

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

**Borrego Community Health Foundation v. Inland Valley
Investments, LLC**

Borrego Community Health Foundation · No. 21-cv-01417-AJB-AGS · Decided March 13, 2023

SUMMARY

The United States District Court for the Southern District of California denied Borrego Community Health Foundation’s motion for leave to amend the complaint and granted defendants’ motion to dismiss its Third Amended Complaint. The court held that the RICO claims were inadequately pleaded under Rules 9(b) and 12(b)(6), including because the defendants were improperly lumped together and the complaint did not sufficiently allege their participation in the enterprise’s affairs. The court dismissed the RICO claims with leave to amend, declined supplemental jurisdiction over the state-law claims, and ordered any Fourth Amended Complaint to be filed by April 3, 2023.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Anthony J. Battaglia
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 13, 2023
DOCKET	21-cv-01417-AJB-AGS
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the Third Amended Complaint, and Plaintiff moved under Rule 15 for leave to amend in order to effectively consolidate this action with another lawsuit. The court denied the motion for leave to amend, granted dismissal of the RICO claims with leave to amend, and declined supplemental jurisdiction over the state-law claims.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court tests the legal sufficiency of the complaint, accepting well-pleaded factual allegations as true and construing them in the plaintiff’s favor, but disregarding legal conclusions and conclusory recitals. A statute-of-limitations defense may support dismissal at the pleading stage only when the running of

the limitations period is apparent on the face of the complaint. RICO fraud allegations are subject to Rule 9(b)'s particularity requirement.

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QUESTIONS PRESENTED

1. Whether Rule 15 was an appropriate procedural vehicle for Plaintiff's request to effectively consolidate this action with a separate action involving additional defendants.
2. Whether Plaintiff's civil RICO claim was barred by the statute of limitations on the face of the Third Amended Complaint.
3. Whether Plaintiff adequately pleaded a substantive RICO violation under 18 U.S.C. § 1962(c), including the conduct, enterprise, and racketeering-activity elements and the particularity required by Rule 9(b).
4. Whether Plaintiff could adequately plead a RICO conspiracy under 18 U.S.C. § 1962(d) without adequately pleading a substantive RICO violation.
5. Whether the court should exercise supplemental jurisdiction over the remaining state-law claims after dismissing the federal RICO claims.

HOLDINGS

1. Rule 15 was not an appropriate procedural vehicle for Plaintiff's requested effective consolidation. The motion was procedurally defective because Rule 42(a), rather than Rule 15, governs consolidation, and the additional defendants had not been joined, notified, or given an opportunity to be heard.
2. The RICO claim could not be dismissed as time-barred because the Third Amended Complaint plausibly alleged that the injury was not discovered until October 2020, and the limitations period was not apparent on the face of the complaint.
3. Plaintiff failed to state a claim under § 1962(c) because it impermissibly lumped the Defendants together, failed to plead the alleged fraud with Rule 9(b) particularity as to each Defendant, failed to support its alter-ego theory with factual allegations, and failed to adequately plead that Defendants participated in the operation or management of the alleged enterprise.
4. Plaintiff failed to state a claim under § 1962(d) because it failed to adequately plead a substantive RICO violation.
5. After dismissing all claims over which it had original jurisdiction, the court declined to exercise supplemental jurisdiction over the remaining state-law claims.

KEY QUOTATIONS

“The rule providing for the Court’s power to consolidate matters is Rule 42(a).” (at 2)

“To determine whether the statute of limitations has run on a civil RICO claim, the Ninth Circuit applies the “injury discovery” rule.” (at 3)

“Rule 9(b) does not allow a complaint to merely lump multiple defendants together but requires plaintiffs to differentiate their allegations when suing more than one defendant and inform each defendant separately of the allegations surrounding his alleged participation in the fraud.” (at 5)

“To satisfy Rule 9(b), a pleading must identify the who, what, when, where, and how of the misconduct charged, as well as what is false or misleading about the purportedly fraudulent statement, and why it is false.” (at 6)

“That said, because Plaintiff has been aware of Defendants’ challenges to its pleadings and afforded a prior opportunity to amend, the Court grants Plaintiff one, final opportunity to cure the deficiencies in its RICO claims.” (at 8)

FACTUAL BACKGROUND

Borrego Community Health Foundation, a California nonprofit and federally qualified health center, leased three clinic properties from entities controlled by Daryl Priest. Plaintiff alleged that its former CEO executed 30-year leases in 2012, 2015, and 2016 at substantially above-market rents without required approval from Plaintiff’s board. Plaintiff alleged that the former CEO, his successor, and Defendants concealed the lease terms from the board, and that the alleged over-market terms came to light after a 2020 law-enforcement raid and subsequent review and appraisal. Plaintiff asserted state-law claims and RICO claims based on the alleged scheme.

PROCEDURAL HISTORY

Plaintiff commenced the action in San Diego Superior Court and filed successive amended complaints. After the Second Amended Complaint added RICO claims, Defendants removed the action to federal court. A prior district judge dismissed the SAC with leave to amend as to deficiencies involving the RICO allegations and statute of limitations. Plaintiff filed a Third Amended Complaint, Defendants moved to dismiss, and after briefing was complete the case was transferred to Judge Battaglia. The court denied Plaintiff’s procedurally defective Rule 15 motion, dismissed the RICO claims with one final opportunity to amend, and conditionally directed remand of the state-law claims if Plaintiff failed to amend.

DISPOSITION

other

REMAND INSTRUCTIONS

Plaintiff was ordered to file a Fourth Amended Complaint and a redlined version by April 3, 2023, with Defendants’ response due April 17, 2023. If Plaintiff failed to amend, the RICO claims would be dismissed without leave to amend and the state-law claims would be remanded to San Diego Superior Court.

CASES CITED

- Von Saher v. Norton Simon Museum of Art, 592 F.3d 954, 969 (9th Cir. 2010)
- Jablon v. Dean Witter & Co., 614 F.2d 677, 682 (9th Cir. 1980)
- Agency Holding Corp. v. Malley-Duff & Associates, Inc., 483 U.S. 143, 156 (1987)
- Pincay v. Andrews, 238 F.3d 1106, 1109-10 (9th Cir. 2001)
- Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Edwards v. Marin Park, Inc., 356 F.3d 1058, 1065-66 (9th Cir. 2004)
- Eclectic Properties E., LLC v. Marcus & Millichap Co., 751 F.3d 990, 997 (9th Cir. 2014)
- Odom v. Microsoft Corp., 486 F.3d 541, 545, 547 (9th Cir. 2007) (en banc)
- Swartz v. KPMG LLP, 476 F.3d 756, 764-65 (9th Cir. 2007)
- Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1055 (9th Cir. 2011)
- Reves v. Ernst & Young, 507 U.S. 170, 185 (1993)
- United Energy Owners Comm., Inc. v. United States Energy Mgmt. Sys., Inc., 837 F.2d 356, 362 (9th Cir. 1988)
- Sun Sav. & Loan Ass'n v. Dierdorff, 825 F.2d 187, 194 (9th Cir. 1987)
- Howard v. Am. Online Inc., 208 F.3d 741, 751 (9th Cir. 2000)
- Sanford v. MemberWorks, Inc., 625 F.3d 550, 561 (9th Cir. 2010)