UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 14-2588-JGB (KKx)**	Date	August 25, 2016
Title	***John Black et al. v. CorVel Enterprise Inc. et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Present
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order (1) GRANTING Defendants CorVel Enterprise Comp, Inc. and Mextli Hyde's Motion to Dismiss (Doc. No. 88); (2) GRANTING Defendants York Risk Services Inc.'s Motion to Dismiss (Doc. No. 87) (IN CHAMBERS)**

Before the Court are two motions. First, Defendants CorVel Enterprise Comp, Inc. ("CorVel") and Mextli Hyde ("Hyde") move to dismiss Plaintiffs' Fourth Amended Complaint ("FAC"). ("CorVel MTD," Doc. No. 88.) Second, Defendant York Risk Services Inc. ("York") also moves to dismiss the FAC. ("York MTD," Doc. No. 87.) After considering the papers submitted in support of and in opposition to the motions, the Court GRANTS the CorVel Motion to Dismiss and GRANTS the York Motion to Dismiss. The hearing on August 29, 2016 set for this matter is VACATED.

I. BACKGROUND

A. Procedural History

On December 16, 2014, John Black, Victor Gregory, Thomas Stephenson, Jacob Huber, Carla McCullough, Tim Brayshaw, Dustin Fujiwara, Joseph Viola, Justin Veloz, Geoffrey Barrett, Brian Park, Russell Thurman, Boyd Mayo, and Vernell Ross-Mullin (collectively, "Original Plaintiffs") filed a Complaint against Defendants CorVel, Hyde, York, and several York employees (collectively, "Original Defendants"). ("Complaint," Doc. No. 1.)

The Original Plaintiffs amended their complaint on February 16, 2015. (Doc. No. 28.) The First Amended Complaint raised six causes of action related to the management of workers' compensation claims for the City of Rialto, California ("Rialto") and the City of Stockton, California ("Stockton"): (1) RICO violations, pursuant to 18 U.S.C. § 1962; (2) constructive

fraud; (3) fraud and fraud in the inducement; (4) violations of California's unfair competition law (the "UCL"), California Business and Professions Code §§ 17200 et seq.; (5) unconstitutional delays of benefits, in violation of 42 U.S.C. §§ 1983 and 1988; and (6) corporate liability for unconstitutional delays of benefits, in violation of 42 U.S.C. §§ 1983 and 1988. (Id.)

On May 21, 2015, the Court ordered the Original Plaintiffs to file a RICO Case Statement providing additional specific information about their RICO claims. (Doc. No. 44.) The Original Plaintiffs complied with the Court's order and submitted their RICO Case Statement on June 8, 2015. ("RICO Statement," Doc. No. 45.)

On June 22, 2015, the Original Defendants moved to dismiss the First Amended Complaint for failure to state a claim. Defendants CorVel and Hyde filed a first motion to dismiss, (Doc. No. 48), and Defendants York and its employees filed a second motion to dismiss the First Amended Complaint (Doc. No. 49).

On September 21, 2015, the Court issued an Order granting both motions to dismiss the First Amended Complaint, with leave to amend. (Doc. No. 59.) In the Order, the Court found: (1) the Original Plaintiffs had failed to allege the denial of a property interest sufficient to support their claims under RICO and 42 U.S.C. §§ 1983 and 1988; (2) the Original Plaintiffs' fraud-related state law claims were preempted by the California Workers' Compensation Act; and (3) the Original Plaintiffs' claims under the California Unfair Competition Law were vaguely alleged such that it was unclear whether they were preempted by the Workers' Compensation Act. (Id.)

On October 13, 2015, the Original Plaintiffs filed a Second Amended Complaint ("SAC"), presenting new factual allegations in support of their claims. (Doc. No. 60.) The SAC asserted the same six causes of action raised in the First Amended Complaint and also asserted a new claim for intentional infliction of emotional distress against CorVel. (Id.) On November 2, 2015, the Original Defendants again moved to dismiss the SAC for failure to state a claim. (Doc. No. 64, 65.)

On January 21, 2016, the Court issued an Order granting both motions to dismiss the SAC, with leave to amend. ("SAC MTD Order," Doc. No. 71.) In the Order, the Court again found: (1) the Original Plaintiffs had failed to allege the denial of a property interest sufficient to support their claims under RICO and 42 U.S.C. §§ 1983 and 1988; (2) the Original Plaintiffs' state law claims for fraud and intentional infliction of emotional distress were preempted by the California Workers' Compensation Act; and (3) the Original Plaintiffs' claims under the California Unfair Competition Law were vaguely alleged such that it was unclear whether they were preempted by the Workers' Compensation Act. (Id.)

