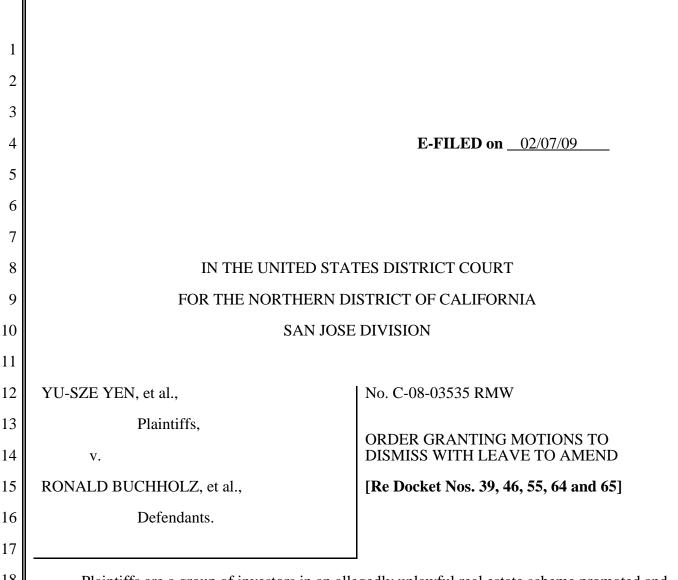
For the Northern District of California

**United States District Court** 



18 Plaintiffs are a group of investors in an allegedly unlawful real estate scheme promoted and 19 sold by Ronald Buchholz ("Buchholz"), Charice Fischer ("Fischer"), and a group of other 20 individuals and corporate entities. Currently before the court are two motions to dismiss; one on 21 behalf of Ronald Buchholz' father William E. Buchholz ("Pastor Buchholz") and Family Community 22 Church (collectively the "Church defendants"), and a second on behalf of defendants Jonathan 23 Vento, Grace Capital, LLC, Donald Zeleznak, Zeleznak Property Management, Z-Loft, LLC, Vento 24 Investments, LLC, and Vento Family Trust (collectively, the "Grace defendants"). For the reasons 25 stated below, the court grants both defendants' motions to dismiss with thirty days leave to amend 26 except as to any punitive damages allegations against the Church defendants. Plaintiffs represented 27 that they are not seeking punitive damages against the Church defendants based upon their 28 complaint.

ORDER GRANTING MOTIONS TO DISMISS WITH LEAVE TO AMEND —No. C-08-03535 RMW JAS

1	I. BACKGROUND			
2	Plaintiffs are alleged to have purchased security interests in, or made loans to, various real			
3	estate entities owned or controlled by defendants. Plaintiffs claim that misrepresentations were			
4	made to them or that material facts were concealed from them.			
5	II. ANALYSIS			
6	A. Church Defendants' Motion to Dismiss			
7	1. Punitive Damages			
8	The Church defendants move to dismiss the punitive damage claims against them because			
9	the complaint fails to satisfy the requirements in California Civil Procedure Code § 425.14 for			
10	seeking punitive damages from a religious organization. Plaintiffs state in their opposition that they			
11	are not seeking punitive damages against the Church defendants. Therefore, any claim for punitive			
12	damages against the Church defendants is dismissed as against them.			
13	2. Motion to Dismiss for Failure to State a Claim for Relief			
14	The Church defendants also move to dismiss any claims brought against them for failure to			
15	state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The court finds that no			
16	claim for relief has been successfully stated and therefore grants the motion. Plaintiffs are given			
17	thirty days leave to amend.			
18	B. Grace Defendants' Motion to Dismiss			
19	1. Personal Jurisdiction			
20	The Grace defendants contend that the court does not have personal jurisdiction over them			
21	such that the causes of action against them must be dismissed under Rule 12(b)(2). Plaintiffs, in			
22	response, contend that the court has jurisdiction over defendants by virtue of nationwide service			
23	provisions for both the alleged federal securities fraud and RICO violations. In the alternative,			
24	plaintiffs assert that the court has both specific and general jurisdiction over the Grace defendants.			
25	Because the court finds that plaintiffs have not adequately alleged a claim upon which relief			
26	can be granted, the Securities Exchange Act of 1934 and the RICO statute cannot serve as a basis for			
27	jurisdiction. The court also finds that facts alleged are insufficient to establish specific or general			
28	jurisdiction over the Grace defendants. However, if plaintiffs can successfully amend, defendants			
	ORDER GRANTING MOTIONS TO DISMISS WITH LEAVE TO AMEND —No. C-08-03535 RMW JAS $2$			

For the Northern District of California **United States District Court** 

may well be subject to jurisdiction. Nationwide service is available for federal securities violations 1 2 and under RICO.

