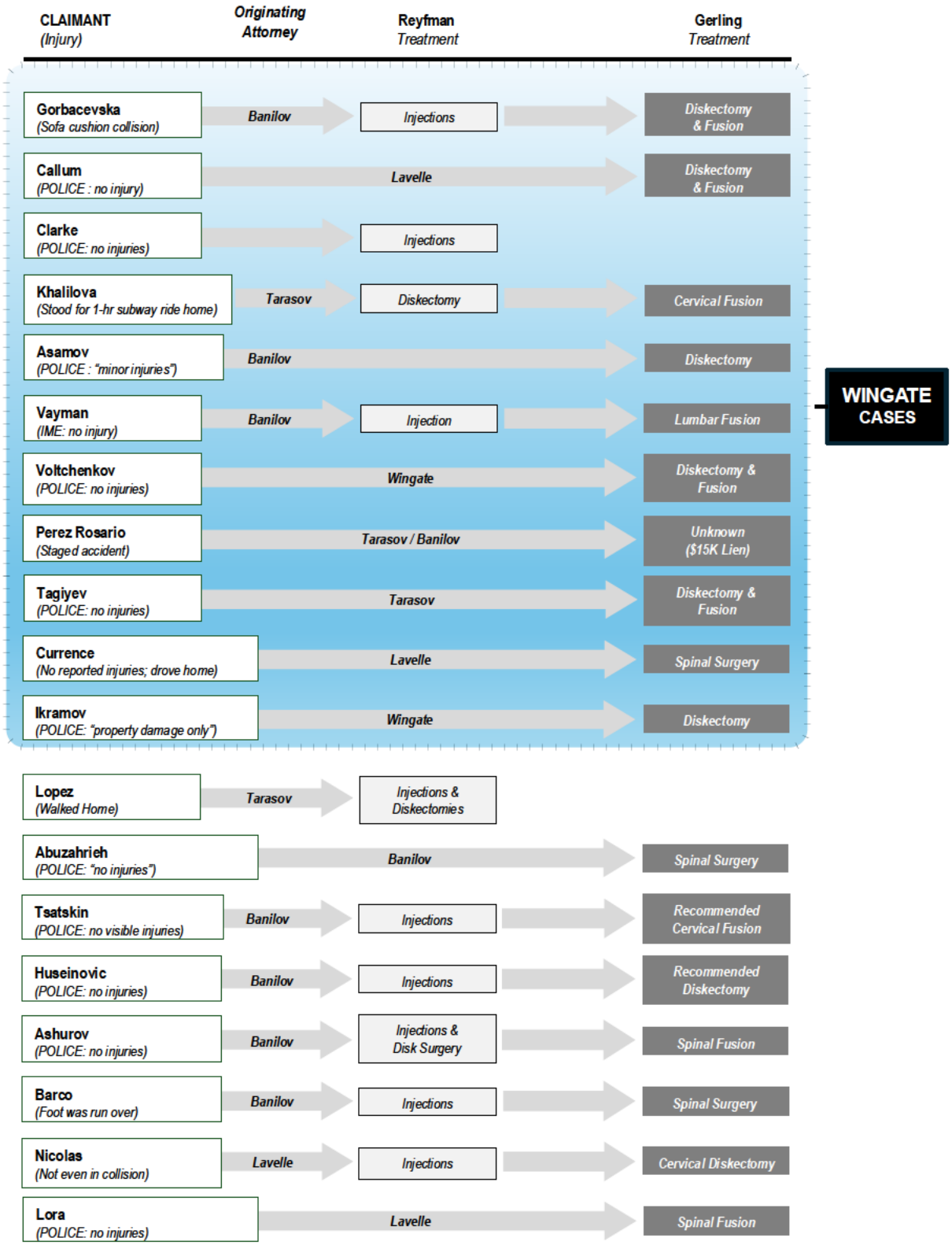
Barco v. Micciola. Alberto Barco was standing in a crosswalk when a car drove over his left foot. *Id.* ¶ 209. Fortunately, the foot was not fractured and Barco suffered no other injuries. *Id.* ¶ 210. He was not disabled and continued working as a laborer after the accident. *Id.* ¶ 217. But after he retained the Banilov Defendants, Barco nevertheless received medically unnecessary spinal injections and back surgery from Reyfman and Gerling—which, obviously, had nothing to do with his left foot. *Id.* ¶¶ 211–212, 218.

Nicolas v. Robillard. Georges Nicolas was sitting at home when a van affiliated with his company was in a car accident. *Id.* ¶ 219. When he heard the news, he raced to the scene and lied about having been in the van so that he could bring a phony lawsuit. *Id.* The Lavelle Defendants referred Nicolas—who was not in *any* car accident and was not injured—to Gerling, who performed a medically unnecessary cervical diskectomy. *Id.* ¶¶ 221, 223.

Tagiyev v. NYCTA. Sukhrob Tagiyev was side-swiped when he was double parked and a bus tried to slowly pass him. *Id.* ¶ 244. He was not injured. *Id.* Months later, he went to the emergency room complaining of arm pain from "wrestling with his friends." *Id.* ¶ 246. He then went to Gerling, complaining of the same arm pain, but received two medically unnecessary spinal surgeries. *Id.* ¶ 247. At trial, the jury found that Tagiyev was not seriously injured.

*

An overview of each participant's role in the cases set forth in the complaint similarly discloses the pattern of repeated use of the same medical providers to supply unnecessary treatment where there has been no injury:


CLAIMANT (Injury)
Originating Attorney
Reyfman Treatment
Gerling Treatment
Gorbacevska (Sofa cushion collision)
Banilov
Injections
Diskectomy & Fusion
Callum (POLICE : no injury)
Lavelle
Diskectomy & Fusion
Clarke (POLICE: no injuries)
Injections
Khalilova (Stood for 1-hr subway ride home)
Tarasov
Diskectomy
Cervical Fusion
Asamov (POLICE : "minor injuries")
Banilov
Diskectomy
Vayman (IME: no injury)
Banilov
Injection
Lumbar Fusion
Voltchenkov (POLICE: no injuries)
Wingate
Diskectomy & Fusion
Perez Rosario (Staged accident)
Tarasov / Banilov
Unknown ($15K Lien)
Tagiyev (POLICE: no injuries)
Tarasov
Diskectomy & Fusion
Currence (No reported injuries; drove home)
Lavelle
Spinal Surgery
Ikramov (POLICE: "property damage only")
Wingate
Diskectomy
WINGATE CASES
Lopez (Walked Home)
Tarasov
Injections & Diskectomies
Abuzahrieh (POLICE: "no injuries")
Banilov
Spinal Surgery
Tsatskin (POLICE: no visible injuries)
Banilov
Injections
Recommended Cervical Fusion
Huseinovic (POLICE: no injuries)
Banilov
Injections
Recommended Diskectomy
Ashurov (POLICE: no injuries)
Banilov
Injections & Disk Surgery
Spinal Fusion
Barco (Foot was run over)
Banilov
Injections
Spinal Surgery
Nicolas (Not even in collision)
Lavelle
Injections
Cervical Diskectomy
Lora (POLICE: no injuries)
Lavelle
Spinal Fusion

E. Defendants' scheme caused injury to Uber's business and property.

Using fabricated evidence regarding medically unnecessary surgeries, Defendants were able to maintain lawsuits against Uber for non-economic damages that—but for the fraud—should have remained in the no-fault system. AC ¶ 28. This caused Uber to incur attorneys' fees and other defense costs that it otherwise would not have incurred. *Id.* ¶ 31. It also substantially increased the potential settlement value of the cases. *Id.* Uber was injured by the payment of inflated settlement amounts arising from the scheme, relative to what Uber would have paid to settle without Defendants' fabricated evidence and false testimony. *Id.* ¶ 128.

This scheme continues to target Uber and others with fraudulent cases built on fabricated evidence, endangering vulnerable claimants in the process. RICO entitles Uber to compensation for the property it lost through Defendants' scheme. Uber's allegations state a claim for relief, and the Court should allow Uber a chance to prove those allegations.

ARGUMENT

On a motion to dismiss, the Court must take Uber's well-pleaded allegations as true and draw all inferences in Uber's favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Because the Court "is prohibited from engaging in any fact finding of its own" at this stage, *City of Warren Police & Fire Ret. Sys. v. World Wrestling Ent. Inc.*, 477 F. Supp. 3d 123, 130 (S.D.N.Y. 2020), Defendants may not ask the Court to credit their (deeply implausible) arguments that they were hoodwinked by claimants, that the repeated referrals to Gerling and Reyfman were mere happenstance, or that the delivery of cervical fusion surgery to treat a bruised left foot (among other surgeries) reflected mere incompetence. Nor may Defendants properly ask this Court to consider now their hundreds of pages of exhibits, which are outside the Amended Complaint and not incorporated by reference.

The Court should also reject Defendants' request that the Court narrow the use of RICO as a tool to remediate the fraud scheme here. While Defendants' decry the supposed "thermonuclear"

nature of the RICO remedy, the Supreme Court has instructed that "RICO is to be read broadly." *Sedima*, *S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497–498 (1985). That description stems from what "Congress' self-consciously expansive language and overall approach," as well as "its express admonition that RICO is to 'be liberally construed to effectuate its remedial purposes.'" *Id.* (quoting Pub. L. 91-452, § 904(a), 84 Stat. 947). In other words, RICO is an essential tool for stopping fraud. And there is no special pleading standard for RICO. Rules 8 and 9(b) apply as they would for any other claim. Under any fair reading of the Amended Complaint, there is no question that Uber has met those standards and adequately pleaded its RICO and state law claims.

I. Defendants' bribery and fraud scheme involving multiple state-court cases is actionable under RICO.

RICO is an essential and appropriate tool to police litigation-related crimes. Indeed, the Second Circuit has long recognized RICO claims arising from or related to litigation activity involving fraud or bribery: In *United States v. Eisen*, 974 F.2d 246 (1992), for example, the Second Circuit affirmed the convictions of several attorneys, investigators, and office staff who conducted a law firm's affairs through a "pattern of mail fraud and witness bribery by pursuing counterfeit claims," including "pressuring accident witnesses to testify falsely, paying individuals to testify falsely ... , paying unfavorable witnesses not to testify, and creating false ... evidence of accidents for use before and during trial." *Id.* at 251. The court firmly rejected the argument that litigation conduct is not actionable under RICO because perjury is not itself a predicate act. *Id.* at 253–254 ("[W]e cannot carve out from the coverage of RICO an exception for mail fraud offenses that involve state court perjuries.").

The Second Circuit has also recognized RICO claims in situations where, as here, a plaintiff seeks equitable relief. For example, in *State Farm Mutual Automobile Insurance Co. v. Tri-Borough NY Medical Practice P.C.*, 120 F.4th 59 (2d Cir. 2024), the Second Circuit held that state-

court proceedings lacking a factual basis and pursued as part of a broader fraudulent scheme can themselves further a RICO violation through repeated acts of mail fraud. *Id.* at 98–99. The court reasoned that allowing those proceedings to continue would cause irreparable harm by depriving State Farm of any forum to establish the existence of the alleged RICO enterprise and, in the circumstances, concluded that staying the pending state-court cases was necessary to give RICO its intended scope. *Id.* Similarly in *Chevron Corp. v. Donziger*, 833 F.3d 74 (2d Cir. 2016), the Second Circuit affirmed a RICO verdict arising from, among other conduct, wrongfully procuring a court decision by "corrupt means" including "submit[ting] false evidence," "pay[ing] off a court-appointed expert," and "coerc[ing] or brib[ing] a judge or jury." *Id.* at 85 (quoting *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 385 (S.D.N.Y. 2014)). In so doing, the Court affirmed the award of equitable relief to the private plaintiff under Section 1964(a).

These cases make plain that the RICO statute means what it says: This Court has the power to stop and remediate fraudulent conduct that violates the statute even when such misconduct is connected with litigation. Defendants' contrary rule—a categorical immunity foreclosing any RICO claim that involves litigation activity—would upend the continued use of this important tool and defy the plain meaning of the statute.

A. Recognizing RICO liability in these circumstances is fully consistent with *Kim v. Kimm*.

Contrary to Defendants' assertion, there is not and has never been a blanket rule against recognizing litigation conduct as a RICO predicate act. And allowing a RICO claim to proceed here is fully consistent with the Second Circuit's decision in *Kim v. Kimm*, 884 F.3d 98 (2018). The court of appeals in that case rejected an attempt to use RICO to seek treble damages as a means of retaliation against a litigation adversary for a single discrete action. *Kim* did not immunize schemes that weaponize the judicial process as part of a broader fraud, like the string of false

claims detailed in Uber's Amended Complaint. Complaints like Uber's do not raise the specter of collateral, retaliatory suits that animated *Kim*.

Kim's facts and holding confirm its limited scope. There, an attorney who had been sued for trademark infringement filed a civil RICO action against his litigation adversaries, their lawyers, and an accountant, alleging that the prior case was an "ill-conceived scheme" to extort $2 million from him. 884 F.3d at 99, 101. The Second Circuit affirmed the dismissal of the complaint. *Id.* at 104. It concluded that "where, as here, a plaintiff alleges that a defendant engaged in *a single frivolous, fraudulent, or baseless lawsuit*, such litigation activity alone cannot constitute a viable RICO predicate act." *Id.* at 105 (emphasis added). But the court expressly "decline[d] to reach the issue of whether all RICO actions based on litigation activity are categorically meritless." *Id.* The court also distinguished the retaliatory lawsuit in *Kim* from cases like *Sykes v. Mel S. Harris & Associates, LLC*, 757 F. Supp. 2d 413 (S.D.N.Y. 2010), which involved a complaint primarily seeking injunctive and other equitable relief to remediate a scheme marked by out-of-court misconduct—including purchasing consumer debt, improperly serving debtors, and filing fraudulent affidavits to secure default judgments—where the defendants used the courts as tools to effectuate a broader fraud. *Kim*, 884 F.3d at 104–105.[4]

The Second Circuit has since reiterated that *Kim* applies narrowly in circumstances far from those here. "Because the plaintiff [in *Kim*] had alleged that the defendant 'engaged in a *single* frivolous, fraudulent, or baseless lawsuit,'" the court has explained, "'such litigation activity *alone* cannot constitute a viable RICO predicate act.'" *Tri-Borough*, 120 F.4th at 98 n.14 (quoting *Kim*, 884 F.3d at 105). *Kim* thus "leaves open the door for RICO claims premised on abusive

[4] *See* Third Amended Class Action Complaint in *Sykes v. Mel S. Harris & Assocs., LLC*, No. 09-cv-8486, 2011 WL 10773338, at ¶¶ 6–7 (S.D.N.Y. May 16, 2011).

litigation activities involving conduct beyond a single lawsuit." *Carroll v. U.S. Equities Corp.*, No. 18-cv-667, 2020 WL 11563716, at *9 (N.D.N.Y. Nov. 30, 2020).

Here, Uber alleges a multi-case, repeat-player scheme involving bribes, unnecessary surgeries and medical treatment, fabrication of "serious injury" evidence, and purchased testimony, all designed to prime a pipeline of lawsuits and then leverage the courts to extract artificially inflated recoveries. *See* AC ¶¶ 1–3, 20–34. Those allegations supply the "more" that easily takes this case outside of the narrow *Kim* holding, and that makes this case more analogous instead to the *Eisen* and *Sykes* line. *Cf., e.g.*, *Carroll*, 2020 WL 11563716, at *9 (buying uncollectable debts, conspiring to use sewer service, using an individual to file false affidavits, and pressuring defendants to compromise on illegally obtained default judgments "were actions external to the individual suits in the state courts, involved matters beyond proper legal representation," and "served the goal of the scheme" "to obtain settlement money to which Defendants were not otherwise entitled"). Because Uber seeks to remediate an overarching scheme infecting numerous actions aimed at using fraud to extract payments from its victims, the narrow *Kim* limitation on a single instance of litigation conduct serving as a predicate RICO act does not apply.

B. Defendants err in positing a categorical bar against recognizing litigation conduct as RICO predicate acts.

The statutory text, Supreme Court precedent, and a long line of other cases confirm that *Kim* is no barrier to Uber's claims.

First, the broad litigation-conduct bar proposed by Defendants has no basis in the text of the RICO statute. Congress defined "racketeering activity" to include archetypical litigation-related crimes, including obstruction-of-justice, witness-tampering, and witness-retaliation. 18 U.S.C. § 1961(1)(B) (including acts indictable under 18 U.S.C. §§ 1511–1513). Congress would not have done so if, as Defendants claim (Wingate Br. 13), litigation activity *per se* cannot consti-

tute a predicate act. The Supreme Court, moreover, has admonished lower courts not to attempt to graft limitations onto the text of the statute, noting that it is not for the judiciary to eliminate a private action in situations where Congress has provided it. *Sedima*, 473 U.S. at 499–500 (rejecting prior conviction and special racketing injury RICO requirements); *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 240–241 (1989) (rejecting RICO requirement "that appears nowhere in the language or legislative history of the Act"). Defendants' overbroad reading of *Kim* cannot be squared with these Supreme Court cases requiring that RICO be narrowly construed.

Abundant caselaw confirms that Defendants' overbroad reading of *Kim* is atextual and wrong. There is no "broad shield from RICO for attorney advocacy." *Garlock Sealing Techs., LLC v. Simon Greenstone Panatier Bartlett*, No. 14-cv-116, 2015 WL 5148732, at *5 (W.D.N.C. Sept. 2, 2015) (denying motion to dismiss where lawyers were alleged to have engaged in wide-ranging fraud "designed to suppress evidence and inflate settlement values for mesothelioma claims" (citation omitted)). That is why courts have allowed litigation activities to serve as RICO predicates when they are the product of fraud or when defendants corrupt the legal process. *See, e.g.*, *Eisen*, 974 F.2d at 254; *Sykes*, 757 F. Supp. 2d at 426; *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 593–595, 601 (S.D.N.Y. 2014), *aff'd*, 833 F.3d 74 (2d Cir. 2016).

Sykes illustrates the point. Plaintiffs alleged that a law firm, its debt-buying affiliates, and a process server ran an industrial-scale "default judgment" mill, not actually "attempting to serve" consumers but filing falsified affidavits of service (a.k.a. "sewer service") and merit to obtain mass default judgments. 757 F. Supp. 2d at 418–419, 423. That enterprise used the courts as instruments of fraud; the litigation filings were actionable because they were the vehicles for a broader racketeering scheme. *Id.* The Second Circuit in *Chevron* similarly confirmed that litigation can be a conduit for racketeering when the process itself is corrupted. *See* 833 F.3d at 135–137 (defendants

used bribes to influence court orders and to ghostwrite a pivotal court expert's report, leading to a multi-billion-dollar judgment).

District courts have repeatedly recognized—before and after *Kim*—that defendants cannot avoid RICO liability by leveraging the judicial system to advance their unlawful schemes. In *Michelo v. National Collegiate Student Loan Tr. 2007-2*, 419 F. Supp. 3d 668 (S.D.N.Y. 2019), the court sustained RICO claims alleging a scheme to "fraudulently obtain default judgments … for debts they cannot prove they are owed" through the filing of documents with false or deceptive information in state proceedings. *Id.* at 694–695. And in *Carroll*, 2020 WL 11563716, the court held that *Kim* was no bar because the plaintiffs alleged a "massive scheme" involving a debt buyer, a law firm, and a process server who "improperly serve[d]" debtors and "file[d] fraudulent affidavits of service and merit" to obtain numerous default judgments. *Id.* at *9; *see Warnock v. State Farm Mut. Auto. Ins. Co.*, No. 08-cv-01, 2008 WL 4594129, at *7–8 (S.D. Miss. Oct. 14, 2008) (denying motion to dismiss where defendants were allegedly "involved in a larger scheme to defraud multiple people" and "transmitted other correspondence and materials relating to the scheme to defraud" beyond false court documents); *State Farm Mut. Auto. Ins. Co. v. Rosenfield*, 683 F. Supp. 106, 110–111 (E.D. Pa. 1988) (sustaining RICO cause of action where attorneys allegedly referred fictitious automobile accident claimants to physicians for treatment and induced the physicians to "exaggerate and overstate patient medical treatment so that personal injury clients could reach the $750 threshold to file a lawsuit for damages under the … Pennsylvania no-fault act"); *Garlock*, 2015 WL 5148732, at *5 (RICO claim may lie where defendants are "accused of committing rampant fraud over the course of several years and in numerous venues").

