



Dell Inc. v. Kumar

2018 | Cited 0 times | W.D. Texas | August 3, 2018

IN THE
UNITED
STATES
DISTRICT
COURT FOR THE
WESTERN
DISTRICT OF
TEXAS 281g

AUG

-3

PH AUSTIN DIVISION

I DELL INC.,

Plaintiff,

CAUSE NO.: -vs-

A-16-CV-00641-SS RAJ

MISHRA, TECH

FIXING CENTER LLC,

SAMEER



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SHAIKH, MANISH DAS,

ABDUL

KANCHWALA, VISION BPO PVT. LTD., MS VOIP CONNECTS,

TUSHAR BOSE, PRO9 INFOSERVICES PVT. LTD.,

GLOBAL VALUE ADD INC.,

SUDHIR PAL, GURU

DORSALA,

WEBCONNECT LLC,

DREAMLAND BPO,

RIYAZ SHAIKH,

MOSHIN

SHAIKH, ONLINETECHSUPPORTS.NET LLC, ANURAG

GUPTA,

SURINDER KUMAR, GSVT

INFOTECH PVT. LTD.,

GAURAV

SHARMA, VIKAS TIWARI, MIND TREE

INFOTECH LLC,

MINDTREE

INFOTECH, PAVITER

SINGH,



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SIMRANJEET SINGH,

RAJINDER

SINGH, JASMINDER SINGH, HS

DIGITAL SOLUTIONS LLC, NK

DIGITAL SOLUTION,

MOHAMMAD AASIF, ASIF KHAN,

IFN.COM INC.,

Defendants.

ORDER BE IT

REMEMBERED on this day the Court

reviewed the file in the

above-styled case, and

specifically Defendant

IFN.COM Inc. d/b/a

TollFreeForwarding.com (IFN)'s Motion to Dismiss [#117], Plaintiff Dell Inc.

(Dell)'s

Response [#125] in

opposition, and IFN's Reply [#128] in support, as well as Dell's Motion to

Modify the

Scheduling Order

[#126]'. Having



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Dell indicates its motion to modify the scheduling order is

unopposed by many of the defendants. Mot. [#126] at 3. No opposition has been filed, and therefore the Court GRANTS Dell's motion as

unopposed. See Local Rule CV-7(e).

reviewed the

documents, the

governing law, and the file as a whole, the Court now enters the following

opinion and

orders.

Background Dell has sued 33

defendants in this lawsuit for their alleged

engagement in a

fraudulent scheme to deceive Dell

customers into

purchasing

"technical

support

services" by posing as legitimate and

authorized Dell

customer support

representatives. See Am.



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Compi. [#95 at

¶ 2. Dell alleges the

defendants

engaged in

unauthorized use of Dell

trademarks and service marks to convince

consumers their

Dell-branded

personal

computers are

infected with malware and viruses in order to sell them

unnecessary technical

support and security

software and services to "clean" their

computers. Id. at

¶¶ 3-6. Defendant IFN, doing business as

TollFreeForwarding.com, is a California

corporation with a principal place of business in Los

Angeles,

California. Id. at

¶ 41. Dell alleges IFN provides telephone



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forwarding

services i.e.,

forwarding calls to United States toll-free or local numbers overseas to

Indian non-IFN

defendants use to facilitate fraud on Dell

customers. Id. at ¶¶ 163-67.

On November 10, 2017, Dell notified IFN it was

receiving customer

complaints connected to a toll-free

numbers associated with one or more non-IFN

defendants. Id. at

¶ 168. Dell requested IFN cancel the accounts

associated with the toll-free

numbers. Id. at

¶ 168. IFN did not cancel the

accounts, and Dell

continues to receive customer

complaints

regarding the toll-free

numbers. Id. at

¶¶ 169-70. Dell served IFN with two



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subpoenas

requesting

additional information on the

accounts

associated with the alleged fraud. *Jd.* at

¶ 171.

According to Dell, IFN did not respond to Dell's

subpoenas or Dell's contact attempts about this matter. *Id.*

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On April 6,

2018, almost two

years after this lawsuit

commenced, Dell

amended its complaint for a fourth time to add IFN as a

defendant. Dell alleges IFN

knowingly

offers telephone

forwarding

services the

non-IFN

defendants with the intent to



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further the goals of alleged

fraudulent

scheme. Id. at

¶11 163-74. IFN moves to dismiss Dell's claims for lack of

personal

jurisdiction, or in the

alternative, for failure to state a claim. The motion is fully briefed and ripe for

consideration. Analysis I.

