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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PARADISE NORTHWEST INC.,
Plaintiff,

No. 2:09-cv-02027-MCE-DAD

v.

MEMORANDUM AND ORDER

SATVINDER PALSINGH RANDHAWA,
LORNA MARIE RANDHAWA dba GREAT
EASTERN EXPORT & TRADING
COMPANY,

Defendants.

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Presently before the Court is a Motion by Defendants Satvinder Palsingh Randhawa and Lorna Marie Randhawa dba Great Eastern Export & Trading Company requesting that this Court issue an order dismissing Plaintiff Paradise Northwest's First Cause of Action alleging violation of the RICO Act and Plaintiff's Second Cause of Action alleging fraud. In the alternative, Defendants move for a more definite statement of Plaintiff's First and Second Causes of Action. Additionally, Defendants move to strike Plaintiff's allegation of diversity jurisdiction.

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1 For the reasons set forth below, Defendants' motions are
2 denied.

3
4 **BACKGROUND¹**

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6 This dispute arises out of a project to re-oxygenate a lake
7 in India. Defendants Satvinder Randhawa and Lorna Marie Randhawa
8 ("Defendants"), are a husband and wife doing business as Great
9 Eastern Export and Trading Company. Defendants are alleged to
10 have entered into an oral contract with Plaintiff Paradise
11 Northwest, Inc. ("Plaintiff") under the terms of which Plaintiff
12 agreed to perform hydrology-related engineering services.
13 Plaintiff claims it was led to believe that the Indian government
14 would be paying for its services, and Defendants would arrange to
15 have payment transferred from the Indian government to Plaintiff.
16 However, Plaintiff contends that since submitting to Defendants a
17 final invoice of \$85,296.74, it still has not been paid in full.

18 Plaintiff argues that it was never the intent of the
19 Defendants to turn over the full payment from the Indian
20 government, but that Defendants instead planned to keep the money
21 for themselves. Plaintiff further claims that Defendants have,
22 in a similar fashion, victimized others including Air Diffusion
23 System, an equipment manufacturer and travel/logistics company
24 that was allegedly never paid for its services, and Harpinder
25 Singh Randhawa, a relative of Defendants that allegedly was never
26 paid for his labor.

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¹ The factual assertions in this section are based on the
allegations in Plaintiff's Complaint unless otherwise specified.

1 Id. at 1965 (citing 5 C. Wright & A. Miller, Federal Practice and
2 Procedure § 1216, pp. 235-36 (3d ed. 2004) (“The pleading must
3 contain something more...than...a statement of facts that merely
4 creates a suspicion [of] a legally cognizable right of action”).

5 “Rule 8(a)(2)...requires a ‘showing,’ rather than a blanket
6 assertion of entitlement to relief. Without some factual
7 allegation in the complaint, it is hard to see how a claimant
8 could satisfy the requirements of providing not only ‘fair
9 notice’ of the nature of the claim, but also ‘grounds’ on which
10 the claim rests.” Twombly, 550 U.S. 556 n.3. A pleading must
11 contain “only enough facts to state a claim to relief that is
12 plausible on its face.” Id. at 570. If the “plaintiffs...have
13 not nudged their claims across the line from conceivable to
14 plausible, their complaint must be dismissed.” Id.

15 Nevertheless, “[a] well-pleaded complaint may proceed even if it
16 strikes a savvy judge that actual proof of those facts is
17 improbable, and ‘that a recovery is very remote and unlikely.’”
18 Id. at 556.

19 Claims sounding in fraud require a heightened pleading
20 standard. Federal Rule of Civil Procedure 9(b) provides that “a
21 party must state with particularity the circumstances constituting
22 fraud.” “A pleading is sufficient under Rule 9(b) if it
23 identifies the circumstances constituting fraud so that the
24 defendant can prepare an adequate answer from the allegations.”
25 Neubronner v. Milken, 6 F.3d 666, 671-672 (9th Cir. 1993) (internal
26 quotations and citations omitted). “The complaint must specify
27 such facts as the times, dates, places, benefits received, and
28 other details of the alleged fraudulent activity.” Id. at 672.

1 A court granting a motion to dismiss a complaint must then
2 decide whether to grant leave to amend. A court should "freely
3 give" leave to amend when there is no "undue delay, bad faith[,]
4 dilatory motive on the part of the movant,...undue prejudice to
5 the opposing party by virtue of...the amendment, [or] futility of
6 the amendment...." Fed. R. Civ. P. 15(a); Foman v. Davis, 371
7 U.S. 178, 182 (1962). Generally, leave to amend is denied only
8 when it is clear the deficiencies of the complaint cannot be
9 cured by amendment. DeSoto v. Yellow Freight Sys., Inc., 957
10 F.2d 655, 658 (9th Cir. 1992).

