

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS

Elaine Ivanowski v. Viv Auto Pilot, CleanSky Energy a/k/a Titan Gas
LLC, Viviana Energy, Gloria Glaudin, and Titan Energy – New
England Inc.

Ivanowski · No. 25-cv-40114-MRG · Decided March 31, 2026

SUMMARY

The United States District Court for the District of Massachusetts denies Elaine Ivanowski’s motion for leave to amend and grants defendants’ motions to dismiss claims arising from alleged unauthorized enrollment in utility programs and related charges. The court dismisses state-law identity theft and racketeering claims with prejudice and dismisses the Chapter 93A, fraud, RICO, breach of contract, forgery, and other statutory claims without prejudice for insufficient pleading. The action is also dismissed without prejudice as to two defendants for failure to effect timely service, while the plaintiff receives one final opportunity to seek leave to amend.

CASE DETAILS

COURT	United States District Court for the District of Massachusetts
WRITING FOR THE COURT	Margaret R. Guzman
JURISDICTION	United States District Court for the District of Massachusetts
DECIDED	March 31, 2026
DOCKET	25-cv-40114-MRG
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, proceeding pro se, sued defendants in Massachusetts Superior Court; defendants removed the action and moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). Plaintiff moved for leave to amend. The district court denied leave to amend as futile, granted the motions to dismiss, dismissed some claims with prejudice and others without prejudice, and allowed one final opportunity to seek amendment.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded facts as true, construes them in the plaintiff's favor, and draws reasonable factual inferences for the plaintiff. The complaint must contain factual allegations sufficient to state a claim that is plausible on its face.

Fraud-based claims must satisfy Rule 9(b)'s particularity requirement. A proposed amendment is reviewed for futility under the Rule 12(b)(6) standard.

PRECEDENTIAL VALUE

unpublished district court order

TOPICS

motions to dismiss

motion to amend

consumer protection

deceptive trade practices

pleadings

PRACTICE AREAS

civil procedure

consumer protection

commercial litigation

fraud

QUESTIONS PRESENTED

1. Whether the complaint plausibly stated a Massachusetts General Laws chapter 93A claim.
2. Whether the fraud-based claims satisfied Federal Rule of Civil Procedure 9(b).
3. Whether plaintiff had private rights of action for the asserted Massachusetts identity-theft and state-racketeering claims.
4. Whether the remaining RICO, breach-of-contract, forgery, and statutory claims were supported by sufficient factual allegations.
5. Whether leave to amend should be denied as futile under Federal Rule of Civil Procedure 15(a)(2).
6. Whether claims against Viviana Energy and Gloria Glaudin should be dismissed without prejudice for failure to effect timely service under Rule 4(m).

HOLDINGS

1. The complaint failed to state a chapter 93A claim because it did not plead specific facts showing an unfair or deceptive act or practice attributable to any defendant and did not satisfy Rule 9(b) for a fraud-based claim.
2. The identity-theft and Massachusetts-specific racketeering claims were dismissed with prejudice because no private right of action or damages remedy was available for those claims.
3. The fraud-based claims were dismissed without prejudice because plaintiff failed to plead the time, place, content, speaker, enrollment method, and fraudulent intent associated with the alleged misconduct.
4. The remaining claims, including RICO, breach of contract, forgery, and assorted statutory claims, were dismissed without prejudice because the complaint lacked sufficient factual allegations connecting defendants to actionable misconduct.
5. The motion for leave to amend was denied as futile because the proposed pleading did not cure the defects in the original complaint, although plaintiff was granted one final opportunity to file a compliant amendment.

6. The action was dismissed without prejudice as to Viviana Energy and Gloria Glaudin because service did not appear to have been effectuated within ninety days.

KEY QUOTATIONS

“The alleged facts must be sufficient to “state a claim to relief that is plausible on its face.”” (Section II.A)

“The standard “is satisfied by an averment ‘of the who, what, where, and when of the allegedly false or fraudulent representation.’”” (Section II.B)

“The billing statements therefore fail to bridge the gap between lawful billing and the conclusory allegation of fraud.” (Section III.A)

“Although the current motion to amend is denied as futile, the Court grants Plaintiff one final opportunity to file a motion for leave to amend, accompanied by a proposed amended complaint that cures the deficiencies identified in this Order.” (Conclusion)

FACTUAL BACKGROUND

Plaintiff alleged that, after initiating utility services with National Grid, defendants enrolled her without consent in various utility and energy programs between March 2018 and July 2024. She claimed that the enrollments resulted in improper charges totaling approximately \$316,000. She also alleged identity theft, fraud, forgery, racketeering, RICO violations, breach of contract, and violations of numerous federal and state statutes. The complaint included utility bills and purported Chapter 93A demand letters, but did not identify the alleged deceptive conduct, enrollment mechanism, responsible defendant, or fraudulent communications with sufficient specificity.