Rule

12(b)(2).Personal

Jurisdiction A.

Legal

Standard "Absent a federal statute that

provides for more

expansive

personal

jurisdiction, the personal

jurisdiction of a federal district

court is

coterminous with that of a court of general jurisdiction of the state in which the

district court sits."



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Submersible Sys., Inc. v.

Perforadora Cent., S.A. de C.V, 249 F.3d 413, 418 (5th Cir. 2001). To

determine whether a federal district court has personal

jurisdiction over a

nonresident

defendant, the court

considers first whether exercising

jurisdiction over the

defendant

comports with due process.

Religious Tech. Ctr. v. Liebreich, 339 F.3d 369, 373 (5th Cir. 2003). If the

requirements of due process are

satisfied, the court then

determines whether the exercise of

jurisdiction is

authorized by the

jurisdictional "long-arm" statute of the state in which the court sits. Id.

Because the Texas long-arm statute has been

interpreted as

extending to the limit of due

process, the two



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inquiries are the same for district courts in Texas. Id.; see also TEx. Civ. PRAC. & REM. CODE

§ 17.001.093. The Due

Process Clause requires a

nonresident

defendant be properly subject to the personal

jurisdiction of the court in which the

defendant is sued.

World-Wide

Volkswagen Corp. v.

Woodson, 444 U.S. 286, 291

(1980). The

Supreme Court has

articulated a

two-pronged test to

3

determine

whether a federal court may

properly

exercise

jurisdiction over a

nonresident defendant: (1) the



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nonresident must have

minimum

contacts with the forum state, and (2)

subjecting the

nonresident to

jurisdiction must be

consistent with

"traditional notions of fair play and

substantial

justice." *Int'l Shoe Co. v.*

Washington, 326 U.S. 310, 316 (1945); *Freudensprung v.*

Offshore Tech. Servs., Inc., 379 F.3d 327, 343 (5th Cir. 2004). A

defendant's

"minimum

contacts" may give rise to either general

personal

jurisdiction or

specific

personal

jurisdiction,

depending on the nature of the suit and the



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defendant's relationship to the forum state.

Freudensprung, 379 F.3d at 343. A court

exercises

general jurisdiction over a

defendant

having

"continuous and

systematic

contacts" with the forum, regardless of whether those

contacts are related to the

asserted cause of action. Id.

Specific jurisdiction, by contrast, is based on the

proposition "that 'the

commission of some single or occasional acts of the

[defendant] in a state' may

sometimes be enough to subject the

[defendant] to

jurisdiction in that State's

tribunals with respect to suits relating to that in-state

activity." Daimler AG v.

Bauman, 134 S. Ct. 746, 754 (2014) (quoting Int'l Shoe, 326 U.S. at 318). The plaintiff has the burden of



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making a prima facie case by

showing a defendant has sufficient

"minimum

contacts" with the forum state to justify the state's exercise of either specific or general jurisdiction.

Freudensprung, 379 F.3d at 343. If the plaintiff does so, the burden shifts to the defendant to show such an exercise offends due process

because it is not consistent with

traditional notions of fair play and

substantial justice. Id. Finally, when a court rules on a

12(b)(2) motion to dismiss for lack of personal

jurisdiction

without an

evidentiary hearing, it must accept the

non-moving party's

jurisdictional

allegations as true and resolve all factual disputes in its favor. Guidry v. US. Tobacco Co., 188 F.3d 619, 625 (5th Cir.

1999).

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B.



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Application Below the Court

addresses Dell's two bases for

personal

jurisdiction over IFN.² 1.

Specific

jurisdiction In its

complaint, Dell

asserts the Court has personal

jurisdiction over all

defendants because "they have

conducted business

activities in and directed to Texas and are

primary participants in tortious acts in and

directed to

Texas." See Am.

Compl. [#95] at

¶ 43. Dell clarifies in its

response to IFN's motion to dismiss that the Court has specific

jurisdiction because IFN assisted other

defendants in

defrauding Texas



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residents, caused

foreseeable injury in Texas, and

directed

incoming

telephone calls from Texas

residences to other

non-IFN defendants. See Resp. [#125] at 6-7.

Dell has failed to carry its burden of

establishing the Court has

specific

jurisdiction over IFN. The relevant inquiry is IFN's contacts with Texas.

