No. 20-____

IN THE
SUPREME COURT OF THE UNITED STATES

LEIGH ANN YOUNGBLOOD-WEST,
Petitioner,

v.

AFLAC INCORPORATED, DANIEL P. AMOS, WILLIAM LAFAYETTE AMOS, JR., CECIL CHEVES, and SAMUEL W. OATES,
Respondents.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The District Court below enforced private hush agreements with a permanent injunction sealing Petitioner Leigh Ann Youngblood-West's civil RICO complaint and restraining her from revealing evidence of a long-running cover-up by Aflac Incorporated and its CEO Dan Amos of multiple assaults committed by Aflac's then-Chief Medical Director Dr. Amos upon his sedated patients, Aflac's employees or their spouses like Youngblood-West. The Eleventh Circuit upheld the injunction without considering the public's First Amendment interest in hearing her story with its significant public implications, in disregard of the balancing test articulated by this Court in *Newton v. Rumery*, 480 U.S. 386 (l987), in conflict with the Fourth Circuit's contemporaneous opinion in *Overbey v. Mayor & City Council of Baltimore*, No. 17-2444 (4th Cir. Jul. 11, 2019), and out of step with other Circuits that have applied *Rumery* to invalidate contractual waivers of constitutional rights. The Eleventh Circuit also upheld the District Judge's refusal to recuse himself despite his spouse's being an intended beneficiary of the hush agreement and a then-member of the law firm that had executed the cover-up; the Judge's own familial and "Fish House Gang" connections to each of the five RICO defendants; his adherence to the long-abolished "duty to sit"; and his Star Chamber conduct of the proceedings.

1. Whether the injunction enforcing the hush agreements and sealing the evidence of Aflac's and Dan Amos' cover-up of Dr. Amos' serial assaults upon women, upheld by the Eleventh Circuit without the balancing test required by *Rumery*, violates the First Amendment?

2. Whether the Eleventh Circuit's affirmation of the District Judge's refusal to recuse himself despite his familial and social ties to each of the five defendants and his spouse's interests in the subject matter has violated the Due Process Clause's guarantee of "an impartial and disinterested tribunal," *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980), and/or "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power" within the meaning of Rule 10(a) of the Court's Rules?

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The underlying appeal was taken pursuant to 28 U.S.C. § 1291 from the judgment of the U.S. District Court for the Middle District of Georgia entered on March 27, 2019, in *Youngblood-West v. Aflac Inc.*, No. 4:18-cv-00083 (the "RICO Action"), consolidated with *Amos v. Youngblood-West*, No. 4:18-cv-00068 (the "Breach Action"). The District Court had original jurisdiction over federal claims in the RICO Action pursuant to 28 U.S.C. § 1331; over related state law claims pursuant to 28 U.S.C. § 1367(a); and over the Breach Action pursuant to 28 U.S.C. § 1332.

The U.S. Court of Appeals for the Eleventh Circuit denied Petitioner's appeal on December 12, 2019, in an opinion reproduced in the Appendix to this Petition as Appx. 1, and denied her timely petition for rehearing on January 21, 2020, Appx. 2. The underlying opinions of the District Court addressing issues presented in this Petition are reproduced as Appendices 3-8.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). This Petition is timely under the Court's order issued on March 19, 2020, Order List 589 U.S.

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment V, the Due Process Clause:

No person shall be . . . deprived of life, liberty, or property, without due process of law . . . .

STATEMENT OF THE CASE

This case is about a long-running cover-up by Aflac's founders, top executives, Board members, and outside counsel of the serial assaults committed with impunity by Aflac's then-Chief Medical Director, Senior Vice President and Board member William Lafayette Amos, Jr., upon his sedated patients. Youngblood-West has alleged, and supported her allegations with evidence, that the RICO defendants facilitated Dr. Amos' flight from Georgia, destroyed physical evidence of his assaults, silenced his multiple victims with fraudulent and coerced hush agreements, repeatedly threatened Youngblood-West with criminal prosecution and incarceration to keep her quiet; and now seek to perpetuate her silence with a permanent injunction issued by the Judge with an apparent bias against her, in the proceedings with restricted public access and Petitioner's complaint, affidavits, evidence and legal briefs sealed or heavily redacted.

A permanent injunction is a "true restraint on future speech," *Alexander v. United States*, 509 U.S. 544, 550 (1993), to which the First Amendment erects a

"virtually insurmountable barrier," *Miami Herald Publ. Co. v. Tornillo*, 418 U.S. 241, 259 (1974) (White, J., concurring). The Due Process Clause of the Fifth Amendment guarantees an impartial federal tribunal that "must satisfy the appearance of justice," *Offutt v. United States*, 348 U.S. 11, 14 (1954), while the public's right of access to judicial documents guarantees that "federal courts, although independent – indeed, particularly because they are independent – . . . have a measure of accountability . . . for the public to have confidence in the administration of justice." *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995). The Star Chamber proceedings below have failed to satisfy the appearance of justice, and the resulting injunction, to surmount the First Amendment's barrier.

1. Proceedings below

These proceedings commenced around midnight on Sunday, April 15, 2018, when the Honorable Clay D. Land, Chief Judge of the U.S. District Court for the Middle District of Georgia, Columbus Division, after a brief telephonic conference conducted from his home with counsel for Dr. Amos and Youngblood-West, granted Dr. Amos' application and issued a TRO restraining Youngblood-West from publicly filing or commenting on her draft RICO complaint until a preliminary injunction hearing, which the Judge scheduled for the following Monday morning. In his concurrently filed Breach Action, Dr. Amos sought to enforce his alleged 1992 and 1993 hush agreements with Youngblood-West, claiming that she had breached them by discussing her potential action with counsel in 2018.

Following a telephonic conference with counsel on April 16, 2018, the Court issued a preliminary injunction requiring Youngblood-West to file her intended civil

RICO complaint under seal and prohibiting her from publicly disclosing or discussing the subject matter of her complaint, of Dr. Amos' Breach Action, also sealed, and of any other document required to be sealed by the Court. Appx. 3 p. 22a.

On May 1, 2018, Petitioner filed her RICO complaint under seal, and amended it on July 9, 2018. All defendants moved to dismiss under Rule 12(b)(6), and Aflac and Dan Amos also moved for Rule 11 sanctions against Petitioner's counsel, alleging that the complaint was frivolous.

On June 21, 2018, the Court granted Aflac's and Dan Amos' written motion filed three days earlier to seal the record in the RICO Action, depriving Petitioner of her right to respond within the 21-day period provided by the Local Rules.

On July 18, 2018, the Court granted defendants' motion to stay discovery in the RICO Action.

On August 8, 2018, the Court publicly issued an order to show cause whether the case should remain sealed, whereupon defendants made *ex parte* contacts with the chambers requesting that the order itself be sealed, which it then was, without prior notice to Petitioner. Appx. 4 p. 66a.

On September 7, 2018, the Court issued a sealing/redaction protocol for the consolidated RICO-Breach Action, dismissing Petitioner's request to unseal on First Amendment and other grounds as "a rant." Appx. 3 p. 18a.

On September 21, 2018, Petitioner moved to recuse the District Judge, with an 18-page affidavit filed pursuant to 28 U.S.C. § 144, which the Judge denied on October 5, 2018. Appx. 4.

On October 22, 2018 the Court granted defendants' motions to dismiss the RICO Action as implausible, time-barred and/or released by the hush agreements. Appx. 5.

On November 13, 2018, the Court denied Youngblood-West's motion for leave to file her whistleblower complaint with the U.S. Securities & Exchange Commission (the "SEC"). Appx. 6.

On November 16, 2018, the Court denied Youngblood-West's motion to dissolve the preliminary injunction, Appx. 7, which she timely appealed.

On November 30, 2018, Dr. Amos moved for summary judgment on his Breach Action claims, seeking a permanent injunction to enforce the hush agreements. On December 19, 2018, the Court denied Youngblood-West's request made pursuant to Rule 56(d) to defer or deny the motion and allow Petitioner time to take discovery (even though "[t]he law in [the Eleventh] circuit is clear: the party opposing a motion for summary judgment should be permitted an adequate opportunity to complete discovery prior to consideration of the motion," *Jones v. City of Columbus*, 120 F. 3d 248, 253 (11th Cir. 1997)).

On March 27, 2019, the Court granted Dr. Amos' summary judgment motion, issued the permanent injunction, and entered final judgment pursuant to Rule 54(b), Appx. 8, which Youngblood-West timely appealed, mooting her prior appeal.

The Eleventh Circuit affirmed in an unpublished opinion issued on December 12, 2019. Appx. 1. On December 16, 2019, Dr. Amos moved the Eleventh Court to "immediately seal its December 12 opinion," claiming that "a dozen or so references

in the unpublished decision . . . reveal information subject to the District Court's injunction." Dr. Amos made a similar motion before the District Court, which the Court granted and sealed the Eleventh Circuit's public opinion on its docket.

On January 2, 2020, Youngblood-West filed a petition for rehearing of the Eleventh Circuit's opinion. On January 6, 2020, Dr. Amos filed a motion with the District Court to hold Youngblood-West in contempt for quoting from the Eleventh Circuit's public opinion in her rehearing petition and in her opposition to his sealing motion, seeking "coercive relief [including incarceration] as well as a compensatory fine, an award of attorneys' fees, or both," and filed a parallel motion for contempt before the Eleventh Circuit on January 9, 2020.

On January 16, 2020, the Eleventh Circuit denied Dr. Amos' motion to seal its opinion. On January 21, 2020, the Eleventh Circuit denied Youngblood-West's rehearing petition. On February 5, 2020, the Eleventh Circuit denied Dr. Amos' contempt motion. On February 21, 2020, Aflac and Dan Amos withdrew their Rule 11 motion.

2. Aflac's and Dan Amos' 33-year cover-up of Dr. Amos' serial assaults

What defendants do not want the world to hear is Youngblood-West's story how Aflac's then-Chief Medical Director, Senior Vice President, Board member and a member of its founding family Dr. Amos sedated and assaulted her in his private OB/GYN office in Columbus in 1984, and similarly sedated and assaulted multiple other patients, Aflac's employees or their spouses like Youngblood-West, videotaping his assaults – but has managed to escape any prosecution for his crimes under the

cover provided by Aflac and two generations of its CEOs for the last 33 years and counting.

What defendants do not want the world to see is Youngblood-West's evidence of the alleged Aflac RICO Enterprise, including (a) a 50-page transcript of Dr. Amos' 2016 confession to his serial assaults and his revelation of the knowledge and cover-up of those assaults by Aflac, its successive CEOs John and Dan Amos, and outside counsel; (b) Youngblood-West's affidavits and documentary evidence filed in support of her 70-page RICO complaint, including evidence of her reporting, in vain, of Dr. Amos' 2016 revelations to the local FBI office in Columbus; (c) the 1992 hush payment made by someone other than Dr. Amos, with Aflac and Dan Amos being the only plausible candidates, and copies of the secret 1992 and 1993 hush agreements; (d) the March and April 2018 written threats of criminal prosecution made by Aflac's and Dan Amos' counsel to prevent Youngblood-West from pursuing her RICO Action; and (e) the identities of seven other victims of Dr. Amos' assaults known to Youngblood-West. Petitioner had diligently and painstakingly collected this evidence prior to filing her action, and obtained nothing further since its commencement because the Court had not allowed her any discovery.

Defendants have gone to great lengths to keep evidence of the assaults and the hush agreements concealed and witnesses silenced. In 1987, defendants facilitated Dr. Amos' flight from Georgia and destroyed incriminating evidence. In 1989, Aflac forced Petitioner's late husband Scott Youngblood to resign after a stellar and loyal 13-year career as Aflac's corporate pilot for John Amos following a distinguished

service as a U.S. Special Forces Captain (Green Berets), awarded Purple Heart, Bronze Star and The Air Medal after two tours of duty in Vietnam.

In 1992, defendant Cheves, a partner at the Columbus law firm of Page, Scrantom, Harris & Chapman, P.C. ("Page Scrantom"), regular outside counsel to Aflac, orchestrated seven separate settlements with Dr. Amos' known victims and their husbands, including the Youngbloods, on behalf of the absent Dr. Amos, Cheves' brother-in-law. Immediately following that settlement, Page Scrantom sued Youngblood-West, laying claims on the settlement payment, threatening her with incarceration, and extracting the 1993 hush agreement with its expanded list of beneficiaries including Page Scrantom and all of its shareholders and employees, with the Judge's spouse among them.

On September 30, 2016, during a personal meeting with Youngblood-West, Dr. Amos admitted his serial assaults, revealed that he had been protected by his Aflac-Amos friends and relations since 1987, and warned her to "be careful" about revealing anything traceable back to him or his family. Appx. 1 p. 5a.

In the March 23, 2018 letter sent in response to Petitioner's pre-suit demand, Aflac's and Dan Amos' counsel threatened Youngblood-West and her counsel with criminal prosecution to intimidate them into foregoing this action, and repeated that threat on April 15, 2018 (the same Sunday when Dr. Amos sought, and obtained, the

midnight TRO), with no legal and factual basis for their threats, which were made in clear violation of the applicable state rules of professional conduct.[1]

In sum, the Aflac RICO Enterprise is as alive and well today as it was 33 years ago. The Enterprise has allowed Dr. Amos to commit his heinous assaults with complete impunity, to keep his medical licenses for twenty years after his flight from Georgia, and to enjoy a scot-free life of luxury on Amelia Island, Florida, collecting Ferraris. The Enterprise has allowed Aflac to maintain its public image as the "world's most ethical company," and Dan Amos to remain at its helm since 1990 with an "impeccable record and reputation for honest and ethical conduct in both professional and personal activities," according to Aflac's 2017 Proxy Statement – all false, according to Youngblood-West's sealed RICO case.

3. The District Judge's apparent bias towards defendants

The District Judge's spouse has an interest in the Court's enforcement of the challenged 1993 hush agreement because she is among its beneficiaries-releasees. She also has a reputational interest in avoiding public disclosure of Page Scrantom's role in executing the cover-up of Dr. Amos' assaults because she was a member of the law firm at the time.

The Judge himself is a relative of Donald Land, Jr., Aflac's senior associate counsel (albeit "more stranger than a 'kissing cousin,'" in the Judge's words. Appx. 4

[1] Rule 3.4(h) of the Georgia Rules of Professional Conduct provides: "A lawyer shall not . . . present, participate in presenting or threaten to present criminal charges solely to obtain an advantage in a civil matter. The maximum penalty for a violation of this Rule is disbarment."

p. 60a). Donald Land, Jr., is not just an in-house counsel at Aflac but he is also a grandson of Aflac's co-founder and first CEO John Amos, which makes him and the Judge related to John Amos' nephews defendants Dan Amos and Dr. Amos (as well as to Dr. Amos' brother-in-law defendant Cheves). The Judge has nowhere acknowledged, let alone addressed, his connections to the Amos family defendants.[2]

The Judge also confirmed that he was a member, along with defendants Dan Amos, Cheves and Oates, of the "Fish House Gang" – an exclusive social club of Georgia's power elite established by John Amos and the District Judge's great-uncle, the late Judge John H. Land – and regularly attended its coveted invitation-only dinners of fried catfish, a local delicacy giving name to the moniker.[3]

Also apparent from the record is the Judge's hostility towards Petitioner and her counsel, whom the Judge had singled out as targets for gratuitous *ad hominem* invectives that pepper his rulings. Thus, the Judge attributed Youngblood-West's recusal motion to her "frustration," "anger," and "disappointment," and accused her of "[l]ashing out with reckless and frivolous accusations" because "it is human nature

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[2] The family and business ties between the Land and the Amos families go back decades: "Aflac, a company based in Columbus, Georgia, was established in 1955 by John Amos for the purpose of selling various lines of insurance. In 1978, AFLAC entered into an agreement with Underwriters South, Inc., a company owned by Mr. and Mrs. Donald Land, the son-in-law and daughter of Amos." *Southeastern Underwriters v. Aflac*, 210 Ga. App. 444, 445 (Ga. Ct. App. 1993). Donald Land, Jr., is their son.

[3] Unlike the Fish House Gang members (such as the Judge and defendants), outside independent observers have described it in local media in such terms as a "secretive network of politicians, lawyers and businessmen," "powerful ad hoc group," "singular opportunity to network," "shadowy association," "private freemasonry," and "behind-the-scene leadership," as cited in Youngblood-West's Section 144 affidavit.

to blame others when we do not get what we want" (Appx. 4 p. 68a) – even though the Judge had not yet ruled against her on any of the dispositive motions. (*id.* p. 54a) ("The Court must decide the motion to recuse before deciding the motions to dismiss."). Nor has the Judge ever had a chance to observe Youngblood-West's demeanor, or any other basis to conclude that she, an experienced ER nurse, would be prone to lashing out in anger and frustration under pressure.

In another example, the Judge labelled Petitioner's threshold argument in opposition to Dr. Amos' summary judgment motion – that the hush agreements do not constitute fully formed contracts as a matter of contract law because they lack the second party (promisee) required for any contract to be formed – as "border[ing] on violating Rule 11," and her other arguments as "the product of creative brain-storming sessions unrestrained by Rule 11." Appx. 8 p. 147a. Yet, the Court's own reasoning – "because the agreements identify Dr. Amos as a released party, they are not invalid for lack of a counterparty" (Appx. 5 p. 105a) – is contrary to hornbook law that third-party beneficiaries such as Dr. Amos and other releasees are neither necessary nor sufficient for contract formation.

REASONS FOR GRANTING THE PETITION

I. The injunction is an unconstitutional prior restraint on speech.

a. The injunction is a "true restraint on future speech."

A permanent injunction is a "classic example" of a "true restraint on future speech," *Alexander*, 509 U.S. at 550, which is "the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 559 (1976).

The Eleventh Circuit's threshold ruling that "[t]he enforcement by the district court of Youngblood-West's obligations in those private agreements did not constitute state action" (Appx. 1 p. 13a), is erroneous because the injunction extends far beyond the scope of the private hush agreements that serve as its sole basis. The injunction prohibits Youngblood-West from publicly disclosing or discussing the subject matter of her RICO complaint, which centers not on Dr. Amos' assaults but on their subsequent cover-up by Aflac and Dan Amos. By contrast, the hush agreements do not mention Aflac or Dan Amos, and do not cover their concealment at the heart of the RICO Action because Youngblood-West had had no inkling of their behind-the-scene involvement until Dr. Amos' revelations in 2016, as she alleged in her complaint and attested to in her affidavits.

Furthermore, state action would be present even if the injunction merely enforced the hush agreements as written, without exceeding their scope, because the underlying agreements themselves are invalid as a matter of state contract law and void on public policy grounds.

The hush agreements are invalid, first and foremost, because they fail the threshold requirement of having at least two parties to form a "contract," which "the Georgia Code defines as 'an agreement between two or more parties for the doing or not doing of some specified thing.'" *Coleman v. H2S Holdings, LLC*, 230 F. Supp. 3d 1313, 1319 (N.D. Ga. 2017) (citing O.C.G.A. § 13-1-1). Here, the Youngbloods are the only party appearing on the face of the hush agreements, and no promisee: both hush

agreements provide that the undersigned Youngbloods. for value received, have agreed to release a number of identified persons and entities, including Dr. Amos and Page Scrantom's shareholders and employees, from liability and to keep the hush agreements and their subject matter confidential – but there is nobody identified on the other side of the Youngbloods' "agreement."

The Courts below, however, ruled that the hush agreements constituted validly formed contracts because they had identified the Youngbloods as the promisor, the consideration paid to them, and Dr. Amos and other releasees as the third-party beneficiaries. Appx. 1 p. 12a, Appx. 5 p. 105a. In so ruling, the Courts confused the third-party beneficiary, who is neither necessary nor sufficient for the contract formation, with the second contracting party necessary to form any contract in the first place. *See e.g., AT&T Mobility v. National Ass'n for Stock Car Auto*, 494 F.3d 1356, 1361 (11th Cir. 2007) ("Georgia law is clear that there must be 'a promise by the promisor to the promisee to render some performance to [the] third person, and it must appear that both the promisor and the promisee intended that the third person should be the beneficiary.'"). Dr. Amos and other third-party beneficiaries of the hush agreements are no substitute for the missing promisee.

The hush agreements are also vitiated by the antecedent fraud and duress alleged by Petitioner. *See City Dodge, Inc. v. Gardner*, 232 Ga. 766, 770 (Ga. 1974)

("If the contract is invalid because of the antecedent fraud, then . . . in legal contemplation, there is no contract between the parties.")[4]

The hush agreements are further void as against public policy because of the criminal nature of the misconduct they are designed to conceal. *See Branzburg v. Hayes*, 408 U.S. 665, 696 (1972) (considering it "obvious that agreements to conceal information relevant to commission of crime have very little to recommend them from the standpoint of public policy"); *Lachman v. Sperry-Sun Well Surveying Co.*, 457 F.2d 850, 853 (10th Cir. 1972) ("The criminal nature of the offense . . . gives the state a clear and separate interest in voiding a contract which conceals the crime, and hampers the punishment of the offender."); *Fomby-Denson v. Dep't of Army*, 247 F.3d 1366, 1377 (Fed. Cir. 2001) ("An agreement to not refer a matter to law enforcement authorities for investigation contravenes public policy"); *Camp v. Eichelkraut*, 539 S.E.2d 588, 597-98 (Ga. Ct. App. 2000) ("If the public policy of Georgia does not permit parties to contract to keep embarrassing-but-discoverable materials secret, then with greater force, that public policy does not permit parties to enter into an enforceable

[4] The Eleventh Circuit's ruling that Youngblood-West could not void the fraudulently induced hush agreement without tendering the consideration ignores Georgia law that restoration is an equitable requirement, to be applied flexibly. *Cf. Overbey*, No. 17-2444 p. 16 ("We have never ratified the government's purchase of a potential critic's silence merely because it would be unfair to deprive the government of the full value of its hush money. We are not eager to get into that business now."). In any event, Petitioner's inability to restore does not detract from the alleged fraudulent and coerced nature of the hush agreements.

agreement to keep arguably criminal matters secret in the face of an official investigation.").[5]

In sum, the injunction enforces hush agreements that are legally invalid and contravene public policy, and goes far beyond their scope by restraining Petitioner from publicly revealing her evidence of Aflac's and Dan Amos' role in covering up Dr. Amos' serial assaults at the heart of the RICO Action. The injunction thus constitutes an exercise of the government's coercive power to restrain future speech.[6]

b. No showing of extraordinary circumstances to surmount the First Amendment's "virtually insurmountable barrier" to prior restraints

Any imposition of prior restraint bears a "heavy presumption against its constitutional validity," *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963), and its proponent "carries a heavy burden of showing justification for the imposition of such a restraint." *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). Prior restraint on speaking on matters of public concern requires the most extraordinary justifications, *New York Times v. United States*, 403 U.S. 713 (1971),

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[5] The Eleventh Circuit erred in ruling that the hush agreements implicitly authorized Youngblood-West's complaints to the law enforcement agencies, because under the applicable Georgia law, "[t]he introduction of an implied term into the contract . . . can only be justified when the implied term is not inconsistent with some express term of the contract and . . . it is absolutely necessary to introduce the term to effectuate the intention of the parties." *Higginbottom v. Thiele Kaolin Co.*, 251 Ga. 148, 149 (Ga. 1983) (internal citation omitted). Here, the express terms of the hush agreements squarely prohibit Youngblood-West from making disclosures to anybody and to "any agency."

[6] The injunction also imposes a prior restraint on Youngblood-West's undersigned counsel's speech, even though counsel had not been a party to any hush agreement and had learned the relevant facts prior to the injunction.

found only in the most "exceptional cases," *Near v. Minnesota*, 283 U.S. 697, 716 (1931), where there is "reasonable ground to fear that serious evil will result if free speech is practiced." *Whitney v. California*, 274 U.S. 357, 376 (1927) (Brandeis, J., concurring), overruled in part by *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

Here, the privacy interests of the unrepentant serial offender do not come close to the requisite "extraordinary justification" and cannot outweigh either the local communities' interest in knowing about such offenders living in their midst, or the SEC's interest in the information it needs to protect the investing public, or the society's interest in prosecuting criminal conduct and punishing its perpetrators.

Likewise, the public's general interest in ensuring enforcement of private contracts and the encouragement of settlement is insufficient to justify a waiver of a constitutional right. Recognizing that "[t]his policy interest is admittedly important," the Ninth Circuit reasoned in *Davies v. Grossmont Union High School Dist.*, 930 F.2d 1390, 1398-99 (9th Cir. 1991):

> However, it is an interest that will be present in every dispute over the enforceability of an agreement terminating litigation. In a case presenting no public interest that would be harmed by enforcement of the waiver provision, the countervailing interest in settlement will be enough to justify enforcement. But where a substantial public interest favoring nonenforcement is present, the interest in settlement is insufficient. Otherwise, there would be no point to the *Rumery* balancing test: since the interest in settlement is present in every case, every settlement agreement would be enforced. Clearly then, when there is a substantial public interest that would be harmed by enforcement – as is unquestionably the case here – the party seeking enforcement must, at the least, advance some important interest in addition to the interest in settlement.

More recently, the Fourth Circuit in *Overbey*, No. 17-2444, cited *Davies* and held that "[t]he City cannot succeed merely by invoking its general interest in settling

lawsuits. It must point to additional interests that, under the circumstances, justify enforcing Overbey's waiver of her First Amendment rights." No such additional interest is present here; to the contrary, even the generally insufficient interests in contract enforcement and the encouragement of settlements are attenuated in this case of the invalid and void hush agreements.

c. The hush agreements fall far short of an effective First Amendment waiver.

Although this Court has not articulated a test for the First Amendment waiver in the civil context, the Court stated in *Brady v. United States*, 397 U.S. 742, 748 (1970), that "[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." (internal citations and quotation marks omitted). *See also Curtis Publishing Co. v. Butts*, 388 U.S. 130, 145 (1967) ("Where the ultimate effect of sustaining a claim of waiver might be an imposition on that valued [First Amendment] freedom, we are unwilling to find waiver in circumstances which fall short of being clear and compelling."); *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) ("'[C]ourts indulge every reasonable presumption against waiver' of fundamental constitutional rights . . . and 'do not presume acquiescence in the loss of fundamental rights.'") (citation omitted). Dr. Amos' hush agreements procured by fraud, duress and collusion are light-years away from "the voluntary, knowing, and intelligent waiver of such important constitutional rights"; nor did the District Court "indulge in every reasonable presumption against waiver," but all too readily "presume[d] acquiescence in the loss of such rights." *Id.*

More importantly, had Youngblood-West waived her First Amendment rights in an otherwise valid contract, any court enforcement of such a waiver should have been subject to the balancing-of-interests test whereby "a promise is unenforceable if the interest in its enforcement is outweighed in the circumstances by a public policy harmed by enforcement of the agreement." *Rumery*, 480 U.S. at 392.

"The threshold question" for the application of the *Rumery* balancing test is "whether compelling [a waiver of rights] impairs to an appreciable extent any of the policies behind the rights involved" and "may infringe important interests . . . of society as a whole." *Id.* Here, enforcing the hush agreements impairs, to an appreciable extent, the public's First Amendment rights to know about Dr. Amos' serial assaults committed with impunity under the cover provided by Aflac and Dan Amos, triggering the *Rumery* balancing inquiry, which the Eleventh Circuit has failed to perform.

II. The Eleventh Circuit is out of step with other Circuits in its failure to consider public interests weighing against waivers of constitutional rights.

"An injunction against speech harms not just the speakers but also the listeners," *McCarthy v. Fuller*, 810 F.3d 456, 462-63 (7th Cir. 2015), because "the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339 (2010) (referring to "[t]he right of citizens to inquire, to hear, to speak, and to use information to reach consensus").

The Eleventh Circuit's failure to consider the First Amendment interests of the public in the non-enforcement of the hush agreements stands in marked contrast to

the Fourth Circuit's ruling in *Overbey*, No. 17-2444, issued just three months prior to the Eleventh Circuit's and applying *Rumery* to invalidate a settlement agreement between a city and a victim of police brutality for violating the First Amendment rights of the public to hear information of public significance.

