

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FINTIV, INC., a Delaware Corporation,

Plaintiff,

v.

APPLE INC., a California Corporation,

Defendant.

Civil Action No. 1:25-cv-04413-TRJ

**APPLE INC.’S MOTION TO TRANSFER UNDER 28 U.S.C. § 1404(A) OR
IN THE ALTERNATIVE TO DISMISS UNDER RULE 12(B)(6)**

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I. INTRODUCTION

Fintiv’s new trade secret case is a bare attempt to repackage and revive its failed patent case. After seven years of litigation against Apple before Judge Alan Albright in the Western District of Texas, Fintiv lost on most of its patent claims and dismissed the rest on the eve of trial. Two days later, Fintiv filed this suit.

Due to the unique and extensive history between the parties and the repeated subject matter, this case belongs in Texas. The mobile wallet technology at issue here and the allegedly patented technology litigated in Texas are substantively the same. Judge Albright thus is deeply familiar with the parties and facts of this case. Moreover, Fintiv opposed Apple’s motion to transfer the patent case to California, arguing that Texas was “the right place” and Judge Albright “the right judge” for a dispute between these parties. Fintiv should be held to that position rather than being allowed to pursue its claims in this District, which has no connection to this case.

Regardless of venue, Fintiv’s equally baseless new claims should be dismissed for several reasons. First, Fintiv’s Defend Trade Secrets Act (DTSA), Georgia Trade Secrets Act (GTSA), and federal RICO claims are time-barred. These claims are based on alleged facts Fintiv relied on during its patent case in 2020—stating that it “fully appreciated” them—and that Fintiv has known or had access to since 2014. But Fintiv waited until August 6, 2025, after its patent case failed, to file this action. By then, the applicable statutes of limitations had run. Second, because it is entirely

based on trade secret misappropriation, Fintiv’s Georgia RICO claim is preempted by the GTSA. Finally, in trying to re-cast a trade secret claim in RICO terms, Fintiv fails to plead the key elements of an enterprise and a pattern of racketeering acts.

Underscoring the frivolousness of its new case, Fintiv has yet to even serve Apple with the Complaint, despite having filed it in August. The Court should reject Fintiv’s attempt to revive its failed patent case in a new district with no connection to the facts. Judicial economy would be best served by transfer, but in the alternative, the Court should dismiss this case as time-barred, preempted, and inadequately pled.

II. BACKGROUND

In 2018, Fintiv asserted U.S. Patent No. 8,843,125 (“the ’125 patent”) against Apple in the Western District of Texas. *Fintiv, Inc. v. Apple Inc.*, Case No. 1:21-cv-00896-ADA (“Patent Case”), Dkt. No. 1. The Patent Case involved the same mobile wallet technology at issue here. As detailed below, Judge Albright presided over that case for nearly seven years before dismissing the last of Fintiv’s claims on August 4, 2025. Dkt. No. 543.¹ Fintiv filed the present action two days later.

A. Fintiv Lost on the Merits of Its Patent Claims

After seven years of litigation, Apple prevailed on summary judgment of non-

¹ With the exception of the Complaint in this action, which Apple cites as “Compl.,” citations to case docket entries herein are to the Patent Case. An appendix of cited docket entries from the Patent Case is provided at Liu Decl. ¶ 12.

infringement. In that time, Fintiv had every opportunity to make its case. Indeed, Fintiv’s claims proceeded through five years of litigation (and 467 docket entries) before Apple first won summary judgment of non-infringement on June 21, 2023. Dkt. No. 468. Across a ten-page opinion engaging with technical details of the ’125 patent and the accused Apple Pay technology, Judge Albright explained why Fintiv lacked evidence of the claimed “widget.” *Id.*

Fintiv appealed. On May 16, 2025, the Federal Circuit reversed and remanded, pointing out a second non-infringement issue. Dkt. No. 482, 12. On August 1, 2025, Apple won summary judgment of non-infringement again as to most of the asserted patent claims (including those discussed below in Section II.C). Dkt. No. 547, 2. Fintiv dismissed its remaining claims the next day, on the eve of trial. Dkt. No. 541. It then filed another notice of appeal, indicating it may seek relief that could yet find the case returned to Judge Albright. Dkt. No. 558.

B. Fintiv’s Mobile Wallet Technology Is at Issue Here

The alleged trade secrets here came from SK C&C USA, Inc. (aka “CorFire”), a company in which Fintiv gained a majority stake in 2014 and acquired in 2015.

Fintiv claims that, by meeting with CorFire under NDAs in 2011-2012, Apple acquired CorFire trade secrets relating broadly to “secure element, widget, and NFC [near-field communication]-enabled mobile wallet technologies” and used them to develop Apple Pay. Compl. ¶¶ 61-62. The Complaint is more specific about the

alleged trade secrets exactly once, accusing Apple Pay of using “(a) an NFC-enabled mobile wallet application; (b) a secure element; (c) an ability to store payment card information/credentials on the secure element chip; (d) widgets that represent a physical card and have a user interface; and (e) a trusted service manager.” *Id.*

C. Fintiv’s Mobile Wallet Technology Was at Issue in the Patent Case

The ’125 patent at issue in the Texas case discloses the same technology Fintiv now seeks to repackage as its trade secrets. Per Fintiv, the patent concerns a “mobile wallet management system to store contactless cards in a secure element.” Dkt. No. 1 ¶ 12. Notably, the patent discloses all five of the elements Fintiv alleges Apple took from CorFire. Claim 18 recites a “mobile wallet application” and a “Trusted Service Manager (TSM) system.” Dkt. No. 1-1, 14:7-23. Claim 23 recites a “mobile wallet application” that “store[s] a widget corresponding to a contactless card applet” stored in a “secure element.” *Id.*, 14:39-53. Claim 25 recites storing on the secure element “a card number to access financial information, a security code, a personal identification number (PIN), and an expiration date.” *Id.*, 14:58-61.

