

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JANET SIHLER, Individually and On
Behalf of All Others Similarly Situated;
CHARLENE BAVENCOFF,
Individually and On Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

GLOBAL E-TRADING, LLC DBA
CHARGEBACKS911,

Defendant.

Case No.: 8:23-CV-01450-VMC-LSG

JOINT FINAL PRETRIAL STATEMENT

Plaintiffs Janet Sihler and Charlene Bavencoff's ("Plaintiffs") and Defendant Global E-Trading, LLC d/b/a Chargebacks911 ("CB911"), through their undersigned counsel, respectfully submit this Joint Pretrial Statement per the Amended Case Management Order and Scheduling Order ("Amended CMSO") and Middle District of Florida Local Rule 3.06(c).

I. BASIS FOR THE COURT'S JURISDICTION

This court has federal question jurisdiction because Plaintiffs' Racketeer Influenced and Corrupt Organizations Act ("RICO") claim, 18 U.S.C. §§ 1961, *et seq.*, arises under federal law. *See* 28 U.S. Code § 1331. This Court further has jurisdiction over this matter because this is a class action in which the Plaintiffs allege that the

damages exceed \$5 million, exclusive of interest and costs, the number of class members exceeds 100, and the parties are diverse pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). Personal jurisdiction has not been contested because the Defendant is a Florida company.

II. CONCISE STATEMENT OF THE ACTION

This case arises from the sale of “Keto” products sold online to Plaintiffs among other members of the Class. Plaintiffs contend that these sales involved fraudulent pricing representations that free bottles would be shipped to members of the Class, when in fact they were not. Plaintiffs contend that these sales were fraudulent and assert a claim for violations of RICO.

Plaintiffs assert a claim against CB911 for allegedly participating in the “Keto Enterprise” in violation of RICO under 18 U.S.C. § 1962(c). *See generally* ECF 102. The Keto Enterprise allegedly consisted of CB911, The Fulfillment Lab, Richard Nelson, David Flynn, Rickie Joe James, Beyond Global Inc., Brightree Holdings Corporation (“Brightree”), Mike Campbell, Aaron Wilson, and BMOR Global LLC (collectively, other than CB911, the “Keto Entities”). *Id.* ¶ 162. According to the Complaint, “the purpose of the Keto Enterprise was to build a durable scam that could victimize consumers by overcharging them for diet pills while avoiding regulatory scrutiny as cheaply as possible.” *Id.* ¶ 163.

CB911 denies this claim.

III. CONCISE STATEMENT OF EACH PARTY'S POSITION

1. Plaintiffs' Statement

Plaintiffs allege that the Defendant, Global E-Trading, Inc. doing business as Chargebacks911 participated in this scheme in violation of RICO, and intended to assist in the fraudulent scheme. Plaintiffs contend that it did so by, among other things, assisting the Keto Entities with the creation of fake transactions intended to dilute their chargeback ratio, advising the Keto Entities on a scheme to utilize shell companies to obtain merchant processing, referring the Keto Entities to other vendors who would assist the Keto Entities in their scheme, providing refunds on behalf of the Keto Entities with the knowledge that such action would dilute the Keto Entities' chargeback ratio, and providing representment services to the Keto Entities while knowing that they were assisting in a fraudulent scheme.

Plaintiffs contend that the Class was injured through a scheme to present false pricing information on the websites operated by Brightree Holdings on which the Ultra Fast Keto Boost and Instant Keto / InstaKeto products were advertised. Plaintiffs further contend that Defendant Chargebacks911 agreed to participate in and assist in the scheme. This includes through providing advice and introductions to help "reengineer" the merchant account structure used by Brightree Holdings into an unlawful shell company scheme with sham owners used to obtain merchant accounts. It also includes Defendant advising Brightree Holdings on how to use "VAP," or large volumes of fake transactions, to mask the number of chargebacks and hide the true percentage of complaints about the pricing fraud. Plaintiffs contend that Defendant

was aware of Brightree’s pricing fraud, as well as its use of what Brightree described as a “decoy website,” to keep the pricing fraud from being detected. Plaintiffs contend that despite knowing the nature of the scheme, Defendant took various steps to encourage it and assist Brightree in defrauding consumers over a period of more than two years. Plaintiffs contend that various acts of wire fraud, mail fraud, and money laundering were committed by Defendant in support of this scheme.

2. Defendant’s Statement

Plaintiffs have brought a claim under RICO for direct violation of the statute and aiding and abetting. Plaintiffs’ claim against CB911 for allegedly violating § 1962(c) rests on two theories—that CB911 (1) itself committed money laundering and wire fraud and (2) aided and abetted Brightree’s wire and mail fraud scheme to defraud customers. *Id.* ¶¶ 177, 216; see also ECF 318 (“Count One alleges that Global e-Trading . . . committed predicate acts of wire fraud and money laundering, and aided and abetted the acts of mail and wire fraud committed by other members of the Keto Enterprise.”).

The evidence at trial will show that Plaintiffs have failed to establish any of six required elements of their substantive RICO claims. *See* ECF 318 (*citing Cisneros v. Petland, Inc.*, 972 F.3d 1204, 1211 (11th Cir. 2020) (“A private plaintiff suing under the civil provisions of RICO must [establish] six elements: that the defendants (1) operated or managed (2) an enterprise (3) through a pattern (4) of racketeering activity that included at least two predicate acts of racketeering, which (5) caused (6) injury to the business or property of the plaintiff.”).

The evidence at trial will show that Plaintiffs have failed to establish the existence of the Keto Enterprise as an association-in-fact enterprise. Instead, the evidence will demonstrate that CB911 had a lawful, inconsistent commercial relationship with Brightree by which CB911 periodically provided its regular commercial services to Brightree. Indeed, the evidence will make clear that CB911's only "purpose" was to form a routine business relationship with Brightree for chargeback and alert services. Moreover, the evidence will show that CB911's relationship with the Keto Entities did not extend beyond a standard commercial relationship or typical vendor-vendee relationship. The evidence will additionally show that CB911 was not associated with the Keto Entities to "defraud[] consumers like Plaintiffs by selling inaccurately marketed diet pills online", ECF 102 ¶ 162, or for the purpose of "enriching its[elf] [] through the financial victimization of consumers . . . [by] capturing [their] credit card information and using it to overcharge them" ECF 102 ¶¶ 163. The evidence will make clear that CB911 only provided its standard services to Brightree in the normal course of business to assist in the general business practice that CB911 engages in—preventing chargebacks and helping its clients keep their chargeback percentages low.

The evidence will show that CB911 did not participate, directly or indirectly, in the conduct of the affairs of the Keto Enterprise. CB911 did not have any discretion to conduct Brightree's affairs and did not make any managerial decisions or direct any of the Keto Enterprise's affairs. There is no evidence that CB911 ever operated outside of conducting its own normal affairs—providing chargeback and alert services. CB911

exerted control only over its own actions, not over the operation or management of the Keto Entities or the Keto Enterprise. The evidence makes clear that CB911 did not “control” Brighttree’s refunds because when CB911 “issued” refunds (as a component of the contracted commercial service provided), CB911 took that action only at the recommendation of Visa and Mastercard and the direction of Brighttree. As explained by Plaintiffs’ own expert, CB911’s role in serving as an alert dashboard is a standard service in the industry. It does not satisfy the operation or management test.

