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SOUTHERN DISTRICT OF CALIFORNIA

BY: *A*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KOREA TRADE INSURANCE CORPORATION, a Korean Corporation,

Plaintiff,

v.

ACTIVEON, INC., a Delaware corporation; ACTIVEON LLC, a Delaware limited liability company; ACTIVEON HOLDINGS, INC., a Delaware corporation; RCA ELECTRONICS INC., a Delaware corporation; ON CORP USA, INC., a Delaware corporation; CHONG WOEN LEE, an individual; and HAN SUK LEE, an individual,

Defendants.

Case No.: 17-cv-0811-WQH-MDD

ORDER

HAYES, Judge:

The matter before the Court is the Motion to Dismiss Plaintiff's First Amended Complaint filed by Defendants. (ECF No. 14).

1 **I. Background**

2 On April 21, 2017, Plaintiff Korea Trade Insurance Corporation (“K-sure”) initiated
3 this action by filing a Complaint (ECF No. 1). On August 18, 2017, K-sure filed the First
4 Amended Complaint (the “FAC”) (ECF No. 13). The FAC names seven Defendants:
5 ActiveON, Inc.; ActiveON, LLC; ActiveON Holdings, Inc.; RCA Electronics, Inc.; ON
6 Corp. USA, Inc.; Chong Woen Lee (“CW Lee”); and Han Suk Lee (“HS Lee”). *Id.* The
7 FAC brings claims against CW Lee and HS Lee for “RICO conspiracy (18 U.S.C §
8 1962(d))” and “civil RICO (18 U.S.C. § 1962(c))”. *Id.* The FAC also brings claims against
9 all Defendants for fraud (intentional misrepresentation), fraud (concealment), and
10 negligent misrepresentation. *Id.*

11 On September 15, 2017, Defendants filed the Motion to Dismiss Plaintiff’s First
12 Amended Complaint. (ECF No. 14).¹ On October 6, 2017, K-sure filed an Opposition to
13 Defendants’ Motion to Dismiss First Amended Complaint. (ECF No. 16). On October 16,
14 2017, CW Lee and HS Lee filed a Reply Memorandum of Points and Authorities in Support
15 of Motion to Dismiss. (ECF No. 18).² The Court held oral argument on the Motion to
16 Dismiss on February 28, 2018. (ECF No. 22).

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19 ¹ Defendants also filed a Request for Judicial Notice in Support of Motion to Dismiss Plaintiff’s First
20 Amended Complaint. (ECF No. 15). The Court denies Defendants’ Request for Judicial Notice (ECF
21 No. 15) as unnecessary to the resolution of the Motion to Dismiss Plaintiff’s First Amended Complaint
(ECF No. 14).

22 ² CW Lee and HS Lee stated that the Reply was filed by them, and not the other Defendants, based on
23 the Notice of Receivership and Stay of Proceedings against Defendants ActiveON, Inc. fka RCA
24 Electronics Corp. fka ONCorp. US, Inc.; ActiveON LLC; and Clicka Holdings, Inc. fka ActiveON
25 Holdings, Inc. (ECF No. 17). (ECF No. 18 at 2). The Notice of Receivership and Stay of Proceedings
26 states that K-sure’s claims against ActiveON, Inc.; ActiveON LLC; and Clicka Holdings, Inc. are stayed
27 by an Order Appointing General Receiver issued by the Superior Court of the State of Washington in and
28 for the County of King. (ECF No.17 at 2). K-sure filed a Limited Objection to Defendants’ Notice of
Receivership and Stay of Proceedings. (ECF No. 19). K-sure contends that “[t]he Washington state court
receivership order does not have any automatic or binding effect on this action [because s]tate courts
simply do not have the power to enjoin or restrict a federal court action.” ECF No. 19 at 2 (citing *Baker*
v. General Motors Corp., 522 U.S. 222, 236 n. 9 (1998)). On October 18, 2017, the Court issued an Order
stating “This case before the United States District Court for the Southern District of California is not
stayed.” (ECF No. 20).

1 **II. Allegations in the FAC**

2 K-sure is a corporation duly organized under the laws of the Republic of
3 Korea (“Korea”). K-sure is an export credit agency that focuses on promoting
4 trade and overseas investment of enterprises in Korea. While domiciled and
5 headquartered in Korea, K-sure maintains branch offices to conduct business
6 in various cities around the world, including one such branch office in Los
7 Angeles, California, which it has operated continuously since 1992.