In the Patent Case, Fintiv accused Apple Wallet, including Apple Pay, of infringing each of these claims of the ’125 patent (among others). Dkt. No. 1 ¶¶ 16-25. It now accuses the very same of incorporating its alleged trade secrets. Likewise, Fintiv previously accused Apple of facilitating the infringement of “partners and service operators” like “card issuers” by “providing a mobile wallet that enables the

provisioning of contactless cards.” *Id.* ¶¶ 3, 26. And now, Fintiv alleges that those same card issuers partake in Apple’s alleged enterprise.

D. Fintiv Has Long Known of Apple’s Interactions with CorFire

Although Fintiv waited until after its patent case failed to file this action, by its own admission, Fintiv knew of the alleged facts underlying its claims years ago.

On July 14, 2020—over five years before it filed this action—Fintiv moved to amend its patent complaint a third time to plead (among other things) willful infringement. Dkt. No. 203, 11:15-18. Per Fintiv, amendment was justified because of its recent discovery that Apple allegedly learned of the secure element technology at issue (1) at a 2011 meeting with CorFire, and (2) through an ex-employee of SK C&C (CorFire’s parent before Fintiv acquired it) who became aware of it before joining Apple. *Id.*, 21:22-22:4, 35:23-24, 36:7-11. Fintiv’s counsel had also interviewed a former CorFire employee regarding “interactions between [CorFire] and Apple.” Dkt. No. 203, 52:3-11. Fintiv argued these discoveries led it to “fully appreciate” the “extent of the communications by [CorFire] with Apple.” *Id.*, 88:20-89:5. The court, however, did not find good cause to amend. *Id.*, 96:20-21.

Two years later, on June 6, 2022 (over three years before filing this action), Fintiv revisited the issue in an emergency motion to reopen discovery. Dkt. No. 435. Fintiv again claimed to have learned new information, namely (1) contacts between CorFire and Apple in 2011-2012, including a January 31, 2012 meeting at which

CorFire allegedly shared “key aspects of its patented technologies,” and (2) Apple’s hiring of a second CorFire-affiliated employee. *Id.*, 2-3. Fintiv argued that this shed light on “the relationship between the parties, copying, indirect infringement, willful infringement, . . . and *trade secret misappropriation*.” *Id.*, 9 (emphasis added). But Fintiv did not explain why it failed to discover this information sooner, given that it had identified closely related facts to the court two years earlier in July 2020.

Although Judge Albright nevertheless granted limited discovery, *see* Dkt. No. 441, Fintiv made virtually no effort to pursue that discovery, *see* Dkt. No. 509-3, and, instead, filed another emergency motion on the eve of trial three years later, *see* Dkt. No. 494. The court denied that motion on July 29, 2025 and the issue became moot after entry of final judgment for Apple on August 7.

E. Fintiv Fought to Keep the Patent Case Before Judge Albright

Fintiv opposed Apple’s motion at the start of the Patent Case to transfer to the Northern District of California, and in the alternative to transfer intradistrict from Waco to Austin. Dkt. No. 40. Fintiv argued that “a wealth of relevant evidence and witnesses” were in the Western District of Texas, including “all of Fintiv’s relevant documents and key witnesses.” Dkt. No. 45, 1. Fintiv’s Human Resources Director confirmed that six key Fintiv employees, including its president, worked in its Austin office—its only office—and that other key employees were willing to appear for trial in Texas. Dkt. No. 43 ¶¶ 3, 6-8. Fintiv also argued that Apple had general local ties

to Austin and that relevant third parties were based in or around the Western District of Texas. Dkt. No. 45, 5-6. Thus, Fintiv said, that district had superior access to sources of proof and a stronger localized interest in the patent dispute. *Id.*, 9.

Rather than transfer to California, Judge Albright granted Apple’s alternative request for intradistrict transfer to the Austin Division, crediting the Western District of Texas’s localized interest in the case. Dkt. No. 73, 15-16. In finding other transfer factors to be neutral, Judge Albright further noted that potential third-party witnesses were present in both his district and the Northern District of California. *Id.*, 7, 11.

III. JUDICIAL NOTICE OF THE PATENT CASE IS APPROPRIATE

Apple requests that the Court take judicial notice of the following entries from the Patent Case docket: Dkt. No. 1 (complaint); Dkt. No. 1-1 (asserted patent); Dkt. No. 45 (Fintiv’s opposition to Apple’s motion to transfer); Dkt. No. 66 (transcript of hearing on transfer motion); Dkt. 203 (transcript of hearing on Fintiv’s motion to file third amended complaint); and Dkt. 435 (Fintiv’s emergency motion to reopen discovery (public redacted version)). *See* Liu Decl. Exs. A-F.

“Courts may take judicial notice of publicly filed documents . . . at the Rule 12(b)(6) stage.” *U.S. ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805, 812 n. 4 (11th Cir. 2015); *see also* Fed. R. Evid. 201. In the sections that follow, Apple will reference and rely on facts that are not subject to reasonable dispute in view of what occurred—and what Fintiv said—in the Patent Case. The positions Fintiv took to

justify keeping the Patent Case in the Western District of Texas are highly relevant to transfer. *See* Section IV.B, *infra*. Similarly, the Patent Case shows when Fintiv discovered or should have discovered the facts alleged in its Complaint, which is key to whether Fintiv’s claims are time-barred. *See* Section V.A, *infra*. The Patent Case also shows the technical overlap between the ’125 patent and Fintiv’s alleged trade secrets. *See* Section V.A.2, *infra*.

Courts in the Eleventh Circuit have relied on judicially noticed facts in similar contexts. *See, e.g., Motley v. Taylor*, 451 F. Supp. 3d 1251, 1270 (M.D. Ala. 2020) (taking judicial notice of a date in state court records to grant dismissal under statute of limitations); *Archer v. Am.’s First Fed. Credit Un.*, No. 19-cv-0258-TFM-MU, 2019 WL 6481303, at *8 (S.D. Ala. Sept. 17, 2019) (taking judicial notice of court docket showing plaintiff had “simply waited until” its earlier case was over before “filing the instant lawsuit in an attempt to get a second bite at the proverbial apple”).

