

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Peterfai v. USA Logistics Inc.

No. 23-cv-1695-WQH-KSC (S.D. Cal. May 30, 2025) · No. 23-cv-1695-WQH-KSC · Decided June 2, 2025

SUMMARY

The United States District Court for the Southern District of California rules on defendants’ motion to dismiss the First Amended Complaint in an interstate household-goods moving dispute. The court grants dismissal of the civil RICO claims for failure to plead predicate acts and a pattern of racketeering with sufficient particularity, declines to consider an unauthenticated Bill of Lading at the motion-to-dismiss stage, and rejects Carmack Amendment preemption of claims against alleged non-carrier defendants. The excerpt does not include the complete disposition of all claims.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	William Q. Hayes
JURISDICTION	United States District Court for the Southern District of California
DECIDED	June 2, 2025
DOCKET	23-cv-1695-WQH-KSC
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the First Amended Complaint asserting federal and California RICO claims, Carmack Amendment and state-law claims, conversion, constructive fraud, negligence, unfair competition, and rescission of contract.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and determines whether the complaint contains sufficient factual matter to state a facially plausible claim. Fraud-based claims, including civil RICO claims, must satisfy Rule 9(b)'s particularity requirement.
PRECEDENTIAL VALUE	unpublished federal district court order; persuasive value only
PARTIES	Laszlo G. Peterfai, Sarah Jane Peterfai v. USA Logistics Inc., dba USA Movers, Top Moving Specialists Inc. dba Hercules Moving Solutions, Ackermann Express LLC, Monopoly Moving LLC, Rado Express

TOPICS

motions to dismiss

civil procedure

commercial litigation

consumer protection

contracts

PRACTICE AREAS

civil procedure

commercial litigation

consumer protection

contracts

racketeering

QUESTIONS PRESENTED

1. Whether the court could consider the defendants' bill of lading under the incorporation-by-reference doctrine.
2. Whether the First Amended Complaint plausibly pleaded civil RICO claims and identified predicate acts with the particularity required by Rule 9(b).
3. Whether the Carmack Amendment preempted Plaintiffs' state-law claims against carrier and noncarrier defendants.
4. Whether Plaintiffs adequately pleaded conversion against the noncarrier defendants.
5. Whether Plaintiffs adequately pleaded constructive fraud against Hercules.
6. Whether the individual defendants could be liable for their own alleged tortious acts and related unfair-competition claims.
7. Whether the claims against Rado were supported by allegations identifying specific conduct by Rado.

HOLDINGS

1. The court declined to consider the defendants' bill of lading under the incorporation-by-reference doctrine because Plaintiffs disputed its authenticity.
2. The First Amended Complaint failed to plead the civil RICO claims because it did not identify which defendants committed which predicate acts and when those acts occurred with the specificity required by Rule 9(b), and it did not adequately allege a pattern of racketeering activity.
3. The Carmack Amendment did not preempt Plaintiffs' state-law claims against defendants who were not alleged to be carriers.
4. Plaintiffs' rescission claim against the carrier defendants was preempted by the Carmack Amendment and was dismissed.
5. Plaintiffs adequately pleaded conversion against the noncarrier defendants.
6. Plaintiffs adequately pleaded constructive fraud against Hercules.
7. The motion to dismiss the remaining claims against the individual defendants was denied because agents may be liable for their own tortious acts even when the principal is also liable, and the UCL claim could proceed where its underlying conversion theory was adequately alleged.

8. The court declined to dismiss the rescission claim against the individual defendants to the extent Plaintiffs alleged that they contracted with those defendants.
9. The remaining claims against Rado were dismissed because the First Amended Complaint did not identify any specific act by Rado or its employees, officers, or agents.

KEY QUOTATIONS

“The elements of a civil RICO claim are “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as ‘predicate acts’) [and] (5) causing injury to plaintiff’s business or property.”” (at 10-11)

“Although the statements in the FAC highlighted by Plaintiffs in their opposition allow for some inference that specific Defendants may have engaged in acts such as extortion or theft from interstate shipment on certain dates, the remaining alleged predicate acts—such as wire fraud, embezzlement, and conspiracy—are not sufficiently supported by factual allegations to satisfy the heightened pleading standard of Rule 9(b).” (at 12-13)

“The elements of a conversion cause of action are (1) plaintiffs’ ownership or right to possession of the property at the time of the conversion; (2) defendants’ conversion by a wrongful act or disposition of plaintiffs’ property rights; and (3) damages.” (at 23-24)

“In that capacity, Plaintiffs have sufficiently alleged that Hercules owed Plaintiffs a fiduciary duty—at minimum, to accurately represent the terms of the transportation arrangement that it arranged on Plaintiffs’ behalf.” (at 34-35)

“If a tortious act has been committed by an agent acting under authority of his principal, the fact that the principal thus becomes liable does not of course exonerate the agent from liability.” (at 35-36)

FACTUAL BACKGROUND

Plaintiffs hired moving companies to transport household goods from California to Texas after receiving estimates totaling \$6,597.49. When movers arrived, they allegedly demanded substantially higher payments, threatened to leave or dump Plaintiffs’ property, transported the property, demanded additional cash or money orders, and ultimately delivered damaged or missing goods. Plaintiffs alleged that the defendants operated an affiliated moving enterprise and asserted RICO, Carmack Amendment, contract, tort, and consumer-protection claims.

PROCEDURAL HISTORY

Plaintiffs filed the action on September 14, 2023. After earlier motions to dismiss were granted in part and denied in part, Plaintiffs filed a First Amended Complaint. The court granted the motion to dismiss the federal and California RICO claims and the rescission claim against carrier defendants, and dismissed the remaining claims against Rado, all without prejudice and with leave to amend. The court otherwise denied the motion, including as to incorporation of the bill of lading, Carmack preemption of claims against noncarrier defendants, conversion, constructive fraud against Hercules, and claims against the individual defendants.