From the "well-settled" premise that "a person may choose to waive certain constitutional rights pursuant to a contract," the Fourth Circuit reasoned:

> Yet we do not presume that the waiver of a constitutional right – even one that appears in an otherwise valid contract with the government – is enforceable. *Id.* On the contrary, such a waiver is enforceable only if it meets two conditions: First, it was made knowingly and voluntarily. *Id.* Second, under the circumstances, the interest in enforcing the waiver is not outweighed by a relevant public policy that would be harmed by enforcement. . . . Today, we restrict our analysis to the second prong of this test, because the second prong is decisive as a matter of law. Under the circumstances, the City's asserted interests in enforcing Overbey's waiver of her First Amendment rights are outweighed by strong policy interests that are rooted in the First Amendment and counsel against the waiver's enforcement.

The Fourth Circuit ruled that "[c]laims of police misconduct, as well as the circumstances in which the City litigates and settles such claims, assuredly fall into the 'public issues' category," and concluded that "enforcing the non-disparagement clause, which subjected Overbey to contractual liability for speaking about the allegations giving rise to her complaint and the circumstances under which she settled with the City, was contrary to the public's well-established First Amendment interest in 'uninhibited, robust, and wide-open' debate on 'public issues.'" *Id.*, quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

Youngblood-West's claims of serial assaults committed with impunity by Aflac's Chief Medical Director under the cover provided by Aflac and its successive

CEOs propel this matter into the sphere of public interest just as assuredly as the claims of police misconduct in *Overbey*.[7] The Courts below, however, have ignored the public's strong First Amendment interests in hearing information of significant public concern from a willing speaker manifestly present in this case.

The Eleventh Court's neglect of its duty to apply the *Rumery* balancing test to this case with its manifest First Amendment concerns creates a dangerous precedent in conflict with the Fourth Circuit' decision in *Overbey* and out of step with other Circuits that have applied *Rumery* to police contractual waivers of constitutional and statutory rights.[8] The Eleventh Circuit had no justification for departing from

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[7] Aflac is a publicly traded international insurance giant, a Fortune 500 corporation with millions of public shareholders and policyholders in the U.S. and Japan, a "Dividend Aristocrat" with a manicured public image of the "world's most ethical company" led by one of "America's best CEOs," and a household name due to the ubiquitous Aflac Duck. The injunction, among other things, prohibited Youngblood-West from filing her whistleblower complaint with the SEC despite the SEC Rule 21F-17 that "[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications." 17 CFR § 240.21F-17(a). *Cf. EEOC v. Cosmair, Inc., L'Oreal Hair Care Div.*, 821 F. 2d 1085, 1090 (5th Cir. 1987) ("We hold that an employer and an employee cannot agree to deny to the EEOC the information it needs to advance this public interest. A waiver of the right to file a charge is void as against public policy.").

[8] *See Lynch v. City of Alhambra*, 880 F. 2d 1122, 1129 (9th Cir. 1989) (remanding to the district court to address whether the enforcement of the release agreement would be in the public interest because "such an inquiry is necessary to conform with the public policy requirement announced by the Supreme Court in *Rumery*"); *Pee Dee Health Care, P.A. v. Sanford*, 509 F.3d 204, 213 (4th Cir. 2007) ("Where a party knowingly and willingly enters into an agreement that waives a constitutional right, the agreement is enforceable so long as it does not undermine the public's interest in protecting the right."); *Cosmair*, 821 F. 2d at 1090 ("The public interest in private dispute settlement is outweighed by the public interest in EEOC enforcement of the ADEA."); *Davies*, 930 F.2d at 1397 (suggesting that a waiver of a constitutional right should arguably be subject to even stricter scrutiny than that required by *Rumeri* for a waiver of a statutory remedy).

Rumery even if it had found no state action in the injunction because *Rumery* is a general common-law test that does not require state action for its application, and has been applied to invalidate private agreements. *See, e.g., Cosmair*, 821 F. 2d at 1090; *Pee Dee Health Care*, 509 F.3d at 213.

III. The District Judge's refusal to recuse himself violates the Due Process Clause's guarantee of an impartial tribunal.

"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). A "neutral and detached judge" is an essential component of due process. *Ward v. Village of Monroeville*, 409 U.S. 57, 62 (1972). To meet this test, "justice must satisfy the appearance of justice." *Offutt*, 348 U.S. at 14; *see also* Richard E. Flamm, *Judicial Disqualification: Recusal and Disqualification of Judges*, at 109 (3d ed. 2017) ("It has been said . . . that there are few characteristics of a judiciary that are more cherished than that of impartiality.").

This Court has held that the presence of a judge who objectively appears biased may violate the Due Process Clause. *See Williams v. Pennsylvania*, 136 S. Ct. 1899, 1903-04 (2016) ("The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias."); *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017) (vacating the Nevada Supreme Court's judgment because the Court "did not ask the question our precedents require: whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable"); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 887

(2009) (extreme cases "are more likely to cross constitutional limits, requiring this Court's intervention and formulation of objective standards").

Here, the District Judge's spouse has interests in this case – to keep the hush agreements enforced, the matter sealed, and the witness silenced – that "could be substantially affected by the outcome of the proceeding" within the meaning of Sections 455(b)(4) and (b)(5)(iii) of 28 U.S. Code. The Judge himself has familial and old-boys-club ties to each of the five RICO defendants, creating further appearance of bias within the meaning of Section 455(a).

The Judge did not "disclose on the record information which the judge believes the parties or their lawyers might consider relevant to the question of disqualification" as required by the Judicial Canons, *Porter v. Singletary*, 49 F.3d 1483, 1489 (11th Cir. 1995). Even after this information was brought to light in Petitioner's Section 144 affidavit, the Judge did not acknowledge his spouse's disqualifying non-financial interests in the subject matter, and his own familial ties to the Amos family defendants.

Furthermore, by restricting public access to the proceedings, the Judge has dispensed with another important measure of accountability necessary to maintain public confidence in the administration of justice. *See Amodeo*, 71 F.3d at 1048.

Finally, the Judge relied on his duty to "remain in the game," Appx. 4 p. 34a, long-abolished by Section 455. *See Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 871 (1988) (amended Section 455 "had the effect of removing the so-called 'duty to sit'").

In sum, the Judge's personal ties to all five RICO defendants and his spouse's interests in the subject matter; his failure to disclose these facts as required by the Judicial Canons; his failure to acknowledge them fully when disclosed by Youngblood-West; and his sealing of the record and adherence to the non-existing "duty to sit" raise "the risk of bias too high to be constitutionally tolerable" in this case. *Rippo*, 137 S. Ct. at 907. At a minimum, the Judge "has so far departed from the accepted and usual course of judicial proceedings" – and the Eleventh Circuit "sanctioned such a departure" – "as to call for an exercise of this Court's supervisory power." Rule 10(a) of the Supreme Court Rules.[9]

IV. This case presents an excellent vehicle to clarify unsettled issues of the court enforcement of private hush agreements.

Commentators generally agree that the public's First Amendment right to hear information of public interest from a willing speaker ought to put some limits on the private contractual right to purchase the speaker's silence, though the proper boundary is uncertain and the guidance where to draw it is unclear. *See*, *e.g.*, Burt Neuborne, *Limiting the Right to Buy Silence: A Hearer-Centered Approach*, 90 Univ.

[9] The Judge also refused to recuse himself in an unrelated shareholder derivative action *Conroy v. Amos*, 338 F. Supp. 3d 1309, 1313 (M.D. Ga. 2018), and the Eleventh Circuit affirmed, No. 18-13834 (11th Cir. Sep. 5, 2019). In the "Fish and Family" section of that opinion, issued five weeks prior to the recusal opinion here, the Judge had denied any knowledge of having relatives working at Aflac, considered the Fish House Gang from the subjective, insider's point of view, and resolved all doubts in favor of the "solemn duty to remain." Old habits die hard, which is another reason for this Court to intervene and reinforce the notion that the "duty to sit" and the "in the judge's opinion" test have long been abolished by Section 455, requiring federal courts instead to resolve reasonable doubts in favor of recusal to maintain their cherished impartiality.

Colo. L. Rev. 411 (2019); David A. Hoffman & Eric Lampmann, *Hushing Contracts*, 97 Wash. Univ. L. Rev. 165 (2019); Daniel J. Solove & Neil M. Richards, *Rethinking Free Speech and Civil Liability*, 109 Colum L. Rev. 1650 (2009). This case presents an excellent and timely vehicle for the Court to clarify unresolved issues of the federal courts' proper role in enforcing private agreements of silence when challenged on the First Amendment grounds.

First, the Court could clarify that court enforcement of an otherwise valid private hush agreement by an injunction constitutes state action for purposes of the First Amendment analysis if the censored information is of public importance. The Eleventh Circuit has recognized that "court enforcement of an agreement between private parties can, in some circumstances, be considered governmental action for constitutional analysis," *United Egg Producers v. Standard Brands, Inc.*, 44 F.3d 940, 943 (11th Cir. 1995), citing *Shelley v. Kraemer,* 334 U.S. 1 (1948), but that "the reach of *Shelley* remains undefined outside of the racial discrimination context."

In *Cohen v. Cowles Media Co.*, 501 U.S. 663, 668 (1991), the Court held that a promissory estoppel enforced by the court implicates the First Amendment inquiry, leaving open the question of whether a contractual promise does so if enforced by the court. As the Supreme Court of Connecticut stated in *Perricone v. Perricone*, 292 Conn. 187, 202 (Conn. 2009):

> It is not entirely clear to us whether, for purposes of determining whether the enforcement of state law in state courts constitutes state action under the fourteenth amendment, the United States Supreme Court in *Cohen* intended to distinguish promissory estoppel actions from contract actions on the ground that the former involve "a state-law

> doctrine which . . . creates obligations never explicitly assumed by the parties."

The *Perricone* opinion notes that while a number of courts "have declined to extend *Cohen* to contract actions . . . [o]ne commentator has concluded . . . that the distinction between the enforcement of a promise and the enforcement of a contract in this context 'is dubious at best and probably false,' because the defendant in a promissory estoppel action 'initially create[d] his obligation by making a promise to do something.' A. Garfield, '*Promises of Silence: Contract Law and Freedom of Speech*,' 83 Cornell L. Rev. 261, 350 (1998). 'The difference between a contract claim and a promissory estoppel claim is merely that in one instance a court enforces a promise because it was part of a bargain, and in the other a court enforces a promise because it induced unbargained-for reliance.'" *Perricone*, 292 Conn. at 202. *See also* Shell, Richard G., *Contracts in the Modern Supreme Court*, 81 Cal. L. Rev. 431, 516 (1993) ("[R]ights to free speech and a free press are arguably so fundamental to the functioning of a democratic society that they ought not to be subjected to unregulated market ordering backed by the state power of contract enforcement"). The Court could clarify whether the reach of *Shelley* extends into the First Amendment arena.

Second, the Court could clarify that its *Rumery* balancing test empowers and requires federal courts to deny enforcement to those private hush agreements that impair to an appreciable degree the public's First Amendment right to hear the censored information of public interest from a willing speaker.

CONCLUSION

The permanent injunction offends the First Amendment in the service of an inequitable and immoral purpose: to conceal evidence of Dr. Amos' serial assaults, his secret hush agreements with multiple victims, and the behind-the-scene cover-up of the assaults and hush agreements by Aflac and Dan Amos. The Eleventh Circuit blessed the injunction issued against their victim without batting an eyelash or furrowing a brow in a legally and constitutionally indefensible opinion out of step with other Circuits and unworthy of the "*cert denied*" imprimatur of this Court.

The case screams out for this Court's intervention and a remand for *de novo* public proceedings before an unbiased judge, because leaving the Eleventh Circuit's ruling undisturbed will keep judicial seal over information of significant public concern and safety; ensure that heinous crimes against women escape any public scrutiny while the victim herself remains permanently exposed to "coercive incarceration" at the mercy of her assailant and his very powerful allies, and chill the willingness of other victims to challenge their powerful abusers – an unjust and intolerable outcome.

Dated: June19, 2020

Respectfully submitted,

/s/ Dimitry Joffe

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APPENDIX

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-11593
Non-Argument Calendar

D.C. Docket No. 4:18-cv-00083-CDL

LEIGH ANN YOUNGBLOOD-WEST,

Plaintiff–Appellant,

versus

AFLAC INCORPORATED,
WILLIAM LAFAYETTE AMOS, JR.,
SAMUEL W. OATES,
DANIEL P. AMOS,
CECIL CHEVES,

Defendants–Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

(December 12, 2019)

Before WILLIAM PRYOR, HULL, and MARCUS, Circuit Judges.

PER CURIAM:

Leigh Ann Youngblood-West appeals the denial of her motion for recusal and the dismissal of her complaint of conspiracy and of racketeering activities in violation of the Racketeer Influenced and Corrupt Organizations Act by Aflac Incorporated, Daniel Amos, Dr. William Amos Jr., Cecil Cheves, and Samuel Oates, 18 U.S.C. § 1962(c), (d). Youngblood-West also appeals the summary judgment in favor of Dr. Amos's counterclaim for breach of contract. After the district court denied Youngblood-West's motion for recusal, it dismissed her complaint as untimely and, in the alternative, implausible, and it ruled that she had violated her two nondisclosure agreements with Dr. Amos and entered a permanent injunction enforcing those agreements. The district court also dismissed Youngblood-West's claims of fraud, intentional infliction of emotional distress, civil conspiracy, and vicarious liability, but she has abandoned, by failing to brief, any challenge she could have made to that adverse ruling. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014). We affirm.

I. BACKGROUND

In our review of the dismissal of Youngblood-West's complaint, we must accept as true her allegations. *See Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1288 (11th Cir. 2010). But to the extent the "exhibits attached to [her] complaint contradict the general and conclusory allegations of the pleading, the

exhibits govern." *Gill as Next Friend of K.C.R. v. Judd*, 941 F.3d 504, 514 (11th Cir. 2019) (internal citation and quotation marks omitted).

In 1984, Dr. Amos allegedly assaulted Youngblood-West while treating her at his private clinic. Youngblood-West's husband worked for Aflac and Dr. Amos was its Chief Medical Director. In 1987, Dr. Amos resigned as medical director and from his position on the board of directors and moved to Florida. In 1989, Aflac forced Youngblood-West's husband to resign.

In 1992, Youngblood-West retained Oates, her employer, to represent her. Oates interviewed Dr. Amos's former office manager and obtained a list of other injured patients from Cheves, Dr. Amos's attorney who was also his brother-in-law. After negotiations, Youngblood-West and her husband accepted $500,000 to release all existing and future "claims, demands, rights, actions . . . or suits at law or in equity of whatever kind," whether "known or unknown, foreseen or unforeseen," founded on any "theory of recovery, . . . in any way growing out of, resulting or to result from the alleged negligent practice of medicine, . . . and specifically for . . . [what occurred on] January 5, 1984." The couple "covenant[ed] that neither they nor their counsel shall reveal to anyone the alleged acts or omissions giving rise to their claims . . . [or] the fact or existence of this release agreement . . . ." They also agreed to the destruction of investigatory materials and medical records. Later, Dr. Stephen Purdom, the new Chief Medical Director of

Aflac, asked Youngblood-West about a videotape Oates possessed, which made her "suspicious that Dr. Purdom was aware of more details of the story."

Youngblood-West's bank learned of her settlement with Dr. Amos. With the assistance of partners in Cheves's law firm, the bank collected from Youngblood-West an outstanding balance on her mortgage. Youngblood-West retained a new attorney to investigate whether the bank received a tip.

In 1993, Youngblood-West entered a settlement with the bank, its lawyers, Cheves, Dr. Amos, and Oates. Youngblood-West and her husband received $75,000 to release existing and future claims "against each and all of the parties," "including, but not limited to[,] fraud, duress, undue influence, breach of fiduciary duty, legal malpractice, unjust enrichment, medical malpractice, mental or emotional suffering, loss of services or consortium." The agreement addressed Youngblood-West's "fee agreement with Mr. Oates" and his failure to "recover enough in his settlement of claims against" Dr. Amos. The agreement also addressed the "legal representation by . . . Cecil Cheves [and his law firm], of or for" Dr. Amos and Youngblood-West's bank and the breach of "any confidentiality agreement or fiduciary duty" owed to her and her husband. Youngblood-West and her husband received an additional $50,000 for their agreement not to disclose "the fact or existence of this release agreement, any of

[its] terms" and "any such matters or any medical or legal services pertaining to any of the parties released . . . ."

In 2016, Youngblood-West met with Dr. Amos. During their conversation, which Youngblood-West recorded, Dr. Amos "guess[ed] Danny [Amos, who assumed the position of Chief Executive Officer of Aflac in 1990,] knew" about the patients' injuries. Dr. Amos stated that he "told Danny when I felt like I needed to resign from the Aflac board . . . because I didn't want to negatively impact anybody else more than I already had." Youngblood-West asked if Dr. Amos would oppose her advocating for a victim organization, and he responded, "that's not my place . . . I trust that you would be careful" and requested that she avoid "see[ing] [his] kids and my grandkids hurt." When Youngblood-West expressed concerns about being "sue[d] . . . [and] in big trouble," Dr. Amos replied, "you know—if you do—and, of course, that's up to you[,] I would hope that you wouldn't use specifics that could . . . trace back. But as far as you advocating . . ., I would have to say that I agree with you . . . .."

In March 2018, Youngblood-West's attorney, Dimitry Joffe, sent a letter to Aflac and Dan Amos that demanded $50 million to suing them for conspiracy and for participating in a criminal enterprise to conceal Dr. Amos's conduct. The letter referenced the 1992 and 1993 agreements. Aflac accused Joffe of extortion and threatened to sue him for libel and harassment.

Dr. Amos filed a motion for a temporary restraining order and a complaint that Youngblood-West had breached her nondisclosure agreements. Dr. Amos sought to enjoin Youngblood-West from filing her complaint of racketeering on the public docket. After a hearing, the district court entered a preliminary injunction that required the parties to file their pleadings under seal.

In May 2018, Youngblood-West filed a complaint under seal, which she later amended, that Aflac, Dan Amos, Dr. Amos, Oates, and Cheves conspired to and engaged in racketeering between 1984 and 1987. 18 U.S.C. § 1962(c), (d). She alleged that the defendants used the wires and mails to coerce her to execute "hush agreements," §§ 1341, 1343, 1461–65, obstructed investigations by aiding Dr. Amos's flight to Florida and by destroying evidence, *id.* §§ 1503, 1510, 1511, tampered with witnesses by forcing them to accept "invalid agreements," *id.* § 1512, and retaliated by forcing her husband to resign, disclosing her settlement to her bank, and by threatening her during her meeting with Dr. Amos and in the letter from Aflac and Dan Amos, *id.* § 1513. Youngblood-West alleged eight injuries: she paid Dr. Amos for unnecessary medical procedures; she overpaid Oates for legal services; she was denied her right to honest services from Dr. Amos and Oates; she relinquished two-thirds of her 1992 settlement to the bank and to attorneys; she became indebted after her husband retired; the 1992 and 1993 settlements were "wholly inadequate and unconscionable"; and she suffered from

"Defendants' fraud and active concealment." Youngblood-West attached to her complaint copies of her 1992 and 1993 agreements and a transcript of her conversation with Dr. Amos.

The defendants moved to dismiss Youngblood-West's complaint. Fed. R. Civ. P. 12(b)(6). Based on the "common questions of law and fact," the district court consolidated Youngblood-West's action with Dr. Amos's counterclaim. Dr. Amos amended his counterclaim and requested a permanent injunction enforcing the nondisclosure agreements. Youngblood-West then requested additional time for discovery concerning Dr. Amos's assent or capacity to assent to the agreements. Fed. R. Civ. P. 56(d).

Youngblood-West filed a motion for recusal, which the district court denied as "frivolous and . . . just plain misleading." 28 U.S.C. § 455. Youngblood-West identified three grounds for recusal: (1) the district judge participated in a dinner club, referred to as the "Fish House Gang," formed by his great-uncle and the founder of Aflac; (2) the judge was related to William Donald Land Jr., an employee of Aflac; and (3) the judge's wife had worked at Cheves's law firm. The district judge ruled that no appearance of partiality stemmed from his involvement in the supper club "seven years after his great-uncle's affiliation ceased and twenty-eight years after John Amos's affiliation ceased." *See id.* § 455(a). The district judge also ruled that neither sharing an "11th degree of relationship" with

William Land nor his wife's incidental interest in the 1993 agreement as a shareholder in Cheves's law firm required him to recuse. *See id.* § 455(b)(5).

The district court next granted the defendants' motion to dismiss. Fed. R. Civ. P. 12(b)(6). The district court ruled that Youngblood-West's claims of conspiracy and of racketeering activities were barred by the four-year statute of limitation and that she was not entitled to statutory or equitable tolling or equitable estoppel because she "was on notice of her injuries by 1993 at the latest." The district court determined that her recent contact with Dr. Amos and Aflac did not restart the limitations period and that she failed to plead facts plausibly connecting Aflac or Dan Amos to a predicate act or identifying a cognizable injury under the Act. The district court also determined that the nondisclosure agreements were enforceable and survived the alleged fraud of the defendants because Youngblood-West affirmed the agreements by retaining the consideration paid to her.

The district court then denied Youngblood-West's motion for discovery and entered summary judgment in favor of Dr. Amos's counterclaim for breach of contract. The district court ruled that discovery was unnecessary because it could determine the validity of the agreements from the allegations in and attachments to Youngblood-West's complaint. The district court then determined that Dr. Amos was entitled to judgment as a matter of law for Youngblood-West's breach of her

nondisclosure agreements and entered a permanent injunction that enforced those agreements.

II. STANDARDS OF REVIEW

We apply two standards of review in this appeal. We review *de novo* the dismissal of Youngblood-West's complaint and the summary judgment in Dr. Amos's favor. *See McCaleb v. A.O. Smith Corp.*, 200 F.3d 747, 750 (11th Cir. 2000) (statute of limitation and summary judgment); *Chang v. Carnival Corp.*, 839 F.3d 993, 996 (11th Cir. 2016) (equitable tolling); *Bailey v. ERG Enterprises, LP*, 705 F.3d 1311, 1316 (11th Cir. 2013) (equitable estoppel). We review the denial of Youngblood-West's motion for recusal for abuse of discretion. *See Draper v. Reynolds*, 369 F.3d 1270, 1274 (11th Cir. 2004).

III. DISCUSSION

Youngblood-West makes five arguments for reversal. First, Youngblood-West argues that her claims of racketeering are timely and plausibly allege a pattern of predicate acts. Second, Youngblood-West argues that her nondisclosure agreements are unenforceable. Third, Youngblood-West argues that the permanent injunction violates her right of free speech under the First Amendment. Fourth, Youngblood-West argues that she was entitled to discovery to oppose summary judgment. Fifth, Youngblood-West argues that the district judge should have recused. We address each argument in turn.

A. Youngblood-West's Complaint of Racketeering was Untimely.

The district court did not err by dismissing as untimely Youngblood-West's complaint. "Civil actions under the Racketeering Influenced and Corrupt Organizations Act . . . are subject to a four-year statute of limitations." *Lehman v. Lucom*, 727 F.3d 1326, 1330 (11th Cir. 2013). That statute commenced running "when [Youngblood-West's] injury was or should have been discovered, regardless of whether or when . . . [she] discovered . . . the injury . . . [was] part of a pattern of racketeering." *See id.* (quoting *Maiz v. Virani*, 253 F.3d 641, 676 (11th Cir. 2001)); *Rotella v. Wood*, 528 U.S. 549, 555 (2000). It matters not that Youngblood-West had an epiphany about the defendants' racketeering in 2016 while talking to Dr. Amos because she had long since known of or could have discovered her injuries. By 1993, Youngblood-West knew that Dr. Amos had injured her and other patients; that Oates and Cheves had worked with Dr. Amos to settle patients' claims; that the three men had revealed the existence of and diminished the proceeds of the 1992 settlement, breached duties owed to her, and defrauded her; that her bank, Cheves, and his law firm had betrayed her trust; and that Aflac knew, at least indirectly, about Dr. Amos's misconduct and his 1992 settlement. Youngblood-West failed to act on the information she possessed and the four-year limitations elapsed long before she filed her complaint in 2018.

Because Youngblood-West's complaint is untimely, we need not address the alternative ruling that her claims were implausible.

Youngblood-West was not entitled to tolling of the limitation period nor to estop the defendants from asserting the limitations period as a defense. Youngblood-West was not entitled to statutory tolling based on Dr. Amos's relocation to Florida, *see* Ga. Code Ann. § 9-3-34, because she knew how to serve him with process after having earlier settled claims against him, *see Andrews v. Stark*, 592 S.E.2d 438, 440 (Ga. Ct. App. 2003). And she failed to exercise due diligence in complaining about the purported pattern of racketeering despite having uncovered the defendants' activities two decades earlier. *See Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 972–73 (11th Cir. 2016) (requiring due diligence by the plaintiff and active deception for equitable tolling). Because Youngblood-West failed to act with due diligence, she also could not invoke the doctrine of equitable estoppel to avoid the statute of limitation. *See Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 194–95 (1997) ("In [the] context [of civil RICO,] . . . a plaintiff who is not reasonably diligent may not assert "fraudulent concealment.").

The district court also did not err by rejecting Youngblood-West's arguments to restart the period of limitation based on the "threats" by Dr. Amos in 2016 "to be 'careful'" not to reveal confidential information and by Aflac and Dan Amos in 2018 to sue Youngblood-West. To reset the period to restart, the

defendants had to inflict "a new and independent injury" on Youngblood-West. *See Lehman*, 727 F.3d at 1331. Youngblood-West's alleged injuries are not new.

B. Youngblood-West's Nondisclosure Agreements Are Enforceable.

Youngblood-West challenges the enforceability of her nondisclosure agreements on four grounds, all of which fail. First, she argues the releases fail to identify counterparties and their obligations. Ga. Code Ann. § 13-1-1. But in the 1992 agreement, Youngblood-West and her husband "released . . . William L. Amos, Jr., M.D., P.C.," "[f]or value received . . . of the sum of . . . ($500,000)," and in the 1993 agreement, "in consideration of payment to them of . . . ($125,000)," the couple gave "a total release and covenant not to sue" "William L. Amos, Jr., . . . the law firm of Samuel W. Oates, Jr. and [him] individually, . . . Cecil M. Cheves individually . . . ." Second, Youngblood-West argues that the releases lacked Dr. Amos's signature. But the doctor signed a signature page to the couple's 1992 agreement that "acknowledg[ed] and confirm[ed] all [their] representations" and "agree[ed] to be bound by . . . said agreement . . . " And the doctor assented to the 1993 agreement by writing the couple a check that they negotiated. *See Burson v. Milton Hall Surgical Assocs., LLC*, 806 S.E.2d 239, 246 (Ga. Ct. App. 2017) ("If one of the parties has not signed, his acceptance is inferred from a performance under the contract, in part or in full . . . ."). Third, Youngblood-West argues the agreements were vitiated by "antecedent fraud,

duress and collusion," but after discovering those grounds for rescission, she affirmed the agreements by retaining the settlement payments, *see Kobatake v. E.I. DuPont De Nemours & Co.*, 162 F.3d 619, 625–26 (11th Cir. 1998). Finally, Youngblood-West argues that her agreements violate the public policy of Georgia, but her agreements were valid because they did not forbid her from disclosing unlawful conduct to investigative authorities, *see Camp v. Eichelkraut*, 539 S.E.2d 588, 597–98 (Ga. Ct. App. 2000).

C. The Enforcement of Youngblood-West's Nondisclosure Agreements Did Not Violate the First Amendment.

The district court did not infringe on Youngblood-West's right of free speech by enforcing her agreements with Dr. Amos. "That 'Congress shall make no law . . . abridging the freedom of speech, or of the press' is a restraint on government action, not that of private persons," *Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 114 (1973), so Youngblood-West was free to waive her right to speech in her private agreements. The enforcement by the district court of Youngblood-West's obligations in those private agreements did not constitute state action. *See United Egg Producers v. Standard Brands, Inc.*, 44 F.3d 940, 943 (11th Cir. 1995). Youngblood-West argues that she acted unintelligently and involuntarily, but she "represent[ed], declare[d], and agree[d]" in the 1992 contract that the "terms [were] fully understood and voluntarily

accepted by [her]" and she similarly "acknowledged" in her 1993 agreement that she "fully underst[ood] its contents and meaning."