8 FAC at ¶ 7. “Among other functions, K-sure’s Los Angeles office performs commercial
9 credit investigations and credit information management, coordinates debt collection
10 activities, and facilitates communications with its customers’ United States-based offices,
11 affiliates, and personnel, such as ON USA.” *Id.* at ¶ 22.

12 Defendants ActiveON, Inc.; ActiveON, LLC; ActiveON Holdings, Inc.; and RCA
13 Electronics, Inc. are Delaware companies which are or were engaged in the sale or
14 distribution of consumer electronics products. *Id.* at ¶¶ 8–10. Defendant ON Corp US,
15 Inc. “either changed its name to RCA Electronics, Inc. and then to ActiveON, Inc., or it
16 otherwise merged with or was acquired by one or more of Defendants ActiveON, Inc.;
17 ActiveON LLC; Activeon Holdings, Inc.; and/or RCA Electronics, Inc.” *Id.* at ¶ 12.
18 Defendants CW Lee and HS Lee actively managed Defendants ON Corp US, Inc.;
19 ActiveON, Inc.; ActiveON LLC; Activeon Holdings, Inc.; and RCA Electronics, Inc. as
20 senior executives throughout the time periods described herein. *Id.* at ¶ 15.

21 Through numerous fraudulent communications, falsified documents, and the
22 purposeful concealment of facts, the Defendants and their co-conspirators
23 fraudulently induced K-sure to issue and extend export insurance policies and
24 financial guarantees (“K-sure Policies”) used to secure bank financing, loans
25 and credit facilities (“Loans”) for the manufacturing and export of consumer
26 electronics products (primarily televisions) (“Export Products”) to retailers in
27 the United States. When ON USA failed to remit sale proceeds from the
28 United States to repay the Loans covered by K-sure Policies, K-sure was
forced to make payments on the K-sure Policies in excess of \$137 million
dollars.

Id. at ¶ 4. The payments on the K-sure Policies were made to the Industrial Bank of Korea,
the Korea Exchange Bank, and Nonghyup Bank. *See id.* at ¶¶ 36–37, 40, 109–116. A
number of the fraudulent communications that induced K-sure to issue and extend the

1 K-sure Policies were sent from the United States by CW Lee and HS Lee. *See, e.g., id.* at
2 ¶¶ 54, 55, 61, 63, 65, 72, 81–87, 90–92, 95, 98, 101, 103.

3 **III. Standard of Review**

4 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state a
5 claim upon which relief can be granted.” Federal Rule of Civil Procedure 8(a)(2) provides
6 that “[a] pleading that states a claim for relief must contain . . . a short and plain statement
7 of the claim showing that the pleader is entitled to relief.” “[A] plaintiff’s obligation to
8 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and
9 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
10 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (alteration in original) (quoting Fed.
11 R. Civ. P. 8(a)). “To survive a motion to dismiss, a complaint must contain sufficient
12 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
13 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim
14 has facial plausibility when the plaintiff pleads factual content that allows the court to draw
15 the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*
16 (citation omitted). “When there are well-pleaded factual allegations, a court should assume
17 their veracity and then determine whether they plausibly give rise to an entitlement to
18 relief.” *Id.* at 679.

19 **IV. Discussion**

20 **A. RICO**

21 The FAC brings claims for “RICO conspiracy (18 U.S.C § 1962(d))” and “civil
22 RICO (18 U.S.C. § 1962(c))” against CW Lee and HS Lee. *Id.* Section³ 1962(c) states

23 It shall be unlawful for any person employed by or associated with any
24 enterprise engaged in, or the activities of which affect, interstate or foreign
25 commerce, to conduct or participate, directly or indirectly, in the conduct of
26 such enterprise’s affairs through a pattern of racketeering activity or collection
of unlawful debt.

27
28 ³ All “sections” referred to in this Order appear in Title 18 of the United States Code.

1 Section 1961(1)(B) defines “racketeering activity” to include “any act which is indictable
2 under” 18 U.S.C. § 1341 (relating to mail fraud) and 18 U.S.C. § 1343 (relating to wire
3 fraud). 18 U.S.C. § 1961(1)(B). Section 1962(d) makes it “unlawful for any person to
4 conspire to violate” § 1962(c). *Id.* at § 1962(d). Section 1964(c), commonly referred to as
5 “civil RICO,” “creates a private civil cause of action that allows ‘[a]ny person injured in
6 his business or property by reason of a violation of section 1962’ to sue in federal district
7 court and recover treble damages, costs, and attorney’s fees.” *RJR Nabisco, Inc. v.*
8 *European Cmty.*, 136 S. Ct. 2090, 2097 (2016) (alteration in original) (quoting 18 U.S.C.
9 § 1964(c)).

10 In order to bring its claims against CW Lee and HS Lee for injuries caused by their
11 alleged violations of § 1962(c) and § 1962(d), K-sure must state a claim under § 1964(c).
12 Defendants contend that K-sure fails to state a claim under § 1964(c) because K-sure fails
13 to allege a ‘domestic’ injury. ECF No. 14-1 at 20 (citing *RJR Nabisco*, 136 S. Ct. at 2106).
14 K-sure contends that the FAC alleges a domestic injury. (ECF No. 15 at 13–14).

15 1. Contentions of the Parties

16 Defendants contend that Plaintiff’s RICO claims should be dismissed because “K-
17 sure has not and cannot plausibly plead that it suffered a domestic injury to business or
18 property.” ECF No. 14-1 at 15 (quoting *RJR Nabisco*, 136 S. Ct. at 2111). Defendants
19 contend that K-sure’s alleged injury is the payment to the Korean Banks. *Id.* at 21 (citing
20 FAC at ¶¶ 140, 154). Defendants contend that injury is not domestic because “K-sure paid,
21 and thus relinquished physical control of, the alleged \$137 million to the Korean Banks in
22 Korea,” and “[a]ny economic harm or harm to K-sure’s business also would have been felt
23 in Korea, as that is where K-sure is incorporated and principally located.” *Id.* at 20 (citing
24 FAC at ¶¶ 7, 20–21, 24, 108–116).

25 K-sure contends that the FAC does allege a domestic injury, focusing on the
26 allegations that (1) K-sure “has maintained a Los Angeles office for more than 25 years to
27 facilitate its significant business with the United States – including the transactions with
28 the Defendants,” ECF No. 16 at 14 (citing FAC at ¶¶ 7, 21–23); (2) “the RICO enterprise

1 was directed at the United States as it involved a United States based corporate enterprise
2 incorporated in Delaware,” *id.* at 14–15 (citing FAC at ¶¶ 8–12, 129, 131); (3) “the RICO
3 Defendants’ alleged activities were directed at fraudulently obtaining credit guarantees
4 from K-sure to facilitate the importation and sales of televisions *in the United States*
5 through ON USA, an entity that they created in the United States,” *id.* at 15 (citing FAC at
6 ¶¶ 131, 136, 139); and (4) “much of the RICO Defendants’ racketeering activity and actions
7 taken in support of the scheme occurred in California,” *id.* (citing FAC at ¶¶ 136–138).

8 2. **Applicable Law**

9 In *RJR Nabisco*, the United States Supreme Court addressed two questions
10 concerning the extraterritorial application of RICO: “First, do RICO’s substantive
11 prohibitions, contained in § 1962, apply to conduct that occurs in foreign countries?
12 Second, does RICO’s private right of action, contained in § 1964(c), apply to injuries that
13 are suffered in foreign countries?” 136 S. Ct. at 2099.

14 The Supreme Court answered the first question by “conclud[ing] that RICO applies
15 to some foreign racketeering activity.” *Id.* at 2103. The Supreme Court concluded that
16 “[a] violation of § 1962 may be based on a pattern of racketeering that includes predicate
17 offenses committed abroad, provided that each of those offenses violates a predicate statute
18 that is itself extraterritorial.” *Id.*

19 The Supreme Court then “turn[ed] to RICO’s private right of action” and
20 “conclude[d] that § 1964(c) does not overcome the presumption against extraterritoriality.”
21 *Id.* at 2106. The Supreme Court held that “[a] private RICO plaintiff therefore must allege
22 and prove a *domestic* injury to its business or property.” *Id.* “Section 1964(c) . . . does not
23 allow recovery for foreign injuries.” *Id.* at 2111. The Supreme Court dismissed the
24 plaintiffs’ claims under § 1964(c) because they “rest[ed] entirely on injury suffered
25 abroad.” *Id.*

26 The plaintiffs in *RJR Nabisco* waived their claims for domestic injuries, so the
27 Supreme Court did not have to decide whether the injuries suffered by the plaintiffs were
28 domestic or foreign. *Id.* The Supreme Court did state that “[t]he application of [the

1 domestic injury] rule in any given case will not always be self-evident, as disputes may
2 arise as to whether a particular alleged injury is ‘foreign’ or ‘domestic.’” *Id.* The Supreme
3 Court also stated that § 1964(c)’s domestic injury requirement “does not mean that foreign
4 plaintiffs may not sue under RICO.” *Id.* at 2110 n.12.

