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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PARADISE NORTHWEST INC., No. 2:09-cv-02027-MCE-KJN
Plaintiff,

v.

MEMORANDUM AND ORDER

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

Defendants and Third-
Party Plaintiffs,

AIR DIFFUSION SYSTEMS, A JOHN
HINDE COMPANY,

Third-Party Defendant.

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Through this action, Paradise Northwest Inc. ("Plaintiff") seeks redress from Satvinder Palsingh Randhawa and Lorna Marie Randhawa doing business as Great Eastern Export & Trading Company ("Defendants") for alleged fraud, breach of contract, and violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO").

1 Presently before the Court is Defendants' Motion to Dismiss
2 Plaintiff's RICO cause of action contained in the First Amended
3 Complaint. (ECF No. 86.) For the reasons set below, Defendants'
4 Motion to Dismiss will be granted.¹

5
6 **BACKGROUND**²
7

8 The instant dispute arises out of a project to re-oxygenate
9 a lake in India. Defendants formed an oral contract with
10 Plaintiff, pursuant to which Plaintiff agreed to provide
11 engineering services in connection with the project. Defendants
12 represented that the Indian Government would be paying for
13 Plaintiff's services. After Plaintiff rendered services pursuant
14 to the oral contract, Defendants were paid directly by the Indian
15 Government. However, Defendants did not release any of these
16 funds to Plaintiff. As a result, Plaintiff has not been paid for
17 the balance of its final invoice in the amount of \$85,296.74.
18 Plaintiff contends that Defendants never intended to compensate
19 Plaintiff for the engineering services as promised, and have
20 victimized others with similar acts of fraud.

21 Defendants are a husband and wife doing business under the
22 fictitious business name "Great Eastern Export and Trading
23 Company."
24

25 ¹ Because oral argument will not be of material assistance,
26 the Court orders this matter submitted on the briefs. E.D. Cal.
Local Rule 230(g).

27 ² The factual assertions in this section are based on the
28 allegations in Plaintiff's First Amended Complaint unless
otherwise specified.

1 Satvinder made the business decisions for the venture and engaged
2 in negotiations. Lorna's contribution to the venture was limited
3 to writing checks, reviewing invoices, and keeping track of
4 accounting information. The business is not incorporated, and
5 there is no allegation of any partnership agreement.

6
7 **STANDARD**
8

9 On a motion to dismiss for failure to state a claim under
10 Rule 12(b)(6), all allegations of material fact must be accepted
11 as true and construed in the light most favorable to the
12 nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,
13 337-38 (9th Cir. 1996). Rule 8(a)(2) requires only "a short and
14 plain statement of the claim showing that the pleader is entitled
15 to relief," to "give the defendant fair notice of what
16 the...claim is and the grounds upon which it rests." Bell Atl.
17 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations
18 and quotations omitted). Although "a complaint attacked by a
19 Rule 12(b)(6) motion" need not contain "detailed factual
20 allegations, a plaintiff's obligation to provide the 'grounds' of
21 his 'entitlement to relief' requires more than labels and
22 conclusions, and a formulaic recitation of the elements of a
23 cause of action will not do." Id. at 555 (quoting Papasan v.
24 Allain, 478 U.S. 265, 2869 (1986)). A plaintiff's "factual
25 allegations must be enough to raise a right to relief above the
26 speculative level." Id. (citing 5 C. Wright & A. Miller, Federal
27 Practice and Procedure § 1216 (3d ed. 2004)

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1 ("[T]he pleading must contain something more...than...a statement
2 of facts that merely creates a suspicion [of] a legally
3 cognizable right of action.")).

4 Further, "Rule 8(a)(2)...requires a 'showing,' rather than a
5 blanket assertion, of entitlement to relief. Without some
6 factual allegation in the complaint, it is hard to see how a
7 claimant could satisfy the requirements of providing...grounds on
8 which the claim rests." Twombly, 550 U.S. at 555 n.3 (internal
9 citations omitted). A pleading must therefore contain "enough
10 facts to state a claim to relief that is plausible on its face."
11 Id. at 570. If the "plaintiffs...have not nudged their claims
12 across the line from conceivable to plausible, their complaint
13 must be dismissed." Id.

14 Once the court grants a motion to dismiss, they must then
15 decide whether to grant a plaintiff leave to amend. Rule 15(a)
16 authorizes the court to freely grant leave to amend when there is
17 no "undue delay, bad faith, or dilatory motive on the part of the
18 movant." Foman v. Davis, 371 U.S. 178, 182 (1962). In fact,
19 leave to amend is generally only denied when it is clear that the
20 deficiencies of the complaint cannot possibly be cured by an
21 amended version. See DeSoto v. Yellow Freight Sys., Inc.,
22 957 F.2d 655, 658 (9th Cir. 1992); Balistieri v. Pacifica Police
23 Dept., 901 F. 2d 696, 699 (9th Cir. 1990) ("A complaint should
24 not be dismissed under Rule 12(b)(6) unless it appears beyond
25 doubt that the plaintiff can prove no set of facts in support of
26 his claim which would entitle him to relief.") (internal
27 citations omitted).