Courts likewise sustain RICO claims where sham litigation campaigns function as extortion, and the mail or wire communications that advance those campaigns serve as predicate acts.

The District Court for the District of Columbia drew that distinction crisply when it explained that courts refuse to treat "litigation activities" as predicates only when those acts are "the *only* allegedly fraudulent conduct," whereas "additional allegations of extortion or some other pattern of racketeering activity" allow mail and wire fraud "arising out of malicious prosecution or abuse of process" to serve as predicate acts. *Feld Ent., Inc. v. American Soc'y for the Prevention of Cruelty to Animals*, 873 F. Supp. 2d 288, 318–319 (D.D.C. 2012). That claim was actionable because the allegations were "not limited to claims that defendants filed false documents," but that "the entire [underlying] lawsuit was based on bribery of the lead plaintiff and witness." *Id.*; *see, e.g.*, *Lemelson v. Wang Labs., Inc.*, 874 F. Supp. 430, 434 (D. Mass. 1994) (denying dismissal where counter-claim-defendant allegedly "extorted millions of dollars in settlement monies through a pattern of litigation involving infringement claims based on fraudulently obtained patents"); *Hall Am. Ctr. Assocs. Ltd. P'ship v. Dick*, 726 F. Supp. 1083, 1097 (E.D. Mich. 1989) (denying dismissal where defendants allegedly filed suits and lis pendens as part of a larger Hobbs Act extortion scheme).

Those cases—and *Kim* itself—make clear that when a defendant engages in coordinated, pre- and extra-litigation conduct, the litigation steps used to effectuate the scheme can be RICO predicate acts. The Amended Complaint describes just such a scheme. Like *Sykes*, *Michelo*, and *Carroll*, the Amended Complaint pleads a repeat-player fraud involving pre-litigation referrals, *e.g.*, AC ¶¶ 63, 279, the manufacture of "serious injury" through unnecessary medical procedures to initiate and advance personal injury claims, *e.g.*, *id.* ¶¶ 21, 134, 138, 148–150, 152, 182, 187, and the use of deceptive documentation and bribery to influence testimony across numerous cases to obtain inflated recoveries, *e.g.*, *id.* ¶¶ 26–28, 87, 196. And as in *Eisen*, *Donziger*, and *Tri-Borough*, the gravamen is not ordinary advocacy but process-infecting fraud and bribery that use the courts as instruments of the Defendants' scheme. *E.g.*, *id.* ¶¶ 2, 65, 122.

Last, policy considerations do not support extending *Kim* to immunize all fraudulent litigation conduct from suit under RICO. Defendants protest that imposing any consequences for their fraudulent scheme would "chill litigants and lawyers." Wingate Br. 17 (citing *Kim*, 884 F.3d at 104). They try to use the personal injury claimants, whom they claim are "outmatch[ed]" by Uber's resources, as human shields. *Id.* But Uber has not sued those claimants and, in fact, is seeking to protect future victims of the RICO scheme from the consequences of unnecessary surgeries at the hands of unscrupulous doctors and lawyers. The *Kim* rule protects good-faith litigants by limiting retaliatory RICO actions in single disputes. And in addition to the narrow *Kim* rule, Rule 9(b)'s heightened pleading standard and RICO's distinct "pattern" and "enterprise" requirements protect individual good-faith litigants and prevent Defendants' parade of horribles.

Uber does not seek to overturn any state judgment, reopen any case, or re-litigate adjudicated merits issues. Hence, preclusion and comity principles do not counsel a different result.

By contrast, granting blanket immunity to litigation-linked conduct—even where it is part of a systematic scheme to manufacture claims and deploy fabricated evidence across multiple cases—would create a safe harbor for bad actors to exploit the courts for corrupt ends. That is the opposite of RICO's purpose.

C. Defendants' other citations are not instructive because they involved a single dispute or litigation activity alone—not a coordinated bribery-and-fraud scheme like the one alleged here.

Defendants cite various decisions for the proposition that litigation activities cannot be RICO predicates "as a matter of law." Wingate Br. 13–18. The cases do not so hold, and they are poor analogues: each was a damages-driven, retaliatory suit by a private litigant seeking treble damages for perceived wrongs in a single dispute or litigation sequence, not an action for equitable relief to halt and remediate a broad, ongoing scheme. The courts in those cases were not asked—unlike here and unlike cases such as *Sykes*—to stop ongoing, coordinated, pre-litigation fraud that

migrated into the courts and requires systemic injunctive remedies. The authorities Defendants cite neither state a categorical rule nor map onto the remedial posture or allegations at issue here.

Single adversarial dispute. Start with *Butcher v. Wendt*, 975 F.3d 236 (2d Cir. 2020). The *pro se* complaint concerned supposed misconduct in "an employee compensation dispute." *Id.* at 239. While the complaint referenced several proceedings—an arbitration, a subsequent Article 75 confirmation proceeding, and a collateral Dodd Frank retaliation suit that was dismissed as *res judicata*—they all arose from the same single dispute between the same parties. *Id.* at 240. *Butcher* is *Kim*'s paradigm: alleged fraud and corruption tied to a discrete litigation sequence, brought by the party aggrieved by those outcomes against his litigation adversaries, their counsel, and the presiding state judge.

The same is true of *Acres Bonusing, Inc. v. Ramsey*, No. 19-cv-5418, 2022 WL 17170856 (N.D. Cal. Nov. 22, 2022), another retaliatory lawsuit.[5] There, plaintiffs characterized invoice approvals and dual-role fee payments to a tribal judge/attorney as "bribery," but the court found the allegations implausible because the payments were compensation for a disclosed judicial salary and separate legal services; there was no well-pleaded quid pro quo or out-of-court corruption. *Id.* at *3, *12. The remaining conduct—approving invoices, substituting counsel, verifying discovery responses, and submitting declarations—was litigation activity all related to a single underlying proceeding. *Id.* Notably, the court characterized the *Kim* rule as covering suits "asserting claims against business or litigation adversaries." *Id.* at *12. Uber of course is not suing its business adversaries or the claimants in the underlying litigation.

[5] *See* First Amended Complaint, 2022 WL 2974946 (Prayer for Relief ¶ 1(c)).

Rajaratnam v. Motley Rice, LLC, 449 F. Supp. 3d 45 (E.D.N.Y. 2020), yet another retaliatory lawsuit, likewise turned on the absence of a broader enterprise or pattern.[6] The case was brought by the defendant in a civil action alleging his material support for terrorism against the plaintiffs' lawyers suing him and certain government anti-terrorism officials. *Id.* at 54. Although the complaint gestured at a decades-long "enterprise," the court found no relatedness between the supposed prior bad acts of the defendant law firm and the plaintiff: "Plaintiff has not pled any plausible connection between the NJ Action, on the one hand, and Ness Motley's asbestos litigation, the 9/11 Action, Rosetta, or the deception of an Afghan drug lord, on the other." *Id.* at 67–68. Thus, the plaintiff could only rely on an allegation that "defendants committed mail and wire fraud by disseminating false statements to the New Jersey District Court with the intent to coerce plaintiff into settling." *Id.* at 69. The surviving theory, then, reflected a single-victim, single-litigation objective—insufficient for a RICO pattern—and those litigation activities alone could not be predicate acts. *Id.* at 69–70.

Finally, in *Azima v. Dechert LLP*, No. 22-cv-8728, 2024 WL 4665106 (S.D.N.Y. Sept. 26, 2024), the court's discussion of *Kim* focused on the problem of retaliatory litigation. *Id.* at *18–19. That one-off, collateral-attack concern is not present here. And the *Azima* court nevertheless confirmed that "litigation activities may be RICO predicates" in "unique circumstances"—including mass default-judgment schemes, corruption of decisionmakers, or fraudulently secured defaults. 2024 WL 4665106, at *19–20. But those circumstances were not present in what was essentially a collateral attack on a pattern of litigation allegedly brought by an Emirati government against a political critic (and his business interests). *Id.* at *1.

[6] *See* Amended Complaint, 2019 WL 3362087 (Prayer for Relief).

Litigation activity alone. In *Brock v. Zuckerberg*, No. 20-cv-7513, 2021 WL 2650070 (S.D.N.Y. June 25, 2021), the court applied *Kim* to dismiss a *pro se* claim that an ordinary motion to enforce a forum selection clause somehow violated RICO. *Id.* at *5. No pre-suit scheme or process-infecting misconduct was alleged, and the court confirmed that "[l]itigation activity *alone* cannot constitute a viable RICO predicate act." *Id.* (emphasis added).

Curtis & Associates, P.C. v. Law Offices of David M. Bushman, Esq., 758 F. Supp. 2d 153 (E.D.N.Y. 2010), *aff'd*, 443 F. App'x 582 (2d Cir. 2011), is similar. The RICO claim in that case was purely retaliatory: The plaintiff, a law firm, "essentially allege[d] that any client with the impudence to contest the [plaintiff law firm's] legal fees" or assert "malpractice" and who sought "to litigate" such claims in court "is a racketeer," *id.* at 171, and relied on "mere 'litigation activities,'" *id.* at 176. Those allegations, the court observed, were "plainly distinguishable" from cases like *Eisen* that allege "an extensive and broader scheme to defraud" through "personal injury lawsuits." *Id.* at 175–176.

In short: Defendants' cases are not on point. Uber alleges a coordinated, multi-case fraud that began *before* any lawsuit was filed. *See, e.g.*, AC ¶¶ 148–149, 167–168.

D. Defendants' remaining arguments lack merit.

First, Defendants contend that Uber has not alleged enough pattern cases to resemble *Sykes* and *Tri-Borough*. Wingate Br. 16 (characterizing Uber's allegations as merely the "inconvenience of having to litigate five cases"). That is wrong, particularly at the pleading stage. Uber has identified nineteen exemplars involving the same core actors executing the same playbook in the same geographic area against similarly situated victims. *See generally* AC ¶¶ 35–276. That is comparable to *Eisen*, 974 F.2d at 251, easily clears Rule 12(b)(6), and satisfies RICO's pattern requirement, which turns on relatedness and continuity, not raw counts. *H.J. Inc.*, 492 U.S. at 237–238 ("at least two" predicates are a floor, and what matters is how the acts relate to each other and to an organized

scheme). Whether a racketeering enterprise targets small businesses in one neighborhood or across the whole city is a question of degree, not kind. What separates *Sykes* and *Tri-Borough* from *Kim* is a common scheme targeting multiple victims with the same playbook. Whether there are 20 or 200 victims is not the key—the conduct is unlike the single-dispute collateral attack in *Kim*.

Defendants next cite *Rajaratnam* to argue that the bribery predicates fail because the lawsuits were not "based entirely on" tainted information. Wingate Br. 16–17 (quoting *Rajaratnam*, 449 F. Supp. 3d at 72). But *Rajarantam*, like *Kim*, turned on a single-victim, single-litigation dispute. In any event, the Amended Complaint shows that the spinal-injury component—the key to crossing New York's "serious injury" threshold and inflating damages—was fabricated through unnecessary surgeries and purchased testimony, then laundered through court filings. *See, e.g.*, AC ¶¶ 1, 22-25, 51, 118-28. Whether or not the personal injury plaintiffs had a knee or shoulder injury, it was the unnecessary spinal surgeries that dramatically inflated potential damages (and corresponding injury to Uber).

Defendants also argue that Uber cannot rely on RICO because it has "not alleged that the New York state courts overseeing these cases are incapable of rooting out alleged fraud." Wingate Br. 16 (citing *Donziger*). The Second Circuit rejected that contention in *Tri-Borough*. There, as here, "fragmented proceedings end up obscuring" the fraud, which "becomes apparent only when the [cases] are analyzed altogether" and the patterns emerge. 120 F.4th at 80. That is precisely this case: the enterprise's playbook—pre-litigation recruitment and referrals, medically unnecessary procedures to fabricate "serious injury," above-market payments and inducements, and the systematic use of deceptive reports and purchased testimony to extract artificially-inflated recoveries—can be seen only across matters, not by parsing any single action in isolation.

II. Uber has statutory standing to assert RICO claims.

"In order to bring a civil RICO claim, a private plaintiff must demonstrate that 'the RICO violation at issue was a proximate cause of the injury to the plaintiff's business or property for which redress is sought.'" *Allstate Ins. Co. v. Lyons*, 843 F. Supp. 2d 358, 373 (E.D.N.Y. 2012) (quoting *Terminate Control Corp. v. Horowitz*, 28 F.3d 1335, 1344 (2d Cir. 1994)). This requirement is commonly referred to as statutory standing. *E.g.*, *Laborers Loc. 17 Health & Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229 (2d Cir. 1999).[7] Uber has statutory standing because it has incurred clear and definite loss of property—including its legal fees and other defense costs—that was proximately caused by Defendants' predicate acts.

This case is like *First Capital Asset Management, Inc. v. Brickellbush, Inc.*, 218 F. Supp. 2d 369 (S.D.N.Y. 2002), *aff'd*, 385 F.3d 159 (2d Cir. 2004). There, judgment creditors alleged that defendants had filed a materially false bankruptcy petition, made false statements in a creditors' meeting and examination, and transferred assets to avoid collection. *Id.* at 382–383. The court observed that it has been "well settled that legal fees may constitute RICO damages," and specifically concluded that these predicate acts of bankruptcy fraud "proximately caused plaintiffs to incur legal fees and other expenses in prosecuting their objections to" the fraudulent bankruptcy petition. *Id.*; *see Bankers Trust*, 859 F.2d at 1105 (plaintiff "suffered injury" for RICO purposes "when it became obligated to pay" "legal fees and other expenses incurred in fighting defendants' frivolous lawsuits in New York state court"). It was foreseeable that the fraudulent litigation activity in *Brickellbush* "would cause creditors to expend money to block" the judicial relief sought by the bad actor, and so plaintiffs had RICO standing "because of the[ir] Legal Fees injury." 218

[7] The Gerling Defendants alone assert that Uber lacks Article III standing. Gerling Br. 11, 13–14. But RICO standing is not jurisdictional and goes only to the existence of the cause of action. *UBS Secs. LLC v. Dondero*, 705 F. Supp. 3d 156, 171 (S.D.N.Y. 2023).

F. Supp. 2d at 383. As in *Brickellbush*, Defendants' effectuation of a scheme through the litigation process intentionally and directly caused Uber to incur legal costs, other costs of defense, and settlement expense, all of which are archetypal pocketbook injuries to Uber's business or property.

Defendants nevertheless argue that Uber lacks standing because: (1) Uber's injuries are not fixed (and thus unripe) because the racketeering scheme is ongoing; (2) they speculate that Uber's out-of-pocket injuries could possibly have been reimbursed by an insurer; and (3) the Amended Complaint supposedly does not plead causation because Uber could have chosen to default on the fraudulent lawsuits instead of incurring defense costs. Those arguments are entirely meritless.

A. Uber's injuries are clear and definite.

Defendants argue that Uber's RICO claim is not yet ripe because Defendants continue to perpetrate their ongoing scheme against Uber (and thus, Uber's damages may grow while this case is pending). Lavelle, Banilov & Tarasov ("LB&T") Br. 15–18. But the law does not immunize Defendants on the ground that they are continuing to engage in a pattern of racketeering that harms Uber—just the opposite. *See Bankers Trust*, 859 F.2d at 1106 (RICO plaintiffs may recover "on-going legal fees and other expenses" as "damages … suffered *up to the time of trial*") (emphasis added). There is no basis for Defendants' absurd position that a RICO fraudster may avoid liability simply by continuing to operate the scheme.

Defendants seek to take advantage of a narrow restriction on the use of RICO to collect contractual debts: "[A] plaintiff who claims that a debt is uncollectible because of the defendant's conduct can only pursue the RICO treble damages remedy after his contractual rights to payment have been frustrated." *First Nationwide Bank v. Gelt Funding Corp.*, 27 F.3d 763, 768 (2d Cir. 1994); *see D'Addario v. D'Addario*, 901 F.3d 80, 93–95 (2d Cir. 2018) (analyzing availability of

"'lost debt' injuries" under RICO).[8] Those cases are irrelevant here because Uber has not filed this lawsuit to collect a debt. As this Court explained in *Lyons*, the lost-debt rule does not apply to insurance fraud cases that are more properly analogized to this one. 843 F. Supp. 2d at 374 (lost-debt rule applies only to plaintiffs seeking "to recover money they had loaned or were otherwise entitled to receive"). Allstate's damages in *Lyons* were clear and definite even though it "may yet recover money through state lawsuits for fraud," and so it had RICO standing. *Id.*

Defendants ignore *Lyons* and instead rely on *Sky Medical Supply Inc. v. SCS Support Claims Services, Inc.*, 17 F. Supp. 3d 207 (E.D.N.Y. 2014). LB&T Br. 17. But this case is nothing like *Sky Medical*. The plaintiff in *Sky Medical* was a "medical equipment provider" and frequent no-fault insurance claimant—not a target of fraudulent claims, like Uber and the insurer in *Lyons*—who alleged that defendant no-fault insurance vendors colluded to fraudulently deny valid claims. 17 F. Supp. 3d at 215–217. More importantly, when it filed the federal lawsuit, the *Sky Medical* plaintiff was simultaneously suing in state court (or arbitration) seeking the same damages—payment of the improperly denied claims. *Id.* at 231. The parallel federal and state actions had a hydraulic relationship: every dollar the plaintiff recovered in state court or arbitration directly reduced available RICO damages. Plaintiff's injury was therefore "contingent" upon losing those pending state-court proceedings. *Id.* at 231–232. Under that narrow set of facts, the *Sky Medical* plaintiff was similar to a lost-debt plaintiff who needed to complete its collections proceedings before bringing a RICO action.

[8] The other cases cited by the LB&T Defendants also concern lost-debt injuries. *Motorola Credit Corp. v. Uzan*, 322 F.3d 130, 136 (2d Cir. 2003) (plaintiff was seeking to recover on "past-due loans"); *DLJ Mortg. Cap., Inc. v. Kontogiannis*, 726 F. Supp. 2d 225, 237–239 (E.D.N.Y. 2010) (plaintiff was "already pursuing other contractual and legal remedies").

Unlike the plaintiff in *Sky Medical*, Uber is a defendant in the underlying state-court actions and is not seeking any recovery from the personal injury plaintiffs there. It has not instituted any parallel action to recover the damages it seeks here. Nor are Uber's lost-property injuries contingent: Uber's property has already been lost to Defendants' scheme; those losses will grow in the future; and they will not be diminished by any court rulings in the pending cases *against* Uber.[9] Plus, Uber has no right to recover fees in those actions—unlike the plaintiff in *Sky Medical*, who had a statutory right to attorneys' fees. 17 F. Supp. 3d at 234 n.11 (citing N.Y. Ins. Law § 5106(a)).

Outside the lost debt-rule, there is no "broad principle that, before bringing a RICO claim, all plaintiffs must exhaust every alternative means of recovery." *Town of Islip v. Datre*, 245 F. Supp. 3d 397, 409–410 (E.D.N.Y. 2017). A RICO plaintiff will virtually always have some other state law cause of action available arising from the predicate acts that support the RICO claim, so an exhaustion requirement neither makes sense nor finds a textual basis in the language of Section 1964(c). That is why this Court held in *Lyons* that an insurer could proceed with a RICO claim arising from defendants' fraudulent "previously denied, *pending, or future* no-fault claims." 843 F. Supp. 2d at 365 (emphasis added). Similarly, in *GEICO v. Akiva Imaging Inc.*, No. 24-cv-6549, 2025 WL 1434297 (E.D.N.Y. May 19, 2025), this Court recently held that injuries from an ongoing scheme that "may increase over time" were clear and definite because the plaintiff had "not initiated any 'parallel proceedings'" but was "seek[ing] to recover" only through the RICO action. *Id.* at *4. So is Uber.

[9] The LB&T Defendants are wrong to suggest (Br. 16) that the denial of summary judgment in one of the underlying cases would bar Uber's recovery here. Defendants' successful use of false testimony to advance the lawsuits is precisely the fraudulent conduct over which Uber is suing here—it is evidence of Defendants' liability, not of their innocence.

Defendants also argue (LB&T Br. 16–17; Reyfman Br. 15) that Uber's damages are not clear and definite because it has pending cross-claims against *its co-defendants* in the underlying cases. Even if Uber's answers and cross-claims were relevant in this motion-to-dismiss posture, that argument fails for two reasons. First, Uber cannot recover its legal fees through indemnification "unless an award is authorized by agreement between the parties, statute or court rule." *Baker v. Health Mgmt. Sys., Inc.*, 98 N.Y.2d 80, 88 (2002). Defendants point to no such agreement or provision. Second, it would be inequitable to require Uber to seek recoveries from other innocent victims of Defendants' scheme for damages caused by Defendants' fraudulent and false testimony. It is Defendants who should compensate Uber for the injury that they caused.