Further, the evidence will show that Plaintiffs have failed to prove that CB911 committed at least two predicate acts that were related to one another. Specifically, the evidence will show CB911 did not commit money laundering because it did not know the money it used to process refunds was obtained through Brighttree’s wire fraud or that it refunded money “with the intent to promote the carrying on” of Brighttree’s fraud. ECF 102 ¶¶ 211-20. The evidence will demonstrate that CB911 issued refunds on behalf of Brighttree as part of Visa and Mastercard’s alert systems that tell CB911 (and its clients) what transactions may be refunded to avoid becoming chargebacks. The evidence will also show that issuing refunds at the recommendation of Visa and Mastercard on behalf of a client is not a criminal act.

The evidence will show that CB911 did not commit wire fraud when Ben Scrancher introduced Brighttree to DeLuca because Scrancher’s introduction was not on behalf of CB911 as its relationship with DeLuca had ended years before and CB911 did not receive any financial benefit from Mr. Scrancher referring Brighttree to Mr. De Luca. Moreover, the introduction did not amount to CB911 intentionally participating

in a scheme to defraud another of money or property. There is no evidence showing that CB911 made false statements to anyone or otherwise acted with reckless indifference to the truth when a CB911 employee recommended that Flynn engage DeLuca. Putting aside that there is no evidence that the service DeLuca provided was unlawful or fraudulent, the service did not directly cause Plaintiffs' alleged injuries. Indeed, if DeLuca's service was fraudulent, the fraud was on financial institutions who were deceived into not closing Brightree's MIDS. *See, e.g., id.* ¶¶ 307–08. Again, the Court has already held that “the alleged bank fraud here was not the proximate cause of Plaintiffs' injuries.” ECF 128. If the alleged bank fraud was not the proximate cause, then an introduction to the person who allegedly performed the act that defrauded banks most certainly was not the proximate cause either.

The evidence will show that these alleged predicate acts did not have similar purposes, results, participants, victims, or methods. The evidence will show that CB911's alleged substantive RICO violations did not cause the requisite injury to Plaintiffs' business or property.

Moreover, the evidence will show that CB911 did not aid and abet two or more related predicate acts of wire and mail fraud by the Keto Entities. The evidence will show that CB911 was not aware of Brightree's alleged improper activity and did not knowingly and substantially assist Brightree's alleged wire or mail fraud. Plaintiffs will not be able to demonstrate that CB911 was aware of its alleged role in the purported enterprise at the time it provided routine services to Brightree. The evidence will show that CB911 did not know that Brightree was making misrepresentations to its

customers (which is itself a disputed fact. The evidence will demonstrate that CB911 did not know that “Brightree committed fraud in its pricing” or that CB911 “knowingly submitted the decoy website in its representations.” ECF 318 at 17.

There is no evidence that CB911, in providing its routine services, “substantially assisted” Brightree in hiding the “illegitimate nature” of Brightree’s alleged fraud. Plaintiffs cannot adduce that CB911 participated in Brightree’s alleged fraud, wanted to bring the fraud about, sought by its actions to make the fraud succeed, or knowingly participated in the deception of Brightree’s consumers. The evidence reveals that CB911 neither created MIDs nor orchestrated microtransactions on behalf of Brightree, which are the two examples of conduct that Plaintiffs allege a jury could find to be substantial assistance. *See* ECF 274 at 19-20. The evidence will demonstrate that mere introductions to other service providers is not substantial assistance. The evidence will also reveal the introductions to banks who did create MIDs and to individuals who did perform microtransactions were not criminal acts. There will be no evidence demonstrating CB911’s knowledge of or substantial assistance in the commission of Brightree’s alleged predicate acts of mail and wire fraud.

IV. LIST OF EACH EXHIBIT WITH A NOTATION OF EACH OBJECTIONS

The parties’ exhibit lists and respective objections are attached as Exhibit A (Plaintiffs’ May 27, 2025 Exhibit List)¹ and Exhibit B (Defendant’s June 5, 2025

¹ Defendant reviewed each of Plaintiffs’ almost 2,000 proposed exhibits and provided specific objections. While Defendant’s objections are not listed in Plaintiffs’ Exhibit List with the present

Exhibit List) and Exhibit C (the parties' Joint Exhibit List) on the Court's preferred form per Section III(B)(2) of the Amended CMSO.

V. **LIST OF FACT WITNESSES WHO MAY BE CALLED AT TRIAL**

The parties recognize this Court's "long-standing preference for live testimony." *White v. United States*, 2013 WL 3422965, at *2 (M.D. Fla. July 8, 2013) (Covington, J.) ("[T]he issue is whether these non-hearsay statements may be presented through depositions rather than live testimony at trial. On this point, the Court has a long-standing preference for live testimony."). Accordingly, the parties have identified five potential witnesses that the parties anticipate will appear in person. For these witnesses, the parties have agreed that they will use the deposition designations for these witnesses only if the witness becomes unavailable, except for impeachment purposes.²

1. Plaintiffs' Fact Witnesses³

Plaintiffs have included their Witness List on the Court's preferred form per the Amended CMSO. *See* Exhibit F.

submission, each of the specific objections is included in Exhibit D, Plaintiffs' Exhibit List for Trial with CB911's Objections. Further, Defendant objects to Plaintiffs' practice of collapsing documents on their submitted exhibit list. Specifically, there is a category of "faxage exhibits" for which Plaintiffs have only included the parent email on their list even though they intend to include each of the attachments (over 700 documents) as its own exhibit. Plaintiff's position is that these objections were first provided at 4:40 PM on June 5, 2025, without an effort to meet and confer, and thus are not timely.

² An asterisk indicates that the parties anticipate the witness will appear in person and the parties will use their deposition designations only if the witness is unavailable. CB911 preserves its potential objections to the deposition designations for Ms. Eaton and Mr. Cardone in the unlikely event they become unavailable.

³ A cross indicates that the parties do not anticipate the witness will appear in person and that it will be necessary to play the witness's deposition testimony to the jury.