PROCEDURAL HISTORY

The complaint was filed in Worcester Superior Court on July 25, 2025, and removed to the District of Massachusetts on August 15, 2025. Titan Energy and CleanSky separately moved to dismiss. After prior unsuccessful amendment efforts, the court invited plaintiff to file a renewed motion to amend, which the court construed from a proposed amended complaint. The court denied that motion as futile, dismissed the claims as specified in the order, dismissed the claims against Viviana Energy and Gloria Glaudin without prejudice for failure of timely service, and granted plaintiff thirty days to file a further motion for leave to amend with a proposed amended complaint.

DISPOSITION

other

CASES CITED

- *Ruivo v. Wells Fargo Bank, N.A.*, 766 F.3d 87, 90 (1st Cir.)
- *A.G. ex rel. Maddoc v. Elsevier, Inc.*, 732 F.3d 77, 80 (1st Cir.)
- *Giragosian v. Ryan*, 547 F.3d 59, 65 (1st Cir.)

- *In re Colonial Mortg. Bankers Corp.*, 324 F.3d 12, 20 (1st Cir.)
- *Santiago v. Action for Bos. Cmty. Dev., Inc.*, No. 17-cv-12249, 2018 WL 5635014, at *2 (D. Mass. Oct. 31, 2018)
- *Dutil v. Murphy*, 550 F.3d 154, 158 (1st Cir.)
- *Gilbert v. City of Chicopee*, 915 F.3d 74, 80 (1st Cir.)
- *Ocasio-Hernández v. Fortuño-Burset*, 640 F.3d 1, 7 (1st Cir.)
- *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)
- *Gagliardi v. Sullivan*, 513 F.3d 301, 305 (1st Cir.)
- *Centro Medico del Turabo, Inc. v. Feliciano de Melecio*, 406 F.3d 1, 6 (1st Cir.)
- *Grajales v. P.R. Ports Auth.*, 682 F.3d 40, 44 (1st Cir.)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009)
- *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)
- *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)
- *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972)
- *Ferranti v. Moran*, 618 F.2d 888, 890 (1st Cir.)
- *Declude, Inc. v. Perry*, 593 F. Supp. 2d 290, 297 (D. Mass.)
- *Rodi v. S. New Eng. Sch. of Law*, 389 F.3d 5, 15 (1st Cir.)
- *Alt. Sys. Concepts, Inc. v. Synopsys, Inc.*, 374 F.3d 23, 29 (1st Cir.)
- *N. Am. Cath. Educ. Programming Found., Inc. v. Cardinale*, 567 F.3d 8, 13 (1st Cir.)
- *U.S. ex rel. Gagne v. Worcester*, 565 F.3d 40, 48 (1st Cir.)
- *Foman v. Davis*, 371 U.S. 178, 182 (1962)
- *Glassman v. Computervision Corp.*, 90 F.3d 617, 623 (1st Cir.)
- *Adorno v. Crowley Towing & Transp. Co.*, 443 F.3d 122, 126 (1st Cir.)
- *Rafferty v. Merck & Co.*, 92 N.E.3d 1205, 1222 (Mass.)
- *Herman v. Admit One Ticket Agency LLC*, 912 N.E.2d 450 (Mass.)
- *PMP Assocs., Inc. v. Globe Newspaper Co.*, 321 N.E.2d 915, 917–18 (Mass.)
- *Walsh v. TelTech Sys., Inc.*, 821 F.3d 155, 160 (1st Cir.)
- *Aspinall v. Philip Morris Cos., Inc.*, 813 N.E.2d 476, 486–87 (Mass.)
- *Distefano v. Bank of Am., N.A.*, No. CV 25-10272-NMG, 2026 WL 560027, at *2 (D. Mass. Feb. 27, 2026)
- *Piard v. Murphy*, No. 24-CV-40005-MRG, 2025 WL 2778022, at *2 (D. Mass. Sept. 29, 2025)
- *Nowell v. Medtronic Inc.*, 372 F. Supp. 3d 1166, 1257–58 (D.N.M. 2019), *aff'd*, No. 19-2073, 2021 WL 4979300 (10th Cir. Oct. 27, 2021)
- *Brown v. Carrington Mortg. Servs.*, No. 3:25-CV-50 (SVN), 2025 WL 2783593, at *11 (D. Conn. Sept. 30, 2025)
- *Rolon v. Henneman*, 517 F.3d 140, 149 (2d Cir.)
- *Educadores Puertorriqueños en Acción v. Hernandez*, 367 F.3d 61, 68 (1st Cir.)
- *Burnham v. Dudley Dist. Ct.*, No. 15-cv-40031-DHH, 2015 WL 5698418, at *5 (D. Mass. Sept. 28, 2015)

