IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION

CRAWFORD'S AUTO CENTER, INC., *et al.*,

PLAINTIFFS,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,

DEFENDANTS.

MDL Docket No. 2557

Case No. 6:14-cv-6016-GAP-TBS

Originally filed in the Northern District of Illinois

DISPOSITIVE MOTION

STATE FARM'S REPLY IN SUPPORT OF MOTION TO DISMISS THE AMENDED COMPLAINT

I. PLAINTIFFS' FRAUD-BASED CLAIMS SHOULD BE DISMISSED FOR FAILURE TO SATISFY RULE 9(B).

Plaintiffs' Amended Complaint ("Am. Compl.") fails to satisfy Rule 9(b) because it does not distinguish between the 85 Defendants in this case and does not provide details of the time, place, speaker, and content of the fraudulent statements allegedly made to Plaintiffs by Defendants over nearly a decade in the context of thousands of auto repair transactions.[1] As Plaintiffs admit, "[a]ll of the Defendant Insurers are separate corporate entities." (Doc. 184 at 21.) Nevertheless, Plaintiffs contend that indiscriminately lumping all 85 Defendants together is permissible because "in reality, there are 7 defendants in this case" who know the "gist" of the challenged conduct. (*Id.* at 42.) Specifically, Plaintiffs erroneously assert that they satisfy Rule 9(b) because (i) they have pled the particulars of 59 "representative

[1] State Farm incorporates by reference in its entirety Certain Defendants' Joint Reply Brief in Support of Motion to Dismiss Amended Class Action Complaint, in compliance with this Court's established procedure. (*See* Scheduling Order Number One, *In re Auto Body Shop Antitrust Litig.*, No. 6:14-md-02557 (M.D. Fla. Aug. 15, 2014), Doc. 2, ¶ 8.)

transactions" (*id.* at 43, 49), (ii) the pleading standard is supposedly relaxed when affiliated entities are involved, and (iii) the facts are supposedly in the possession of Defendants.

Plaintiffs' assertion that lumping is permissible where the Defendants are affiliated corporate entities is not supported by the out-of-circuit case law they cite. That case law in fact confirms that Plaintiffs must allege facts specific to *each* named Defendant. For example, in *Jepson, Inc. v. Makita Corp.*, 34 F.3d 1321 (7th Cir. 1994), relied upon by Plaintiffs, the court emphasized that lumping affiliated corporate defendants together "is an indulgence that a plaintiff should avoid when it comes to attributing acts of mail and wire fraud" and that "absent a compelling reason, a plaintiff is normally not entitled to treat multiple corporate defendants as one entity."[2] *Id.* at 1329, 1331; *see also Pa. Chiropractic Ass'n v. Blue Cross Blue Shield Ass'n*, 2010 WL 3940694, at *2-3 (N.D. Ill. Oct. 6, 2010) and 2010 WL 1979569, at *10-11 (N.D. Ill. May 17, 2010) (dismissing RICO claims where plaintiff had improperly lumped together affiliated defendants; holding that plaintiff, after amending its complaint, could only proceed against defendants with whom it could allege it transacted). Likewise, in *Lawrie v. Ginn Cos., LLC*, 2010 WL 3746725, at *5 & n.22 (M.D. Fla. Sept. 21, 2010), the court dismissed RICO fraud claims, noting, *inter alia*, plaintiff's failure to "differentiate among the various [corporate affiliates]" and stating that "a more

[2] There is no "compelling reason" here. For example, in their 59 representative transactions, Plaintiffs include two transactions attributed to "21st Century." (Doc. 138-5 at 11, 22.) As Plaintiffs state in their brief, both of these transactions relate only to Defendant 21st Century Indemnity Insurance Company (Doc. 184 at 44 n.10), although there are three 21st Century entities named as Defendants. (Am. Compl. ¶ 28.) Moreover, no transaction is listed for any of the numerous other Defendants that Plaintiffs refer to collectively as "Farmers." (*Id.*) Plaintiffs' ability to specify the particular Defendant involved demonstrates that Plaintiffs are not "entitled to treat" the affiliated Defendants in this case "as one entity." *Jepson*, 34 F.3d at 1329. Thus, even if the Amended Complaint stated a claim against 21st Century Indemnity Insurance Company (which it does not), the Amended Complaint would not state a claim against any other "Farmers" affiliated entity.

lenient pleading standard cannot be used to base claims of fraud on conclusory allegations."