Fact Witness	Will Call / May Call	Objections
Charlene Bavencoff*	Will Call	
Mike Campbell*	Will Call	
Gary Cardone*	Will Call	
Nicholas Carroll*	May Call	
Kendall Christensen†	Will Call	
Nicole Cline	May Call	Rule 403 (needlessly presenting cumulative evidence) Objection because Defendant was unable to depose the witness
Susan Degennaro	May Call	Rule 403 (needlessly presenting cumulative evidence) Objection because Defendant was unable to depose the witness
Robin Eason	May Call	Rule 403 (needlessly presenting cumulative evidence) Objection because Defendant was unable to depose the witness
Monica Eaton*	Will Call	
David Flynn†	Will Call	
Amy Killingsworth	May Call	Rule 403 (needlessly presenting cumulative evidence)

		Objection because Defendant was unable to depose the witness
Maria Martinez	May Call	Rule 403 (needlessly presenting cumulative evidence) Objection because Defendant was unable to depose the witness
Olivia Martinez†	Will Call	
Amy Morris	May Call	Rule 403 (needlessly presenting cumulative evidence) Objection because Defendant was unable to depose the witness
Debra Moss	May Call	Rule 403 (needlessly presenting cumulative evidence) Objection because Defendant was unable to depose the witness
Richard Nelson	May Call	
Anthony Pugliese†	May Call	
Ben Scrancher†	Will Call	
Janet Sihler*	Will Call	
Jennifer Stafford	May Call	Rule 403 (needlessly presenting cumulative evidence)

		Objection because Defendant was unable to depose the witness
CB911 Corporate Trial Representative	May Call	

2. Defendant’s Fact Witnesses

Defendant will or may call the witnesses listed in the table below in person at trial in its rebuttal case. Defendant has included its Witness List on the Court’s preferred form per the Amended CMSO. *See* Exhibit G.

Fact Witness	Will Call / May Call	Objections
Gary Cardone*	Will Call	
Monica Eaton*	Will Call	
David Flynn (likely via deposition video)	May Call	
Nick Carroll*	May Call	
Kendall Christensen (via deposition video)	May Call	
Anthony Pugliese (via deposition video)	May Call	
Ben Scrancher (via deposition video)	May Call	
Charlene Bavencoff*	May Call	
Janet Sihler*	May Call	
Mike Campbell*	May Call	
Olivia Martinez (via deposition video)	May Call	
Richard Nelson	May Call	

VI. LIST OF EACH EXPERT WITNESS

1. Plaintiffs' Expert Witness List

Expert Witness	Objections
<p>Kerri Merrifield</p> <p>Ms. Merrifield's testimony will cover the following subjects:</p> <ul style="list-style-type: none"> • Her background and qualifications • Accepted methods of analyzing complex datasets in Excel such as the (1) Brightree Shipment Spreadsheet, (2) Chargeback Spreadsheet, and (3) Refund Spreadsheet • The methodology used to review the (1) Brightree Shipment Spreadsheet, (2) Chargeback Spreadsheet, and (3) Refund Spreadsheet • The integrity and accuracy of the calculations performed on the (1) Brightree Shipment Spreadsheet, (2) Chargeback Spreadsheet, and (3) Refund Spreadsheet • Her analysis of the (1) Brightree Shipment Spreadsheet, (2) Chargeback Spreadsheet, and (3) Refund Spreadsheet • The net damages suffered by the Class • The insignificance of any purported gaps in the (1) Brightree Shipment Spreadsheet, (2) Chargeback Spreadsheet, and (3) Refund Spreadsheet • How the damage analysis and conclusions relate to Plaintiffs' theories of how the Defendants' wrongful actions caused the damages to the Class 	

<ul style="list-style-type: none">• The expert report submitted by Lisl Unterholzner in this matter on behalf of Defendants on October 4, 2024• Any other topics disclosed in her expert report• Rebuttal testimony to testimony or opinions offered by Defendants’ fact or expert witnesses	
<p>Kenneth Musante</p> <p>Mr. Musante’s testimony will cover the following subjects:</p> <ul style="list-style-type: none">• His background and qualifications• Basic terminology, nomenclature, and concepts used in the payment processing industry, including but not limited to practices that card networks like Visa and Mastercard deem suspicious• Credit card processing, including the importance of processing for a merchant, the structure of how a merchant obtains a MID, the process of a typical purchase from a merchant, and what happens when a consumer disputes a credit-card purchase• The nature and significance of chargebacks in the card processing industry, including Visa and Mastercard rules regarding the number and ratio of chargebacks that a merchant can accumulate while still maintaining access to card processing, and the remedies that card networks have for merchants that breach those limits• Programs within the card processing industry directed towards merchants with excessive chargeback counts or ratios, including the MATCH program	

<ul style="list-style-type: none">• The role of chargeback rules and thresholds in deterring merchants who use misleading sales tactics and protecting consumers• The services that third parties like CB911 offer to mitigate a merchant’s chargeback count or ratio and the obligations imposed on third parties like CB911 in providing those services• Common tactics that merchants use to circumvent rules and regulations regarding chargebacks, including load balancing, using multiple or offshore acquirers, and creating small-dollar transactions to increase transaction counts, and Card Networks’ positions on these practices• How CB911’s VAP or DeLuca’s microtransactions service allowed merchants, including Brightree, to dilute their chargeback ratio, including how and why a service like VAP would be kept confidential• Whether VAP or similar microtransactions strategies are consistent with the card networks’ rules and regulations• Whether CB911’s VAP or DeLuca’s microtransactions service appeared to have any purpose besides diluting a chargeback ratio• How CB911 assisted Brightree and DeLuca design and process microtransactions• Brightree’s use of small-dollar transactions, load balancing, and multiple merchant accounts to dilute its chargeback count or ratio and the importance of CB911’s role in those efforts• The practice of obtaining additional MIDs using straw signers and card networks’ positions on the use of straw signers to obtain additional MIDs	
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<ul style="list-style-type: none"> • Whether CB911’s efforts to assist Brightree obtain MIDs appeared to have a legitimate purpose • The process of submitting a representment to a card network and CB911’s representments service, including with respect to Brightree • The expert report submitted by Troy Carrothers in this matter on behalf of Defendants on October 4, 2024 • Any other topics discussed in his expert report • Rebuttal testimony to testimony or opinions offered by Defendants’ fact or expert witnesses 	
<p>Cole Popkin</p> <p>Mr. Popkin’s testimony may cover the following subjects:</p> <ul style="list-style-type: none"> • His background and qualifications • How Skype conversations are catalogued, archived, and stored, including in .JSON files • Accepted methods of analyzing Skype .JSON files to determine when deletions occurred • The methodology used to review the .JSON file obtained from David Flynn to determine when Ben Scrancher deleted Skype messages • His conclusions about when Ben Scrancher deleted Skype messages • Any other forensic analysis of Mr. Scrancher’s Skype account • Any other topics addressed in his declaration • Rebuttal testimony to testimony or opinions offered by Defendants’ fact or expert witnesses 	<p>Relevance</p> <p>Rule 403 (unfair prejudice, confusing the issues, misleading the jury)</p> <p>Objection because Defendant was not given the opportunity to depose this witness</p>

2. Defendant’s Expert Witness List

Defendant intends to call the expert witnesses identified in the below list in person in its rebuttal case.