D. The District Court Did Not Abuse Its Discretion When It Denied Youngblood-West's Motion to Postpone Summary Judgment to Take Discovery.

The district court acted within its discretion when it denied Youngblood-West's request for discovery. For a nonmovant to obtain time for discovery before responding to a motion for summary judgment, she must "show[] by affidavit or declaration that, for specified reasons, [she] cannot present facts essential to justify its opposition." Fed. R. Civ. P. 56(d). Youngblood-West alleged that Dr. Amos procured the agreements, so he knew about and could understand and accept them. And the agreements Youngblood-West attached to her complaint established that the doctor accepted the 1992 agreement and assented to the 1993 agreement. *See Burson*, 806 S.E.2d at 246. The district court reasonably determined Youngblood-West possessed all facts necessary to respond to Dr. Amos's dispositive motion.

E. The District Court Did Not Abuse Its Discretion by Denying Youngblood-West's Motion to Recuse.

The district judge did not abuse his discretion in refusing to recuse. No "reasonable person knowing all the facts would conclude that the [district] judge's impartiality might reasonably be questioned." *United States v. Greenough*, 782 F.2d 1556, 1558 (11th Cir. 1986). Youngblood-West's argument for recusal based on the district judge's participation in the Fish House Gang was based, in the

words of the district court, "on unsupported, irrational [and] highly tenuous speculation" that he had associated with Dr. Amos, Dan Amos, and Cheves at social events. *See id.* Youngblood-West offered no evidence that the district judge interacted with the defendants. The judge's familial ties to William Donald Land Jr., a "fourth cousin, once removed," is far from the "third degree of relationship" that would be disqualifying. *See* 28 U.S.C. § 455(b)(5). And Youngblood-West identified no "interest [of the district judge's wife] that could be substantially affected by the outcome of the proceeding." *See id.* § 455(b)(5)(iii). She had retired and, when she had been a shareholder in the law firm identified in the 1993 agreement, the Georgia Business Corporation Act limited her liability to her "own acts or conduct" and relieved her of liability for other shareholders' actions. *See* Ga. Code Ann. § 14-2-622(b).

IV. CONCLUSION

We **AFFIRM** the dismissal of Youngblood-West's complaint and the summary judgment in favor of Dr. Amos on his counterclaim for breach of contract.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11593-QQ

LEIGH ANN YOUNGBLOOD-WEST,

Plaintiff - Appellant,

versus

AFLAC INCORPORATED,
WILLIAM LAFAYETTE AMOS, JR.,
SAMUEL W. OATES,
DANIEL P. AMOS,
CECIL CHEVES,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

BEFORE: WILLIAM PRYOR, HULL and MARCUS, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by LEIGH ANN YOUNGBLOOD-WEST is DENIED.

ORD-41

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

LEIGH ANN YOUNGBLOOD-WEST,	*	
Plaintiff,	*	
vs.	*	
AFLAC INCORPORATED, WILLIAM LAFAYETTE AMOS, JR., CECIL CHEVES, SAMUEL W. OATES, and DANIEL P. AMOS,	*	CASE NO. 4:18-CV-83 (CDL)
Defendants.	*	

O R D E R

Over 25 years ago, Leigh Ann Youngblood-West made allegations against William Lafayette Amos, Jr. ("Dr. Amos") and threatened to sue him. Dr. Amos paid her a substantial sum, and in exchange, she released him from any liability related to her claims. She also agreed that the settlement, including the substance of her claims, would remain confidential. Today, Youngblood-West seeks to resurrect her quarter-of-a-century old claims against Dr. Amos while also asserting related claims against four additional defendants. When Dr. Amos and his co-defendants refused her recent monetary demand, she sued them, [redacted]

Defendants have moved to dismiss the claims based on the statute of limitations, release, and failure to state a claim.

Before Youngblood-West's present action was filed, the Court in related litigation directed that it be filed under seal because of the settlement agreement between Youngblood-West and Dr. Amos, which included a confidentiality agreement. The Court subsequently found in that related litigation that the settlement agreement, including the confidentiality agreement, was enforceable under Georgia law. The Court further ordered that filings in these proceedings shall remain under seal until the Court received further briefing from the parties on the sealing issue. That briefing is now complete. The brief of Youngblood-West's counsel resembles a rant with *ad hominem* attacks on the parties and predictions of shame that will inevitably befall the undersigned if he refuses to completely unseal the record. Dr. Amos's counsel acknowledges the presumption in favor of full public access but makes a strong case for limited public disclosure under the unique circumstances presented here. Having considered the arguments of the parties and the applicable law, the Court makes the following findings and reaches the following conclusions.

BACKGROUND

According to Dr. Amos's complaint for breach of the confidentiality agreement, Youngblood-West retained counsel in 1992 to pursue legal claims against him. Dr. Amos and Youngblood-

West eventually entered into an agreement under which Youngblood-West released Dr. Amos from liability in exchange for a sum of money (the "1992 Settlement Agreement"). Compl. ¶¶ 5-6, *Amos v. Youngblood-West*, No. 4:18-CV-68 (M.D. Ga. Apr. 16, 2018), ECF No. 2 [hereinafter Amos Compl.]; *id.* Ex. A, 1992 Settlement Agreement 1–2, ECF No. 2-1. In 1993, Youngblood-West retained new counsel to pursue additional claims against Dr. Amos and others. Amos Compl. ¶ 9. This dispute resulted in Youngblood-West signing another settlement agreement for which she received an additional sum of money (the "1993 Settlement Agreement"). *Id.* ¶¶ 10–11; *id.* Ex. B, 1993 Settlement Agreement 1, 6, ECF No. 2-2. Both the 1992 and the 1993 Settlement Agreements contain confidentiality provisions prohibiting Youngblood-West from disclosing certain matters about the released claims and the agreements to others. 1992 Settlement Agreement 1–2; 1993 Settlement Agreement ¶ 6. The confidentiality agreement specifically provided that Youngblood-West would:

> maintain at all time the confidentiality of [the settlement agreement] and shall not reveal to anyone . . . the alleged acts or omissions giving rise to [her] claim against any party released hereby, or any other matter relevant to such claims, the fact or existence of this release agreement, any of the terms of this release agreement or any of the amounts, numbers or terms and conditions of any sums payable to the undersigned hereunder or previously paid pursuant to a prior release agreement between the undersigned and the parties being released hereby, unless compelled to do so by Court Order; and further, that if asked about any such matters [redacted]

[redacted], the undersigned shall refuse to discuss them.

1993 Settlement Agreement ¶ 6. The parties further agreed that a breach of the confidentiality agreement would cause "irreparable" damage with no adequate legal remedy. *Id.* ¶ 7.

At some point, Youngblood-West became dissatisfied with the settlements and sought legal advice from her current lawyer, Mr. Joffe. Joffe also represents AFLAC shareholders in an unrelated derivative suit against AFLAC executives and board members that was recently dismissed by this Court. *See* Order (Aug. 31, 2018), *Conroy v. Amos*, No. 4:18-CV-33 (M.D. Ga. Feb. 12, 2018), ECF No. 63. In March of this year, Joffe sent AFLAC's lawyers in that matter a demand letter threatening to file suit on behalf of Youngblood-West against AFLAC, Dr. Amos, and others unless they paid Youngblood-West [redacted]. Amos Compl. ¶¶ 18, 20; *see generally id.* Ex. C, Letter from D. Joffe to L. Cassilly *et al.* (Mar. 16, 2018), ECF No. 2-3. AFLAC rejected the demand, and Dr. Amos's counsel sent Joffe copies of the 1992 and 1993 Settlement Agreements. Amos Compl. ¶¶ 22-23. Then, on Saturday, April 14, 2018, Joffe sent an email to AFLAC's lawyers and Dr. Amos's counsel containing a draft of a complaint which he threatened to file "first thing Monday am." *Id.* ¶ 24; *id.* Ex. D, Email from D. Joffe to J. Grant *et al.* (Apr. 14, 2018), ECF No. 2-4; *see generally id.* Ex. E, Draft [redacted] Complaint, ECF No. 2-5. Joffe emailed the

lawyers the following day and said, "Your clients have 12 hours left to decide whether they wish to have this dispute resolved in court." Amos Compl. ¶ 27; *id.* Ex. F, Email from D. Joffe to L. Cassilly *et al.* (Apr. 15, 2018), ECF No. 2-6.

That same day, before Youngblood-West could file her complaint on the public docket, Dr. Amos filed an action in this Court, alleging that Youngblood-West's demand letter and the draft complaint contained confidential information under the 1992 and 1993 Settlement Agreements and that Youngblood-West breached those agreements when Joffe sent the demand letter and draft complaint to AFLAC's lawyers on her behalf. Amos Compl. ¶¶ 19, 21, 25–26. Dr. Amos also filed an emergency ex parte motion for a temporary restraining order ("TRO") seeking to prevent the public filing of the draft complaint and related materials. *See* Pl.'s Mot. for TRO 1–2, *Amos v. Youngblood-West*, 4:18-CV-68 (M.D. Ga. Apr. 16, 2018), ECF No. 1.

Instead of ruling on the motion ex parte, the Court notified Joffe and held a hearing by telephone conference first thing the following Monday morning. Order 1 (Apr. 16, 2018), *Amos v. Youngblood-West*, No. 4:18-CV-68 (M.D. Ga. Apr. 16, 2018), ECF No. 3. After the hearing and based on a review of the draft complaint and the 1992 and 1993 Settlement Agreements, the Court found that Dr. Amos had shown a substantial likelihood that the public filing of the draft complaint would violate the confidentiality

provisions of the settlement agreements, that Dr. Amos would suffer irreparable injury by the public disclosure of such confidential information, and that the public interest would not be harmed by granting temporary injunctive relief. *Id.* at 2–3. Noting the presumption in favor of public access to court proceedings and related documents, the Court then balanced the public's interest in disclosure against the legitimate interests of the parties, including the potential loss of Dr. Amos's bargained-for privacy. *Id.* at 3. The Court found that requiring Youngblood-West to file her complaint and related materials under seal was appropriate because the parties had previously agreed pursuant to their prior settlement that such matters would remain confidential and because the harm to the public's interest in disclosure was reduced in light of the temporary nature of the restriction on public access. *Id.*

The Court ordered temporary injunctive relief as follows: (1) restricting access to any documents filed in *Amos v. Youngblood-West*, No. 4:18-CV-68 (M.D. Ga. Apr. 16, 2018) to the parties to that action, their counsel, and court personnel; (2) requiring Youngblood-West to file any matters related to her threatened draft complaint, including the complaint itself, under seal; and (3) prohibiting Youngblood-West and anyone acting on her behalf from publicly disclosing or discussing the subject matter

of her threatened draft complaint and any other documents required to be sealed or restricted by the Court's order. *Id.* at 3-4.[1]

Youngblood-West subsequently filed her complaint under seal as directed by the Court. *See* Compl., *Youngblood-West v. AFLAC Incorporated et al.*, No. 4:18-CV-83 (M.D. Ga. May 1, 2018), ECF No. 1. In that complaint, which initiated this present action, she asserts claims against Dr. Amos, Daniel P. Amos, Cecil Cheves, Samuel Oates, and Aflac. [redacted] Defendants have filed motions to dismiss her Complaint and have notified Joffe of their intention to seek Rule 11 sanctions against him. Those motions are pending and will be decided in due course. The present issue before the Court is the extent to which the filings in this litigation should remain under seal.[2]

[1] The temporary injunctive relief does not prohibit Youngblood-West from discussing matters related to the present action or the draft complaint with Joffe or reporting other specifically identified matters. Order 4 (Apr. 16, 2018), *Amos v. Youngblood West*, No. 4:18-CV-68 (M.D. Ga. Apr. 16, 2018), ECF No. 3.

[2] The Court has consolidated *Amos v. Youngblood West*, No. 4:18-CV-68 (Dr. Amos's breach of confidentiality agreement action) and *Youngblood-West v. AFLAC et al.*, No. 4:18-CV-83 (Youngblood-West's RICO/fraud action), with Dr. Amos's claims in 4:18-CV-68 being treated as counterclaims in 4:18-CV-83. *See* Order, 4:18-CV-68 (ECF No. 35) and 4:18-CV-83 (ECF No. 57)(Sept. 6, 2018).

DISCUSSION

The public certainly has a right of access to documents filed in a federal court. Federal courts are public institutions and cannot retain the confidence of the people if they operate under a cloak of secrecy. This important right is well recognized by federal and state courts. *See, e.g.*, *Atlanta Journal v. Long*, 369 S.E.2d 755, 757 (Ga. 1988) ("[T]he public and the press have traditionally enjoyed a right of access to court records. Public access protects litigants both present and future, because justice faces its gravest threat when courts dispense it secretly. Our system abhors star chamber proceedings with good reason. Like a candle, court records hidden under a bushel make scant contribution to their purpose."); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 571 (1980) ("The crucial prophylactic aspects of the administration of justice cannot function in the dark."); *Chi. Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1311 (11th Cir. 2001) (per curiam) ("The common-law right of access to judicial proceedings, an essential component of our system of justice, is instrumental in securing the integrity of the process.").

But the right of public access is not absolute. As with many important rights, the right to unfettered public access sometimes conflicts with other rights that may be equally compelling. In these circumstances, the Court must engage in the often-difficult

task of balancing the conflicting interests. *See, e.g.*, *Romero v. Drummond Co.*, 480 F.3d 1234, 1245-46 (11th Cir. 2007) (explaining that courts must "balanc[e] the asserted right of access against the other party's interest in keeping the information confidential" and that "[a] party's privacy . . . interest in information sometimes overcomes the interest of the public in accessing the information").

Here, two important interests conflict with the right of wide-open public access. One is the private interest of Dr. Amos to retain the benefit of his bargained-for confidentiality agreement. If the subject matter of his settlement is publicly disclosed, then he has permanently lost part of what he paid for when he settled Youngblood-West's claims. And the injury caused by that disclosure is irreparable. No amount of money can compensate for such a loss of privacy. To allow the right of access to trump this important interest of Dr. Amos facilitates Youngblood-West's alleged breach of her agreement for which she was compensated. Further, allowing these confidential matters to be publicly disclosed also impinges upon the public's strong interest in the enforceability of contracts. If a party to a contract can abandon her obligation simply by filing a public lawsuit, then others will be less willing to enter into confidentiality agreements because they will know that they can be side-stepped simply by filing a lawsuit with allegations about the confidential subject matter.

See Savannah Coll. of Art & Design v. Sch. of Visual Arts, Inc., 515 S.E.2d 370, 372 (Ga. 1999) ("To hold that the private nature of a settlement agreement is lost once the document is filed in the trial court places litigants in the unusual dilemma of having to waive an agreement's confidentiality in order to enforce it.").

The Court therefore finds that there are important conflicting interests to be considered here. Balancing these interests does not require that the Court take an "all or nothing" approach. There are different levels of public access. And the case law recognizes that some restrictions are more suspect than others. *See, e.g.*, *Chi. Tribune Co.*, 263 F.3d at 1311 ("In certain narrow circumstances, the common-law right of access demands heightened scrutiny of a court's decision to conceal records from the public and the media."). When a court "conceals the record of an entire case, making no distinction between those documents that are sensitive or privileged and those that are not," the denial of public access must be "'necessitated by a compelling governmental interest, and . . . narrowly tailored to that interest.'" *Id.* (quoting *Wilson v. Am. Motors Corp.*, 759 F.2d 1568, 1571 (11th Cir. 1985)); *see also Brown v. Advantage Eng'g, Inc.*, 960 F.2d 1013, 1015-16 (11th Cir. 1992) (restating the compelling government interest and narrow tailoring requirements); *Hicklin Eng'g v. Bartell*, 439 F.3d 346, 348 (7th Cir. 2006) ("The [district] judge did not explain what authority permits a federal

court to issue entire opinions in secret. Redacting portions of opinions is one thing, secret disposition quite another. We have insisted that litigation be conducted in public to the maximum extent consistent with respecting . . . facts that should be held in confidence. This means that both judicial opinions and litigants' briefs must be in the public record, if necessary in parallel versions--one full version containing all details, and another redacted version with confidential information omitted."), *abrogated on other grounds by RTP LLC v. Orix Real Estate Capital, Inc.*, 827 F.3d 689 (7th Cir. 2016); *United States v. Valenti*, 987 F.2d 708, 715 (11th Cir. 1993) (noting in criminal case that "district court's denial of [newspaper's] motion to unseal must be supported with a finding that the denial of access is necessary to preserve higher values, and is narrowly tailored to serve that interest"); *The Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 96 (2d Cir. 2004) (holding public has qualified First Amendment right to access docket sheets that can be overcome by a compelling government interest that is narrowly tailored to that interest and collecting cases).

Balancing these interests and in an attempt to narrowly tailor an approach that reconciles them, the Court makes the following findings:

1. Allowing the public to know the names of the parties to this litigation does not disclose the nature of the litigation and

thus does not unreasonably diminish the expectations of the parties to the confidentiality agreement. The confidentiality agreement seeks to protect the existence of the settlement and its subject matter; not the fact that Youngblood-West and the other parties to this litigation are involved in litigation presently. To allow the parties' names to remain a secret would prevent the public from knowing who the Court is making decisions about, including parties who are not even covered by the confidentiality agreement. Therefore, the names of the parties, their counsel and the case number should not be restricted from public access. The Court understands that such disclosure could theoretically lead to an infringement upon Dr. Amos's bargained for right of privacy, but to hold otherwise, would have the practical effect of denying meaningful public access altogether. Limiting the public docket to redacted motions, briefs, and orders *involving unnamed parties* tells the public too little. The Court understands that Dr. Amos may not get *all* that he bargained for due to the important interest of permitting public access.

2. The public has a right to know when a party makes a filing that asks the Court to take some official action and when a response to that motion is made. Therefore, the docket should reflect when such filings are made. The description of the

filings, however, should remain generic, so that the subject matter of the motion is not specifically disclosed without proper redaction.

3. The legitimate private interests of Dr. Amos and the public interest in the enforcement of contracts, along with the strong public interest in access to parties' motions, responses to those motions, and the Court's Orders deciding those motions, can best be balanced with a redaction protocol, as described in the remainder of this Order.[3]

Based on the foregoing, the Court orders that the following process shall apply in the consolidated cases of *Amos v. Youngblood-West*, No. 4:18-CV-68 and *Youngblood-West v. AFLAC et al.*, No. 4:18-CV-83:

1. The existence of the actions, including the names of the parties, their counsel, and the designated case numbers, shall appear on the public docket.
2. All future filings shall be made in the consolidated case which is case number 4:18-CV-83.

[3] Part of the Court's hesitancy in opening the file for full public access at this stage of the litigation arises from having not had an opportunity to rule on Defendants' motions to dismiss Youngblood-West's complaint. If the Court unsealed the record in its entirety today, and yet later ruled that Youngblood-West's claims are barred by the statute of limitations, have been released, or do not even state a claim (or even worse are frivolous), then Dr. Amos will have lost the benefit of his confidentiality agreement because of the mere filing of a lawsuit that turned out to be meritless.

3. A docket entry for each filing will appear on the public docket with the following generic descriptions: [Party's Name] Motion, [Party's Name] Response to Motion, and Order. If a filing falls into some category other than the above, the Clerk shall consult with the undersigned before making the public docket entry.

4. Future orders of the Court will be made available on the public docket with appropriate redactions. The full unredacted version shall be docketed under seal with access restricted to the parties, their counsel, and court personnel. Before a redacted version is docketed on the public docket, the parties shall have an opportunity to propose redactions. Within five business days of the unredacted order being docketed under seal, the parties shall file under seal a proposed redacted version of the order, including a brief description of the reasons supporting redaction. Thereafter, if the Court determines that redaction is appropriate, the Court will make the appropriate redactions and have the redacted version docketed on the public docket. If the Court determines that redaction is not appropriate, the Court will direct the Clerk to unseal the unredacted order.

5. Past orders have been docketed in redacted form and the unredacted versions of those orders shall remain under seal until further order of the Court.

6. The parties shall continue to make unredacted filings under seal by emailing them to the Clerk, who will then docket the filings with access restricted to the parties, counsel, and court personnel. Simultaneously with the emailing of the unredacted version of the filing, the filing party shall email to the Clerk a proposed redacted version of the filing. The Clerk will docket the redacted version with access restricted to the parties, counsel, and court personnel. Within five business days of the docketing of the redacted filing, any party may file a response to the redactions, specifying concerns about over-redaction or under-redaction. These responses shall be emailed to the Clerk who will docket the responses with access restricted to the parties, counsel, and court personnel. The responses and the proposed redacted versions of the filings shall remain restricted until the Court determines whether a redacted version should be docketed on the public docket.

CONCLUSION

[redacted]. But twenty-five years ago Youngblood-West signed an agreement not to publicly air those allegations in exchange for a

substantial monetary payment. Importantly, the Court has previously rejected her counsel's arguments that the agreement is unenforceable. And notwithstanding the strong public interest in full public access to the filings in this zealously contested litigation, the Court cannot ignore the legitimate opposing interests that arise from a confidentiality agreement that on its face is enforceable. Balancing the relevant interests, the Court finds that the modified sealing/redaction protocol specified in this Order is appropriate. Today's Order shall be filed under seal and subject to the redaction protocol described hereinabove.[4]

IT IS SO ORDERED, this 7th day of September, 2018.

S/Clay D. Land
CLAY D. LAND
CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA

[4] The unsealing of the names of the parties on the public docket shall also be delayed until after the Court receives the parties' requests for redaction of today's order pursuant to the redaction protocol.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

LEIGH ANN YOUNGBLOOD-WEST,	*	
Plaintiff,	*	
vs.	*	
		CASE NO. 4:18-CV-83 (CDL)
AFLAC INCORPORATED, DANIEL P. AMOS, WILLIAM LAFAYETTE AMOS, JR., CECIL CHEVES, & SAMUEL W. OATES,	*	
	*	
Defendants.		

O R D E R (REDACTED PUBLIC COPY)

Plaintiff's lawyer, Dimitry Joffe, has not fared well in this Court. In addition to adverse rulings in the present action, the undersigned recently dismissed a shareholder derivative action filed by Mr. Joffe against Aflac[1] and several of its board members; and in a separate action, the undersigned, over Mr. Joffe's objections, ordered the arbitration of claims asserted by Mr. Joffe on behalf of Aflac sales associates. Rather than acknowledge the possibility that his record thus far may be due to the weakness of his legal arguments, Mr. Joffe blames his lackluster performance on the alleged personal bias of the undersigned. Like the Little League parent who blasts the umpire when his eleven-year old takes a third strike, Mr. Joffe wants another judge. Just as that umpire

[1] In this Order, the Court refers to any of the various companies related to AFLAC Incorporated generally as "Aflac."

must remain in the game, so too must this judge. To ensure the impartial administration of justice, we do not permit disgruntled attorneys to manipulate the system and shop for a new judge when things do not go their way. As explained in the remainder of this Order, Plaintiff's motion to recuse (ECF No. 69) is frivolous and therefore denied.

PLAINTIFF'S GROUNDS FOR RECUSAL

Plaintiff seeks to recuse the undersigned pursuant to 28 U.S.C. § 144 and § 455. She has filed an affidavit describing why she believes the undersigned has a personal bias or prejudice against her and in favor of the Defendants. Her concerns fall into four categories: (1)she alleges that the affiliation of the undersigned and the Amos Defendants with the so-called "Fish House Gang" creates the appearance of partiality; (2) she maintains that the undersigned's family relationships with employees of AFLAC, specifically William Donald Land, Jr., require the undersigned's recusal; (3) she argues that the undersigned's spouse has an interest that could be substantially affected by the outcome of this action; and (4) she points to various rulings of the undersigned in support of her claim of actual bias.

DISQUALIFICATION STANDARDS

Section 144 requires disqualification if a judge has personal bias or prejudice either against a party or in favor of an adverse party. 28 U.S.C. § 144. To initiate a motion for disqualification pursuant to § 144, the party must file a "timely and sufficient" affidavit stating the facts and reasons for the party's belief that bias or prejudice exists. *Id.* Plaintiff has filed an affidavit purporting to satisfy section 144. *See* Pl.'s Mot. for Recusal Ex. 5, Pl.'s Aff., ECF No. 69-5 ["Pl.'s Aff."]. Section 144 contemplates initial screening of a party's recusal affidavit in order to prevent manipulation of the judicial system by disgruntled litigants. *See Davis v. Bd. of Sch. Comm'rs of Mobile Cty.*, 517 F.2d 1044, 1051 (5th Cir. 1975) ("Once the motion is filed under § 144, the judge must pass on the legal sufficiency of the affidavit . . ."[2]. "Legal sufficiency is determined as a question of law on the basis [of] whether the affidavit sets out facts and reasons for the party's belief that the judge has a personal bias and prejudice against the party or in favor of the adverse party." *Parrish v. Bd. of Comm'rs of Ala. State Bar*, 524 F.2d 98, 100 (5th Cir. 1975) (en banc).[3] A three part test assists

[2] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

[3] *See supra* note 2.

the Court in determining the sufficiency of an affidavit filed pursuant to section 144: "1. The facts must be material and stated with particularity; 2. The facts must be such that, if true they would convince a reasonable man that a bias exists; [and] 3. The facts must show the bias is personal, as opposed to judicial, in nature." *Id.* (quoting *United States v. Thompson*, 483 F.2d 527, 528 (3d Cir. 1973)). "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994).

Section 455 is similar to § 144 except that no affidavit is required to support a motion for recusal pursuant to section 455. *Phillips v. Joint Legislative Comm. On Performance and Expenditure Review*, 637 F.2d 1014, 1019 (5th Cir. 1981). Like § 144, § 455 requires disqualification if the judge's impartiality "might reasonably be questioned" or if he has a personal bias or prejudice for or against a party. 28 U.S.C. § 455(a)-(b)(1). A judge must also disqualify himself if "[h]e knows that he . . . or his spouse . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding." 28 U.S.C. § 455(b)(4). To determine whether an interest could be "substantially affected," the judge must evaluate "two variables: the remoteness of the interest and its extent or degree." *In re Moody*, 755 F.3d 891, 897 (11th Cir. 2014). Finally, a judge must

recuse if "a person within the third degree of relationship to [him] . . . [i]s a party to the proceeding, or an officer, director, or trustee of a party; [i]s acting as a lawyer in the proceeding; [or] [i]s known by the judge to have an interest that could be substantially affected by the outcome of the proceeding." *Id.* at § 455(b)(5)(i)-(iii).

As explained in the remainder of this Order, Plaintiff's affidavit and motion fail to allege sufficient facts to demonstrate bias or prejudice; they also do not show that the impartiality of the undersigned might reasonably be questioned.

FACTUAL AND PROCEDURAL BACKGROUND

Before addressing Plaintiff's specific accusations, the Court finds it helpful to describe what happened prior to Plaintiff's motion to recuse in order to provide context to her allegations of bias. Plaintiff's counsel, Mr. Joffe, has been involved in three other related actions in this Court. The following discussion describes those actions and the events that led to them.

I. Claims By Disgruntled Sales Associates and Shareholders

AFLAC Incorporated is a holding company that provides supplemental insurance products through its wholly owned subsidiary American Family Life Assurance Company of Columbus (collectively referred to in this order as "Aflac"). In addition

to the Plaintiff in this action, Mr. Joffe represents several disgruntled former employees and current shareholders of Aflac. He asserted derivative claims on behalf of three Aflac shareholders against officers and directors of Aflac. *See Conroy v. Amos*, No. 4:18-CV-33, 2018 WL 4208855 (M.D. Ga. Aug. 31, 2018)(hereinafter referred to as "the derivative action"). This action was dismissed by the undersigned. *See id.* Mr. Joffe also has asserted putative class action claims on behalf of seven present and former disgruntled Aflac sales associates. *See Am. Family Life Assurance Co. of Columbus v. Hubbard*, No. 4:17-CV-246, 2018 WL 283254 (M.D. Ga. Jan. 3, 2018)(hereinafter referred to as "the arbitration action"). The undersigned ordered Mr. Joffe to submit these claims to arbitration. *See id.* The following discussion describes the relationship between the derivative action, the arbitration action and the present action.