- *Atuahene v. Hartford*, 10 F. App'x 33, 34 (2d Cir.)
- *Jones v. Bank of N.Y.*, 542 F. Supp. 3d 44, 57 (D. Mass.)
- *Smith v. Jenkins*, 777 F. Supp. 2d 264, 267–68 (D. Mass.)
- *Wagner v. Fed. Home Loan Mortg. Corp.*, 494 F. Supp. 3d 80, 88 n.8 (D. Mass.)
- *Schuster v. Harbor*, 471 F. Supp. 3d 411, 424–25 (D. Mass.)
- *Flores v. OneWest Bank, F.S.B.*, 886 F.3d 160, 167 (1st Cir.)
- *Katz v. Pershing, LLC*, 806 F. Supp. 2d 452, 458 (D. Mass. 2011), *aff'd*, 672 F.3d 64
- *Andrews v. Earl's Restaurants USA Inc.*, No. 19-CV-817-PB, 2019 WL 6879214, at *2 (D.N.H. Dec. 17, 2019)
- *Beychok v. Baffert*, No. 3:24-CV-100-CHB, 2024 WL 5112755, at *18 (W.D. Ky. Dec. 13, 2024)
- *New England Data Services, Inc. v. Becher*, 829 F.2d 286 (1st Cir.)
- *Home Orthopedics Corp. v. Rodríguez*, 781 F.3d 521, 532 (1st Cir.)
- *Mann v. Chase Manhattan Mortg. Corp.*, 316 F.3d 1, 6–7 (1st Cir.)
- *Grant v. News Grp. Bos., Inc.*, 55 F.3d 1, 5 (1st Cir.)

OPINION

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS) ELAINE
IVANOWSKI,)) Plaintiff,)) v.)) Civil No. 25-cv-40114-MRG VIV AUTO PILOT,
CLEANSKY ENERGY) A/K/A TITAN GAS LLC, VIVIANA) ENERGY, GLORIA GLAUDIN,
and TITAN) ENERGY – NEW ENGLAND INC.,)) Defendants.))) ORDER RE:MOTION
FOR LEAVE TO AMEND THE COMPLAINT [ECF No. 58] AND MOTIONS TO DISMISS
[ECF Nos. 8& 17] GUZMAN, J. Plaintiff Elaine Ivanowski brings this action pro se against
Defendants Viv Auto Pilot, CleanSky Energy a/k/a Titan Gas LLC (“CleanSky”), Viviana Energy,
Gloria Glaudin, and Titan Energy – New England Inc. (“Titan Energy”)(collectively,
“Defendants”),¹ alleging various state and federal law violations stemming from the allegedly
“unauthorized enrollment [of Plaintiff] into utility programs.” [Compl. at 3, ECF No. 1-1].

Construed liberally, the Complaint appears to assert claims under Chapter 93A, common-law fraud, various federal and state criminal statutes, and the federal Racketeer Influenced and Corrupt Organizations Act. None are adequately pleaded.

For the reasons stated below, the Court DENIES Plaintiff’s Motion for Leave to Amend the
1Because service does not appear to have been properly effectuated on Defendants Viviana Energy
and Gloria Glaudin within 90 days, the Court sua sponte dismisses the action without prejudice as
to those Defendants pursuant to Federal Rule of Civil Procedure 4(m). Complaint² [ECF No. 58]
and GRANTS Defendants’ Motions to Dismiss, dismissing certain claims with prejudice and the
remaining claims without prejudice.[ECF Nos. 8& 17].

I. BACKGROUND A. Factual Allegations The following facts are taken from Plaintiff’s
Complaint, the factual allegations of which are assumed to be true when considering a motion to

dismiss. See *Ruivo v. Wells Fargo Bank, N.A.*, 766 F.3d 87, 90 (1st Cir. 2014) (citing *A.G. ex rel. Maddoc v. Elsevier, Inc.*, 732 F.3d 77, 80 (1st Cir. 2013)).

The Court has also considered “documents incorporated by reference in [the complaint], matters of public record, and other matters susceptible to judicial notice.” *Giragosian v. Ryan*, 547 F.3d 59, 65 (1st Cir. 2008) (alteration in original) (quoting *In re Colonial Mortg. Bankers Corp.*, 324 F.3d 12, 20 (1st Cir. 2003)).