IV. THIS CASE SHOULD BE TRANSFERRED TO JUDGE ALBRIGHT

This case has nothing to do with the Northern District of Georgia. Instead, it springs from the same facts as the Patent Case, where Fintiv successfully opposed transfer *from* the Western District of Texas by relying on the convenience and local interests of that district. After six more years of litigation, Judge Albright determined that Apple Pay did not use Fintiv’s allegedly proprietary mobile wallet technology. These unique circumstances definitively support transfer to that court.

A. Fintiv Could Have Filed This Suit in the Western District of Texas

In the Eleventh Circuit, the test for transfer under 28 U.S.C. § 1404(a) requires first assessing whether the action “might have been brought” in the alternative venue. *Mirasco, Inc. v. Am. Nat. Fire Ins. Co.*, No. 1:00-cv-947-ODE, 2000 WL 34440850, at *4 (N.D. Ga. July 5, 2000). Fintiv cannot seriously dispute that it could have filed this case in the Western District of Texas. Indeed, it already filed the Patent Case in that District on the same technology.

The Western District of Texas would have original subject matter jurisdiction over Fintiv’s federal claims under 28 U.S.C. § 1331, 18 U.S.C. § 1836(c) (DTSA), and 18 U.S.C. § 1964(c) (RICO). It also would have supplemental jurisdiction over Fintiv’s Georgia state law claims which, as Fintiv alleges, “arise out of the same case or controversy as its federal law claims” and “out of a common nucleus of operative facts.” Compl. ¶ 31; 28 U.S.C. § 1367(a). And, it would have personal jurisdiction over Fintiv, which has its principal place of business in that district, and Apple, which maintains offices and retail locations there.

Venue would also be proper. First, the Western District of Texas is “a judicial district in which” Apple, the sole defendant, “resides.” 28 U.S.C. § 1391(b)(1); 28 U.S.C. § 1391(d). Second, venue for a federal civil RICO action is proper in “any district in which” the defendant “resides, is found, has an agent, or transacts his affairs,” which Apple does in the Western District. 18 U.S.C. § 1965(a).

B. This Circuit’s Private and Public Factors Warrant Transfer

The Eleventh Circuit’s factors overwhelmingly favor transfer, especially in view of Fintiv’s prior fight to keep the Patent Case in Texas. Courts in this Circuit weigh the following factors on a Section 1404(a) motion:

(1) the convenience of the witnesses; (2) the location of relevant documents and the relative ease of access to sources of proof; (3) the convenience of the parties; (4) the locus of operative facts; (5) the availability of process to compel the attendance of unwilling witnesses; (6) the relative means of the parties; (7) a forum’s familiarity with the governing law; (8) the weight accorded a plaintiff’s choice of forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances.

Manuel v. Convergys Corp., 430 F.3d 1132, 1135, n.1 (11th Cir. 2005). Here, almost every factor favors transfer, while no factor meaningfully weighs against it.

1. The Convenience of the Witnesses Favors Transfer.

This factor favors transfer to the Western District of Texas for the same reason Fintiv argued it warranted keeping the Patent Case in that District: More non-party witnesses, including those Fintiv named in the Patent Case, reside there than in this District. *See Ward v. Figure Lending, LLC*, No. 1:23-cv-00516-MLB-RDC, 2023 WL 6194046, at *3 (N.D. Ga. June 21, 2023) (“Non-party witnesses’ convenience carries more weight on the decision to transfer because they have less interest in the proceedings and, thus, may be less willing to appear.”).

The potential non-party witnesses fall into two groups. The first group are non-party individuals named at paragraphs 37-48 and 58-60 of the Complaint. Only

two of these ten individuals appear to reside in this District. *See* Liu Decl. ¶ 9, Ex. G. The second group includes five current and former NXP employees who Fintiv has alleged to be knowledgeable about the NFC controllers used with Apple Pay. Dkt. No. 45, 5; Compl. ¶¶ 53, 61-62, 127, 134, 145, 152. All five appear to be based in Austin. *See* Liu Decl. ¶ 10, Ex. H. As for party witnesses, Apple is not aware of any in this District. By contrast, the Western District of Texas remains home to at least Fintiv’s president and CEO, Mike Love. Liu Decl. Ex. I.

Thus, five potential non-party witnesses and at least one key party witness are in the Western District of Texas, versus only two potential non-party witnesses in this District. The witness convenience factor therefore favors transfer.

2. The Locations of Relevant Documents and the Relative Ease of Access to Sources of Proof Favor Transfer.

Because of “the predominance of electronic discovery in the modern era,” the “physical location of relevant documents” has become less significant in the transfer inquiry under Eleventh Circuit law. *Ward*, 2023 WL 6194046, at *4. Nevertheless, this factor slightly favors transfer because there are no relevant sources of proof in this District, while Fintiv’s primary and only office is in Austin. Dkt. No. 45, 4.

3. The Convenience of the Parties Favors Transfer.

The Western District of Texas is more convenient for both parties than this District. Neither party is based in or maintains offices in this District. Meanwhile, Fintiv is headquartered in Austin. *Id.*

4. The Locus of Operative Facts Is Neutral.

“This factor considers the closeness of relation between the judicial forum and the cause of action—specifically, the site of events from which the claim arises.” *Ward*, 2023 WL 6194046, at *5 (cleaned up). Here, the factor is neutral because the key operative facts occurred neither in the Western District of Texas nor the Northern District of Georgia. Instead, Fintiv alleges Apple obtained CorFire trade secrets in California. *See* Compl. ¶¶ 37-48. At most, Georgia is one of many places in which Apple sells devices that Fintiv accuses of incorporating its trade secrets. *See* Compl. ¶ 119. But so, too, is the Western District of Texas.