The Reyfman Defendants argue that Uber's injuries are not cognizable under RICO because, in asserting that Uber was fraudulently induced to settle claims for more than they were worth, Uber is apparently seeking the "benefit of the bargain." Reyfman Br. 16. The argument is irrelevant because, charitably construed, it is directed at the quantum of damages—a question that is for trial. Uber's defense costs plainly constitute damages under *Bankers Trust* and *Brickellbush.* That is enough for RICO standing.

In any event, the argument that the settlement expense does not supply an independent basis for standing is incorrect. Uber alleges that it was defrauded into paying money that it would not otherwise have paid to the personal injury claimants—not (directly) to any Defendant here—based on Defendants' fraudulent misrepresentations. The impact of a spinal fusion surgery on personal injury damages in New York is concrete and certain (*supra* pp. 7–10), not speculative. Uber spent more than it would have absent the fraud, and those damages are cognizable. *In re Merrill Lynch Ltd. P'ships Litig.*, 154 F.3d 56, 59 (2d Cir. 1998) (investors "sustained recoverable out-of-pocket losses when they invested" in reliance on defendant's misrepresentations); *Bailey v. Atlan-*

tic Auto. Corp., 992 F. Supp. 2d 560, 580–581 (D. Md. 2014) (holding that car buyer suffered injury when she was defrauded into overpaying based on condition of car at the time of sale, and distinguishing cases involving cars with speculative risk of future defect). Unlike the plaintiffs in *In re General Motors LLC Ignition Switch Litigation*, No. 14-md-2543, 2016 WL 3920353 (S.D.N.Y. July 15, 2016), Uber is not suing a contractual counterparty alleging that it received overvalued merchandise. *Id.* at *7. The damages in *General Motors* were injuries to speculative and intangible interests, like the anticipated future resale value of the vehicles plaintiffs purchased. *Id.* at *16.

B. Defendants injured Uber's business or property because it has paid defense costs and an inflated settlement as a direct result of the scheme.

Defendants do not dispute that legal fees and other costs of defense constitute compensable RICO injury. *Brickellbush*, 218 F. Supp. 2d at 383. But the LB&T Defendants argue that Uber "has not alleged that *it* suffered any injury at all," and they ask the court to "infer[]" from the lack of the adjective unreimbursed in some paragraphs of the Amended Complaint that "Uber's insurer" must have paid the defense costs. LB&T Br. 18. That argument would require the Court to draw inferences against Uber, the plaintiff, which the Court may not do at this stage. *Hu v. City of New York*, 927 F.3d 81, 99 (2d Cir. 2019); *see Caputo v. Copiague Union Free Sch. Dist.*, 218 F. Supp. 3d 186, 190 (E.D.N.Y. 2016). Uber alleged that *it* paid defense costs, constituting lost-property injury. AC ¶¶ 79, 96, 113, 128, 139. But even if it hadn't, under New York's collateral source rule—which federal law adopts—a RICO plaintiff has standing to recover costs reimbursed by a "source that is independent of and collateral to the wrongdoer." *Fertitta v. Knoedler Gallery, LLC*, No. 14-cv-2259, 2018 WL 3720063, at *6 (S.D.N.Y. June 8, 2018); *see New York Mercantile Exch. v. Verrone*, No. 96-cv-8988, 1998 WL 811791, at *1 (S.D.N.Y. Nov. 19, 1998) (holding that insurance reimbursement does not offset the RICO damages "to which plaintiff is entitled").

The Gerling Defendants argue (at 15) that Uber's injuries are not compensable because they were "arguably self-inflicted" and because the Amended Complaint alleges that the scheme had other victims aside from Uber. But Uber did not choose to be targeted by Defendants' scheme and had no realistic choice but to retain counsel and defend against their fraudulent lawsuits. The law in this Circuit is clear: such defense costs constitute injury to business or property. *Brickellbush*, 218 F. Supp. 2d at 384. That Defendants' scheme had other victims (and even injured the courts) does not lessen the harm to Uber; to the contrary, that a scheme had multiple victims is evidence of a pattern of racketeering conduct. *See Ross v. Bolton*, 639 F. Supp. 323, 328 (S.D.N.Y. 1986) (complaint alleging that a scheme involved "a continuing series of transactions" involving "multiple transactions and multiple victims" pleaded a pattern of racketeering activity).

C. Uber's injuries were directly caused by Defendants' racketeering activity.

1. Uber has alleged direct causation.

All Defendants argue (LB&T Br. 18–23; Wingate Br. 18–19; Reyfman Br. 17–19; Gerling Br. 15–18) that Uber has not shown a "direct relation between the injury asserted and the injurious conduct alleged." *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010). But the causal chain alleged in the Amended Complaint is simple and direct: Defendants file fraudulent personal injury actions and submit false testimony to extract artificially inflated settlements or verdicts. These fraudulent acts necessarily cause Uber to incur defense costs that it otherwise would not as well as settlement expense incurred in reliance on the fraud. As in *Lyons*, Defendants' conduct, viewed "in the light most favorable to" Uber, "proximately caused [Uber's] financial injury" by seeking compensation for medical procedures that "were not medically necessary or compensable," and "therefore [Uber] may properly bring this suit." 843 F. Supp. 2d at 373–374.

The LB&T Defendants rely on the Second Circuit's decision in *Empire Merchants, LLC v. Reliable Churchill LLLP*, 902 F.3d 132 (2018). The attenuated causal chain rejected in that case

stands in sharp contrast to the Amended Complaint's allegation of direct harm. *See* LB&T Br. 22–23. In *Empire Merchants*, the theory of harm was that the defendants' unlawful tax evasion on liquor sales allowed them to undercut their competitors (including plaintiff) on price, which caused plaintiff to lose sales that would otherwise have been made if defendants were paying taxes. 902 F.3d at 142. The economic harm to plaintiff was *directly* caused by third-party retailers deciding not to buy plaintiff's products—decisions that could have had many causes other than the alleged racketeering acts, including the retailers' desire "to offer something new to consumers or to respond to changes in consumer tastes." *Id.* at 143. The "relation between the injury asserted and the injurious conduct alleged," *Hemi Group*, 559 U.S. at 9, was thus "intricate and uncertain," and there was another plaintiff—the State of New York, which lost tax revenue from defendants' alleged evasion—"more directly harmed by" the scheme, *Empire Merchants*, 902 F.3d at 142.

Here, by contrast, the predicate acts of fraud and bribery were directed not at a third party but at Uber, the RICO plaintiff. And Uber's economic harm—defense costs and artificially inflated settlement amounts—directly arose from those predicate acts. The LB&T Defendants bizarrely assert (Br. 22) that "the legal filings and bribes alleged did not themselves injure Uber" and only "set in motion circumstances in which Uber ultimately decided to incur legal costs." But that is always true of fraud claims. Outside of defamation and related torts, words themselves are not injurious; the injury arises from the plaintiff's detrimental reliance on the defendant's false statements. *E.g.*, *Olson v. Major League Baseball*, 29 F.4th 59, 72 (2d Cir. 2022). If Defendants were correct that a plaintiff's actions taken in reliance on false statements break the causal chain, then fraud could *never* form the basis of a RICO claim. That is not the law. 18 U.S.C. § 1961(1) (defining "racketeering activity" to include mail fraud and wire fraud).

The Gerling Defendants (Br. 16) direct the Court to *Roosevelt Road Re, Ltd. v. Subin*, No. 24-cv-5033, 2025 WL 1713109 (E.D.N.Y. June 19, 2025), but that case supports Uber, not Defendants. *Subin* concerned personal injury lawsuits by construction employees against their employers based on "fake accidents and fraudulently inflate[d]" claims. *Id.* at *5. The plaintiff was not any of the employers directly targeted by these suits, but rather a reinsurer, and the Court held that its injury was too remote because "it is contingent on harms suffered by insurers, which are themselves contingent on the harms suffered by the construction employers." *Id.* The clear implication is that the construction employers did suffer actionable harms that were *not* too remote (unlike the reinsurer whose injury was twice removed from the employers'). Uber is much more like the construction employers than the reinsurer because Uber was also injured directly as the defendant in fraudulent personal injury lawsuits.[10]

The LB&T Defendants' attempt to introduce confusion about Uber's straightforward bribery allegations similarly misses the mark. LB&T Br. 21–22. The Amended Complaint alleges that the Law Firm Defendants paid bribes to Reyfman and Gerling to influence medical testimony and the provision of unnecessary spinal fusion surgeries. AC ¶¶ 45, 72, 87. Such testimony—the very reason that New York criminalizes bribing a witness—harmed Uber by increasing its defense costs and the settlement value of the cases against it. There is no requirement under New York or federal law that Uber "trac[e] any given expense to the testimony of one witness versus another" to prove injury from bribery. LB&T Br. 21. Defendants also rely on *Eastern Savings Bank, FSB v.*

[10] The Gerling Defendants' assertions (Br. 17–18) that Uber seeks "recovery for costs incurred in defending third-party litigation," and that Uber "admi[ts]" that it "was not even the target of the alleged fraudulent scheme," have no basis in the Amended Complaint. Uber alleges that Defendants fabricated medical evidence "in an attempt to fraudulently induce settlements from Uber," (AC ¶ 2) and that the scheme is "designed to induce Uber … into settling cases for far more" than they are worth (*id.* ¶ 20). These allegations must be taken as true.

Papageorge, 31 F. Supp. 3d 1 (D.D.C. 2014), for support. But *Papageorge* held that the plaintiffs there failed to plead a bribery predicate act at all because they did not explain "what testimony was obtained, what item of value was exchanged, or what promises were made," 31 F. Supp. 3d at 15, all of which are alleged in the Amended Complaint here.

Nor does it undermine Uber's theory that, according to Defendants, documents outside the scope of the Amended Complaint show that *other* doctors testified that the personal injury claimants were injured. LB&T Br. 21–22; Wingate Br. 26. Even if this Court could look outside the pleadings, this argument depends on misreading Uber's claims. Uber does not allege that all of the personal injury claimants were completely uninjured, but rather that the Doctor Defendants fabricated evidence of *spinal* injuries and provided unnecessary *spinal* surgeries. AC ¶¶ 22–26. That a non-defendant doctor opined that a personal injury claimant may have had a non-serious injury to her knee or shoulder is irrelevant to whether her *spine* was injured—and certainly does not render Uber's allegations implausible. Defendants do not cite any injury causation testimony from *any* non-defendant doctors linking any supposed injuries to the accidents at issue. LB&T Br. at 21.[11]

2. Defendants cannot evade causation by dividing responsibilities among members of the racketeering enterprise.

As Uber has explained (*supra* pp. 10–21), a consistent element of Defendants' pattern of racketeering activity is that the LB&T Defendants would recruit personal injury plaintiffs, refer them to the Doctor Defendants, file the actions, and start taking discovery, and then pass the cases over to the Wingate Defendants to add Uber as a defendant and prepare the cases for trial. AC ¶¶ 20, 41, 63, 300. Defendants argue that this division of labor means that none of the Law Firm Defendants can be liable: the LB&T Defendants made their false statements and paid their bribes

[11] Roman Shulkin, who opined that Mr. Lopez's injuries were caused by his accident, is an associate of Reyfman's at Defendant Pain Physicians NY. Cogan Decl. Ex. 55.

before Uber was formally added as a defendant (LB&T Br. 19), and the Wingate Defendants joined the representation after the false statements had been made (Wingate Br. 22–23 & n.12). But Uber seeks to recover for the damages caused by the racketeering conduct as a whole—conduct that includes a scheme to defraud through use of the mail and interstate wires—not the acts of any individual defendant. *E.g.*, *GEICO v. Infinity Health Prods., Ltd.*, No. 10-cv-5611, 2012 WL 1427796, at *9 (E.D.N.Y. Apr. 6, 2012) ("In a RICO conspiracy, defendants are jointly and severally liable for all of the plaintiff's damages, even those with which an individual defendant was not personally involved."); *Allstate Ins. Co. v. Aminov*, No. 11-cv-2391, 2014 WL 527834, at *8 (E.D.N.Y. Feb. 7, 2014) (similar); *United States v. Fruchter*, 411 F.3d 377, 384 (2d Cir. 2005) (under criminal RICO, "each conspirator is jointly and severally liable for all proceeds foreseeably derived from the racketeering activity"). Defendants cannot use a division of labor *within* the enterprise to evade joint and several liability for anyone conspiring to conduct the affairs of the enterprise through bribery and the mail fraud and wire fraud schemes.

In any event, Defendants' argument is wrong: the Amended Complaint expressly alleges that the LB&T Defendants acted with the intent that Wingate would use the fraudulent statements and bribes to extract illicit proceeds from Uber, which would be shared with LB&T. AC ¶¶ 60, 63, 90–91, 122. That is more than enough to show that the LB&T Defendants' racketeering activity was targeted at and proximately caused injury to Uber. Defendants ask the Court to disregard Uber's well-pleaded allegations, and they propose competing inferences to explain the consistent pattern of referring cases to the Wingate Defendants to add Uber as a defendant. LB&T Br. 19. Yet Defendants admit that, in *Callum*, Lavelle knew that she was suing an "Uber driver." LB&T Br. 7. So there can be no question that Lavelle knew and intended to add Uber as a defendant.

The actions of the RICO scheme, including the predicate acts of the Law Firm Defendants, proximately harmed Uber even if they were taken before Uber was formally added as a Defendant.

3. Uber's litigation efforts are not an intervening cause.

Defendants argue that their fraud did not affect Uber's defense costs because Uber did not move for summary judgment on serious-injury grounds in the state-court cases, so Uber's "defense ... had nothing to do with the merits of the allegations." LB&T Br. 20. Defendants have it backwards. Defendants' perjured medical opinion testimony meant that, as a matter of law, a motion for summary judgment could not succeed no matter how overwhelming the evidence from Uber's medical experts. *Toure*, 98 N.Y.2d at 357. It is rank (and baseless) speculation that Uber "would have acted in the same way" absent the fraud. LB&T Br. 20. Defendants' false testimony and medically unnecessary spinal fusion surgeries indelibly impacted Uber's litigation strategy.

Defendants also argue that Uber's other liability defenses (including that it is not vicariously liable for the torts of its independent contractors) obviate the impact of the false medical evidence. *Id.* But Defendants' artificially inflated damages affected the value of the claims regardless of their impact on potential liability—it is axiomatic that both liability and potential damages inform the settlement value of a claim. *See, e.g.*, *Wolinsky v. Scholastic Inc.*, 900 F. Supp. 2d 332, 335 (S.D.N.Y. 2012) (settlement fairness must be assessed with reference to both the "plaintiff's range of possible recovery" and "the seriousness of the litigation risks faced by the parties"). And a cervical fusion surgery increases required damages in a personal injury case as discussed above. *Starkman*, 148 A.D.3d at 1073.

4. Uber's reliance allegations independently satisfy proximate cause.

Even if one were to set aside Uber's allegations that it incurred legal fees as a direct result of the fraud, Uber has separately established injury "by reason of a violation" because it alleges that it relied on fraudulent statements in connection with agreeing to settle the *Khalilova* action.

While the Wingate Defendants concede as they must (Br. 18) that reliance is neither an element of RICO wire or mail fraud nor a requirement to show proximate cause, *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 649–650, 655–656 (2008), its presence undeniably establishes proximate cause by directly linking the fraud and the injury. *Id.* at 658–659 ("proof of reliance is often used to prove … the element of causation") (quoting *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 478 (2006) (Thomas, J., concurring in part and dissenting in part)). The Amended Complaint alleges just that: both Uber and the New York courts relied on Defendants' false statements, which were intentionally made to obtain an improper litigation advantage and artificially inflate settlement amounts. AC ¶¶ 64, 128. Uber specifically pleaded that it relied on false medical evidence in evaluating its exposure—which impacts investment in defense costs—and assessing settlement value, including in the case that was settled in reliance on the fraud (*Khalilova*). *Id.*

The Law Firm Defendants ask the Court to ignore Uber's reliance allegations because (a) Uber denied liability in the underlying actions; and (b) it settled the *Khalilova* action with the benefit of discovery. LB&T Br. 20; *see* Wingate Br. 19 (arguing that Uber cannot have relied on the false statements in *Gorbacevska* because it denied liability and successfully moved for summary judgment). But defendants deny liability every day without assuming that plaintiffs are manufacturing evidence or suborning perjury. To the contrary, it is reasonable for Uber to have assumed—before uncovering this scheme—that a personal injury plaintiff would not have subjected herself to a spinal fusion surgery without a medical reason. Attorneys routinely consider and rely on the other side's compliance with ethical obligations in valuing a case for possible settlement. *E.g.*, N.Y. R.P.C Rule 3.3(a)(3).

It was only the repeated pattern of the *same* racketeering conduct across numerous cases involving the *same* lawyers and doctors, the *same* allegations, and the same surgery that eventually

revealed the fraudulent scheme to Uber—including that the medical evidence in *Khalilova* was fabricated. That aggregate knowledge, acquired over time, does not retroactively nullify Uber's prior reliance. Defendants do not and cannot cite any allegations in the Amended Complaint showing Uber's supposed knowledge of a fraud that they took great pains to conceal.[12]

* * *

The Amended Complaint plausibly alleges that Uber was directly injured by Defendants' pattern of racketeering activity. Defendants' fabricated medical evidence, including medically unnecessary cervical fusion surgeries and related (false) causation testimony, caused Uber to incur defense costs and settle claims that it otherwise would not have absent the fraudulent scheme. These injuries arose directly from and in reliance on Defendants' misrepresentations, not as a result of the actions of any intervening third parties. Uber has standing under RICO to sue Defendants for its lost property.

D. Uber has standing to seek equitable relief under 18 U.S.C. § 1964(a).

Independently, Uber has standing to pursue equitable remedies under 18 U.S.C. § 1964(a). The standing requirement derives from the limitation in Section 1964(c) that only a "person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor." Section 1964(a), which authorizes equitable relief, does not include the "business or property" language and so does not impose the same standing requirement. Thus, in *Donziger*, the Second Circuit recognized that Section 1964(a) "grants the district courts jurisdiction to hear RICO claims and also sets out general remedies, including injunctive relief, that all plaintiffs authorized to bring suit may seek." 833 F.3d at 139 (quoting *National Org. for Women, Inc. v. Scheidler*, 267

[12] Reyfman's argument (Br. 19) that his alleged false statements were "facts uniquely within [Uber's] knowledge" is more nonsensical still. As a matter of logic, Reyfman did not know facts that were only known to Uber, and vice versa.

F.3d 687, 696 (7th Cir. 2001)). The "business or property" requirement in Section 1964(c) limits the right to "sue for money damages, but that right is *in addition to* the relief that the court has power to grant under subsection (a)." *Id.* (emphasis added). Thus, the Second Circuit held that the requirement that damages be clear and definite—which Defendants agree is an element of RICO standing under Section 1964(c)—does not apply to claims for equitable relief under Section 1964(a). *Id.* at 140. To the contrary the very indefiniteness that Defendants say thwarts monetary relief would *support* granting equitable relief in the same case: "[T]he difficulty in calculating the amount of money damages that would be needed to redress the entire loss is a common basis for the granting of equitable relief." *Id.*

The Second Circuit stated that it rejected the defendant's "contention that RICO does not authorize the granting of equitable relief to a private plaintiff that has proven injury to its business or property by reason of a defendant's violation of § 1962," *id.*, but did not affirmatively hold in *Donziger* or thereafter that *only* a plaintiff eligible to seek money damages under Section 1964(c) may sue for equitable relief under Section 1964(a). Such an argument is foreclosed by the reasoning of *Donziger* and *National Organization for Women*. *See also Gingras v. Think Finance, Inc.*, 922 F.3d 112, 124–125 (2d Cir. 2019) (holding that "RICO authorizes private rights of action for injunctive relief" in a suit where "the relief sought [was] an injunction and not money damages"). Uber thus may pursue equitable relief under Section 1964(a) without proving its eligibility for treble damages arising from injury to its business or property.

III. The Amended Complaint adequately alleges that each Defendant is liable as a primary violator under Section 1962(c) or as a conspirator under Section 1962(d).

