



1 Defendants' motion, although brought as a motion for summary  
2 adjudication as to the RICO claim, in essence attacks Plaintiff's  
3 charging allegations as contained in the complaint. A review of  
4 the Court's docket in this matter does not reveal that Plaintiff  
5 challenged the sufficiency of the pleadings prior to bringing  
6 this motion.

7 "To prevail on a civil RICO claim, a plaintiff must prove  
8 that the defendant engaged in (1) conduct (2) of an enterprise  
9 (3) through a pattern (4) of racketeering activity and,  
10 additionally, must establish that (5) the defendant caused injury  
11 to plaintiff's business or property." Chaset v. Fleer/Skybox  
12 Intern., LP, 300 F.3d 1083, 1086 (9th Cir. 2002) (citing  
13 18 U.S.C. §§ 1962(c), 1964(c)).

14 Defendants' challenge to the RICO claim asserted by  
15 Plaintiff here hinges on whether the requisite "enterprise" can  
16 be established. As Defendants point out, for RICO purposes the  
17 term contemplates two variants. First, an enterprise can be "any  
18 individual, partnership, corporation, association or other legal  
19 entity". Second, and alternatively, an enterprise can also be  
20 present with respect to "any union or group of individuals  
21 associated in fact although not a legal entity." Id. According  
22 to Defendants, while Plaintiff has "unambiguously pleaded an  
23 enterprise under the first category", it has failed to allege an  
24 enterprise under the second. See Defs.' Mot., 1:17-18 Because  
25 Defendants maintain that the Eastern Export and Trading Company  
26 was simply a fictitious business name maintained by the Randhawas  
27 as husband and wife, they assert that Eastern Export cannot  
28 qualify as an enterprise under the first category.

1 Given that shortcoming, and because Plaintiff made no effort in  
2 its complaint to identify an enterprise under the second  
3 category, Defendants claim they are entitled to summary  
4 adjudication as to Plaintiff's RICO claim.

5 In opposition, Plaintiff does not dispute the  
6 inapplicability here of any claimed enterprise under the first  
7 category. Instead, Plaintiff makes it clear that its opposition  
8 is based on the fact that the Randhawas' fictitious name  
9 statement can qualify under the second definition of enterprise  
10 for RICO purposes as "any union or group of individuals  
11 associated in fact although not a legal entity." Pl.'s Opp'n,  
12 3:19-21. Defendants counter that they "can only move for summary  
13 judgment upon the pleading that is on file," which, as stated  
14 above, relies only on the first category. See Defs.' Reply,  
15 5:15.

16 While this may be true, Plaintiff requests within its  
17 opposition leave to amend its Complaint in order to properly  
18 reflect Plaintiff's reliance on the second category of enterprise  
19 in stating its RICO claim. Defendants' reply, while continuing  
20 to reiterate that the pleadings as presently constituted are  
21 insufficient, does not take issue with that request to amend.

22 As the Supreme Court has recognized, the terms of RICO are  
23 "to be liberally construed to effectuate its remedial purposes."  
24 Boyle v. U.S., 129 S. Ct. 2237, 2243 (2009). Moreover, there is  
25 authority for the proposition that this Court has discretion to  
26 permit a party opposing summary judgment to offer an amended  
27 pleading that sets forth a different theory of liability.  
28 See Zaidi v. Ehrlich, 732 F.2d 1218, 1220 (5th Cir. 1984).

1 Given that discretion, particularly when coupled with the liberal  
2 construction to be awarded RICO claims, the Court finds it is  
3 proper at this time to grant Plaintiff's request to file an  
4 amended pleading. Discovery will not close for more than three  
5 months, and Defendants have articulated no prejudice resulting  
6 from an amendment at this juncture.

7 Plaintiff is accordingly granted twenty (20) days from the  
8 date this Order is signed within which to file an amended  
9 complaint. Given the fact that amendment will be permitted,  
10 Defendants' Motion for Partial Summary Judgment (ECF No. 68) is  
11 DENIED,<sup>1</sup> without prejudice to refileing at a later time after a  
12 First Amended Complaint is filed, or in the absence of such  
13 filing, after the time for doing so has expired.

14 Finally, the Court notes that on December 1, 2010, Plaintiff  
15 filed a request with the Court that it accept a later, signed  
16 version of Dennis Williams' Declaration in Opposition to the  
17 Motion for Partial Summary Judgment. Plaintiff's counsel  
18 indicates that it inadvertently filed an earlier, unsigned draft  
19 of that declaration rather than the final version and seeks leave  
20 to substitute the finalized declaration.

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27 <sup>1</sup> Because oral argument was not of material assistance, this  
28 matter was deemed appropriate for submission on the briefs. E.D.  
Cal. Local Rule 230(g).

1 No opposition was received to Plaintiff's request in that regard.  
2 Given that fact, and good cause appearing, Plaintiff's Motion for  
3 Leave (ECF No. 79) is GRANTED.

4 IT IS SO ORDERED.

5 Dated: January 13, 2011



8 MORRISON C. ENGLAND, JR.  
9 UNITED STATES DISTRICT JUDGE

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