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12 **B. Motion for More Definite Statement**

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14 Before interposing a responsive pleading, a defendant may
15 move for a more definitive statement "[i]f a pleading...is so
16 vague or ambiguous that a party cannot reasonably be required to
17 frame a responsive pleading...." Fed. R. Civ. P. 12(e). A Rule
18 12(e) motion is proper when the plaintiff's complaint is so
19 indefinite that the defendant cannot ascertain the nature of the
20 claim being asserted. Gay-Straight Alliance Network v. Visalia
21 Unified Sch. Dist., 262 F. Supp. 2d 1088, 1099 (E.D. Cal. 2001).

22 Due to the liberal pleading standards in the federal courts
23 embodied in Rule 8(e) and the availability of extensive
24 discovery, courts should not freely grant motions for more
25 definitive statements. Famolare, Inc. v. Edison Bros. Stores,
26 Inc., 525 F. Supp. 940, 949 (E.D. Cal. 1981).

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1 Indeed, a motion for a more definitive statement should be denied
2 unless the information sought by the moving party is not
3 available or is not ascertainable through discovery. Id.

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5 **C. Motion to Strike**

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7 The Court may strike "from any pleading any insufficient
8 defense or any redundant, immaterial, impertinent, or scandalous
9 matter." Fed. R. Civ. P. 12(f). "(T)he function of a 12(f)
10 motion to strike is to avoid the expenditure of time and money
11 that must arise from litigating spurious issues by dispensing
12 with those issues prior to trial...." Sidney-VinSTEIN v. A.H.
13 Robins Co., 697 F.2d 880, 885 (9th Cir. 1983). Immaterial matter
14 is that which has no essential or important relationship to the
15 claim for relief or the defenses being pleaded. Fantasy, Inc. v.
16 Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993) (rev'd on other
17 grounds Fogerty v. Fantasy, Inc., 510 U.S. 517, 114 S. Ct. 1023,
18 127 L. Ed. 2d 455 (1994)) (internal citations and quotations
19 omitted). Impertinent matter consists of statements that do not
20 pertain, and are not necessary, to the issues in question. Id.

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1 **ANALYSIS**

2 **A. Racketeer Influenced Corrupt Organizations Act ("RICO")**

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4 The Racketeer Influenced Corrupt Organizations Act ("RICO")
5 makes it unlawful for any person to conduct an enterprise through
6 a pattern of racketeering activity, to acquire control of an
7 enterprise through a pattern of racketeering activity, or to use
8 money derived from a pattern of racketeering activity to invest
9 in an enterprise, in a manner which affects interstate or foreign
10 commerce. 18 U.S.C. § 1962 (2009). It allows for civil remedy,
11 authorizing private actions by "any person injured in his
12 business or property by reason of a violation of [RICO] section
13 1962." 18 U.S.C. § 1964(c) (2009). To state a claim under section
14 1962 of RICO, a plaintiff must allege "1) conduct, 2) of an
15 enterprise, 3) through a pattern 4) of racketeering activity."
16 Walter v. Drayson, 538 F. 3d 1244, 1247 (9th Cir. 2008); see also
17 Odom v. Microsoft Corp., 486 F.3d 541, 547 (9th Cir. 2007)
18 (quoting Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496
19 (1985)).

20 While the outer boundaries are not specifically defined, an
21 "enterprise" includes "any individual, partnership, corporation,
22 association, or other legal entity, and any union or group of
23 individuals associated in fact although not a legal entity." 18
24 U.S.C. § 1961(4); Boyle v. U.S., 129 S. Ct. 2237, 2243 (2009)
25 ("This enumeration of included enterprises is obviously
26 broad....The term 'any' ensures that the definition has a wide
27 reach (internal citations omitted).

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1 In creating RICO, Congress expressly admonished that its terms
2 were to be "liberally construed to effectuate its remedial
3 purposes." See Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 497-98
4 (1985) (citing Pub. L. No. 91-452, § 904(a), 84 Stat. 947 (1970)).

5 In order to establish the existence of an enterprise, a
6 plaintiff must prove: (1) there is an ongoing organization with
7 some sort of framework, formal or informal, for carrying out its
8 objectives; and (2) the various members and associates of the
9 association function as a continuing unit to achieve a common
10 purpose. Boyle, 129 S. Ct. at 2242; Odom, 486 F.3d at 552. An
11 association-in-fact enterprise must have at least three
12 structural features: (1) a purpose, (2) relationships among those
13 associated with the enterprise, and (3) longevity sufficient to
14 permit these associates to pursue the enterprise's purpose.