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## Failure to State a Claim for Relief

4 Plaintiffs assert a multitude of federal and state claims against the Grace defendants. 5 However, before reaching the question of whether plaintiffs' complaint is sufficient to state a claim 6 under each of these theories, the court has to understand what it is that plaintiffs claim the Grace defendants did wrong. At oral argument on the motion the plaintiffs referred to the paragraphs in 8 the chart below as showing wrongdoing by the Grace defendants. However, the court finds such 9 allegations deficient, particularly plaintiffs' theories that rely on fraud. See Fed. R. Civ. P. 9(b). The 10 following chart highlights some of the basic deficiencies in plaintiffs' complaint as against the Grace defendants.

Paragraph Cited	What Paragraph Alleges Against Grace Defendants	Reason Insufficient
1(p) and 1(q)	Vento is statutory agent for Gilbert Road Office Investors,	No allegations as to scope of agency, what participation Vento had with respect to pro forma statements, when statements were made, whether Vento knew they were false and who relied on
	LLC and pro forma statements stated land costs at	
	\$1,090,045.00 when they were actually \$783,470.00.	
		them.
	Zeleznak received a \$1,000,000 commission on the	No allegations showing why Zeleznak's receipt of large commission was wrongful and how Zeleznak participated in any scheme to defraud
	sale of land to Solomon Towers, LLC	
		plaintiffs.
	Vento is the statutory agent	No allegations as to scope of
	and a manager for various entities in which Buchholz has some interest. In particular	agency and what Vento and Zeleznak did that was wrongful.
	plaintiffs referred to paragraph (q)(iii) where Zeleznak is a	
	statutory agent and a manager of The Spirit at Spectrum,	
	LLC.	
		1
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1 2 3 4	142	Vento was a statutory agent and Zeleznak a manager of The Spirit at Spectrum, LLC. Phoenix Valley Development,	No allegations as to scope of agency and what Vento and Zeleznak did that was wrongful.		
		Phoenix Valley Development			
		LLC for which Buchholz was a managing member purchased	No allegations as to what Vento and Zeleznak did that was knowingly wrongful		
5 6		land from Zeleznak and Vento for \$2,202,492 in March 2005, land for which Zeleznak and	(selling property for an obscene profit is not in itself unlawful). No specific		
7 8 9		Vento paid \$900,000 in March 2004 "the profits and funds being diverted by defendants to themselves as ill gotten gains."	allegation that Zeleznak or Vento diverted funds or profits and why funds were "ill gotten gains."		
10 11 12 13	15(a)	Solomon Capital on a private placement memorandum stated that Zeleznak and Vento would be managers of projects referred to as 44 Monroe and Osborn Commons.	No allegations as to scope of duties as managers or what Zeleznak or Vento did that was wrongful.		
14 15		Buchholz purchased land from Deer Valley, LLC of which Zeleznak and Vento were the only members	No allegations as to what Vento and Zeleznak did that was wrongful.		
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> </ol>	105 & 106	No specific allegations regarding Grace defendants defendants raised funds through Luxury Development Fund, LLC for certain projects but funds diverted for use in projects involving OC Investors, LLC	No allegations as what participation any Grace defendant had in raising funds or diverting funds.		
20 21					
22 23	143	OC Investors solicited funds for Crystal Lake project "of which VENTO	No allegations as to what solicitation representations were made, who made them,		
24		INVESTMENTS, LLC, was manager and which in turn was managed by VENTO."	why they were false, and who relied on them.		
25					
26 27	Because plaintiff's complaint as it now stands fails to state a claim on which relief can be				
27 28	granted against the Grace defendants, the motion to dismiss is granted with thirty days leave to amend.				
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## C. Supplemental Opposition

Rule 7-3(d) permits filing, before the noticed hearing date, of a relevant judicial opinion
published after the date the opposition was filed. The rule permits no argument to accompany the
filed opinion without prior court approval. The cases plaintiffs offer were published before their
opposition was due, and nothing in the reply necessitates a supplemental opposition. The motion to
file a supplemental opposition is denied.

## **III. ORDER**

For the foregoing reasons, the court:

- 1. Grants William Buchholz and Family Community Church's motion to dismiss with thirty days leave to amend except as to punitive damage allegations;
- 2. Grants the Grace defendants motion to dismiss with thirty days leave to amend;
- 3. Denies plaintiffs motion to file a supplementary opposition; and
  - 4. Encourages plaintiffs to plead any allegations based upon fraud with particularity and to recognize that particularity does not necessarily require length. For example, the allegations could read:
    - 1. On \_\_\_\_\_\_ date (name of particular Grace defendant) stated (or concealed) that (representation or information concealed);
    - 2. (The representation was false in that \_\_\_\_\_) (The information concealed was \_\_\_\_\_);
    - 3. The (representation) (information concealed) was material);
    - 4. Plaintiff \_\_\_\_\_\_(justifiably relied on the representation in
    - deciding to invest) (if plaintiff \_\_\_\_\_\_ had known the concealed
    - information, he or she would not have invested); and
    - 5. As a consequence plaintiff suffered damages consisting of