Expert Witness	Objections
<p>Troy Carrothers</p> <p>Mr. Carrothers’s testimony will cover the following subjects:</p> <ul style="list-style-type: none"> • His background and qualifications • Rebuttal testimony regarding the expert report Ken Musante submitted in this matter on behalf of Plaintiffs on August 9, 2024 • Merchant acquirer processing, including which entities issue and manage MIDs, the thorough vetting of merchants that risk management teams conduct before issuing MIDs, the regular review of already-issued MIDs, and the inability of third-party providers of services to merchants, like CB911, to have any say or influence over whether payment processors issue or subsequently terminate MIDs • The industry standards of fraud prevention and chargeback services used by merchants to reduce fraud exposure and protect the merchant’s bottom line • The fraud prevention and chargeback services offered by Chargebacks911, including but not limited to representments and alerts • Acquirers’ chargeback monitoring programs, including but not limited to MATCH • The legitimate purpose for customer acquisition and retention of commonly used marketing 	

<p>programs like the “Value Added Promotions” (“VAP”) used by CB911 before 2019</p> <ul style="list-style-type: none">• The many reasons why merchants maintain multiple acquirers and MIDs• Any other topics disclosed in his expert report• Further rebuttal testimony to any testimony or opinions offered by Plaintiffs’ fact or expert witnesses	
<p>Lisl Unterholzner</p> <p>Ms. Unterholzner’s testimony will cover the following subjects:</p> <ul style="list-style-type: none">• Her background and qualifications• Rebuttal testimony regarding the expert report submitted by Kerrie Merrifield in this matter on behalf of Plaintiffs on August 8, 2024• Her analysis of Plaintiffs’ damages expert’s methodology and damages calculations• The flaws in the calculations of alleged damages, including but not limited to the inability to fully assess whether the purported transactions identified in the Brightree Shipment Spreadsheet occurred at all, and if they did, (a) whether shipping quantities reconcile to purchase transactions reflecting amounts paid by customers, or (b) if they can be reconciled to other records, such as bank statements, showing the payment amounts received by the Keto Entities• Her review of the three Excel spreadsheets relied on by Ms. Merrifield for her damages calculation: (1) Brightree Shipment Spreadsheet, (2) Chargeback Spreadsheet, and (3) Refund Spreadsheet	

<ul style="list-style-type: none">• The incompleteness of the chargeback and refund data and whether Ms. Merrifield's damages conclusions are overstated• How Ms. Merrifield's damage analysis and conclusions have not been tied to Plaintiffs' theories of how the Defendant's alleged wrongful actions caused the damages she calculated in the case• Any other topics disclosed in her expert report• Further rebuttal testimony to any testimony or opinions offered by Plaintiffs' fact or expert witnesses	
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VII. TYPE AND AMOUNT OF DAMAGES

1. Plaintiffs' Claim for Monetary Damages

Plaintiffs have submitted an expert report from Kerri Merrifield, whose testimony regarding her calculations they intend to present at trial. Based on those calculations, Plaintiffs expect to seek \$18,799,274 in actual damages, with trebling of actual damages to \$56,397,822. Plaintiffs expect to seek prejudgment interest on the actual damages (exclusive of trebling) at interest rates based on the IRS underpayment rate for large corporate underpayments (historically ranging from 5% to 10% in the applicable time period), with compounding included on at a minimum a quarterly basis. Plaintiffs expect prejudgment interest to exceed \$10,000,000, with final calculations to be performed after a jury verdict. Plaintiffs further expect to seek attorney's fees and costs, which are expected to exceed \$5,000,000. Plaintiffs also expect to seek post-judgment interest under 28 U.S.C. § 1961, which cannot be calculated at this time because it runs from the date of judgment to the date of payment.

2. Defendant's Claim for Monetary Damages

Defendant has no claim for monetary damages.

VIII. DEPOSITIONS OFFERED IN LIEU OF LIVE TESTIMONY

Pursuant to Local Rule 3.06(b)(8), below is a list of depositions expected to be presented in lieu of live testimony, except for those depositions offered only for impeachment. As stated above, an asterisk indicates that the parties anticipate the witness will appear in person and the parties will use their deposition designations only if the witness is unavailable.

A. Plaintiffs' Deposition Designations

- a. Plaintiffs plan to use the deposition testimony in lieu of live testimony for the following individuals:
 - i. Kendall Christensen
 - ii. David Flynn
 - iii. Olivia Martinez
 - iv. Anthony Pugliese
 - v. Ben Scrancher
 - vi. Richard Nelson as Records Custodian via Affidavit
 - vii. Nicholas Carroll*
 - viii. Mike Campbell*
 - ix. Gary Cardone*
 - x. Monica Eaton*
- b. A chart containing Plaintiffs' identification of the deposition testimony that Plaintiffs intend to publish including CB911's objections is attached hereto as Exhibit H.

- i. Defendant preserves its potential objections to the deposition designations for witnesses the parties anticipate will appear in person in the unlikely event the witnesses become unavailable.
- ii. There are large portions of testimony that Plaintiffs have designated that relate to exhibits to which Defendant has objected. *See Exhibit D- Plaintiffs' Exhibit List with Defendant's Objections.* Defendant reserves the right to amend the following objections after the Court rules on Defendant's objections to the exhibit list.
- iii. Defendant objects to the designation of the 30(b)(6) testimony in its entirety because hearsay testimony is improper at trial and the corporate representative may only testify live about matters that are within her personal knowledge. *See Indus. Eng'g & Dev., Inc. v. Static Control Components, Inc.*, 2014 U.S. Dist. LEXIS 141823, 2014 WL 4983912, at *4 (M.D. Fla. Oct. 6, 2014); *see also White v. United States*, 2013 WL 3422965, at *3 (M.D. Fla. July 8, 2013) ("However, the Court does find that publishing large portions of the depositions of witness who are available and whom the [a party] will likely call as witness[es] not only contravenes the Court's marked preference for live testimony, it would also likely be unnecessarily cumulative and would waste this Court's time and resources."). If the Court permits Plaintiffs' designations of this transcript, Defendant reserves the right to amend its objections.

B. Defendant's Deposition Designations

- a. Defendant plans to use the deposition testimony in lieu of live testimony for the following individuals:
 - i. Olivia Martinez
 - ii. Anthony Pugliese
 - iii. Ben Scrancher
 - iv. Kendall Christensen
 - v. David Flynn
 - vi. Nick Carroll*
 - vii. Mike Campbell*

- viii. Janet Sihler*
- ix. Charlene Bavencoff*
- b. A chart containing Defendant's identification of the deposition testimony that Defendant intends to publish including Plaintiffs' objections is attached hereto as Exhibit I.
 - i. Defendant reserves the right to make additional designations and to use additional deposition testimony as impeachment, when necessary. Defendant also reserves the right to call live any of the witnesses it has designated by deposition testimony.

IX. CONCISE STATEMENT OF EACH ADMITTED FACT

The parties admit the following facts:

1. Global E-Trading, LLC d/b/a Chargebacks911 is a Florida Limited Liability Company, headquartered in Clearwater, Florida and was founded in June 2011.
2. Prior to a charge becoming a chargeback, it is in prechargeback/pre-dispute status. For that period of time, merchants that subscribe to an alert service can process a credit (issue a refund) rather than having it become a chargeback and having it work through the dispute process.
3. The alerts provided by Mastercard and Visa allow merchants to refund transactions to prevent chargebacks and "control [their] dispute ratio."
4. Pursuant to card network rules concerning alerts, a potential chargeback that is refunded does not count against a merchant's chargeback ratio.
5. CB911 provides a service in which it combines the alert services of card networks like Mastercard and Visa to provide broad alert services through a single dashboard.
6. The only entities that can approve and issue merchant identification numbers ("MIDs") are acquirers.
7. In July 2019, David Flynn, Mike Campbell, and Rick James created Brightree Holdings Corporation ("Brightree") for the purpose of selling products known as "Ultra Fast Keto Boost," "InstaKeto," and "Instant Keto" (collectively the "Keto Products").