Freudensprung, 379 F.3d at 343; see also

Walden v. Fiore, 571 U.S. 277, 289 (2014) (noting "it is the

defendant, not the plaintiff or third parties, who must create contacts with the forum State" for the purposes of

determining personal

jurisdiction). As noted above, Dell relies on IFN's

forwarding of calls from Texas residents to other

non-IFN

defendants in India.

These



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allegations, however, reflect

contact initiated by Texas

residents with

non-resident IFN. There are no

allegations IFN's conduct occurred in Texas, IFN travelled to or

conducted

activities Texas, or IFN itself

contacted Texas residents or

otherwise sent

anything to Texas. Put simply, there is no

evidence IFN had jurisdictionally relevant contacts with this state. Dell's

reference to injuries in Texas are irrelevant, as the "mere injury to a forum resident is not a

sufficient

connection to the forum" for the purposes of

establishing

personal

jurisdiction.

Walden, 571 U.S. at 289.

2 DelI does not assert general

jurisdiction in this case. See Resp. [#125] at 6.

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In sum, Dali has not shown IFN

purposely

directed

activities toward Texas or

purposely availed itself of the

privileges of

conducting

activities here to

establish

specific

personal jurisdiction.

2.

RICO

jurisdiction Dell also

contends the Court has

jurisdiction over IFN as a

co-conspirator under the Racketeer

Influenced and

Corrupt

Organizations Act (RICO).

See Resp. [#125] at 7-8. Specifically, Dell argues



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RICO permits

nationwide

service of process for each RICO co- conspirator once personal

jurisdiction over one RICO

defendant has been

established in Texas. Id.

Absent

minimum

contacts with a

particular state, a court may

nonetheless

exercise personal

jurisdiction in cases

brought under federal statutes

providing

nationwide service of process. See *Busch v.*

Buchman, Buchman & O'Brien, Law Firm, 11 F.3d 1255, 1258 (5th Cir. 1994). Section

1965(b) of RICO recites: In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be

summoned, and process for that

purpose may be served in any judicial district of the United States by the marshal thereof. 18 U.S.C.A.



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§ 1965.

"Although the Fifth Circuit has not expressly decided this issue, many courts within this Circuit and elsewhere have concluded that RICO provides for nationwide service of process."

Harvest Nat. Res., Inc. v. Garcia, CV

H-18-483, 2018 WL

2183968, at *3 (S.D. Tex. May 11, 2018)

(quoting Dimas v.

Vanderbilt Mortg. & Fin., Inc., CIV. A. C-10-68, 2010 WL

1875803, at *4

(S.D. Tex. May 6, 2010)). "And, when a federal court is attempting to exercise personal

jurisdiction over a defendant in a suit based upon a federal statute

providing for nationwide service of process, the relevant inquiry is

whether the

defendant has had

minimum contacts with the United States." Busch, 11 F.3d at 1258. A plaintiff relying on RICO as the

basis of

personal

jurisdiction over a



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non-resident

defendant must

establish

personal

jurisdiction over at least one other RICO

defendant. See Caidwell v.

Palmetto State Say. Bank of S. C., 811 F.2d 916, 918 (5th Cir. 1987) (stating

nationwide service of

process under

§ 1965

"requires that a defendant be

conducting

business in the

forum"). Here, Dell has

established personal

jurisdiction over IFN under RICO.

Several defendants and alleged RICO

co-conspirators reside in Texas. See Am.

Compi. [#95] at

¶¶ 18- 21. As a California

corporation, IFN has



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minimum

contacts with the United States. See id. at ¶ 41

("Defendant

IFN.com Inc., d/b/a

TollFreeForwarding.com is a

California

corporation with a principal place of business at 5901 West

Century

Boulevard, Ninth Floor, Los

Angeles, California."). Thus, Dell's RICO claims provide personal

jurisdiction over IFN. Because Dell's claims arise from the same nucleus of

operative facts, the Court exercises pendent personal

jurisdiction over Dell's

non-RICO claims against IFN. See

Rolls-Royce Corp. v. Heros, Inc., 576 F. Supp. 2d 765, 783 (N.D. Tex. 2008)

(explaining pendent personal jurisdiction "exists when a court

possesses personal

jurisdiction over a defendant for one claim, lacks an independent basis for personal

jurisdiction over the

defendant for another claim that arises out of the same nucleus of operative fact"). II.