Furthermore, contrary to Plaintiffs' contentions (Doc. 184 at 41-44), Defendants' Rule 9(b) argument is not based simply upon Plaintiffs' failure to distinguish between affiliated Defendants. Rather, even accepting *arguendo* Plaintiffs' contention that there are seven corporate group Defendants in this case, Plaintiffs do not and cannot cite any case that would allow them to lump together seven separate Defendants. Plaintiffs do not specify which corporate group made which alleged misrepresentation(s) to which Plaintiff. Plaintiffs do not provide the required details of time, speaker, and content for even a single misrepresentation by *any* Defendant to either Plaintiff. Indeed, although Plaintiffs assert that Defendants' estimates and estimate supplement repairs contained the alleged misrepresentations (*see* Am. Compl. ¶ 261; Doc. 184 at 14, 50 & n.14), they do not quote a single alleged misrepresentation from even one of these documents. *See Burgess v. Religious Tech. Ctr.*, 2015 WL 310249, at *5 (11th Cir. Jan. 26, 2015) (affirming dismissal; complaint "failed to identify any specific examples to illustrate the fraud" and "lump[ed] all the defendants together as the sources of the misrepresentations"). Far from satisfying Rule 9(b), the Amended Complaint fails under Rule 8 because "a defendant seeking to respond to plaintiffs' conclusory allegations . . . would have little idea where to begin." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, n. 10 (2007).

Plaintiffs erroneously assert that Rule 9(b) is satisfied by the 59 transactions included in Exhibits E and F to the Amended Complaint. (*See* Doc. 184 at 49.) The "details" offered by these Exhibits, however, are not the details required by Rule 9(b). The Exhibits do not specify the time, speaker, source, or content of any purported fraudulent misrepresentation.

The Exhibits do not set forth and have nothing to do with the misrepresentations Plaintiffs claim were made by Defendants as to "what the purported prevailing rates were (for all categories of repair compensation)," "how the rates and repair standards are determined," and "that Plaintiffs' charges were not in accordance with purported prevailing rates," and so on. (*Id.* at 52.) The Exhibits are charts prepared by Plaintiffs that merely list repair transactions, amounts paid, and Plaintiffs' claimed amounts of "shortfall" for labor or parts. They give no further information. (*See* Docs. 138-5, 138-6.)[3]

Plaintiffs also erroneously assert that they do not need to allege particulars because all the Defendants "are in unique possession of specific facts." (Doc. 184 at 45.) This principle cannot excuse Plaintiffs from their burden under Rule 9(b) of alleging what specific misrepresentations were made to each of them and by which Defendant, when and whether the misrepresentations were written or oral, and if oral, by which claims representative or supervisor of which Defendant. Such facts are not in Defendants' "unique possession." *Cf. Am. Dental Ass'n.*, 605 F.3d at 1292 (rejecting a similar plea of informational disadvantage where the plaintiffs had received documents "explaining the reimbursement of specific procedures"). Moreover, Plaintiffs' assertion that Defendants can just look to their own records to see which employees were involved in which repair transactions (and should then apparently assume that every one of them made the same misrepresentations) (Doc. 184 at 49) is completely contrary to the requirements of Rule 9(b). For all these reasons, Plaintiffs'

[3] If anything, all the 59 exemplar transactions show is that this lawsuit boils down to a "difference of opinion" over repair charges, where, for example, Plaintiff Crawford's was paid $9,764.82, but wanted to be paid $10,086.00. (Doc. 138-5 at 11.) Such a difference of opinion does not give rise to a RICO claim. (Doc. 158 at 26-27 (citing *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1293 (11th Cir. 2010).

failure to satisfy Rule 9(b) requires dismissal of their RICO and state law fraud claims.