8. From 2011 to April of 2023, Eaton served as CB911's COO and Gary Cardone ("Cardone") served as CB911's CEO.
9. Since April of 2023, Eaton has served as CB911's CEO.
10. A chargeback is a debit-card or credit-card charge that a card-issuing bank forcibly reverses.
11. A seller of a product is known as a "merchant."
12. Flynn and Campbell had started developing pricing for the Keto Products in May 2019 and discussed charging a set amount for a single bottle of the Keto pills and offering "Buy X get Y free" promotions.
13. In August 2019, after starting its "Buy X Get Y Free" pricing strategy, Brightree engaged CB911's software and services, signing a Master Service Agreement.
14. Plaintiff Charlene Bavencoff purchased Keto pills from a Brightree website in October 2019.
15. Plaintiff Janet Sihler purchased Keto pills from a Brightree website in December 2019.
16. At the time CB911 initially engaged Brightree as a client in August 2019, Defendant knew of only one MID used by Brightree.
17. Plaintiff Janet Sihler is a citizen of the State of California.
18. Plaintiff Charlene Bavencoff is a citizen of the State of North Carolina.
19. Plaintiffs served CB911 with a demand letter on May 9, 2023.

X. **STATEMENT OF EACH AGREED PRINCIPLE OF LAW**

The parties agree that the following principles of law apply to this case.

- Plaintiffs' claim is brought on behalf of a Class certified under Federal Rules of Civil Procedure Rule 23 and composed of:
 - All consumers in the United States who, within the applicable statute of limitations period until the date notice is disseminated, were billed for shipments of either three bottles or five bottles of Ultrafast Keto Boost, Insta Keto, or InstantKeto.
- This court has jurisdiction and venue is proper.

- Plaintiffs are entitled to a jury trial.
- Plaintiffs' claims for interest and attorneys' fees and costs are to be decided by the Court.
- The elements of a 18 U.S.C. § 1962(c) claim are: (1) the existence of an enterprise; (2) that the enterprise affected interstate or foreign commerce; (3) that the defendant was employed by or associated with the enterprise; (4) that the defendant participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and (5) that the defendant participated through a pattern of racketeering activity. *See United States v. Starrett*, 55 F.3d 1525, 1541 (11th Cir. 1995).
- An association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose. *See Boyle v. United States*, 556 U.S. 938, 946 (2009).
- Racketeering activity is defined in 18 U.S. Code § 1961(1) and includes wire fraud, 18 U.S.C. section 1343 (relating to wire fraud), mail fraud 18 U.S.C. section 1341 (relating to mail fraud), and money laundering, 18 U.S.C. section 1956 (relating to the laundering of monetary instruments).
- "Continuity" is required to establish a pattern of racketeering activity. "Continuity" is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition. *H. J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 241, 109 S. Ct. 2893, 2902 (1989).

Defendant's Position:

Defendant identifies the following principles of law as applying to this case, based on this Court's Order on Summary Judgment. *See* ECF 318. Defendant has tried in good faith to craft a joint response to this section. However, Plaintiffs did not agree to many of Defendant's revisions and instead proposed deleting wholesale the majority of Defendant's additions. To aid the Court and the efficient resolution of this action, Defendant believes it is beneficial to the Court for Defendant to include its additional proposals for the Court's review ahead of the pretrial conference on June 12, 2025. Moreover, Defendant believes it is appropriate to submit this section because "[t]o the extent the parties do not agree on certain portions of the Statement, the parties may include their respective arguments and positions in the document." *See Jain et al V. Nexgen Memantine, Inc. et al*, Case No. 8:20-cv-02263-VMC-JSC, ECF No. 385 (M.D.Fl., Sept. 16, 2022).

- “A RICO enterprise exists where a group of persons associates, formally or informally, with the purpose of conducting illegal activity.” *Jackson v. BellSouth Telecommunications*, 372 F.3d 1250, 1264 (11th Cir. 2004) (citation and internal quotation marks omitted); *see also Al-Rayes v. Willingham*, 914 F.3d 1302, 1308 (11th Cir. 2019).
- “The purpose prong contemplates ‘a common purpose of engaging in a course of conduct’ among the enterprise’s alleged participants.” *Cisneros*, 972 F.3d at 1211 (citation omitted). “An abstract common purpose, such as a generally shared interest in making money, will not suffice.” *Id.*
- “The critical inquiry in determining whether a RICO-defendant was involved in the ‘operation or management’ of the enterprise is whether the defendant ‘conducted or participated in the conduct of the “enterprise’s affairs,” not just [his or her] own affairs.’” *Coquina Invs. v. Rothstein*, 2011 WL 197241, at *3 (S.D. Fla. Jan. 20, 2011) (*quoting Reves v. Ernst & Young*, 507 U.S. 170, 185 (1993)).
- “[T]he civil RICO defendant must exercise some degree of direction of the enterprise as well as an element of control.” *Super Vision Int’l, Inc. v. Mega Int’l Com. Bank Co.*, 534 F. Supp. 2d 1326, 1338 (S.D. Fla. 2008) (citation and internal quotation marks omitted).
- 18 U.S. Code § 1961(1) defines racketeering activity to include “any act which is indictable under” specified provisions of the U.S. Code. To determine if there is a pattern of racketeering activity, the jury must consider only those specific racketeering acts that a plaintiff alleges against a defendant. *See* 11th Cir. Pattern Jury Instr. § 7.3. “A plaintiff must put forward enough facts with respect to each predicate act to make it independently indictable as a crime.” *Cisneros*, 972 F.3d at 1215.
- “To successfully [establish] a pattern of racketeering activity, plaintiffs must [prove] that: (1) the defendants committed two or more predicate acts within a ten-year time span; (2) the predicate acts were related to one another; and (3) the predicate acts demonstrated criminal conduct of a continuing nature.” *Jackson*, 372 F.3d at 1264.

“An act of racketeering activity, commonly known as a ‘predicate act,’ includes any of a long list of state and federal crimes.” *Cisneros*, 972 F.3d at 1215.