The Amended Complaint details how each Defendant worked together for years to transform minor or non-existent automobile accidents into corrupt payouts by fabricating evidence of serious spinal injuries and making false representations to Uber, other victims, and the courts. Uber

alleges facts with particularity establishing that each Defendant repeatedly violated the federal mail and wire fraud statutes, 18 U.S.C. § 1341 and 18 U.S.C. § 1343, as well as facts establishing violations of New York's witness bribery law, N.Y. Penal Law §§ 215.00 *et seq.*, each of which is a statutory predicate act. 18 U.S.C. § 1961(1). It alleges how such predicate acts form a pattern and describes the close nexus between such acts and the affairs of both the medical provider and association in fact enterprises in violation of Section 1962(c). Finally, the complaint alleges that such conduct constitutes, in the alternative, a RICO conspiracy in violation of Section 1962(d). Thus, the Amended Complaint adequately states a RICO claim against each Defendant.

A. The medical practices and the association-in-fact of lawyers and doctors are enterprises.

An enterprise includes "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact." 18 U.S.C. § 1961(4). Uber alleges three enterprises: Gerling's professional corporation (Gerling Institute), Reyfman's professional corporation (Pain Physicians), and an association-in-fact enterprise. Each is sufficient to meet the requirements of Section 1961(4).

1. The Gerling and Reyfman medical practices are RICO enterprises.

Gerling's and Reyfman's medical practices are each a professional corporation. The existence of a RICO enterprise is proven "by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." *United States v. Applins*, 637 F.3d 59, 73 (2d Cir. 2011) (quoting *United States v. Turkette*, 452 U.S. 576, 583 (1981)). That requirement is "easily satisfied when the enterprise is a formal legal entity." *First Capital Asset Mgmt., Inc. v. Satinwood, Inc.*, 385 F.3d 159, 173 (2d Cir. 2004); *see GEICO v. Jacobson*, No. 15-cv-7236, 2021 WL 2589717, at *15 (E.D.N.Y. June 24, 2021). Gerling Institute and Pain Physi-

cians NY are each alleged to be legal entities that provide medical services to patients. That is enough to meet any enterprise requirement.

2. Defendants also formed an association-in-fact enterprise of lawyers and doctors.

Uber also adequately alleges that Banilov, Tarasov, Wechsler, Reyfman, Gerling, and their respective firms and practices operate as an association-in-fact enterprise. *See, e.g.*, AC ¶¶ 313–318 (Count I).

The "concept of an association in fact is expansive" and "has a wide reach." *Boyle v. United States*, 556 U.S. 938, 944 (2009). Because "the RICO statute is to be 'liberally construed,'" *D'Addario*, 901 F.3d at 100, it "establishes a low threshold for pleading such an enterprise," *McGee v. State Farm Mut. Auto. Ins. Co.*, No. 08-cv-392, 2009 WL 2132439, at *4 n.7 (E.D.N.Y. July 10, 2009). An association-in-fact enterprise thus "need exhibit only three structural features: (1) a shared purpose; (2) relationships among the associates; and (3) 'longevity sufficient to permit these associates to pursue the enterprise's purpose.'" *D'Addario*, 901 F.3d at 100 (citation omitted). The Amended Complaint meets these requirements.

Uber alleges that Defendants associate with each other and pursue a common purpose: to carry out their bribery and fraud scheme targeting Uber and other victims. Defendants acknowledge (Gerling Br. 17) that the Amended Complaint "outlines a coordinated effort to recruit personal injury plaintiffs, direct them to specific lawyers and medical professionals, and fabricate or exaggerate medical documentation to support tort claims." Nothing more is needed at this stage. In any event, the Amended Complaint alleges specific facts showing how the Lawyer Defendants make referrals, orchestrate unnecessary and above-market-rate medical treatment, and provide bribes for false opinions and testimony from Reyfman and Gerling for the purposes of fabricating a legal claim and sharing the profits. *See, e.g.*, *supra* pp. 10–21. In other words, the attorneys

ensure that the doctors have patients on whose behalf will be paid inflated rates for medically unnecessary treatment. For their part, the Doctor Defendants ensure that the lawyers have the false and fraudulent "evidence" necessary to transform penny-ante allegations into six- and seven-figure claims. *Id.* Those factual allegations show Defendants' intent to violate the law and render each Defendant's conduct "a necessary part of, and critical to, the success of the fraudulent scheme." *Allstate Ins. Co. v. Etienne*, No. 09-cv-3582, 2010 WL 4338333, at *3 (E.D.N.Y. Oct. 26, 2010) (citation omitted). Indeed, for their scheme to work, each Defendant necessarily and consciously rows in the same direction.

The Amended Complaint also details Defendants' longstanding relationships—including their professional partnerships, common office space, and history of referring and sharing clients for purposes of drumming up fraudulent claims. *See supra* pp. 7–21. Defendants' scheme has spanned several years and numerous cases that have targeted victims besides Uber. *See D'Addario*, 901 F.3d at 100.

This association-in-fact is also "distinct" from the underlying fraudulent activity. *See Satinwood*, 385 F.3d at 173. Defendants fatally undermine their distinctness argument by asserting (LB&T Br. 29–30; Wingate Br. 29–30) that they also engage in some legitimate business. A RICO enterprise's "perform[ance of] tasks beyond" unlawful acts *confirms* its distinctness from the named defendants and their predicate acts. *See, e.g.*, *Etienne*, 2010 WL 4338333, at *7–*8 (denying motion to dismiss where the complaint alleged "that the enterprise recruits professionals and non-professionals, deploys them to perform tasks beyond the acts of mail fraud, creates and maintains patient files, negotiates and executes contracts").

Defendants err in contending (Wingate Br. 29–30, 33; LB&T Br. 30; Gerling Br. 26–27; Reyfman Br. 21–22) that they did not share interpersonal relationships or that not every Defendant

participated in every predicate act. Those arguments ignore the well-pleaded allegations that Defendants *do* have relationships with each other—and in some instances share office space and facilities—and that they deliberately engaged in concerted misconduct. *See* AC ¶ 300 (detailing Defendants' longstanding relationships); *supra* pp. 7–21 (same). At any rate, Defendants misapprehend RICO's requirements: The statute does not demand that every participant share a relationship with all members of the enterprise. Nor does it require a plaintiff to prove that every participant personally contributed to each wrongful act. On the contrary, "it is irrelevant whether each defendant participated in the enterprise's affairs through different, even unrelated crimes, so long as [courts] may reasonably infer that each crime was intended to further the enterprise's affairs." *United States v. Friedman*, 854 F.2d 535, 562 (2d Cir. 1988) (cleaned up). In other words, a complaint need only allege that Defendants "knew of, and actively participated in, the overall Enterprise with a common purpose." *Nastasi & Assocs., Inc. v. Bloomberg, L.P.*, No. 20-cv-5428, 2022 WL 4448621, at *15 (S.D.N.Y. Sept. 23, 2022). Under Defendants' mistaken view, RICO would fail to capture most organized crime (which relies on division of labor and in which low-level operatives may never have met the bosses).

Similarly misplaced is Defendants' reliance (LB&T Br. 30; Reyfman Br. 21–22) on a since-overruled requirement that RICO plaintiffs prove a "hierarchy" or formal "structure" to establish an association-in-fact enterprise. The Supreme Court unequivocally rejected that view in *Boyle*: There is "no basis in the language of RICO for" such "structural requirements." 556 U.S. at 948. "Pleading a hierarchy or a structural organization is not necessary." *Etienne*, 2010 WL 4338333, at *6.

Finally, Defendants' reliance (*e.g.*, Wingate Br. 31–32) on this Court's decision in *Gurung v. MetaQuotes Ltd.*, No. 23-cv-6362, 2024 WL 3849460 (E.D.N.Y. Aug. 16, 2024), is misplaced.

The plaintiff in *Gurung* alleged a RICO scheme based on one defendant's provision of general "software support" to another defendant's cryptocurrency platform, without any "overarching" shared design or purpose. *Id.* at *8–*10. That is nothing like Defendants' scheme here.

B. The primary scheme participants participated in the management and affairs of these enterprises.

Next, the Amended Complaint alleges that each Defendant participates in operating or managing the affairs of one or more of these three enterprises. Like the enterprise requirement, RICO's "operation or management" requirement also "presents a relatively low hurdle for plaintiffs to clear, especially at the pleading stage." *D'Addario*, 901 F.3d at 103 (cleaned up).

1. Defendants manage the medical-practice enterprises.

"[U]pper management" and owners, like Gerling and Reyfman, are quintessential operators and managers of their respective medical practice enterprise. *Reves*, 507 U.S. at 184. Gerling and Reyfman control the conduct of their professional corporations by, among other things, "exercis[ing] discretion in" selecting unnecessary treatments, "preparing and submitting" medical invoices, and engaging in bribery, wire fraud, and mail fraud. *Fuji Photo Film U.S.A., Inc. v. McNulty*, 640 F. Supp. 2d 300, 314 (S.D.N.Y. 2009).

Banilov, Tarasov, Lavelle, Wechsler, and their respective firms also participate in the managing or conducting the medical practice enterprises' affairs by corruptly referring patients to—and bribing—Gerling and Reyfman. As Wingate concedes (Br. 34), a RICO enterprise may "be 'operated' or 'managed' by others 'associated with' the enterprise who exert control over it as, for example, by bribery." *Reves*, 507 U.S. at 184; *see, e.g.*, *Department of Econ. Dev. v. Arthur Andersen & Co. (U.S.A.)*, 924 F. Supp. 449, 466–467 (S.D.N.Y. 1996) ("Giving a bribe can be tantamount to gaining a management position within the enterprise, because the insider taking the bribes acts under the direction of the outsider giving them in conducting the affairs of the RICO

enterprise."). That is precisely what the well-pleaded allegations show here. *See, e.g.*, AC ¶¶ 39–45, 71–72, 196–197 (Banilov and Wingate payments to Pain Physicians NY); *id.* ¶¶ 120, 131–132 (Banilov and Tarasov payments and corrupt referrals to Pain Physicians NY); *id.* ¶¶ 87, 223, 228, 264 (Lavelle payments and corrupt referrals to Gerling Institute); *id.* ¶¶ 117–118, 145–148, 155–157, 168, 178–179, 218, 241, 287 (Banilov and Tarasov payments and corrupt referrals to Gerling Institute); *id.* ¶¶ 204–205, 264, 274–275 (Wingate payments and corrupt referrals to Gerling Institute).

Allegations of this nature have been held sufficient to establish participation in the affairs of an enterprise sufficient to establish primary liability under Section 1962(c).[13] *See, e.g.*, *Eagle One Roofing Contractors, Inc. v. Acquafredda*, No. 16-cv-3537, 2018 WL 1701939, at *7 (E.D.N.Y. Mar. 31, 2018) (plaintiff stated RICO claim by "alleg[ing] that Defendants coordinated a scheme whereby the Accord defendants would submit false invoices to Eagle One for work that was never done," "the insider defendants would ensure that Eagle One paid Defendants," and, "[i]n return, the Accord defendants paid kickbacks or bribes to the insider defendants"); *State Farm Mut. Auto. Ins. Co. v. CPT Med. Servs., P.C.*, No. 04-cv-5045, 2008 WL 4146190, at *11 (E.D.N.Y. Sept. 5, 2008) ("[T]he RICO statute 'has been repeatedly construed to cover both insiders as well as those peripherally connected to a RICO enterprise, particularly where the "outsiders" are alleged to have engaged in kickbacks in order to influence the enterprise's decision.'" (citation omitted)).

2. Defendants manage the association-in-fact enterprise.

The Amended Complaint also plausibly alleges that Defendants corruptly participated in the operation or management of the association-in-fact enterprise through actions that are distinct

[13] And of course, as discussed below, even if any given Defendant did not participate in the enterprises' affairs, that Defendant is still jointly and severally liable as a co-conspirator.

from the enterprise. *D'Addario*, 901 F.3d at 103–104; *contra* Wingate Br. 32. The Law Firm Defendants operate or manage the association-in-fact enterprise by referring patients to and bribing the Doctor Defendants, who similarly control the enterprise by "exercis[ing] discretion in" selecting unnecessary treatments and "preparing and submitting" medical invoices, *Fuji Photo*, 640 F. Supp. 2d at 314. That is plainly sufficient. *Id.*; *see, e.g.*, *D'Addario*, 901 F.3d at 103–104 (sufficient to allege knowing "assistance" and provision of "necessary tools for the schemes' operation"); *Eagle One*, 2018 WL 1701939, at *7 (plaintiff plausibly pleaded association-in-fact enterprise by "alleg[ing] that Defendants coordinated a scheme whereby the Accord defendants would submit false invoices to Eagle One for work that was never done, and the insider defendants would ensure that Eagle One paid Defendants" and, "[i]n return, the Accord defendants paid kickbacks or bribes to the insider defendants"). And precisely because Defendants' long-standing professional, referral, and payment relationships involve clients and cases separate and apart from the unlawful scheme, AC ¶ 140, their association-in-fact enterprise is distinct from their predicate RICO acts, *see, e.g.*, *Etienne*, 2010 WL 4338333, at *7–*8.

C. Defendants participated in the enterprises' affairs through racketeering activity.

Next, the Amended Complaint adequately alleges numerous instances of wire fraud, mail fraud, and bribery. Each such instance constitutes racketeering activity under Section 1961(1).

1. The wire and mail fraud predicate acts.

"The elements of wire fraud under 18 U.S.C. § 1343 are (i) a scheme to defraud (ii) to get money or property, (iii) furthered by the use of interstate wires." *United States v. Pierce*, 224 F.3d 158, 165 (2d Cir. 2000). "The elements of mail fraud under 18 U.S.C. § 1341 are identical, except that mail fraud must be furthered by use of the mails" instead of wires. *Tymoshenko v. Firtash*, 57 F. Supp. 3d 311, 321 (S.D.N.Y. 2014). Proving the "scheme to defraud" element of either charge

requires proving: "(i) the existence of a scheme to defraud[,] (ii) the requisite scienter (or fraudulent intent) on the part of the defendant[,] and (iii) the materiality of the misrepresentations." *Pierce*, 224 F.3d at 165 (citations omitted).

Importantly, to "prove a violation of 18 U.S.C. § 1341 [or § 1343], the Government [or a RICO plaintiff] need only show that a defendant was one of the participants in a scheme to defraud, and that the mails [or wires] were used in furtherance of that scheme." *United States v. Coven*, 662 F.2d 162, 175 (2d Cir. 1981)). Any culpable participant in a fraud scheme that foreseeably uses mail or wire transmissions can be liable for mail or wire fraud, irrespective of whether they personally made material false statements. *United States v. Rutigliano*, 790 F.3d 389, 397 (2d Cir. 2015); *United States v. Bortnovsky*, 879 F.2d 30, 36 (2d Cir. 1989) ("[I]t is not significant for purposes of the mail fraud statute that a third-party, rather than the defendant[s], wrote and sent the letter at issue, provid[ed] ... the defendants could reasonably have foreseen that the third-party would use the mail [in furtherance of their fraud scheme]."); *Williams v. Equitable Acceptance Corp.*, 443 F. Supp. 3d 480, 492 (S.D.N.Y. 2020) (explaining that RICO "plaintiffs need not allege that each defendant itself made a misrepresentation as long as they allege sufficient facts showing each defendant's knowing or intentional participation in the alleged scheme to defraud"). Each discrete use of the mail or wires in furtherance of a fraud scheme "constitutes a separate offense[.]" *United States v. Ramirez*, 420 F.3d 134, 145 (2d Cir. 2005).

a. Uber has alleged the who, what, where, and when of the fraud with particularity.

Where a RICO plaintiff alleges mail and wire fraud as predicate acts, the complaint must satisfy Rule 9(b). *Williams*, 443 F. Supp. 3d at 488. The Amended Complaint does so.

The Amended Complaint details numerous statements that Uber alleges were false, identifies the relevant speakers and signatories, describes when and how the statements were made or

transmitted, and explains why the statements were fraudulent. *See id.* It describes with particularity fraudulent medical records and affidavits that were signed and electronically transmitted by Gerling, Reyfman, and subordinates operating at their direction. *See, e.g.*, AC ¶¶ 55–58, 94–95, 168, 179, 188, 235, 265–268, 275 (Gerling); ¶¶ 49–51, 102–104, 132, 138, 177, 187, 212 (Reyfman). Likewise, it describes with particularity numerous fraudulent filings that Banilov, Tarasov, Lavelle, and Wechsler each signed and transmitted *via* mail or wire. *See, e.g.*, *id.* ¶¶ 40, 60–61, 150–152, 158, 165–167, 180, 189–191, 198–199, 213–215 (Banilov); ¶¶ 121, 135–38, 240, 248–51 (Tarasov); ¶¶ 83, 88–89, 220–222, 230–233, 235, 259–261 (Lavelle); ¶¶ 64–68, 69–70, 105–111, 162, 252–255 (Wechsler). The Amended Complaint meets and exceeds the requirements of Rule 9(b). *See Lyons*, 843 F. Supp. 2d at 373 (explaining Rule 9(b) was satisfied because the complaint "clearly directs defendants to the specific misrepresentations [the plaintiff] is alleging").

No Defendant seriously attempts to contest that the Amended Complaint alleges the necessary "who, what, where, when, how, and why of the alleged fraud," *id.*, or that the Amended Complaint pleads the required use of mails or wire. Nonetheless, the Doctor Defendants argue that the Amended Complaint fails to allege fraud because Uber has not proffered sufficient "factual evidence" showing that the medical procedures they performed were actually unnecessary and the causation statements they provided were truly false. *E.g.*, Gerling Br. 21–22; Reyfman Br. 4–5, 25.

These arguments misunderstand the pleading rules. On a motion to dismiss, the Court "must accept all facts set forth in the complaint as true and draw all reasonable inferences in the plaintiff's favor." *Alix v. McKinsey & Co.*, No. 18-cv-4141, 2023 WL 5344892, at *4 (S.D.N.Y. Aug. 18, 2023). "A plaintiff need not offer admissible proof of its allegations for the Court to accept them as true at the motion-to-dismiss stage." *In re Lottery.com, Inc. Sec. Litig.*, 765 F. Supp.

3d 303, 328 (S.D.N.Y. 2025) (cleaned up). This remains true irrespective of whether the claim at issue is subject to the requirements of Rule 8(a) or Rule 9(b). *See GEICO v. Star Med. Diagnostic, P.C.*, No. 24-cv-8049, 2025 WL 1489604, at *2 (E.D.N.Y. May 23, 2025) ("Rule 9(b) does not require factual pleadings that demonstrate the probability of wrongdoing …. It only requires that the Complaint, taken as true, sufficiently explains in detail the contours of the fraudulent scheme it plausibly alleges.") (cleaned up).

In any event, the Amended Complaint plainly does allege facts showing that statements regarding medical necessity and causation were false when made. In the *Gorbacevska* case, as but one example, the Amended Complaint alleges with particularity facts showing that Gorbacevska was not seriously injured in the supposed auto accident and that the accident did not occur as Defendants represented—including a video that even the Wingate Defendants eventually admitted foreclosed their own theory of the case. AC ¶¶ 37–40, 50, 77. Those factual allegations, taken as true, establish the falsity of the Doctor Defendants' statements regarding injury and causation for purposes of this motion. *E.g.*, *id.* ¶¶ 48, 49, 55, 58. The Doctor Defendants will have their opportunity to challenge the sufficiency of Uber's evidence. But those arguments are for trial, not a motion to dismiss.

b. Uber has adequately alleged fraudulent intent.

The Complaint also adequately alleges fraudulent intent. A RICO plaintiff may "allege fraudulent intent generally" under Rule 9(b) provided that there be "some minimal factual basis for conclusory allegations of scienter that give rise to a strong inference of fraudulent intent." *Powers v. British Vita, P.L.C.*, 57 F.3d 176, 184 (2d Cir. 1995) (cleaned up). A complaint satisfies this standard either "(a) by alleging facts to show that defendants had both motive and opportunity to commit fraud, or (b) by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness." *Lyons*, 843 F. Supp. 2d at 373 (quoting *Lerner v. Fleet Bank, N.A.*,

459 F.3d 273, 290–91 (2d Cir. 2006)). Allegations that a defendant "(1) benefitted in a concrete and personal way from the purported fraud[;] (2) engaged in deliberately illegal behavior[;] (3) knew facts or had access to information suggesting that their [false] statements were not accurate[;] or (4) failed to check information they had a duty to monitor" can each establish the requisite strong inference. *Novak v. Kasaks*, 216 F.3d 300, 311 (2d Cir. 2000). This standard is not "exacting" where "the allegations lie peculiarly within the opposing parties' knowledge." *Ouaknine v. MacFarlane*, 897 F.2d 75, 81 (2d Cir. 1990). Moreover, scienter allegations "may be based on information and belief when facts are particularly within the opposing party's knowledge, provided that they adduce specific facts supporting a strong inference of fraud." *Alix v. McKinsey & Co.*, 23 F.4th 196, 209 (2d Cir. 2022) (cleaned up).