28 DATED:

KONALD M. WITT IE

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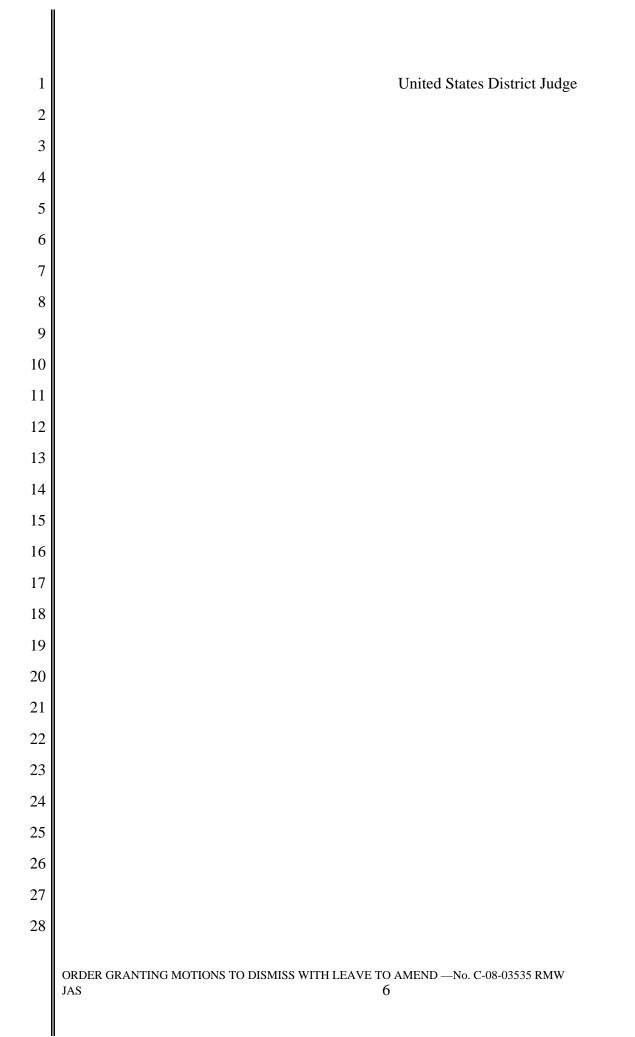
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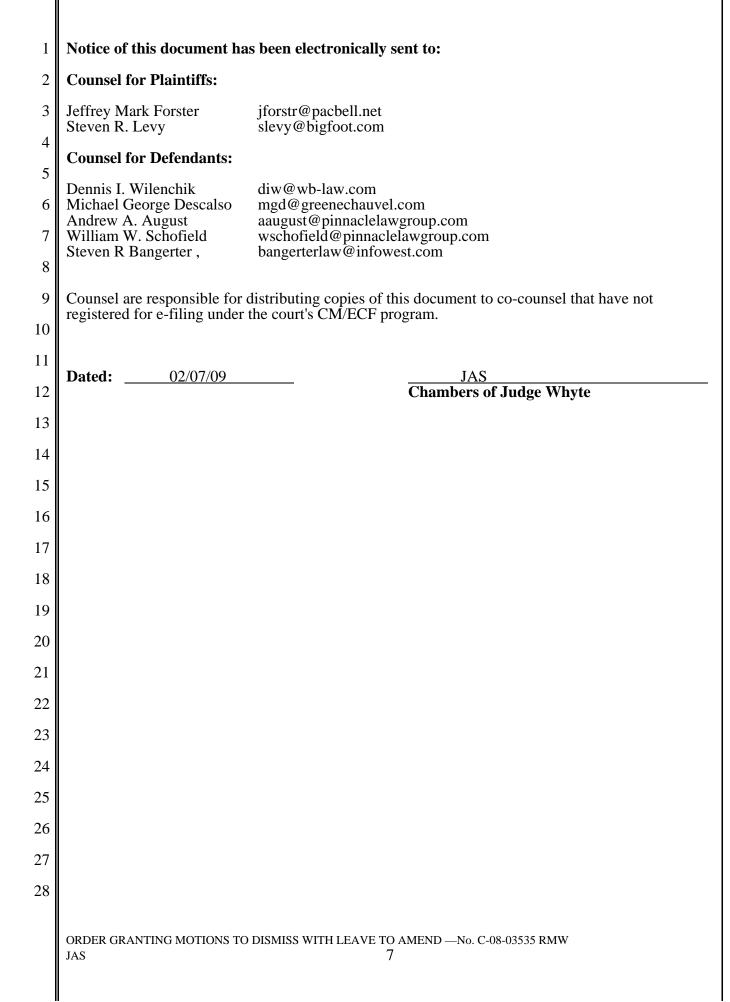
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