In December 2016, Mr. Joffe sent a notice on behalf of several former Aflac sales associates to Aflac's chief executive officer and the chairman of its board, Dan Amos, to Aflac's president and former board member, Paul Amos II, and to Aflac's general counsel. *Conroy*, 2018 WL 4208855, at *3. The notice made the following specific accusations: (1) Aflac engaged in fraudulent recruiting by promising potential sales associates they could make more money than was actually possible; (2) Aflac manipulated its key operational metrics to artificially inflate its potential earnings

and growth; (3) Aflac engaged in fraudulent underwriting through various means designed to artificially inflate its earnings; (4) Aflac engaged in fraudulent accounting practices by improperly extending revenue reporting periods; and (5) Aflac regional sales coordinators and market coordinators stole sales associates' commissions (collectively, the "Fraud Allegations"). *Id.* The associates also alleged that Aflac retaliated against them for informing management of the Fraud Allegations. *Id.* They asked Aflac to waive their arbitration agreements and allow them to pursue related claims against Aflac in court. *Id.*

In-house counsel for Aflac informed Mr. Joffe by letter that Aflac would investigate the Fraud Allegations. *Id.* Less than a month later, Aflac informed him that that it unequivocally denied the Fraud Allegations and demanded that the associates individually submit their disputes to arbitration. *Id.* Ignoring the arbitration agreements, Joffe sent Aflac a draft putative class action complaint asserting several claims against Aflac on behalf of Aflac sales associates and demanded that Aflac settle the claims. *Hubbard*, 2018 WL 283254, at *2. Aflac anticipatorily filed a petition in state court for an order compelling arbitration according to the sales associates' arbitration agreements. *Id.* at *1. The sales associates removed the case to this Court, and the undersigned found that the arbitration agreements were enforceable

and ordered the associates to submit their claims to arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq*. *Id*.

Three months after Aflac denied the Fraud Allegations and demanded that the sales associates submit their claims to arbitration, Mr. Joffe sent a notice to Aflac's outside directors that was similar to the one he had previously sent to Dan and Paul Amos and Aflac's general counsel. *Conroy*, 2018 WL 4208855, at *3. One of the outside directors, on behalf of all of the outside directors, informed Joffe that they were already aware of the Fraud Allegations and had been informed of management's due diligence efforts. *Id.* The response letter also informed Mr. Joffe that Aflac had retained outside counsel to represent Aflac in relation to the dispute notice and directed him to address future correspondence to the outside counsel. *Id.* Mr. Joffe alleged that the defendants in the derivative action breached their fiduciary duties to Aflac by failing to adequately investigate the Fraud Allegations and by failing to implement controls to detect and prevent the alleged wrongful conduct. *Id.*

Before Mr. Joffe notified Alfac's outside directors of his clients' Fraud Allegations, Aflac published its FY2016 Annual Report. *Id.* at *4. In that report, Aflac allegedly failed to disclose the Fraud Allegations. *Id.* In March 2017, Aflac published its 2017 proxy solicitation to shareholders, which

assured shareholders that Aflac was in good hands with the current board members and recommended that shareholders reelect Aflac's directors to the board. *Id.* The proxy likewise allegedly made no disclosure of the Fraud Allegations. *Id.* On May 1, 2017, shareholders reelected Alfac's board members. *Id.* Mr. Joffe claimed that the FY2016 Annual Report and 2017 proxy were false and misleading in violation of 15 U.S.C. §§ 78j and 78n and SEC Rules 10b-5 and 14a-9 because they failed to disclose his client's Fraud Allegations and their potential effect on Aflac's operations. *Id.*

In June 2017, Paul Amos II notified Aflac's board that he would be resigning as a director of Aflac and as president of Aflac on July 1, 2017. *Id.* Paul Amos allegedly sold over 200,000 of his Aflac shares a few days later. *Id.* Mr. Joffe alleged that Paul Amos committed insider trading under 15 U.S.C. § 78t-1 because he traded on material, nonpublic information—namely, knowledge of the sales associates' Fraud Allegations. *Id.* Pursuant to its director-authorized stock repurchase program, Aflac purchased some of its own shares the day after Paul Amos's stock sale. *Id.* Mr. Joffe claims that Aflac paid a higher price for its shares than it otherwise would have paid had it been aware the prices were inflated. *Id.*

Shortly after Paul Amos's stock sale, Mr. Joffe sent Aflac's counsel his first formal demand ("First Demand"). *Id.* This demand alleged that Paul Amos committed insider trading and breached his fiduciary duty to AFLAC when he sold his stock. *Id.* It demanded that Aflac bring a lawsuit against Paul Amos for disgorgement and other damages. *Id.* In response, Aflac's board created a special litigation committee composed of three outside directors (the "SLC") to investigate the claims against Paul Amos and respond to Mr. Joffe's First Demand. *Id.* The SLC eventually determined that pursuing the claims was not in Aflac's best interest and rejected Mr. Joffe's demand. *Id.*

Mr. Joffe then circulated a draft complaint to Aflac's outside counsel that named Dan Amos, Paul Amos II, and four Aflac directors as defendants ("Second Demand"). *Id.* In the Second Demand, Mr. Joffe asserted breach of fiduciary duty claims, securities and proxy fraud claims, an unjust enrichment claim against Paul Amos arising from his stock sale, and the insider trading claim against Paul Amos that the SLC had previously rejected. *Id.* Because the draft complaint presented the breach of fiduciary duty, unjust enrichment, and securities and proxy fraud claims to the SLC for the first time, the SLC considered the draft complaint to be a second formal demand and undertook to investigate. *Id.*

Before the SLC had formally responded to his Second Demand, Mr. Joffe filed his shareholder derivative action in the Southern District of New York. *Id.* at *5. Less than a month later, *The Intercept* published an online article detailing Aflac's conduct alleged in Mr. Joffe's client's complaint, including the Fraud Allegations. *Id.* The next day, Aflac's stock dropped 7.5%. *Id.* During the trading day, Aflac published a press release denying the allegations in the article and informing the market that Mr. Joffe's allegations were meritless. *Id.* Aflac then filed a Form 8-K with the SEC that reiterated Aflac's position, and it published the report the SLC generated in its investigation of Mr. Joffe's First Demand. *Id.*

Mr. Joffe subsequently amended his derivative action to include additional claims of securities fraud for alleged false misstatements and omissions in the press release and the Form 8-K ("Third Demand"). *Id.* The SLC considered the amended complaint to be a third formal demand and acted accordingly. *Id.* About a week later, the SLC issued its second report, rejecting Plaintiffs' Second Demand. *Id.* The New York derivative action was then transferred to this Court. *Id.*

Defendants in the derivative action moved to dismiss Mr. Joffe's amended complaint pursuant to O.C.G.A. § 14-2-744, which allows a corporate defendant to seek termination of a derivative

suit based upon the recommendation of a committee of the corporation's independent board members. *Id.* The undersigned granted the motion to dismiss on August 31, 2018 in a thirty page written order. *Id.*

Mr. Joffe did not file a motion to recuse the undersigned in the derivative action. But he did drop a footnote in a brief inviting the undersigned to evaluate whether he should recuse due to the undersigned's affiliation with the so-called Fish House Gang and family relationships. *Id.* at *1. Although no motion to recuse was filed, the undersigned found it necessary to clear up any suggestion of bias and explained in the written order granting Defendant's motion to dismiss why no basis existed for the undersigned's disqualification. *Id.* at *1-2. Three weeks after the undersigned dismissed Mr. Joffe's shareholder derivative action, Mr. Joffe filed his motion for recusal in the present action. Pl.'s Mot. for Recusal, *Youngblood-West v. Amos*, No. 4:18-CV-83 (M.D. Ga. Filed May 1, 2018), ECF No. 69.

II. Claims Arising from Dr. William Amos's Alleged [redacted] and Ms. Youngblood-West's Alleged [redacted]

As previously noted, the undersigned ordered Mr. Joffe to arbitrate the sales associates' claims instead of pursue a putative class action. *Hubbard,* No. 4:17-cv-246, 2018 WL 283254 (M.D. Ga. January 3, 2018). The undersigned denied Mr. Joffe's motion to

reconsider that order on January 25, 2018. Order, *Hubbard*, 2018 WL 283254, ECF No. 23. Less than sixty days after the undersigned denied that motion, Mr. Joffe allegedly sent a letter to Aflac's private counsel stating that [redacted] Compl. Ex. C, Letter from Dimitry Joffe to Lisa Cassilly and Mary Gill 1 (Mar. 16, 2018), ECF No. 2-3 ("Demand Letter"), *Amos v. Youngblood-West*, No. 4:18-CV-68 (M.D. Ga. Filed Apr. 16, 2018). Mr. Joffe further alleged that [redacted]

[redacted]

Id. Mr. Joffe informed Aflac's counsel in the letter that he represented Leigh Ann Youngblood-West, [redacted] *Id.* at 2. Mr. Joffe

acknowledged in the letter that Ms. Youngblood-West had entered into a "global settlement" [redacted] and that she was represented at that time by attorney Samuel Oates for whom she worked as a legal secretary at the time. *Id.* at 4. Mr. Joffe failed to mention in his letter that Ms. Youngblood-West retained other counsel in 1993 to pursue additional claims [redacted]. Compl. ¶ 155, *Youngblood-West v. Amos*, No. 4:18-CV-83 (M.D. Ga. Filed May 1, 2018), ECF No. 26. She signed releases that included confidentiality agreements when she settled her claims in 1992 and in 1993. *Id.* Ex. C, 1993 Settlement Agreement, ECF No. 26-3; Am. Compl. Ex. B, 1992 Settlement Agreement, ECF No. 26-2.

According to Mr. Joffe's letter, [redacted]

Mr. Joffe concludes his letter by informing Aflac's counsel that he was retained by Ms. Youngblood-West in 2018 "to prosecute her [redacted] claims against Aflac" and that she had instructed him "to [redacted] *Id.* Mr. Joffe then states, "[i]n advance of the filing of that complaint, I am authorized by Ms. Youngblood-West to make a settlement demand for [redacted] . . . to achieve an amicable resolution of this matter, if consummated within ten days from the date of this letter." *Id.* at 6-7.

Aflac's counsel responded to Mr. Joffe's demand on March 23, 2018 on behalf of Aflac and Dan Amos. Mot. for Sanctions Ex. B, Letter from Mary Gill to Dimitry Joffe 1 (Mar. 16, 2018), ECF No. 21-3, *Youngblood-West v. Amos*, No. 4:18-CV-83 (M.D. Ga. Filed May 1, 2018). The response began by describing Mr. Joffe's allegations as "baseless and defamatory" with "no factual or legal basis whatsoever to support these allegations as they relate to Aflac and/or Mr. Amos." *Id.* Counsel for Aflac and Dan Amos explained that [redacted] Counsel further

informed Mr. Joffe that neither Aflac nor Dan Amos had any knowledge of Ms. Youngblood-West's allegations, and neither of them participated in any settlement of her claims. *Id.* The letter put Mr. Joffe on notice that "[t]here is no good faith basis to proceed with these claims [against Aflac and/or Dan Amos] [redacted]

[redacted]

Id. The response ends with "Suffice it to say, Aflac rejects your offer of settlement for these patently false and baseless claims." *Id.* at 2.

Undeterred, Mr. Joffe emailed Aflac's counsel a copy of a draft complaint on Saturday April 14, 2018 at 5:28 P.M., stating "Counsel—this is ready for filing first thing Monday am." Compl. Ex. D, Email from Dimitry Joffe to Jim Grant (Apr. 14, 2018), ECF No. 2-4, *Amos v. Youngblood-West*, No. 4:18-CV-68 (M.D. Ga. Filed Apr. 16, 2018). Mr. Joffe included a cryptic post script: "I would quote Matthew 5:25 but your clients should know it by heart."[4] *Id.*

Mr. Joffe sent a follow-up email to counsel the next day, Sunday, April 15, at 12:13 P.M. Compl. Ex. F, Email from Dimitry Joffe to Jim Grant (Apr. 15, 2018), ECF No. 2-6, *Amos*, No. 4:18-

[4] According to the Gospel of Matthew, Jesus reportedly said, "[a]gree with thine adversary quickly, whiles thou art in the way with him; lest at any time the adversary deliver thee to the judge, and the judge deliver thee to the officer, and thou be cast into prison." Matthew 5:25 (King James).

CV-68. In that email, he stated, "Counsel—I may not be able to check my emails for the rest of today but you can always reach me on my mobile [phone]. Your clients have 12 hours left to decide whether they wish to have this dispute resolved in court." *Id.* Thus, Mr. Joffe threatened to file the lawsuit electronically some time after midnight and before the Court opened for regular hours on Monday morning.

Dr. Amos retained different counsel than Aflac. That counsel determined that Mr. Joffe's correspondence to Aflac's counsel violated the nondisclosure agreements executed by Ms. Youngblood-West over 25 years earlier. To prevent the disclosure of confidential information covered by those agreements, Dr. Amos's counsel filed a Verified Complaint and Emergency Ex Parte Motion for Temporary Restraining Order to prevent Youngblood-West from filing the complaint on the public docket and to prevent any dissemination of the information that was the subject of the prior settlement/nondisclosure agreements. *Amos v. Youngblood-West*, No. 4:18-CV-68 (M.D. Ga. Filed Apr. 16, 2018)(hereinafter "Dr. Amos Nondisclosure Agreement Action"). Given the urgency of the situation, counsel for Dr. Amos contacted the undersigned at home late on Sunday evening of April 15th to advise the undersigned of its action and the short time period the Court had to grant a temporary restraining order given Mr. Joffe's threat to file his complaint shortly after midnight. Rather than decide the matter

ex parte, the undersigned recalls having counsel for Dr. Amos contact Mr. Joffe so that a conference call could be scheduled that evening. To the best of the undersigned's recollection, a short conference call was held with Mr. Joffe and Dr. Amos's counsel in which the undersigned advised them that he would hold a hearing the next morning where Mr. Joffe and Dr. Amos's counsel could be heard. After hearing from both sides the next morning, the Court issued a preliminary injunction against Plaintiff and Mr. Joffe. That order was subsequently memorialized in writing. Order, *Amos*, No. 4:18-CV-68, ECF No. 3. It restrained Mr. Joffe and Ms. Youngblood-West as follows:

> A. [Ms. Youngblood-West], and any person acting on her behalf or in concert with her (including her current counsel), shall file under seal any document that relates to the subject matter of the draft [redacted], including, without limitation, the draft [redacted] any complaint similar to it, and any corresponding exhibits;[5]
>
> B. [Ms. Youngblood-West], and any person acting on her behalf or in concert with her (including her current counsel), shall not disseminate, disclose, or discuss publicly the subject matter of the draft [redacted] or any other documents sealed and restricted by this Court, except that [redacted] and [Ms. Youngblood-West] is not prohibited from discussing these matters with her current counsel;

[5] "Under seal," as used in this Order, meant that the filing must not be available to the public without prior permission from the Court or the government agency with whom the filing is made.

> C. Access to [Dr. Amos's] Verified Complaint (including the Exhibits), [Dr. Amos's] Emergency Ex Parte Motion for a Temporary Restraining Order, and any further filings in this action shall be restricted such that the filings are only accessible by the parties to this action, their counsel of record, and court personnel.

Id. at 3-4. Mr. Joffe subsequently filed his complaint under seal in this Court on May 1, 2018. *See* Compl., *Youngblood-West v. Amos*, No. 4:18-CV-83 (M.D. Ga. filed May 1, 2018), ECF No. 1 (hereinafter "Youngblood-West Action" or "present action"). And he filed a motion to dismiss Dr. Amos's nondisclosure agreement action in case number 4:18-CV-68. Def.'s Mot. to Dismiss, *Amos*, No. 4:18-CV-68, ECF No. 15. In an order dated August 7, 2018, the Court denied that motion to dismiss, finding that the settlement agreements were valid contracts that contained enforceable confidentiality provisions. Order, *Amos*, No. 4:18-CV-68, ECF No. 19. In that order, the Court also stated the following:

> Having decided today that the agreements are enforceable as alleged, the Court finds that a strong interest exists in honoring the parties' confidentiality agreements by restricting public access to these proceedings. The Court further finds, notwithstanding that interest, that there is a strong public interest in public access to judicial proceedings, particularly orders of the Court. Balancing these competing interests, the Court directs that this case be unsealed such that the existence of this action, the identities of the parties, and today's Order by the Court shall be shown on the public docket. However, until further order of the Court, all previous and future filings in this action shall be maintained and filed in a restricted manner such that they are accessible only by the parties, their counsel, and appropriate court personnel.

Id. at 15 n.5. The day after that order was entered, the Court entered a show cause order directing the parties in Dr. Amos's nondisclosure agreement action and in the Youngblood-West action to show cause as to whether filings in these two cases should remain restricted from public access. Order, *Amos*, No. 4:18-CV-68, ECF No. 20; Order, *Youngblood-West*, No. 4:18-CV-83, ECF No. 37.

Shortly after the cases were partially unsealed, counsel contacted the Clerk's Office and informed administrative personnel that Dr. Amos intended to file a motion for reconsideration regarding the Court's partial unsealing of the cases and thus requested that the case be re-sealed until that motion could be filed. The following remark by a docket clerk is indicated on the docket: "[i]n light of recent telephonic inquiries and in anticipation of motions for reconsideration/clarification, the cases are remaining sealed pending further Order of the Court." Docket Remark, *Amos*, No. 4:18-CV-68. On that same day, Dr. Amos's counsel filed an "Emergency Motion for Reconsideration." Mot. for Recons., *Amos*, No. 4:18-CV-68, ECF No. 21. In that motion, counsel sought to be heard on whether the filings should remain sealed, and if not, the extent to which they should be unsealed. *Id.* at 2.

Two days later, the Court granted in part and denied in part the motion for reconsideration. Order, *Amos*, No. 4:18-CV-68, ECF

No. 23; Order, *Youngblood-West*, No. 4:18-CV-83, ECF No. 40. Specifically, the Court stated "[t]he Court orders that these actions shall be partially unsealed, until the parties have had an opportunity to respond to the Court's previously issued show cause order and the Court can determine whether the remainder should be unsealed." *Id.* at 2. The Court directed that the existence of the actions and the case numbers shall appear on the public docket, but the names of the parties shall be shown as "Sealed v. Sealed." *Id.* The Court further ordered that the following documents would be accessible to the public until further order of the Court: (1) a redacted copy of the Court's show cause order; (2) an unredacted copy of the Court's order granting in part and denying in part the motion for reconsideration and partially unsealing the action; and (3) a redacted copy of the order denying Youngblood-West's motion to dismiss in case number 4:18-CV-68. *Id.* at 2-3.

The Court eventually consolidated Dr. Amos's nondisclosure agreement action, case number 4:18-CV-68, with the Youngblood-West action, case number 4:18-CV-83, on September 6, 2018, over Mr. Joffe's objection. Order, *Youngblood-West*, No. 4:18-CV-83, ECF No. 57. Dr. Amos's nondisclosure agreement claims were treated as counterclaims in the Youngblood-West action. After receiving briefing from the parties, the Court entered an order on September 7, 2018 addressing the issue of whether and to what extent filings should remain sealed. Order, *Youngblood-West*, No. 4:18-CV-83, ECF

No. 59. The Court established a redaction protocol in that order. *Id.*

In the Youngblood-West action, Mr. Joffe alleges on behalf of his client that [redacted]. He also alleges certain related [redacted]. Am. Compl. ¶ 1, *Youngblood-West*, No. 4:18-CV-83, ECF No. 26. Defendants seek dismissal of Plaintiff's complaint because it fails to state a plausible claim for relief against any of the Defendants, the claims are barred by the statute of limitations, and the claims against Dr. Amos and Cheves have been released. Mots. to Dismiss, *Youngblood-West*, No. 4:18-CV-83, ECF Nos. 32-34. Those motions are presently ripe for consideration by the Court. Defendant Oates had not been served with the Complaint at the time the other Defendants filed their motions to dismiss.

After all of the briefing had been completed on the motions to dismiss and the Court had spent considerable time reviewing them, Mr. Joffe filed the current motion to recuse the undersigned on September 21, 2018. Mot. for Recusal, *Youngblood-West*, No. 4:18-CV-83, ECF No. 69. The Court must decide the motion to recuse before deciding the motions to dismiss.

DISCUSSION

With this background in mind, the Court addresses the Plaintiff's recusal accusations.

"Fish House Gang" Affiliation

Plaintiff states in her affidavit that the Amos and Land families are among "the founders and prominent members of the so-called Fish House Gang—a secretive, exclusive, 'by invitation only,' highly coveted 'singular opportunity to network' for the powerful members of the Georgia establishment." Pl.'s Aff. ¶ 17. In support of this conclusory statement, she cites to newspaper articles and other published writings. *Id.* at ¶¶ 17-26. Those writings focus upon the undersigned's great-uncle, John Land, who was a Superior Court Judge for the Chattahoochee Judicial Circuit and considered by many to be the leader of the Fish House Gang. *Id.* Plaintiff's affidavit also quotes an excerpt from a publication on Aflac co-founder John Amos that states that John Amos "founded" the Fish House Gang. *Id.* at ¶ 20. The only mention of the undersigned in any of the articles is that the undersigned attended some of the Fish House Gang meetings. *Id.* at ¶ 21.

The articles are a fascinating and nostalgic look at a powerful Superior Court Judge from a prior era. But that judge has been dead for seven years; and he had been retired for twenty-

three years when he died at the age of 93.[6] *See id.* at 24 (citing a 2011 article entitled "Powerful Judge John Henry Land Dies at Age 93"). The undersigned does not deny that his great-uncle John had a personal friendship with John Amos, one of the Aflac founders. But John Amos died in 1990 at the age of sixty-six.[7] While the articles cited in Plaintiff's affidavit fuel Plaintiff's speculation that a close connection existed between John Land, John Amos, and the Fish House Gang, those affiliations ended in 1990 upon the death of John Amos. And John Land's affiliation with the Fish House Gang would have ended no later than his death in 2011.

The present question is whether the *undersigned's* affiliation with the *modern* version of the Fish House Gang (seven years after his great-uncle's affiliation ceased and twenty-eight years after John Amos's affiliation ceased) would cause a reasonable person to believe that the undersigned could not be impartial in an action involving Aflac, Dan Amos, William Amos, Cecil Cheves, and Samuel Oates. In an order dismissing Mr. Joffe's

[6] John Land died on November 30, 2011 at the age of 93. He served as a Superior Court judge for the Chattahoochee Judicial Circuit from 1964 to January 1, 1989 when he retired. He was the brother of the undersigned's grandfather.

[7] *See* Laura McCarty, *John Amos (1924-1990)*, New Georgia Encyclopedia (Mar. 10, 2006), https://www.georgiaencyclopedia.org/articles/business-economy/john-amos-1924-1990.

shareholder derivative action, the undersigned described the modern Fish House Gang as follows:

> This group actually includes approximately two-hundred invitees who gather three or four times a year to enjoy fried fish, french fries, hushpuppies, coleslaw, and each other's company. The undersigned has been invited to these functions over the years and has attended with some regularity. The group conducts no official business, charges no membership fees, and has no stated organizational purpose. The attendees pay for the cost of their own meals.

Conroy v. Amos, No. 4:18-CV-33, 2018 WL 4208855, at *1 (M.D. Ga. Aug. 31, 2018). Plaintiff and her counsel imply that Dan Amos, William Amos, and/or Cecil Cheves also attend Fish House Gang functions. According to the undersigned's review of the most recent invitee list, none of them are on the list. Although they may have attended one or more of these fried-fish suppers in the past, the undersigned has no specific recollection of them having done so.[8]

The applicable recusal standards do not require disqualification based upon the undersigned's attendance at these fish suppers. The test under section 455(a) is "whether an objective, disinterested, lay observer" knowing the grounds on which recusal is sought "would entertain a significant doubt about the judge's impartiality." *Parker v. Connors Steel Co.*, 855 F.2d

[8] Defendant Samuel Oates does appear on the recent invitee list, but the undersigned has no specific recollection of his recent attendance.

1510, 1524 (11th Cir. 1988). As noted, the undersigned does not have any recollection of the Amos Defendants or Defendant Cheves even attending these events, and their names do not appear on the recent invitee list.

But even if they did attend these suppers, the undersigned's attendance would not warrant disqualification in this action. Attendance at social events that a party to litigation may have also attended does not create the appearance of partiality or bias and is not a legitimate basis for recusal. *See Parrish v. Bd. of Comm'rs of Ala. State Bar*, 524 F.2d 98, 101, 104 (5th Cir. 1975);[9] Code of Conduct for United States Judges Canon 4 cmt. (Judicial Conference 2014) ("Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives."). Nor does it provide a basis for recusal under §§ 144 or 455(b)(1), which ask whether the undersigned *actually* has a personal bias or prejudice concerning a party. *United States v. Amedeo*, 487 F.3d 823, 828 (11th Cir. 2007).

Perhaps if John Land and his good friend John Amos were miraculously resurrected and John Land was reincarnated as a United

[9] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

States District Court judge and John Amos was a party to this litigation, then *great-uncle* John may should consider recusal. But the undersigned is aware of no principle of law that would result in the undersigned inheriting his great-uncle's alleged bias in favor of John Amos, and then transforming that bias to a bias in favor of John Amos's nephews.

Mr. Joffe's Fish House Gang allegations may make for a colorful tale about old-fashioned politics in a by-gone era, but they are frivolous insofar as he relies upon them as a basis for the undersigned's disqualification.

Family Relationships

In her affidavit, Plaintiff states generally that the undersigned has family ties with the Amos Defendants. She makes no *specific* allegations as to what those ties are and only identifies Aflac employee William Donald Land, Jr. as a disqualifying relative. The undersigned does not believe that he has ever met William Donald Land, Jr. and first learned of his employment at Aflac when it was brought to his attention by Mr. Joffe in this litigation. Upon learning of his alleged involvement in this action as an employee in the Aflac legal department, the undersigned consulted with the Land family genealogist and has learned that William Donald Land, Jr. is the undersigned's fourth cousin, once removed. According to the undersigned's

calculations, this places William Donald Land, Jr. at the 11th degree of relationship to the undersigned.

A judge must recuse when "a person within the *third degree* of relationship" to the judge is or could be involved in a proceeding in certain ways or has "an interest that could be substantially affected by the outcome of the proceeding." 28 U.S.C. § 455(b)(5). Even if William Donald Land, Jr. is somehow involved in these proceedings, his degree of relationship to the undersigned is a distant eight degrees beyond the prohibited boundary. That diluted blood line combined with the undersigned's personal unfamiliarity with his distant relative makes him more stranger than "kissing cousin."[10] The undersigned is also unaware of any other relative who is within the prohibited degree of relationship and involved in these proceedings or who has an interest that could be substantially affected by the outcome.

Spouse's Employment With
Page, Scrantom, Harris & Chapman, P.C.

In her affidavit, Plaintiff alleges that the undersigned's wife was a partner in the Page, Scrantom, Harris & Chapman, P.C. law firm at the time that Plaintiff signed the two releases that

[10] "Kissing Cousin" has been defined as "a person and especially a relative whom one knows well enough to kiss more or less formally upon meeting." *Kissing Cousin Definition*, Merriam-Webster Dictionary, *available at* www.merriam-webster.com/dictionary/kissing%20cousin.

Defendants Dr. Amos and Cheves rely upon in part in their pending motions to dismiss this action. One of these releases includes Page, Scrantom, Harris & Chapman, P.C. ("Page Scrantom") and all of its shareholders, officers, and employees as releasees. Mr. Joffe, therefore, maintains that the undersigned's wife, as a former employee and shareholder of Page Scrantom at the time the releases were executed, has a *substantial* interest in how the Court rules on the enforceability of those releases. The interest of the undersigned's wife in the outcome of that issue, or any other issue in these proceedings, is not simply insubstantial and remote—it is nonexistent. Mr. Joffe's suggestion otherwise is misleading.