DISPOSITION

CASES CITED

- Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d 1035, 1041 (9th Cir. 2010)
- Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001)
- Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009)
- Edwards v. Marin Park, Inc., 356 F.3d 1058, 1065-66 (9th Cir. 2004)
- Alan Neuman Prods., Inc. v. Albright, 862 F.2d 1388, 1392 (9th Cir. 1989)
- Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist., 940 F.2d 397, 405 (9th Cir. 1991)
- Bly-Magee v. California, 236 F.3d 1014, 1019 (9th Cir. 2001)
- Odom v. Microsoft Corp., 486 F.3d 541, 545 (9th Cir. 2007)
- United Bhd. of Carpenters & Joiners of Am. v. Bldg. & Constr. Trades Dep't, AFL-CIO, 770 F.3d 834, 837 (9th Cir. 2014)
- Living Designs, Inc. v. E.I. Dupont de Nemours & Co., 431 F.3d 353, 361 (9th Cir. 2005)
- Canyon County v. Syngenta Seeds, Inc., 519 F.3d 969, 972 (9th Cir. 2008)
- Sever v. Ala. Pulp Corp., 978 F.2d 1529, 1535 (9th Cir. 1992)
- H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 239, 241-42 (1989)
- Chaset v. Fleer/Skybox Int'l, LP, 300 F.3d 1083, 1087 (9th Cir. 2002)
- Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990)
- In re Silicon Graphics Inc. Sec. Litig., 183 F.3d 970, 986 (9th Cir. 1999)
- Asvesta v. Petroutsas, 580 F.3d 1000, 1010 n.12 (9th Cir. 2009)
- Miller v. Sawant, 18 F.4th 328, 337 (9th Cir. 2021)
- Knievel v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005)
- Gerritsen v. Warner Bros. Ent. Inc., 112 F. Supp. 3d 1011, 1027 n.77 (C.D. Cal. 2015)
- Parrino v. FHP, Inc., 146 F.3d 699, 706 (9th Cir. 1998)
- Campbell v. Allied Van Lines Inc., 410 F.3d 618, 620 (9th Cir. 2005)
- White v. Mayflower Transit, LLC, 543 F.3d 581, 584 (9th Cir. 2008)
- Hall v. N. Am. Van Lines, Inc., 476 F.3d 683, 688 (9th Cir. 2007)
- N.Y., New Haven & Hartford R.R. Co. v. Nothnagle, 346 U.S. 128, 131 (1953)
- Gummer v. Am. Choice Van Lines, LLC, No. 3:11-CV-00808-SC, 2011 WL 5599854, at *2 (N.D. Cal. Nov. 17, 2011)
- Graham-Sult v. Clainos, 756 F.3d 724, 737 (9th Cir. 2014)
- Salahutdin v. Valley of Cal., Inc., 24 Cal. App. 4th 555, 562 (Ct. App. 1994)

- Younan v. Equifax Inc., 111 Cal. App. 3d 498, 516 n.14 (Ct. App. 1980)
- Edumoz, LLC v. Republic of Mozambique, No. CV 13-02309-MMM, 2014 WL 12802921, at *30 (C.D. Cal. July 21, 2014)
- Perkins v. Blauth, 163 Cal. 782, 787 (1912)
- PMC, Inc. v. Kadisha, 78 Cal. App. 4th 1368, 1381 (Ct. App. 2000)
- Russo v. Fed. Med. Servs., Inc., 744 F. Supp. 3d 914, 924 (N.D. Cal. 2024)

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 SOUTHERN DISTRICT OF
CALIFORNIA 9 10 LASZLO G. PETERFAI, an Case No.: 23-cv-1695-WQH-KSC individual,
SARAH JANE 11 PETERFAI, an individual, and on ORDER 12 behalf of themselves and others
similarly situated, 13 Plaintiffs, 14 v. 15 USA LOGISTICS INC., dba 16 USA MOVERS, a
California 17 Corporation; TOP MOVING SPECIALISTS INC. dba 18 HERCULES MOVING
19 SOLUTIONS, a Florida Corporation; ACKERMANN 20 EXPRESS LLC, an Arizona 21
Limited Liability Company; MONOPOLY MOVING LLC, a 22 Texas Corporation; RADO 23
EXPRESS LOGISTICS, INC., an Illinois Corporation; GAL ROBI 24 JEDDAE, an individual;
TRAVIS 25 ACKERMANN, an individual; 26 RAFAEL OHANESYAN, an individual; and DOES
1 through 27 25, inclusive, 28 1 Defendants.

2 HAYES, Judge: 3 The matter before the Court is the Motion to Dismiss First Amended
Complaint 4 (ECF No. 22) filed by Defendants Gal Robi Jeddae, USA Logistics Inc., Top Moving
5 Specialists Inc., Rado Express Logistics, Inc., Rafael Ohanesyan, Monopoly Moving LLC, 6
Travis Ackermann, and Ackermann Express LLC. 7 I. BACKGROUND 8 On September 14, 2023,
Plaintiffs Laszlo G. Peterfai and Sarah Jane Peterfai 9 (“Plaintiffs”) initiated this action by filing a
Complaint against Defendants USA Logistics 10 Inc. (“USA Logistics”), Top Moving Specialists
Inc. d/b/a Hercules Moving Solutions 11 (“Hercules”), Rado Express Logistics, Inc. (“Rado”),
Ackermann Express LLC 12 (“Ackermann Express”), Monopoly Moving LLC (“Monopoly
Moving”), Gal Robi Jeddae 13 (“Jeddae”), Travis Ackermann (“Ackermann”), and Rafael
Ohanesyan (“Ohanesyan”) 14 (collectively, “Defendants”).

(ECF No. 1.) 15 On November 29, 2023, Defendants USA Logistics and Jeddae filed a Motion to
16 Dismiss. (ECF No. 5.) 17 On December 22, 2023, Defendants Ackermann, Ackermann
Express, and 18 Monopoly Moving filed an Answer to the Complaint. (ECF No. 8.) 19 On January
11, 2024, Defendants Hercules, Rado, and Ohanesyan filed a Motion to 20 Dismiss. (ECF No. 13.)

21 On September 24, 2024, the Court issued an Order (the “September Order”) granting 22 in part
and denying in part the Motions to Dismiss (ECF Nos. 5, 13). (ECF No. 17.) 23 On November 13,
2024, Plaintiffs filed the operative First Amended Complaint (the 24 “FAC”). (FAC, ECF No. 20.)
25 On January 6, 2025, Defendants collectively filed the pending Motion to Dismiss 26 First
Amended Complaint (the “Motion to Dismiss”).

(ECF No. 22.) On January 27, 2025, 27 28 1 Plaintiffs filed a Response in opposition to the Motion to Dismiss. (ECF No. 23.) On 2 February 3, 2025, Defendants filed a Reply. (ECF No. 24.) 3 II. ALLEGATIONS IN THE FIRST AMENDED COMPLAINT 4 “In the fall of 2022, Plaintiffs were moving from California to Texas.” (FAC ¶ 19.) 5 Plaintiff Sarah located Defendant Hercules through online research for moving companies.

6 Id. “On or about September 3, 2022, Defendant Hercules communicated via internet and 7 telephone to Plaintiffs to provide a quote and then ‘Binding Moving Estimates’ for packing 8 and transporting household goods and furnishings from Rancho Santa Fe, California to 9 Houston, Texas.” Id. 10 In response to Plaintiff Sarah’s request to use a moving “pod,” Defendant Hercules 11 represented that it “did not have any pods available until the first week of January 2023, 12 but it had a ‘turn around’ truck, which would be less expensive, direct, and only Plaintiffs’ 13 belongings would be on that truck during the entirety of the transport.” Id. ¶ 20.