Because Plaintiff is proceeding pro se, the Court holds her pleadings “to less demanding standards than those drafted by lawyers and endeavors, within reasonable limits, to guard against the loss of pro se claims due to technical defects.” *Santiago v. Action for Bos. Cmty. Dev., Inc.*, No. 17-cv-12249, 2018 WL 5635014, at *2 (D. Mass. Oct. 31, 2018) (quoting *Dutil v. Murphy*, 550 F.3d 154, 158 (1st Cir.

2008)). Although the facts as pled are, at times, difficult to understand, the Court construes them as follows: Plaintiff alleges that, “after initiat[ing] utility services with National Grid,” between March 2018 and July 2024, Defendants enrolled her into utility programs without her consent and charged 2 In the Court’s January 12, 2026 Order, the Court instructed Plaintiff that, if she were to move to amend her complaint, she “must file a single motion for leave to amend containing her new factual assertions and/or legal claims,” and was strongly encouraged to include a proposed amended complaint in her filing.

[ECF No. 51 at 5]. Ultimately, Plaintiff did not file a motion for leave to amend her complaint and instead only filed a proposed amended complaint. [ECF No. 58]. The Court Clerk modified the ECF event type from “Amended Complaint” to “Motion to Amend Complaint” and provided notice that parties should construe ECF No. 58 as the Plaintiff’s Motion for Leave to Amend the Complaint. her for services that she did not sign up for, resulting in improper charges totaling \$316,000.

[Compl. ¶¶ 9–13]. These alleged programs, Plaintiff contends, include the “Low Income R-2 program,” “Distributed Solar Charge program,” “Renewable Energy Charge program,” “Electric Vehicle Charge” program, “Energy Efficiency Charge” program, “Transmission Charge” program, and “Transition Charge” program. [Id. at 14]. Plaintiff asserts that she sent Defendants a demand letter pursuant to Mass. G.L. c. 93A on March 2, 2025, and that Defendants “failed to provide a fair settlement within 30 days.” [Id. at 5, ¶ 14; see also id. at 22–25 (photocopies of letters)].

Plaintiff brings this action to redress this alleged wrongdoing. B. Procedural History The Complaint, originally filed in Worcester Superior Court on July 25, 2025, was removed to this Court on August 15, 2025. [ECF No. 1 ¶ 1]. Defendants Titan Energy and CleanSky filed separate motions to dismiss for failure to state a claim. [ECF Nos. 8 & 17]. Prior to ruling on the Defendants’ motions to dismiss, and after denying various of Plaintiff’s motions ostensibly

seeking to amend her complaint, [ECF Nos. 23, 25, and 33], the Court invited Plaintiff to file a renewed motion for leave to amend her Complaint.

[ECF No. 51]. In inviting Plaintiff to do so, the Court noted that “Plaintiff may benefit from reviewing Defendants’ pending Motions to Dismiss, [ECF Nos. 8, 17], because they contain arguments that Plaintiff’s current Complaint fails to clear the futility hurdle.” [Id. at 5].

The Court then mailed Plaintiff copies of the Local Rules and District’s pro se guide and ordered Plaintiff to review both resources, instructing that “Plaintiff’s compliance with procedural requirements imposed by the Federal Rules of Civil Procedure and this Court’s Local Rules is mandatory” and “pro se status does not insulate a party from complying with procedural and substantive law.” [Id. at 7 (internal quotation marks and citations removed)].

II. LEGAL STANDARDS A. Motion to Dismiss In reviewing a motion to dismiss under Rule 12(b)(6), the Court must accept all well-pleaded facts as true, construe those facts in the light most favorable to the plaintiff, and draw all reasonable factual inferences in favor of the plaintiff. See *Gilbert v. City of Chicopee*, 915 F.3d 74, 80 (1st Cir. 2019) (citing *Ocasio-Hernández v. Fortuño-Burset*, 640 F.3d 1, 7 (1st Cir.

2011)). “[D]etailed factual allegations” are not required, but the complaint must set forth “more than labels and conclusions,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), and must contain “factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory.” *Gagliardi v. Sullivan*, 513 F.3d 301, 305 (1st Cir.

2008) (internal quotations omitted) (citing *Centro Medico del Turabo, Inc. v. Feliciano de Melecio*, 406 F.3d 1, 6 (1st Cir. 2005)). The alleged facts must be sufficient to “state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “To cross the plausibility threshold a claim does not need to be probable, but it must give rise to more than a mere possibility of liability.” *Grajales v. P.R.*

Ports Auth., 682 F.3d 40, 44 (1st Cir. 2012) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “A determination of plausibility is ‘a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.’” *Id.* at 44 (quoting *Iqbal*, 556 U.S. at 679).