Uber's allegations meet these requirements. Uber has alleged the scheme participants' motive by describing the financial gain they sought to obtain and the opportunity provided by the no-fault statute for obtaining such gain. *See Lyons*, 843 F. Supp. 2d at 373 (similar allegations established motive and opportunity sufficient to infer fraudulent intent). Moreover, the circumstances alleged here—above-market lawyer-directed payments in exchange for medically unnecessary surgeries—strongly indicate conscious misbehavior. Fraudulent intent is the most plausible explanation for Defendants' conduct.

Again, taking the *Gorbacevska* matter as a case study, a shared intent to defraud is plainly the strongest explanation for Gerling, Reyfman, Banilov, and Wechsler's actions. Starting with Gerling, fraudulent intent is the only sensible explanation for his performing an invasive spinal surgery on an obviously uninjured patient and recording in medical records patently false causation statements that had no clinical purpose. AC ¶¶ 55–59, 72. That inference is bolstered by the fact that lawyers paid for the surgery (*id.* ¶ 72), and that Gerling did the exact same thing with numerous

other personal injury claimants sent his way by the Law Firm Defendants. Likewise, with Gerling's business partner, Reyfman, who also performed unnecessary procedures on Gorbacevska, recorded plainly inappropriate and false causation statements in medical records, and did so as a part of a pattern of similar conduct across personal injury cases alleged in the Amended Complaint. *Id.* ¶¶ 46–51.

The facts alleged regarding Banilov raise a strong inference of fraud too. Banilov would not have sent the uninjured Gorbacevska to Gerling and Reyfman and paid for the damages-enhancing cervical fusion surgery—in plain violation of the New York Rules of Professional Conduct—unless he was pursuing a shared scheme to defraud. *See* Roy D. Simon, Jr., Simon's New York Rules of Professional Conduct Annotated § 1.8:60 (2024) (explaining that the Rules allow an attorney to pay for medical diagnostic work for a client, but not for "other medical procedures necessary to treat a personal injury client's injuries"); *see also infra* p. 73. Those facts, combined with Banilov filling out and filing a falsified form MV-104 that claimed Gorbacevska was in a two-car collision that never occurred (AC ¶¶ 39–40), then filing a number of litigation documents containing false claims about how Gorbacevska supposedly sustained serious spinal injuries in the non-existent collision (*id.* ¶¶ 60–61), raises a very strong inference of fraudulent intent.

The same goes for Wechsler. He and his firm regularly worked with Banilov, Gerling, and Reyfman, and he knew that Gerling and Reyfman performed unnecessary procedures to support fraudulent claims. The Amended Complaint alleges he was familiar with the facts underlying Gorbacevska's claims, and he certified as much each time he signed court filings in her case. *See* 22 NYCRR § 130-1.1a (providing that by signing filings, an attorney certifies they conducted a reasonable inquiry into facts); N.Y. R.P.C. 3.1 cmt. 2 (Attorneys must "inform themselves about the facts of their clients' cases[.]"). Further, it stretches credulity to suggest that an uninjured Gor-

bacevska could have somehow tricked her attorney when she cavalierly admitted her intent to defraud to the driver she planned to sue. *Id.* ¶ 38. Moreover, Wechsler had in his possession a video conclusively showing that the supposedly debilitating car collision described in his filings never occurred, and he indisputably reviewed that video. *Id.* ¶ 77. That he nonetheless pursued the case for years after receipt of the video, pressed a baseless $5 million settlement demand (*id.* ¶ 68), and repeatedly made false filings claiming that Gorbacevska suffered serious spinal injuries in the non-collision strongly "indicat[es] conscious or reckless behavior[.]" *Capital 7 Funding v. Wingfield Cap. Corp.*, No. 17-cv-2374, 2020 WL 2836757, at *11–12 (E.D.N.Y. May 29, 2020); *see Novak*, 216 F.3d at 311 (plaintiff can plead fraudulent intent by pleading that defendant "knew facts or had access to information suggesting that their [false] statements were not accurate" or that they "failed to check information they had a duty to monitor"); *Alix*, 2023 WL 5344892, at *22 (finding a "strong inference of conscious misbehavior" where declarant omitted certain information of which they "knew, or should have known" based on available evidence); *Nathel v. Siegal*, 592 F. Supp. 2d 452, 465 (S.D.N.Y. 2008) (finding strong inference where plaintiff alleged that defendants had access to factual information contradicting their false statements).

The facts alleged in connection with the other personal injury matters described in the Amended Complaint raise just as strong an inference of fraudulent intent. For example, fraudulent intent is the clear explanation for Lavelle's conduct in the *Nicolas* case. When a van had a minor collision with an ambulance, Nicolas was nowhere near the scene. AC ¶ 219. But Lavelle nevertheless filed a complaint falsely claiming that the accident left Nicolas "severely injured and damaged, rendered sick, sore, lame and disabled." *Id.* ¶¶ 219–220. She then doubled down on that lie in a false bill of particulars. *Id.* ¶ 222. She also referred Nicolas to Gerling (as she did other clients),

and, per his standard practice, Gerling performed a medically unnecessary spinal surgery on Nicolas. *Id.* ¶¶ 221, 223.

Likewise with Tarasov's conduct in *Perez Rosario*. Perez Rosario staged an accident, in which he was not injured. *Id*. ¶¶ 237–239. Still, Tarasov filed a complaint claiming that the staged accident had rendered Perez Rosario "sick, sore, lame and disabled" and had required medical treatment. *Id*. ¶ 240. Perez Rosario had, of course, received this supposed treatment from Gerling. *Id*. ¶ 241. Progressive Max Insurance Company sued Perez Rosario alleging that he staged the accident and obtained a judgment against him. *Id*. ¶ 239. Nonetheless, Tarasov kept pursuing the case for a number of months before handing it off to Wingate. *Id*. ¶ 242. The allegations that Tarasov pursued a fraudulent case based off a staged accident and substantiated by treatment procured from Gerling—particularly within the context of the many other instances in which Tarasov and his *de facto* partner Banilov used Gerling and Reyfman to fabricate evidence of non-existent serious spinal injuries—raises a strong inference of fraud.

Similarly with Barco—who suffered a sore left foot but no other injuries when a car rolled over it (AC ¶¶ 209–210)—the facts alleged again raise a strong inference of fraudulent intent for each of Reyfman, Gerling, and Banilov. A shared understanding that they were working together to manufacture a fraudulent personal injury case predicated on a fake serious spinal injury is the most logical explanation why: Reyfman would have diagnosed Barco with "cervical disc displacement," administered unnecessary epidural steroid injections, and falsely recorded in medical records that there was a direct relationship between the car rolling over his foot and the imagined serious spinal injury (*id*. ¶ 212); Gerling would have performed a medically unnecessary spinal surgery on Barco, even though Barco was healthy and had spent the years since the accident performing strenuous physical work as a day laborer (*id*. ¶¶ 217–218); and Banilov would have sent

Barco to the Doctor Defendants for the unnecessary treatment, filed a complaint and bill of particulars including false claims about Barco's supposed spinal injuries, and pursued the case for years (*id*. ¶¶ 213–214).

Moreover, more than their conduct in connection with any one of the personal injury claimants, the repeated nature of Defendants misrepresentations across a pattern of similar cases "in their totality" strongly supports the inference that Defendants acted with fraudulent intent. *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec*., *LLC*, 797 F.3d 160, 171 (2d Cir. 2015) ("In determining the adequacy of Plaintiffs' fraud pleadings … we view the alleged facts in their totality, not in isolation."). The Doctor Defendants' consistent pattern of dealing with the Law Firm Defendants—who repeatedly referred clients (*e.g.*, AC ¶¶ 41–53, 84–87, 117, 146–148, 155, 194–196) and paid above-market rates for their treatment (*e.g.*, AC ¶¶ 148, 156, 287)—and their consistent provision of false causation opinions in testimony (*e.g.*, AC ¶¶ 95, 138, 235, 268, 275) and medical records (*e.g.*, AC ¶¶ 48–58, 94, 102–104, 132, 177, 179, 187–188, 212, 262) show that the Doctor Defendants understood and intended that their false statements would be used to manufacture fraudulent legal claims. *See Union Mut. Fire Ins. Co. v. Stand Up MRI of Brooklyn, P.C.*, No. 24-cv-6652, 2025 WL 3165668, at *3 (E.D.N.Y. Nov. 12, 2025) (holding that "pattern of" false medical testimony was "so stark and numerous" that it "could only be the product of intentional misrepresentation, rather than … ordinary disagreement of medical opinion"). That Gerling kept two sets of books (AC ¶ 286), and that Gerling and Reyfman have both been credibly accused of corruptly performing unnecessary procedures in similar schemes (AC ¶¶ 46, 73, 288–290) make the inference all that much more overwhelming. *See United States v. Viruet*, 539 F.2d 295, 297 (2d Cir. 1976) (defendant's involvement in similar schemes to charged conspiracy supported finding intent). It is difficult to imagine how a medical practitioner acting in good faith could so consist-

ently misdiagnose and mistreat his patients in a manner that just happened to enrich himself and the Law Firm Defendants. *See GEICO v. Gerling*, 718 F. Supp. 3d 268 (E.D.N.Y. 2024) (finding similar facts sufficient to support preliminary injunction).

Likewise with the Law Firm Defendants: it is simply not believable that the lawyers were tricked time and time again by unscrupulous clients conspiring on their own with crooked medical providers, particularly given the allegations that the Law Firm Defendants directed and controlled their clients' medical care in a way that was obviously inappropriate. It defies reason to imagine the Law Firm Defendants would have repeatedly sent their clients to get spinal surgery at inflated and above-market rates from a fraudster like Gerling without understanding what they were doing, or that Gerling and Reyfman would have repeatedly provided unnecessary injections, surgeries, false causation statements, and false testimony absent a fraudulent understanding shared with the Law Firm Defendants. It is far more plausible that they perfectly understood what they were buying with those inflated payments to Gerling and Reyfman—namely, evidence for a lucrative, fabricated claim. This is no honest or careless one-off mistake; that the fraud occurred no fewer than 19 times raises a compelling inference of conscious misbehavior.

(i) Defendants' counterarguments are unavailing.

Defendants nevertheless insist that the more probable inference from the shocking facts alleged in the Amended Complaint (and described above) is that the Law Firm Defendants are mere patsies who were duped (at least 19 times) by their clients, and that the Doctor Defendants are too incompetent to determine when surgery is medically necessary. *See* Wingate Br. 22–25, LB&T Br. 26–27, Reyfman Br. 25–26, Gerling Br. 21–23. But as explained, no reasonable person would draw that inference based on the facts alleged in the Amended Complaint.

No doubt recognizing as much, the Law Firm Defendants ask the Court to ignore Uber's well-pleaded allegations in favor of exhibits that they claim demonstrate their innocence because

non-defendant doctors also treated the personal injury claimants. Wingate Br. 23. In doing so, the Law Firm Defendants improperly rely on supposed facts outside the Amended Complaint and inappropriately ask the Court to engage in prohibited fact finding and draw contested inferences in Defendants' favor. *City of Warren*, 477 F. Supp. 3d at 130 ("[Rule 9(b)] in no way dispose[s] of the traditional rule that, at the motion to dismiss stage, the Court accepts as true the complaint's well-pleaded allegations of fact and draws all reasonable inferences in plaintiff's favor, and is prohibited from engaging in any fact finding of its own."); *Flynn v. Cable News Network, Inc*., No. 21-cv-2587, 2021 WL 5964129, at *4 (S.D.N.Y. Dec. 16, 2021), *on reconsideration in part*, 621 F. Supp. 3d 432 (S.D.N.Y. 2022) (court accepts at motion to dismiss phase well-pleaded allegations that allegedly false statements were false).

Although the Court can take judicial notice of publicly filed litigation documents, it may properly do so only "to determine what statements [the documents] contain[ ] … not for the truth of the matters asserted[,]" such as the veracity of any of the assertions in Defendants' exhibits. *Mosdos Chofetz Chaim, Inc. v. Village of Wesley Hills*, 815 F. Supp. 2d 679, 691 (S.D.N.Y. 2011) (alterations in original) (quoting *Kramer v. Time Warner Inc.,* 937 F.2d 767, 774 (2d Cir. 1991)). Moreover, it would be a serious mistake for the Court to infer that any doctor not *yet* named as a defendant in this lawsuit must be "innocent[.]" Wingate Br. 23. Indeed, some of the medical providers who Defendants attempt to hide behind have also been sued in other lawsuits for fraud.[14] In

[14] *See, e.g.*, Amended Complaint, *Union Mut. Fire Ins. Co. v. Liakas Law, P.C.*, No. 25-cv-1857 (E.D.N.Y. July 18, 2025), ECF No. 63 (Taber Decl. Ex. 4) (accusing Dr. Dante Leven, who performed surgery on claimant Clarke, of performing unnecessary surgeries and submitting fraudulent insurance claims, as part of a RICO enterprise involving Reyfman); Complaint, *Allstate Ins. Co. v. Melgar*, No. 22-cv-7634 (E.D.N.Y. Dec. 15, 2022), ECF No. 1 (Taber Decl. Ex. 5) (accusing Dr. Richard Seldes, who provided an opinion regarding Callum's alleged shoulder injury, of performing "excessive and medically unnecessary services" as part of a scheme to defraud). There is no reason for the Court to look outside the four corners of the Amended Complaint in deciding this motion; but, if it considers Defendants' attached court filings, it should consider these too.

any event, Defendants' argument is entirely irrelevant to scienter: that non-defendant doctors allegedly identified *knee* or *shoulder* injuries does not show that any of the (faked) *spinal* injuries at issue here were real. *See, e.g.*, *supra* pp. 16–21. In short, the Law Firm Defendants cannot overcome the inference of fraud at the motion to dismiss phase by offering up largely irrelevant filings relating to non-party medical providers.[15]

Finally, as a last-ditch attempt to escape the inference of fraudulent intent, the Wingate Defendants argue (at 23–25) that their withdrawals from the *Gorbacevska* and *Perez Rosario* case prove the purity of their intentions. That is nonsense. By the time Wingate took over the *Perez Rosario* case, Perez Rosario had already been exposed as having staged the supposed accident at issue—his lies were obviously not an obstacle to accepting the representation. AC ¶¶ 239, 242. But GEICO's RICO case against Gerling—which was filed a few weeks *after* Wingate took on Perez Rosario—changed things. AC ¶¶ 73, 288–289. That the Wingate Defendants decided to walk away from one staged accident case that relied on Gerling's supposed treatment in the immediate aftermath of Gerling being publicly exposed as a fraudster does not exonerate the Wingate Defendants; the obvious inference is that they were taking steps to conceal their involvement as Gerling's co-fraudsters.

Wechsler similarly continued representing Gorbacevska long after he unquestionably knew about her non-accident. He received the dashcam video showing that Gorbacevska's supposed car collision did not actually happen in discovery in November 2021. And he saw it at Gorbacevska's

[15] The Wingate Defendants also argue (Br. 23) that their clients' testimony in support of their fraudulent claims somehow overcomes the inference of fraudulent intent because Uber alleges that the personal injury claimants were victimized by Defendants' scheme. That argument is a sleight of hand. Uber has never disclaimed that the personal injury claimants coordinated with Defendants and lied at deposition—several undoubtedly did. Uber's point is that these unsophisticated individuals were induced to undergo unnecessary surgeries with the promise of a life-changing payout, not understanding that Defendants would pocket the bulk of any proceeds. *See* AC ¶ 298.

deposition in May 2023. AC ¶ 77. But he did not withdraw for nearly a year, until shortly after Uber noticed Gerling's deposition on topics including the GEICO case. AC ¶¶ 74–77. And contrary to the Wingate Defendants' assertion that it "defies logic" to think they would have relied on Gerling's medical records but withdrew because of the deposition notice (Wingate Br. 23–24), it makes perfect sense—until Wingate received Uber's deposition subpoena requiring Gerling's testimony regarding the GEICO matter and its relation to Gerling's treatment of Gorbacevska (AC ¶ 74), Wechsler and his colleagues had every reason to hope that they could get their settlement without Gerling being exposed to that questioning. What defies logic is the Wingate Defendants' story that they withdrew because of a video Wechsler had watched in Gorbacevska's deposition a year earlier—obviously, they withdrew to avoid the Gerling deposition. Nothing about the withdrawals undermines the strong inference of fraud.[16]

c. The Amended Complaint alleges materiality.

Next, the Amended Complaint alleges materiality. A misrepresentation is material if it "would naturally tend to lead or is capable of leading a reasonable [person] to change [their] conduct." *United States v. Rybicki*, 354 F.3d 124, 145 (2d Cir. 2003). As noted, if any member of a fraud scheme makes material misrepresentations in furtherance of the scheme, that satisfies the materiality element as to all members of the scheme. *See Williams*, 443 F. Supp. 3d at 492 ("[P]laintiffs need not allege that each defendant itself made a misrepresentation as long as they allege sufficient facts showing each defendant's knowing or intentional participation in the alleged scheme to defraud" which "contain[s] a material misrepresentation").

[16] The Wingate Defendants' misleading suggestion that "Uber's counsel raised *no* concerns about Wingate's stated reason for or timing of withdraw [sic]" (Wingate Br. 24) is clearly controverted by Uber's opposition to their withdrawal, which highlights the concerns raised by Wingate's relationship with Gerling and the GEICO complaint. Cogan Decl. Ex. 10.

Here the Amended Complaint plainly alleges that Defendants' false statements in connection with the 19 fraudulent personal injury cases were material. In each case, the Defendants' false representations about the personal injury claimants' injuries and their cause would obviously have the tendency to change how victims (including Uber) would approach litigation and settlement. Only the Wingate Defendants raise a materiality challenge. Wingate Br. 20–21. Their argument fails.

First, by focusing myopically on statements made by the Wingate Defendants (and not their co-conspirators), Wingate's materiality argument misunderstands the mail and wire fraud statutes, which extend liability to any participant in a fraud scheme that uses material misrepresentations. *See Williams*, 443 F. Supp. 3d at 492; *Paul Hobbs Imports Inc. v. Verity Wines LLC*, No. 21-cv-10597, 2023 WL 374120, at *4 (S.D.N.Y. Jan. 24, 2023) ("[P]laintiffs need not allege that each defendant itself made a misrepresentation…."). The Wingate Defendants do not even attempt to argue that the misrepresentations by their co-Defendants were immaterial and cannot do so.

Second, the Wingate Defendants badly misconstrue Uber's allegations. The Amended Complaint identifies a number of misrepresentations conveyed by Wechsler and his Wingate colleagues over mail and wire that would obviously have "a natural tendency to influence" Uber's and other scheme victims' approach to litigating and settling the fraudulent personal injury cases. *United States v. Weaver*, 860 F.3d 90, 94 (2d Cir. 2017). For example, Wechsler's false claims that Gorbacevska "was severely injured" in a collision between two vehicles that caused her to need invasive spinal surgery (*see* AC ¶¶ 64–67) were plainly material; if Wechsler's amended complaint and bill of particulars had instead stated that Gorbacevska was in a vehicle that bumped a sofa cushion and she did not suffer any injuries as a result, Uber (like any rational litigant) would

have taken a different approach to that case.[17] The same is true of the false representations in the complaint, bill of particulars, and affirmation Wingate electronically filed in *Callum* (AC ¶¶ 91–92), the bills of particulars that Wechsler filed in *Clarke* (AC ¶¶ 106–110), and the many other misrepresentations described in the Amended Complaint whose materiality the Wingate Defendants do not even try to contest. Moreover, having signed and submitted these filings, the Wingate Defendants cannot now disclaim responsibility and cast all the blame on their clients and co-counsel, as they indecorously attempt to do in their brief. *See* 22 NYCRR § 130-1.1a.