On February 19, 2016, the Original Plaintiffs filed a Third Amended Complaint ("TAC"), omitting their state law claims and asserting only three causes of action: (1) RICO violations pursuant to 18 U.S.C. § 1962; (2) unconstitutional delays of benefits, in violation of 42 U.S.C. §§ 1983 and 1988; and (3) corporate liability for unconstitutional delays of benefits, in violation of 42 U.S.C. §§ 1983 and 1988. (Doc. No. 75.) On March 11, 2016, the Original Defendants moved to dismiss the TAC for failure to state a claim. (Doc. No. 76, 77.)

On April 27, 2016, the Court issued an Order granting both motions to dismiss the TAC. ("TAC MTD Order," Doc. No. 83.) In the Order, the Court again found the Original Plaintiffs had failed to allege the denial of a property interest sufficient to support their claims under RICO and 42 U.S.C. §§ 1983 and 1988. (Id.) The Court dismissed Brayshaw, Viola, Huber, McCullough, Black, and Ross-Mullin's RICO and Section 1983 claims with leave to amend. (Id.) The Court dismissed Fujiwara, Gregory, Veloz, Stephenson, Barrett, Park, Thurman, and Mayo's claims without leave to amend and dismissed all eight individuals from this action. (Id.)

On May 27, 2016, Joseph Viola and Timothy Brayshaw (hereinafter "Plaintiffs") filed the FAC against CorVel, York, and Hyde (hereinafter "Defendants").[1] (Doc. No. 86.) Plaintiffs assert three causes of action: (1) RICO violations pursuant to 18 U.S.C. § 1962; (2) unconstitutional delays of benefits, in violation of 42 U.S.C. §§ 1983 and 1988; and (3) corporate liability for unconstitutional delays of benefits, in violation of 42 U.S.C. §§ 1983 and 1988. (Id.)

On June 17, 2016, York filed its motion to dismiss. (Doc. No. 87.) On the same date, CorVel and Hyde filed their motion to dismiss. (Doc. No. 88.) On July 8, 2016, Plaintiffs filed oppositions to both motions. ("CorVel Opp'n," Doc. No. 89; "York Opp'n," Doc. No. 90.) On July 18, 2016, Defendants filed replies to Plaintiffs' oppositions. ("York Reply," Doc. No. 91; "CorVel Reply," Doc. No. 92.)

B. Factual Allegations in the FAC

The FAC raises three causes of action related to Rialto's management of workers' compensation claims: (1) RICO claims pursuant to 18 U.S.C. § 1962 against CorVel and York; (2) claims of unconstitutional delays of benefits under 42 U.S.C. §§ 1983 and 1988, against all of the Defendants; and (3) corporate liability for unconstitutional delays of benefits under 42 U.S.C. §§ 1983 and 1988, against CorVel and York. (FAC ¶¶ 274-97.) The FAC alleges the following facts.

1. General Allegations

Rialto contracted with Gregory B. Bragg & Associates ("Bragg") to administer its workers' compensation claims. (FAC ¶ 4.) After Defendant York purchased Bragg in July 2008, it hired Defendant Hyde to adjust Rialto's workers' compensation claims. (Id.) York and Hyde (along with Rialto) consistently delayed and denied coverage for legitimate work-related injuries in an attempt to discourage claims, lower costs, and increase profits. (Id. ¶¶ 4-5.) Beginning in June 2011, Rialto contracted with Defendant CorVel for both third-party administration and bill review. (Id. ¶ 4.) CorVel hired Hyde, and they continued to wrongfully delay and deny workers' compensation claims. (Id.) The payment structure for CorVel and York involved a flat fee per claim from Rialto as well as a percentage of savings of utilization and bill review. (Id.) Plaintiffs assert that York and CorVel (in conjunction with Rialto) engaged in a pattern or practice of fraudulently delaying and denying legitimate claims. (Id. ¶¶ 5, 7.)

[1] Huber, McCullough, Black, Ross-Mullin, and the York employees named in the Original Plaintiffs' earlier pleadings are not listed as parties in the FAC and are thus no longer part of this action.

That practice allowed Rialto to decrease costs and York and CorVel to increase revenues. (Id.) On September 30, 2010, a San Bernardino grand jury reported that York had improperly delayed and denied claims that should have been timely paid. (Id. ¶ 6.)

2. Allegations Specific to Plaintiffs

The FAC also includes specific facts relating to each Plaintiff's workers' compensation claims. (Id. ¶¶ 17-63.) Each Plaintiff is a former employee of the Rialto police department. (Id. ¶ 248.) The facts relevant to each Plaintiff follow a similar pattern. Each Plaintiff alleges that he sustained injuries in the course of his employment and applied for workers' compensation benefits. Defendants agreed or stipulated to pay Plaintiffs benefits and Plaintiffs were awarded benefits in final judgments. Each benefits application was subsequently denied or delayed by York or CorVel, and the denial or reason for delay was communicated to the Plaintiff via a notice sent through the mail.