- In defining how “the predicate acts must relate to each other,” the Eleventh Circuit has stated “the predicate acts must ‘have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise [be] interrelated by distinguishing characteristics and . . . not [be] isolated events.’”) *United States v. Godwin*, 765 F.3d 1306, 1321 (11th Cir. 2014) (quoting *United States v. Starrett*, 55 F.3d 1525, 1543 (11th Cir. 1995)).
- “The Supreme Court has been clear that a party is only entitled to recover under RICO ‘to the extent that[] he has been injured in his business or property by the conduct constituting the violation.’” *Ray v. Spirit Airlines, Inc.*, 836 F.3d 1340, 1349 (11th Cir. 2016) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985)).
- “When a court evaluates a RICO claim for proximate causation, the central question . . . is whether the alleged violation led directly to the plaintiff[s]’ injuries.” *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006).
- “The connection between the racketeering activity and the injury can be neither remote, purely contingent, nor indirect.” *See, e.g., Ray*, 836 F.3d at 1349; *Virtus Pharms., LLC*, 2024 WL 4235895, at *6 (“It demands some direct relation between the harm suffered and the injurious conduct. . . . Indeed, allowing ‘secondary victims’ to recover under RICO would ‘run afoul of proximate-causation standards.’”) (citing *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992)).
- The injury flowing from a RICO violation “‘necessarily is the harm caused by the predicate acts.’” *Hemi Group, LLC v. City of New York*, 559 U.S. 1, 12-13 (2010) (“Our precedents make clear that in the RICO context, the focus is on the directness of the relationship between the conduct and the harm.”).
- A civil RICO plaintiff must show “(1) the requisite injury to ‘business or property,’ and (2) that such injury was ‘by reason of’ the substantive RICO violation.” *Ray v. Spirit Airlines, Inc.*, 836 F.3d 1340, 1348 (11th Cir. 2016) (cleaned up). “To establish that a predicate act caused the alleged harm, a plaintiff must show “that the claimed racketeering activity . . . was the but-for and proximate cause of the plaintiff[s]’ injuries.” *Virtus Pharms., LLC v. Woodfield Distrib., LLC*, 2024 WL 4235895, at *4.
- “[A] claim for money laundering under RICO requires . . . that a person conducted a financial transaction with money he knew to be the proceeds of unlawful activity, with the intent to promote the carrying on of specified unlawful activity.” *Omnipol v. Worrell*, 421 F. Supp. 3d 1321, 1352 (M.D.

- Fla. 2019) (Covington, J.). The term “specified unlawful activity” means “any act or activity constituting an offense listed in section 1961(1) of [title 18 of the U.S. Code] except an act which is indictable under subchapter II of chapter 53 of title 31.” 18 U.S.C § 1956(c)(7). Wire fraud under 18 U.S.C. § 1343—the “specific unlawful activity” Plaintiffs allege in the Complaint—is one of the offenses listed in 18 U.S.C. § 1961(1). See ECF 102 ¶213, ¶ 229.
- “To establish civil liability for aiding and abetting, the plaintiffs must show: (1) that the defendant was generally aware of the defendant’s role as part of an overall improper activity at the time that he provides the assistance; and (2) that the defendant knowingly and substantially assisted the principal violation.” *Cox v. Adm’r U.S. Steel & Carnegie*, 17 F.3d 1386, 1410 (11th Cir.), opinion modified on reh’g, 30 F.3d 1347 (11th Cir. 1994).
 - “[T]o prevail under an aider and abettor theory, [a plaintiff] must show, among other things, that [the defendant] acted with the requisite scienter: that [the defendant] in fact knew of the commission of the mail, wire, and/or bank fraud and acted with the intent to facilitate it.” *RJSG Props., LLC v. Marbella Condo. Devs., LLC*, 2010 WL 2890307, at *38 (N.D. Fla. June 11, 2010). The defendant “must have shared the principal’s criminal intent.” *In re Sahlen & Assocs., Inc. Sec. Litig.*, 773 F. Supp. 342, 367–68 (S.D. Fla. 1991).
 - Only if all of RICO’s other requirements are met can “[o]ne who aids and abets two predicate acts . . . be civilly liable under RICO.” *Cox*, 17 F.3d at 1410.
 - Under 18 U.S.C. section 1343, “[w]hoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.”
 - “Mail or wire fraud occurs when a person (1) intentionally participates in a scheme to defraud another of money or property and (2) uses the mails or wires in furtherance of that scheme.” *Am. Dental Ass’n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010).

- “The first element, a scheme or artifice to defraud, ‘requires proof of a material misrepresentation, or the omission or concealment of a material fact calculated to deceive another out of money or property.’” *Omnipol, a.S.*, 421 F. Supp. 3d at 1350 (citation omitted).

XI. CONCISE STATEMENT OF EACH ISSUE OF FACT

The parties agree that the following issues of fact are to be determined at trial:

1. Whether the Keto Enterprise engaged in or had some effect on interstate commerce.
2. Whether CB911 conducted or participated, directly or indirectly, in the conduct of the Keto Enterprise’s affairs.
3. Whether CB911 knowingly and substantially assisted Brightree’s wire fraud.
4. Whether CB911 knowingly and substantially assisted Brightree’s mail fraud.
5. Whether CB911 committed wire fraud.
6. Whether CB911 committed money laundering.
7. Whether CB911 committed at least two distinct predicate acts.
8. Whether the Keto Enterprise qualifies as a closed-ended or open-ended enterprise.
9. The amount of damages the Keto Enterprise caused Plaintiffs and the Class, if any.

Plaintiffs’ Position:

Consistent with the court’s order directing that the Parties prepare a joint pretrial statement, Plaintiffs do not believe it is appropriate for the Parties to have separate responses to each section of this report. As such, Plaintiffs are not submitting any issues of fact beyond those that have been jointly agreed to. *See Jain et al V. Nexgen Memantine, Inc. et al*, Case No. 8:20-cv-02263-VMC-JSC, ECF No. 297 (M.D.Fl., Sept. 16, 2022) (“[T]he Court is disappointed that Plaintiffs and Defendant Mahendiran failed to submit truly ‘joint’ responses to most sections of the joint pretrial statement. The filing of opposing responses to each section is insufficient. They must discuss these issues and craft a joint response to each section.”).

Defendant's Position:

Defendant identifies the following additional issues of fact to be determined at trial. Defendant has tried in good faith to craft a joint response to this section. However, Plaintiffs did not agree to many of Defendant's revisions and instead proposed deleting wholesale the majority of Defendant's additions. To aid the court and the efficient resolution of this action, Defendant believes it is beneficial to the Court for Defendant to include its additional proposals for the Court's review ahead of the pretrial conference on June 12, 2025. Moreover, Defendant believes it is appropriate to submit this section because "[t]o the extent the parties do not agree on certain portions of the Statement, the parties may include their respective arguments and positions in the document." See *Jain et al V. Nexgen Memantine, Inc. et al*, Case No. 8:20-cv-02263-VMC-JSC, ECF No. 385 (M.D.Fl., Sept. 16, 2022).