5. The Availability of Process to Compel Attendance of Unwilling Witnesses Is Neutral.

In this Circuit, this factor “concerns *unwilling* witnesses” and therefore bears “limited significance” absent evidence that a witness “would be unwilling to testify.” *Ward*, 2023 WL 6194046, at *5 (cleaned up). There is no such evidence here.

6. The Relative Means of the Parties Favors Transfer.

For this factor, the question is “whether one party is better positioned to bear the costs of a change in venue.” *Id.* at *6. While there is no evidence of hardship to either party in either forum here, the Western District of Texas would still be more convenient, as discussed under Factor 3.

7. The Forum’s Familiarity with Governing Law Is Neutral.

As “district courts often have little trouble applying the law of other states,”

absent a showing “that the case turns on nuanced issues of another state’s law, [this] factor weighs neutrally towards transfer.” *PuffCuff, LLC v. Quality Plastic Prods., Inc.*, No. 1:21-cv-04663-SEG, 2022 WL 3700103, at *5 (N.D. Ga. June 2, 2022). (cleaned up). There are no nuanced issues of Georgia law here. In fact, the elements of Fintiv’s state and federal claims are virtually the same. For example, the GTSA and DTSA apply nearly identical definitions of “trade secret” and “misappropriation.” Compare O.C.G.A. § 10-1-761 with 18 U.S.C. § 1839. And the Georgia RICO Act “was modeled after” its federal counterpart, such that courts find “federal authority persuasive in interpreting” it. *See Aquino v. Mobis Ala., LLC*, 739 F. Supp. 3d 1152, 1191 (N.D. Ga. 2024) (cleaned up).

Indeed, the Court need only look to the Complaint itself to see how Fintiv has pled its federal and state claims in the same way. *See, e.g.*, Compl. ¶¶ 74-77, 104-6 (nearly identical pleading of “enterprise” element for federal and Georgia RICO); *id.* ¶¶ 80-89, 109-18 (same for wire fraud and trade secret theft as predicate RICO acts); *id.* ¶¶ 126-43, 144-61 (same for GTSA and DTSA claims).

8. The Weight Accorded a Plaintiff’s Choice of Forum Is Neutral.

In this Circuit, a plaintiff’s choice of forum is “entitled to less deference when a plaintiff files suit outside of its home forum or where the operative facts underlying the cause of action did not occur in the forum chosen by the plaintiff.” *Fireman’s Fund Ins. Co. v. Comtran Grp., Inc.*, No. 1:13-cv-1164-WSD, 2013 WL 12064285,

at *5 (N.D. Ga. Oct. 7, 2013). Fintiv’s home forum is the Western District of Texas and the operative facts occurred in California. Furthermore, Fintiv already chose the Western District of Texas for its first case against Apple. Having lost, Fintiv filed in this District, despite none of the operative facts having occurred here. Thus, Fintiv’s choice merits no deference.

9. Trial Efficiency and the Interests of Justice Favor Transfer.

“This last factor serves as a catchall for considerations such as administrative efficiency, local interests in having localized controversies decided at home, and all other practical problems that make trial of a case easy, expeditious and inexpensive.” *Ward*, 2023 WL 6194046, at *7. This factor overwhelmingly favors transfer.

Most importantly, Judge Albright has presided for seven years over a dispute between the same parties involving the same technology. In that time, he provided substantive decisions on transfer, claim construction, dismissal, exclusion of expert testimony, and summary judgment of non-infringement. Dkt. Nos. 73, 86, 184, 401, 424, 468, 547. To help decide those issues, Judge Albright held thorough hearings, *see, e.g.*, Dkt. Nos. 66, 83, 188, 202, 203, 259, and appointed a technical advisor to ensure familiarity with the technology at issue, Dkt. No. 298. Throughout the case, Judge Albright issued case management orders and conducted numerous scheduling and discovery conferences. *See generally*, Patent Case Docket. In fact, Fintiv has already presented to Judge Albright the exact factual allegations it raises now in its

Complaint. *See* Dkt. Nos. 139-1, 203, 435; *see also* Section II.D, *supra*. Thus, Judge Albright’s familiarity with the parties, their history, and the technology at issue will promote judicial economy and efficiencies if this case is transferred.

Indeed, courts find this factor to be the “most persuasive reason” to transfer a case where transfer would prevent “duplication of judicial effort” and “inconsistent results.” *Mirasco*, 2000 WL 34440850, at *5; *Fairbanks Co. v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, No. 1:13-cv-2399-MHC, 2015 WL 11232355, at *10 (N.D. Ga. Feb. 11, 2015) (“interests of justice” are “strongly furthered by transfer” where it would allow “consistency in the results” of related cases). Here, Judge Albright’s rulings on and familiarity with Fintiv’s ’125 patent will help ensure consistency on the critical issue of what, if anything, comprises Fintiv’s trade secrets, as opposed to patented or otherwise publicly known technology. Similarly, that court’s experience with Apple Wallet and Apple Pay will promote consistency between prior findings of non-infringement and future determinations on misappropriation.

Furthermore, while Fintiv’s latest appeal from the Patent Case is meritless, it remains possible that Judge Albright will once again preside over its failed patent claims. Fintiv has also noticed its intent to challenge Judge Albright’s decision not to continue trial and allow further discovery into the same facts and issues Fintiv raises in this action. *See* Dkt. No. 558; Section II.D, *supra*. Thus, transfer will help ensure consistency with both prior Patent Case findings and potential future ones.