Defendant 14 Hercules additionally represented that it “only hires moving companies with five-star 15 ratings,” and “Plaintiffs’ items would not be transferred to another truck during transport.” 16 Id. 17 “On or about September 3, 2022, after instructing Plaintiffs to estimate the 18 measurement for the items that Plaintiffs sought to move,” Defendant Hercules sent 19 Plaintiffs a written “‘Binding Moving Estimate’ with Defendant Hercules’ logo at the top, 20 for the interstate move of 652 cubic feet of Plaintiffs’ household goods and furnishings 21 from California to Texas.” Id. ¶ 21.

The Binding Moving Estimate “provided a Total 22 Moving Estimate of \$4,536.09 and at that time, Plaintiffs paid the requested ‘Customer 23 Payment’ of \$1,570.00 by credit card, which ultimately reflected on the credit card 24 statement as a payment to Defendant Rado.” Id. 25 On or about September 15, 2022, Plaintiffs added a few more items to their move 26 and communicated the update to Defendant Hercules.

Id. ¶ 22. In response, Defendant 27 Hercules sent Plaintiffs “a second written ‘Binding Moving Estimate’ with Defendant 28 Hercules’ logo at the top, for the interstate move of 812 cubic feet of Plaintiffs’ household 1 goods and furnishings from California to Texas.” Id. The second Binding Moving Estimate 2 provided a “Total Moving Estimate of \$6,597.49 and Plaintiffs paid an additional 3 \$1,000.00 by credit card at that time to cover the requested ‘Customer Payment.’” Id. 4 “On September 16, 2022, a moving truck arrived at Plaintiffs’ home in Rancho Santa 5 Fe, California with 7 men, whom Plaintiffs later learned to be associated with Defendant 6 USA Logistics.” Id. ¶ 23.

These men told Plaintiffs that “the items they wanted moved 7 needed to be taken out of Plaintiffs’ home and garage and placed on the street and driveway 8 and then placed on the truck.” Id. Some of the men began packing items and wrapping 9 furniture, while others removed all belongings designated for transport from Plaintiffs’ 10 home and garage, placing them in the street and

driveway before loading them into the 11 moving truck, “which appeared to be a standard 26 foot box truck.” Id. 12 After Defendant USA Logistics’ men had begun placing Plaintiffs’ items on the 13 truck, David of USA Logistics informed them that their items “would ‘fill the entire truck’” 14 and that the move would actually cost \$23,000.00—“more than three times the amount 15 contained in the [second Binding Moving Estimate].” Id. ¶ 24.

As soon as David stated 16 this, Plaintiff Laszlo instructed the men to stop and explained that “Plaintiffs would not be 17 moving forward with the move.” Id. ¶ 26. “David of USA Logistics then threatened 18 Plaintiffs by saying that if Plaintiffs stopped the move, in addition to losing Plaintiffs’ 19 deposit of \$2,570.00, Plaintiffs would have to pay \$5,000.00 more to unload and place 20 Plaintiffs’ belongings in the street and driveway”—not even the house or garage.

Id. ¶ 27. 21 “Plaintiffs felt like they had no choice so when David said that Defendant USA Logistics 22 would complete the move for \$17,500.00, Plaintiffs paid the additional deposit demanded 23 of \$9,700.00 (at this time the total amount of deposits paid were \$12,270). Despite 24 Plaintiffs’ protests, once the men from USA Logistics placed Plaintiffs’ remaining items 25 in the truck, they immediately drove away with Plaintiffs’ belongings.” Id. ¶ 28.

26 “Defendant Jeddæ and/or Doe Defendants 6-10 organized and directed employees of 27 Defendant USA Logistics to intentionally and purposefully load items on to the moving 28 truck” and then increase the price, in violation of USDOT regulations. Id. ¶ 25. 1 On or about September 24, 2022, at 12:30 p.m., Ackermann of Ackermann Express 2 and Monopoly Moving called Plaintiff Sarah and informed her, for the first time, that he 3 would “deliver Plaintiffs’ items to Plaintiffs’ home in Houston, Texas at 3:00 pm that same 4 day.” Id. ¶ 29. “Defendant Ackermann also demanded that Plaintiffs pay a purported 5 remaining balance of \$5,225.00 in cash or money orders upon delivery.

Defendant 6 Ackermann asserted that he would only take cash or United States Postal Service money 7 orders and no other form of payment.” Id. “Plaintiff Sarah protested the cash/money order 8 payment and disputed that Plaintiffs owed the money demanded by Defendants 9 Ackermann, Ackermann LLC and Monopoly.” Id. ¶ 30.

In response, “Defendant 10 Ackermann refused to deliver Plaintiffs’ items and threatened to dump Plaintiffs’ 11 belongings in the desert unless Plaintiffs paid him the full amount demanded in cash or 12 United States Postal Service money orders.” Id. “Plaintiffs requested that the delivery be 13 delayed until at least Monday, September 26, 2022 so that cash or money orders could be 14 obtained to pay the ransom payment as Defendant Ackermann had demanded.

Defendant 15 Ackermann never responded.” Id. ¶ 31. “On Monday, September 26, 2022, Plaintiff Sarah 16 rushed as quickly as she could in the morning to get cash from her bank and then to the 17 United States Post Office to get money orders to pay the \$5,225.00 ransom demand. Then 18

Plaintiff Sarah went back to Plaintiffs' home and waited." Id. ¶ 33. 19 "On September 26, 2022, shortly after Plaintiff Sarah returned home from the post office, Defendants Ackermann, Ackermann LLC and Monopoly" arrived in a different 21 truck than the one used to pick up Plaintiffs' belongings, forced paperwork on Plaintiff 22 Sarah to sign, took Plaintiffs' money orders, dumped boxes of Plaintiffs' items in the 23 garage and driveway, and refused to provide copies of the paperwork, including the Bill of 24 Lading.

Id. ¶ 34. 25 After unpacking, Plaintiffs realized that most of their items were either damaged or 26 missing. Id. ¶ 35. Relying on Defendant Hercules' assurance that their items were insured, 27 Plaintiffs submitted a claim, only to learn that USA Logistics was involved in the process. 28 1 Id. For over \$32,164.00 in damages or losses, Plaintiffs were offered just \$375.60— 2 contingent on signing a Release Form, which they refused.

Id. 3 "None of the Defendants possess or possessed the required certifications and/or 4 licenses from the Department of Consumer Affairs, Bureau Of Household Goods And 5 Services in California." Id. ¶ 36. Defendants' pattern of extorting interstate customers for 6 their property is evidenced by numerous similar consumer complaints. Id. ¶ 37; see also 7 id. ¶¶ 37–38, 51 (describing Defendants' alleged history of fraudulent behavior as 8 exhibited by customer complaints and a Newsweek article).