In short, the Amended Complaint alleges the materiality necessary to establish the scheme to defraud element of mail and wire fraud, and the Wingate Defendants' quibbles about the import of a few of their false statements are irrelevant.

d. The Amended Complaint adequately alleges that the object of the scheme is to get money or property.

Finally, the Wingate Defendants also assert that Uber has failed to sufficiently allege the "for obtaining money or property" element of mail and wire fraud. Wingate Br. 25. But the Amended Complaint could not be clearer: the purpose of Defendants' fraudulent scheme is to obtain money from Uber and similarly situated victims. *See, e.g.*, AC ¶¶ 2, 20, 33, 60, 68. That one of Wingate's false statements in the *Gorbacevska* case was made in the context of a motion to withdraw hardly undermines the sufficiency of the AC's predicate act allegations. The purpose of that strategic withdrawal was to conceal the fraud so that the scheme could continue to target Uber through future fraudulent lawsuits. Obtaining Uber's (and the other victims') money was the whole point of Defendants' fraud. *See Eisen*, 974 F.2d at 251–252 (fraud scheme that operated through

[17] The Wingate Defendants' assertion (Br. 21) that Uber's successful summary judgment motion in *Gorbacevska* somehow undermines materiality is bizarre. But for the Wingate Defendants' filing their fraudulent amended complaint, there would have been no litigation against Uber, and no need to expend the significant resources required for discovery in a supposed $5 million case.

fraudulent lawsuits satisfied the "to obtain money" element). In sum, none of Defendants' arguments undermine the manifest sufficiency of the Amended Complaint's allegations of mail and wire fraud.

2. The bribery predicate acts.

a. The Law Firm Defendants bribed the Doctor Defendants to provide false testimony.

The Amended Complaint also plausibly alleges that Defendants committed predicate acts by paying and receiving bribes in violation of the New York witness bribery statute, N.Y. Penal Law §§ 215.00 *et seq*. *See* 18 U.S.C. § 1961 ("racketeering activity" includes acts of bribery chargeable under State law); *Eisen*, 974 F.2d at 254 (violation of § 215.00 is a predicate act); *Friedman*, 854 F.2d at 553 (bribe receiving is a predicate act). In New York, a person is guilty of bribing a witness "when he confers, or offers or agrees to confer, any benefit upon a witness or a person about to be called as a witness in any action or proceeding upon an agreement or understanding that[] the testimony of such witness will thereby be influenced[.]" N.Y. Penal Law § 215.00. Correspondingly, a witness is guilty of "bribe receiving … when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that[] his testimony will thereby be influenced[.]" *Id.* § 215.05. The term "witness" covers not only individuals who have already been named as prospective witnesses in active litigation, but also individuals with relevant knowledge whom a reasonable person would perceive as potential witnesses. *Eisen*, 974 F.2d at 254, 256 (quoting *People v. Bell*, 73 N.Y.2d 153, 164 (1989)) ("[A] person's status as a witness under section 215.00 'depends upon the evidence he can supply the court, not the immediacy of the need for the evidence[.]'").

As with other claims that do not sound in fraud, bribery allegations need only satisfy the Rule 8(a) plausibility standard. *Nastasi*, 2022 WL 4448621 at *17 (explaining "claims of bribery

are subject only to Rule 8(a), not Rule 9(b)" and compiling cases); *Bisnow LLC v. Lopez-Pierre*, No. 20-cv-3441, 2022 WL 17540573, at *15 (S.D.N.Y. Nov. 2, 2022), *report and recommendation adopted*, 2022 WL 17540349 (Dec. 5, 2022) (same).[18]

The Amended Complaint plausibly alleges that the Law Firm Defendants bribed the Doctor Defendants by paying them to perform lucrative and medically unnecessary procedures on the personal injury claimants, on the understanding that the Doctor Defendants would provide false testimony in return. It alleges numerous specific payments to the Doctor Defendants that the Law Firm Defendants directly made or caused to be made, in violation of relevant ethical rules (*e.g.*, AC ¶¶ 72, 87, 148, 155–156, 196, 287); it specifically alleges that many of these payments were above the market rate, and provides compelling reason to infer that others were too (*e.g.*, AC ¶¶ 148, 156, 287); and it alleges circumstantial evidence more than plausibly supporting the existence of an understanding that in return for the payments, the Doctor Defendants would provide false testimony to support the fraudulent personal injury cases (*e.g.*, AC ¶¶ 46–58, 95, 138, 177, 187, 212 (describing false testimony and medical records Doctor Defendants actually provided)).

Defendants cannot seriously contest that accepting the allegations as true and drawing all inferences in Uber's favor, the Amended Complaint plausibly alleges Defendants engaged in bribery. Instead, they again ask the Court to ignore well-pleaded allegations and draw inferences *against* Uber. Their arguments lack merit.

b. The New York Rules of Professional Conduct do not authorize attorneys to pay for surgeries.

To start, several Defendants claim that the New York Rules of Professional Conduct do not *per se* prohibit attorneys from paying for clients' medical procedures, and they argue that

[18] Only the Reyfman Defendants seem to advocate the application of the Rule 9(b) standard to Uber's bribery allegations in their briefing, but they cite no authority supporting that position.

somehow renders the Amended Complaint's bribery claims implausible. *See* LB&T Br. 4, 27–28; Wingate Br. 27; Gerling Br. 22. But Defendants are wrong about what the Rules allow, and in any event, their argument on this issue is entirely beside the point.

The Rules of Professional Conduct broadly prohibit an attorney from providing financial assistance to a client. N.Y. R.P.C. 1.8(e). They make a limited exception by allowing an attorney to pay for "costs directly related to litigation," including "medical diagnostic work connected with [a] matter under litigation and treatment *necessary for diagnosis*." *Id.* cmt. 9B (emphasis added). But outside of diagnostic work, the Rules expressly prohibit attorneys from paying any of their client's other "medical expenses[,]" such as treatments for alleged injuries. *Id.*; *see* N.Y. R.P.C. A. § 1.8:60 (explaining the Rules bar attorneys from paying for "other medical procedures necessary to treat a personal injury client's injuries"). Defendants cannot seriously (or ethically) argue that cervical fusion surgery was necessary to *diagnose* injuries—that very serious procedure is reserved to treat patients with a diagnosed injury requiring it. The fact that the Lawyer Defendants are plausibly alleged to have made payments that are not necessary for diagnosis and that are therefore unethical *supports* an inference of misconduct.

As importantly, even if attorneys were generally permitted to pay for medical procedures, that would not give the Law Firm Defendants license to bribe doctors with above-market payments for unnecessary spinal surgeries or the Doctor Defendants license to accept such payments on the understanding that they would perform unnecessary procedures and provide false testimony in return. That conduct is indisputably unlawful.

c. Defendants' "above market rate" argument fails both on the facts alleged and as a matter of logic.

Next, several Defendants argue that the Amended Complaint fails to allege bribery because it does not sufficiently allege that the payments made to the Doctor Defendants exceeded prevail-

ing rates. *See* LB&T Br. 27; Gerling Br. 10, 23. That argument is wrong. The Amended Complaint sets out the details of particular above-market payments that the Law Firm Defendants made or caused to be made (*e.g.* AC ¶¶ 148, 156, 287), and more broadly alleges that "the Gerling Defendants consistently bill at above the prevailing market rate" for surgeries connected to personal injury cases. AC ¶ 287. This is more than sufficient to meet the requirements of Rule 8.[19]

But Uber need not plead (or prove) above-market rates. It need only allege a payment intended to influence testimony, which it has plainly done. Defendants cite *People v. Canepa*, 295 A.D.2d 247 (1st Dep't 2002), for the proposition that the Amended Complaint must allege more. However, *Canepa* was a criminal case, in which the court made a fact-specific determination that a bribe-payer received only "an accommodation that was commonly granted to other[s]." *Id.* at 247. *Canepa* certainly did not establish any sort of general rule that a civil complaint must allege above-market payments to adequately plead bribery.

d. Rule 8 does not require magic words.

Lavelle and Tarasov argue that Uber fails to allege their improper payments to the Doctor Defendants in connection with the *Lora*, *Nicolas*, and *Khalilova* cases violated § 215.00 because the specific paragraphs describing those bribes do not cite § 215.00 or employ the word "bribe." LB&T Br. 27 n.10, 28. But the Federal Rules do not require pleadings to contain magic words. A "short and plain statement" describing the relevant conduct and pleading the relevant claim within the body of the complaint satisfies Rule 8—and the allegations at issue (AC ¶¶ 117–121, 221–223,

[19] The LB&T Defendants' reliance on *Roberto's Fruit Market, Inc. v. Schaffer*, 13 F. Supp. 2d 390, 396, 399 (E.D.N.Y. 1998), does not help their argument. In *Schaffer*, the "prolix and argumentative" complaint lacked the sorts of basic facts needed to state a claim even under the pre-*Iqbal* standard. Uber's Amended Complaint provides the details the *Schaffer* complaint lacked. And to the extent *Schaffer* might be read as implying the Rule 9(b) particularity requirement applies to bribery allegations, that would be incorrect and inconsistent with the overwhelming majority of authorities. *See Nastasi*, 2022 WL 4448621, at *17 (discussing *Schaffer* and clarifying that Rule 8 governs bribery allegations).

228–230) clearly set forth violations of N.Y. Penal Law § 215.00. *See Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 11 (2014) ("Federal pleading rules … do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted.").

e. Defendants' other arguments ask the Court to ignore well-pleaded allegations or draw inferences against Uber.

Defendants' remaining arguments either ignore well-pleaded allegations or ask the Court to improperly draw inferences against Uber. For example, Reyfman (at 26) asserts that the Amended Complaint only contains "one alleged instance" of bribery involving Reyfman, effectively asking the Court to disregard the Amended Complaints' several additional allegations that the Reyfman Defendants took bribes. *E.g.*, AC ¶¶ 102–104, 117–120, 196, 209–212, 294. The Wingate Defendants criticize Uber for pleading certain details—such as the precise amounts of bribes and how payments were made—on information and belief, and they ask the Court to reject those allegations and draw inferences against Uber, again relying on supposed facts outside the Amended Complaint. *See* Wingate Br. 26–27. But the details at issue, which Uber cannot know before discovery, are precisely the sorts of facts "peculiarly within the possession and control of the defendant" that a plaintiff may plead on information and belief. *Honeywell Int'l Inc. v. Citgo Petroleum Corp.*, 574 F. Supp. 3d 76, 82 (N.D.N.Y. 2021) (citing *Boykin v. KeyCorp*, 521 F.3d 202, 215 (2d Cir. 2008)). And contrary to the Wingate Defendants' suggestions, Uber has alleged facts demonstrating the basis for its beliefs. For example, regarding *Gorbacevska*, the Amended Complaint pleads that payments to Gerling were made by her attorneys, and that Wechsler was Gorbacevska's counsel through a portion of Gerling's supposed treatment of Gorbacevska *and* through the period when Gerling was set to testify regarding Gorbacevska's supposed serious spinal injuries. *See* AC ¶¶ 58, 62, 72, 74–75. Similarly, with *Voltchenkov* and *Ikramov*, the Amended Complaint alleges facts supporting the inference that Wingate improperly paid the Doctor Defend-

ants on the understanding they would provide testimony. *See* AC ¶¶ 205–206, 274–275. The Court should reject the Wingate Defendants' efforts to confuse this simple calculus with suggestions of other inferences the Court could draw based on purported facts outside the Amended Complaint. Again, those arguments are for trial, not a motion to dismiss.

In sum, Uber adequately alleged that all Defendants committed RICO predicate acts, and none of Defendants' counterarguments undermine the Amended Complaint's evident sufficiency.

D. Defendants' racketeering activity formed a pattern.

The Amended Complaint also establishes that Defendants' racketeering activities constitute a continuous pattern. *See, e.g.*, AC ¶¶ 20–28; *supra* pp. 7–21, 56–75. A plaintiff need plausibly allege only that the defendants' predicate acts (1) "amount to or pose a threat of continued criminal activity" and (2) are "related." *DeFalco v. Bernas*, 244 F.3d 286, 320 (2d Cir. 2001) (quoting *H.J. Inc.*, 492 U.S. at 239). Uber satisfies both requirements.

1. The Amended Complaint alleges both open-ended and closed-ended continuity.

Continuity can be either "open-ended" or "closed-ended." *H.J.*, 492 U.S. at 239. Defendants' schemes are both.

a. *Open-ended Continuity*. Criminal activity is open ended if, "by its nature," it "projects into the future with a threat of repetition." *H.J. Inc.*, 492 U.S. at 241. "To establish open-ended continuity, 'the plaintiff need not show that the predicates extended over a substantial period of time but must show … a threat of continuing criminal activity….'" *DeFalco*, 244 F.3d at 323 (quoting *Cofacredit, S.A. v. Windsor Plumbing Supply Co.*, 187 F.3d 229, 242 (2d Cir. 1999)). "[E]ven if the business itself is primarily lawful," open-ended continuity still exists "when the predicate acts were the regular way of operating that business." *Reich v. Lopez*, 858 F.3d 55, 60 (2d Cir. 2017) (cleaned up).

Uber's allegations support a compelling inference that Defendants regularly operate the enterprises discussed above through bribery and fraud—and that Defendants' consistent pattern of predicate acts across 19 different lawsuits give rise to a threat of continued criminal activity. *See, e.g.*, AC ¶¶ 60–61, 121, 135, 150, 240, 279–281 (Banilov Defendants); *id.* ¶¶ 80–83, 219–220, 258–259, 282–283 (Lavelle Defendants); *id.* ¶¶ 64–67, 74–77, 90, 123–124, 161–162, 169, 242, 278 (Wingate Defendants); *id.* ¶¶ 53–56, 226–227, 235, 285–291 (Gerling Defendants); *id.* ¶¶ 46, 49, 102–104, 129–133, 138, 177, 294–295 (Reyfman Defendants). For example, even after the Wingate Defendants withdrew from Gorbacevska's and Perez's plainly fraudulent lawsuits, Wingate continued to press other sham claims pursuant to referral and funding arrangements with their co-Defendants. *See, e.g.*, *supra* pp. 11–12, 21. Those ongoing cases involve the same attorneys and same doctors and follow the same playbook that Defendants have employed in the almost two dozen cases detailed in the Amended Complaint. *Id.* And precisely because Defendants have used the same ruse against other victims beyond just Uber, it is plausible that "they had no intention of stopping once they met some immediate goal." *DeFalco*, 244 F.3d at 324 (upholding jury finding of open-ended continuity). Those factual allegations underscore that Defendants' schemes are "not 'inherently terminable,'" *id.*, and therefore meet any requirement for open-ended continuity.

If anything, Defendants effectively concede that Uber has pleaded open-ended continuity. The LB&T Defendants acknowledge (Br. 4) that "each state-court case cited by Uber follows the same pattern." Gerling similarly recognizes (Br. 29) that, just like the *GEICO v. Gerling* RICO litigation, "[t]his case also involved alleged kickbacks by personal injury attorneys to a third-party medical institution allegedly owned and controlled by Gerling …." That is more than sufficient to defeat Defendants' continuity challenge.

b. *Closed-ended Continuity.* Uber also alleges facts showing closed-ended continuity. That type of continuity is "a temporal concept" that "generally requires that the crimes extend over at least two years." *Reich*, 858 F.3d at 60 (citation omitted).

The Amended Complaint contains ample factual allegations detailing Defendants' numerous fraudulent submissions and bribe payments over the past 9 years in a widespread scheme that involved at least 19 cases, and has targeted deep-pocketed victims like Uber and insurance carriers. *See supra* pp. 16–21. Specifically, Uber alleges how, since 2016, the Lawyer Defendants have corruptly referred patients and funded the Reyfman and Gerling Defendants' unnecessary and above-market-rate medical treatment for the purpose of fabricating lucrative legal claims and evidence. *E.g.*, AC ¶¶ 278–295. Courts have consistently found materially similar allegations sufficient to plead closed-ended continuity. *See, e.g.*, *Reich*, 858 F.3d at 60 (holding that a plaintiff "sufficiently plead[ed] closed-ended continuity because it allege[d] [wire fraud and Travel Act violations] from 2009 until at least the end of December 2012"); *Jacobson*, 2021 WL 2589717, at *14 ("Courts have routinely held in similar situations that a closed-ended continuity pattern is cognizable when a healthcare provider commits numerous acts of mail fraud by submitting hundreds of fraudulent no-fault insurance claims to an insurer over a period of more than two years.").[20]

2. The Amended Complaint alleges relatedness.

RICO's "relatedness" requirement is met when the predicate acts are (1) "related to each other ('horizontal' relatedness)," and (2) "related to the enterprise ('vertical' relatedness)." *United States v. Daidone*, 471 F.3d 371, 375 (2d Cir. 2006) (citation omitted).

[20] The Gerling Defendants practically concede this element too: They recognize (Gerling Br. 29) that Uber "alleges conduct spanning more than two years." They also admit (*id.*) that Uber has alleged "fourteen other state-court cases" that "involve acts by the Gerling Defendants" and "alleged predicate acts attributed to Gerling which span multiple years."

Uber amply alleges facts showing both types of relatedness. The Amended Complaint identifies predicate acts with common actors (Defendants) and the "same or similar purposes," "victims," and "methods of commission": In particular, Defendants use their legal entities and association-in-fact enterprise to defraud Uber and other deep-pocketed victims through false testimony about medically unnecessary treatment arising from minor (or non-existent) car accidents. *H.J. Inc.*, 492 U.S. at 240; *see United States v. Indelicato*, 865 F.2d 1370, 1382 (2d Cir. 1989) (en banc) ("An interrelationship between acts … may be established in a number of ways … includ[ing] proof of their temporal proximity, or common goals, or similarity of methods, or repetitions."); *Eagle One Roofing*, 2018 WL 1701939, at *13 ("These frauds, being of the same form, and committed against the same company, were clearly interrelated."). Those same well-pleaded allegations establish that Defendants' predicate acts are related to their enterprises. *See, e.g.*, *Daidone*, 471 F.3d at 376 (vertical and horizontal relatedness turns on "overlapping … evidence"); *Indelicato*, 865 F.2d at 1384 ("establishment of a [18 U.S.C. § 1962(c)] violation will often entail overlap").

3. Defendants' counterarguments lack merit.

Defendants argue (Wingate Br. 28; LB&T Br. 4, 9, 28–30; Gerling Br. 28–29; Reyfman Br. 28) that the 19 pattern cases are unrelated to each other because they supposedly involve just "a few bad eggs" out of what they say are thousands of cases. But obviously, Defendants have no need to run this scheme in a meritorious case. The scheme is a method for unscrupulous lawyers and doctors to profit from the subset of cases without a serious injury and as such are closely related. In any event, these are factual issues for trial. Defendants "fail[] to take seriously the court's obligation at this stage to assume the truth of the well-pleaded factual allegations in the Complaint and to draw all reasonable inferences in favor of [Uber]." *Lyons*, 843 F. Supp. 2d at 370.

Defendants also argue that the fraudulent conduct is neither continuous nor related given the context of their overall legitimate business. But even businesses that "primarily" engage in lawful conduct can satisfy the RICO statute's continuity and relatedness prongs. *Reich*, 858 F.3d at 60. Again, courts have found that allegations just like Uber's sufficiently establish open-ended continuity. *Jacobson*, 2021 WL 2589717, at *14 ("A jury could infer that engaging in a pattern of illegal self-referrals and sending inflated and fraudulent invoices to insurers was [a medical practice's] regular way of conducting business."); *Lyons*, 843 F. Supp. 2d at 370 ("[E]ven if the PCs were legitimate businesses, it would be reasonable to infer that defendants' acts of mail fraud constituted a regular way of conducting the affairs of those businesses."). Defendants' arguments overlook that Uber has independently established closed-ended continuity, which applies regardless whether Defendants engage in other legitimate business. *Reich*, 858 F.3d at 60 (sufficient to alleged statutory violations over three-year period); *Jacobson*, 2021 WL 2589717, at *14 (sufficient to allege healthcare provider submitted several fraudulent claims over period exceeding two years).

