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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RJC FUNDING LLC, a Nevada limited liability company,

Plaintiff,

vs.

TODD MACALUSO, etc., et al.,

Defendants.

CASE NO. 15cv2659-LAB (BLM)

ORDER DENYING MOTION TO DISMISS AND ORDER TO SHOW CAUSE

Former attorney Todd Macaluso pled guilty to wire fraud over a year ago. Macaluso defrauded lenders, including RJC Funding, by forging client signatures in return for advances on litigation loans. Judge Benitez sentenced Macaluso to five months in prison, three years of supervised release, and ordered him to pay fines and restitution totaling \$250,000.¹

Around the same time, RJC Funding filed a civil suit against Macaluso. Last April, the Court granted partial judgment against Macaluso and his business entities for about \$2.4 million.² RJC Funding also named Macaluso's wife, Tonya Macaluso, and his sister, Stacey Macaluso, as defendants who conspired with him to defraud clients and hide assets. Tonya and Stacey moved to dismiss the claims against them. RJC Funding opposed.

The motion to dismiss is only five pages, but it's difficult to understand, doesn't cite a single case, and appears to have missed that the Court's already granted partial judgment.

¹ See *USA v. Macaluso*, 15-cr-948-BEN.

² Dkt. 26.

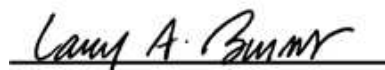
1 First, venue is proper since a substantial part of the events giving rise to the claim
2 occurred in this district, and, both Stacey and Tonya are domiciled in San Diego County. 28
3 U.S.C. § 1391. The defendants don't dispute those facts. Instead, they argue that a
4 settlement agreement RJC Funding entered with Macaluso three years ago contains a
5 mandatory arbitration clause that requires resolution in New York. The Court disagrees. RJC
6 Funding and Macaluso waived any arbitration provision by litigating in this court for the past
7 two years. And the defendants haven't explained why they have a right to enforce this
8 agreement when they also claim they weren't parties to it. Even if the defendants could
9 enforce the arbitration clause, the agreement provides that RJC Funding "may, at its option,
10 demand arbitration, as stated above, or may institute any legal or equitable action to collect
11 the amount due." Venue is proper.

12 Second, Tonya and Stacey essentially say they didn't do anything wrong. But at the
13 motion to dismiss stage, the Court must "accept as true all facts pleaded in [the] complaint."
14 *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 751 (2017). RJC Funding has sufficiently pled
15 causes of action against both defendants for conspiracy, unjust enrichment, and fraudulent
16 conveyances. If the defendants believe there's no evidence to support those claims, then
17 the proper tool is a motion for summary judgment. Defendants' motion to dismiss is **DENIED**.

18 When the Court granted partial judgment last April, it warned that it would not "leave
19 this case perpetually open" and *ordered* RJC Funding "to submit a status report within six
20 months" or face dismissal.³ RJC Funding didn't file a status report. The Court orders RJC
21 Funding to file a memorandum on or before **April 14, 2017**, explaining why the Court
22 shouldn't dismiss the remaining claims for failure to comply with Court's order.

23 **IT IS SO ORDERED.**

24 DATED: April 5, 2017

25 

26 **HONORABLE LARRY ALAN BURNS**
27 United States District Judge

28 _____
³ Dkt. 26.