Plaintiff specifically released Cecil Cheves, William Amos, Samuel Oates, and Page Scrantom. *See* Am. Compl. Ex. C, 1993 Settlement Agreement 1, ECF No. 26-3. The general release also included language releasing any employee or shareholder of Page Scrantom. *Id.* But Plaintiff has made no allegation that the undersigned's spouse had anything to do with the conduct giving rise to the claims that were released. She was simply released incidentally along with every other employee of the firm at the time, whether they knew anything about the matter or not.

Presumably, Mr. Joffe contends that although the undersigned's wife left Page Scrantom around 1994, she somehow presently has a substantial interest that could be affected by the

outcome of these proceedings due to her being an incidental releasee. Mr. Joffe carelessly alleges that the undersigned's wife was a "partner" in Page Scrantom based upon her name appearing among the list of lawyers on Page Scrantom letterhead from that era. But that same letterhead that Mr. Joffe relies on clearly indicates that Page Scrantom was a *professional corporation*, not a general partnership. Pl.'s Mot. for Recusal Ex. A., Letter from Page Scrantom (Sept. 29, 1992), ECF No. 69-1; Pl.'s Mot. for Recusal Ex. B, Letter from Page Scrantom (Mar. 16, 1993), ECF No. 69-2. Thus, the letterhead shows only that the undersigned's wife may have been a *shareholder* in the Page Scrantom professional corporation.

While lawyers who are shareholders in professional corporations sometimes refer to their fellow lawyer shareholders casually as "partners," a significant legal difference exists between a *shareholder* lawyer in a professional corporation and a *partner* in a general partnership. Under Georgia law, a shareholder in a law firm professional corporation is not legally liable for the conduct of other fellow lawyers/shareholders in the professional corporation. *See Henderson v. HSI Fin. Servs., Inc.*, 471 S.E.2d 885, 886-87 (Ga. 1996)(holding that shareholders in a professional corporation law firm were not liable for the professional misconduct of a fellow lawyer shareholder). Therefore, even if the release that included Page Scrantom, its

shareholders, and employees was held to be unenforceable, such a ruling would have no legal or practical impact on the undersigned's wife, an incidental releasee. She is not alleged to have engaged in any conduct involving the plaintiff that would subject her to personal liability. And, under Georgia law, she could face no liability for the conduct of then fellow-shareholder Cheves or any of the other lawyers [redacted]. Furthermore, since she left the firm in 1994, she has no present shareholder interest in the Page Scrantom professional corporation, and thus has no capital contribution at risk.[11] The undersigned's spouse simply has no interest that could be affected by these proceedings. No reasonable person could conclude otherwise. And had Mr. Joffe exercised slight diligence before having his client execute a misleading affidavit, he would have reached the same conclusion.

Allegations of Actual Bias

Mr. Joffe makes several allegations of "actual personal bias." Most of those accusations relate directly to rulings that the Court has made in this litigation and thus cannot support a personal bias claim. *See Liteky v. United States*, 510 U.S. 540, 555 (1994); *see also Parrish v. Bd. of Comm'rs of Ala. State Bar,*

[11] The Court notes that neither Page Scrantom, nor any of its shareholders or employees, except former shareholder and employee Cheves, has been named as a party in the present litigation.

524 F.2d 98, 100 (5th Cir. 1975) (en banc). Therefore, the undersigned does not address them here. But Mr. Joffe also makes baseless and misleading accusations of improper *ex parte* communications, and those allegations cannot be left unanswered.

Mr. Joffe seeks to cast a cloud over the undersigned's impartiality by spinning entirely appropriate conduct as suspicious *ex parte* communications. These accusations are preposterous, and Mr. Joffe should have known better before he recklessly included them in his client's affidavit. First, he points to the initiation of this litigation when the undersigned was contacted by telephone at home late on a Sunday evening by a desperate lawyer representing Dr. Amos who obviously did not want to disturb a federal judge at home, much less late on a Sunday evening. Dr. Amos's counsel was faced with the threat from Mr. Joffe that sometime after midnight and before the Court opened officially for business Monday morning, Mr. Joffe was going to file electronically a complaint on the public docket that included allegations covered by a nondisclosure agreement signed by Mr. Joffe's client over 25 years ago. Counsel for Dr. Amos certainly had a good faith basis for seeking an *ex parte* temporary restraining order. Mr. Joffe should be aware that such *ex parte* temporary restraining orders are authorized by clearly established law. *See* Fed. R. Civ. P. 65(b) ("The court may issue a temporary restraining order *without written or oral notice to the adverse*

party or its attorney . . .” (emphasis added)). No reasonable member of the bar would have a good faith belief that Dr. Amos’s counsel’s attempt to seek a temporary restraining order was an improper *ex parte* communication.

Moreover, the events following Dr. Amos’s counsel’s contact further demonstrate the frivolous nature of Mr. Joffe’s accusation. Rather than decide the motion *ex parte*, as the undersigned could have done consistent with applicable law, the undersigned insisted that Dr. Amos’s counsel get Mr. Joffe on the line that night. The undersigned then held a telephone conference from his home late Sunday evening with both Dr. Amos’s counsel and Mr. Joffe. The Court informed them that they both would be heard first thing the next morning. That Monday morning, the Court held a hearing. After hearing from both sides, the Court entered a preliminary injunction directing that Mr. Joffe file his complaint under seal instead of on the public docket. Suggesting that anything about this process amounted to inappropriate *ex parte* communication is frivolous and misleading.

Mr. Joffe’s other allegation of improper *ex parte* communication is similarly groundless. Mr. Joffe accuses Defendants’ counsel of making improper *ex parte* contacts with the Court when counsel made telephonic inquiries of court personnel. In support of this accusation, Mr. Joffe relies upon the following

remark by a docketing clerk: "REMARK: In light of recent telephonic inquiries and in anticipation of motions for reconsideration/clarification, the cases are remaining sealed pending further Order of the Court." Docket Remark, *Amos*, No. 4:18-CV-68. The entry includes the initials of the docket clerk who made the entry. *Id.*

Mr. Joffe first suggests that this entry was suspiciously deleted from the docket. This suggestion is simply false. It appears on the docket today. But since it was an internal administrative entry by a docket clerk, it is only accessible to court personnel consistent with the policies and procedures of the clerk of court. The docket does note, however, that when the entry was made by the docket clerk, it was served upon counsel for the parties, including Mr. Joffe. Any suggestion that court personnel tried to hide the information contained in the docket clerk's remark or improperly deleted a docket entry is false and misleading.

As to the suggestion that the re-sealing of the case was somehow improper, Mr. Joffe again resorts to a misleading interpretation of what actually happened. The Court issued an order partially unsealing the case at approximately 5:00 P.M. on August 7, 2018. The next morning, while the undersigned was in Montgomery, Alabama holding court as a visiting judge, counsel for

Dr. Amos contacted the clerk's office notifying the docket clerk that they intended to file a motion for reconsideration regarding the partial unsealing and requesting that the case remain under seal until their motion for reconsideration could be heard. The docket clerk promptly re-sealed the cases administratively. Shortly after that was done, Dr. Amos's counsel sent the following email to the undersigned's courtroom deputy clerk, which he also sent to Mr. Joffe: "Dear Ms. Long—I represent plaintiff. Last evening, I received the Court's order denying defendant's motion to dismiss and partially unsealing the record in this case. I understand the case was re-sealed this morning. We would like to schedule a conference call with the Court and opposing counsel to discuss this issue this afternoon. We respectfully ask that plaintiff be heard before any portion of this case is unsealed. If necessary, we will file an emergency motion for reconsideration this afternoon with the Court." The undersigned subsequently decided the motion for reconsideration after hearing from both sides. There was no *ex parte* contact with the undersigned about the merits of the motion for reconsideration or any other substantive issues in the case. The status quo was simply maintained administratively until the Court could hear from both sides on the motion for reconsideration. Mr. Joffe should know that this conduct does not amount to improper *ex parte*

communication. It is certainly not evidence of personal bias on the part of the undersigned.

The remaining claims in Plaintiff's affidavit are either based upon the undersigned's judicial rulings, writing style, or alleged delay in issuing certain rulings. None of that conduct supports a claim of actual personal bias.

CONCLUSION

Accusations of bias and lack of impartiality must be taken seriously, which is why the undersigned has filled so many pages to thoroughly address Plaintiff's charges. But as this Order makes abundantly clear, the accusations here do not withstand minimal scrutiny. Most are frivolous and many are just plain misleading.

It is human nature to blame others when we do not get what we want. The undersigned understands Plaintiff's frustration. [redacted] And her lawyer has apparently given her some hope that thirty-four years later she will be heard, her rights will be vindicated, and she will be generously compensated. When a judge approaches her case like other cases, in a methodical manner without the expression of personal sympathy, a lay party could predictably react with disappointment and even anger. But members of the bar like Mr. Joffe are held to a higher standard. Lashing out with reckless and frivolous accusations of judicial bias does not meet that standard.

No legitimate reason exists for the undersigned to abandon his post in this litigation. As has been noted in this Circuit and others, "there is as much obligation for a judge not to recuse when there is no occasion for him to do so as there is for him to do so when there is." *Carter v. W. Publ'g Co.*, No. 99-11959-EE, 1999 WL 994997, at *2 (11th Cir. Nov. 1, 1999) (Tjoflat, J., addendum to pro forma order denying recusal motion) (alteration in original) (quoting *Hinman v. Rogers*, 831 F.2d 937, 939 (10th Cir. 1987)). Recusal under the circumstances presented here would be a dereliction of duty. Plaintiff's motion (ECF No. 69) is denied.

This 5th day of October, 2018

S/Clay D. Land
CLAY D. LAND
CHIEF U.S. DISTRICT JUDGE
MIDDLE DISTRICT OF GEORGIA

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

LEIGH ANN YOUNGBLOOD-WEST,	*	
Plaintiff,	*	
vs.	*	
AFLAC INCORPORATED, DANIEL P. AMOS, WILLIAM LAFAYETTE AMOS, JR., CECIL CHEVES, and SAMUEL W. OATES,	*	CASE NO. 4:18-CV-83 (CDL)
Defendants.	*	

O R D E R (REDACTED)

Plaintiff Leigh Ann Youngblood-West alleges that [redacted] Defendant William L. Amos Jr. ("Dr. Amos") [redacted] on January 3, 1984. Eight years later, while working as an employee in the law office of Defendant Samuel Oates, she learned [redacted] She retained Oates to represent her in connection with the 1984 incident. On August 28, 1992, she settled her claims against Dr. Amos, who was represented by Defendant Cecil Cheves, and she executed a general release and nondisclosure agreement in exchange for [redacted]. Shortly after the consummation of the settlement, her bank, which was also represented by Cheves's law firm, learned of the settlement and sought to recover from the settlement proceeds a debt that she and her husband owed. Plaintiff alleges that the bank took most of

her settlement proceeds. She then began pointing fingers at Oates and Cheves, maintaining that Oates had settled her case for less than it was worth and that someone tipped the bank off about the settlement in violation of the nondisclosure agreement contained in the settlement agreement. She retained new counsel, Taylor Jones, to represent her. On November 19, 1993, she entered into a second settlement agreement that included another general release and nondisclosure agreement. This time, she again released Dr. Amos [redacted], and in addition, she released Oates and Cheves from any liability related to the first settlement of her claim against Dr. Amos and any claims related to the bank's collection of its debt. The release specifically included the release of any claims for fraud or duress and any claims against Oates related to his failure to obtain an adequate settlement against Dr. Amos the first time. In exchange for the second release and nondisclosure agreement, Dr. Amos paid Plaintiff an additional [redacted], [redacted] for the release and [redacted] for the nondisclosure agreement.

Plaintiff now wants a third bite at the apple and alleges a Racketeer Influenced and Corrupt Organizations Act ("RICO") conspiracy and state law tort claims relating to what her lawyer describes as [redacted]. The essence of her [redacted] claim is that Defendant Dan Amos was aware of [redacted]

[redacted], and that Dan Amos, Cheves, and Oates conspired to make sure Plaintiff never disclosed [redacted] in order to protect the Amos family from embarrassment, Dr. Amos from [redacted], and Defendant Aflac Incorporated ("Aflac") from a tarnished corporate image. Defendants Dr. Amos, Cheves, Dan Amos, and Aflac filed Motions to Dismiss, which have been fully briefed. Oates was not served until recently, and therefore, he has no motion to dismiss pending. Because Plaintiff's claims are barred by the statute of limitations, have been released, and/or fail to state a plausible claim for relief, Defendants' Motions (ECF Nos. 32, 33, & 34) are granted.

MOTION TO DISMISS STANDARD

It is important to fully appreciate the difference between dismissing a complaint based upon inadequate factual allegations and granting summary judgment based upon inadequate evidence. It has been this Court's experience that some attorneys have blurred this distinction since the Supreme Court's decisions in *Twombly* and *Iqbal*:[1]

> Since *Twombly* was decided, many lawyers have felt compelled to file a motion to dismiss in nearly every case, hoping to convince the Court that it now has the authority to divine what the plaintiff may plausibly be

[1] *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

> able to prove rather than accepting at the motion to dismiss stage that the plaintiff will be able to prove [her] allegations. These motions, which bear a close resemblance to summary judgment motions, view every factual allegation as a mere legal conclusion and disparagingly label all attempts to set out the elements of a cause of action as 'bare recitals.' They almost always, either expressly or, more often, implicitly, attempt to burden the plaintiff with establishing a reasonable likelihood of success on the merits under the guise of the 'plausibly stating a claim' requirement. While these cautious lawyers, who have been encouraged by *Twombly* and *Iqbal*, have parsed the *Twombly* decision to extract every helpful syllable, they often ignore a less well known (or at least less frequently cited) admonition from *Twombly*: '[O]f course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.' *Twombly*, 550 U.S. at 556 []. Finding the *Twombly/Iqbal* urge irresistible, many lawyers fail to appreciate the distinction between determining whether a claim for relief is 'plausibly stated,' the inquiry required by *Twombly/Iqbal*, and divining whether actual proof of that claim is 'improbable,' a feat impossible for a mere mortal, even a federal judge.

Barker ex rel. *U.S. v. Columbus Reg'l Healthcare Sys., Inc.*, 977 F. Supp. 2d 1341, 1346 (M.D.Ga. 2013). Notwithstanding the over-use and misapplication of the *Twombly/Iqbal* standard, some cases are tailor made for its application. This case is one of those.

Plaintiff's Amended Complaint is filled with duplicative conclusory allegations which she attempts to substantiate factually by incorporating three exhibits into her Complaint—the 1992 release and nondisclosure agreement, the 1993 release and nondisclosure agreement, and a recorded conversation between Plaintiff and Dr. Amos occurring in 2016. Because those exhibits

are incorporated into her factual allegations, go to the heart of her complaint, and their authenticity is not questioned, the Court considers them as part of the well-pleaded complaint. *See Reese v. Ellis, Painter, Ratterree & Adams, LLP*, 678 F.3d 1211, 1216 (11th Cir. 2012)(noting that the Court treats exhibits attached to a plaintiff's complaint "as part of the complaint for Rule 12(b)(6) purposes").

While the incorporation of these exhibits as part of Plaintiff's Complaint complicates the *Twombly/Iqbal* analysis, it actually clarifies the factual basis for her claims. The complication arises because some of Plaintiff's essential conclusory allegations in her Complaint are inconsistent with unequivocal factual statements in the exhibits. The Court must certainly accept Plaintiff's allegations, along with any reasonably favorable inferences, as true at the motion to dismiss stage. But the Court cannot ignore factual statements in her Complaint that contradict other allegations, particularly when she purports to rely upon the contradicted allegations to support further allegations. *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1206 (11th Cir. 2007)("[W]hen the exhibits contradict the general and conclusory allegations of the pleading, the exhibits govern."). The Court understands *Twombly/Iqbal's* admonition that the district court must focus on "plausibility" and make a reasonable determination as to whether discovery is likely to

produce evidence to support general conclusory allegations as requiring this exacting analysis. *Twombly*, 550 U.S. at 556 (requiring a plaintiff to plead "plausible grounds to infer" illegal conduct and "enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal [conduct]"). In determining whether Plaintiff has adequately pled her claims, the Court also must view her fraud-based RICO allegations through the focused lens of Federal Rule of Civil Procedure 9(b), which requires her to plead her claims with particularity. *See* Fed. R. Civ. P. 9(b)(requiring the circumstances constituting fraud to be alleged with particularity); *Miccosukee Tribe of Indians of Fla. v. Cypress*, 814 F.3d 1202, 1212 (11th Cir. 2015)("When the underlying allegations assert claims that are akin to fraud, the heightened pleading standards of Rule 9(b) apply to the RICO claims.").

FACTUAL ALLEGATIONS

Plaintiff's Amended Complaint, including exhibits, alleges the following facts, which the Court must accept as true for purposes of the pending motions:[2]

[2] As noted previously, Plaintiff attached as exhibits to her Complaint the two releases/nondisclosure agreements and a transcript of her recorded conversation with Dr. Amos. In several places, Plaintiff makes allegations in the Complaint that cite to the exhibits for propositions that are inconsistent with the exhibits. When that occurs, the Court attempts to reconcile the two by construing any reasonable inferences in Plaintiff's favor. When the Complaint clearly and unambiguously misstates a fact that is stated in the exhibit, the Court accepts the fact in the exhibit over Plaintiff's erroneous conclusory misstatement

Defendant Dr. Amos is the son of one of Aflac's co-founders and the first cousin of Aflac's current CEO and Chairman, Defendant Dan Amos. Am. Compl. ¶ 2, ECF No. 26. In the 1980s, Dr. Amos served as both the Chief Medical Director and a board member of Aflac. *Id.* ¶¶ 1, 105. Dr. Amos also had a private OB/GYN practice in Columbus, Georgia, which Aflac encouraged its employees and their families to visit. *Id.* ¶¶ 1, 83, 91.

Plaintiff's late husband was an Aflac employee who worked as a pilot for Aflac's corporate fleet from 1976 to 1989. *Id.* ¶ 54. Plaintiff was a patient of Dr. Amos. *Id.* ¶ 91.

I. Plaintiff's 1984 [redacted]

On January 3, 1984, Plaintiff [redacted]

of that fact in the Complaint. *Griffin Indus., Inc.*, 496 F.3d at 1206 ("[W]hen the exhibits contradict the general and conclusory allegations of the pleading, the exhibits govern.").

[redacted]

II. Dr. Amos's 1987 Move and Plaintiff's Husband's 1989 Resignation

Around 1987, Dr. Amos [redacted] close his clinic suddenly and move to Florida, where he continues to reside. *Id.* ¶¶ 93, 115, 129. In 1987, Dr. Amos's father (an Aflac board member at the time) and uncle (Aflac's CEO and Chairman at the time) learned about Dr. Amos's [redacted] Plaintiff generally alleges that Dr. Amos's father and uncle, both of whom are dead and not parties to this action, helped [redacted]

[redacted] *Id.* ¶¶ 135, 188, 191, 246. In that same year, Aflac held a special board meeting to discuss Dr. Amos's [redacted]. *Id.* ¶ 246.

In 1989, Plaintiff's husband resigned from Aflac after the company pressured him to leave. *Id.* ¶¶ 57, 143. At the time, Plaintiff did not understand why Aflac wanted her husband to quit. *Id.* ¶ 143. She now alleges that Aflac, [redacted], began harassing her husband in 1987 to force him to resign. *Id.* ¶ 57.

III. Plaintiff's 1992 Settlement Agreement

In 1992, while working as a secretary for Defendant Oates' law firm, Plaintiff learned [redacted] *Id.* ¶ 120. Plaintiff told Oates [redacted] Plaintiff retained Oates as her attorney pursuant to a forty percent contingency fee contract; according to Plaintiff, Oates "dissuaded her from bringing any claims" against Dr. Amos because of the statute of limitations and because Plaintiff had no proof [redacted] although Oates did in fact eventually assert claims on Plaintiff's behalf and made a recovery for her.

Oates began negotiating [redacted] He informed Plaintiff at that time that Defendant Cheves—Dr. Amos's then-

attorney—had [redacted] for the purpose of facilitating a settlement. *Id.* ¶ 126. Plaintiff alleges on information and belief that Defendants Dan Amos and Aflac instructed Cheves to enter into these agreements, or at least that Dan Amos and Aflac knew of the agreements. *Id.* ¶ 99.

Plaintiff learned during the settlement negotiations that Dr. Amos had [redacted]

Plaintiff signed a Settlement Agreement (the "1992 Settlement Agreement") on August 28, 1992. *Id.* ¶ 136; *see also* Am. Compl. Ex. B, 1992 Settlement Agreement, ECF No. 26-2. Under the agreement, all [redacted] were to be destroyed. Am. Compl. ¶ 136. Plaintiff alleges that after facilitating these agreements, Defendants Cheves and Oates destroyed incriminating evidence at the instruction or with the knowledge of Defendants Aflac and Dan Amos. *Id.* ¶ 100, 136.

IV. CB&T's Lawsuit Against Plaintiff and the 1993 Settlement Agreement

As consideration for signing the Agreement, Plaintiff received [redacted] Before Plaintiff received this sum, however, CB&T bank (now Synovus) sued Plaintiff and her husband seeking to immediately call due an outstanding note based

on the anticipated settlement. *Id.* ¶¶ 140, 148, 150. The bank harassed Plaintiff and eventually petitioned the court to incarcerate her until she turned over the settlement proceeds. *Id.* ¶ 154. Partners in Defendant Cheves's law firm represented CB&T in this action. *Id.* ¶ 149. Plaintiff alleges that Defendants informed CB&T about the confidential settlement to claw back the settlement money paid. *Id.* ¶ 151.

In 1993, Plaintiff retained a new lawyer, Taylor Jones, who helped her reach a settlement with the bank (the "1993 Settlement Agreement"). *Id.* ¶ 155. As part of the 1993 Settlement Agreement, Plaintiff released claims against the bank, its lawyers, Oates, Cheves, and Dr. Amos. *Id.* ¶ 155; *Id.* Ex. C, 1993 Settlement Agreement, ECF No. 26-3, at 2. This settlement agreement released the releasees from any claims relating to [redacted] and also released any claims for fraud or duress relating to the first settlement. 1993 Settlement Agreement 1-2. In exchange for the release, Plaintiff was paid [redacted]. *Id.* at 1. The agreement also included a nondisclosure agreement for which Plaintiff was paid an additional [redacted]

V. Plaintiff's Mounting Suspicions and Investigations

After the 1992 Agreement, Aflac's new Chief Medical Director, Dr. Stephen Purdom, disclosed that he was friends with Dan Amos and Dr. Amos and asked Plaintiff if she knew if Defendant Oates had [redacted]. Am. Compl.

¶¶ 132-33. After this, Plaintiff "[became] suspicious that Dr. Purdom was aware of more details of the story." *Id.* ¶ 134.

Her suspicion continued after she learned [redacted] On September 9, 2016, Plaintiff sent Dr. Amos a message via Facebook asking to meet. *Id.* ¶¶ 182-83. Dr. Amos agreed, and they met on September 30, 2016 in Tifton, Georgia. *Id.* ¶ 186. Plaintiff recorded the conversation. *Id.* ¶ 193.

Plaintiff alleges that during this conversation she discovered that Aflac, Dan Amos, Cheves, as well as the late John Amos and William Amos, Sr. "knew about [redacted] and helped Dr. Amos [redacted] through collusion, fraud and duress." [redacted] While the transcript from that

recorded conversation is consistent with Plaintiff's allegation that Dan Amos may have known about [redacted], there is nothing in the transcript supporting her conclusion that Dan Amos "helped [redacted] or "coerced [redacted]." [redacted] Because Plaintiff's allegation that Dan Amos coerced [redacted] is based solely on what Dr. Amos told her in the conversation that was recorded and because the transcript of the conversation, which Plaintiff incorporated as an exhibit to her Complaint, does not support Plaintiff's allegation of Dan Amos's involvement in the coercion [redacted], the Court does not accept that implausible and inconsistent conclusory allegation as true for purposes of the pending Motions to Dismiss.[3]

[3] As will be explained later, Plaintiff's claims against Dan Amos must be dismissed for other reasons even if the Court did accept this inconsistent allegation as true. But the Court finds it important to point this inconsistency out because it is not the only place that Plaintiff makes misleading internally inconsistent allegations in her Complaint.

During the conversation, Plaintiff asked Dr. Amos if he would have a problem with her [redacted] and whether he would want to review her statements before she made them in light of the Settlement Agreements. *Id.* at 42:7-43:5, 47:12-19. In response, he stated, "I wouldn't want to review it because that's not my place. . . I trust that you would be careful [redacted] Plaintiff alleges that she took this as a threat to stay silent.[4] Am. Compl. ¶ 236.

[4] This is another example of Plaintiff's misleading allegations. She contends that she believed Dr. Amos threatened her to keep quiet. When read in the context of the entire conversation, this "belief" is inconsistent with her actual conversation with Dr. Amos. [redacted]

VI. The 2017 Aflac Super-bowl Commercial

In 2017, Aflac aired a commercial featuring [redacted] The commercial aired to more than 110 million viewers. *Id.* ¶ 74. Plaintiff alleges this commercial caused her and her family extreme emotional distress. *Id.* ¶ 289.

VII. Dan Amos and Aflac's 2018 Response to Threatened Litigation

Plaintiff later sent Defendants a demand letter regarding the present action. *Id.* ¶ 201. In March and April 2018, Aflac and Dan Amos's counsel responded to the letter claiming that it was extortion and threatening to file motions for Rule 11 sanctions, libel and defamation lawsuits, ethics complaints, and stock manipulation charges if Plaintiff's counsel proceeded with the action. *Id.* ¶¶ 201-02. Plaintiff alleges that this response violated the law and constituted a threat to retaliate if Plaintiff

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[redacted] and in the context of the conversation, she acknowledges that she needs to be careful not to violate the nondisclosure agreement—this is not the type of *plausible* "Mafiaesque" threat that Plaintiff's counsel tries to spin.

brought charges. *Id.* ¶ 238. She further claims that these threats were part of a RICO enterprise [redacted].

DISCUSSION

Defendants Cheves, Dr. Amos, Dan Amos, and Aflac filed Motions to Dismiss. Cheves Mot. to Dismiss, ECF No. 32; Dr. Amos Mot. to Dismiss, ECF No. 33; Aflac & Dan Amos Mot. to Dismiss (hereinafter "Aflac Mot. to Dismiss"), ECF No. 34. For the reasons explained in the remainder of this Order, those motions are granted.

I. Plaintiff's RICO Claims are Time Barred as to All Defendants, Have Been Released as to Dr. Amos and Cheves, and are Implausibly Stated

Plaintiff's vague RICO claims are difficult to discern.[5] Cluttered with general inflammatory language like [redacted] Plaintiff's complaint is heavy on verbose hyperbole but light on particularized facts. When reduced to its

[5] To establish a civil RICO claim, "the plaintiffs must prove, first, that [18 U.S.C.] § 1962 was violated; second, that they were injured in their business or property; and third, that the § 1962 violation caused the injury." *Cox v. Adm'r, U.S. Steel & Carnegie*, 17 F.3d 1386, 1396 (11th Cir. 1994). To prove a substantive RICO violation under § 1962, a plaintiff must show that the defendant participated in an illegal enterprise "through a pattern of racketeering activity." 18 U.S.C. § 1962(c). A pattern of racketeering activity "is defined as two predicate acts of racketeering activity within a ten-year period." *Green Leaf Nursery v. E.I. DuPont De Nemours & Co.*, 341 F.3d 1292, 1306 (11th Cir. 2003). Additionally, to recover under RICO, a plaintiff must prove that the defendant's racketeering activity caused injury to her business or property. 18 U.S.C. § 1964(c). At the motion to dismiss stage, the Court must accept Plaintiff's factual allegations as true and determine whether they plausibly state the essential elements for a RICO claim. *Iqbal*, 556 U.S. at 678 ("[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" (quoting *Twombly*, 550 U.S. at 570)).

essence, Plaintiff's current grievances, as expressed in her Complaint, are that Defendants were aware of [redacted], that they conspired to keep them quiet, and that they prevented [redacted] from learning of evidence [redacted] they lose their viability as legal claims when they are considered in the context of the other factual allegations in the Complaint—allegations that establish that Plaintiff settled her claims related to [redacted] 1984 [redacted] no later than 1993, including claims arising from [redacted] and claims arising from the first settlement in 1992. [redacted] Her claims also lose their luster when juxtaposed next to her other factual allegations that establish that her second settlement in 1993 was negotiated with separate independent counsel who Plaintiff has not claimed acted other than in her best interest.

