**ANNOTATIONS AND COMMENTS**

Pursuant to 18 U.S.C. § 1964, “[a]ny person injured in his business or property by reason of a violation of section 1962… may sue… in any appropriate United States district court” and may recover treble damages and a reasonable attorney’s fee. *See, Sedima, S.P.R.L.*, 173 U.S. at 496. However, no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of Section 1962. This exclusion concerning securities does not apply to an action against any person that is criminally convicted in connection with a securities fraud. 18 U.S.C. § 1964.

This instruction assumes a single plaintiff suing a single defendant. It will need to be appropriately modified if there are multiple defendants. Additionally, as the vast majority of RICO conspiracies allege claims under § 1962, this instruction is tailored to allege a conspiracy under that subsection. If a conspiracy claim alleges violations of either § 1962 or , then the instruction will need to be amended accordingly.

“A plaintiff can establish a RICO conspiracy claim in one of two ways: by showing that the defendant agreed to the overall objective of the conspiracy; or by showing that the defendant agreed to commit two predicate acts.” *American Dental Ass’n. v. Cigna Corp.*, 605 F. 3d 1283, 1293 (11th Cir. 2010) (quoting *Republic of Panama v. BCCI Holdings (Luxembourg) S.A.*, 119 F.3d 935, 950 (11th Cir. 1997). A plaintiff may establish an “agree[ment] to the overall objection” by “circumstantial evidence showing that each defendant must necessarily have known that others were also conspiring to participate in the same enterprise through a pattern of racketeering activity.” *United States v. Starrett*, 55 F.3d 1525, 1544 (11th Cir. 1995). In *Starrett*, the Court found that the jury could infer that the defendant manifested an agreement to participate in a national crime organization from evidence that the defendant had been the president of the regional and local chapters of the organization, had been one of the four original members of the Florida chapter of the organization, had initiated an aggressive membership recruitment drive to solidify the organization’s position, and had personally committed thirty-four predicate acts related to the organization. *Id*. at 1547.

“A conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor. He may do so in any number of ways short of agreeing to undertake all of the acts necessary for the crime’s completion.” *Salinas v. United States*, 522 U.S. 52, 65 (1997). In *Salinas*, the court found that the defendant conspired to violate the RICO statute by accepting numerous bribes while knowing about and agreeing to facilitate an ongoing criminal scheme.

A RICO conspiracy plaintiff is not required to “offer direct evidence of an agreement; the existence of [the] conspiracy ‘may be inferred from the conduct of the participants.’” *American Dental Ass’n.*, 605 F.3d at 1283. In *American Dental*, the court found that because the plaintiff’s allegations were “mere formulaic recitations” of a conspiracy claim, they were therefore insufficient to “support an inference of agreement to the overall objective of the conspiracy or an agreement to commit two predicate acts.