Plaintiffs also re-assert the TAC's allegations concerning Huber, McCullough, Black, Ross-Mullin, Fujiwara, Gregory, Veloz, Stephenson, Barrett, Park, Thurman, and Mayo, which the Court previously found insufficient to state a claim. (Id. ¶¶ 64-246.) Plaintiffs claim these allegations are relevant to "the pattern element under RICO and related to Plaintiff[s'] claim of a pattern and practice amounting to a policy under Section 1983." (Id. at 26 n.2.)

a. Timothy Brayshaw

Brayshaw worked as a police officer with Rialto for over eleven years and suffered several on-the-job injuries for which he was not issued workers' compensation benefits. (Id. ¶ 34.)

i. Clostridium Difficile and Pneumonia

Between April and August 2008, Brayshaw was diagnosed with clostridium difficile and pneumonia by his personal physician, Dr. Shiu. (Id. ¶ 35.) Dr. Shiu opined that the injury was work-related. (Id.) Hence, on June 3, 2009, Brayshaw filed a claim for workers' compensation based on these medical conditions. (Id.) In response, starting on October 8, 2010, Hyde (working for York at the time) repeatedly delayed and denied treatment recommended by Brayshaw's physicians. (Id. ¶ 37.) Hyde also personally discouraged Brayshaw from seeking workers' compensation benefits. (Id.) On June 25, 2012, the California Division of Workers' Compensation awarded workers' compensation benefits to Brayshaw.[2] (Id. ¶ 40.) The FAC alleges the award included indemnity benefits for 242.5 sick hours. (Id.) Defendants refused to pay Brayshaw benefits "for 242 hours of 4850 time (approximately, $10,000.00)"[3] that were granted by the award and also refused to pay Brayshaw's "mileage and expenses related to his worker's compensation claims" in excess of $3,000. (Id. ¶¶ 42-43.)

[2] Plaintiffs attach a copy of the award as an exhibit to the FAC. (FAC, Ex. 5.)

[3] Plaintiffs' use of the number "4850" refers to California Labor Code 4850, which provides that certain public safety workers are entitled to take, in lieu of temporary disability benefits, a leave of absence of up to one year without loss of salary. Cal. Lab. Code § 4850.

ii. Injuries to Neck and Right Forearm

On June 2, 2011, while performing his duties, Brayshaw also suffered injuries to his neck and right forearm as a result of a car accident. (Id. ¶ 45.) On August 18, 2011, Brayshaw filed a workers' compensation claim based on these injuries. (Id.) Although several physicians recommended Brayshaw receive treatment for these injuries between June 2011 and July 2012, CorVel delayed in approving treatment for Brayshaw. (Id. ¶¶ 46-47.) Consequently, Brayshaw was forced to obtain treatment from his personal physician using his own medical insurance and bear the financial burden of such treatment. (Id.) On August 21, 2012, CorVel sent Brayshaw a notice that payment of his workers' compensation benefits would be delayed because it was "conducting an employer level investigation." (Id.)

On December 20, 2012, the California Division of Workers' Compensation awarded workers' compensation benefits to Brayshaw and accepted the medical findings of Dr. Hopkins of Arrowhead Orthopedics.[4] (Id. ¶ 50.) Dr. Hopkins had determined that Brayshaw required six chiropractic visits a year.[5] (Id.) On February 23, 2013, Dr. Hopkins recommended chiropractic treatment for Brayshaw. (Id. ¶ 51.) On May 22, 2013, Hyde mailed a letter denying Dr. Hopkins's medical treatment recommendation, despite the workers' compensation award. (Id.) As a result, Brayshaw was forced to use his own personal medical insurance to pay for the cost of treatment. (Id.) After a subsequent "penalty hearing," Rialto "finally agreed to pay for the long overdue benefits, which had already been adjudicated and awarded months prior." (Id. ¶ 52.)

b. Joseph Viola

Viola worked as a police officer for Rialto for over twelve years. (Id. ¶ 17.) While on patrol, Viola suffered injuries to his lower back in the early 2000s. (Id.) On April 25, 2011, Viola filed a claim for workers' compensation benefits. (Id.) Although CorVel and Rialto initially attempted to "coerce" Viola to sign an unfavorable settlement agreement, they finally agreed Viola had a legitimate claim. (Id. ¶ 22.) Hence, on September 17, 2013, the California Division of Workers' Compensation awarded Viola workers' compensation benefits, including a lump-sum of $13,042.50.[6] (Id.) Despite the award, CorVel, Rialto, and Hyde delayed payment of Viola's benefits and have only paid Viola $3,000 up to the present time. (Id. ¶ 23.)