Even if the Defendants did try to keep [redacted] quiet, it is implausible to suggest that these attempts give rise to a RICO claim. Keeping the conduct quiet would be entirely consistent with what Plaintiff agreed to do in exchange for the

settlement payments made to her. How that can be a violation of some duty owed to her is not readily apparent. It is not difficult to understand why she did not bring the claim during the ensuing 25 years given that few lawyers would reasonably conclude that a viable claim existed.

Furthermore, Plaintiff knew most of the material information that she relies on today more than 25 years ago. She knew in 1993 that [redacted] She knew that Dr. Amos was on the Aflac Board at the time and was its medical director. She knew that Dr. Amos had disappeared mysteriously from Columbus around 1987. She was suspicious of the possible collusion between Oates and Aflac attorney Cheves when she retained new counsel in 1993. That new counsel certainly could (and likely did) consider all possible claims that Plaintiff may have, including the possibility of tying Aflac to the conduct of Dr. Amos. Yet Plaintiff asserted no claim against Aflac or Dan Amos relating to the conduct of Dr. Amos. And she claims she did not even consider such a claim until Dr. Amos told her in 2016 that Dan Amos knew [redacted], which knowledge standing alone would certainly not give rise to a RICO claim.

A. The Statute of Limitations

The statute of limitations for a civil RICO claim is four years. *Lehman v. Lucom*, 727 F.3d 1326, 1330 (11th Cir. 2013) (quoting *McCaleb v. A.O. Smith Corp.*, 200 F.3d 747, 751 (11th Cir.

2000)(per curiam)). The Eleventh Circuit follows the injury discovery rule to determine when a plaintiff's RICO claims accrue. A RICO claim thus accrues when a plaintiff either actually discovers or should have discovered that she was injured, not when she discovers that the injury was part of a pattern of racketeering. *Id.* A plaintiff should have discovered her injury when "there are sufficient 'storm warnings' to trigger the duty to inquire." *Koch v. Christie's Int'l PLC*, 699 F.3d 141, 153 (2d Cir. 2012). Once that duty is triggered, "if a plaintiff does not inquire within the limitations period, the claim will be time-barred. In such a case, knowledge of facts that would suggest to a reasonably intelligent person the probability that the person has been injured is dispositive." *Id.*

Plaintiff's conclusory allegation that she did not learn of the existence of her claims she now asserts until her 2016 conversation with Dr. Amos belies the actual facts set forth in the exhibits to her complaint. The only additional "fact" that she learned for the first time in that conversation that may be relevant to her current claims is that Dan Amos knew about [redacted] As previously mentioned, this is the only information from the transcript of their conversation that relates in any way to Dan Amos's involvement. And Plaintiff makes no particularized allegations in her Complaint to support her general claim that Dan Amos somehow participated in [redacted].

Moreover, her conclusory allegations are also inconsistent with her two settlements. Giving Plaintiff the benefit of every doubt and accepting Plaintiff's allegations that Dan Amos knew that Dr. Amos had [redacted], that he was aware of the two settlements, that he was involved behind the scenes in their creation, that he covered them up by not disclosing them to anyone and by encouraging others not to disclose them, that he subjectively believed that her compensation from the settlements could have been more, Plaintiff cannot get around the undisputed facts, which are also alleged in her Complaint. She alleges that she released Dr. Amos, she agreed to two settlements that included releases and nondisclosure agreements, she had a separate lawyer evaluate her claims after she became dissatisfied with the first settlement, and this independent examination by a second lawyer occurred after she believed Cheves and Oates had conspired against her in the first settlement. It takes truly creative lawyering to craft a racketeering [redacted] claim when your client agreed to keep the matter [redacted] through a nondisclosure agreement. Because of this, Plaintiff's exhibits and allegations contradict her conclusory assertion that she did not know of her RICO injuries until her 2016 conversation with Dr. Amos.

As to the actual accrual date of her claims, Plaintiff certainly had sufficient information available to her at the time of the second settlement in 1993, when she was represented by new

counsel, to assess whether she had everyone who she thought should be held accountable at the table. She knew at that time that Dr. Amos had been an Aflac board member, had been the Aflac medical director, and had disappeared from Columbus. A reasonably diligent person would have reasonably expected at that time that other Aflac officials may have some knowledge of why he had left town. Yet she went forward with the second settlement and did relatively little to further investigate additional possible claims for twenty-five years. As Plaintiff indicates in the transcript of her conversation with Dr. Amos in 2016, she stayed quiet for all those years because she correctly concluded that she was bound to do so by the second nondisclosure agreement she entered into in 1993 while she was represented by counsel who she apparently does not criticize. [redacted]. The fact established by Plaintiff's Complaint is that she did come forward. She did assert claims. She received [redacted] to release those claims and to agree not to disclose the facts giving rise to them. And she had two lawyers review her claims and the subsequent settlement of them. This all happened at the latest by 1993. Thus, Plaintiff discovered or should have discovered her RICO injuries by 1993 when she settled claims arising from them, and, accordingly, her RICO claims accrued at that time.

Even if one concluded that it was reasonable for Plaintiff not to have fully appreciated the full extent of the alleged RICO conspiracy until 2016, her claims would still be barred. The statute of limitations clock starts with discovery of the injury, not discovery that the injury is part of a pattern of racketeering. *Rotella v. Wood*, 528 U.S. 549, 555 (2000); *see also Lehman*, 727 F.3d at 1330. And as the Supreme Court has explained, the clock starts upon a plaintiff's discovery that she has a legally cognizable injury, not upon "discovery of the other elements of a [civil RICO] claim." *Rotella*, 528 U.S. at 555-56 (noting that although a pattern of predicate acts may be "complex, concealed, or fraudulent," that will not necessarily stop the claim from accruing).

The statute of limitations issue here is remarkably similar to the one presented in *Lehman v. Lucom*, 727 F.3d 1326 (11th Cir. 2013). In *Lehman*, the plaintiff filed a civil RICO case. *Id.* at 1332. However, he had filed a complaint four years earlier seeking damages for nearly identical injuries. *Id.* The Eleventh Circuit concluded that "any claim by [the plaintiff] that he was not aware of his injuries before [his first complaint]—four years prior to the RICO complaint—cannot be substantiated" and he therefore knew or should have known of his injuries prior to filing his first complaint. *Id.* at 1332-33.

Here, like in *Lehman*, Plaintiff knew or should have known of her injuries by 1993 when she, upon advice of independent counsel, released Dr. Amos, Cheves, and Oates from claims stemming from almost the exact same injuries she alleges in the current action. Because Plaintiff attached the Settlement Agreements as exhibits to her Amended Complaint, it is "'apparent from the face of the [C]omplaint' that [her RICO claims are] time-barred." *La Grasta v. First Union Secs., Inc.*, 358 F.3d 840, 845 (11th Cir. 2004)(quoting *Omar* ex rel. *Cannon v. Lindsey*, 334 F.3d 1246, 1251 (11th Cir. 2003)).

B. "New" and Implausibly Stated Claims

Plaintiff argues that even if her claims associated with the alleged ongoing conspiracy that dates back to 1993 are time-barred, Dan Amos, Aflac, and Dr. Amos committed new or previously unknown RICO predicate acts within the statute of limitations period, and her claims based on that conduct are timely. Specifically, she points to: (1) Aflac and Dan Amos's threats of criminal prosecution in their March and April 2018 responses to Plaintiff's settlement demand letter, Am. Compl. ¶ 36; (2) Dr. Amos's threat to "be careful" not to reveal confidential information during his 2016 conversation with Plaintiff, *id.* ¶ 236; and (3) Aflac's forcing her husband to resign from his employment with Aflac in 1989, *id.* ¶ 15(f). These claims fail because: (1) the post-1993 injuries are not new and independent and thus do not start the statute of

limitations clock anew; (2) the alleged injuries associated with the post-1993 conduct are not cognizable RICO injuries; (3) threatening legal action under the circumstances here does not constitute a RICO predicate act; and (4) the financial consequences to Plaintiff related to the loss of her husband's job in 1989 are not recoverable due to a lack of causation.

"[I]f a new RICO predicate act gives rise to a new and independent injury, the statute of limitations clock will start over for the damages caused by the new act." *Lehman*, 727 F.3d at 1331(citing *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 190 (1997)). However, a plaintiff cannot recover for injuries caused by previous, now time-barred predicate acts under this rule. *Id.* And "when an injury is a 'continuation of [an] initial injury,' it 'is not new and independent.'" *Id.* (quoting *Pilkington v. United Airlines*, 112 F.3d 1532, 1537-38 (11th Cir. 1997)).

Plaintiff's post-1993 injuries are not new and independent. The Eleventh Circuit analyzed this new and independent injury requirement in *Pilkington v. United Airlines*, 112 F.3d 1532 (11th Cir. 1997). There, the plaintiffs were pilots who had not participated in a strike. *Id.* at 1533. After the strike ended, their co-workers who had participated in the strike began harassing them by using "physical threats, vandalism, assault and battery." *Id.* at 1534. That harassment was ongoing and continued to the date the lawsuit was filed. *Id.* Plaintiffs argued that "each

time the plaintiffs suffered injury from the harassment a new RICO cause of action accrued." *Id.* at 1536. The Eleventh Circuit rejected this argument, noting that "the injuries suffered by the plaintiffs were not new and independent injuries, but rather, a single, continuous course of injury--specifically, ongoing emotional and physical distress designed to force the plaintiffs to either leave their employment or to lower job performance." *Id.* at 1537. The Eleventh Circuit found that "[w]ith each act of harassment the adverse impact on the plaintiffs' job performance may accumulate, however, the injury is not *new and independent*." *Id.* at 1537-38.

Here, Plaintiff alleges that Dr. Amos's 2016 threat to remain quiet and the Amos and Aflac lawyers' 2018 threat not to bring this action caused Plaintiff to suffer "additional expenses, legal costs and inconveniences caused by the delay in enforcing her rights and bringing her causes of action now instead of earlier by reason of Defendants' [redacted] Am. Compl. ¶ 15(h).[6] But this alleged

[6] Plaintiff sustained her other alleged RICO injuries before 2016. [redacted]

injury to Plaintiff, like the injury in *Pilkington*, is not new and independent. If Plaintiff's allegations are to be accepted as true, these injuries have been ongoing since Defendants entered into the alleged conspiracy which began with coercing her into signing the settlement agreements in 1992 and 1993. This more recent conduct thus does not restart the clock on Plaintiff's RICO claims.

Even if this post-1993 conduct is considered to be a new injury for statute of limitations purposes, it is not a cognizable RICO injury. These "threats," according to Plaintiff's theory, caused her to delay bringing this present action and also forced her to have to pursue this action to vindicate her rights. To the extent that Plaintiff contends that her recent RICO injury is the cost of pursuing the present RICO action, the Court finds that such a claim fails. To recover on a RICO claim, Plaintiff must prove that Defendants' alleged predicate acts caused injury to her business or property. 18 U.S.C. § 1964(c); *Ray v. Spirit Airlines, Inc.*, 836 F.3d 1340, 1349 (11th Cir. 2016). Here, the costs associated with bringing the present action do not qualify as RICO injuries. *See e.g., Walter v. Palisades Collection, LLC*, 480 F. Supp. 2d 797, 805 (E.D. Pa. 2007)("It would be illogical to allow a plaintiff to have RICO standing based on damages incurred by the plaintiff in paying his attorney to file the RICO action. RICO's injury requirement would be a nullity if paying an attorney to

initiate the RICO action itself sufficed as a damage."); *Moore v. Saniefar*, No. 1:14-CV-01067, 2016 WL 2764768, *10 (E.D. Cal. May 12, 2016)(noting that "[e]ven if legal fees are available as RICO damages . . . an award is subject to one critical limitation: that the legal fees stem from prior legal disputes, and not the RICO lawsuit itself" because "[o]therwise the RICO injury requirement could be easily satisfied in every case"). Although this appears to be an issue of first impression in the Eleventh Circuit, the Court finds the rationale of this nonbinding precedent persuasive. The RICO injury requirement would become a nullity if a plaintiff could satisfy it by simply alleging that she had to file the RICO action. The RICO statute permits plaintiffs to recover "the cost of the suit, including a reasonable attorney's fee" in addition to "threefold the damages he sustains." 18 U.S.C. § 1964(c). This provision would be superfluous if a plaintiff could recover the expenses associated with bringing a RICO action as a separate item of damages based on a separate RICO injury. The Court finds that Plaintiff's claim for "additional expenses, legal costs and inconveniences caused by the delay in [Plaintiff] enforcing her rights" cannot serve as a new and independent injury that restarts the statute of limitations clock. Am. Compl. ¶ 15(h).

Furthermore, even if Dan Amos's and Aflac's 2018 threatening correspondence to Plaintiff and her counsel were considered a new injury, such threats do not constitute a RICO predicate act.

Plaintiff argues that the attorney correspondence amounts to witness tampering and retaliation. *Id.* ¶ 238. The Eleventh Circuit has explained that threatening to file or actually filing lawsuits (even if they are frivolous or in bad faith) "cannot as a matter of law constitute the predicate act of extortion for purposes of [a] plaintiffs' civil RICO claim." *Town of Gulf Stream v. O'Boyle*, 654 F. App'x 439, 444 (11th Cir. 2016)(per curiam)(citing *United States v. Pendergraft*, 297 F.3d 1198, 1208 (11th Cir. 2002); *Raney v. Allstate Ins. Co.*, 370 F.3d 1086, 1088 (11th Cir. 2004)(per curiam)).

Although Plaintiff argues that Defendants' 2018 litigation threats constitute witness tampering and retaliation rather than extortion, *see* Am. Compl. ¶ 238, the Eleventh Circuit's reasoning in the extortion cases applies just as persuasively here. Therefore, this Court reaches the same conclusion and finds that, under the circumstances presented here, threatening to file a lawsuit does not constitute the predicate act of witness tampering or retaliation for purposes of a plaintiff's civil RICO claim.

Finally, although Plaintiff claims that she suffered financial losses stemming from her husband's 1989 forced resignation from Aflac and that she did not learn of this injury until 2016, she nevertheless cannot recover for it. It is true that Plaintiff's husband's forced resignation from Aflac was not settled or discussed in the 1992 or 1993 Settlement Agreements.

Therefore, any claims stemming from this injury are arguably not time-barred because the Amended Complaint does not indicate that Plaintiff discovered or should have discovered them prior to 2016. They nevertheless fail because Defendants' actions did not proximately cause this injury.

For RICO claims, "one or more of the predicate acts must not only be the 'but for' cause of the injury, but the proximate cause as well." *Green Leaf Nursery*, 341 F.3d at 1307. To prove proximate causation in RICO cases, there must be a "direct relation between the injury asserted and the injurious conduct alleged." *Id.* (quoting *Holmes v. Secs. Inv'r Prot. Corp.*, 503 U.S. 258, 268 (1992)). The predicate act is not the proximate cause of an injury if the "conduct was 'aimed primarily' at a third party." *Id.* (quoting *Bivens Gardens Office Bldg., Inc. v. Barnett Banks of Fla.*, Inc., 140 F.3d 898, 906 (11th Cir. 1998)).

In *Green Leaf Nursery*, the Eleventh Circuit held that a defendant's misconduct in a lawsuit that plaintiffs were not a party to did not proximately cause their injuries even though the defendant's actions in that case were intended to hurt plaintiffs. 341 F.3d at 1307-08. Because the defendant's misconduct was aimed primarily at the parties to the other case, defendant's specific intent to hurt the plaintiffs was irrelevant. *Id.*

Here, Plaintiff's theory of causation for her husband's forced resignation is similar to the plaintiffs' losing theory in

Green Leaf Nursery. She argues that Defendants Dan Amos and Aflac engaged in misconduct directed at her husband by forcing him to resign with the specific intent of injuring her. Like in *Green Leaf Nursery*, this argument does not satisfy RICO's proximate cause requirements because Defendants' conduct was aimed primarily at a third party—Plaintiff's husband—not Plaintiff herself.

C. No Tolling or Estoppel

Plaintiff argues that the statute of limitations for her RICO claims should be equitably tolled or that Defendants should be equitably estopped from asserting a statute of limitations defense. Am. Compl. ¶¶ 20-35. Plaintiff's allegations in her Amended Complaint, including the exhibits, establish that neither equitable tolling nor equitable estoppel apply here. "The general test for equitable tolling requires the party seeking tolling to prove '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.'" *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 971 (11th Cir. 2016)(quoting *Menominee Indian Tribe of Wis. V. United States*, 136 S. Ct. 750, 755 (2016)). Plaintiff's Complaint is devoid of any plausible allegations that she acted diligently to pursue her claims and that extraordinary circumstances prevented her from bringing them earlier. *Id.* Equitable "tolling [is] the exception, not the rule." *Rotella*, 528 U.S. at 561. And "'the occurrence of fraud in RICO patterns'

is not a good reason to put off the running of the statute [of limitations]." *Pac. Harbor Capital, Inc. v. Barnett Bank, N.A.*, 252 F.3d 1246, 1251-52 (11th Cir. 2001)(quoting *Rotella*, 528 U.S. at 559-60). "Equitable tolling is defeated . . . when it is shown indisputably the plaintiffs 'had notice sufficient to prompt them to investigate and that, had they done so diligently, they would have discovered the basis for their claims.'" *Id.* at 1252 (quoting *Morton's Market, Inc. v. Gustafson's Dairy, Inc.*, 198 F.3d 823, 832 (11th Cir. 1999)).

Here, Plaintiff alleges that she exercised due diligence by [redacted], trying to collect relevant information, researching Georgia RICO law, searching for attorneys who would take her case, working on a potential complaint herself, and reaching out to Shaw, Cheves, and Dr. Amos in 2016. Am. Compl. ¶ 27, 32. She alleges that she faced extraordinary circumstances here because [redacted] and because Defendants threatened to criminally prosecute Plaintiff in 1992 and 2018, induced her to sign the Settlement Agreements, and destroyed evidence and records. *Id.* ¶¶ 28-31.

As previously discussed, Plaintiff's 1992 and 1993 Settlement Agreements attached to her Amended Complaint release many of the claims that she now seeks to assert. This demonstrates that she

was on notice of her injuries by 1993 at the latest. She does not allege any facts in her Amended Complaint demonstrating that she exercised due diligence in pursuing her claims until 2016. And when she did act in 2016, she alleges she was able to quickly discover her injuries. As the Eleventh Circuit has stated, "twelve years after the first [alleged] predicate act" is "too long for a RICO suit to hang in the air." *Pac. Harbor Capital, Inc.*, 252 F.3d at 1252. Defendants' alleged fraud to conceal their actions "is not a good reason to put off the running of the statute [of limitations]" where, as here, the plaintiff knows she has been injured. *Id.* at 1251-52.

Plaintiff's equitable estoppel argument also fails. Equitable estoppel applies "where . . . the [plaintiff] has been induced or tricked by [her] adversary's misconduct into allowing the filing deadline to pass." *Raziano v. United States*, 999 F.2d 1539, 1541 (11th Cir. 1993)(quoting *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990)). However, "[o]nce the circumstances inducing reliance are exposed, the plaintiff's obligation to timely file is reimposed." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1324 (11th Cir. 1989)(per curiam). Then, a plaintiff is "afforded a reasonable time after discovery in which to bring an action." *Id.* at 1325. Here, even if Defendants' fraudulent misrepresentations about the merits and timeliness of her claims against Dr. Amos induced her to settle those claims in 1992,

thereby allowing the statute of limitations on the claims to pass, Plaintiff should have discovered this fraud by 1993 when she settled claims [redacted] stemming from the 1992 settlement. Her obligation to file the claim within a reasonable time was then reimposed. Plaintiff, however, did not subsequently file her claim until twenty-five years later. This twenty-five-year time gap was not reasonable. See *Pac. Harbor Capital*, 252 F.3d at 1252 (noting that even "twelve years after the first [alleged] predicate act" is "too long for a RICO suit to hang in the air"). Plaintiff cannot rely on equitable estoppel or tolling to save her claims.

D. Claims Against Dr. Amos and Cheves Released

It is equally clear that Plaintiff's RICO claims against Dr. Amos and Cheves have been released pursuant to the 1992 and 1993 Settlement Agreements. The two settlement agreements clearly cover these claims.[7] And Plaintiff's contention that the

[7] Both agreements release Dr. Amos from claims [redacted] 1992 Settlement Agreement 1; *see also* 1993 Settlement Agreement 2 (similar language used). The 1993 agreement releases Dr. Amos, Cheves, and Oates from claims [redacted] 1993 Settlement Agreement 2. The 1993 settlement also releases Oates and Cheves from claims [redacted]. *Id.* Plaintiff argues that the language in the Agreements should be read narrowly, citing cases from other circuits applying the law of other states. *See e.g.*, *Matsuura v. Alston & Bird*, 166 F.3d 1006, 1010-11 (9th Cir. 1999)(per curiam). Even employing these heightened standards from other states, both agreements still cover "actions" stemming from

agreements are not enforceable under Georgia law is unpersuasive. Plaintiff received [redacted] in exchange for a general release of Dr. Amos for any claims relating to [redacted]. Then when Plaintiff claimed her attorney, Oates, and Amos's attorney, Cheves, had [redacted], she obtained another attorney who was able to achieve a second settlement. In that 1993 settlement, she received [redacted]. That release not only released Dr. Amos again for any claims related to [redacted] but also released Cheves and Oates for any claims related to that settlement, [redacted]. That agreement included her release and, according to the exhibits to her Complaint, it was performed by payment of the amount called for in the settlement agreement. The agreement is enforceable under Georgia law.

Plaintiff's argument that the settlement agreements are unenforceable because they allegedly fail to identify the parties

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[redacted]

Plaintiff agreed to release these [redacted] claims while represented by new, independent counsel who is not accused of any wrongdoing in this case. The terms of both agreements are broad enough to cover Plaintiff's claims stemming from Cheves and Dr. Amos's actions prior and in relation to the 1993 Settlement Agreement. And Plaintiff's post-1993 claims against Dr. Amos and Cheves fail for other reasons—namely, because she does not plausibly assert that they caused her new and independent injuries and because the injuries they caused are not cognizable RICO injuries.

to the contracts is specious. The agreements identify Dr. Amos as a "released party." 1992 Settlement Agreement 1; 1993 Settlement Agreement 1. The 1993 Settlement Agreement also acknowledges the 1992 Settlement Agreement in its text, 1993 Settlement Agreement ¶ 11, and Plaintiff acknowledges the 1993 Settlement Agreement in a signed and notarized attachment to that agreement. 1993 Settlement Agreement 7. Settlement agreements often bear only the releasing party's signature and become effective upon the counterparty's performance. *See* 1 Ga. Forms Legal & Bus. §§ 11:3, 11:7 (2017).

The settlement agreements here are distinguishable from the vague and incomplete contracts in the cases that Plaintiff relies upon.[8] The primary issue is whether "there is a meeting of the minds as to all essential terms [of the contract]." *Harris*, 652 S.E.2d at 869 (quoting *Chong v. Reebaa Constr. Co.*, 645 S.E.2d 47, 51 (Ga. Ct. App. 2007), *rev'd on other grounds by Reebaa Constr.*

[8] *See Bagwell-Hughes v. McConnell*, 164 S.E.2d 229, 230 (Ga. 1968)(finding an oral agreement indefinite where the most detail that the plaintiff could demonstrate was that "it joined the defendant in attempting to devise some plan or use to enhance the value of the defendant's property"); *Harris v. Baker*, 652 S.E.2d 867, 869-70 (Ga. Ct. App. 2007)(finding the contract did not contain essential terms because it not only failed to identify contracting parties and details of who agreed to do what, it also "contain[ed] no recitals, definitions, signature lines, or signatures that might provide clarification on the issue" and it did not identify the subject matter of the construction contract); *Jimenez v. Gilbane Bldg. Co.*, 693 S.E.2d 126, 129-30 (Ga. Ct. App. 2010)(finding that the contract was too vague because "it [was] impossible to tell from the terms of the written document who Jimenez may have promised to indemnify," and it could not be clarified by the rules of construction).

Co. v. Chong, 657 S.E.2d 826 (Ga. 2008)). Unlike the cases that Plaintiff cites, the settlement agreements here provide sufficient detail to identify the essential terms and parties to the contracts. Therefore, because the agreements identify Dr. Amos as a released party, they are not invalid for lack of a counterparty and their provisions are not incomprehensible. Additionally, performance can cure an indefinite contract as long as the contract is not "so vague, indefinite, and uncertain 'as to make it impossible for courts to determine what, if anything, was agreed upon, therefore rendering it impossible to determine whether there had been performance.'" *Jimenez*, 693 S.E.2d at 129 (quoting *Razavi v. Shackelford*, 580 S.E.2d 253, 255 (Ga. Ct. App. 2003)). The settlement agreements here are not so vague that the Court cannot determine what performance Plaintiff's counterparty was required to render. *See, e.g.*, 1993 Agreement 1 (noting that Plaintiff entered into the release agreement "[f]or and in consideration of the sum of [redacted]").

The essential terms of the two agreements are clear. In the 1992 Settlement Agreement, Plaintiff released Dr. Amos from any claims [redacted]. And in exchange, Dr. Amos paid her [redacted]. The terms of the 1993 Agreement are equally clear. Plaintiff released Dr. Amos, Cheves, Oates, and others for any claims relating to the prior settlement and any claims relating to Dr. Amos's [redacted] for [redacted].

She also agreed to a nondisclosure agreement in exchange for the payment of an additional [redacted]. These payments were made. The contracts are binding and enforceable under Georgia law.

Moreover, to the extent Plaintiff now contends the settlement agreements were procured by fraud, her failure to tender the consideration she received prevents their rescission. In the settlement context, "[i]t is well established that one, who for a valuable consideration, including payment of money, has released another from all further liability, cannot obtain a rescission of such a contract of release . . . without restoring or offering to restore what the releasee paid for such a release." *Kobatake v. E.I. DuPont De Nemours & Co.*, 162 F.3d 619, 627 (11th Cir. 1998)(quoting *Leathers v. Robert Potamkin Cadillac Corp.*, 361 S.E.2d 845, 846 (Ga. Ct. App. 1987)).

Plaintiff did not allege that she tendered the proceeds she received under the 1992 or 1993 Settlement Agreements before filing suit, likely because she made no such tender. Therefore, the Court may accept at this stage that no such tender has been made. Consequently, she has affirmed the contracts and is bound by their terms. The 1993 Settlement Agreement contains a merger clause. So the clause bars Plaintiff from alleging that she relied on a fraudulent misrepresentation outside the written contract in making the agreement. *See Kobatake*, 162 F.3d at 625-26 (explaining that a merger clause in an affirmed settlement agreement barred

the plaintiff from voiding the settlement agreement on the basis of fraud).

Plaintiff argues that she should be excused from the tender rule. Under Georgia law, a plaintiff may be excused from the tender requirement when requiring tender would be unreasonable or where the defrauding party has made tender impossible. *See e.g.*, *Crews v. Cisco Bros. Ford-Mercury, Inc.*, 411 S.E.2d 518, 519-20 (Ga. Ct. App. 1991)(finding it would be unreasonable to make plaintiffs tender their car before seeking rescission of their contract to purchase the vehicle because, even without the car, they would have to continue making payments on the car to their third-party creditor); *Am. Family Life Assurance Co. of Columbus v. Intervoice, Inc.*, 659 F. Supp. 2d 1271, 1282 (M.D. Ga. 2009)(finding a jury issue on whether plaintiff's tender was excused as inequitable or unreasonable because tender would require plaintiff to return software that the company had used for eight years and the software had become integral to its system). When the tender requirement is excused, a plaintiff can seek rescission of the contract.