Here, the Court construes the complaint liberally because it was filed pro se. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). A pro se litigant’s filings are to be “liberally construed.” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

Therefore, a pro se complaint, “however inartfully pleaded,” must be held to a “less stringent standard than formal pleadings drafted by lawyers.” *Id.* (quoting *Haines v. Kerner*, 404 U.S. 519,

520-21 (1972)). However, “[t]his is not to say that pro se plaintiffs are not required to plead basic facts sufficient to state a claim.” *Ferranti v. Moran*, 618 F.2d 888, 890 (1st Cir.

1980) (citation and footnote omitted). B. Rule 9(b) Standard for Pleading Allegations of Fraud Additionally, claims that “sound[] in fraud must satisfy the requirements of the heightened pleading standard” of Rule 9(b) “regardless of what label the pleader assigns to it.” *Declude, Inc. v. Perry*, 593 F. Supp. 2d 290, 297 (D. Mass. 2008). Rule 9(b) provides: “[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.

Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.” Fed. R. Civ. P. 9(b). Thus, the standard “is satisfied by an averment ‘of the who, what, where, and when of the allegedly false or fraudulent representation.’” *Rodi v. S. New Eng. Sch. of Law*, 389 F.3d 5, 15 (1st Cir. 2004) (quoting *Alt. Sys. Concepts, Inc. v. Synopsys, Inc.*, 374 F.3d 23, 29 (1st Cir.

2004)). “The other elements of fraud, such as intent and knowledge, may be averred in general terms.” *Id.* However, the complaint must “also identify[] the basis for inferring scienter” by setting forth “specific facts that make it reasonable to believe that defendant knew that a statement was materially false or misleading.” *N. Am. Cath. Educ. Programming Found., Inc. v. Cardinale*, 567 F.3d 8, 13 (1st Cir.

2009) (quotations and citations omitted). Accordingly, to satisfy Rule 9(b), the complaint must set forth “specific facts that make it reasonable to believe that defendant knew that a statement was materially false or misleading.” *Id.* (quotations and citations omitted). C. Leave to Amend Under Rule 15(a)(2), leave to amend a complaint shall be “freely give[n]... when justice so requires.” Courts have discretion to deny leave to amend for several reasons, including “futility of amendment.” *U.S. ex rel.*

Gagne v. Worcester, 565 F.3d 40, 48 (1st Cir. 2009) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). “‘Futility’ means that the complaint, as amended, would fail to state a claim upon which relief could be granted.” *Glassman v. Computervision Corp.*, 90 F.3d 617, 623 (1st Cir. 1996) (citations omitted).

The Court reviews a proposed amended complaint for futility under the “standard [that] applies to motions to dismiss under Fed. R. Civ. P. 12(b)(6).” *Adorno v. Crowley Towing & Transp. Co.*, 443 F.3d 122, 126 (1st Cir. 2006) (citing *Glassman*, 90 F.3d at 623). III. DISCUSSION A. Massachusetts Consumer Protection Statute, Mass. Gen. Laws ch. 93A Plaintiff brings a claim under Massachusetts General Laws Chapter 93A (“Chapter 93A”) against Defendants for allegedly enrolling her into energy programs without her consent and charging her more than \$300,000.

[Compl. ¶¶ 10–15]. “To state a claim under [Chapter 93A], a plaintiff must allege facts sufficient to establish four elements: first, that the defendant has committed an unfair or deceptive act or

practice; second, that the unfair or deceptive act or practice occurred ‘in the conduct of any trade or commerce;’³ third, that the plaintiff suffered an injury; and fourth, that the defendant’s unfair or deceptive conduct was a cause of the injury.” *Rafferty v. Merck & Co.*, 92 N.E.3d 1205, 1222 (Mass.

2018) (citing first Mass. Gen. Laws ch. 93A § 2; and then *Herman v. Admit One Ticket Agency LLC*, 912 N.E.2d 450 (Mass. 2009)). To determine whether a business practice is unfair under Chapter 93A, courts must consider: “(1) whether the practice... is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, 3 Mass. Gen.