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) allows a party to bring a motion to dismiss for failure to state a claim upon which relief can be granted. Rule 12(b)(6) is read in conjunction with Rule 8(a), which requires only a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); Conley v. Gibson, 355 U.S. 41, 47 (1957)

[4] Plaintiffs attach a copy of the award as an exhibit to the FAC. (FAC, Ex. 12.)

[5] Plaintiffs attach a copy of Dr. Hopkins' findings as an exhibit to the FAC. (FAC, Ex. 11.)

[6] Plaintiffs attach a copy of the award as an exhibit to the FAC. (FAC, Ex. 6.)

(holding that the Federal Rules require that a plaintiff provide "'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests") (quoting Fed. R. Civ. P. 8(a)(2)); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). When evaluating a Rule 12(b)(6) motion, a court must accept all material allegations in the complaint — as well as any reasonable inferences to be drawn from them — as true and construe them in the light most favorable to the non-moving party. See Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S. Dep't of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005); Moyo v. Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citations omitted). Rather, the allegations in the complaint "must be enough to raise a right to relief above the speculative level." Id.

Surviving a motion to dismiss requires a plaintiff to allege "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570; Ashcroft v. Iqbal, 556 U.S. 662, 697 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between possibility and plausibility of 'entitlement to relief.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 556). The Ninth Circuit has clarified that (1) a complaint must "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively," and (2) "the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

Rule 9(b) presents heightened pleading requirements for plaintiffs alleging fraud or mistake. In alleging fraud or mistake, the plaintiff must "state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). Failure to satisfy this heightened pleading requirement can result in dismissal of the claim. Vess v. Ciba–Geigy Corp. USA, 317 F.3d 1097, 1107 (9th Cir. 2003). In general, the plaintiff's allegations of fraud or mistake must be "specific enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong." Id. at 1106. This heightened pleading standard requires the plaintiff to allege fraud or mistake by detailing "the who, what, when, where, and how" of the misconduct charged. Id. at 1106-07. In other words, the plaintiff must specify the time, place, and content of the alleged fraudulent or mistaken misconduct. See id.

Although the scope of review on a Rule 12(b)(6) motion to dismiss is limited to the contents of the complaint, the Court may consider certain materials, such as documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice. United States v. Ritchie, 342 F.3d 903, 907-08 (9th Cir. 2003). Under the incorporation by reference doctrine, the Court may consider documents not attached to the pleading if: (1) those documents are referenced extensively in the complaint or form the basis of the plaintiff's

claim; and (2) if no party questions their authenticity. United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003).

III. DISCUSSION

A. First Cause of Action: RICO Claim Against CorVel and York

Plaintiffs' first cause of action alleges that CorVel and York violated the RICO Act and committed mail, wire, and bank fraud in violation of 18 U.S.C. §§ 1341, 1343, and 1344. The Court first summarizes the general requirements for bringing such a claim and then turns to discuss the sufficiency of Plaintiffs' RICO allegations.

1. Relevant Standard for RICO Liability

Pursuant to 18 U.S.C. § 1964(c), "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court." Plaintiffs' RICO claim alleges that CorVel and York engaged in fraud in violation of 18 U.S.C. § 1962(c) ("Subsection (c)") as well as conspiracy to commit that fraud in violation of 18 U.S.C. § 1962(d) ("Subsection (d)"). (FAC ¶¶ 274-97; RICO Statement at 2.)

Subsection (c) makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. § 1962(c). Accordingly, Plaintiffs must plead four elements: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. See Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985); Eclectic Props. E., LLC v. Marcus & Millichap Co., 751 F.3d 990, 997 (9th Cir. 2014). The term "racketeering activity" is defined to include a host of so-called predicate acts, including "any act which is indictable under . . . [18 U.S.C.] section 1341 (relating to mail fraud)." 18 U.S.C. § 1961(1)(B). For the purpose of construing those elements, "RICO is to be read broadly . . . [and] is to be liberally construed to effectuate its remedial purposes." Sedima, 473 U.S. at 497-98.

A plaintiff must show a defendant committed at least two or more predicate acts to prove a "pattern of racketeering activity." 18 U.S.C. § 1961(5). This requirement, however, is a minimum, and is not itself sufficient to establish a "pattern of racketeering activity." H.J. Inc. v. N.W. Bell Tel. Co., 492 U.S. 229, 237-38 (1989); Turner v. Cook, 362 F.3d 1219, 1229 (9th Cir. 2004). Instead, a plaintiff must show that the predicate acts are sufficiently related and create a threat of continuing criminal activity. H.J. Inc., 492 U.S. at 240; Religious Tech. Ctr. v. Wollersheim, 971 F.2d 364, 366 (9th Cir. 1992). The threat of continuity may be established where the predicate acts themselves include a threat of future criminal actions, where an alleged perpetrator of the predicate acts is engaged in an ongoing criminal enterprise, or where the predicate acts are the enterprise's regular way of doing business. H.J. Inc., 492 U.S. at 242-43. If the predicate acts are isolated or sporadic incidents, they do not amount to a "pattern of racketeering activity." Durning v. Citibank Int'l, 990 F.2d 1133, 1138 (9th Cir. 1993).