Defendants mischaracterize the Amended Complaint by arguing that "[t]he only asserted 'horizontal link' is participant overlap," Reyfman Br. 28, or "common purpose," Gerling Br. 30; *see* Wingate Br. 28; LB&T Br. 29–30. Those incomplete descriptions ignore Uber's allegations that *also* identify Defendants' common victims and modus operandi. *See supra* pp. 10–21, 56–73. Defendants rely on decisions dismissing RICO claims that had alleged only one victim, *see, e.g.*, *Grace Int'l Assembly of God v. Festa*, 797 F. App'x 603, 606 (2d Cir. 2019); only one predicate act, *see, e.g.*, *Schlaifer Nance & Co. v. Estate of Warhol*, 119 F.3d 91, 98 (2d Cir. 1997); or only common participants, *Halvorssen v. Simpson*, 807 F. App'x 26, 29–30 (2d Cir. 2020); *Reich*, 858 F.3d at 62. Such cases have little to do with the scheme alleged in the Amended Complaint.

The Reyfman Defendants misapprehend the law in asserting (Br. 28) that vertical relatedness requires proof that a Defendant "could have committed any act solely by virtue of his role in an enterprise." On the contrary, Defendants' own citations (*id.*) make clear that vertical relatedness may be established by showing that the predicate conduct is "related to the activities of th[e] enterprise." *Rosenson v. Mordowitz*, No. 11-cv-6145, 2012 WL 3631308, at *5, *7 (S.D.N.Y. Aug. 23, 2012); *accord, e.g.*, *United States v. Burden*, 600 F.3d 204, 216 (2d Cir. 2010). That is exactly what Uber plausibly alleges. And, in any event, Uber alleges facts showing that Reyfman provided false causation testimony in exchange for bribes—which is not conduct that generally "occur[s] independently in medical practice." Reyfman Br. 28.

Similarly mistaken is the Reyfman Defendants' suggestion (Br. 13, 24) that this Court must limit its review to allegations of personal injury cases against Uber, and shut its eyes to Defendants' other misconduct involving other victims. Those contentions misunderstand how RICO works. Because Uber has established RICO standing by showing that a predicate act caused it a compensable harm, the allegations of related predicate acts—including predicate acts targeting other victims or for which monetary recovery is otherwise unavailable—demonstrate the pattern of racketeering activity under Section 1962(c). *James v. Arango*, No. 05-cv-2593, 2006 WL 8439482, at *6 (E.D.N.Y. Nov. 20, 2006) (Plaintiff established predicate acts element of RICO claim by alleging one act of wire fraud targeting plaintiff and a second related act targeting another victim.); *King v. Wang*, No. 14-cv-7694, 2021 WL 5232454, at *3 (S.D.N.Y. Nov. 9, 2021) (explaining that "RICO cases frequently plead and rely on evidence of racketeering acts that are outside the limitations period" to prove a pattern of predicate acts). Thus, in analyzing Defendants' motions, the Court can and must consider all the predicate acts alleged in the Amended Complaint, including the

Reyfman Defendants' acts of mail and wire fraud in connection with personal injury claimants besides Gorbacevska and Khalilova.

E. Each Defendant is also liable for joining and furthering the RICO conspiracy.

Finally, the same conduct that establishes a primary violation also confirms that each Defendant conspired to violate RICO.

The requirements for proving conspiracy under 18 U.S.C. § 1962(d) "are less demanding" than those for showing a substantive violation. *Baisch v. Gallina*, 346 F.3d 366, 376 (2d Cir. 2003). "A 'conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor.'" *Id.* at 376–377 (quoting *Salinas*, 522 U.S. at 65–66). Thus, "[i]n the civil context, a plaintiff must allege that the defendant 'knew about and agreed to facilitate the scheme.'" *Id.* at 377 (same). There is "no requirement of some overt act," *Salinas*, 522 U.S. at 63, and a party "may be liable for [RICO] conspiracy even though he was incapable of committing the substantive offense," *id.* at 64. The existence of a RICO enterprise, moreover, is not a required element of a RICO conspiracy claim. *Applins*, 637 F.3d at 76. Not every person in a RICO conspiracy need have a relationship with all participants in the scheme, nor must they have actual knowledge of every wrongful act. *Friedman*, 854 F.2d at 562; *Nastasi*, 2022 WL 4448621 at *15. And while "[t]he partners in the criminal plan must agree to pursue the same criminal objective," each co-conspirator "is responsible for the acts of each other." *Salinas*, 522 U.S. at 63–64.

The Amended Complaint alleges ample facts showing a RICO conspiracy. Uber details Defendants' express agreements to share fees and make referrals in exchange for further predicate acts. *See, e.g.*, AC ¶¶ 63, 72, 87, 90–91, 103, 145–146, 148, 154–156, 161–162, 278–295. Gerling even admits (Br. 22) that it is a "common practice" for lawyers to pay doctors to operate on their

clients, and defends the agreements reached among the Defendants on that basis. But that is itself a reason to *deny* Defendants' motions: If—as the Amended Complaint amply alleges—those agreements were for the corrupt purposes Uber has identified, then Defendants conspired in violation of RICO.

Defendants half-heartedly challenge the conspiracy allegations by labeling them "conclusory" and baldly contending that the Complaint contains "no particulars." LB&T Br. 31; Gerling Br. 30–32; Reyfman Br. 29–32; *cf.* Wingate Br. 34. That is incorrect. Defendants disregard that the conspiracy count incorporated Uber's prior allegations, AC ¶ 333, and overlook the dozens of factual allegations discussed above identifying the timing, scope, purposes, and terms of Defendants' illicit agreements, both generally and in particular sham lawsuits, *id.* ¶ 27 ("the Doctor Defendants understood and agreed that in exchange for these false diagnoses, unnecessary treatments, and false statements, the Law Firm Defendants would continue to funnel patients to the Doctor Defendants' offices"); *id.* ¶ 28 ("The Law Firm Defendants paid such excessive and/or above-market compensation to induce the Doctor Defendants to manufacture evidence, and the Doctor Defendants accept such payments"); *id.* ¶¶ 63, 72, 73 (identifying express fee-sharing agreement in Gorbacevska case); *see, e.g.*, *id.* ¶¶ 87, 90–91, 103, 145–148, 155–161, 241–242, 278 (similar). Those allegations plausibly establish RICO conspiracy. Moreover, agreement may "be inferred from circumstantial evidence of the defendant's status in the enterprise or knowledge of the wrongdoing." *New York Dist. Council of Carpenters Pension Fund v. Forde*, 939 F. Supp. 2d 268, 282 (S.D.N.Y. 2013). Uber's detailed descriptions of Defendants' scheme to make referrals and payments in exchange for unnecessary treatment and false statements are more than enough to support the reasonable inference that all Defendants agreed to further a racketeering scheme. *See, e.g.*, *Eagle One Roofing*, 2018 WL 1701939, at *15 ("Eagle One has also pleaded

specific facts from which it can be inferred that Defendants entered into such a conspiracy: Eagle One alleges that the Accord defendants sent false invoices, which Dawn Acquafredda processed; and, in return, Dawn Acquafredda received money from Accord in kickback payments.").

IV. Uber's RICO claims are timely.

The Second Circuit "recognize[s] a 'separate accrual' rule under which a new claim accrues, triggering a new four-year limitations period, each time plaintiff discovers, or should have discovered, *a new injury* caused by the predicate RICO violations." *Bingham v. Zolt*, 66 F.3d 553, 559 (2d Cir. 1995) (emphasis added). The RICO statute also contemplates that the requisite pattern of racketeering activity may be proved using predicate acts that occurred outside the limitations period: it "requires a showing of at least two related predicate acts … occurring within a ten year period." *SKS Constructors, Inc. v. Drinkwine*, 458 F. Supp. 2d 68, 77 (E.D.N.Y. 2006) (citing 18 U.S.C. § 1961(5)). Defendants nevertheless argue that the entire Amended Complaint must be dismissed because some of the predicate acts—they say—occurred more than four years before filing. LB&T Br. 23–24. But they do not and cannot claim that *none* of Uber's injuries accrued within the limitations period. Uber's RICO claim is timely.

Defendants misunderstand the Second Circuit's "separate accrual" rule, which provides that "each time plaintiff discovers or should have discovered an injury caused by defendant's violation of § 1962, a new cause of action arises as to that injury, regardless of when the actual violation occurred." *Bankers Trust*, 859 F.2d at 1105. The Court explained that, because "[m]ultiple injuries, spread over time, frequently result from the very nature of a RICO violation," Congress "tied the right to sue for damages … not to the time of the defendant's RICO violation, but to the time when plaintiff suffers injury." *Id.* at 1103. "At a later date, when a new and independent injury is incurred from the same violation, the plaintiff is again 'injured in his business or property' and his right to sue for damages from that injury accrues." *Id.* The Second Circuit's separate accrual

rule is entirely inconsistent with—and forecloses—Defendants' argument that "all future injuries relate back" to a plaintiff's first RICO injury. LB&T Br. 24.

Defendants rely on *In re Merrill Lynch Ltd. Partnerships Litigation*, 154 F.3d 56 (2d. Cir. 1998). But that case expressly "recognize[d] that in some instances a continuing series of fraudulent transactions undertaken within a common scheme can produce multiple injuries which each have separate limitations periods." 154 F.3d at 59. The reason that the claims in *Merrill Lynch* were time-barred was that plaintiffs "sustained recoverable out-of-pocket losses when they invested" in allegedly fraudulent real estate partnerships, and that subsequent annual reports materially misrepresenting the partnerships "put a gloss on the losing investments" as part of "continuing efforts to conceal the initial fraud, and not separate and distinct fraudulent acts resulting in new and independent injuries." *Id.* at 59–60. Here, by contrast, each new fraudulent personal injury lawsuit was not an "effort[] to conceal the initial fraud," but rather was a "separate and distinct fraudulent act[]" or acts "resulting in new and independent injuries." *See id.*

Contrary to Defendants' assertion, *Merrill Lynch* did not hold that "injuries arising from the same 'common scheme' do not restart the limitations period." LB&T Br. 23. Rather, courts have repeatedly recognized that "*In re Merrill Lynch* did not … foreclose … the possibility that 'new and independent' injuries may be suffered when they are part of the same scheme." *Bascuñan v. Elsaca*, No. 15-cv-2009, 2021 WL 3540315, at *6 (S.D.N.Y. Aug. 11, 2021). *Merrill Lynch* is limited to claims of "subsequent costs associated with the initial injury." *World Wrestling Ent., Inc. v. Jakks Pac., Inc.*, 530 F. Supp. 2d 486, 527 (S.D.N.Y. 2007), *aff'd*, 328 F. App'x 695 (2d Cir. 2009). Where Defendants engage in a "continuing series of fraudulent actions undertaken to divert and conceal assets and income" through "frequent misappropriations" from the victim "of discrete amounts of money [coming in] from different sources," those individual misappropria-

tions constitute new injuries for purposes of the separate accrual rule. *Bingham*, 66 F.3d at 561; *see American Med. Ass'n v. United Healthcare Corp.*, No. 00-cv-2800, 2006 WL 3833440, at *10 (S.D.N.Y. Dec. 29, 2006) (holding that, in an insurance scheme involving "false … reimbursement determinations," each new reimbursement determination under the same scheme caused a new and independent injury under the separate accrual rule). Thus, each new fraudulent misrepresentation and act of bribery that caused Uber to incur defense costs constitutes a new and independent injury.

Under any rule, Uber's claims with respect to *Khalilova* are not time-barred. Uber incurred out-of-pocket injury when it settled that case for more than it was worth within the limitations window. AC ¶ 128; Cogan Decl. Ex. 47. The mere fact that Uber filed a motion for summary judgment in 2020—without more—does not show that Uber was aware of the fraudulent scheme then. Uber's RICO claim is timely.

Uber's claims are also timely under the equitable tolling doctrine. AC ¶¶ 311–312. Uber has pleaded "(1) wrongful concealment by defendants (2) which prevented plaintiff's discovery of the nature of the claim within the limitations period, and (3) due diligence in pursuing the discovery of the claim." *N.Y. Dist. Council of Carpenters Pension Fund v. Forde*, 939 F. Supp. 2d 268, 278 (S.D.N.Y. 2013). Specifically, Uber diligently sought discovery in the underlying actions, but was thwarted from discovering its RICO injury by Defendants' fabrication of evidence and selective evasion of discovery that might uncover the scheme—for example, Wechsler and Wingate's tactical withdrawal in *Gorbacevska* to prevent Gerling's deposition. Defendants' intentional acts of concealment prevented Uber from discovering the underlying scheme. *See id.* at 280.

Finally, if Uber's claims are "unripe" because its damages are "not clear and definite," (LB&T Br. 15), it would mean that the claims have not yet accrued for statute of limitations periods and cannot possibly be time-barred. *E.g.*, *D'Addario*, 901 F.3d at 93. While Defendants are free to

argue in the alternative, their ripeness and statute of limitations arguments are glaringly inconsistent.

V. The Amended Complaint adequately alleges that the Law Firm Defendants violated N.Y. Judiciary Law § 487.

In addition to stating RICO claims against all Defendants, the Amended Complaint states claims against each of the Law Firm Defendants for violations of N.Y. Judiciary Law § 487.[21] Section 487 "permits a civil action to be maintained by any party who is injured by an attorney's intentional deceit or collusion in New York on a court or on any party to litigation." *Amalfitano v. Rosenberg*, 533 F.3d 117, 123 (2d Cir. 2008). An attorney who commits even "a single intentionally deceitful or collusive act" can be held liable for violating § 487. *Id.*; *see Trepel v. Dippold*, No. 04-cv-8310, 2005 WL 1107010, at *4 (S.D.N.Y. May 9, 2005) ("A single act or decision, if sufficiently egregious and accompanied by an intent to deceive, is sufficient to support liability [under § 487].").

Here, the Amended Complaint alleges facts establishing that each of the Law Firm Defendants engaged in egregious deceit, that they acted with intent to deceive, and that they caused Uber injury by doing so. The Amended Complaint alleges that each Law Firm Defendant made deceptive misrepresentations in court filings across five cases in which Uber incurred substantial defense costs. It identifies specific deceitful submissions made by each Law Firm Defendant, which include false assertions about, *e.g.*, a car collision that did not happen and accident-induced serious injuries that did not occur. *See, e.g.*, AC ¶¶ 64–70, 91–92, 95, 106–107, 110–112, 124–127 (Wingate); AC ¶¶ 60–61 (Banilov); AC ¶¶ 83, 88–89 (Lavelle); AC ¶¶ 121, 135–138 (Tarasov).

The Wingate Defendants assert (at 35) that the Amended Complaint does not adequately allege intent to deceive, but that argument fails for the same reasons explained in connection with

[21] The Court has diversity jurisdiction over the dispute, including the state-law claims. AC ¶ 17.

the mail and wire fraud RICO predicate acts. *See supra* pp. 59–68.[22] The Wingate Defendants also argue that the Amended Complaint does not allege sufficiently extreme or chronic misconduct. *See* Wingate Br. 35. That is wrong on both the law and the facts. As the Second Circuit explained in *Amalfitano*, "a single intentionally deceitful or collusive act" can give rise to a § 487 claim. 533 F.3d at 123. The Wingate Defendants' deceptive conduct in *Gorbacevska*—manufacturing evidence of fake serious spinal injuries and deceitfully claiming that Gorbacevska suffered those fake injuries in a collision between two motor vehicles that they knew did not actually happen—is extreme and egregious by any reasonable measure. *See Amalfitano*, 533 F.3d at 122–123 (attorney who falsely represented to the court that his client retained an interest in a partnership violated § 487); *M'Baye*, 2007 WL 431881, at *13 (allegations that attorney intentionally misrepresented when a contract was executed supported a § 487 claim). That the Wingate Defendants' deceitful representations in cases involving Uber occurred within the context of their broader corrupt scheme makes the sufficiency of the AC's § 487 claims even more apparent.[23]

Finally, Wingate's argument that Uber has not alleged damages is clearly wrong. *See* Wingate Br. 35. If Wingate had not filed its fraudulent complaints against Uber in *Gorbacevska*, *Clarke*, *Callum*, and *Khalilova*, Uber would not have incurred costs defending those cases. Those

[22] Moreover, that § 487 claims do not sound in fraud and should therefore be judged against the Rule 8 standard makes the sufficiency of the Amended Complaint's allegations all the more manifest. *See M'Baye v. New Jersey Sports Prod., Inc.,* No. 06-cv-3439, 2007 WL 431881, at *13 (S.D.N.Y. Feb. 7, 2007) (applying Rule 8 standard to § 487 claims and explaining "an allegation that a defendant has deceived a court is not the same as an allegation of fraud under Rule 9(b)"); *Sabatini Frozen Foods, LLC v. Weinberg, Gross & Pergament, LLP*, No. 14-cv-2111, 2015 WL 5657374, at *7 (E.D.N.Y. Sept. 23, 2015) (applying Rule 8 standard); *Amalfitano v. Rosenberg*, 12 N.Y.3d 8, 12 (2009) (emphasizing that § 487 is not a fraud cause of action); *but see Bryant v. Silverman*, 284 F. Supp. 3d 458, 469 (S.D.N.Y. 2018) (applying Rule 9(b)).

[23] Tarasov's argument that Uber has not alleged he violated § 487 in connection with the *Lopez* case fails for the same reasons. LB&T Br. 31–32.

litigation costs are injuries contemplated by § 487. *See Amalfitano*, 12 N.Y.3d at 15 (fees incurred defending litigation based on deceitful complaint are § 487 injury).

The Banilov and Lavelle Defendants argue that Uber cannot pursue § 487 claims against them because they handed off the *Gorbacevska*, *Callum*, and *Khalilova* cases to the Wingate Defendants before the Wingate Defendants added Uber to those cases, and they assert that § 487 does not allow Uber to recover for deceitful conduct occurring before it was a party. LB&T Br. 31. But that is wrong.

Section 487 recognizes two types of deceptions: (1) deceptions directed against a court, and (2) deceptions directed only at a party. *See Singer v. Whitman & Ransom*, 83 A.D.2d 862, 863 (2d Dep't 1981). Fraudulent statements in court filings are considered deceptions directed against a court, whereas fraudulent statements in private correspondence between parties are regarded as deceptions directed only at a party. *See id.*; *see also Cinao v. Reers*, 27 Misc. 3d 195, 203 (Sup. Ct. Kings Cty. 2010) (quoting *Fields v. Turner*, 1 Misc. 2d 679, 681 (Sup. Ct. N.Y. Cty. 1955)) ("Deception of a court" includes "any statement, oral or written, made with regard to a proceeding brought or to be brought therein and communicated to the court with intent to deceive.").

Though § 487 does not authorize a victim of deceptions *against a party* to recover unless the deceptions occurred during a pending judicial proceeding, deceptions *against a court* can support a § 487 claim even if the deceptions "relat[e] to a prior judicial proceeding or one which may be commenced in the future." *Singer*, 83 A.D.2d at 863.[24] Of course, many of the alleged decep-

[24] The cases Lavelle and Banilov cite are not to the contrary. *Bankers Tr. Co. v. Cerrato, Sweeney, Cohn, Stahl & Vaccaro*, 187 A.D.2d 384 (1st Dep't 1992) and *Greenfield v. Schultz*, 173 Misc. 2d 31 (Sup. Ct. N.Y. Cty. 1997), *aff'd in part, modified in part, & vacated in part*, 251 A.D.2d 67 (1st Dep't 1998), both involved § 487 claims seeking recovery for deceptions directed against parties (not a court). And neither case involved a litigation in which the plaintiff was *ever* a party, unlike here.

tions did occur during the pendency of a judicial proceeding to which Uber became a party. And in any event, Uber's § 487 claims arise from deceitful statements in court filings—classic deceptions against the court—related to judicial proceedings which would "be commenced in the future" against Uber. *Id.* Under *Singer*, Uber can maintain its § 487 claims.

VI. The Amended Complaint adequately alleges unjust enrichment against the Doctor Defendants.

As an alternative to its RICO claims, Uber alleges valid unjust enrichment claims against the Doctor Defendants. "To prevail on a claim for unjust enrichment in New York, a plaintiff must establish 1) that the defendant benefitted; 2) at the plaintiff's expense; and 3) that equity and good conscience require restitution." *Kaye v. Grossman*, 202 F.3d 611, 616 (2d Cir. 2000) (cleaned up). A plaintiff need not have directly transferred money to the defendant to pursue a claim for unjust enrichment; the plaintiff need only "show a causal 'nexus' between a defendant's enrichment and their own expense that goes beyond mere 'correlation.'" *St. John's Univ., New York v. Bolton*, 757 F. Supp. 2d 144, 182 (E.D.N.Y. 2010) (citation omitted). "The essential inquiry in any action for unjust enrichment or restitution is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered." *Paramount Film Distrib. Corp. v. State of New York*, 30 N.Y.2d 415, 421 (1972). Here, the Amended Complaint more than plausibly alleges: (1) that the Doctor Defendants were unjustly enriched at Uber's expense as a result of their outrageous conduct of manufacturing fraudulent evidence of accident-induced serious spinal injuries, and (2) that equity and good conscience require that the Doctor Defendants not be allowed to profit off their wrongdoing and that Uber be made whole.