15 Boyle, 129 S. Ct. at 2244; see also Odom, 486 F.3d at 552-53.

16 The existence of an enterprise is an element distinct from
17 the pattern of racketeering activity and "proof of one does not
18 necessarily establish the other." Boyle, 129 S. Ct. at 2245
19 (quoting United States v. Turkette, 452 U.S. 576, 583 (1981)).
20 However, the evidence used to prove the pattern of racketeering
21 activity and the evidence establishing an enterprise "may in
22 particular cases coalesce." Id. Therefore, "proof of a pattern
23 of racketeering activity may be sufficient in a particular case
24 to permit a jury to infer the existence of an association-in-fact
25 enterprise." Id. at 2247 (rejecting petitioner's proffered jury
26 instruction that an enterprise must have "an ascertainable
27 structure beyond that inherent in the pattern of racketeering
28 activity in which it engages").

1 Plaintiff alleges that Defendants have engaged in a pattern
2 of financial misrepresentation such that it constitutes
3 racketeering activity punishable under RICO. Plaintiff contends
4 that Defendants habitually and purposely fail to arrange for the
5 Indian government to pay for various services rendered, and that
6 this pattern of nonpayment has not only victimized them but other
7 parties over time. Additionally, Plaintiff identifies the
8 Defendants' business, the Great Eastern Export and Trading
9 Company, as the separate enterprise engaging in this conduct, and
10 allege that Defendants have utilized interstate wire and mail
11 services to conduct their fraudulent activities.

12 Defendants counter that their business does not constitute
13 an enterprise, and that the behavior Plaintiff identifies does
14 not amount to a "pattern". However, the determination of whether
15 a "pattern" or an "enterprise" exists is not the question
16 currently before the court. Rather, at this early stage of the
17 proceedings, the inquiry is whether sufficient facts have been
18 alleged in the complaint to constitute a RICO claim "beyond the
19 speculative level."

20 Here, that standard has been met. Plaintiff has identified
21 the non-payment of contracts to be the relevant conduct, the
22 Great Eastern Export and Trading Company to be alleged
23 enterprise, the lack of payment to itself and several others to
24 be the alleged pattern, and the interception of government funds
25 to be the alleged racketeering activity. In considering a motion
26 to dismiss, the court must accept all allegations of material
27 fact as true. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,
28 337-38 (9th Cir. 1996).

1 These factual allegations, if taken to be true, would satisfy
2 each necessary element of a RICO claim such that Plaintiff has
3 met its burden of providing a cognizable legal theory. Moreover,
4 Congress has instructed that RICO be interpreted with "liberal
5 construction." Sedima, 473 U.S. at 498. Here, the facts plead by
6 Plaintiff, especially if liberally construed, could plausibly
7 evidence a pattern or enterprise within of the realm of RICO's
8 definitions. In evaluating a pleading challenged by a Rule
9 12(b)(6) Motion to Dismiss, we do not require a heightened fact
10 pleading of specifics, but only enough facts to state a claim of
11 relief that is plausible on its face. Bell Atl. Corp. v.
12 Twombly, 550 U.S. 544, 570. Plaintiff has proffered enough facts
13 to support a plausible claim. Later the parties may litigate its
14 merits.

15 Accordingly, Defendants' Motion to Dismiss Plaintiff's RICO
16 claim is denied.

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18 **B. Fraud**

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20 Defendants also move to dismiss Plaintiff's Fraud claim.

21 In California the required elements of fraud are
22 "a) misrepresentation; b) knowledge of falsity; c) intent to
23 defraud, i.e., to induce reliance; d) justifiable reliance; and
24 e) resulting damage." In re Estate of Young, 160 Cal. App. 4th
25 62, 79 (2008) (citation omitted). When alleging fraud, a
26 plaintiff must meet a heightened pleading standard under which "a
27 party must state with particularity the circumstances
28 constituting fraud." Fed. R. Civ. P. 9(b).

1 "A pleading is sufficient under Rule 9(b) if it identifies the
2 circumstances constituting fraud so that the defendant can
3 prepare an adequate answer from the allegations."

4 Here, Plaintiff's Complaint sufficiently provides the
5 circumstances under which Plaintiff believes it was defrauded.
6 It outlines that in 2006 Mr. Satvinder Palsingh Randhawa, while
7 in Orangevale, California, made a false promise to Plaintiff to
8 pay it funds acquired by the Indian government. Plaintiff
9 alleges that Randhawa knew that his promise was false, that he
10 intended to induce performance by Plaintiff based on this
11 reliance, that Plaintiff did in fact rely, and now Plaintiff
12 suffers damage due to nonpayment. These details provide enough
13 specificity to give Defendants sufficient notice of the
14 accusations being levied against them in order to prepare an
15 adequate answer.