Application of these principles requires a careful review of the facts presented in each case. See H.J. Inc., 492 U.S. at 242.

Subsection (d) forbids conspiracy to violate other parts of 18 U.S.C. § 1962: "It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section." Pleading a conspiracy RICO claim requires a plaintiff to first adequately plead that the underlying conduct constitutes a substantive RICO violation. See Howard v. Am. Online, Inc., 208 F.3d 741, 751 (9th Cir. 2000).

2. Plaintiffs' RICO Claim

Plaintiffs bring their RICO claim pursuant to 18 U.S.C. § 1964(c), which provides that "[a]ny person injured in his business or property by reason of a violation of [18 U.S.C. § 1962 ("Section 1962")] may sue therefor in any appropriate United States district court." 18 U.S.C. § 1964(c) (emphasis added). Regardless of what unlawful act under Section 1962 Defendants are alleged to have committed, Plaintiffs must demonstrate that they have been "injured in [their] business or property." 18 U.S.C. § 1964(c). Moreover, "Rule 9(b)'s requirement that '[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity' applies to civil RICO fraud claims." Edwards v. Marin Park, Inc., 356 F.3d 1058, 1065-66 (9th Cir. 2004).

Courts "typically look to state law to determine 'whether a particular interest amounts to property.'" Diaz v. Gates, 420 F.3d 897 (9th Cir. 2005) (en banc). The United States Supreme Court addressed whether claimants have a property right to workers' compensation medical benefits under Pennsylvania law in American Manufacturers Mutual Insurance Co. v. Sullivan. 526 U.S. 40, 59-61 (1999). The Supreme Court explained that a claimant's entitlement to such benefits is not automatic. See id. at 60. Rather, "the employee must clear two hurdles: First, he must prove that an employer is liable for a work-related injury, and second, he must establish that the particular medical treatment at issue is reasonable and necessary." Id. at 60-61. The Supreme Court thus distinguished workers' compensation medical benefits from true entitlements, explaining that only after clearing those hurdles "does the employee's interest parallel that of the beneficiary of welfare assistance in Goldberg [v. Kelly, 397 U.S. 254 (1970),] and the recipient of disability benefits in Mathews [v. Eldridge, 424 U.S. 319 (1976)]." Sullivan, 526 U.S. at 61. Because the claimants had not cleared both hurdles at the time of the alleged due process violations, they lacked the required property interest in the payment of their workers' compensation medical benefits. Id.

Although Sullivan clearly addressed the existence of a property right to workers' compensation benefits, that case was based on Pennsylvania workers' compensation law. However, the Ninth Circuit very recently addressed the question of when workers' compensation claimants obtain a property right to their benefits under California law. Angelotti Chiropractic, Inc. v. Baker, 791 F.3d 1075, 1081-82 (9th Cir. 2015).[7] The panel explained that "the right to

[7] Specifically, Angelotti addressed property rights to workers' compensation liens, but the Ninth Circuit explained that property rights in a lien "are derivative of the underlying (continued . . .)

workers' compensation benefits is 'wholly statutory,' and such rights are not vested until they are 'reduced to final judgment.'" Id. (quoting Graczyk v. Workers' Comp. Appeals Bd., 184 Cal. App. 3d 997, 1006 (1986)). Similar to Sullivan, the Ninth Circuit noted that, before obtaining a property right, claimants must demonstrate both the purpose for which the medical expense was incurred and that the "expense was 'reasonably required to cure or relieve the injured worker from the effects of his or her injury.'" Angelotti, 791 F.3d at 1082 (quoting Cal. Lab. Code § 4600).

Despite the fact that the Angelotti decision addressed property rights under a Takings Clause analysis, the Court concludes Angelotti is controlling on the matter of when an individual acquires a property interest in workers' compensation benefits for purposes of RICO. It is true that the Ninth Circuit has recognized that some "property rights . . . [a]re safeguarded by due process, but still not vested." Bowers v. Whitman, 671 F.3d 905, 912 (9th Cir. 2012).[8] Accordingly, perhaps a claimant could possess a due process property right to workers' compensation benefits even though those rights have not yet vested. This Court, however, is unable to reconcile such a conclusion with Sullivan, 526 U.S. at 59-61. There, the Supreme Court held that Pennsylvania workers' compensation claimants lacked due process rights to their benefits because entitlement to those benefits was contingent upon determinations that a medical treatment is reasonable and necessary and that an employer is liable for the injury. Id. at 60-61.[9] Similarly, the Ninth Circuit recently stated that California workers' compensation benefits are contingent on a demonstration of the purpose for which the medical expense was incurred as well as a showing that the expense was reasonably required. See Angelotti, 791 F.3d at 1082. California Labor Code § 3600 also lists several conditions for an award of workers' compensation benefits, such as that the employee must have been injured in the course of her employment and the injury caused by her employment. See Cal. Lab. Code § 3600(a).