Rule



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12(b)(6) Failure to State a Claim A. Legal Standard

Federal Rule of Civil Procedure 8(a)(2) requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. Civ. P. 8(a)(2). A motion under Federal Rule of Civil Procedure 12(b)(6) asks a court to dismiss a complaint for "failure to state a claim upon which relief can be

granted." FED. R. Civ. P. 12(b)(6). To survive a motion to dismiss, the plaintiff must plead sufficient facts to state a claim for relief that is facially

plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

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"A claim has facial

plausibility when the

plaintiff pleads factual content that allows the court to draw the

reasonable

inference that the

defendant is liable for the

misconduct

alleged." *Iqbal*, 556 U.S. at 678.

Although a

plaintiff's factual

allegations need not

establish the

defendant is



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probably liable, they must establish more than a "sheer possibility" a

defendant has acted

unlawfully. Id.

Determining plausibility is a

"context-specific task," and must be

performed in light of a court's

"judicial experience and

common sense." Id. at 679. In deciding a motion to dismiss under Rule

12(b)(6), a court

generally accepts as true all factual

allegations

contained within the

complaint.

Leatherman v.

Tarrant

Narcotics

Intelligence & Coordination Unit, 507 U.S. 163, 164 (1993).

However, a court is not bound to

accept legal conclusions

couched as factual



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allegations. Papasan v. Allain, 478 U.S. 265, 286

(1986). Although all

reasonable

inferences will be

resolved in favor of the

plaintiff, the plaintiff must plead

"specific facts, not mere conclusory

allegations." Tuchman v. DSC Commc 'ns Corp., 14 F.3d 1061, 1067 (5th Cir. 1994). In

deciding a motion to dismiss, courts "must consider" the

complaint, as well as other sources such as

documents

incorporated into the

complaint by reference and matters of which a court may take judicial notice. Tellabs, Inc. v. Makor
issues & Rights, Ltd., 551 U.S. 308, 322 (2007). B.

Application IFN moves to dismiss Dell's claim under Rule 12(b)(6) for failing to state a valid claim for
relief. See Mot.

Dismiss [#1 17] at 1 1-22. As

explained below, the Court

concludes Dell has failed to state a plausible RICO claim against IFN.

1.

Dell's RICO claim Dell alleges all

defendants have and continue to conduct



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fraudulent affairs as an illegal enterprise in violation of 18 U.S.C.

§ 1961 et seq. Am. Compi. [#95] at

¶ 219.

Specifically, Dell asserts

violations of 18 U.S.C.

1962(c) and (d) based on the predicate acts of wire fraud and trafficking in counterfeit services. Id. at

¶IJ 219-20; Resp. [#125] at 13.

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The relevant

subsections of the RICO

statute recite: (c) It shall be unlawful for any person

employed by or

associated with any enterprise

engaged in, or the

activities of which affect,

interstate or foreign commerce, to conduct or

participate, directly or

indirectly, in the conduct of such enterprise's

affairs through a pattern of

racketeering activity or



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collection of unlawful debt. (d) It shall be unlawful for any person to conspire to violate any of the provisions of

subsection (a), (b), or (c) of this section. 18

U.S.C.A.

§ 1962.

Regardless of the

subsection asserted, RICO claims

require (1) a person who engages in (2) a pattern of

racketeering activity, (3)

connected to the

acquisition, establishment,

conduct, or control of an

enterprise. In re Burzynski, 989 F.2d 733, 741 (5th Cir. 1993).

IFN

contends Dell has failed to

demonstrate IFN was part of an

"enterprise" and engaged in

"racketeering

activity." See Mot. Dismiss [#1 17] at 18-22. a.

Enterprise RICO defines

"enterprise" to include "any



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individual,
partnership,
corporation, association, or other legal entity, and any union or group of
individuals
associated in fact although not a legal entity." 18

U.S.C.A.

§ 196 1(4). If the alleged enterprise is an
association- in-fact, the plaintiff must show
evidence of an ongoing
organization, formal or informal, and by evidence that the various
associates in the
enterprise function as a
continuing unit with a common purpose. Boyle v. United States, 556 U.S. 938, 944-45 (2009). The Fifth
Circuit also requires a
plaintiff establish the
association-in-fact
enterprise (1) has an
existence separate and apart from the pattern of
racketeering, (2) is an
ongoing
organization and (3) has



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members that function as a continuing unit as shown by a hierarchical or consensual decision making structure. *Crowe v. Henry*, 43 F.3d 198, 205 (5th Cir. 1995).