1. Whether CB911, The Fulfillment Lab, Richard Nelson, David Flynn, Rickie Joe James, Beyond Global Inc., Brightree Holdings Corporation, Mike Campbell, Aaron Wilson, BMOR Global LLC associated together to form the Keto Enterprise.
2. Whether CB911 associated with the Keto Entities to pursue "defrauding consumers like Plaintiffs by selling inaccurately marketed diet pills online and deceiving banks and payment processing companies about the nature of their activities." ECF 102 ¶ 162.
3. Whether CB911 shared the purpose of "enriching [the Keto Enterprise] members through the financial victimization of consumers . . . [by] capturing [their] credit card information and using it to overcharge them" ECF 102 ¶¶ 163.
4. Whether CB911 participated in Brightree's alleged fraud, wanted to bring the fraud about, and sought by its actions to make the fraud succeed.
5. Whether CB911 knew about the general nature of the Keto Enterprise.
6. Whether CB911 knowingly participated in the alleged deception of Brightree's consumers.
7. Whether CB911's relationship with Brightree was more than a simple commercial relationship.
8. Whether CB911 made decisions or exercised authority over the Keto Enterprise.
9. Whether CB911 was aware of its alleged role in the Keto Enterprise at the time it provided routine services to Brightree.

10. Whether CB911 participated directly through a pattern of racketeering activity.
11. Whether CB911 committed at least two crimes as part of the Keto Enterprise.
12. Whether the two distinct predicate acts were related to one another and to the Keto Enterprise.
13. Whether CB911 was refunding money “with the intent to promote the carrying on” of Brightree’s fraud. ECF 102 ¶¶ 211-20.
14. Whether the related predicate acts extended over a substantial period of time.
15. Whether CB911 aided and abetted at least two distinct predicate acts.
16. Whether Plaintiffs were directly harmed by the Keto Enterprise.
17. Whether CB911’s alleged substantive RICO violations proximately caused the requisite injury to Plaintiffs.
18. If Plaintiffs were harmed, the extent of the harm.

XII. CONCISE STATEMENT OF EACH ISSUE OF LAW

The parties agree that the following are unresolved issues of law:

1. Whether Plaintiffs can prove each required element for their 18 U.S.C. § 1962(c) claim.
2. Whether CB911’s conduct constitutes aiding and abetting the commission of at least two predicate acts under 18 U.S.C. § 1962(c).
3. Whether CB911’s conduct constitutes committed wire fraud under 18 U.S.C. § 1343.
4. Whether CB911 committed money laundering under 18 U.S.C. § 1956.
5. Whether CB911 committed two or more predicate acts alleged by Plaintiffs.
6. Whether Plaintiffs’ claims are barred by the Doctrine of Laches.
7. Whether Plaintiffs are entitled to prejudgment interest.
8. Whether Plaintiffs are entitled to attorneys’ fees and costs.

Plaintiffs' Position:

Consistent with the court's order directing that the Parties prepare a joint pretrial statement, Plaintiffs do not believe it is appropriate for the Parties to have separate responses to each section of this report. As such, Plaintiffs are not submitting any issue of law beyond those that have been jointly agreed to. *See Jain et al V. Nexgen Memantine, Inc. et al*, Case No. 8:20-cv-02263-VMC-JSC, ECF No. 297 (M.D.Fl., Sept. 16, 2022) (“[T]he Court is disappointed that Plaintiffs and Defendant Mahendiran failed to submit truly ‘joint’ responses to most sections of the joint pretrial statement. The filing of opposing responses to each section is insufficient. They must discuss these issues and craft a joint response to each section.”).

Defendant's Position:

Defendant identifies the following additional issues of law that remain outstanding. Defendant has tried in good faith to craft a joint response to this section. However, Plaintiffs did not agree to many of Defendant's revisions and instead proposed deleting wholesale the majority of Defendant's additions. To aid the court and the efficient resolution of this action, Defendant believes it is beneficial to the Court for Defendant to include its additional proposals for the Court's review ahead of the pretrial conference on June 12, 2025. Moreover, Defendant believes it is appropriate to submit this section because “[t]o the extent the parties do not agree on certain portions of the Statement, the parties may include their respective arguments and positions in the document.” *See Jain et al V. Nexgen Memantine, Inc. et al*, Case No. 8:20-cv-02263-VMC-JSC, ECF No. 385 (M.D.Fl., Sept. 16, 2022).

1. Whether CB911's conduct constitutes a pattern of racketeering activity.
2. Whether the predicate acts constituting the pattern of racketeering activity injured Plaintiffs or their business or property.
3. Whether CB911 aided and abetted any predicate acts.
4. Whether Plaintiffs can show the required proximate causal connection between CB911's alleged RICO violations and the damages claimed by the Plaintiffs.
5. Whether Plaintiffs' claims are barred because Plaintiffs failed to allege actionable misrepresentations or omissions, and all statements alleged to have been made had a reasonable basis in fact, and because any alleged misrepresentations or omissions were not material.

6. Whether Plaintiffs' claims are barred because Plaintiffs cannot prove any facts showing that Defendant acted with the requisite scienter in the alleged misconduct.
7. Whether Plaintiffs' claims are barred because at all times mentioned in the Complaint and with respect to all matters contained therein, Defendant acted in good faith and exercised reasonable care and diligence and did not know, and in the exercise of reasonable care could not have known, of any alleged misconduct, untruth, omission, or any other action in the Complaint that allegedly gave rise to liability.
8. Whether Plaintiffs' claims are barred because Plaintiffs and/or their agents had, in whole or part, actual or constructive knowledge of the alleged misrepresentations or omissions.
9. Whether any damage, loss, or liability sustained by Plaintiffs (which Defendant denies) must be reduced, diminished, and/or barred in proportion to Plaintiffs' failure to mitigate, reduce, or otherwise avoid any alleged damages.

XIII. LIST OF EACH PENDING MOTION OR OTHER UNRESOLVED ISSUE

The parties have identified the following motions or issues as unresolved as of the date of this filing:

1. Plaintiffs' Renewed Motion for Sanctions (ECF No. 321)

XIV. STATEMENT OF USEFULNESS OF FURTHER SETTLEMENT DISCUSSIONS

Per Local Rule 3.06(a)(1), the parties discussed settlement in person at a May 27, 2025 meeting to prepare the joint pretrial statement.

The parties have scheduled a mediation for June 11, 2025 before Jill Sperber. The parties have further agreed to attempt to draft non-monetary terms for any potential settlement in advance of this mediation, in order to ensure that if settlement occurs, it will be possible to finalize any such settlement quickly. The parties believe

this mediation and ongoing discussions will be useful, and intend to promptly notify the Court about the results of the discussions after the mediation occurs.

XV. STIPULATIONS REGARDING TRIAL PROCEDURE

A. Length of Trial

1. Plaintiffs estimate that trial should last 15 court days.
2. Defendant estimates that trial should last 10 court days as per the Amended CMSO.
3. The parties respectfully request that the Court divide the trial time equally between the Plaintiffs on the one hand and Defendant, on the other, including opening and closing statements.

B. Proposed Voir Dire Questions

Per Section III(B)(5) of the Amended CMSO, the parties have included a single list of jointly-proposed questions for the Court to ask the venire during voir dire.

1. Are you acquainted with any of the attorneys, law firms, expert witnesses, or potential witnesses expected to appear in this case?
2. Do you know Gary Cardone?
3. Do you know Monica Eaton?
4. Have you ever heard of Chargebacks911?
5. Have you, a family member, or a close friend ever been employed by, invested in, or otherwise had a business relationship with the Chargebacks911 or any of its competitors?
6. Have you, a family member, or a close friend ever worked in the field of payment processing?
7. Have you read, seen, or heard any news reports, social-media discussions, blog posts, podcasts, or other commentary about the Chargebacks911, Monica Eaton, Gary Cardone, or about this particular lawsuit?