II. PLAINTIFFS' RICO CLAIMS ARE DEFICIENT AS A MATTER OF LAW.

A. Plaintiffs' Allegations of Mail and Wire Fraud Fail.

The deficiencies of Plaintiffs' allegations of fraudulent misrepresentations go beyond their failure to satisfy Rule 9(b). Plaintiffs' allegations that Defendants misrepresented the prevailing rates are based on their contentions that it was somehow improper for Defendants to include the rates charged by DRP shops in the calculation, to pay for painting on an hourly basis, or to use their market power (volume of repairs) to obtain lower prices and that Defendants were somehow required to compensate shops based upon their "expertise," etc. (*E.g.*, Doc. 184 at 3-4, 7, 64.) These contentions have nothing to do with fraud, and there is no legal authority to support Plaintiffs' assertions of impropriety. (Doc. 157 at 3-4, 11-13.) In their Opposition, Plaintiffs still fail to supply any legal authority for the proposition that Defendants are obliged to calculate the prevailing rates in a manner approved by auto body shops. Plaintiffs never have claimed to believe that a shop's "expertise" was factored into the "prevailing rates" or that insurers did not price paint jobs on an hourly basis, or to have been deceived in those regards. Plaintiffs allegations regarding such matters and their recitation of such matters in their brief are merely "irrelevant 'factual enhancement' masquerading as fraudulent conduct." *Lawrie*, 2010 WL 3746725, at *5.

Indeed, Plaintiffs' far-ranging complaints and allegations about how their reimbursement is calculated make clear that the claimed misrepresentations and omissions were not material. (*See* Doc. 158 at 11-13; Doc. 157 at 12.) Plaintiffs' real gripe is not that they were deceived but that they were paid less than they wanted to be paid for repairs to

Defendants' insureds' cars. That is simply not the basis for a RICO claim. *Cf. Am. Dental Ass'n*, 605 F.3d at 1291-92. Likewise, Plaintiffs' varying and contradictory reasons for accepting the compensation offered (they were "coerced" by market forces into doing so, they were "extorted" into to doing so by a purported fear of economic reprisals, and they believed Defendants' purported misrepresentations regarding the "prevailing rates" (Am. Compl. ¶¶ 38, 43, 180-181, 255, 303)) underscore that Plaintiffs' decisions to accept the offered compensation were business decisions made in light of their business needs and market conditions, and were not based upon any purported belief in the alleged misrepresentations as to how the amounts were determined and whether they were in accordance with "prevailing rates." Plaintiffs' attempt to cast their dissatisfaction with the amounts paid as a RICO fraud claim fails as a matter of law. *See Am. Dental*, 605 F.3d at 1293 (plaintiffs "difference of opinion from Defendants" regarding methods of processing plaintiffs' claims did not support "a scheme-driven deception").

B. Plaintiffs' RICO Extortion Claim Fails As a Matter of Law.

As shown in Defendants' moving papers, Plaintiffs' RICO extortion claim is not supported by plausible allegations that Defendants (1) obtained property from them (2) through a wrongful use of fear of economic loss and harm. (*See* Doc. 157 at 8-10; Doc. 158 at 13-16.)

Obtain Property. Plaintiffs claim that "it is beyond dispute that services constitute 'property.'" (Doc. 184 at 55.) *In re Managed Care Litigation*, 298 F. Supp. 2d 1259 (S.D. Fla. 2003), which Plaintiffs cite for this proposition, addressed the meaning of property not for purposes of the Hobbs Act, but for purposes of the requirement under the mail fraud statutes that a person be deprived of money or property. *See id.* at 1279. Courts have recog-

nized that the analysis is different under different statutes, with a more restrictive definition of property applying under the Hobbs Act.[4] Thus, the Second Circuit rejected a defendant's

> attempt[] to analogize the use of "property" in the forfeiture statute to the Hobbs Act text as interpreted by the Supreme Court in *Scheidler* [*v. National Organization for Women, Inc.*, 537 U.S. 393 (2003)], where abortion clinic protesters were charged with obtaining certain "property" by extortion, in violation of the Hobbs Act, 18 U.S.C. § 1951(b)(2). The property at issue there was the "women's right to seek medical services," "doctors' rights to perform their jobs," and "clinics' rights to provide medical services." Rejecting that claim, the *Scheidler* Court found that the "right to seek medical services," for instance, is not "something of value" that can be "exercise[d], transfer[red], or s[old]" and is therefore not properly considered "property" under the Hobbs Act. That analysis does not apply here because we are dealing with a different statute and a different type of property . . . .

United States v. Torres, 703 F.3d 194, 201 n.9 (2d Cir. 2012) (citations omitted), *cert. denied*, 133 S. Ct. 2782 (2013); *see also United States v. Hedaithy*, 392 F.3d 580, 602 & n.21 (3d Cir. 2004) (refusing to apply *Scheidler*'s Hobbs Act analysis to mail fraud statute; stating: "We do not find *Scheidler* applicable to this case because of a crucial distinction between the Hobbs Act and the mail fraud statute."). Here, *Scheidler* is applicable, and under *Scheidler*, Plaintiffs' services do not constitute "property" for purposes of their extortion claim. Moreover, even if services constituted "property" under the Hobbs Act, it is clear that Defendants have not *obtained* services from Plaintiffs and have not obtained money. Rather, Defendants have paid Plaintiffs for services rendered to their insureds. There has been no "deprivation and acquisition of property," as required by *Scheidler*, 537 U.S. at 404. In paying for repairs to their insureds' cars, Defendants did not acquire, or deprive Plaintiffs of, property that Defendants "could exercise, transfer, or sell." *Id.* at 405.