Laws ch. 93A § 1(b) defines “trade” and “commerce” as including: “advertising, the offering for sale, rent or lease, the sale, rent, lease or distribution of any services and any property, tangible or intangible, real, personal or mixed, any security as defined in subparagraph (k) of section four hundred and one of chapter one hundred and ten A and any contract of sale of a commodity for future delivery, and any other article, commodity, or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this commonwealth.” oppressive, or unscrupulous; [and] (3) whether it causes substantial injury to consumers (or competitors or other businessmen).” *PMP Assocs., Inc. v. Globe Newspaper Co.*, 321 N.E.2d 915, 917–18 (Mass.

1975) (internal quotation marks and citation omitted). An act or practice is deceptive “‘if it possesses a tendency to deceive’ and ‘if it could reasonably be found to have caused a person to act differently from the way he [or she] otherwise would have acted.’” *Walsh v. TelTech Sys., Inc.*, 821 F.3d 155, 160 (1st Cir. 2016) (quoting *Aspinall v. Philip Morris Cos., Inc.*, 813 N.E.2d 476, 486–87 (Mass.

2004)). Chapter 93A claims that sound in fraud, like Plaintiff’s claim, trigger the heightened Rule 9(b) pleading standard. *Distefano v. Bank of Am., N.A.*, No. CV 25-10272-NMG, 2026 WL 560027, at *2 (D. Mass. Feb. 27, 2026). Plaintiff has failed to adequately plead a claim under Chapter 93A because she does not allege specific facts supporting the existence of an unfair or deceptive act or practice attributable to any Defendant.

Her conclusory assertion that Defendants fraudulently enrolled her in utility services without her consent is insufficient, standing alone, to meet her pleading burden. Plaintiff contends that she has satisfied this burden by “provid[ing] the Court with multiple utility bills.” [ECF No. 61 at 1]. But those documents do not plausibly support an inference of any unfair or deceptive act. At most, the bills show that Plaintiff was charged for metered services and enrolled in various programs.

They do not identify any false statement, unauthorized enrollment mechanism, deceptive conduct, or other misconduct, nor do they connect any Defendant to the alleged wrongdoing. The billing

statements therefore fail to bridge the gap between lawful billing and the conclusory allegation of fraud. See, e.g., *Piard v. Murphy*, No. 24-CV-40005-MRG, 2025 WL 2778022, at *2 (D.

Mass. Sept. 29, 2025) (quoting *Iqbal*, 556 U.S. at 679) (“Based on the complaint and supporting documents filed... [the plaintiff] has only raised an ‘inference of...the mere possibility of misconduct[,]’ which is insufficient to state a claim for relief.”); *Nowell v. Medtronic Inc.*, 372 F. Supp. 3d 1166, 1257–58 (D.N.M. 2019), *aff’d*, No. 19-2073, 2021 WL 4979300 (10th Cir.

Oct. 27, 2021) (quoting *Iqbal*, 556 U.S. at 678) (“conclusory allegations amount to ‘naked assertions devoid’ of the ‘factual enhancement’ necessary to bridge the gap between possible and plausible”); *Brown v. Carrington Mortg. Servs.*, No. 3:25-CV-50 (SVN), 2025 WL 2783593, at *11 (D. Conn. Sept. 30, 2025) (citing *Rolon v. Henneman*, 517 F.3d 140, 149 (2d Cir.

2008)) (“Although [Plaintiff] alleges that [the billing] statements were untrue, Plaintiff alleges no non-conclusory facts to support the conclusion that such statements were untrue or that [Defendant] knew that such statements were untrue. Instead, Plaintiff relies on bald assertions and legal conclusions that [Defendant] knowingly overbilled him, which do not suffice to withstand a motion to dismiss, particularly under Rule 9(b)’s heightened pleading standard.”).

Plaintiff further fails to allege the role of each Defendant in the purported scheme, instead referring to Defendants collectively without differentiation. [Compl. ¶ 15]. Such undifferentiated allegations are insufficient to state a claim. See, e.g., *Educadores Puertorriqueños en Acción v. Hernandez*, 367 F.3d 61, 68 (1st Cir. 2004) (a “complaint should at least set forth minimal facts as to who did what to whom, when, where, and why—although why, when why means the actor’s state of mind, can be averred generally”); *Burnham v. Dudley Dist.*

Ct., No. 15-cv-40031-DHH, 2015 WL 5698418, at *5 (D. Mass. Sept. 28, 2015) (citing *Atuahene v. Hartford*, 10 F. App’x 33, 34 (2d Cir. 2001)) (“[When] a plaintiff brings a claim against multiple defendants, the plaintiff must...draft [their] complaint in such a manner that it is clear what the alleged factual allegations and legal claims are against each individual defendant” and they “cannot simply refer to the defendants collectively where it cannot be reasonable[y] inferred that all the defendants engaged in the alleged misconduct.”).⁴ Accordingly, the Complaint does not satisfy Rule 8(a)’s plausibility requirement and also fails to meet the heightened pleading standard of Rule 9(b), which requires a plaintiff to plead the circumstances of the alleged fraud with particularity.⁵ Accordingly, the Court GRANTS Defendants’ motions to dismiss the Chapter 93A claim without prejudice.