Plaintiff asserts that her tender requirement should be excused because, like in *Crews* and *Intervoice*, tender here would be inequitable or unreasonable. *Crews* and *Intervoice* are distinguishable. Unlike the tender of a leveraged car or integral software, Plaintiff here merely needed to tender cash or its

equivalent before filing suit. The fact that she may have spent the cash that she received and did not have alternative resources to make the tender will not generally excuse the tender. To excuse a tender under these circumstances would make the tender requirement meaningless. In *Kobatake*, the Eleventh Circuit concluded that tender was not impossible when the tender merely required returning money and the plaintiffs could not afford to pay the tender amount due to "discretionary decisions taken by them upon receipt of their settlement amounts." 162 F.3d at 627. In this case, Plaintiff claims that she never had the full benefit of her 1992 settlement proceeds because the bank asserted a claim to those proceeds. She overlooks the fact that she and her husband owed the bank the money. The fact that she could not tender what she received in the 1992 settlement because it was used to pay a legitimate debt does not rescue her from Georgia's tender requirement. She cannot keep the benefit of the settlement (which was used to pay off a legitimate debt) and also sue for rescission of the contract. The Court notes that even if tender of the 1992 settlement payment is deemed unreasonable because those proceeds went directly to the bank, this argument would not apply to her failure to tender her 1993 settlement proceeds.

Plaintiff has had the benefit of the settlement proceeds from the 1992 and 1993 settlements for the last twenty-five years. She may have spent that money, which is certainly her prerogative.

But she may not seek to rescind those agreements twenty-five years later without first tendering what she got in exchange for them.

Finally, Plaintiff argues that the merger clause in the settlement agreements would not bar Plaintiff from providing extraneous evidence of fraudulent inducement because a contract induced by fraud is void in the eyes of the law and, accordingly, the merger clause too is void. But this is the rule only where a plaintiff has not affirmed the contract and is, therefore, not bound by the terms of the contract. The cases that Plaintiff cites to support her argument are distinguishable from this case because they deal with rescission-fraud claims where the plaintiff had not affirmed the contract. *See Crews*, 411 S.E.2d at 519-20 (explaining that the contract was not affirmed because tender was excused and implying that if the contract had been affirmed, the plaintiff would be estopped from asserting reliance on the fraudulent inducement); *Brown v. Techdata Corp.*, 234 S.E.2d 787, 792 (Ga. 1977)(per curiam)(finding that plaintiff had satisfied the tender requirement). Plaintiff also relies on *Intervoice* where this Court concluded that even if the plaintiff had affirmed the contract, the merger clause would not bar the plaintiff's fraud claim because the misrepresentation was stated in the agreement itself. *Intervoice*, 659 F. Supp. 2d at 1284. But this case is distinguishable from *Intervoice* because Plaintiff alleges she relied on fraudulent misrepresentations made *outside* the

agreement, and the 1993 Settlement Agreement's merger clause disposes of Plaintiff's allegations that she relied on any representation outside the agreement.

Plaintiff had the option of seeking rescission of the settlement agreements based upon fraudulent inducement. To exercise that option, Georgia law required that she tender the proceeds that she received pursuant to those agreements. She failed to do so. Consequently, she has chosen to affirm those agreements and is thus bound by their terms. And those terms, including the merger clause in the 1993 Agreement, defeat her fraud and duress claims.[9]

E. No RICO Conspiracy Claims

Plaintiff's RICO conspiracy claims are subject to the same statute of limitations, injury, and causation requirements as her substantive RICO claims. *See McCaleb*, 200 F.3d at 751 (acknowledging that "[t]he statute of limitations for civil RICO actions is four years" and indicating that all civil RICO actions follow the same accrual rules); 18 U.S.C. § 1964(c)(providing a civil RICO cause of action to individuals "injured in [their] business or property by reason of a violation of [RICO's criminal

[9] Plaintiff also alleges that the settlement agreements are void on public policy and First Amendment grounds. These arguments have already been addressed and rejected by this Court in 4:18-CV-68. *See* Order (Aug. 7, 2018), ECF No. 19, at 10-13. Plaintiff offers no new arguments on this point. Therefore, this Court rejects these arguments on the same grounds as before.

provisions]"). Because Plaintiff's RICO conspiracy claims are premised on the same conduct as her substantive RICO claims, they similarly fail. Specifically, as with Plaintiff's substantive RICO claims, her RICO conspiracy claims are time-barred, do not state a cognizable RICO injury, do not allege adequate RICO predicate acts, have been released, and/or lack causation.

II. Plaintiff's State Law Claims are Barred by the Statute of Limitations, Have Been Released, or are Implausibly Stated

Plaintiff asserts claims under Georgia law for fraud, intentional infliction of emotional distress, civil conspiracy, and respondeat superior liability. As explained below, these claims must be dismissed.

A. Fraud

Plaintiff generally alleges that Defendants engaged in fraud when they participated in a conspiracy to make misstatements [redacted]. Am. Compl. ¶ 270. The statute of limitations for Georgia common law fraud claims is four years. *Hamburger v. PFM Capital Mgmt., Inc.*, 649 S.E.2d 779, 784 (Ga. Ct. App. 2007). The statute of limitations on these claims runs from the time of Plaintiff's discovery of the fraud. *Id.*

As previously explained in the Court's RICO discussion, Plaintiff was aware of the facts that gave rise to her fraud claim by 1993 when she settled the [redacted] claims against Oates, Cheves, and Dr. Amos. These claims are, therefore, time-barred.

And for the same reasons that her RICO claims are deemed to have been released, these claims against Dr. Amos and Cheves have also been released by Plaintiff.

B. Intentional Infliction of Emotional Distress

Plaintiff also alleges claims for the intentional infliction of emotional distress ("IIED") against Defendants stemming from their misconduct and from Aflac's [redacted] commercial. Am. Compl. ¶¶ 286, 289. The statute of limitations for these claims is two years. O.C.G.A. § 9-3-33. Thus, emotional distress stemming from any pre-2016 conduct is time-barred.

The only post-2016 alleged "misconduct" are Dan Amos and Aflac's 2018 legal threats, Aflac's 2016 [redacted] commercial, and Dr. Amos's 2016 "be careful" threat. It is clear that the 2018 legal threat by Dan Amos's lawyers does not support an IIED claim. *See Amstadter v. Liberty Healthcare Corp.*, 503 S.E.2d 877, 880 (Ga. Ct. App. 1998)("[N]either the filing of a lawsuit or threat to file a lawsuit is sufficient to establish . . . [IIED].").

The Aflac [redacted] commercial likewise does not support an IIED claim. To state an IIED claim, a plaintiff must allege physical impact "to her person" from the act or that the act was "directed at her." *Jones v. Fayette Family Dental Care, Inc.*, 718 S.E.2d 88, 90 (Ga. Ct. App. 2011). Plaintiff fails to allege such facts. She alleges the opposite--that the commercial aired (i.e.,

was directed) to hundreds of millions of individuals. Am. Compl. ¶ 74.

As to Plaintiff's IIED claim against Dr. Amos, Dr. Amos's alleged 2016 threat does not constitute sufficiently "humiliating, embarrassing or frightening conduct which will give rise to a claim of intentional infliction of emotional distress." *Amstadter*, 503 S.E.2d at 880. The 2016 transcript shows the context in which Dr. Amos's alleged "threat" took place. [redacted] He encouraged her, but he asked her to be careful not to reveal any confidential information. Transcript 43:7-44:18, 45:1-48:7. This is not the type of conduct that is so outrageous that it rises to the level of intentional infliction of emotional distress. *See Amstadter*, 503 S.E.2d at 880 ("A claim for intentional infliction of emotional distress will not succeed where the defendant uttered 'mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'"(quoting *Jenkins v. Gen. Hosps. Of Humana, Inc.*, 395 S.E.2d 396, 398 (Ga. Ct. App. 1990))).

C. Civil Conspiracy and Respondeat Superior Liability

In the absence of any predicate tortious conduct, Plaintiff cannot allege a viable civil conspiracy claim. *See Mustaqeem-Graydon v. SunTrust Bank*, 573 S.E.2d 455, 461 (Ga. Ct. App. 2002)(noting that a civil conspiracy claim requires defendants to

have "engaged in conduct that constitutes a tort"). Similarly, Plaintiff has not alleged a substantive tort claim upon which a respondeat superior claim against Aflac could rest. *See Cotton States Mut. Ins. Co. v. Kinzalow*, 634 S.E.2d 172, 174 n.3 (Ga. Ct. App. 2006)("In order to succeed in a claim of respondeat superior against an employer, one must first prove the existence of an underlying tort."). Therefore, Plaintiff's civil conspiracy and respondeat superior claims are dismissed.

CONCLUSION

Plaintiff's claims against Dan Amos, Aflac, Dr. Amos, and Cheves are time-barred, have been released by her 1992 and 1993 settlement agreements, or are otherwise implausible. They therefore must be dismissed. Accordingly, the Court grants Dan Amos and Aflac's Motion to Dismiss (ECF No. 34), Dr. Amos's Motion to Dismiss (ECF No. 33), and Cheves's Motion to Dismiss (ECF No. 32).

The following claims and motions remain pending: (1)Plaintiff's claims against Defendant Oates, who has not yet filed a motion to dismiss; (2) Defendant Dr. Amos's counterclaim against Plaintiff; (3) Dr. Amos's Motion for Default Judgment on his Counterclaim; (4) Dr. Amos's Motion for Conditional Dismissal of his Counterclaim; (5) Plaintiff's Motion to Dissolve the Preliminary Injunction; (6) Defendant Dan Amos and Aflac's Motion for Rule 11 Sanctions; (7) Plaintiff's Motion for Reasonable

Expenses; and (8) Plaintiff's Motion for Relief from Preliminary Injunction for SEC Whistleblower Complaint.[10]

IT IS SO ORDERED, this 22nd day of October, 2018.

S/Clay D. Land
CLAY D. LAND
CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA

[10] Various motions regarding the redaction protocol also are pending.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

LEIGH ANN YOUNGBLOOD-WEST,	*	
Plaintiff,	*	
vs.	*	
AFLAC INCORPORATED, DANIEL P. AMOS, WILLIAM LAFAYETTE AMOS, JR., CECIL CHEVES, and SAMUEL W. OATES,	*	CASE NO. 4:18-CV-83 (CDL)
Defendants.	*	

O R D E R

Plaintiff filed a motion seeking "leave to file a whistleblower complaint with the U.S. Securities and Exchange Commission (the 'SEC')" against Aflac Incorporated, Daniel P. Amos, and William L. Amos, Jr. Mot. for Leave to File Whistleblower Compl., ECF No. 44. Plaintiff's counsel attached to his motion a proposed draft letter that he wishes to send to the SEC to notify the SEC of the alleged violations of the law. *Id.* Ex. 1, Letter from Leigh Ann Youngblood-West to Emily Pasquinelli, ECF No. 44-1. In support of the alleged violations, he intends to enclose with that letter Plaintiff's complaint filed in the above captioned action. He seeks leave to send the correspondence to the SEC because doing so could violate the preliminary injunction entered in this action.

The preliminary injunction in this action prevents Plaintiff and her counsel from "disseminat[ing], disclos[ing], or discuss[ing] publicly the subject matter" of her complaint in this action as well as any other documents that the Court has sealed or restricted in this action, "*except that [Plaintiff] is not prohibited . . . from reporting any crime to any law enforcement agency charged with investigating unlawful criminal conduct*." Order (Apr. 16, 2018) at 4, *Amos v. Youngblood-West*, No. 4:18-CV-68 (ECF No. 3). Therefore, the preliminary injunction does not prohibit Plaintiff from reporting any *crime* to the SEC if the SEC is the governmental agency charged with investigating the crime that Plaintiff seeks to report. It is not clear from Plaintiff's proposed draft letter to the SEC whether Plaintiff seeks to report a "crime" to the SEC. If Plaintiff and her counsel seek in good faith to report "criminal conduct" to the SEC over which the SEC has jurisdiction to investigate, then the preliminary injunction does not prohibit the reporting of the criminal conduct. However, it appears clear that the letter Plaintiff's counsel seeks to send is much broader than notification of criminal conduct. Accordingly, the Court finds that counsel's proposed letter would violate the preliminary injunction, and thus counsel's request for leave to send it is denied.

Notwithstanding the Court's finding that counsel's proposed correspondence to the SEC would violate the preliminary

injunction, the Court emphasizes that Plaintiff is not prevented from reporting criminal conduct that the SEC has jurisdiction to investigate to the SEC. And Plaintiff's counsel could certainly craft a narrower letter that specifically describes the alleged criminal violations while also respecting Plaintiff's obligations under the nondisclosure agreements to the extent reasonably possible. Moreover, Plaintiff is certainly permitted to send the SEC the redacted order that the Court entered dismissing her complaint which describes the nature of her claims. And upon inquiry by the SEC, the preliminary injunction does not prevent Plaintiff from submitting to an interview conducted by the SEC. However, Plaintiff or her counsel should inform the SEC of the preliminary injunction and the need to keep the investigation confidential to the extent possible and consistent with SEC rules and regulations.

Plaintiff complains that the Court's preliminary injunction restricts her right to report matters relating to her 1992 and 1993 settlement agreements. She ignores the undisputed fact that she agreed not to discuss such matters and that she was generously compensated for her agreement. The Court has found those agreements enforceable. The Court's preliminary injunction simply enforces what she voluntarily agreed to do. And as noted above, it does not prevent her from reporting in good faith criminal conduct to any government agency that has jurisdiction to

investigate the alleged criminal conduct. The Court makes no determination today as to whether she or her attorney has a good faith basis for asserting that the targets of her SEC letter violated the criminal law over which the SEC has jurisdiction. But the Court finds that the preliminary injunction entered in this case does not prohibit good faith reports of criminal conduct that are narrowly tailored to provide the investigative agency sufficient information to determine whether a violation of the criminal law over which the agency has jurisdiction has occurred. The injunction does prohibit, however, Plaintiff or her counsel from asserting claims of criminal conduct with no good faith basis for the purpose of simply making public allegations that Plaintiff has contractually agreed not to disclose.

In summary, the Court finds as follows:

(1) Plaintiff's proposed correspondence attached to her motion for leave is not approved by the Court because it is overbroad and does not narrowly inform the SEC of criminal conduct over which the SEC has jurisdiction.

(2) Plaintiff and her counsel are not prohibited from reporting crimes to the SEC as long as Plaintiff and her counsel have a good faith basis for believing that a crime has occurred over which the SEC has jurisdiction.

(3) Any good faith reporting of criminal conduct to the SEC should provide the essential facts necessary for the SEC to determine

whether it should investigate the alleged conduct, but it should not provide extraneous allegations that are not reasonably related to such a determination and which would otherwise violate the nondisclosure agreements this Court has found enforceable.

(4) Any correspondence to the SEC notifying it of alleged criminal conduct that relies upon allegations that are covered by the enforceable nondisclosure agreements should conspicuously notify the SEC that the reports should be kept confidential and should provide the SEC with a copy of this Court's preliminary injunction and today's order.[1]

IT IS SO ORDERED, this 13th day of November, 2018.

S/Clay D. Land
CLAY D. LAND
CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA

[1] The Court finds that today's order contains no information that should be redacted. Accordingly, the Clerk is directed to docket the order such that it is not restricted from public view.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

LEIGH ANN YOUNGBLOOD-WEST,	*	
Plaintiff,	*	
vs.	*	
AFLAC INCORPORATED, DANIEL P. AMOS, WILLIAM LAFAYETTE AMOS, JR., CECIL CHEVES, and SAMUEL W. OATES,	*	CASE NO. 4:18-CV-83 (CDL)
Defendants.	*	

O R D E R

Plaintiff filed a motion to dissolve the preliminary injunction in this action (ECF No. 87). For the reasons explained in the remainder of this order, that motion is denied.

THE PRELIMINARY INJUNCTION

Plaintiff Leigh Ann Youngblood-West entered into two settlement agreements with Defendant William Lafayette Amos, Jr. ("Dr. Amos") in 1992 and 1993, respectively. These settlement agreements included confidentiality provisions which prohibited the parties to the agreements from disclosing the subject matter of the settlements. Notwithstanding the nondisclosure agreements, Youngblood-West's counsel disclosed the subject matter of the settlements in a demand letter to certain Defendants in the above captioned action. The demand letter included a proposed draft complaint that further disclosed the subject matter related to the

previous settlement agreements. After receiving the demand letter, Dr. Amos filed an action for breach of the nondisclosure agreements seeking damages and injunctive relief. *See* Compl., *Amos v. Youngblood-West*, No. 4:18-CV-68 (M.D. Ga. Apr. 16, 2018), ECF No. 2.[1]

After determining that Dr. Amos had demonstrated a substantial likelihood that the public disclosure of the draft complaint would violate the confidentiality provisions of the 1992 and/or 1993 settlement agreements, that Dr. Amos would suffer irreparable injury by the disclosure of the confidential information, and that the public interest would not be harmed by granting preliminary injunctive relief, the Court restrained Youngblood-West and her counsel as follows:

> A. [Youngblood-West], and any person acting on her behalf or in concert with her (including her current counsel), shall file under seal any document that relates to the subject matter of the draft Civil RICO Complaint, including, without limitation, the draft Civil RICO Complaint, any complaint similar to it, and any corresponding exhibits;[2]
>
> B. [Youngblood-West], and any person acting on her behalf or in concert with her (including her current counsel), shall not disseminate, disclose, or discuss publicly the subject matter of the draft Civil RICO Complaint or any other documents sealed and restricted

[1] The Court later consolidated Dr. Amos's action for breach of the non-disclosure agreements (4:18-CV-68) with the above captioned action (4:18-CV-83). *See* Order (Sept. 6, 2018), *Youngblood-West v. Aflac*, No. 4:18-CV-83 (M.D. Ga. Sept. 6, 2018), ECF No. 57.

[2] "Under seal," as used in the preliminary injunction, means that the filing must not be available to the public without prior permission from the Court or the government agency with whom the filing is made.

> by this Court, except that [Youngblood-West] is not prohibited by this Order from reporting any crime to any law enforcement agency charged with investigating unlawful criminal conduct, and [Youngblood-West] is not prohibited from discussing these matters with her current counsel;
>
> C. Access to [Dr. Amos's] Verified Complaint (including the Exhibits), [Dr. Amos's] Emergency Ex Parte Motion for a Temporary Restraining Order, and any further filings in this action shall be restricted such that the filings are only accessible by the parties to this action, their counsel of record, and court personnel.

Order (Apr. 16, 2018) at 3-4, *Amos*, No. 4:18-CV-68, ECF No. 3 ("Prelim. Inj.").

DISCUSSION

As this litigation proceeded, the Court ruled that the nondisclosure agreements are enforceable. Order (Aug. 7, 2018) at 7-13, 15, *Amos*, No. 4:18-CV-68, ECF No. 19; Order (Oct. 22, 2018) at 33-41, *Youngblood-West*, No. 4:18-CV-83, ECF Nos. 88, 98. Therefore, Youngblood-West's contention that the preliminary injunction should be dissolved because the agreements are unenforceable is rejected. The Court's preliminary injunction simply requires Youngblood-West to keep her word, and it does so narrowly. As explained in previous rulings, her nondisclosure agreement is enforceable, does not violate her First Amendment

rights, and is not against public policy.[3] Order (Aug. 7, 2018) at 7-13, *Amos*, No. 4:18-CV-68, ECF No. 19.

The Court does find it appropriate to address two new issues raised by Youngblood-West's counsel. He suggests that the injunction prevents her from consulting other counsel regarding her claims. The injunction specifically provides that she is not prohibited from discussing matters with her "current counsel." Prelim. Inj. at 4. To the extent that Youngblood-West has interpreted this language to mean that she may only discuss her claims with her counsel of record in this action, Dimitry Joffe, the Court clarifies that she may discuss these matters with any lawyer who she has retained in good faith with regard to these claims to the extent that those discussions are covered by attorney client privilege and upon the condition that she provides such counsel with a copy of the preliminary injunction as well as today's order which would restrain any counsel who represents her from disseminating information in violation of the preliminary injunction.[4]

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[3] The Court addressed her complaint that the preliminary injunction prevents her from communicating with the Securities and Exchange Commission in a separate order. *See* Order (Nov. 13, 2018), *Youngblood-West*, No. 4:18-CV-83, ECF No. 103.

[4] Youngblood-West also maintains that the preliminary injunction unreasonably restricts her right to engage in discovery in this litigation. In light of the Court's dismissal of her claims at the pleading stage, this concern is now moot. To the extent that she needs discovery to defend Dr. Amos's claim against her, she should file a motion specifying what discovery she seeks that is relevant to the defense of that claim. At that point, the Court will determine whether

As to Youngblood-West's claim that the enforcement of her nondisclosure agreement restricts her ability to find employment, the Court observes that she voluntarily placed herself in this predicament by entering into the nondisclosure agreements. Moreover, the Court finds that the preliminary injunction will not work a significant hardship on Youngblood-West because there are ways for her to comply with both the preliminary injunction and an employer's reporting requirements. If a future employer asks her about her litigation history in a way that would require her to discuss her claims against Dr. Amos, then Youngblood-West could certainly respond that she had a claim against a doctor relating to conduct that happened over 25 years ago, that she settled the claims, and that she is bound by a nondisclosure agreement. As to her present claims in this action, Youngblood-West would not violate the preliminary injunction by providing her prospective employer with redacted copies of any of the orders entered in this action which have been filed on the public docket. Although Youngblood-West may wish to disclose more, she has agreed not to do so, and the Court has found her agreement enforceable.

For all of these reasons, Plaintiff's motion to dissolve the preliminary injunction (ECF No. 87) is denied.

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the discovery requests seek relevant evidence and the extent to which she should be relieved from her obligations under the preliminary injunction to pursue discovery.

IT IS SO ORDERED, this 16th day of November, 2018.[5]

S/Clay D. Land

CLAY D. LAND
CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA

[5] The Court finds that today's Order does not need to be redacted. The Clerk is directed to docket it with unrestricted access.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

LEIGH ANN YOUNGBLOOD-WEST,	*	
Plaintiff,	*	
vs.	*	
AFLAC INCORPORATED, DANIEL P. AMOS, WILLIAM LAFAYETTE AMOS, JR., CECIL CHEVES, and SAMUEL W. OATES,	*	CASE NO. 4:18-CV-83 (CDL)
Defendants.	*	

ORDER AND PERMANENT INJUNCTION (REDACTED)

Dr. William Lafayette Amos, Jr. asserts a claim for breach of contract against Leigh Ann Youngblood-West for allegedly violating the confidentiality provisions of two settlement agreements. He now moves for summary judgment on his breach of contract claim and seeks permanent injunctive relief (ECF No. 112). For the following reasons, the Court grants Dr. Amos's motion for summary judgment and permanently enjoins Youngblood-West from violating the confidentiality provisions of the settlement agreements to the extent described below.[1]

[1] Dr. Amos originally filed his breach of contract action as a separate action, 4:18-CV-68 ("Breach Action"). The Court consolidated that action with the above captioned action that was filed by Youngblood-West against Dr. Amos and other Defendants, 4:18-CV-83 ("RICO Action"). Thus, the Court treats Dr. Amos's breach of contract claim as a counterclaim against Youngblood-West in this consolidated action.

SUMMARY JUDGMENT STANDARD

Summary judgment may be granted only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In determining whether a *genuine* dispute of *material* fact exists to defeat a motion for summary judgment, the evidence is viewed in the light most favorable to the party opposing summary judgment, drawing all justifiable inferences in the opposing party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A fact is *material* if it is relevant or necessary to the outcome of the suit. *Id.* at 248. A factual dispute is *genuine* if the evidence would allow a reasonable jury to return a verdict for the nonmoving party. *Id.*

A FACTUAL RECORD WITHOUT DISCOVERY

Dr. Amos filed his motion for summary judgment before the parties conducted any discovery. Although this may not be the norm, it is certainly authorized under Rule 56 of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 56(b) (unless local rules or a court order direct otherwise, "a party may file a motion for summary judgment at any time until 30 days after the close of all discovery"). Youngblood-West has the right to seek discovery if she can establish that discovery is necessary to adequately respond to Dr. Amos's summary judgment motion. *See* Fed. R. Civ. P. 56(d) (if the nonmoving party shows by affidavit or declaration that it

"cannot present facts essential to justify its position," the Court may defer or deny the motion for summary judgment, permit further discovery, or issue any other appropriate order). But, in the affidavit or declaration, "the nonmoving party must give more than 'vague assertions that additional discovery will produce needed, but unspecified, facts.'" *Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1063 (11th Cir. 2015) (quoting *Reflectone, Inc. v. Farrand Optical Co., Inc.*, 862 F.2d 841, 844 (11th Cir. 1989)(per curiam)). And, "a plaintiff's entitlement to discovery prior to a ruling on a motion for summary judgment is not unlimited, and may be cut off when the record shows that the requested discovery is not likely to produce the facts needed [by the nonmoving party] to withstand a . . . motion for summary judgment." *Paul Kadair, Inc. v. Sony Corp. of Am.*, 694 F.2d 1017, 1029-30 (5th Cir. 1983).

Youngblood-West claims that she needs discovery before she can adequately respond to Dr. Amos's motion for summary judgment. Having reviewed her request, the Court finds that she has not shown that discovery would likely produce facts needed to respond to the pending summary judgment motion. The Court intends to base its decision in part on Youngblood-West's verified complaint, assuming her factual allegations to be true and construing reasonable inferences in her favor. Thus, she certainly does not need discovery to confirm the facts that she alleges in her complaint given that the Court is going to accept those facts for purposes

of the pending motion. Moreover, the essential foundation of Dr. Amos's motion for summary judgment consists of the two settlement agreements, which are attached as exhibits to both Youngblood-West's and Dr. Amos's complaints. Youngblood-West has never disputed that the material portions of those two documents represent the relevant settlement paperwork that memorializes the two agreements. She simply argues that they are not enforceable because Dr. Amos did not sign them, did not assent to them, did not have the capacity to assent to them, and participated in a conspiracy to procure them by fraud and coercion.

For purposes of the present motion, the Court accepts as true the allegation that Dr. Amos did not actually sign the agreements. But the conclusory arguments that Dr. Amos did not otherwise assent to them or have the capacity to assent to them are inconsistent with Youngblood-West's other factual allegations in her pleadings in this action, and she has not even bothered to explain the inconsistencies in her affidavit. She certainly does not need discovery to create a factual dispute on these issues when she has already stated her factual position on them, which the Court accepts as true for purposes of the pending motion. And, even if she could create a factual dispute on any of these issues, she would perhaps win the battle but not the war because it is absolutely clear that Dr. Amos would be a third-party beneficiary to the agreements and have the legal right to enforce them,

notwithstanding any alleged lack of capacity or assent on his part. Furthermore, Youngblood-West acknowledges that she has never tendered the consideration she received under the agreements, and, even if her excuses for failing to do so are true, they do not provide a legal basis for now rescinding the settlement agreements based on fraud. Consequently, discovery will not assist her with regard to this claim for avoiding her responsibilities under the agreements.

The Court notes that it has addressed the enforceability of these settlement agreements on two previous occasions in this litigation. It found the agreements enforceable for the purpose of deciding Youngblood-West's motion to dismiss Dr. Amos's breach of contract claim; it also found them enforceable when deciding Dr. Amos and other Defendants' motions to dismiss Youngblood-West's claims against them in this action. Breach Action, Order (Aug. 7, 2018), ECF No. 19 at 7-10; RICO Action, Order (Oct. 22, 2018), ECF No. 88 at 33-41. The Court also previously decided that Youngblood-West is not entitled to discovery in this action to decide the pending summary judgment motion. As the Court previously noted in its order rejecting Youngblood-West's Rule 56(d) declaration, the issues remaining to be decided on summary judgment "either involve pure questions of law and/or do not involve genuine factual disputes." RICO Action, Order (Dec. 19, 2018), ECF No. 118 at 2. The Court has "previously determined the

enforceability of the agreements, taking Youngblood-West's allegations as true." *Id.* And, it is "not necessary for her to engage in discovery to confirm those allegations" when the Court considers them established for purposes of the pending motion. *Id.*[2] As to her request that she needs to discover matters apart from what she alleged in her pleadings and what is indisputably established by the settlement agreements, the Court finds that the information she seeks to discover is not material to the issues raised by Dr. Amos's present motion for summary judgment. The correctness of this finding should become readily apparent in the Court's discussion in the remainder of this order.