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1 **ANALYSIS**

2
3 To state a RICO claim, a plaintiff must allege: (1) conduct;
4 (2) of an enterprise; (3) through a pattern; (4) of racketeering
5 activity. Odom v. Microsoft Corp., 486 F.3d 541, 547 (9th Cir.
6 2007) (internal quotations omitted). ‘Enterprise’ is defined as
7 “any individual, partnership, corporation, association, or other
8 legal entity, and any union or group of individuals associated in
9 fact although not a legal entity.” 18 U.S.C. § 1961.

10 Here, Plaintiff concedes that Defendants cannot qualify as
11 an enterprise for RICO purposes as a formal legal entity. The
12 dispositive question for purposes of this motion therefore
13 becomes whether Defendants alternatively may constitute an
14 associated-in-fact enterprise, and may accordingly pass muster
15 under RICO in that regard. An associated-in-fact enterprise is
16 “a group of persons associated together for a common purpose of
17 engaging in a course of conduct.” Odom, 486 F.3d at 552 (quoting
18 United States v. Turkette, 452 U.S. 576, 583 (1981)). Further,
19 an associated-in-fact enterprise must have at least three
20 structural features: “a purpose, relationships among those
21 associated with the enterprise, and longevity sufficient to
22 permit these associates to pursue the enterprise’s purpose.”
23 Boyle v. U.S., 129 S. Ct. 2237, 2244 (2009).

24 In the instant case, Plaintiff has not alleged facts
25 sufficient to establish an associated-in-fact enterprise.
26 Plaintiff contends that Defendants established an enterprise by
27 forming the Great Eastern Export and Trading Company.

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1 However, the Great Eastern Export and Trading Company is merely a
2 fictitious business name. Defendants run the business as husband
3 and wife and have no employees.³ Further, the alleged duties of
4 Lorna Randhawa in connection with the business are limited to
5 writing checks, reviewing invoices, and keeping track of
6 accounting information. (First Am. Compl. ¶ 13.) Those
7 activities are normal incidents of a marital relationship and do
8 not give rise to an associated-in-fact enterprise. In short,
9 Plaintiff makes no allegations to distinguish Defendants'
10 relationship from the partnership implicit in a typical marriage.
11 Because a marital relationship does not involve a common purpose
12 of engaging in a particular course of conduct, Plaintiff has not
13 established a RICO enterprise.⁴ As a result, the RICO claim must
14 be dismissed.

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18 ³ In U.S. v. Benny, the Ninth Circuit held that, for
19 purposes of RICO, a sole proprietorship with one or more
20 employees may constitute an enterprise with which the proprietor
21 may conspire. 786 F.2d 1410, 1415 (9th Cir. 1986). However, as
22 the business venture in the instant case is operated by husband
23 and wife without any employees, Benny is inapplicable.

24 ⁴ The Court's own research revealed scant authority on the
25 issue of whether a marriage may qualify as an enterprise for
26 purposes of RICO, but at least one case has held that a marriage
27 is an associated-in-fact enterprise. Am. Mfrs. Mut. Ins. Co. v.
28 Townson held that a marriage is an enterprise for purposes of
RICO because a married couple is "associated together for the
common purpose of engaging in a course of conduct necessary to
preserve their welfare as a marital unit." 912 F. Supp. 291, 295
(E.D. Tenn. 1995). However, the Court finds Townson poorly
reasoned. A marital relationship, without more, although it may
entail a commitment to engage in general conduct necessary to
preserve the relationship, does not involve a purpose of engaging
in any specific course of conduct. This Court declines to follow
Townson's holding both because it is not binding authority, and
because it is ultimately unpersuasive in any event.

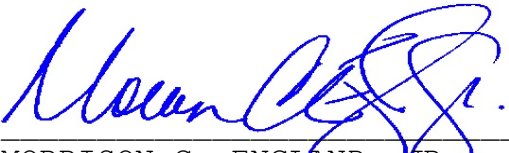
1 Plaintiff was previously granted leave to amend and was not
2 able to cure the defects in the Complaint. Under the
3 circumstances, it appears clear that Plaintiff cannot plausibly
4 allege any facts that would establish a RICO enterprise.⁵ As a
5 result, Plaintiff should not be granted leave to amend the RICO
6 claim.

7
8 **CONCLUSION**

9
10 Based on the foregoing, Defendants' Motion to Dismiss
11 Plaintiff's RICO claim (ECF No. 86) is hereby GRANTED. Plaintiff
12 will not be permitted leave to amend that claim at this juncture.

13 IT IS SO ORDERED.

14 Dated: April 14, 2011

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16 
17 MORRISON C. ENGLAND, JR.
18 UNITED STATES DISTRICT JUDGE

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⁵ This conclusion is underscored by Plaintiff's proposed
27 Second Amended Complaint, attached as an exhibit to Plaintiff's
28 Motion fo Leave to Amend the First Amended Complaint. (ECF
No. 95.) The Court's review of the RICO allegations in that
pleading still causes it to conclude that no viable RICO claim
can be alleged.