B. Allegations of Identity Theft and Racketeering in Massachusetts Plaintiff alleges that Defendants committed “identity theft” and that Defendants “may have forged [her] signature or identity to falsify renewable energy application forms” and “may have ⁴ Although the Court does

not decide the motion on this ground, it is unclear whether Plaintiff complied with the Chapter 93A demand letter requirement.

Mass. Gen. Laws ch. 93A, § 9(3). A plaintiff's failure to send a proper demand letter is fatal to a Chapter 93A claim, and the letter must be received by the defendant and must identify the specific allegedly unfair or deceptive conduct at issue. See *Jones v. Bank of N.Y.*, 542 F. Supp. 3d 44, 57 (D. Mass. 2021); *Smith v. Jenkins*, 777 F.Supp. 2d 264, 267–68 (D.

Mass. 2011); *Wagner v. Fed. Home Loan Mortg. Corp.*, 494 F. Supp. 3d 80, 88 n.8 (D. Mass. 2020). Relief is limited to the conduct described in the demand letter. *Schuster v. Harbor*, 471 F. Supp. 3d 411, 424–25 (D. Mass. 2020) (quoting *Flores v. OneWest Bank*, F.S.B., 886 F.3d 160, 167 (1st Cir. 2018)) (“Demand letters must therefore ‘set out specifically any activities... as to which they seek relief.

Separate relief on actions not so mentioned is foreclosed as a matter of law.”). Here, Plaintiff attaches two purported demand letters, but neither is addressed to a specific defendant, includes a mailing address, or appears complete. [Compl. at 22–25].

The letters differ in content and appear to be missing portions, and there is no indication they were sent or received. [Id.] On this record, the Court cannot reasonably infer that Plaintiff served a valid demand letter on any Defendant. If Plaintiff amends her Complaint, she should address this. 5 See *Distefano*, 2026 WL 560027, at *2 (dismissing Chapter 93A claim sounding in fraud for insufficient factual allegations); *Brown*, 2025 WL 2783593, at *11 (citing *Rolon*, 517 F.3d at 149) (“Although he alleges that [the] statements were untrue, Plaintiff alleges no non-conclusory facts to support the conclusion that such statements were untrue or that [Defendant] knew that such statements were untrue.

Instead, Plaintiff relies [on] bald assertions and legal conclusions that [Defendant] knowingly overbilled him, which do not suffice to withstand a motion to dismiss, particularly under Rule 9(b)'s heightened pleading standard.”). illegally used customers' personal information, forged signatures, and impersonated identities when interfacing with state administrators of renewable energy programs.” [Compl. ¶ 16].

Additionally, Plaintiff alleges that Defendants engaged in “racketeering” [Compl. at 7, 17]. There is no private right of action to sue for identity theft. *Katz v. Pershing, LLC*, 806 F.Supp.2d 452, 458 (D. Mass. 2011), *aff'd*, 672 F.3d 64 (finding enforcement of Massachusetts consumer protection laws specific to identity theft is restricted to the Massachusetts Attorney General); see also *Andrews v. Earl's Restaurants USA Inc.*, No. 19-CV-817-PB, 2019 WL 6879214, at *2 (D.N.H.

Dec. 17, 2019) (finding that the plaintiff's claim failed “because no private right of action for damages exists under either the Massachusetts criminal identity theft statute or its federal law

counterpart”). There is also no private right of action or damages for Massachusetts- specific racketeering allegations. Mass. Gen. Laws ch. 271A, § 1 et seq.; see also *Beychok v. Baffert*, No. 3:24-CV-100-CHB, 2024 WL 5112755, at *18 (W.D.

Ky. Dec. 13, 2024) (finding that there is “no provision for a civil cause of action or damages” under Mass. Gen. Laws ch. 271A). In the absence of private rights of action, the Court GRANTS Defendants’ motions to dismiss Plaintiff’s identity theft and state racketeering claims with prejudice. C. Allegations of Fraud Plaintiff alleges that Defendants committed fraud, including “consumer fraud,” “tax fraud,” “fraudulent enrollments,” “making false statements,” “civil fraud,” “providing false consumer information,” “securities fraud,” “mortgage or loan fraud,” “defrauding the state,” “record falsification” or “falsified utility records,” “potential tax fraud,” “deceptive billing,” “fraudulent use of interstate power lines,” and violations of “mail/wire fraud statutes.” [See Compl. at 3, 5, 9, 11, 16–19, 25].