9 "Defendants jointly constituted an 'enterprise' as defined in 18 U.S.C. section 10 1961(4)." Id. ¶ 47. Defendant Ohanesyan was the "leader and organizer of the enterprise" 11 and "coordinated and directed other Defendants, other entities, lower level employees, 12 members, and associates of the affiliated companies and was responsible for orchestrating 13 the scheme" described in the FAC.

Id. ¶ 50. "Defendant Ohanesyan along with Defendants 14 Jeddah and Ackermann organized a network, across the United States of America, of 15 affiliated companies, co-conspirators, employees and associates to defraud and extort 16 consumers." Id. ¶ 51.

The enterprise "constitutes an ongoing and continuing organization 17 whose members function as a continuing unit for the common purpose of achieving the 18 objectives and purposes of" the enterprise. Id. ¶ 54. 19 "Defendants operated as if they were a single business entity by operating and 20 working through affiliated companies named USA Logistics, Hercules, Rado, Monopoly, 21 and other entities presently unknown." Id. ¶ 48. "Individual Defendants owned, operated, 22 and/or worked as employees, members, and associates of the affiliated companies." Id. 23 ¶ 49. "[E]ach of the Defendants amongst each other agreed to commit, and did so commit, 24 at least two acts of racketeering activity" such as "(a) 18 U.S.C. §1343 (wire fraud); (b) 18 25 U.S.C. §659 (theft from interstate shipment); (c) 18 U.S.C. §1951(a) (interference with 26 commerce, robbery, or extortion); (d) California Penal Code §186.2(5) (embezzlement); 27 28 1 (e) California

Penal Code §186.2(6) (extortion); and (f) California Penal Code §186.2(25) 2 (conspiracy to commit a crime).” Id. ¶¶ 52,1 55.

3 Plaintiffs assert the following causes of action against all Defendants: (1) violations 4 of the Racketeer Influenced and Corrupt Organizations Act (“RICO”); (2) violations of the 5 California Control of Profits of Organized Crime Act (“CA RICO”); and (3) Rescission of 6 Contract. Plaintiffs assert a cause of action for violations of the Carmack Amendment 7 against Defendants USA Logistics, Ackermann LLC, Hercules (only if determined to have 8 been a carrier at all relevant times), and Does 16–20 (collectively, the “Carrier 9 Defendants”).

Plaintiffs assert the following causes of action against all Defendants except 10 the Carrier Defendants: (1) Conversion/Civil Theft; (2) Negligence; and (3) violations of 11 Unfair Competition Laws. Finally, Plaintiffs assert a cause of action for Constructive Fraud 12 against Defendants Hercules and Does 11–15. 13 Plaintiffs seek the following relief: preliminary and permanent injunctions on behalf 14 of themselves and others similarly situated, enjoining and restraining Defendants from 15 continuing the wrongful, unlawful, unfair and fraudulent business practices as set forth 16 above; disgorgement; statutory and treble damages and penalties; compensatory damages; 17 special damages; general damages; punitive damages; interest and prejudgment interest; 18 reasonable attorney’s fees and costs; and such other relief as the Court deems just and 19 proper.

20 III. LEGAL STANDARD 21 Rule 12(b)(6) of the Federal Rules of Civil Procedure permits dismissal for “failure 22 to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b) (6). In order to state 23 a claim for relief, a pleading “must contain ... a short and plain statement of the claim 24 showing that the pleader is entitled to relief.” Fed. R. Civ.

P. 8(a)(2). Dismissal under Rule 25 12(b)(6) “is ‘proper only where there is no cognizable legal theory or an absence of 26 27 1 Although labeled as paragraph fifty-two on page twenty-one of the FAC, this appears to be a 28 1 sufficient facts alleged to support a cognizable legal theory.’” Shroyer v. New Cingular 2 Wireless Servs., Inc., 622 F.3d 1035, 1041 (9th Cir.

2010) (quoting Navarro v. Block, 250 3 F.3d 729, 732 (9th Cir. 2001)). 4 “To survive a motion to dismiss, a complaint must contain sufficient factual matter, 5 accepted as true, to ‘state a claim that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 6 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). “A claim 7 has facial plausibility when the plaintiff pleads factual content that allows the court to draw 8 the reasonable inference that the defendant is liable for the misconduct alleged.” Id. 9 However, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ 10 requires more than labels and conclusions, and a formulaic recitation of the elements of a 11 cause of action will not do.” Twombly, 550 U.S. at 555 (quoting Fed.

R. Civ. P. 8(a)). While 12 a pleading “does not require ‘detailed factual allegations,’” Rule 8 nevertheless “demands 13 more than an unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 14 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). A court is not “required to accept as true 15 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable 16 inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.

2001). “In 17 sum, for a complaint to survive a motion to dismiss, the non-conclusory factual content, 18 and reasonable inferences from that content, must be plausibly suggestive of a claim 19 entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). 20 Federal Rule of Civil Procedure 9(b) applies where a plaintiff alleges fraud, 21 including in the context of civil RICO claims.

See Fed. R. Civ. P. 9(b); *Edwards v. Marin 22 Park, Inc.*, 356 F.3d 1058, 1065–66 (9th Cir. 2004) (quoting *Alan Neuman Prods., Inc. v. 23 Albright*, 862 F.2d 1388, 1392 (9th Cir. 1989)). Rule 9(b) “requires a pleader of fraud to 24 detail with particularity the time, place, and manner of each act of fraud, plus the role of 25 each defendant in each scheme.” *Lancaster Cmty.*

Hosp. v. Antelope Valley Hosp. Dist., 26 940 F.2d 397, 405 (9th Cir. 1991). “To comply with Rule 9(b), allegations of fraud must 27 be specific enough to give defendants notice of the particular misconduct which is alleged 28 to constitute the fraud charged so that they can defend against the charge and not just deny 1 that they have done anything wrong.” *Bly-Magee v. California*, 236 F.3d 1014, 1019 (9th Cir. 2001).

2001) (citation omitted). 3 IV. DISCUSSION 4 Defendants move to dismiss Plaintiffs’ claims against them on the following 5 grounds: (1) Federal law preempts Plaintiffs’ California statutory and common law claims; 6 (2) the Bill of Lading is the contract between the parties and its provisions and limitations 7 on liability control; (3) Plaintiffs fail to plead conversion; (4) Plaintiffs fail to plead RICO 8 claims; (5) Plaintiffs fail to plead constructive fraud against Defendant Hercules; 9 (6) Plaintiffs fail to plead personal liability against Defendants Jeddae, Ohanesyan, and 10 Ackermann (the “Individual Defendants”); and (7) Plaintiffs fail to allege any specific acts 11 of Defendant Rado.