THE FACTS

Viewed in the light most favorable to Youngblood-West, the record reveals the following.

Around January 5, 1984, [redacted]. Youngblood-West later

[2] The Court denies Youngblood-West's Rule 56(d) request *de novo* in today's order. But to the extent that her request is construed as a motion for reconsideration of the Court's previous order denying such request, Order (Dec. 19, 2018), ECF No. 118, that motion is also denied. Generally, motions for reconsideration will only be granted if the movant demonstrates that (1) there was an intervening development or change in controlling law, (2) new evidence has been discovered, or (3) the court made a clear error of law or fact. *Rhodes v. MacDonald*, 670 F. Supp. 2d 1363, 1378 (M.D. Ga. 2009); *see also* Local Rule 7.6. Because Youngblood-West has not made this showing, the Court denies the motion for reconsideration.

entered into two settlement agreements that released her claims against Dr. Amos. Those agreements form the basis of this action.

The first agreement was signed on August 28, 1992. In that agreement, Youngblood-West and her late husband released Dr. Amos and Medstrategies, Georgia, Inc. ("Medstrategies"), a for-profit entity that Dr. Amos is CEO and CFO of, from claims [redacted] Breach Action, Compl. Ex. A, 1992 Settlement Agreement 1, ECF No. 2-1. In exchange for the release, Youngblood-West was promised [redacted]. *Id.* The 1992 settlement agreement also contained a confidentiality provision stating, "[Youngblood-West and her late husband] further covenant that neither they nor their counsel shall reveal to anyone the alleged acts or omissions giving rise to their claims against any party released hereby, or any other matter relevant to such claims, the fact or existence of this release agreement, any of the terms of this release agreement or any of the amounts, numbers or terms and conditions of any sums payable to the undersigned hereunder." *Id.* at 2. A provision of the agreement also stated, "[i]n the event of a breach of any of the terms or provisions of this release agreement, [Youngblood-West and her late husband] shall not be bound by their covenant or agreement of confidentiality contained in this release agreement." *Id.*

Youngblood-West signed the agreement. Dr. Amos did not.[3] Youngblood-West received the payment due under the agreement and has not tendered or attempted to tender this settlement payment back to the payor before filing suit.

Later, on November 19, 1993, in exchange for [redacted], Youngblood-West and her late husband entered a second settlement agreement releasing a number of parties, including Dr. Amos and Medstrategies, from these same and additional claims. Breach Action, Compl. Ex. B, 1993 Settlement Agreement ¶ 2, ECF No. 2-2. This agreement also had a confidentiality provision which stated that in exchange for [redacted], Youngblood-West and her late husband "shall maintain at all time the confidentiality of this agreement and shall not reveal to anyone, including other attorneys . . . , the alleged acts or omissions giving rise to their claim against any party released hereby, or any other matter relevant to such claims, [or] the fact or existence of this release agreement." *Id.* ¶ 6. The agreement also states that "[Youngblood-West and her late husband] acknowledge that the damage to the parties being released hereby would be irreparable and difficult to ascertain and that their remedy at law would be inadequate." *Id.* ¶ 7. It

[3] There is a separate signature page attached to the end of the 1992 agreement with Dr. Amos's signatures on it. 1992 Settlement Agreement 4. But, Youngblood-West contests the authenticity of this separate signature page. Because the Court must view the facts in the light most favorable to Youngblood-West, it does not consider this page part of the agreement for purposes of this motion.

contemplates that if Youngblood-West or her late husband breach the confidentiality provision in the agreement, "the parties paying the consideration for this confidentiality agreement shall be entitled to receive . . . [redacted] . . . which sum [Youngblood-West and her late husband] agree is a reasonable pre-estimate of the damages from such a breach." *Id.* The agreement also contemplates that the released parties could obtain a "permanent injunction . . . against [Youngblood-West or her late husband] restricting them from violating the terms of this confidentiality agreement." *Id.* ¶ 8. The agreement states, "[e]ach of the undersigned acknowledges and agrees that there is a prior settlement and release and confidentiality agreement between the undersigned and [Dr. Amos], which prior agreement does and shall remain in full force and effect." *Id.* ¶ 11. And, the agreement states that "[t]his agreement and the prior one may not be modified unless it is done so in writing signed by the party to be bound." *Id.*

Youngblood-West does not dispute that she received the settlement payment under this 1993 agreement and did not tender the payment back to the payor before filing this suit. Youngblood-West, her late husband, and their attorney all signed the agreement. No other party signed the agreement. Youngblood-West received a check from [redacted] *Id.* at 8 (depicting a copy of the check with the

signatures of Youngblood-West, her husband, and their attorney underneath). Dr. Amos's signature appears on the signature line of this check. *Compare id.*, *with* 1992 Settlement Agreement 4 (showing a signature block with Dr. Amos's signature that matches the signature on the [redacted]).[4]

On March 16, 2018, Youngblood-West's attorney sent a letter to two attorneys at the law firm of Alston & Bird discussing [redacted]. Breach Action, Compl. Ex. C, Letter from D. Joffe to L. Cassilly and M. Gill (Mar. 16, 2018), ECF No. 2-3. Then, on April 14, 2018, Youngblood-West's attorney emailed several Alston & Bird attorneys a 51-page draft RICO complaint against Aflac, Dr. Amos, and others. Breach Action, Compl. Ex. D, Email from D. Joffe to J. Grant, M. Gill, L. Cassilly, S. Pryor, and J. Bogan (Apr. 14, 2018), ECF No. 2-4; *id.* Ex. E, Proposed RICO Compl., ECF No. 2-5. The draft complaint also included accusations regarding [redacted]. *See generally* Proposed RICO Compl.

[4] The Court considers the signature page of the 1992 settlement agreement for the limited purpose of comparing Dr. Amos's signatures on that page to the signature on the [redacted]. Although Youngblood-West contends that the signature page was not part of the 1992 agreement, she does not contend that the signatures on that page are not Dr. Amos's signatures.

After this correspondence, Dr. Amos filed an action for breach of the confidentiality provisions of the 1992 and 1993 settlement agreements. After that action was filed, Youngblood-West filed her proposed RICO complaint as a separate action, the present action. The Court subsequently consolidated the two cases, treating Dr. Amos's claims against Youngblood-West as a counterclaim in this present action. The Court previously dismissed all of Youngblood-West's claims in this action, and only Dr. Amos's counterclaim remains pending. Dr. Amos withdrew his claim for damages on his breach of contract claim; but he seeks permanent injunctive relief enforcing the confidentiality provisions of the settlement agreements. Dr. Amos now moves for summary judgment on his claim, contending no genuine and material factual disputes exist and the settlement agreements are enforceable as a matter of law.

DISCUSSION

Dr. Amos is entitled to summary judgment on his breach of contract claim. Under Georgia law, the elements of breach of contract are: "(1) breach and the (2) resultant damages (3) to the party who has the right to complain about the contract being broken." *Norton v. Budget Rent A Car Sys., Inc.*, 705 S.E.2d 305, 306 (Ga. Ct. App. 2010) (quoting *Kuritzky v. Emory Univ.*, 669 S.E.2d 179, 181 (Ga. Ct. App. 2008)). For there to be a breach, there also must be a valid contract. Here, the elements of breach

and damages are indisputably met. By disclosing information concerning [redacted] to Alston & Bird attorneys in the March 6th letter and the April 14th email, Youngblood-West, through her attorney, breached the confidentiality provisions of the 1992 and 1993 settlement agreements. And, Dr. Amos suffered resulting damages because he no longer has the privacy bargained for under the agreements. Youngblood-West nevertheless argues that the agreements are not enforceable by Dr. Amos, [redacted]. Her arguments lack merit and may well be frivolous, but that determination remains for another day.

Under Georgia law, "[t]o constitute a valid contract, there must be parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a subject matter upon which the contract can operate." O.C.G.A. § 13-3-1. The Court previously found that the 1992 and 1993 settlement agreements are valid and enforceable contracts under Georgia law. *See* RICO Action, Order (Oct. 22, 2018), ECF No. 88 at 33-41; Breach Action, Order (Aug. 7, 2018), ECF No. 19 at 7-10. Youngblood-West now asks the Court to reconsider this decision, arguing that there is a fact dispute concerning whether two or more parties assented to the terms of the agreements. Although she concedes that she assented to the agreements, she

argues that the evidence in the record does not establish that Dr. Amos assented to be bound by them. Specifically, she alleges that Dr. Amos never signed the 1993 agreement and that his signature on the 1992 agreement is not authentic.

For purposes of the pending motion, the Court accepts as true the allegations that Dr. Amos did not sign the agreements. The Court previously held that Dr. Amos sufficiently manifested his assent to the terms of the agreements by performing under the contract and paying the settlement payments. Breach Action, Order (Aug. 7, 2018), ECF No. 19 at 7-9. The Court found that the [redacted] check attached to the 1993 agreement was evidence that Dr. Amos paid pursuant to the terms of the 1993 agreement. *Id.* Youngblood-West now asks the Court to reconsider this finding because the [redacted]. Therefore, Youngblood-West contends, there is a fact dispute about whether *Dr. Amos* ever actually performed under the contract, thereby manifesting his assent to be bound by the terms of the agreement and becoming a party to the agreement.

The Court notes that Youngblood-West had the opportunity to allege in her complaint or to file an affidavit in opposition to summary judgment stating that she never received the consideration contemplated by the two settlement agreements. She did not do so because she has never disputed that she was paid pursuant to the

two settlement agreements. Thus, there is no question that the contract was performed, i.e., she got what she bargained for—a total of [redacted]. But in a desperate attempt to undo the deal, her counsel contends that because Dr. Amos allegedly failed to sign the agreements and because the check used to pay the consideration for the 1993 agreement was drawn on Dr. Amos's [redacted], she is not bound by the terms of the settlement agreements.

Although Youngblood-West's counsel seems to acknowledge that the mere absence of Dr. Amos's signature does not relieve Youngblood-West from her obligations under the contract that she undisputedly signed, the Court finds it appropriate to nevertheless begin its discussion with that fundamental principle. The law of the State of Georgia (and likely every other jurisdiction in the country) clearly establishes that the absence of a promisee's signature does not relieve the promisor from her obligations under a contract. A party's assent to the terms of an agreement may be established by means other than that party's signature. This principle has Georgia precedential roots that stretch back to antebellum days. In fact, it was originally planted in the very first volume of the Georgia Reports. *See Jernigan, Lawrence & Co. v. F.D. Wimberly*, 1 Ga. 220, 221-22 (1846) (finding a contract was not invalidated by the plaintiff's failure to sign it). This principle flourished through the ensuing years

and is part of our modern contract jurisprudence. *See, e.g.*, *Rogin v. Dimensions S. Realty Corp., Inc.*, 264 S.E.2d 555, 556 (Ga. Ct. App. 1980) ("Assent to the terms of a contract may be given other than by signatures." (quoting *Cochran v. Eason*, 180 S.E.2d 702, 704 (Ga. 1971)). Thus, the lack of Dr. Amos's signature on the settlement agreements is not dispositive of whether the agreements are enforceable.

The absence of signature simply eliminates what is often the clearest sign of assent to an agreement. But other evidence of assent can certainly be relied on to establish that the parties to an agreement actually assented to it. One well-recognized and persuasive indication of assent is performance of the promises in the agreement. It would make little sense for someone to comply with a promise that he did not make. Thus, the law recognizes that performance can establish assent. This principle too has deep judicial roots. In *Brown v. Bowman*, 46 S.E. 410, 410 (Ga. 1903), the Georgia Supreme Court in an opinion by Justice Fish explained, "[a] contract is often such that, until something is done under it, the consideration is imperfect; yet a partial performance, or a complete performance on one side, supplies the defect." *Id.* (quoting Bishop, Contracts, § 87). Justice Fish continued, "[i]f, for example, one promises another, who makes no promise in return, to pay him money when he shall have done a specified thing, if he does it, not only is the contract executed

on one side, but also the consideration is perfected, and payment can be enforced. And, in more general terms, when from any cause the party from whom the consideration moves is not compellable to render it, if he does render it, the contract becomes thereby perfected." *Id.* (quoting Bishop, Contracts, § 87). Then Justice Fish concludes, "[t]he test of mutuality is to be applied, not as of the time when the promises are made, but as of the time when one or the other is sought to be enforced. A promise may be unenforceable for want of mutuality when made, and yet the promisee may render it valid and binding by supplying a consideration on his part before the promise is withdrawn." *Id.* at 410-411 (quoting Hammond on Contracts, p. 683). This fundamental principle has not tarnished with age. As this Court explained in its earlier order finding the settlement agreements here to be enforceable, the principle is well established. *See Comput. Maint. Corp. v. Tilley*, 322 S.E.2d 533, 537 (Ga. Ct. App. 1984) ("If one of the parties has not signed [a contract], his acceptance is inferred from a performance under the contract, in part or in full, and he becomes bound." (quoting *Cooper v. G.E. Constr. Co.*, 158 S.E.2d 305, 308 (Ga. Ct. App. 1967))); *Gruber v. Wilner*, 443 S.E.2d 673, 676-77 (Ga. Ct. App. 1994) (finding party's partial performance of consulting and profit sharing agreements bound the party to those agreements even though the party had not signed them).

So, Youngblood-West faces a dilemma. She admits that she signed the settlement agreements and that she received the consideration called for in the agreements. Those agreements clearly indicate that Dr. Amos is a released party under the agreements [redacted]. No amount of discovery would change these facts. They are undisputed. In light of these undisputed facts, Youngblood-West must navigate clearly established legal principles that provide that Dr. Amos's lack of signature on the agreements does not render them unenforceable and that performance of the obligation in the agreement may establish assent to the agreement by a non-signatory to the agreement.

Youngblood-West's counsel responds with a strained, incredulous argument that even though it is undisputed that performance occurred, i.e., Youngblood-West was paid the entire amount she was promised under the agreements, he needs discovery to determine whether Dr. Amos was actually aware of that performance (or even the existence of the agreements) and whether he assented to them on his own behalf. Of course, Youngblood-West could have pointed to facts based on her personal knowledge as a party to the agreements that might lead a reasonable jury to conclude that Dr. Amos knew nothing about the agreements. But she would have had to swear under penalty of perjury that what she stated was true. And that may be difficult given that she alleges

in her RICO and fraud lawsuit against Dr. Amos that he participated in fraudulently [redacted] procuring the settlement agreements. It is hard to understand how he did not assent to agreements that she claims he participated in procuring.

Youngblood-West's allegations that Dr. Amos knowingly participated in the fraudulent procurement of the settlement agreements also directly contradict any conclusory allegation that he did not have the mental capacity to be able to contract. In her desperate attempt to avoid the very contracts that she knowingly executed, she now tries to convince the Court that Dr. Amos was completely aware of what he was doing when he got *her* to sign the agreements, but he had no capacity to understand what he was doing when *he* agreed to the settlements. This attempt to avoid summary judgment goes well beyond the assertion of arguments in the alternative; the two positions are irreconcilable. And, even if Youngblood-West could discover evidence of Dr. Amos's mental incapacity, that evidence ironically could provide another basis for throwing out Youngblood-West's fraudulent procurement claims against Dr. Amos based on his lack of knowledge and would do nothing to Dr. Amos's ability to enforce the settlement agreements as an intended third-party beneficiary of them. *See infra*, note 8.[5]

[5] Youngblood-West has also consistently claimed that Dr. Amos's attorney and brother-in-law, Cheves, helped negotiate the settlements on his

Youngblood-West also ignores the undisputed fact that consideration was paid with a check that Dr. Amos actually signed. The fact that [redacted] does not negate his active involvement in signing the check. Even if he signed the check in his capacity as [redacted], he signed a check for [redacted] to Youngblood-West. It ignores reality to speculate that he did so without knowing what it was for, particularly given the undisputed fact that the 1992 and 1993 agreements clearly identify Dr. Amos as a released party. At one time, Youngblood-West even acknowledged what she and Dr. Amos clearly knew. She *admitted* that Dr. Amos was a party to the 1992 agreement when she signed the 1993 agreement acknowledging "that there [was] a prior settlement and release and confidentiality agreement between [her] and William L. Amos, Jr., M.D. which prior agreement does and shall remain in full force and effect." 1993 Settlement Agreement ¶ 11. It was not until over 20 years later when she engaged her current counsel that opaqueness suddenly overcame clarity. Waiting that long to suggest that Dr. Amos did not assent to the agreements for which she received [redacted] defies common sense.[6] All of the evidence points to the inescapable

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behalf. Thus, the undisputed facts establish, at a minimum, that the agreements were negotiated by Dr. Amos's agent on his behalf. *See infra* note 7. Youngblood-West is not entitled to discovery to impeach her own factual allegations.

[6] [redacted], but she filed no affidavit indicating that this [redacted] prevented her from earlier reaching the

conclusion that Youngblood-West knows that Dr. Amos knew about the settlement agreements and assented to them. There is no reasonable basis for concluding that discovery would yield any evidence to the contrary.[7]

The present record establishes that Dr. Amos and Youngblood-West assented to settling her claims against him in exchange for money. As part of that settlement, Youngblood-West agreed to keep the settlement confidential. Youngblood-West was paid the full consideration called for under the agreements. She had a legal duty to comply with her promises. When she did not, Dr. Amos had the legal right to sue her to make her do what she promised to do. It is that simple, and no amount of discovery or creative lawyering would change that.[8]

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conclusion that Dr. Amos did not assent to the settlement agreements. And while this delay is certainly not dispositive, it adds confirmation that no one thought Dr. Amos was not on board with the settlement. Her current counsel's argument to the contrary is particularly dubious given that she was represented by counsel in the second settlement who she has not criticized (at least not yet), and that counsel certainly would not have advised her to enter into a settlement with a party who did not assent to it.

[7] Although unnecessary to the Court's holding today, the Court observes that even if Dr. Amos was not directly involved in the execution of the final agreements, he could certainly assent through his agents. *See Levy v. Cohen*, 4 Ga. 1, 13 (Ga. 1848) ("To consummate a contract there must be mutuality of assent to a certain and definite proposition. But this may be done, not only personally, where the parties are present, but by means of agents . . . ."). Youngblood-West clearly alleges that Dr. Amos's "agents" procured the settlement agreements on his behalf in her RICO complaint.

[8] The Court notes that even if Youngblood-West could produce evidence that she did not actually have an enforceable contract with Dr. Amos, she would still have a valid agreement with [redacted] In that case, Dr. Amos would nevertheless have a claim as an intended third-party

Remarkably, Youngblood-West's "lack of assent" argument is her strongest argument for avoiding her responsibilities under the settlement agreements. And, it borders on violating Rule 11 of the Federal Rules of Civil Procedure. Her remaining arguments likely cross the line. They appear to be the product of creative brain-storming sessions unrestrained by Rule 11. Most of them have previously been rejected by the Court. Because it is important to inform counsel when his conduct crosses the line, the Court takes the time to address these frivolous arguments. Youngblood-West objects to Dr. Amos relying on the settlement agreements attached to his complaint because Dr. Amos states in the complaint that they are "copies" of the settlement agreements, not that they are "true and correct" copies. But, Youngblood-West admits to signing settlement agreements in 1992 and 1993 and does not contend that the documents attached to Dr. Amos's complaint are not those agreements.[9] Youngblood-West also does not argue that the settlement agreements cannot be presented in a form that

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beneficiary of that contract and be entitled to injunctive relief to enforce it since it is evident from the face of the agreement that it was intended to benefit him. *See* O.C.G.A. § 9-2-20(b) ("The beneficiary of a contract made between other parties for his benefit may maintain an action against the promisor on the contract."). The Court also notes that, because Dr. Amos could enforce the agreement as a third-party beneficiary, the question of whether he personally had the capacity to contract at the time the agreements were made is irrelevant.

[9] Although Youngblood-West disputes the authenticity of the signature page to the 1992 agreement, the signature page is immaterial to the validity of the agreement as previously discussed. Youngblood-West does not contend that the rest of the 1992 agreement is different than what she originally signed.

would be admissible in evidence at trial. *See* Fed. R. Civ. P. 56(c)(2) ("A party may object that the material cited to support . . . a fact cannot be presented in a form that would be admissible in evidence."). Youngblood-West's argument that summary judgment should be denied on this basis is frivolous.

Counsel for Youngblood-West renews arguments previously made in this proceeding that the agreements are unenforceable due to lack of mutuality (RICO Action, Order (Oct. 22, 2018), ECF No. 88 at 34-37), Georgia public policy (Breach Action, Order (Aug. 7, 2018), ECF No. 19 at 10-12), the absence of counterparty signatures (*id.* at 9-10), and exceptions to the tender requirement (RICO Action, Order (Oct. 22, 2018), ECF No. 88 at 37-41). The Court has previously rejected all of these arguments and rejects them again. They have no merit.

Further, Youngblood-West's counsel incredibly argues that Youngblood-West can unilaterally revoke or modify her nondisclosure obligations under the settlement agreements. This argument demonstrates her counsel's lack of restraint in avoiding the assertion of frivolous positions. Counsel actually argues that Youngblood-West's own breach of the confidentiality provisions in the 1992 settlement agreement releases her from all her obligations under that agreement because it states "[i]n the event of a breach of any of the terms or provisions of this release agreement, the undersigned shall not be bound by their covenant or

agreement of confidentiality contained in this release agreement." 1992 Settlement Agreement 2. Interpreting this language to permit Youngblood-West to escape her confidentiality requirements by violating those very same confidentiality requirements is absurd. When read in the context of the entire agreement, the agreement releases Youngblood-West from her obligations under the agreement if the counterparties breach their *payment obligation*, not when she breaches her confidentiality obligations. *See Cahill v. United States*, 810 S.E.2d 480, 483 (Ga. 2018) (finding a settlement agreement "must be read reasonably, in its entirety, and in a way that does not lead to an absurd result" (quoting *Office Depot, Inc. v. Dist. at Howell Mill, LLC*, 710 S.E.2d 685, 689 (Ga. Ct. App. 2011))).

Counsel for Youngblood-West also maintains that she can unilaterally modify the 1993 agreement to delete her confidentiality obligations. She notes that the 1993 settlement agreement states that it "may not be modified unless it is done so in writing signed by the party to be bound." 1993 Settlement Agreement ¶ 11. She argues that she is a "party to be bound" and, therefore, can modify her own obligations under the agreement as long as she does it in writing. Again, Youngblood-West's interpretation of this language is absurd. Instead, the "party to be bound" language obviously contemplates the signature of the party adversely impacted by the modification. Moreover,

Youngblood-West's unilateral modification of the settlement agreement would be unenforceable because it lacks new consideration. *See Carroll v. Bd. of Regents of Univ. Sys. of Ga.*, 751 S.E.2d 421, 425 (Ga. Ct. App. 2013). Counsel's arguments are frivolous.

In summary, the undisputed material facts establish that Youngblood-West breached the settlement agreements with Dr. Amos. The "facts" that Youngblood-West seeks to develop in discovery are not material to the issues to be resolved in deciding Dr. Amos's pending summary judgment motion. Dr. Amos is entitled to judgment as a matter of law and his motion is accordingly granted.

PERMANENT INJUNCTION

Having found that Youngblood-West breached the confidentiality provisions of the settlement agreements as a matter of law, the Court further finds that the appropriate remedy for those breaches is a permanent injunction. Accordingly, the Court enters a permanent injunction as follows:

1. Permanent injunctive relief is required because the remedies available at law, such as monetary damages, would not be adequate if Youngblood-West breached the confidentiality provisions of the 1992 and 1993 settlement agreements again in the future. If Youngblood-West publicly discloses her allegations related to the claims settled in the 1992 and 1993 settlement agreements and subject to the confidentiality

provisions in the settlement agreements, then Dr. Amos permanently will have lost the value of the confidentiality provisions in the settlement agreements. Because no amount of money can compensate Dr. Amos for the harm that would result from violations of the confidentiality provisions in the settlement agreements, Dr. Amos would suffer irreparable harm from any future violation of the confidentiality provisions.

2. The Court further finds that a balancing of the parties' interests tips sharply in Dr. Amos's favor. Although Youngblood-West may have some interest in publicly airing her allegations, Youngblood-West received and has not offered to return the consideration she received in exchange for her promise to release her claims against Dr. Amos and maintain the confidentiality of her allegations. Dr. Amos's privacy interest in enforcing the confidentiality provisions in the settlement agreements outweighs any hardship to Youngblood-West caused by requiring her to comply with the contractual obligations to which she agreed in exchange for consideration she has retained.

3. The Court further finds that the public interest would not be disserved by a permanent injunction. Protecting Dr. Amos's benefit of his bargain by permanently barring Youngblood-West from violating the settlement agreements supports the

public's strong interest in the enforceability of contracts and the public's strong interest in encouraging and preserving the finality of settlements.

4. Accordingly, Youngblood-West, and any person acting on her behalf or in concert with her (including her counsel), shall not disseminate, disclose, or discuss with anyone the subject matter of the claims Youngblood-West settled in the 1992 and 1993 settlement agreements unless permitted to do so by Court order, except that Youngblood-West is not prohibited by this order from reporting any crime to any law enforcement agency charged with investigating unlawful criminal conduct or from discussing these matters with her legal counsel who is also bound by this injunction.

5. In accordance with the 1992 and 1993 settlement agreements, this permanent injunction may be enforced by Dr. Amos and by his heirs, executors, administrators, or assigns.

CONCLUSION

For the foregoing reasons, the Court grants Dr. Amos's motion for summary judgment (ECF No. 112) and enters the permanent injunction described in this order. This permanent injunction replaces the preliminary injunction previously entered in this action. Restrictions regarding the filing of items under seal in this action continue to apply to filings in this action.

RULE 54(b) CERTIFICATE

After today's order, all of the claims asserted by Youngblood-West in her complaint in this action and all of the claims asserted by Dr. Amos in his counterclaim against Youngblood-West have been decided. Only the following motions remain to be decided: the parties' motions for sanctions or reasonable expenses under Rule 11 (RICO Action, ECF Nos. 21, 49, 56), [redacted]. The Court intends to decide these pending motions in due course; but the Court finds that an appeal of the Court's previous dismissal of Youngblood-West's claims and summary judgment on Dr. Amos's counterclaim should not be delayed during the Court's adjudication of these motions. Therefore, to the extent that these pending motions are deemed claims which would prevent the entry of final judgment by the Clerk without direction from the Court, the Court directs the Clerk to enter final judgment as explained below.

Pursuant to Federal Rule of Civil Procedure 54(b), which permits the entry of a final judgment on one or more, but fewer than all, of the asserted claims, the Court concludes that there is no just reason for delaying the entry of a final judgment on

Dr. Amos's breach of contract claim, which the Court has decided today in this order. The Court further finds no just reason for delaying further the entry of final judgment in favor of all of the Defendants in this action regarding the Court's previous orders granting all of the Defendants' motions to dismiss Youngblood-West's first amended complaint. *See* RICO Action, Order (Oct. 22, 2018), ECF No. 88; RICO Action, Order (Nov. 13, 2018), ECF No. 104.

Accordingly, the Clerk is directed to enter final judgment in favor of Dr. Amos on his breach of contract counterclaim against Youngblood-West and to enter final judgment in favor of Defendants Dr. Amos, Aflac Incorporated, Samuel W. Oates, Daniel P. Amos, and Cecil Cheves on all of Youngblood-West's claims against them in her first amended complaint. As the prevailing parties, Defendants, including Dr. Amos, shall recover their costs against Youngblood-West, but the Clerk shall not assess those costs until all of the motions that remain pending in this action have been decided by this Court.

IT IS SO ORDERED, this 27th day of March, 2019.

S/Clay D. Land
CLAY D. LAND
CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA