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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

DJCBP Corporation DBA Tier One
Consulting, a California Corporation
and David Ju, an individual,

Plaintiffs,

vs.

CITY OF BALDWIN PARK, a
municipality; ROBERT NACIONALES-
TAFOYA, an individual; ANTHONY
WILLOUGHBY, II, an individual;
RICARDO PACHECO, an individual;
ISAAC GALVAN, an individual;
MANUEL LOZANO, an individual;
LOURDES MORALES, an individual
and Does 1-50,

Defendants.

Case No.: **2:23-cv-00384**

**DEFENDANT ANTHONY
WILLOUGHBY II'S REPLY IN
SUPPORT OF THE MOTION TO
DISMISS PLAINTIFFS' FIRST
AMENDED COMPLAINT FOR
DAMAGES**

Date: AUGUST 28, 2023

Time: 10:00 A.M.

Courtroom: 8D

Action Filed: January 18, 2023

TO THE HONORABLE CHRISTINA A. SNYDER AND ALL PARTIES:

Defendant Anthony Willoughby II ("Willoughby"), by and through the undersigned attorney of record, hereby submits this Reply in support of Willoughby's motion to dismiss pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure to dismiss Plaintiff DJCBP Corporation DVA Tier One

1 Consulting and Plaintiff David Ju's (together as "Plaintiffs") First Amended
2 Complaint ("FAC") for damages.

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6 Dated: August 8, 2023

LAW OFFICE OF J. BLACKNELL

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8 *Kellen J. Davis*

9 Kellen Davis

10 Attorney for Defendant

11 Anthony Willoughby, II
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Despite a grossly deficient complaint to initiate this case, generous direction from the court and an allowance for Plaintiffs to amend, Plaintiffs' opposition again regurgitates the unfounded, mostly indiscernible allegations in the First Amended Complaint ("FAC"). Nothing that Plaintiffs have offered in the FAC or their opposition to Willoughby's motion to dismiss changes the fact that the FAC is wholly deficient. The Plaintiffs' opposition makes a serious of conclusory arguments that are not supported by the facts alleged in the FAC. Plaintiffs' attempt to draw wild conclusions from immaterial events having nothing to do with Plaintiffs, Plaintiffs' allegations, or Willoughby. The FAC only effectively alleges that Plaintiff Ju wanted Willoughby's license and was willing to do whatever it took behind Willoughby's back to get his hands on it.

Plaintiffs' buyer's remorse after conspiring to deprive Willoughby of his license for less than its value does not create a cause of action against Willoughby. Plaintiffs' disagreement with their co-conspirators does not create a cause of action against Willoughby. The utter lack of predicate offenses combined with the factual defects in the pleading warrant the dismissal of the FAC before it can cause further harm to Willoughby's reputation.

II. ARGUMENT

A. Timeliness Of Willoughby's Motion

"This circuit allows a motion under Rule 12(b) any time before the responsive pleading is filed." *Aetna Life Ins. Co. v. Alla Medical Services, Inc.*, 855 F.2d 1470, 1474 (9th Cir. 1988). Willoughby has not filed a responsive pleading. Therefore, the instant motion is timely.

B. Plaintiff Fails To Distinguish *Schulman v. Kaplan*

Cannabis entrepreneurs and cannabis businesses do not have standing to bring an action under the Federal Racketeer Influenced and Corrupt Organizations

1 Act (“RICO”). *Shulman v. Kaplan*, 58 F.4th 404 (9th Cir. 2023). “Since RICO and
2 the CSA were enacted almost contemporaneously, it is clear that Congress did not
3 intend the term ‘business or property’ in RICO to include cannabis businesses or
4 property.” *Id.* at p. 411. “Congress would not have intended RICO to provide
5 damages for injury to interests in which it explicitly disclaimed the existence of any
6 property rights.” *Id.*

7 The RICO allegations in this case are being made by a cannabis business and
8 entrepreneurs. The instant lawsuit does not exist apart from cannabis. The truth of
9 the matter is that every claim contained herein is connected to cannabis. The only
10 interests Plaintiffs’ claim were harmed in the instant lawsuit are an interests in a
11 cannabis business and the operation of that business. Plaintiffs’ reliance on uncited
12 cases that do not deal with the same factual scenario and which pre-date the Ninth
13 Circuit’s decision are irrelevant. *Shulman v. Kaplan* unequivocally establishes that
14 RICO does not provide damages for injury to interests in cannabis. This authority is
15 binding on this Honorable Court. Thus, Plaintiffs have no claim under RICO.

16 **C. There Are No Predicate Offenses**

17 Any action under RICO requires a showing that a RICO predicate offense
18 was a ‘but for’ cause of the plaintiffs’ injury and the proximate cause as well. *Hemi*
19 *Group, LLC v. City of New York, N.Y.*, 559 U.S. 1, 9 (2010). As noted by other court’s
20 in this district, predicate offenses are those listed in 18 U.S.C. § 1961(1). *Pacific*
21 *Recovery Solutions v. United Behavioral Health*, 481 F.Supp.3d 1011, 1027 (N.D.
22 Cal. 2020).

23 Nothing within the FAC comes close to meeting the pleading standard for a
24 RICO cause of action against Willoughby. There are no predicate offenses alleged to
25 have brought harm to Plaintiffs by any defendant. While Plaintiffs list alleged
26 offenses committed by other defendants in this action, Plaintiffs do not connect
27 these offenses to any loss suffered by Plaintiffs. Of the offenses named, not a single
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one is attributable to Willoughby. There are no allegations that Willoughby committed any offense. Plaintiffs have no claim under RICO against Willoughby

D. Delayed Discovery Does Not Apply

In the State of California, any action sounding in personal injury must be brought within two years. See California Code Civ. Proc., § 335.1. This limitation also applies to an action sounding in negligence. See California Code Civ. Proc., § 335.1. The limitations period for actions based on fraud is three years. See California Code of Civ. Proc., § 338. In order to invoke the delayed discovery exception to the statute of limitations, the plaintiff must specifically plead facts which show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. *Saliter v. Pierce Bros. Mortuaries*, 81 Cal.App.3d 292, 296 (1978)). Plaintiff cannot sit idly on his hands but must show that even with the exercise of reasonable diligence the facts could not have been discovered at an earlier date. *General Bedding Corp. v. Echevarria*, 947 F.2d 1395, 1397 (9th Cir.1991).

There is nothing in the FAC which provides factual information related to delayed discovery. There is nothing plead with any sort of specificity. Every action alleged to have been taken by Willoughby took place over three years prior to the Complaint being filed. Plaintiffs admit that Plaintiff Ju knew of any alleged deficiencies as to Tier One in October of 2018. No interaction between Willoughby and Plaintiff is alleged to have occurred after 2018. There is nothing to explain the nearly four-and-a-half-year gap. Furthermore, there is nothing to explain how the acts of other defendants in this matter which did not harm Plaintiffs in any way had anything to do with this action or Willoughby. Plaintiffs' conclusory allegations do not meet the requirements of specificity.

Finally, Plaintiffs sudden claim for relief based on COVID provides nothing in the way of authority or application. It is entirely unclear how COVID applies to any claims against Willoughby which would have started to run in 2018. Even

1 taking the alleged six-month tolling into account, Plaintiffs claims are still untimely
2 by over three years. This excuse by Plaintiffs should be ignored in its entirety. It
3 does not exist in the FAC. The claims against Willoughby must be dismissed.

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6 **E. There Are No Facts To Connect Willoughby To Any Harm**

7 To survive a motion to dismiss, a complaint must contain sufficient factual
8 matter, accepted as true, to state a claim to relief that is more than a sheer
9 possibility that a defendant has acted unlawfully. *Ashcroft v. Iqbal*, 556 U.S. 662,
10 678 (2009). Where a complaint pleads facts that are merely consistent with a
11 defendant's liability, it falls short of the line between possibility and plausibility. *Id.*
12 Further, the complaint must specify such facts as the times, dates, places, benefits
13 received, and other details of the alleged fraudulent activity. *Semegen*, 780 F.2d at
14 731; See also *Neubronner v. Milken*, 6 F.3d 666, 671–672 (9th Cir. 1993). Any action
15 sounding in fraud must be brought within three years. See California Code Civ.
16 Proc., § 338(d). To survive a motion to dismiss, a plaintiff must allege specific
17 conduct by each alleged defendant. See *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.
18 1989); see also *Rodriguez v. County of Los Angeles*, 891 F.3d 776, 798 (9th Cir.
19 2018).

20 Plaintiffs continue to confuse their conclusions with facts, such their bare
21 speculation as to Willoughby's intentions or goals in procuring a cannabis license.
22 The facts of the FAC are that Plaintiff Ju conspired with other individuals behind
23 Willoughby's back to acquire Willoughby's development agreement and cannabis
24 license. The FAC states that Plaintiff Ju was presented with a proposition by people
25 other than Willoughby, that Plaintiff was enticed by the proposition, and engaged in
26 substantial negotiations with those other people to procure Willoughby's license.
27 The FAC then demonstrates that Plaintiff Ju and those other individuals stopped
28 getting along resulting in their conspiracy falling apart. The FAC clearly alleges

1 that David Lee, Defendant Isaac Galvan, and Defendant Robert N. Tafoya made
2 representations to Plaintiff Ju. Willoughby is never alleged to have made a single
3 representation to Plaintiff Ju. Instead, it was Plaintiff's Ju's reliance on his own co-
4 conspirators, not Willoughby, that created the issues faced by Plaintiffs.

5 There are no factual details in the FAC to support any of the conclusory
6 allegations in any cause of action. There are no facts to connect Willoughby to the
7 deprivation of any right, and any right would be connected to cannabis thereby
8 falling within the holding in *Shulman v. Kaplan*. There are no facts demonstrating
9 a duty owed by Willoughby, any breach by Willoughby. There is nothing alleged to
10 have been stated by Willoughby to Plaintiffs or any communication between
11 Willoughby and Plaintiffs to support a fraud allegation. Plaintiffs are simply
12 attempting to harm Willoughby's reputation because of what other people allegedly
13 did. To make matters worse, Plaintiffs have not even provided facts supporting the
14 allegations that they were harmed by the actions of those other people. It makes no
15 sense. The continuously deficient pleading warrants dismissal.

16 IV. CONCLUSION

17 There is no need to drag this matter out any further. The FAC is defective.
18 Willoughby must be dismissed. Further litigation on these issues will only
19 necessitate a Rule 11 Motion and a request for sanctions. This need not take place
20 when Plaintiffs have already demonstrated that they cannot meet the basic
21 pleading requirements. Based on the foregoing, Mr. Willoughby respectfully
22 requests that the court dismiss the FAC without leave to amend.

23
24 Dated: August 18, 2023

LAW OFFICE OF J. BLACKNELL

25
26 Kellen J. Davis

27 Kellen Davis

28 Attorney for Anthony Willoughby, II

CERTIFICATE OF COMPLIANCE L.R. 11-6.1.

The undersigned, counsel of record for Defendant Anthony Willoughby II certifies that this brief contains 1,733 words, less than 7,000 words, which:

 x complies with the word limit of L.R. 11-6.1.

 complies with the word limit set by court order dated.

Dated: August 18, 2023

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