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JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GERALD HOFFARTH, an individual,
et al.,

Plaintiffs,

v.

DIVERSIFIED LENDING GROUP,
INC., a California corporation, et al.,

Defendants.

Case No. SACV11-00336-R(RZX)

**ORDER DISMISSING
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Date: August 15, 2011
Time: 10:00 a.m.
Dept. 8
Judge: Hon. Manuel L. Real
Trial Date: None Set

1 On Monday, August 22, 2011, at 10:00 a.m., the Motion of Defendant
2 Jackson National Life Insurance Company (“Jackson”) to Dismiss Plaintiffs’ First
3 Amended Complaint (the “Motion”) came regularly for hearing in the above-
4 entitled Court. The Motion requested dismissal of all of the claims asserted against
5 Jackson in Plaintiffs’ First Amended Complaint (the “Complaint”), including the
6 following causes of action: fraud (Claim 1); negligent misrepresentation, and aiding
7 and abetting negligent misrepresentation(Claim 2); negligence (Claim 3); aiding
8 and abetting fraud (Claim 4); breach of fiduciary duty, and aiding and abetting
9 breach of fiduciary duty (Claim 5); breach of the insurance guarantee contract
10 (Claim 6); violation of Cal. Corp. Code § 25110 (Claim 7); violation of Cal. Corp.
11 Code § 25401 (Claim 8); holder’s action (Claim 9); aiding and abetting violation of
12 Cal. Bus. & Prof. Code § 17200 *et seq.* (Claim 10); aiding and abetting conversion
13 (Claim 11); financial elder abuse(Claim 12); violation of Cal. Corp. Code § 25503
14 (Claim 14); violations of RICO, 18 U.S.C. § 1962(c) (Claim 13); and unjust
15 enrichment (Claim 15).

16 Having considered the papers in support of and in opposition to the Motion
17 and all other matters presented to the Court, the Court concludes that the Motion
18 should be granted in part for the following reasons:

19 1. The Complaint fails to state a RICO claim because the allegations are
20 insufficient to show or permit a reasonable inference of an “association in fact
21 enterprise.” *See Boyle v. U.S.*, 129 S. Ct. 2237 (2009); *U.S. v. Turkette*, 452 U.S.
22 576 (1981); *Odom v. Microsoft Corp.*, 486 F.3d 541 (9th Cir. 2007). Among other
23 things, the facts alleged fail to show or permit a reasonable inference that there was
24 a common purpose between any entity or individual other than between Diversified
25 Lending Group (“DLG”) and Bruce Friedman (“Friedman”). Indeed, the facts
26 alleged in the Complaint show that DLG and Friedman did not share a common
27 purpose with Jackson, and that DLG had the purpose of defrauding investors,
28 whereas Jackson had the purpose of selling insurance and annuities and simply had

1 the misfortune of having this innocent purpose and business co-opted by a Ponzi
2 schemer. Accordingly, the RICO claim is dismissed as to Jackson and all other
3 defendants, except for DLG and Friedman, for failure to plead an “associated-in-
4 fact enterprise.”

5 2. Because actions against DLG and Friedman are stayed pursuant to this
6 Court’s March 10, 2009 Order in *Securities Exchange Commission v. Diversified*
7 *Lending Group, Inc., et al.*, CV-09-1533-R (C.D. Cal.), Plaintiffs are barred from
8 pursuing any claims against DLG and Friedman during the pendency of the
9 receivership established in that case. Accordingly, Plaintiffs may not maintain any
10 of their claims against DLG and Friedman. The RICO claim is therefore dismissed
11 in its entirety.

12 3. Plaintiffs assert jurisdiction in this case based on federal question
13 jurisdiction arising out of the RICO claim and supplemental jurisdiction as to their
14 other claims. As a result of the dismissal of the RICO claim, this Court has
15 discretion to retain jurisdiction over the remaining state law claims or to dismiss the
16 claims without prejudice. *See Carlsbad Technology, Inc. v. H.I.F. Bio, Inc.*, 129
17 Sup. Ct. 1862 (2009). It is generally preferable for a district court to not exercise
18 supplemental jurisdiction over pendent state law claims once federal claims have
19 been dismissed. *See Harrell v. 29th Century Insurance Company*, 934 Fed.2d 203
20 (9th Cir. 1991). Pursuant to its discretion, this Court declines to exercise
21 jurisdiction over the remaining state law claims and dismisses those claims without
22 prejudice.

23 IT IS HEREBY ORDERED THAT Jackson’s Motion is GRANTED in part;
24 IT IS HEREBY FURTHER ORDERED THAT the RICO claim (Claim 13)
25 is dismissed with prejudice as to Jackson and all other defendants except DLG and
26 Friedman, and dismissed as to DLG and Friedman without prejudice but barred
27 pursuant to the Court’s March 10, 2009 Order in *Securities Exchange Commission*
28 *v. Diversified Lending Group, Inc., et al.*, CV-09-1533-R (C.D. Cal.);

1 IT IS HEREBY FURTHER ORDERED THAT all remaining claims under
2 state law are dismissed without prejudice based on the Court's decision not to
3 exercise jurisdiction over these claims, including specifically the following: fraud
4 (Claim 1); negligent misrepresentation, and aiding and abetting negligent
5 misrepresentation(Claim 2); negligence (Claim 3); aiding and abetting fraud (Claim
6 4); breach of fiduciary duty, and aiding and abetting breach of fiduciary duty
7 (Claim 5); breach of the insurance guarantee contract (Claim 6); violation of Cal.
8 Corp. Code § 25110 (Claim 7); violation of Cal. Corp. Code § 25401 (Claim 8);
9 holder's action (Claim 9); aiding and abetting violation of Cal. Bus. & Prof. Code §
10 17200 *et seq.* (Claim 10); aiding and abetting conversion (Claim 11); financial elder
11 abuse(Claim 12); violation of Cal. Corp. Code § 25503 (Claim 14); and unjust
12 enrichment (Claim 15).

13 IT IS SO ORDERED.



14
15 Hon. Manuel L. Real
16 Judge, United States District Court

17 Dated: August 30, 2011