Nonetheless, the Doctor Defendants assert that Uber's unjust enrichment count must be dismissed as duplicative because it arises from the same facts as Uber's RICO claims. Reyfman Br. 33; Gerling Br. 32. This argument misses the mark. Litigants in this District and throughout

the country regularly pursue RICO claims alongside unjust enrichment claims pleaded in the alternative, including in cases against corrupt medical providers. *See, e.g., Liberty Mut. Ins. Co. v. Excel Imaging, P.C.*, 879 F. Supp. 2d 243, 273 (E.D.N.Y. 2012) (denying motion to dismiss RICO and unjust enrichment claims brought by insurer against medical providers); *Star Med. Diagnostic*, 2025 WL 1489604, at *3; *Jacobson*, 2021 WL 2589717, at *12; *Superb Motors Inc. v. Deo*, 776 F. Supp. 3d 21, 88 (E.D.N.Y. 2025); *Crabhouse of Douglaston Inc. v. Newsday Inc.*, 801 F. Supp. 2d 64, 92 (E.D.N.Y. 2011). Though it is true that an unjust enrichment claim will not lie if it is purely duplicative of another claim, that is obviously not the case with the RICO claims against the Doctor Defendants for the simple reason that a RICO claim requires proving more and different elements than a claim for unjust enrichment. Uber is confident that it will prevail in proving its RICO claims; but at this stage it may maintain an unjust enrichment claim in the alternative.

Thus, Uber's unjust enrichment claims do not merely duplicate its RICO claims—because they provide an alternative path to recovery, they cannot be dismissed as duplicative. *See Haraden Motorcar Corp. v. Bonarrigo*, No. 19-cv-1079, 2020 WL 1915125, at *10 (N.D.N.Y. Apr. 20, 2020) (explaining that if plaintiff could fail to prove liability under alternative theories but prove unjust enrichment, then an unjust enrichment claim is not duplicative); *Great W. Ins. Co. v. Graham*, No. 18-cv-6249, 2020 WL 3415026, at *34 (S.D.N.Y. June 22, 2020) (same).

VII. The *Noerr-Pennington* doctrine does not immunize Defendants' fraudulent litigation conduct.

Defendants argue that their conduct is protected by the *Noerr-Pennington* doctrine, LB&T Br. 32, which "generally immunizes from liability a party's commencement of a prior court proceeding." *T.F.T.F. Cap. Corp. v. Marcus Dairy, Inc.*, 312 F.3d 90, 93 (2d Cir. 2002). "The doctrine originated in the antitrust area, but it has been extended to provide immunity from liability for bringing other suits." *Hirschfeld v. Spanakos*, 104 F.3d 16, 19 (2d Cir. 1997).

Defendants are premature. *Noerr-Pennington* is an affirmative defense and a plaintiff has "no affirmative obligation to plead facts to show that the *Noerr-Pennington* doctrine does not apply." *Muddy Bites, Inc. v. Evergreen USA LLC*, No. 24-cv-7089, 2025 WL 2662959, at *4 (S.D.N.Y. Sept. 17, 2025). They are also mistaken. "*Noerr-Pennington* protection is not absolute." *Blue Cross & Blue Shield of Vt. v. Teva Pharm. Indus., Ltd.*, 712 F. Supp. 3d 499, 524 (D. Vt. 2024) (cleaned up). The doctrine only immunizes activity protected by the First Amendment; it does not insulate intentional misrepresentations, fabricated evidence, bribery, or other abuses that corrupt the adjudicatory process.

A. *Noerr-Pennington* is an affirmative defense ill-suited to resolution on a motion to dismiss.

As a threshold matter, because *Noerr-Pennington* is an affirmative defense, it may compel dismissal only when the defense is clear from the face of the pleading and judicially noticeable materials. *360 Mortg. Grp., LLC v. Fortress Inv. Grp. LLC*, No. 19-cv-8760, 2020 WL 5259283, at *4 (S.D.N.Y. Sept. 3, 2020); *see also Twin City Bakery Workers & Welfare Fund v. Astra Aktiebolag*, 207 F. Supp. 2d 221, 223–224 (S.D.N.Y. 2002) (dismissal under *Noerr-Pennington* is available at the pleading stage only when it is "legally impossible" for the conduct to be a sham). Despite the Reyfman Defendants' assertion to the contrary (Br. 33), Uber has no obligation at the pleading stage to show that the doctrine does not apply or that "the sham exception applies." *360 Mortg. Grp.*, 2020 WL 5259283, at *4; *Muddy Bites*, 2025 WL 2662959, at *4; *Adecco USA, Inc. v. Staffworks, Inc.*, No. 20-cv-744, 2022 WL 16571380, at *6 (N.D.N.Y. Nov. 1, 2022); *MMS Trading Co. Pty. Ltd. v. Hutton Toys, LLC*, No. 20-cv-1360, 2021 WL 1193947, at *10–11 (E.D.N.Y. Mar. 29, 2021) (allegations that defendant regularly filed fraudulent infringement complaints were sufficient to overcome a *Noerr-Pennington* defense at the motion to dismiss stage). Whether litigation is a "sham," or whether serial misrepresentations corrupted adjudication, are

fact-intensive questions ill-suited to a motion to dismiss and are typically resolved on a more developed record. *See, e.g.*, *Blue Cross & Blue Shield of Vt.*, 712 F. Supp. 3d at 526–527 (collecting cases); *Truck-Lite Co. v. Grote Indus., Inc.*, No. 18-cv-599, 2021 WL 8322467, at *12 (W.D.N.Y. Sept. 17, 2021) ("Determinations of whether a party's conduct is a genuine attempt to avail itself of the judicial process or is merely a sham is a question of fact that is inappropriate for a motion to dismiss.").

Here, it is not apparent from the face of Uber's Amended Complaint that *Noerr-Pennington* immunizes Defendants' misconduct. To the contrary, and as discussed further below, the Amended Complaint plausibly alleges that Defendants' fraud, pattern of sham filings, intentional misrepresentations, and process-infecting abuses strips them of any First Amendment protection. At this stage, those allegations must be accepted as true and all reasonable inferences drawn in Uber's favor, foreclosing dismissal on an affirmative defense that turns on disputed facts. *See 360 Mortgage Grp.*, 2020 WL 5259283, at *3.

B. The *Noerr-Pennington* doctrine does not apply, because the First Amendment does not protect fraud.

Substantively, the *Noerr-Pennington* doctrine has no relevance to this case because it does not protect fraudulent statements. The Amended Complaint alleges that the conduct the Law Firm Defendants characterize as protected litigation activity violated the mail and wire fraud statutes. *See supra* pp. 56–71. The *Noerr-Pennington* doctrine is a First Amendment doctrine that prevents parties from being wrongfully punished for engaging in First Amendment-protected activity. *See Suburban Restoration Co. v. ACMAT Corp.*, 700 F.2d 98, 101 (2d Cir. 1983). It applies to statutes like the Sherman Act that facially appear to penalize activity the First Amendment protects, by immunizing such activity from liability. *See id*. But the *Noerr-Pennington* doctrine has no application to the mail and wire fraud statutes, because "it is well settled that the First Amendment does

not protect fraud" and therefore (unlike with the Sherman Act) all the activity those statutes prohibit falls outside the First Amendment's aegis. *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1123 (D.C. Cir. 2009) (citing *McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 357 (1995)).

Moreover, fraud that an attorney commits in connection with litigation is entitled to no special First Amendment protection. *McDonald v. Smith*, 472 U.S. 479, 485 (1985) (finding the Petition Clause does not have "special First Amendment status" and that petitions are not entitled to "greater constitutional protection" than "other First Amendment expressions"). And "during a judicial proceeding, whatever right to 'free speech' an attorney has is extremely circumscribed." *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1071 (1991); *Schottenstein v. Schottenstein*, No. 04-cv-5851, 2005 WL 912017, at *2 n.19 (S.D.N.Y. Apr. 18, 2005) ("As an officer of the court, [an attorney] has bargained away a portion of his First Amendment rights in exchange for the privilege of practicing law."). Indeed, since this nation's founding, there have been laws criminalizing deceitful litigation activity by attorneys, *Amalfitano*, 12 N.Y.3d at 12–14, and "judges regularly fine attorneys, and even throw them in jail from time to time, as a direct consequence of attorneys' in-court speech[.]" *Mezibov v. Allen*, 411 F.3d 712, 717 (6th Cir. 2005).

Thus, even if the *Noerr-Pennington* defense could be resolved on a motion to dismiss, it plainly cannot apply because filings that constitute "violations of the mail and wire fraud … and RICO statutes" are "not afforded protection under the Noerr-Pennington doctrine[.]" *Calabrese v. CSC Holdings, Inc.*, No. 02-cv-5171, 2004 WL 3186787, at *2 (E.D.N.Y. July 19, 2004); *Philip Morris*, 566 F.3d at 1123 ("valid findings of fraud[ ] take Defendants' statements out of the *Noerr-Pennington* context"); *Fritz v. Resurgent Cap. Servs., LP*, 955 F. Supp. 2d 163, 176 (E.D.N.Y. 2013) ("*Noerr-Pennington* does not provide immunity for intentional misrepresentations made in

litigation"); *Hartman v. Great Seneca Fin. Corp*., 569 F.3d 606, 616 (6th Cir. 2009) (explaining that "the Petition Clause protects legitimate petitioning but not sham petitions, baseless litigation, or petitions containing 'intentional and reckless falsehoods,'" and, relatedly, "there is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in uninhibited, robust, and wide-open debate on public issues." (cleaned up)).

C. The *Noerr-Pennington* doctrine does not protect serial misrepresentations.

Even if the *Noerr-Pennington* doctrine could somehow extend First Amendment protection to violations of the mail and wire fraud statutes, it still would not offer immunity to Defendants because Uber's claims relate to Defendants' sham litigations. The *Noerr-Pennington* doctrine protects *legitimate* petitions to the government.[25] Petitioning loses protection when it is a "mere sham to cover what is actually nothing more than an attempt to interfere directly with the business relationships of a competitor." *Eastern R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 144 (1961). For a single matter, litigation is a sham if it is (1) "objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits," and (2) pursued with a subjective intent to use process, rather than outcome, to inflict harm. *Professional Real Estate Invs. Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 60–61 (1993); *T.F.T.F. Cap. Corp*., 312 F.3d at 93. But that is not the test that would apply here. *Contra* LB&T Br. 32.

"In cases in which the defendant is accused of bringing a whole series of legal proceedings, the test is not retrospective but prospective: Were the legal filings made, not out of a genuine interest in redressing grievances, but as part of a pattern or practice of successive filings undertaken

[25] Defendants do not cite any cases holding that non-party expert witnesses like the Doctor Defendants engage in protected petitioning activity when they submit testimony. The Court should not extend *Noerr-Pennington* to cover the Doctor Defendants.

essentially for purposes of harassment?" *Primetime 24 Joint Venture v. National Broad. Co.*, 219 F.3d 92, 101 (2d Cir. 2000); *see Waugh Chapel S., LLC v. United Food & Com. Workers Union Loc. 27*, 728 F.3d 354, 364 (4th Cir. 2013) (explaining the objective-subjective test is appropriate for a single proceeding because "it is relatively simple for a judge to decide whether the singular claim it is presiding over is objectively baseless," but is "ill-fitted to test whether a series of legal proceedings is sham litigation"). This test arises from *California Motor Transport v. Trucking Unlimited*, 404 U.S. 508 (1972), which broadened the sham exception to cover "unethical conduct in the setting of the adjudicatory process" and "a pattern of baseless, repetitive claims" that "effectively bar[s]" meaningful access to tribunals. *Id.* at 512–513; *accord Otter Tail Power Co. v. United States*, 410 U.S. 366, 380 (1973) ("repetitive lawsuits carrying the hallmark of insubstantial claims" are unprotected).

Accordingly, when *Noer-Pennington* is asserted as a defense to a claim arising from a series of legal proceedings, a "district court should conduct a *holistic* evaluation of whether the administrative and judicial processes have been abused." *Waugh*, 728 F.3d at 364 (emphasis added); *accord Landmarks Holding Corp. v. Bermant*, 664 F.2d 891, 896 (2d Cir. 1981); *USS-POSCO Indus. v. Contra Costa Bldg. & Constr. Trades Council, AFL-CIO*, 31 F.3d 800, 811–812 (9th Cir. 1994). Under this test, it is irrelevant whether some of the claims might have merit "as a matter of chance." *Primetime 24*, 219 F.3d at 101 (quoting *USS-POSCO*, 31 F.3d at 811); *accord Hanover 3201 Realty, LLC v. Village Supermarkets, Inc.*, 806 F.3d 162, 180 (3d Cir. 2015) ("[E]ven if a small number of the petitions turn out to have some objective merit, that should not automatically immunize defendants from liability."). Instead, "[t]he pattern of the legal proceedings, not their individual merits, centers this analysis." *Waugh*, 728 F.3d at 364.

Here, Uber alleges a non-exhaustive list of nineteen pattern cases, detailing the same repeat players, using the same pre-litigation recruitment and referral pipeline, performing unnecessary spinal surgeries, generating deceptive reports, and deploying purchased testimony across multiple suits to extract inflated recoveries. *See supra* pp. 10–21. This alone is sufficient to show sham litigation. *Primetime 24*, 219 F.3d at 101 (concluding plaintiff "stated a valid sham claim" where plaintiff alleged that defendants had submitted "simultaneous and voluminous challenges ... without regard to whether the challenges had merit"); *Landmarks Holding Corp.*, 664 F.2d at 896 ("[A]buse of the … judicial process through unethical lawyer conduct and repetitive filing of insubstantial claims is unprotected by the *Noerr-Pennington* immunity."); *see also MCI Commc'ns Corp. v. American Tel. & Tel. Co.*, 708 F.2d 1081, 1154–1155 (7th Cir. 1983); *Clipper Exxpress v. Rocky Mountain Motor Tariff Bureau, Inc.*, 690 F.2d 1240, 1255 (9th Cir. 1982).

Moreover, Defendants engaged in "other signs of bad faith litigation," *Waugh*, 728 F.3d at 364, including, for example, strategically withdrawing as counsel to avoid depositions about evidence clearly demonstrating the objective baselessness of personal injury claims, *see* AC ¶¶ 74–77, and intentionally manipulating discovery, *see, e.g.*, AC ¶¶ 60, 122. This, too, supports a sham finding. *See, e.g.*, *Landmarks Holding Corp.*, 664 F.2d at 896 (considering a series of sham appeals used to further the conspiracy which defendants filed knowing they lacked standing along with other indicia of fraud, including deliberately delaying prosecution of the appeals, failing to convey settlement offers, and soliciting meritless litigation by the landowners).

Uber's Amended Complaint also establishes the sham litigation exception under the objective-subjective test cited by Defendants. As to the objective prong, the fraud alleged here goes to the heart of liability and damages. The underlying complaints' high-dollar claims depended on manufactured "serious injury" created through unnecessary spinal surgeries, falsified reports,

above-market payments, and perjured testimony. *See, e.g.*, AC ¶¶ 28–34. These allegations demonstrate precisely the type of claims on which "no reasonable litigant could realistically expect" to succeed, but for the fraud. *Professional Real Estate Invs.*, 508 U.S. at 60; *cf. Michelo*, 419 F. Supp. 3d at 694 (finding sham litigation where defendants submitted false or deceptive affidavits to state courts to fraudulently obtain default judgments); *accord Shetiwy v. Midland Credit Mgmt.*, 980 F. Supp. 2d 461, 475–476 (S.D.N.Y. 2013). As to the subjective prong, Uber alleges that Defendants were knowingly misusing the judicial system to avoid pre-trial motion practice and force higher settlements. *See, e.g.*, AC ¶ 2 ("To accomplish their scheme, *Defendants knowingly and willfully misrepresent material facts at every turn*—to the passengers, to the courts, and to parties to such meritless litigation, including Uber." (emphasis added)); *id.* ¶ 33 ("Defendants at all times *acted with the intent* of depriving Uber and others of their property and/or money." (emphasis added)).

Under either sham inquiry, the deliberate and repeated falsification of medical evidence, bribed testimony, and deceptive filings that infected the entire adversarial process remove any purported petitioning protection. *California Motor Transport*, 404 U.S. at 512–513; *accord Sykes*, 757 F. Supp. 2d at 429.

D. Defendants' counterarguments fail.

Defendants first argue that Uber's litigation choices—asserting cross-claims, continuing to litigate, or settling—undermine any objective baselessness. LB&T Br. 34. This assertion has no place in *California Motor Transport*'s serial litigation analysis, but in any event, it fundamentally misunderstands the sham inquiry. When a complaint plausibly alleges that fabricated evidence and perjury distorted the process, subsequent strategic decisions do not immunize a sham. Indeed, Uber *relied on* Defendants' fraud and perjury when it made the cited litigation decisions. *See, e.g.*, AC ¶ 32. That Uber litigated or resolved cases in the face of deceptive medical evidence reflects the scheme's effectiveness, not its legitimacy. *Cf. Clipper Exxpress*, 690 F.2d at 1261 ("In the adjudi-

catory sphere … information supplied by the parties is relied on as accurate for decision making and dispute resolving.").

Relatedly, Defendants also suggest that because some cases have survived summary judgment or were settled favorably, there was at least "a chance" of success, thereby defeating a sham litigation finding. *See* LB&T Br. 32. That is wrong. For starters, settlements and interlocutory rulings are not merits victories. *Cf., e.g.*, *Waugh*, 728 F.3d at 366 ("[W]hile a state court's appraisal of the merits of litigation aids the sham exception inquiry, the plaintiffs in the majority of the cases withdrew their suits before an adjudication."). And in all events, the Second Circuit has recognized that even a "winning lawsuit … does not *ipso facto* constitute a determination of the 'objective reasonableness' of the lawsuit, especially in a case where"—as here—"the plaintiff claims that the judgment in the prior action was obtained through deceit." *T.F.T.F. Cap. Corp.*, 312 F.3d at 94; *accord Primetime 24*, 219 F.3d at 100–101; *USS-POSCO*, 31 F.3d at 811. "[T]he fact that there may be moments of merit within a series of lawsuits is not inconsistent with a campaign of sham litigation, for 'even a broken clock is right twice a day.'" *Waugh*, 728 F.3d at 365 (quoting *USS-POSCO*, 31 F.3d at 811); *see also, e.g.*, *Calloway v. Marvel Ent. Group,* 854 F.2d 1452, 1473 (2d Cir. 1988) (explaining in analogous Rule 11 sanctions context that "[i]t is ... entirely possible that a baseless factual claim will survive a motion for summary judgment, particularly where an attorney prepares an affidavit for a client stating a material fact for which there is no basis."), *rev'd on other grounds sub nom. Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120 (1989).

Finally, it is no answer that Defendants' cases might contain kernels of truth—such as real accidents or injuries. *See* LB&T Br. 33. Uber's Amended Complaint alleges, *inter alia*, that the Defendants fraudulently sought to manufacture increased damages from minor accidents. *See, e.g.*, AC ¶¶ 28, 129, 138, 140. That some cases "involved real people and real injuries" or that some

doctors not currently "alleged to be involved in any purported racketeering" corroborated some of those injuries, LB&T Br. 33, does not excuse the litany of Defendants' intentional misrepresentations. "[T]he act of petitioning … may not serve as the means to achieve illegal ends." *Waugh*, 728 F.3d at 356. And a "high percentage of meritless or objectively baseless proceedings … will tend to support a finding that the filings were not brought to redress any actual grievances," regardless of any purported aspects of truth. *Hanover 3201 Realty*, 806 F.3d at 180–181.

Noerr-Pennington protects legitimate petitioning; it does not license the corruption of adjudication through fraud, misrepresentations, fabricated medical records, unnecessary surgeries, and perjured testimony. Even if this Court reaches *Noerr-Pennington*'s limits at this stage, the Amended Complaint plausibly alleges fraud and sham litigation that defeats immunity, foreclosing dismissal.

CONCLUSION

For the foregoing reasons, Defendants' motions to dismiss should be denied.

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Respectfully submitted,

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