[4] Indeed, the *Managed Care* court specifically noted that the plaintiffs there withdrew their claims of extortion under the Hobbs Act. 298 F. Supp. 2d at 1279 n.7.

Wrongful Use of Fear. As shown in Defendants' moving papers, the Amended Complaint does not adequately allege a wrongful use of fear of economic harm. (Doc. 157 at 2-3, 8-9; Doc. 158 at 15-16.) Plaintiffs, tacitly conceding Defendants' argument by shifting gears, now erroneously assert that the element of wrongfulness is met because Defendants' conduct violates Pennsylvania and North Carolina statutory prohibitions on "steering." (Doc. 184 at 56-57.) No mention of these statutes appears in Plaintiffs' Amended Complaint – much less allegations that Defendants violated them. Moreover, these statutes are not blanket prohibitions on "steering," but clearly permit an insurer to recommend repair shops to its insureds if certain conditions are met. *See, e.g.*, N.C. Gen. Stat. § 58-3-180(b). Even assuming *arguendo* that a violation of these statutory provisions could render the alleged "steering" wrongful as to Plaintiffs, they have not pled and could not plead any such violation.

C. Plaintiffs Have Not Plausibly Alleged Reliance or Materiality.

As shown in Defendants' opening papers, Plaintiffs have not satisfied the elements of materiality or reliance. (Doc. 157 at 10-13, 17-19; Doc. 158 at 10-13.) Plaintiffs incorrectly contend both that they are not required to allege reliance and that their allegations of reliance are sufficient. (Doc. 184 at 51.) In fact, given the nature of Plaintiffs' claims, reliance is necessary in order to establish their RICO wire fraud claim, and Plaintiffs' failure to adequately allege facts supporting reliance renders their RICO fraud claim deficient as a matter of law. *See, e.g., UFCW Local 1776 v. Eli Lilly & Co.*, 620 F.3d 121, 133 (2d Cir. 2010) (reliance may be "a necessary part of the causation theory advanced by the plaintiffs"). Here, Plaintiffs allege that they continue to accept Defendants' payments even after bringing this lawsuit (Am. Compl. ¶ 258), and their 59 "representative transactions" (Doc. 184 at 49) in-

clude transactions that postdate the April 30, 2014 filing of this lawsuit. (*See* Doc. 138-5 at 17, 20-22.) These circumstances show that the alleged misrepresentations were not material and that Plaintiffs did not rely on them in deciding whether to accept repair jobs.

Plaintiffs now attempt to repair this deficiency by the new claim that "insureds" and "third party vehicle owners" somehow relied on "statements made to them by Defendant Insurers regarding the so-called prevailing rates for repairs which limited the compensation to be paid to repair their vehicles pursuant to the purportedly applicable terms of insurance policies." (Doc. 184 at 60.) Plaintiffs conclusorily assert that this purported reliance "resulted" in the suppression of repair compensation. In contrast to *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639, 656 (2008), where the plaintiff's allegations supported the conclusion that the plaintiff's injury was "the foreseeable result of *someone's* reliance on the misrepresentation," here, the Amended Complaint contains no allegation of reliance by insureds and other vehicle owners. Nor do Plaintiffs explain how this purported third-party reliance caused the alleged suppressed compensation. In short, reliance by Plaintiffs is a necessary part of their claim that they were harmed by Defendants' purported wire fraud. Because they have not plausibly alleged reliance, their RICO fraud claims should be dismissed.