Dell has failed to plead a plausible RICO enterprise involving IFN. To begin, Dell fails to distinguish the pattern of racketeering from the association-in-fact enterprise. For example, as discussed above, Dell alleges defendants engaged in a pattern of racketeering premised on wire fraud and



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trafficking in

counterfeit

services. See Resp. [#125] at 14

("Dell has pled the RICO predicate acts of wire fraud and

trafficking in

counterfeit

services"). Dell also

characterizes the association-in-fact

enterprise as having the same

purpose: "the

purpose of carrying out a systematic and

ongoing wire fraud

through misuse of the DELL Marks and

impersonating Dell." Resp. [#125] at 17; see also Am.

Compi. [#95] at

¶¶ 2-7, 65-81.

Essentially, Dell has failed to establish an

enterprise that "has an

existence

separate and apart from the pattern of

racketeering." Crowe, 43 F.3d at 205; see also Elliott v.



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Foufas, 867 F.2d 877, 881 (5th

Cir.1989)

("plaintiff must plead

specific facts which

establish that the

association exists for

purposes other than simply to commit the

predicate acts") More of an issue,

however, is Dell's

failure to

sufficiently tie IFN to the alleged enterprise. An

association-in-fact

enterprise "need not have a

hierarchical

structure or a chain of command;

decisions may be made on an ad hoc basis and by any number of

methodsby majority vote,

consensus, a show of

strength, etc." Boyle, 556 U.S. at 948 (internal

quotations and

citations



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omitted).

However, the

members of an

association-in-fact

enterprise must

function as a

continuing unit as shown by a

hierarchical or

consensual decision making

structure. Crowe, 43 F.3d at 205. After all,

§ 1962(c) requires a

defendant "to

conduct or

participate,

directly or indirectly, in the

conduct of such

enterprise's affairs

through a pattern of

racketeering

activity." 18

U.S.C.A.



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§ 1962. In order to

"participate, directly or

indirectly, in the conduct of such enterprise's affairs,'

§ 1962(c), one must

participate in the

operation or

management of the

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enterprise

itself." *Reves v. Ernst & Young*, 507 U.S. 170, 179

(1993). In other words, "some part in

directing the

enterprise's

affairs is

required." *Id.* Dell alleges IFN

provided

telephone

forwarding

services to one or more other

non-IFN defendants that were used in the

alleged



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fraudulent

scheme. See

Compl. [#95] at

¶¶ 82, 127, 165-67. Dell

notified IFN of the

toll-free

numbers used by other

defendants,

requested the accounts be

terminated, and

attempted

(without

success) to obtain

information on the

accounts from IFN. Id. at

¶¶ 11 168-71.

Based on these facts, Dell alleges "on

information and belief" IFN is acting with the intent to further the goals of the

enterprise. See id.

¶¶ 172-74. Dell has failed to show IFN was

involved in the



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operation or

management of the

alleged enterprise.

Providing goods or

services to an

enterprise does not give rise to liability under RICO. See *Reves*, 507 U.S. at 186

(affirming

dismissal of RICO claim against

accounting firm providing

services to

enterprise); see also *Allstate Ins. Co. v.*

Benhamou, 190 F. Supp. 3d 631, 655 (S.D. Tex. 2016)

("[S]imply

providing goods or services that

ultimately

benefit the enterprise will not subject one to

liability.");

Compass Bank v.

Villarreal, CIV.A. L-10-8, 2011 WL

1740270, at *13

(S.D. Tex. May 5, 2011)



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("Having a business relationship with a RICO enterprise does not constitute operation and management of the enterprise's affairs necessary for RICO liability."). The same is true even if the services are provided with knowledge or willful disregard of the enterprise's racketeering activities. See Gonzalez v. Bank of Am., CV H-09- 2946, 2011 WL 13261985, at *7 (S.D. Tex. Feb. 20, 2011), aff'd as modified sub nom. Gonzalez v. Bank of Am. Ins. Services, inc., 454 F. App'x 295 (5th Cir. 2011) (finding allegations defendant acted "with the knowledge of or willful disregard" for the other



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defendants' supposed criminal

activity to be

insufficient

participation in the alleged RICO

enterprise); see also *Amsterdam*

Tobacco Inc. v. Philip

Morris Inc., 107 F. Supp. 2d 210, 218

(S.D.N.Y. 2000)

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("Providing

important services to a

racketeering

enterprise is not the same as

directing the affairs of an

enterprise."

(quoting *Dep 't of Econ. Dev. v. Arthur*

Andersen & Co.

(U.S.A.), 924 F. Supp. 449, 466

(S.D.N.Y. 1996)).

