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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ENCOMPASS HOLDINGS, INC.,)
)
Plaintiff(s),) No. C09-1816 BZ
)
v.)
) **ORDER**
CAREY F. DALY II, et al.,)
)
Defendant(s).)
)
_____)

Before me is counterdefendants The N.I.R. Group, LLC ("NIR") and Corey S. Ribotsky's motion to dismiss defendants' amended counterclaim for lack of personal jurisdiction and failure to state a valid RICO claim.¹ In defendants' opposition to this motion, they seek to supplement their amended counterclaim by including additional factual allegations against NIR and Ribotsky presently contained in declarations. Opposition at 1-2.

When ruling on motions to dismiss for failure to state a claim, courts cannot "look beyond the complaint" at additional

¹ Although NIR and Ribotsky are added as third-party defendants, defendants filed this pleading as a counterclaim.

1 factual allegations made by parties. See Schneider v. Cal.
2 Dept. of Corrections, 151 F.3d 1194, 1197 (9th Cir. 1998). It
3 is therefore ordered as follows:

4 1. The **October 27, 2010** hearing on NIR and Ribotsky's
5 motion to dismiss is **VACATED**.

6 2. Defendants are **GRANTED LEAVE TO AMEND** their
7 counterclaim by **November 1, 2010**.

8 3. NIR may file a supplemental opposition addressing any
9 new allegations by **November 8, 2010**.

10 4. A reply may be filed by **November 15, 2010**.

11 5. A hearing will be set by the Court.

12
13 Dated: October 22, 2010

14 

15 _____
16 Bernard Zimmerman
United States Magistrate Judge

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