3. The Parties' Contentions

Plaintiffs allege they were injured in their business or property because Defendants denied or delayed payment of workers' compensation benefits they had been awarded by the California Division of Workers' Compensation. Specifically, Plaintiffs claim Defendants failed to comply with three awards: two awards issued to Brayshaw on June 25, 2012 and December 20, 2012, and an award issued to Viola on September 17, 2013. (FAC ¶¶ 23, 40, 50-52.)

(. . . continued)
workers' compensation claim" and thus the property right vests simultaneously. See Angelotti, 791 F.3d at 1081-82.

[8] For example, the Ninth Circuit cited Goldberg as one case in which due process rights to property existed despite the fact that the property rights had not vested. Bowers, 671 F.3d at 912 (citing Goldberg, 397 U.S. 254).

[9] The Supreme Court distinguished a claimant's interest in workers' compensation benefits from a welfare beneficiary's property interest in her benefits, as established in Goldberg. Sullivan, 526 U.S. at 60-61 (citing Goldberg, 397 U.S. 254).

Defendants contend Plaintiffs have failed to allege sufficient facts showing Defendants engaged in a "pattern" of racketeering activity, for purposes of 18 U.S.C. § 1962(c). (York MTD at 19-21.) Defendants argue that even assuming their failure to comply with the three awards constitutes an injury to property that could support a RICO claim, "there is no well-pled allegation that connects the predicate acts together in a 'pattern of racketeering activity.'" (Id.) Defendants contend the FAC does not sufficiently allege that these acts "amounted to anything more than isolated or sporadic incidents, much less a pattern of criminal activity." (Id. at 19.)

4. Analysis

Plaintiffs fail to state RICO claims against York and CorVel. Plaintiffs allege they were injured in their business or property because Defendants denied or delayed payment of three awards of workers' compensation benefits. However, aside from these isolated incidents, Plaintiffs do not allege facts showing either York or CorVel was engaged in an "ongoing scheme which amounts to, or poses a threat of continued criminal activity." Durning, 990 F.2d at 1139 (internal quotation marks and citation omitted). Although the FAC presents conclusory allegations that York and CorVel systematically and fraudulently denied and delayed legitimate workers' compensation claims by injured firefighters and police officers over a significant period of time, it contains no facts supporting these allegations.[10] Indeed, the FAC contains no facts suggesting York and CorVel injured the property interests of any persons other than Viola or Brayshaw, or that the failure to grant workers' compensation benefits to Viola and Brayshaw was part of some larger scheme or pattern.[11] Consequently, the FAC fails to state a RICO claim. See Durning, 990 F.2d at 1139

[10] Plaintiffs attach a copy of a "2009-2010 San Bernardino County Grand Jury Final Report" as an exhibit to the FAC. (FAC, Ex. 1.) According to Plaintiffs, the report found York and Rialto's mishandled workers' compensation claims. (FAC ¶ 6.) However, the copy of the report attached to the FAC contains no mention of such a finding.

[11] Plaintiffs argue they have alleged sufficient facts showing a pattern of racketeering activity because the FAC re-asserts their allegations concerning Huber, McCullough, Black, Ross-Mullin, Fujiwara, Gregory, Veloz, Stephenson, Barrett, Park, Thurman, and Mayo. (York MTD Opp. at 12.) However, the Court previously found these allegations did not show any of these individuals had a cognizable property interest in workers' compensation benefits that was interfered with by CorVel or York. (TAC Order at 12-21.) Plaintiffs characterize the Court's prior ruling as a determination that these individuals merely "lacked standing to recover under RICO" and not a finding that CorVel and York did not engage in mail fraud in violation of 18 U.S.C. § 1341 against these individuals. (York MTD Opp. at 12.) Plaintiffs mischaracterize the Court's ruling: by finding these individuals did not have a property interest in workers' compensation benefits, the Court necessarily found CorVel and York did not engage in mail fraud because mail fraud "requires the object of the fraud to be 'property' in the victim's hands." Cleveland v. United States, 531 U.S. 12, 26 (2000). Consequently, CorVel and York's alleged actions with respect to these twelve individuals do not support Plaintiffs' claim that CorVel and York engaged in a pattern of racketeering activity.