Dell's factual

allegations fail to show IFN



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participated in the operation or

management of the

enterprise. b.

Racketeering

activity "Racketeering

activity" is defined as "any act or threat

involving" certain

enumerated state law

crimes or any "act which is

indictable" under

specified

federal statutes and certain federal

offenses. 18

U.S.C.A.

§ 1961(1); Dennis v. Gen. Imaging, Inc., 918 F.2d 496, 511 (5th Cir.

1990). A pattern of

racketeering

requires two or more

predicate

criminal acts that are related and

"amount to or pose a threat of



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continued

criminal

activity." Word of Faith World

Outreach Ctr.

Church, Inc. v. Sawyer, 90 F.3d 118, 122 (5th Cir. 1996)

(quotations and

citations

omitted). Dell has

sufficiently pled the existence of a pattern of

racketeering

activity. As noted above, Dell

alleges a pattern of

racketeering

premised on wire fraud under 18 U.S.C.

§ 1343 and trafficking in

counterfeit

services under 18 U.s.c.

§ 2320. Am. Compi. [#95] at

¶¶ 219-20. Sections 1343 and 2320 are

explicitly listed in the

"racketeering



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activity"

definition. See 18 U.S.C.A.

§ 1961(1). Dell recites four

specific

allegations of wire fraud and

trafficking of counterfeit

services. See *id.* at

¶¶ 82, 123.

Finally, Dell alleges the

wrongful actions are

ongoing as the

telephone

accounts remain active and Dell

continues to

receive

customer

complaints regarding

defendants'

actions. *Id.* at

¶ 169.

Accordingly, Dell has



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alleged a
pattern of racketeering with
predicate acts that
constitute and
threaten
continued
long-term
criminal activity.

As with the section above,
however, the Court finds the
allegations
against IFN to be tenuous.

Dell's
complaint
includes
detailed
factual
allegations of the overall
"fraudulent

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scheme," but does little to spell out IFN's specific role in the



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alleged scheme and

conscious behavior to confer RICO

liability. The Court

struggles to

understand how

providing

telephone services

constitutes

racketeering

activity

actionable under RICO. Summarized, Dell has failed to plead a

plausible RICO claim under

§ 1962(c) against IFN. Dell's

§ 1962(d) claim against IFN fails for similar reasons. See

Benhamou, 190 F. Supp. 3d at 663

(dismissing

§ 1962(d) claim

against defendant in light of

plaintiff's failure to plead a plausible §

1962(c) claim against the same

defendant). The Court does not



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consider the

remaining claims against IFN

because Dell's

RICO claim is a

dispositive issue.

Without RICO claims against IFN, Dell cannot

establish a basis for personal

jurisdiction over IFN. See

Rolls-Royce Corp. v. Heros, Inc., 576 F. Supp. 2d 765, 773 (N.D. Tex. 2008) ("If

dismissal of

RollsRoyce's RICO claims. . . is proper, then

RollsRoyce cannot establish personal

jurisdiction over

defendants under 18 U.S.C.

§ 1965"). Dell

requests leave to amend its

complaint

should the Court find any claim

insufficiently pleaded. See Resp. [#125] at 19.

Although Dell has

amended its



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complaint four times, this is Dell's first complaint with claims against IFN. IFN has not shown amendment would be futile. The Court therefore grants Dell leave to amend its complaint. The Court warns, however, any amendment of the complaint may require modification of the Scheduling Order to accommodate any additional discovery and/or briefing. The Court encourages Dell to review other claims against IFN before filing an amended complaint as no further amendments to the complaint will be permitted.

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Conclusion Accordingly,



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IT IS THEREFORE ORDERED that Plaintiff Dell's Motion to Modify the Scheduling Order [#126] is GRANTED, making Dell's expert disclosures due October 15, 2018, GVA expert disclosures due November 13, 2018, close of discovery November 29, 2018, and the deadline for dispositive motions December 27, 2018;

IT IS FURTHER ORDERED that Plaintiff Dell has twenty-one (21) days to replead its claims against IFN under the Federal Rules of Civil Procedure or IFN will be dismissed from this case for lack of personal jurisdiction; and

IT IS FINALLY ORDERED that Defendant IFN's Motion to Dismiss for Lack of Personal Jurisdiction [#117] is DISMISSED as moot without prejudice for refile. SIGNED this the day of August 2018.

SAM SPARKS SENIOR UNITED STATES DISTRICT JUDGE