12 A. Bill of Lading 13 Defendants contend that the Bill of Lading limits the Carrier Defendants’ liability to 14 \$0.60 per pound for Plaintiffs’ damaged, lost, or destroyed property, and that Plaintiffs 15 agreed to this limitation by signing the Bill of Lading. (ECF No. 22-1 at 10.) Plaintiffs do 16 not attach the Bill of Lading to the FAC. Generally, when ruling on a motion to dismiss, 17 “a district court may not consider any material beyond the pleadings.” *Hal Roach Studios, 18 Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir.

1990). However, 19 Defendants attach the Bill of Lading (“Exhibit 2”) to their Motion to Dismiss (ECF No. 20 22-3) and request the Court consider the terms of the Bill of Lading pursuant to the 21 incorporation-by-reference doctrine. (ECF No. 22-1 at 21.) 22 The incorporation-by-reference doctrine permits a court to “take into account 23 documents ‘whose contents are alleged in a complaint and whose authenticity no party 24 questions, but which are not physically attached to the [plaintiff’s] pleading.’” *Knievel v. 25 ESPN*, 393 F.3d 1068, 1076 (9th Cir.

2005) (quoting *In re Silicon Graphics Inc. Sec. Litig.*, 26 183 F.3d 970, 986 (9th Cir. 1999)) (alteration in original). 27 Plaintiffs contend that “Defendants’ Exhibit 2 does not comport with papers and 28 pictures in Plaintiffs’ possession” and that “Defendants have failed to authenticate Exhibit 1 2.” (ECF No. 23 at 16.)

Because Plaintiffs dispute the authenticity of the Bill of Lading 2 submitted by Defendants, and “the court must accept [their] representation that there is a 3 dispute for purposes of applying the incorporation by reference doctrine,” *Gerritsen v. 4 Warner Bros. Ent. Inc.*, 112 F. Supp. 3d 1011, 1027 n.77 (C.D. Cal. 2015), the Court 5 declines to incorporate-by-reference the Bill of Lading. 2 6 Because the Court declines to incorporate-by-reference the Bill of Lading, the Court 7 does not consider Defendants’ contention that “the Bill of Lading is the contract between 8 the parties and its provisions and limitations on liability control.” (ECF No. 22-1 at 9.)

9 B. The RICO Claims 10 Defendants contend that Plaintiffs’ RICO claims should be dismissed for failure to 11 meet the heightened pleading requirements established by Rule 9(b) of the Federal Rules 12 of Civil Procedure and for failure to identify, with the requisite specificity, two predicate 13 acts of racketeering activity. 14 As the Court noted in the September Order: 15 The RICO Act provides for civil and criminal liability.

Odom v. Microsoft Corp., 486 F.3d 541, 545 (9th Cir. 2007) (citing Pub. L. No. 91-452, § 901, 16 84 Stat. 922 (1970)) (codified at 18 U.S.C. § 1964(c)). The elements of a civil 17 RICO claim are “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as ‘predicate acts’) [and] (5) causing injury to 18 plaintiff’s business or property.” *United Bhd. of Carpenters & Joiners of Am.*

19 v. Bldg. & Constr. Trades Dep’t, AFL-CIO, 770 F.3d 834, 837 (9th Cir. 2014) (quoting *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 20 361 (9th Cir. 2005)). “‘Racketeering activity’ includes, inter alia, ‘any act 21 which is indictable’ under the Hobbs Act, 18 U.S.C. § 1951, or ‘any act or threat involving ... extortion, ... which is chargeable under State law.’” *Id.* 22 23 24 2 The Court notes Defendants’ contention that “California law is clear that contracts at issue must be 25 attached to the complaint,” (ECF No. 24 at 8), but finds that any such state-law pleading requirements are inapplicable in federal court.

Miller v. Sawant, 18 F.4th 328, 337 (9th Cir. 2021) (“Pleading in federal court is governed by Federal Rules of Civil Procedure, not state pleading requirements.”). The Court further notes Defendants’ request for judicial notice of Exhibit 1 to the Motion to Dismiss, (see ECF No. 24 at 8), but declines to take judicial notice of the document, as the Court does not rely on it in this Order.

Asvesta v. Petroutsas, 580 F.3d 1000, 1010 n.12 (9th Cir. 2009) (denying request to dismiss) (quoting 18 U.S.C. § 1961(1)(A), (B)) (cleaned up). “A ‘pattern of racketeering activity’ requires at least two predicate acts of racketeering activity, as defined in 18 U.S.C. § 1961(1) within a period of ten years.” 3 Canyon County v. Syngenta Seeds, Inc., 519 F.3d 969, 972 (9th Cir.

2008) (citing 18 U.S.C. § 1961(5)). The Ninth Circuit has observed that “[t]he identification of a pattern of racketeering has proven a challenging task for courts.” Sever v. Ala. Pulp Corp., 978 F.2d 1529, 1535 (9th Cir. 1992) (quotation omitted).

The Supreme Court in H.J. Inc. v. Nw. Bell Telephone Co., 492 U.S. 229 (1989), “considered the term in an effort to provide some guidance to lower courts struggling with it” and “held that to show a pattern of racketeering activity, a RICO plaintiff must ‘show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.’” Sever, 978 F.2d at 1535 (quoting H.J.

Inc., 492 U.S. at 239). The Court additionally notes that “Congress enacted RICO to combat organized crime, not to provide a federal cause of action and treble damages” for every tort plaintiff. Chaset v. Fleer/Skybox Int’l, LP, 300 F.3d 1083, 1087 (9th Cir. 2002) As relevant to their RICO claims, Plaintiffs allege that: From at least on or about September 2020, and continuing through the date of the complaint was filed, in the Southern District of California and elsewhere, Defendants, and each being a person or entity employed by, a member of, and associated with the Moving Enterprise, an Enterprise engaged in, and the activities of which affected, interstate and foreign commerce, together with others known and unknown, did knowingly and intentionally conspire to conduct and participate, and did conduct and participate, directly and indirectly, in the conduct of the affairs of the Moving Enterprise through a pattern of racketeering activity, as defined in 18 U.S.C. §1961(1) and (5) and 21 California Penal Code §186.2, consisting of multiple acts indictable under: (a) 18 U.S.C. §1343 (wire fraud); (b) 18 U.S.C. §659 (theft from interstate shipment); (c) 18 U.S.C. §1951(a) (interference with commerce, robbery, or extortion); (d) California Penal Code §186.2(5) (embezzlement); (e) California Penal Code §186.2(6) (extortion); and (f) California Penal Code §186.2(25) (conspiracy to commit a crime).