16 Defendants argue that the allegations still lack specificity
17 in that they do not say when exactly in 2006 the promise was
18 made, or whether it was done by phone call, face-to-face
19 conversation, etc. However, while it is true that the "averments
20 of fraud must be accompanied by the who, what, when, where, and
21 how of the misconduct charged," Vess v. Ciba-Geigy Corp., 317
22 F.3d 1097, 1106 (9th Cir. 2003), the details that Defendants
23 request are not necessary at the pleading stage. The complaint
24 simply need be "specific enough to give defendants notice of the
25 particular misconduct." Bly-Magee v. California, 236 F.3d 1014,
26 1019 (9th Cir. 2001). That standard has been met. Defendants'
27 Motion to Dismiss Plaintiff's Fraud Claim is therefore denied.

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1 **C. Motion for a More Definite Statement**

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3 A grant of a Motion for a More Definite Statement is only
4 appropriate “[i]f a pleading...is so vague or ambiguous that a
5 party cannot reasonably be required to frame a responsive
6 pleading....” Fed. R. Civ. P. 12(e). The complaint must be so
7 indefinite that the defendant cannot ascertain the nature of the
8 claim being asserted. See Gay-Straight Alliance Network v.
9 Visalia Unified Sch. Dist., 262 F. Supp. 2d 1088, 1099 (E.D. Cal.
10 2001).

11 For the reasons stated above, that is not the case here.
12 Sufficient notice has been given to the parties for them to file
13 a responsive pleading. Defendants’ Motion for a More Definite
14 Statement is denied.

15
16 **D. Diversity Jurisdiction**

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18 Finally, Defendants move to strike allegations of diversity
19 jurisdiction from Plaintiff’s complaint.² Diversity jurisdiction
20 exists where there is diversity of citizenship among parties and
21 an amount in controversy exceeding \$75,000. 28 U.S.C. § 1332
22 (2005); Life Ins. Co. Of North America v. Ortiz, 535 F.3d 990,
23 993 (9th Cir. 2008).

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26 ² The jurisdiction of the federal court is not affected by
27 Defendants’ Motion to Strike. Plaintiff’s complaint alleges
28 violation of federal RICO law thus conferring federal question
jurisdiction upon the court pursuant to 28 U.S.C. § 1331 (1980).
The court notes that Defendants are not challenging the Court’s
jurisdiction, but are simply seeking to strike language from the
Complaint.

1 When determining the amount in controversy, "the sum claimed by
2 the plaintiff controls if the claim is apparently made in good
3 faith." Guglielmino v. McKee Foods Corp., 506 F.3d 696, 699 (9th
4 Cir. 2007) (citing St. Paul Mercury Indemnity Co. v. Red Cab Co.,
5 303 U.S. 283, 288-89 (1938)). It must appear to a legal
6 certainty that the claim is really for less than the
7 jurisdictional amount to justify finding a defeat of diversity of
8 jurisdiction. Id.

9 Defendants challenge Plaintiff's purported amount in
10 controversy arguing that, when looking at Plaintiff's Exhibits A,
11 D, E, F-1, and H,³ the amount in dispute is instead \$64,280,
12 falling short of the amount in controversy requirement for
13 diversity jurisdiction. However, Defendants' calculation of the
14 amount in controversy is irrelevant. The sum claimed by the
15 Plaintiff is determinative and there is no evidence that
16 Plaintiff's claims are without good faith. The complaint
17 includes allegations of Fraud and RICO violations that, if found
18 to be warranted, may result in damages in excess of \$75,000.
19 Therefore, the amount in controversy properly meets the statutory
20 requirements, and Defendants' Motion to Strike is denied.

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24 ³ Exhibit A: September 1, 2007 Paradise Northwest Inc.
25 Invoice to Great Eastern Export Trading Co. for \$85,296.75;
26 Exhibit D: September 10, 2007 Paradise Northwest Inc.
27 Invoice to Great Eastern Export & Trading Co. for \$56,053.00;
28 Exhibit E: October 26, 2007 PNW Invoice for \$64,280.00;
Exhibit F-1: September 29, 2007 Paradise Northwest Inc.
Invoice to Great Eastern Export & Trading Co. for \$64,280.00;
Exhibit H: August 1, 2008 Paradise Northwest Inc. Invoice to
Great Eastern Export & Trading Co. for \$73,497.09.

1 **CONCLUSION**

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3 For the reasons set forth above, Defendants' Motion to
4 Dismiss Plaintiff's Fraud and RICO claims, Motion for a More
5 Definite Statement, and Motion to Strike allegations of diversity
6 jurisdiction⁴ (Docket No. 13) are hereby DENIED.

7 IT IS SO ORDERED.

8 Dated: December 9, 2009

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11 MORRISON C. ENGLAND, JR.
12 UNITED STATES DISTRICT JUDGE
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27 ⁴ Because oral argument will not be of material assistance,
28 the Court orders this matter submitted on the briefs. E.D. Cal.
Local Rule 78-230(h).