Accordingly, the Court GRANTS Defendants' Motions to Dismiss to the extent they seek dismissal of Plaintiffs' RICO claim.

B. Second and Third Causes of Action: Section 1983 Claims

In their second and third causes of action, Plaintiffs assert claims pursuant to 42 U.S.C. § 1983 ("Section 1983). Both the second and third causes of action assert unconstitutional delays of benefits. (FAC ¶¶ 280-297.) The second cause of action is brought against all Defendants while the third cause of action (for corporate liability) is raised against only CorVel and York. (Id.) In both claims, Plaintiffs allege they were deprived of their property rights in their workers' compensation benefits without due process of law, in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. (Id.)

1. Claims against CorVel and York

In order to state a claim for a civil rights violation under 42 U.S.C. section 1983, a plaintiff must allege that a particular defendant, acting under color of state law, deprived plaintiff of a right guaranteed under the U.S. Constitution or a federal statute. 42 U.S.C. § 1983; see West v. Atkins, 487 U.S. 42, 48 (1988). However, municipal and private entities sued under Section 1983 cannot be held liable on a respondeat superior theory, that is, solely because they employ a tortfeasor. Monell v. Dep't of Soc. Serv. of City of New York, 436 U.S. 658, 691 (1978); Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1139 (9th Cir. 2012) (applying Monell to private entities sued under Section 1983). Municipal and private entities may be held liable only if the alleged wrongdoing was committed pursuant to a policy, custom or usage. See Board of Cnty. Comm'rs of Bryan Cnty., Okla. v. Brown, 520 U.S. 397, 402-04 (1997); Monell, 436 U.S. at 691; Gibson v. Cnty. of Washoe, 290 F.3d 1175, 1185 (9th Cir. 2002) (describing "two routes" to municipal liability: (1) where municipality's official policy, regulation, or decision violated plaintiff's rights, or (2) alternatively where municipality failed to act under circumstances showing its deliberate indifference to plaintiff's rights). Under certain circumstances, a single act, when carried out by a municipal "policymaker," may also give rise to Monell liability, even in the absence of a policy or custom. See Pembaur v. City of Cincinnati, 475 U.S. 469, 483–84 (1986) ("[Section 1983] municipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances.").

Defendants argue Plaintiffs' claims against CorVel and York must be dismissed because Plaintiffs have not alleged facts showing either CorVel or York deprived them of workers' compensation benefits pursuant to a policy, custom, or usage. (York MTD at 23; CorVel MTD at 23.) The Court agrees. As with their RICO claims, Plaintiffs do not allege facts showing York and CorVel injured the property interests of any persons other than Viola or Brayshaw, or that the failure to grant workers' compensation benefits to Viola and Brayshaw was part of some larger policy or practice. See Monell, 436 U.S. at 691; Tsao, 698 F.3d at 1139.

Accordingly, the Court GRANTS Defendants' Motions insofar as they seek dismissal of Plaintiffs' second and third causes of action against CorVel and York.

2. Claims against Hyde

a. Procedural Due Process Claim

The Fourteenth Amendment prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV. "Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." Carey v. Piphus, 435 U.S. 247, 259 (1978). "The first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in 'property' or 'liberty.'" Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 59 (1999). Second, the court "examines whether the procedures attendant upon that deprivation were constitutionally sufficient." Vasquez v. Rackauckas, 734 F.3d 1025, 1042 (9th Cir. 2013). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (internal quotations and citation omitted). The Ninth Circuit has held that "the determination of what procedures satisfy due process in a given situation depends upon an analysis of the particular case in accordance with the three-part balancing test outlined in Mathews v. Eldridge . . . ." Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist., 149 F.3d 971, 983 (9th Cir. 1998) (internal citation, quotation marks, and alterations omitted). In Mathews, the Supreme Court stated:

> [I]dentification of the specific dictates of due process generally requires consideration of three distinct factors. First, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Mathews, 424 U.S. at 335.

"[A] state can cure what would otherwise be an unconstitutional deprivation of 'life, liberty or property' by providing adequate postdeprivation remedies." Zimmerman v. City of Oakland, 255 F.3d 734, 737 (9th Cir. 2001). Under the U.S. Supreme Court's decisions in Parratt v. Taylor, 451 U.S. 527 (1981), and Hudson v. Palmer, 468 U.S. 517 (1984), postdeprivation remedies pass constitutional muster if government officials "acted in random, unpredictable, and unauthorized ways." Zimmerman, 255 F.3d at 738. The rationale for this rule is straightforward: "when deprivations of property are effected through random and unauthorized conduct of a state employee, predeprivation procedures are simply 'impracticable' since the state cannot know when such deprivations will occur." Hudson, 468 U.S. at 533.