Plaintiffs contend that, “[a]fter the Court previously found that the initial Complaint did not state facts with sufficient specificity, Plaintiffs submitted a comprehensive

FAC 28 1 setting forth facts that detail and identify the ‘who, what, when, where, and how’ of the 2 alleged acts, as required under Rule 9(b).” (ECF No. 23 at 9.)

However, the Court finds 3 that Plaintiffs’ FAC still fails to clearly allege which Defendants committed which of the 4 six alleged predicate acts and when those acts occurred. Although the statements in the 5 FAC highlighted by Plaintiffs in their opposition allow for some inference that specific 6 Defendants may have engaged in acts such as extortion or theft from interstate shipment 7 on certain dates, the remaining alleged predicate acts—such as wire fraud, embezzlement, 8 and conspiracy—are not sufficiently supported by factual allegations to satisfy the 9 heightened pleading standard of Rule 9(b).³ *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 10 531, 540 (9th Cir.

1989) (finding that Rule 9(b) requires pleadings to identify “the 11 circumstances constituting fraud so that a defendant can prepare an adequate answer”). 12 Furthermore, isolated allegations that some Defendants committed a single act on a 13 particular date do not satisfy the RICO requirement of showing a pattern of racketeering 14 activity, which necessitates a series of related predicate acts extending over a substantial 15 period of time.

See *H.J. Inc.*, 492 U.S. at 241–42 (discussing RICO’s pattern element and 16 its requirement of continuity over a “substantial period of time”). 17 18 19 3 Although paragraph fifty-six of the FAC contains additional detail regarding several alleged predicate 20 acts—for example, that “[i]t was and is further part of the Moving Enterprise that its members use wire 21 communications, such as emails, to send false representations to customers and potential customers, such as Plaintiffs, to induce them to hire affiliated companies of the Moving Enterprise to move their household 22 goods”; that “[i]t was and is further part of the Moving Enterprise that its members at times caused customers’ household goods to be stolen while transporting the goods interstate by not delivering the 23 household goods after loading them and receiving payment”; and that “[a]s shown herein, consumers, including Plaintiffs, paid money to Defendants who reinvested the racketeering money by paying (a) 24 insurance needed for USDOT licenses, (b) USDOT license fees, (c) Secretary of State filing fees for 25 business entities, and (d) other fees, which all enabled and continues to enable Defendants to profit from their racketeering,” (FAC ¶ 56)—the Court noted in the September Order that, “[u]nder Rule 9(b)’s 26 heightened pleading standard, Plaintiffs cannot ‘lump together the defendants without identifying the particular acts or omissions that each defendant committed.’” (ECF No. 17 at 11 (quoting *Mostowfi v. 27 i2Telecom Int’l, Inc.*, 269 Fed.

Appx. 621, 624 (9th Cir. 2008)).)) The FAC’s continued use of generalized group allegations impermissibly suggests that all Defendants participated in each predicate act and does 28 1 Accordingly, the Motion to Dismiss the civil RICO claims against the Defendants is 2 granted. 3 C. Preemption of State Law Claims 4 Defendants contend that Plaintiffs’ claims for: (1) RICO; (2) CA RICO; 5 (3) Conversion/Civil Theft; (4) Rescission of Contract; (5) Constructive Fraud; 6 (6)

Negligence; and (7) Violations of Unfair Competition Laws are barred under the Carmack Amendment, which “preempts state and common law remedies against interstate carriers.” (ECF No. 22-1 at 8.)

Because the Court has dismissed Plaintiffs’ RICO and CA 9 RICO claims on other grounds, it does not consider whether they are preempted. As discussed in the September Order: The Carmack Amendment, enacted in 1906, was designed to establish a “national scheme of carrier liability for goods damaged or lost during interstate shipment.” *Campbell v. Allied Van Lines Inc.*, 410 F.3d 618, 620 (9th Cir.

2005). The Carmack Amendment “provides the exclusive cause of action” against carriers for interstate shipping contract claims, and “it completely preempts state law claims alleging delay, loss, failure to deliver, and damage to property.” *White v. Mayflower Transit, LLC*, 543 F.3d 581, 584 (9th Cir. 2008); *Hall v. N. Am. Van Lines, Inc.*, 476 F.3d 683, 688 (9th Cir.

2007) (holding that the Carmack Amendment is the “exclusive cause of action” against a carrier of interstate goods, and this extends to “all manner of harms” arising from loss or damage to the shipment); *N.Y., New Haven & Hartford RR Co. v. Nothnagle*, 346 U.S. 128, 131 (1953) (“Congress superseded diverse state laws with a nationally uniform policy governing interstate carriers’ liability for property loss.”).

(ECF No. 17 at 8.) Plaintiffs assert claims against two sets of defendants: the Carrier Defendants (Defendants USA Logistics, Ackermann LLC, Hercules, and Does 16–20) and the Non-Carrier Defendants (Defendants Jeddae, Rado, Ohanesyan, Monopoly Moving, Ackermann, and Hercules). Plaintiffs include Defendant Hercules in the definition of “Non-Carrier Defendants” only to the extent As the Court held in the September Order, the Carmack Amendment does not extend to defendants not alleged to be carriers.

(ECF No. 17 at 9 (citing *Chubb Grp. of Ins. Cos. 3 v. H.A. Transp. Sys., Inc.*, 243 F. Supp. 2d 1064, 1068–69 (C.D. Cal. 2002) and *FNS, Inc. 4 v. Bowerman Trucking, Inc.*, No. 09–CV–0866–IEG (PCL), 2010 WL 532421, at *4 (S.D. Cal. Feb. 9, 2010)).) Consequently, based upon the allegations of the FAC, the Court rejects Defendants’ argument that Plaintiffs’ state-law claims against Non-Carrier Defendants are barred by the Carmack Amendment and denies their motion to dismiss these claims on preemption grounds.

Plaintiffs’ remaining state-law claim against the Carrier Defendants is limited to rescission of contract. Although Plaintiffs contend that “[s]tate law claims, such as the California RICO claim, that are based on facts that are separate and independent to the loss or damages to goods survive preemption under Carmack,” (ECF No. 23 at 12), this Court held otherwise in the September Order.

(See ECF No. 17 at 9.) Plaintiffs' rescission of 14 contract claim—premised on allegations of fraud—is preempted by the Carmack 15 Amendment, which “constitutes a complete defense to common law claims against 16 interstate carriers for negligence, fraud and conversion, even though these claims may not 17 be completely preempted.” White, 543 F.3d at 584.

Because Plaintiffs' rescission of 18 contract claim arises from allegations of fraudulent inducement, it falls within the scope of 19 the Carmack Amendment's preemptive reach. See *Gummer v. Am. Choice Van Lines, LLC*, 20 No. 3:11-CV-00808-SC, 2011 WL 5599854, at *2 (N.D. Cal. Nov. 17, 2011) (holding that 21 a rescission claim based on fraudulent inducement could not escape Carmack preemption).