Second, Fintiv should be held to the position it took in the Patent Case that the Western District of Texas has a strong local interest in resolving disputes between Fintiv and Apple. *See* Dkt. No. 45, 10. At the hearing on Apple’s transfer motion, Fintiv presented a lengthy argument on that point, concluding firmly that the Western District of Texas was “the right place” and Judge Albright “the right judge.” Dkt. No. 66, 46:2-21. Thus, Fintiv is judicially estopped from arguing in this case that the Western District of Texas is not the appropriate forum. *See Slater v. U.S. Steel Corp.*, 871 F.3d 1174, 1181 (11th Cir. 2017) (judicial estoppel prohibits parties from making “a mockery of the judicial system” by taking “inconsistent positions”); *Hall v. GE Plastic Pac. PTE Ltd.*, 327 F.3d 391, 397 (5th Cir. 2003) (a party cannot, “for convenience or gamesmanship after [an] argument has served its purpose, advance a different and inconsistent argument”). The interests of justice call for transfer.

10. Balance of Factors

The balance of factors favors transfer. As Judge Albright is already familiar with the parties and the technology—including the specific allegations Fintiv makes here about Apple’s history with CorFire—transfer will promote judicial efficiency and the interests of justice. The Western District of Texas also is more convenient for the witnesses and parties. Meanwhile, no factor opposes transfer.

V. ALTERNATIVELY, FINTIV’S CLAIMS SHOULD BE DISMISSED

Should the Court decide to retain this case, it should dismiss each of Fintiv’s

causes of action under Rule 12(b)(6). Fintiv cannot pursue its trade secret or federal RICO claims because the applicable statutes of limitations have long expired. Nor can Fintiv pursue its Georgia RICO claim, as the GTSA supersedes it. Furthermore, Fintiv has failed to adequately plead two key elements of its RICO claims.

A. Fintiv’s Trade Secret and Federal RICO Claims Are Time-Barred

Fintiv’s trade secret and federal RICO claims come far too late. The statute of limitations for each claim began to run when the underlying misappropriation or injury was discovered or should have been discovered through reasonable diligence: The DTSA bars claims three years after the misappropriation was or “should have been” discovered. 18 U.S.C. § 1836(d). The GTSA statute is the same but runs for five years. O.C.G.A. § 10-1-766. And federal RICO claims must be brought within four years of “when the injury was or should have been discovered.” *Lehman v. Lucom*, 727 F.3d 1326, 1330 (11th Cir. 2013) (cleaned up).

Fintiv filed this action on August 6, 2025. But Fintiv *discovered* the purported misappropriation or injury no later than July 2020, when it requested leave to amend its patent complaint by relying on the same alleged facts it pleads now.² And Fintiv *should have discovered* the misappropriation much earlier: In 2018, Fintiv filed the

² As explained further in Section V.A.5, *infra*, the RICO “injury” here for limitations purposes *is* the underlying misappropriation because Fintiv alleges trade secret theft as a predicate RICO act, and later predicates do not reset the clock unless they “give rise to a new and independent injury.” *Id.* at 1331.

Patent Case against Apple and thus should have diligently investigated potential trade secret claims involving the same technology. And as early as 2014, Fintiv's predecessor-in-interest CorFire had access to all facts supporting Fintiv's present claim that Apple Pay incorporated CorFire trade secrets at its launch. Thus, Fintiv's DTSA, GTSA, and federal RICO claims are time-barred because each applicable statute of limitations began to run more than five years before Fintiv filed this suit.

1. Fintiv discovered the alleged misappropriation no later than July 2020 when it moved to amend its patent complaint.

Because Fintiv's misappropriation claims are based on alleged facts that it knew in July 2020, the statutes of limitations began to run no later than that date. Those alleged facts are (1) that Apple Pay used NFC and secure element technology, Compl. ¶¶ 49-53; (2) that Apple had met with CorFire in 2011 and 2012, *id.* ¶¶ 37-48; and (3) that Apple hired formerly CorFire-affiliated employees, *id.* ¶¶ 58-64.

Fintiv not only knew, but specifically relied on these alleged facts in July 2020 when it moved to amend its patent complaint. Apple Pay's alleged use of NFC and secure element technology was already part of Fintiv's infringement case. *See* Dkt. No. 1-1, 14:38-53. As to the other two alleged facts underlying Fintiv's present misappropriation claims, Fintiv identified them as new information justifying a late willful infringement claim. *See* Dkt. No. 203, 35:11-36:11 (summarizing Fintiv's bases for amending its complaint); *see also* Dkt. No. 139-1 (motion to amend). In addition, Fintiv's counsel had apparently interviewed a former CorFire employee

specifically about the Apple-CorFire meetings. *See* Dkt. No. 203, 52:3-11. These revelations, according to Fintiv, allowed it to “fully appreciate” the “extent of the communications” between CorFire and Apple. *Id.*, 88:20-89:5; Section II.D, *supra*.

Fintiv was therefore not only aware in July 2020 of the allegations on which it now bases its claims, but also presented them as evidence of Apple’s supposedly willful use of Fintiv technology. It thus is implausible that Fintiv had not discovered the alleged misappropriation by then. And Fintiv certainly should have discovered it through reasonable diligence because all these alleged facts were indisputably in its possession. But that was more than five years ago, barring Fintiv’s claims.

2. Fintiv should have discovered the alleged misappropriation when it sued Apple in December 2018.

Although Fintiv discovered the alleged facts underlying its misappropriation claim no later than July 2020, it *should* have done so by no later than December 2018, when it filed the Patent Case against Apple on the same technology.

As summarized above, Fintiv alleged that Apple Pay infringed the ’125 patent because it was part of a “mobile wallet application” with elements such as widgets, a Trusted Service Manager (TSM) system, a secure element, and storage of payment information on the secure element. *See* Section II.B, *supra* (quoting Dkt. No. 1-1 (’125 patent), 14:7-23, 14:39-53, 14:58-61). Fintiv now identifies the same elements to plead its misappropriation claims, alleging that Apple has “used and incorporated” CorFire’s trade secrets in Apple Pay because Apple Pay

include[s] the following elements, all of which were discussed in CorFire's 2012 presentations to Apple: (a) an NFC-enabled mobile wallet application; (b) a secure element; (c) an ability to store payment card information/credentials on the secure element chip; (d) widgets that represent a physical card and have a user interface; and (e) a trusted service manager.