D. Plaintiffs' Allegations of a State Farm RICO Association-in-Fact Enterprise Are Deficient As a Matter of Law.

Plaintiffs allege that State Farm "has formed an association-in-fact enterprise . . . comprised of State Farm, its respective Select Service facilities around the country, Mitchell and Audatex." (Am. Compl. ¶ 171.)[5] Plaintiffs' own allegations defeat any argument that

[5] Here, State Farm addresses issues specific to the alleged participation of the thousands of State Farm DRPs in the State Farm enterprise. (*See also* Doc. 57 at 22.) The other alleged enterprises do

State Farm's DRPs have the common interest or common purpose required to make them a part of the purported RICO scheme or that they participate in the management of the alleged RICO enterprise. *MCM Partners, Inc. v. Andrews-Bartlett & Assocs., Inc.*, 62 F.3d 967 (7th Cir. 1995), cited by Plaintiffs, does not support Plaintiffs' contention that the DRPs are part of RICO enterprise as "lower rung participants." (Doc. 184 at 29.) In *MCM*, the "lower rung participants" in the alleged association-in-fact carried out "predicate acts of racketeering . . . 'at the direction' of the enterprise's managers" and were thus "foot soldiers" in the alleged RICO enterprise. 62 F.3d at 979. Here, State Farm's DRPs simply are alleged to have entered into contracts with State Farm to accept compensation based upon prevailing rates in their local markets. They are not alleged to have carried out predicate acts of racketeering. Nor does this Court's opinion in *State Farm Mutual Automobile Insurance Co. v. Weiss*, 410 F. Supp. 2d 1146 (M.D. Fla. 2006), also cited by Plaintiffs, support their argument. In *Weiss*, there was evidence that the doctor in question "had some participation in directing the enterprise" in multiple ways, "performed a number of tasks that enabled the enterprise to meet its goals," and "was not only directly involved in th[e] enterprise, but . . . was essential to its existence." 410 F. Supp. 2d at 1158. No comparable facts are alleged regarding State Farm's DRPs.

In re National Western Life Insurance Deferred Annuities Litigation, 635 F. Supp. 2d 1170 (S.D. Cal. 2009), also cited by Plaintiffs, supports the conclusion that the DRPs are not

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not include DRPs, but only Defendants and Information Providers. The deficiencies of Plaintiffs' allegations regarding the purported enterprise participation by Information Providers such as Mitchell and Audatex are discussed in Doc. 157 at 4-5, 21-25, and Doc. 158 at 19-21. Plaintiffs' contentions in their Opposition regarding the Information Providers are addressed by Certain Defendants' Joint Reply Brief, which State Farm adopts. *See* n.1 *supra*.

part of any association in fact. As stated in *National Western Life*, to meet the common purpose requirement, the plaintiff "'must allege, not only that there was some commonly shared purpose,'" but also that the alleged participants "'*associated together* for that purpose.'" 635 F. Supp. 2d at 1175 (quoting *Lockheed Martin v. Boeing Co.*, 357 F. Supp. 2d 1350, 1362 (M.D. Fla. 2005)). Here, DRPs are alleged to have joined State Farm's Select Service Program, willingly or unwillingly, in order to secure the volume of repair work needed for their respective businesses. (Am. Compl. ¶ 48.) As in *Lockheed Martin*, there is no allegation that the DRPs have "associated together" for a common purpose.

In *Negrete v. Allianz Life Insurance Co. of North America*, 2011 WL 4852314 (C.D. Cal. Oct. 13, 2011), cited by Plaintiffs, the court recognized the general principle that the relationships requirement set forth by *Boyle v. United States*, 556 U.S. 938 (2009), is not met by a "'rimless hub-and-spoke configuration.'" *Negrete*, 2011 WL 4852314, at *5-6 (citation omitted). The court in *Negrete* found, however, that a "unifying rim" was supplied by the defendant's "Marketing Advisory Committee" (or "MAC Board"), which "operated as an intermediary for communications between and among FMOs [field marketing organizations]," which were the alleged spokes of the purported enterprise. *Id.* at *6. MAC Board members (who included FMOs) also "interact[ed] regularly with Allianz senior management and ha[d] a direct voice in company management." *Id.* at *4.

No such "unifying rim" is alleged in the present case. Rather, Plaintiffs allege only that the DRPs individually engaged in similar conduct (becoming Selective Service shops, accepting State Farm's rates, and answering State Farm surveys). As the court held in *Target Corp. v. LCH Pavement Consultants, LLC*, allegations of "parallel conduct" by alleged

enterprise participants are not sufficient to allege "concerted conduct as part of an enterprise," even if the alleged participants have "knowledge that others are engaged in similar conduct." 2013 WL 2470148, at *5 (D. Minn. June 7, 2013) (citing *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 374 (3d Cir. 2010)). Because Plaintiffs have not plausibly alleged an association-in-fact enterprise, their RICO claims fail as a matter of law.