22 Accordingly, Plaintiffs' rescission claim is dismissed as preempted as to the Carrier 23 Defendants. 24 D. Conversion Claim Against the Non-Carrier Defendants 25 26 27 shall be included as one of the Non-Carrier Defendants only if Hercules is determined to have not been a 28 1 Defendants move to dismiss Plaintiffs' conversion/civil theft claim, which is 2 asserted against the Non-Carrier Defendants only.

Defendants contend that Plaintiffs' 3 conversion claim fails because “Plaintiffs failed to demonstrate any wrongful dominion of 4 Plaintiffs' property, or that Defendants have been unjustly enriched.” (ECF No. 22-1 at 5 12.)⁵ 6 “The elements of a conversion cause of action are (1) plaintiffs' ownership or right 7 to possession of the property at the time of the conversion; (2) defendants' conversion by 8 a wrongful act or disposition of plaintiffs' property rights; and (3) damages.” *Graham-Sult 9 v. Clainos*, 756 F.3d 724, 737 (9th Cir.

2014) (alteration omitted). 10 Here, the Complaint alleges that “Defendants substantially interfered with Plaintiffs' 11 property by knowingly and/or intentionally preventing Plaintiffs from having access to 12 their personal property and/or destroying Plaintiffs' personal property and/or refusing to 13 return certain items of Plaintiffs' personal property after Plaintiffs demanded their return.” 14 (FAC ¶ 85.)

The Complaint alleges that this conduct “damaged Plaintiffs by interfering 15 with and preventing access to their property and by way of payment of fees for an interstate 16 move Defendants conducted illegally.” *Id.* ¶ 87.

As this Court found in the September 17 Order as to Defendant Rado only, these allegations are sufficient to state a claim for 18 conversion against the Non-Carrier Defendants. 19 Defendants' Motion to Dismiss Plaintiffs' conversion claim is denied. 20 E. Constructive Fraud Claim Against Hercules 21 Defendants move to dismiss Plaintiffs' constructive fraud claim against Defendant 22 Hercules.⁶ Defendants contend that Plaintiffs fail to allege constructive fraud against 23 24 5 The Court notes that Defendants cite to several cases discussing the doctrine of conversion in relation to 25 carriers.

However, because Plaintiffs allege conversion as to the Non-Carrier Defendants only, the Court does not consider Defendants' contentions relating to carriers. 26 6 As discussed briefly above, Plaintiffs allege that "Defendant Hercules purportedly operates a common 27 carrier business and/or [is] a purported broker." (FAC ¶ 5.)

As such, Plaintiffs contend that "Hercules shall be included as one of the Non-Carrier Defendants only if Hercules is determined to have not been a 28 1 Hercules because "[n]owhere in the First Amended Complaint have Plaintiffs explained 2 any fiduciary relationship with any Defendant." (ECF No. 22-1 at 14.) "The term 'broker' 3 was used in the Complaint, but there are no allegations a broker in the transportation 4 industry is, for example, a 'broker' in real estate or selling financial assets." Id. 5 "Constructive fraud is a unique species of fraud applicable only to a fiduciary or 6 confidential relationship." *Salahutdin v. Valley of Cal., Inc.*, 24 Cal. App.

4th 555, 562 (Ct. 7 App. 1994) (citation omitted). To succeed in a constructive fraud claim, a plaintiff must 8 show: (1) the existence of a fiduciary or confidential relationship; (2) nondisclosure; (3) 9 intent to deceive; and (4) reliance and resulting injury. *Younan v. Equifax Inc.*, 111 Cal. 10 App. 3d 498, 516 n.14 (Ct. App. 1980). "Like fraud claims, constructive fraud claims 11 [under California law] are subject to the particularity requirements of Rule 9(b)." See 12 *Edumoz, LLC v. Republic of Mozambique*, No. CV 13-02309-MMM, 2014 WL 12802921, 13 at *30 (C.D.

Cal. July 21, 2014). 14 In their opposition to Defendants' Motion to Dismiss, Plaintiffs contend that an 15 excerpt contained in the Motion to Dismiss proves that Hercules has admitted "it was acting 16 on behalf of Plaintiffs (as a principal) with Hercules as an agent," and thus, the FAC 17 properly alleges a constructive fraud cause of action against Hercules.

(ECF No. 23 at 14– 18 15.) Plaintiffs rely on the following excerpt of the "terms and conditions of [Hercules'] 19 confirmation e-mail," which is quoted in and attached to Defendants' Motion to Dismiss: 20 Customer has hired Hercules Moving Solutions as a moving coordinator/shipper agent / broker and not to handle or otherwise participate 21 in a move as a carrier in acting as a shipper agent only, Hercules Moving 22 Solutions is not responsible for any acts or omissions of the carrier or its employees or agents.

Customer must pursue the carrier for all claims for 23 property damage and personal injury or death, including without limitation, 24 any daims [sic] for damage to property, lost or stolen goods, delayed pickup or delivery, actions of estimators, drivers, packers or movers, or other types 25 26 27 Defendant." (ECF No. 23 at 5, 14.) Plaintiffs' allegations must be accepted as true for purposes of a 12(b)(6) motion.

At this stage in the proceedings, Plaintiffs' contention that Hercules is a broker is 28 1 of claims. Hercules Moving Solutions will act on behalf of tile [sic] customer in resolving any claims or

delay issues with the carrier. 2 3 (See ECF No. 22-1 at 22 (emphasis added); see also ECF No. 22-3 (“Exhibit 3”) at 12.) 4 As the Court previously noted, a district court generally “may not consider any 5 material beyond the pleadings” when ruling on a motion to dismiss.

Hal Roach Studios, 6 Inc., 896 F.2d at 1555 n.19. However, under the incorporation-by-reference doctrine, 7 courts may consider “documents ‘whose contents are alleged in a complaint and whose 8 authenticity no party questions, but which are not physically attached to the [plaintiff’s] 9 pleading.’” Knievel, 393 F.3d at 1076 (alteration in original) (quoting *In re Silicon 10 Graphics Inc. Sec. Litig.*, 183 F.3d at 986).

The Ninth Circuit has extended this doctrine to 11 include situations where a plaintiff’s claim necessarily relies on a document, the defendant 12 attaches the document to its motion to dismiss, and no party disputes its authenticity—even 13 if the complaint does not explicitly reference its contents. *Id.* (citing *Parrino v. FHP, Inc.*, 14 146 F.3d 699, 706 (9th Cir.

1998)). 15 Plaintiffs allege that “Defendant[] Hercules ... owed Plaintiffs a fiduciary duty” and 16 that it “acted on Plaintiffs’ behalf in connection with the transport of Plaintiffs’ personal 17 property from California to Texas.” (FAC ¶¶ 96–97.)