Compl. ¶ 62. But if Fintiv believed in 2018 that Apple Pay infringed its patent by incorporating these elements, it also should have investigated Apple's possible use of trade secrets involving those same elements. Instead, Fintiv filed this action seven years later, after the applicable statutes of limitations had run.

3. Fintiv, through its predecessor-in-interest CorFire, should have discovered the alleged misappropriation when Apple Pay launched in October 2014.

The statutes of limitations began to run even earlier, in October 2014, when Apple Pay launched. That is because CorFire (Fintiv's predecessor-in-interest) knew or should have known, at that time, every fact Fintiv pleads now to support its claim that Apple Pay incorporated CorFire trade secrets when it released. Compl. ¶¶ 8, 53.

In alleging that Apple Pay used CorFire trade secrets at the time of its launch, Fintiv points to the purported meetings between Apple and CorFire in 2011 and 2012 and Apple's public announcements regarding Apple Pay leading up to its U.S. launch. *Id.* ¶¶ 37-48, 49-53. But, as the disclosing party, CorFire was of course aware of any meetings in which it allegedly disclosed trade secrets to Apple. In addition, it is implausible that CorFire was unaware of Apple's public statements regarding Apple Pay ahead of its 2014 launch, given that a related project was the alleged subject of

those very meetings just two years before. *Id.* ¶¶ 37-48. Furthermore, Apple Pay marked the introduction of a product by a major technology company into the same field that CorFire supposedly led. *See id.* ¶ 35 (“CorFire was an industry-leading mobile commerce company that had developed mobile wallet technology products and services.”). CorFire therefore likely knew, and certainly should have known, of Apple’s announcement that Apple Pay would use “a groundbreaking NFC antenna design” and “a dedicated chip called the Secure Element,” *id.* ¶ 49, two key aspects of the technology that Fintiv claims CorFire disclosed to Apple in 2012, *id.* ¶ 62.

Because reasonable diligence would have led CorFire to the same facts Fintiv pleads now, CorFire should have discovered the alleged misappropriation in 2014. As CorFire’s successor-in-interest, Fintiv is subject to the same statute of limitations clock, which began to run at that time and expired long before Fintiv filed this action. *See, e.g., CMI Roadbuilding, Inc. v. Iowa Parts, Inc.*, No. 16-cv-33-LRR, 2017 WL 6210920, at *7, n.4 (N.D. Iowa Dec. 8, 2017), *aff’d*, 920 F.3d 560 (8th Cir. 2019) (predecessor’s knowledge of possible misappropriation began limitations clock); *E.T. Mfg. Co. v. Xomed, Inc.*, 679 F. Supp. 1082, 1087-88 (M.D. Fla. 1987) (same).

4. Fintiv’s DTSA claim is also barred because it Fintiv admitted to discovering the alleged misappropriation in June 2022.

As a final nail in the coffin for Fintiv’s DTSA claim, Fintiv expressly ***admitted*** to having discovered the alleged misappropriation in June 2022. In its emergency motion to reopen discovery, Fintiv identified the CorFire-Apple meetings that it now

mentions in the Complaint, as well as Apple’s hiring of formerly CorFire-affiliated employees. *See* Dkt. No. 435, 2-3. To justify reopening discovery on the eve of trial, Fintiv noted that these events were relevant to “trade secret misappropriation.” *Id.*, 9. Thus, even if Fintiv’s clock started as late as the time of its emergency motion in 2022, that was over three years before this case, barring Fintiv’s DTSA claim.

5. Fintiv’s allegations of continuing misappropriation or later acts of racketeering do not reset the statute of limitations clock.

The statutes of limitations on Fintiv’s claims began to run at the earliest time the alleged misappropriation or RICO injury was discovered or should have been discovered. 18 U.S.C. § 1836(d); O.C.G.A. § 10-1-766; *Lehman*, 727 F.3d at 1330 (Claim begins “when the injury was or should have been discovered, regardless of whether or when the injury is discovered to be part of a pattern of racketeering.”) (cleaned up).

For the DTSA and GTSA claims, it is immaterial that Fintiv alleges Apple’s misappropriation is ongoing. Compl. ¶¶ 134, 152. A “continuing misappropriation” supports only “a single claim of misappropriation.” 18 U.S.C. § 1836(d); O.C.G.A. § 10-1-766. Thus, the continuing availability of Apple Pay cannot reset the clock.

Similarly, for Fintiv’s federal RICO claim, later events do not reset the clock unless they give “rise to a new and independent injury.” *Lehman*, 727 F.3d at 1331; *Austin v. Grand Canyon Univ., Inc.*, No. 1:19-cv-03734-SCJ, 2020 WL 13526627, at *6 (N.D. Ga. May 11, 2020) (statute of limitations did not reset every time plaintiff

paid defendant because each payment “was a continuing injury stemming from the alleged fraud which induced” the payments). Here, Fintiv alleges predicate acts of trade secret theft, wire fraud, and interstate transportation and sale of stolen property (“ITSP”). Compl. ¶ 79. Thus, the clock started running when the misappropriation underlying the alleged trade secret theft was or should have been discovered. Later alleged acts of wire fraud and ITSP did not reset the clock because they are not new and independent from the theft—Fintiv’s wire fraud theory is that Apple hid from the public the role of Fintiv’s trade secrets in developing Apple Pay, *id.* ¶¶ 80-83, and the trade secrets are the “stolen property” in Fintiv’s ITSP theory, *id.* ¶¶ 90-100.

In short, Fintiv cannot escape the applicable statutes of limitations by pleading later improper acts that relate back to the alleged initial misappropriation. Because the time has long passed since Fintiv should have brought its trade secret and federal RICO claims, the Court should dismiss them with prejudice.