8. Have you ever purchased or considered purchasing keto diet pills or similar weight-loss supplements, either online or in stores?
9. Have you ever encountered or been influenced by advertising for dietary supplements, such as keto diet pills, that you later believed to be deceptive or misleading?
10. Do you have any strong opinions about the marketing or advertising of health and wellness products online, particularly regarding claims that may be exaggerated or deceptive?
11. Do you, a family member, or a close friend work in the field of online advertising or affiliate marketing? Do you regularly purchase goods or services online?
12. Do you believe that fraud is a common problem in online transactions?
13. Do you believe that elderly individuals are particularly vulnerable to deceptive online marketing practices?
14. Do you know what a chargeback is?
15. Have you ever been the victim of a fraud?
16. Have you, a family member, or a close friend ever reported unauthorized charges on a credit or debit card, discovered fraudulent transfers from a bank account, or experienced identity theft or any form of online fraud? If yes, how was the matter resolved, and do you believe that experience might affect your impartiality here?
17. Do you believe that corporations accused of deceptive marketing are typically guilty?
18. Do you have any beliefs about the honesty of technology companies, payment processors, or online retailers that might predispose you to trust or distrust the Defendants' witnesses?
19. Do you have any strong beliefs, philosophical, political, or otherwise, about corporate responsibility, consumer rights, or the regulation of online commerce that might make it difficult for you to decide this case solely on the evidence and the law?
20. Do you possess any strong opinions about government regulation of online businesses, either that there is too much regulation or not

enough, and would those opinions affect your decision-making in this case?

21. Have you ever written a review or complaint online that accused a company of fraud, deception, or unethical business practices?
22. Have you ever filed a complaint with a consumer-protection agency, the Better Business Bureau, a state attorney general, the Federal Trade Commission, or any similar body regarding an online transaction?
23. Do you have any opinions, positive or negative, about class-action lawsuits in general, or about grouping many individuals' claims into a single case?
24. Have you ever been a party, witness, or claimant in any lawsuit, arbitration, mediation, or formal dispute resolution proceeding—including but not limited to any matter involving alleged fraud, unauthorized credit-card charges or deceptive business practices?
25. The evidence in this case may include detailed testimony regarding payment processing and credit and debit card transaction flows. Do you have any feelings about your ability or willingness to evaluate such evidence with the assistance of expert witnesses and the Court's instructions?
26. This trial may involve complex legal instructions concerning RICO claims (both substantive and conspiracy), causation, and damages. Will you commit to following the Court's instructions on the law even if they differ from your personal understanding or beliefs?
27. During deliberations, you will be asked to refrain from conducting independent research, consulting outside sources, or discussing the case with others until deliberations are concluded. Would you have any difficulty abiding by these rules, especially given the temptation to search for information online?

Plaintiffs' Questions

Consistent with the court's order directing that the Parties prepare a joint pretrial statement, Plaintiffs do not believe it is appropriate for the Parties to have separate responses to each section of this report. As such, Plaintiffs are not submitting any voir dire questions beyond those that have been jointly agreed to. *See Jain et al V. Nexgen Memantine, Inc. et al*, Case No. 8:20-cv-02263-VMC-JSC, ECF No. 297 (M.D.Fl., Sept. 16, 2022) (“[T]he Court is disappointed that Plaintiffs and Defendant

Mahendiran failed to submit truly ‘joint’ responses to most sections of the joint pretrial statement. The filing of opposing responses to each section is insufficient. They must discuss these issues and craft a joint response to each section.”).

Defendant’s Questions

CB911 believes that these questions are important and would like to discuss their inclusion at the Final Pretrial Conference.

1. Does the word sham mean fraud to you?
2. Do you believe that a defendant’s personality or demeanor could influence your judgment about the facts or the law?

C. Prior Approval for Certain Topics

1. The parties agree that before raising the following topics via witness testimony or documentary evidence, they will approach the bench to obtain permission from the Court first:
 1. Size of Defendants’ law firms or the number of attorneys’ representing the parties;
 2. Ms. Eaton’s and Mr. Cardone’s divorce proceedings and statements made therein by them, their counsel, or the judge; and
 3. Enforcement actions, investigations, or lawsuits pertaining to entities that are not defendants in the instant action and are not alleged to have participated in the alleged enterprises. Some of the actions at issue include but are not limited to *United States v. CB Surety, LLC, et al.*, Case No. 2:23-02812 (E.D. Cal. 2023) and *United States v. Kahn*, Case No. 1:23-cv-24497 (S.D. Fla. 2023))

D. Disclosure of Trial Demonstratives

Plaintiffs’ Position: Plaintiffs would generally like to follow the procedure laid-out in Section III(A)(4) of the Court’s Case Management and Scheduling Order (ECF 187), except as to (1) graphical, illustrative, or demonstrative material that consists solely of admissible evidence, jury instructions, or the verdict form (including, for example, highlighting and callouts from such documents); and (2) demonstrative material consisting solely of mathematical or Excel calculations. Plaintiffs don’t believe that demonstrative material that is fully

based on or derived from admissible evidence or material the jury will already be reviewing, e.g., jury instructions, need be disclosed in advance.

Defendant's Position: Defendant requests that the parties disclose summary, graphical, illustrative, or demonstrative material that will be shown to the trier of fact in opening statements, during the testimony of a witness whom that party plans to call, and during closing statements by 9:00 am (or as soon as practicable thereafter) the calendar day before its use. The parties will meet and confer by 7:00 pm (or as soon as practicable thereafter) the same day in an effort to resolve any objections and other issues relating to the disclosed demonstrative material.

Graphical, illustrative, or demonstrative material that consists solely of an excerpt from an exhibit that has been admitted or to which admissibility has been stipulated (including, for example, highlighting and callouts from such exhibit) need not be disclosed in advance of being shown to the Court. Graphical, illustrative, or demonstrative material that will be shown to the Court during the examination of an adverse witness, or used solely for impeachment or rebuttal, need not have been previously disclosed.

E. Disclosure of Witnesses Testifying at Trial

1. Counsel shall use best efforts to provide notice of the witnesses expected to testify at least two days in advance of the witnesses' testimony.

XVI. PROPOSED JURY INSTRUCTIONS

1. The Parties Joint Proposed Jury Instructions are attached hereto as Exhibit J.

XVII. PROPOSED VERDICT FORM

The parties have each submitted their own proposed verdict form.

1. Plaintiffs' Proposed Verdict Form is attached hereto as Exhibit K.
2. Defendant's Proposed Verdict Form is attached hereto as Exhibit L.

LOCAL RULE 3.06(B) CERTIFICATE

In preparing this final pretrial statement, we have aimed for the just, speedy, and inexpensive resolution of this action.

Dated: June 6, 2025

/s/ Cyclone Covey

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed via the CM/ECF system on June 6, 2025, which will send notice to all counsel of record.

/s/ Cyclone