As such, the FAC necessarily relies 18 on the document containing Hercules’ terms and conditions to assert a fiduciary 19 relationship between Hercules and Plaintiffs. Since Defendants attached Exhibit 3 to their 20 Motion to Dismiss and Plaintiffs rely on it in their opposition, the parties evidently do not 21 contest its authenticity.

Accordingly, although the FAC does not explicitly reference the 22 contents of Exhibit 3, the Court may properly consider its contents under the incorporation- 23 by-reference doctrine. 24 As discussed above and reflected in the terms and conditions set forth in Exhibit 3, 25 Hercules was expressly authorized to act on behalf of Plaintiffs as their “shipper agent.” In 26 that capacity, Plaintiffs have sufficiently alleged that Hercules owed Plaintiffs a fiduciary 27 duty—at minimum, to accurately represent the terms of the transportation arrangement that 28 it arranged on Plaintiffs’ behalf.

Plaintiffs allege that Hercules breached this duty by 1 misrepresenting: (1) “that Plaintiffs’ belongings would be on a ‘turn around’ truck,” and 2 (2) that the total cost of the move would be \$6,597.49. (FAC ¶¶ 98–99.)

Because 3 Defendants contend only that “Plaintiffs have not described any fiduciary relationship,” 4 and do not otherwise challenge the sufficiency of Plaintiffs’ allegations regarding the 5 remaining elements of constructive fraud as to Hercules, the Court finds no basis to dismiss 6 the constructive fraud claim against Hercules.

Accordingly, Defendants' Motion to Dismiss this claim is denied. 8 F. Claims Against the Individual Defendants 9 Defendants contend that Plaintiffs' allegations against the Individual Defendants fail 10 to "support any liability" against them because the FAC "never specifies any date, conduct, 11 or even a communication with any individual acting outside their scope as agents of the 12 broker and motor carriers." (ECF No. 22-1 at 17.)

In opposition, Plaintiffs contend that 13 "[t]he FAC alleges facts that specifically describe the conduct of [the Individual 14 Defendants] and how they engaged and/or participated in the alleged unlawful acts against 15 Plaintiffs." (ECF No. 23 at 12.) 16 Because the Court has dismissed Plaintiffs' RICO and California RICO claims 17 against all Defendants, the Court addresses Defendants' contentions only as they pertain to 18 Plaintiffs' remaining claims against the Individual Defendants: negligence, conversion, 19 California Unfair Competition Laws (UCL), and rescission of contract.

20 It is settled California law that "[i]f a tortious act has been committed by an agent 21 acting under authority of his principal, the fact that the principal thus becomes liable does 22 not of course exonerate the agent from liability." *Perkins v. Blauth*, 163 Cal. 782, 787 23 (1912); see also *PMC, Inc. v. Kadisha*, 78 Cal. App. 4th 1368, 1381 (Ct. App. 2000) ("[A]n 24 agent is liable for her or his own acts, regardless whether the principal is also liable.").

The 25 FAC alleges that the Individual Defendants committed the tortious acts of negligence and 26 conversion in their capacity as agents of the relevant companies. The fact that Plaintiffs 27 also allege that the broker and Carrier Defendants are liable for these acts does not 28 exonerate the Individual Defendants from liability for their alleged actions.

1 Additionally, pursuant to the UCL, "individual liability for agents and managers of 2 a corporation is permitted as long as the underlying cause of action can be alleged against 3 them." See *Russo v. Fed. Med. Servs., Inc.*, 744 F. Supp. 3d 914, 924 (N.D. Cal. 2024). 4 Plaintiffs allege that "Defendants violated the unlawful prong of the UCL 5 by ... committing conversion/civil theft." (FAC ¶ 110.)

Since the underlying allegation of 6 conversion can be alleged against the Individual Defendants, Plaintiffs' UCL claim 7 survives as well. 8 Lastly, Plaintiffs bring a cause of action for rescission of contract under California 9 Civil Code § 1689 against the Individual Defendants. California Civil Code § 1689 10 provides a party to a contract the opportunity to rescind such contracts if the party's consent 11 "was given by mistake, or obtained through duress, menace, fraud, or undue influence, 12 exercised by or with the connivance of the party as to whom he rescinds." Cal. Civ.

Code 13 § 1689(b)(1). To the extent Plaintiffs allege that they contracted with the Individual 14 Defendants, the Court declines to dismiss this claim against them. 15 At this stage of the proceedings, Plaintiffs' remaining claims against the Individual 16 Defendants survive and

Defendants' Motion to Dismiss on these grounds is denied. 17 G. Remaining Claims Against Rado
18 Defendants move to dismiss the claims asserted against Defendant Rado on the 19 grounds that
"[t]he operative pleading never identifies a single act of a single employee, 20 officer, or agent of
[Rado]." (ECF No. 22-1 at 20–21.)

Plaintiffs do not appear to oppose 21 the Motion, (see generally ECF No. 23), and the Court agrees
with Defendants that 22 Plaintiffs fail to allege any facts specific to Rado's conduct. Accordingly,
all remaining 23 claims against Rado are dismissed. 24 V. CONCLUSION 25 IT IS HEREBY
ORDERED that the Motion to Dismiss (ECF No. 22) is granted in 26 part and denied in part, as
follows: Defendants' request to incorporate-by-reference the Bill 27 of Lading is denied;
Defendants' motion to dismiss Plaintiffs' federal and California RICO 28 claims against all
Defendants is granted; Defendants' motion to dismiss Plaintiffs' claim 1 || for rescission of contract
against the Carrier Defendants is granted on the ground that the 2 ||claim is preempted by the
Carmack Amendment.

The motion is otherwise denied as to 3 preemption under the Carmack Amendment; Defendants'
motion to dismiss Plaintiffs' 4 ||conversion claim is denied; Defendants' motion to dismiss
Plaintiffs' constructive fraud 5 ||claim against Defendant Hercules is denied; Defendants' motion to
dismiss Plaintiffs' 6 ||claims against the Individual Defendants is denied; and Defendants' motion
to dismiss 7 || Plaintiffs' remaining claims against Defendant Rado is granted.

All claims dismissed in 8 Order are dismissed without prejudice and with leave to amend. 9 IT IS
FURTHER ORDERED that no later than twenty-one days from the date this 10 |Order is filed,
Plaintiffs may file a second amended complaint that addresses the 11 || deficiencies identified in
this Order. If no second amended complaint is filed, Defendants 12 || shall file an answer to the
First Amended Complaint no later than thirty days from the date 13 || this Order is filed.

14 15 Dated: May 30, 2025 itton~ Ze. Ma 16 Hon, William Q. Hayes United States District Court
17 18 19 20 21 22 23 24 25 26 27 28 45h