B. Fintiv’s Georgia RICO Claim Is Preempted by the GTSA

Because Fintiv’s Georgia RICO claim is based on “predicate acts” arising from alleged trade secret misappropriation, it should be dismissed as preempted by the GTSA. The GTSA “supersede[s] conflicting tort, restitutionary, and other [state] laws” that provide “civil remedies for misappropriation of a trade secret.” O.C.G.A. § 10-1-767(a). Fintiv’s Georgia civil RICO claim is no exception. *See AmNet Esop Corp. v. CrossCountry Mortg., Inc.*, No. 2:23-cv-10-RWS, 2023 WL 9181488, at

*18 (N.D. Ga. Dec. 18, 2023) (state RICO preempted by GTSA where plaintiff relied on “misappropriation (or theft) of trade secrets” as predicates).

In addition to trade secret theft, Fintiv’s Georgia RICO claim is predicated on wire fraud and theft by bringing stolen property into the state. Compl. ¶¶ 109-12, 119-20. Critically, these predicate RICO acts are all themselves based on trade secret theft. There would be nothing fraudulent about Apple’s statements that it developed Apple Pay unless Apple did, in fact, incorporate stolen trade secrets into Apple Pay (which it did not). Similarly, the trade secrets are the “property” in the allegation of theft by bringing stolen property into the state. Each predicate act is thus merely a different manifestation of the same underlying alleged misappropriation. *See, e.g., AmNet*, 2023 WL 9181488, at *18-19 (predicate acts of theft and computer theft did not circumvent GTSA preemption where trade secrets were the stolen property).

Fintiv’s alleged injuries confirm that these supposed predicate acts collapse into its trade secret claims. Per Fintiv, Apple’s racketeering activities led it to suffer (1) “loss of monies owed to Fintiv” for the use of its *trade secrets* and (2) “damage to Fintiv’s reputation and goodwill” and “loss of business opportunities” caused by Apple’s “failure to properly credit Fintiv for” the *trade secrets*. Compl. ¶ 123. Thus, the alleged injuries are attributable to the alleged underlying misappropriation.

Because each predicate act in Fintiv’s Georgia RICO claim is based on trade secret misappropriation, the GTSA supersedes it. And as explained in Section V.C,

infra, the alleged “wire fraud” and “theft by bringing stolen property into the state” are not viable predicate acts, leaving trade secret theft on its own. Thus, whether or not the other predicates are distinguishable from trade secret misappropriation (they are not), Fintiv’s state RICO claim is still preempted and should be dismissed.

C. Fintiv Has Not Adequately Pled Its RICO Claims

Fintiv’s Complaint fails to adequately allege two key elements of a RICO claim: (1) an enterprise that Apple operated and (2) a pattern of racketeering activity. *See Cisneros v. Petland, Inc.*, 972 F.3d 1204, 1211 (11th Cir. 2020).³ Fintiv is unable to plausibly allege these elements because Fintiv’s RICO claim is a mere re-tread of its trade secret claims. Thus, the Court should dismiss with prejudice.

1. Fintiv fails to plausibly allege the existence of an enterprise.

Because Fintiv claims that Apple is part of an association-in-fact enterprise, Complaint ¶¶ 77, 107, it must allege facts that plausibly show the enterprise has (1) a common purpose, (2) relationships among those associated with the enterprise, and (3) longevity sufficient to pursue the common purpose. *Cisneros*, 972 F.3d at 1211.

³ *Cisneros* provides the elements of a federal civil RICO claim. The elements of a Georgia civil RICO claim are similar, except that a claim under O.C.G.A. § 16-14-4(a) does not require proof of an “enterprise.” *Aquino v. Mobis Alabama, LLC*, 739 F. Supp. 3d 1152, 1173 (N.D. Ga. 2024). Here, Fintiv does not specify the provision of Section 16-14-4 on which it relies. But because Fintiv’s state RICO claim alleges an enterprise, Apple analyzes Fintiv’s claim under Section 16-14-4(b).

Fintiv does not adequately allege a common purpose. According to Fintiv, the “Apple Pay Payment Enterprise” comprises “Apple, major credit card issuers, major payment processing networks, and others” who have come together for the purpose of “processing contactless payment transactions in interstate and foreign commerce through Apple Pay for fees.” Compl. ¶¶ 14, 74, 104. Fintiv further alleges that each enterprise member makes money from this scheme. *Id.* ¶ 14.

But the Eleventh Circuit has held that “[a]n abstract common purpose, such as a generally shared interest in making money, will not suffice.” *Cisneros*, 972 F.3d at 1211. Enterprise members must have “shared the purpose of enriching themselves through a particular *criminal* course of conduct.” *Id.* (emphasis added). But Fintiv points only to legitimate relationships between companies in the ordinary course of business to permit transactions through Apple Pay. Indeed, if Fintiv were to try and monetize its alleged trade secret technology, it, too, would need to work with credit card issuers and payment processing networks in the same relationships. The only difference, as pled, is that Apple allegedly stole Fintiv’s technology, of which no other alleged enterprise member was aware. Fintiv thus fails to plead the common purpose element of an association-in-fact enterprise. *See Amnet*, 2023 WL 9181488, at *16 (common purpose requires “that a meeting of the minds occurred”).

To the extent Fintiv’s theory is that the enterprise members shared the purpose of “convert[ing] Fintiv’s stolen technology into cash,” *see* Compl. ¶ 14, Fintiv does

not plausibly plead it. Again, Fintiv never alleges that anyone other than Apple was aware of any theft, precluding a common purpose and thus a RICO enterprise.

The Eleventh Circuit affirmed dismissal on similar facts in *Ray v. Spirit Airlines, Inc.*, 836 F.3d 1340, 1352-55 (11th Cir. 2016). There, the plaintiffs alleged that Spirit was part of an enterprise with technology and public relations vendors, with the common purpose of increasing Spirit’s revenue through a fraudulent scheme (misrepresenting fees to customers). *Id.* at 1352. But that complaint did not permit a plausible inference that the vendors were involved with the misrepresentation. *Id.* at 1353. Instead, the vendors had engaged in “wholly innocent activity undertaken as a course of regular business,” such as helping Spirit “set up the ticket reservation system for [its] website.” *Id.* Thus, the alleged enterprise “engaged in no more than a series of legitimate commercial transactions.” *Id.* at 1354-55.