III. PLAINTIFFS' STATE LAW CLAIMS FOR UNJUST ENRICHMENT AND FRAUD SHOULD BE DISMISSED.

A. Plaintiffs' Unjust Enrichment Claim Fails As a Matter of Law.

Plaintiffs' unjust enrichment claim (Count IX) is defective whether analyzed under Illinois, Pennsylvania or North Carolina state law. Plaintiffs fail to identify any benefit conferred upon Defendants from repairs to *their policyholders'* cars.[6] As the Court explained in dismissing the plaintiffs' unjust enrichment claim in *A&E*,[7] the repairs of insureds' vehicles at issue "obviously provided a benefit to the owners of the vehicles. But so far as the . . . Complaint discloses, the only effect of such a repair on the insurance company is the incurring of an obligation to pay for it." (*A&E*, Doc. 293 at 9.) Further, Plaintiffs' contention that "[t]he value of the services performed by Plaintiffs relieved Defendant Insurers of their obli-

[6] Neither case cited by Plaintiffs (Doc. 184 at 70) purports to alter the requirement that a plaintiff must show a benefit conferred on a defendant to state a claim for unjust enrichment. *See Suessenbach Family Ltd. P'ship v. Access Midstream Partners, L.P.*, 2015 WL 1470863, *17 (M.D. Pa. Mar. 31, 2015) ("'[T]o establish a claim for unjust enrichment under Pennsylvania law, a party must show "benefits conferred on defendant by plaintiff . . ."'") (citation omitted); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2011 WL 4501223, *7 (N.D. Cal. Sept. 28, 2011) ("unjust enrichment requires a plaintiff to show 'the receipt of a benefit whose retention without payment would result in the unjust enrichment of the defendant at the expense of the claimant'") (citation omitted).

[7] *See also Capitol Body Shop*, 6:14-cv-06000, Doc. 82 at 6-11, *adopted*, Doc. 83; *Indiana AutoBody Ass'n*, No. 6:14-cv-06001, Doc. 145 at 5-8, *adopted*, Doc. 150; *Brewer Body Shop*, 6:14-cv-06002, Doc. 78 at 5-6, *adopted*, Doc. 84; *Alpine Straightening Sys.*, 6:14-cv-06003, Doc. 95 at 5-8, *adopted*, Doc. 101; *Parker Auto Body*, 6:14-cv-06004, Doc. 109 at 11-12, *adopted*, Doc. 118.

gations to their insureds under the policies" is incorrect. (Doc. 184 at 70.) As this Court explained in *A&E*, even if an obligation to pay could be construed as a "benefit," it is "certainly not something that has been conferred . . . by the repair shop." (*A&E*, Doc. 293 at 10.)

Plaintiffs also offer no response to this Court's holding in *A&E Auto Body* that "'unjust enrichment is concerned solely with enrichments that are unjust independently of wrongs and contracts.'" (*A&E*, Doc. 293 at 10 (citation omitted).) By alleging substantive RICO violations and conspiracy, Plaintiffs' allegations "of wrongful conduct take[] this matter outside of the bounds of an unjust enrichment claim" (*id.*), and require dismissal of Count IX.

B. Plaintiffs' State Law Fraud Claim Fails As a Matter of Law.

Plaintiffs' state law fraud claim is deficient as a matter of law for many of the same reasons, discussed above, that their RICO fraud claim fails. Like Plaintiffs' RICO fraud claim, Plaintiffs' state law fraud claim should be dismissed under Rule 9(b) because Plaintiffs have entirely failed to plead the "'who, what, when, where, and how of the alleged fraud.'" *United States v. Aggarwal*, 2004 WL 5509107, at *3 (M.D. Fla. Nov. 8, 2004) (Presnell, J.) (citation omitted). Plaintiffs' fraud claims are also substantively deficient. In their Opposition, Plaintiffs conclusorily assert that the elements of fraud are met for the reasons they outline in discussing their RICO claims. (Doc. 184 at 72.) As shown above, however, their RICO fraud claims fail for failure to plead a material misrepresentation, reasonable reliance, and proximately caused damages. Their state law fraud claims fail for the same deficiencies. (*See* Doc. 158 at 33.)

IV. CONCLUSION

The Amended Complaint should be dismissed in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of May, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to all counsel of record that are registered with the Court's CM/ECF system.

/s/ *Johanna W. Clark*
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