Plaintiffs allege they were deprived of property because Hyde, while adjusting workers' compensation claims for Rialto, denied or delayed payment of workers' compensation benefits they had been awarded by the California Division of Workers' Compensation. Specifically, Plaintiffs claim Hyde failed to comply with awards issued to Brayshaw on June 25, 2012 and December 20, 2012, and to Viola on September 17, 2013. (FAC ¶¶ 23, 40, 50-52.)

Defendants respond that even if Plaintiffs were deprived of their property interest in workers' compensation benefits, they were afforded sufficient post-deprivation procedural remedies to satisfy due process. (York MTD at 22-23; CorVel MTD at 15-16.) Defendants note that under California's workers' compensation system, Plaintiffs could secure statutory penalties for Hyde's failure to grant them workers' compensation benefits they had been awarded. (CorVel MTD at 8-9.)

The Court concludes Plaintiffs have failed to state a procedural due process claim. Here, Plaintiffs had procedural remedies for Hyde's failure to grant them workers' compensation benefits. Under California Labor Code sections 5814 and 5814.6, Plaintiffs could gain statutory penalties from the California Workers' Compensation Appeals Board for Rialto's failure to pay them benefits they had been awarded. See Cal. Lab. Code § 5814; Cal. Lab. Code § 5814.6. In fact, Plaintiffs allege Brayshaw pursued such remedies and finally gained payment for benefits he had been awarded on December 20, 2012 after a "penalty hearing." (FAC ¶ 52.) Plaintiffs do not identify any defects in such procedures. Moreover, given that Plaintiffs' alleged injuries were caused by Hyde's "random and unauthorized conduct," the Court finds these procedures were sufficient post-deprivation remedies under the Due Process Clause. Hudson, 468 U.S. at 533; see also Woods View II, LLC v. Kitsap Cnty., 484 F. App'x 160, 162 (9th Cir. 2012) ("[M]eaningful post-deprivation remedies were available to address Appellees' failure to act by the statutory deadline. Such post-deprivation remedies were sufficient to satisfy procedural due process.") (citation omitted).

Accordingly, the Court GRANTS Defendants' Motions insofar as they seek dismissal of Plaintiffs' second cause of action for procedural due process violations against Hyde.

b. Substantive Due Process Claim

In their Opposition to CorVel's Motion, Plaintiffs argue they can maintain a substantive due process claim arising out of the delay in payment of their workers' compensation benefits. (CorVel MTD Opp. at 12-13.) Defendants do not seek dismissal of Plaintiffs' substantive due process claim in their Motions and only challenge Plaintiffs' procedural due process claim. Accordingly, the Court declines to rule on the merits of Plaintiffs' substantive due process claim against Hyde at this time.

C. Leave to Amend

Federal Rule of Civil Procedure 15 provides that leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a)(2). A district court, however, may in its discretion deny leave to amend "due to undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment." Leadsinger, Inc. v. BMG Music Publ'g, 512 F.3d 522, 532 (9th Cir. 2008) (internal citation and quotation marks omitted).

Here, the Court previously granted Plaintiffs leave to amend on three prior occasions when dismissing their prior pleadings. The Court declines to grant Plaintiffs an additional opportunity to amend their operative pleading. See Zavala v. Bartnik, 348 F. App'x 211, 213

(9th Cir. 2009) ("Dismissal with prejudice was proper because Zavala was given two prior opportunities to amend his complaint in order to correct the deficiencies identified by the district court but failed to do so."). Moreover, the Court finds amendment of the FAC to include additional allegations with respect to Plaintiffs' RICO claims, Section 1983 claims against York and CorVel, and procedural due process claim against Hyde would be futile.

Accordingly, the Court DENIES Plaintiffs leave to amend.

IV. CONCLUSION

For the reasons stated above, the Court GRANTS the CorVel Motion to Dismiss and GRANTS the York Motion to Dismiss WITHOUT LEAVE TO AMEND.[12] Plaintiffs' claims against CorVel and York are DISMISSED WITH PREJUDICE. Plaintiffs' claims under 42 U.S.C. §§ 1983 and 1988 against Hyde, to the extent they are based on a procedural due process theory, are DISMISSED WITH PREJUDICE. Plaintiffs' substantive due process claims against Hyde under 42 U.S.C. §§ 1983 and 1988 remain with the Court.

The hearing on August 29, 2016 set for this matter is VACATED.

IT IS SO ORDERED.

[12] Defendants also move to strike Plaintiffs' allegations concerning Huber, McCullough, Black, Ross-Mullin, Fujiwara, Gregory, Veloz, Stephenson, Barrett, Park, Thurman, and Mayo as irrelevant. (CorVel MTD at 17-18.) Federal Rule of Civil Procedure 12(f) empowers the Court to strike from a pleading "any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). The Court GRANTS Defendants' request to strike these allegations as irrelevant.