That is exactly the case here. The “common purpose” Fintiv identifies is only a series of legitimate commercial transactions, which cannot sustain a RICO claim. Even if Fintiv were to amend the Complaint to allege a common purpose of profiting from its trade secrets, it must allege facts sufficient to show that entities like JP Morgan Chase and Visa knowingly participated in that purpose. There is no evidence that it can. The Court should dismiss Fintiv’s RICO claims with prejudice.

2. Fintiv fails to plausibly allege a pattern of racketeering activity.

The RICO element of a “pattern” requires at least two predicate acts. *Cisneros*,

972 F.3d at 1211. Because neither Fintiv’s wire fraud nor its transportation of stolen property claims are viable—leaving trade secret theft as the lone predicate act, *see* Compl. ¶¶ 79, 109-21—the Court should dismiss the RICO claims with prejudice.⁴

Wire Fraud: Fintiv accuses Apple of fraudulently representing to the public that it developed Apple Pay, and that this fraud injured Fintiv. Compl. ¶¶ 81-82, 110-11. But civil RICO “injuries must be a direct result of the alleged racketeering activity.” *Halpin v. Crist*, 405 F. App’x 403, 405-06 (11th Cir. 2010) (cleaned up). Fintiv must show that Apple’s “commission of the predicate acts of racketeering was the proximate and direct cause of [its] alleged injuries.” *Id.* And for a predicate act of fraud, Fintiv must show that someone actually relied on the false statement, and that specific reliance injured Fintiv. *Ray*, 836 F.3d at 1350.

Fintiv does not even establish that the alleged fraud was the direct, let alone proximate, cause of Fintiv’s “injuries.” The fraud, as pled, was intended to deceive the general public. But Fintiv fails to plead that the public—or anyone else—did in fact rely on the supposedly false statements. The *Ray* court affirmed the dismissal of a civil RICO claim where the plaintiffs “pled nothing even remotely suggesting that they—or anyone else for that matter—would have acted at all differently had

⁴ Fintiv also has not adequately pled its trade secret claims because it failed to plead the alleged trade secrets with enough particularity to distinguish them from matters that are publicly known. While not raised here, Apple reserves the right to challenge the adequacy of those pleadings, for example, on a motion under Rule 12(c).

Spirit” not made the alleged misrepresentations. *Id.* at 1351. Similarly, Fintiv has not pled facts that can support a plausible inference that Apple Pay users would have behaved any differently had Apple credited Fintiv for its technology.

Even if such an inference were possible (it is not), Fintiv still fails to show how the Apple Pay users’ reliance proximately caused its injuries. The first alleged injury, loss of “business opportunities that would come from proper recognition in the marketplace about [Fintiv’s] role in developing and enabling Apple Pay’s mobile wallet functionality,” is pure speculation. Compl. ¶¶ 82, 111. Fintiv fails to point to a single lost business opportunity, let alone link it to the only examples of alleged fraud in the Complaint (a press release and a podcast appearance in October 2024). *See id.* The second alleged injury, “harm [to] Fintiv by concealing from discovery Apple’s theft of Fintiv’s intellectual property,” *id.*, is logically impossible because Fintiv had already discovered the supposed theft. The two identified examples of the alleged fraud in October 2024 came six years after Fintiv sued Apple for patent infringement, accusing Apple Pay. And if anything, Apple’s open statements to the public about having developed various technical elements that Fintiv claims for itself should have *alerted* Fintiv to the alleged theft, rather than conceal it. Finally, the third alleged injury, “just compensation for use or exploitation of Fintiv’s intellectual property and trade secrets,” has nothing to do with wire fraud. *Id.* As pled, it would be the *trade secret misappropriation*, not Apple’s public statements, that would be

the proximate cause of Fintiv's loss of compensation for its intellectual property.

Thus, wire fraud cannot qualify as a predicate act for Fintiv's RICO claims.

ITSP/Bringing Stolen Property into the State: Finally, Fintiv misapplies the federal and state statutes regarding stolen property to conjure a third predicate act. In particular, Fintiv identifies the "stolen property" as "stolen intellectual property." Compl. ¶¶ 91, 119. But intellectual property is not stolen property for these purposes. 18 U.S.C. § 2314 prohibits the transport of "goods, wares, merchandise, securities, or money," none of which are intellectual property. Using intellectual property in physical objects like iPhones does not bring it within the scope of the statute. *See Dowling v. United States*, 473 U.S. 207, 216 (1985) (requiring "a ***physical identity*** between the items unlawfully obtained and those eventually transported") (emphasis added); *see also Schoenbaum v. E.I. Dupont De Nemours & Co.*, 517 F. Supp. 2d 1125, 1147-48 (E.D. Mo. 2007), *vacated in part on other grounds*, No. 4:05-cv-01108 ERW, 2007 WL 3331291 (E.D. Mo. Nov. 6, 2007) (dismissing RICO claim based on ITSP because "intangible intellectual property did not fall within the Act's ambit"). Fintiv fails to identify stolen property that would constitute a predicate act.

Accordingly, the Court should dismiss Fintiv's RICO claims with prejudice.

VI. CONCLUSION

For the foregoing reasons, Apple requests that this Court transfer this action to Judge Albright, or in the alternative dismiss each of Fintiv's claims with prejudice.

Dated: October 27, 2025

Respectfully submitted,

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RULE 7.1(D) CERTIFICATION

The undersigned counsel certifies that this document has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1(C).

/s/ Kurt R. Erskine

Kurt R. Erskine

Counsel for Defendant
APPLE INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day a copy of the foregoing was filed and served using the Court's CM/ECF system which will send notification of such filing to ECF registered participants.

Dated: October 27, 2025

/s/ Kurt R. Erskine

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