However, as discussed above with respect to Plaintiff’s Chapter 93A claim, Plaintiff does not provide sufficient factual allegations to establish that Defendants engaged in the conduct that she alleges amounts to fraud.⁶ Plaintiff does not allege the time, place, or content of any allegedly fraudulent communication, the method by which she was purportedly enrolled, or the identity of any individual or entity who made a misrepresentation.

Nor does she allege facts supporting a plausible inference that any Defendant acted with fraudulent intent. Accordingly, the Court GRANTS Defendants’ motions to dismiss Plaintiff’s fraud claims without prejudice. D. Allegations of Forgery, Racketeering, Breach of Contract, and other Statutory Claims Plaintiff further alleges that Defendants committed forgery, unspecified racketeering, Racketeer Influenced and Corrupt Organizations (“RICO”) Act violations, breach of contract, and other statutory claims, including violations of utility laws, “licensing rules,” “marketing, self- certification processes, and properly documenting scope of work,” “renewable energy standards and rebate programs,” “emissions standards,” “above-market charges and interstate commerce,” “reporting/disclosure laws for publicly traded companies,” “energy regulatory laws.” [Compl. at 16–19, 25].

Plaintiff also alleges Defendants violated the Endangered Species Act, Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, the Lacey Act, Marine Mammal Protection Act, and Wild Free-Roaming Horses and Burros Act. [Compl. at 19–20].

However, Plaintiff does not provide sufficient factual allegations to establish that Defendants committed any of the alleged violations or misconduct. See *Iqbal*, 556 U.S. at 678 (holding that complaints be plausible on their face, meaning that the “plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”) (citing *Twombly*, 550 U.S. at 6 Supra at 8–9.

556). Finally, the Complaint does not contain sufficient allegations of mail or wire communications in furtherance of a fraudulent scheme warranting additional discovery under *New England Data Services, Inc. v. Becher*, 829 F.2d 286 (1st Cir. 1987). *Home Orthopedics Corp. v. Rodríguez*, 781 F.3d 521, 532 (1st Cir. 2015) (rejecting application of *Becher* when complaint failed to meet ordinary plausibility standard).

Accordingly, the Court GRANTS Defendants' motions to dismiss these remaining claims without prejudice. E. Plaintiff's Motion for Leave to Amend Plaintiff's motion for leave to amend [ECF No. 58] is denied because her proposed pleading fails to cure any of the defects outlined above. *Mann v. Chase Manhattan Mortg. Corp.*, 316 F.3d 1, 6–7 (1st Cir.2003) (citing *Grant v. News Grp.*

Bos., Inc., 55 F.3d 1, 5 (1st Cir. 1995) (leave to amend may be denied "as a matter of law, where a proposed amendment would not cure the deficiencies in the original complaint"). Although the present motion is denied as futile, mindful of her pro se status, Plaintiff will be granted one final opportunity to file another motion for leave to amend—containing a proposed amended complaint—that addresses the issues discussed above.

The proposed amended complaint shall not include the claims dismissed with prejudice. IV. CONCLUSION In accordance with the foregoing, the Court hereby orders: Plaintiff's claims under Massachusetts General Laws Chapter 93A are dismissed without prejudice because the Complaint fails to plausibly allege any unfair or deceptive act and does not meet the heightened pleading requirements of Rule 9(b).

Plaintiff's purported state-law claims for identity theft and racketeering are dismissed with prejudice because no private right of action exists for those claims. e Plaintiff's fraud-based claims are dismissed without prejudice for failure to plead with particularity, including failure to allege the who, what, when, where, and how of the alleged fraud. =Plaintiff's remaining claims—including RICO, breach of contract, forgery, and various statutory violations—are dismissed without prejudice because they are unsupported by sufficient factual allegations. e The action is also dismissed without prejudice as to Defendants Viviana Energy and Gloria Glaudin for failure to effect timely service under Rule 4(m). e Although the current motion to amend is denied as futile, the Court grants Plaintiff one final opportunity to file a motion for leave to amend, accompanied by a proposed amended complaint that cures the deficiencies identified in this Order.

Claims dismissed with prejudice may not be reasserted. Plaintiff has thirty days from entry of this order to file a motion for leave to amend, including a proposed amended complaint. Failure to comply with this deadline will result in dismissal. SO ORDERED. Dated: March 31, 2026 /s/ Margaret R. Guzman Margaret R. Guzman United States District Judge 13