5 Since the Supreme Court decided *RJR Nabisco*, a number of district courts and the
6 Second Circuit Court of Appeals have decided whether the plaintiffs before them alleged
7 domestic injuries for which they could recover under § 1964(c). Many of these courts
8 found that the location of the plaintiff alleging economic injury was relevant to the location
9 of the injury allegedly suffered by that plaintiff. *See, e.g., Armada (Singapore) Pte Ltd. v.*
10 *Amcol Int’l Corp.*, 244 F. Supp. 3d 750, 755 (N.D. Ill. 2017), *reconsideration denied,*
11 *motion to certify appeal granted*, No. 13 C 3455, 2017 WL 1862836 (N.D. Ill. May 9,
12 2017) (collecting cases applying the rule that “a corporate entity generally suffers
13 economic harm in its principal place of business”); *Bascuñán v. Daniel Yarur ELS*
14 *Amended ComplaintA*, No. 15-CV-2009 (GBD), 2016 WL 5475998, at *4 (S.D.N.Y. Sept.
15 28, 2016) (determining “where an economic injury accrued,” by “ask[ing] two common-
16 sense questions: who became poorer, and where did they become poorer.” (alterations and
17 quotations omitted)). The Second Circuit Court of Appeals focused on the location of the
18 property that the plaintiff allegedly lost because of the defendants’ actions. *Bascunan v.*
19 *Elsaca*, 874 F.3d 806, 820–21 (2d Cir. 2017) (“[A]bsent some extraordinary circumstance,
20 the injury is domestic if the plaintiff’s property was located in the United States when it
21 was stolen or harmed, even if the plaintiff himself resides abroad.”). At least one district
22 court decided whether an injury was domestic under § 1964(c) by examining the
23 defendants’ conduct and its purposes. *Tatung Co., Ltd. v. Shu Tze Hsu*, 217 F. Supp. 3d
24 1138, 1156 (C.D. Cal. November 14, 2016) (concluding that the plaintiff suffered a
25 domestic injury because “the defendants specifically targeted their [injury-inducing]
26 conduct at California with the aim of thwarting [the plaintiff’s] rights in California”); *but*
27 *see Cevdet Aksut Ogullari Koll. Sti v. Cavusoglu*, 245 F. Supp. 3d 650, 658 (D.N.J. 2017)
28 (“[T]he only relevant inquiry is where Plaintiff’s injury occurred—i.e. where the impact of

1 Plaintiff's injury was felt—and not where the predicate acts occurred.”); *Bascunan*, 2016
2 WL 5475998, at *6 (“[An] approach[]which focuses on . . . the defendant’s contacts with
3 the forum . . . to determine where a plaintiff suffered an alleged RICO injury[]is
4 misguided.”).

5 3. Analysis

6 The FAC alleges that K-sure is a Korean export credit agency headquartered and
7 domiciled in Korea. FAC at ¶ 7. K-sure has a “branch office[]” in Los Angeles that
8 “performs commercial credit investigations and credit information management,
9 coordinates debt collection activities, and facilitates communications with its customers’
10 United States-based offices, affiliates, and personnel.” *Id.* CW Lee and HS Lee
11 “fraudulently induced K-sure to issue and extend export insurance policies and financial
12 guarantees (‘K-sure Policies’) used to secure bank financing, loans and credit facilities
13 (‘Loans’).” *Id.* at ¶ 4. CW Lee and HS Lee did so, in part, “[t]hrough numerous fraudulent
14 communications,” many of which were sent from the United States. *Id.* at ¶¶ 4, 50–106.
15 “When ON USA failed to remit sale proceeds from the United States to repay the Loans
16 covered by K-sure Policies, K-sure was forced to make payments on the K-sure Policies in
17 excess of \$137 million dollars.” *Id.* at ¶ 4.⁴ Those payments were made to the Industrial
18 Bank of Korea, the Korea Exchange Bank, and Nonghyup Bank. *See id.* at ¶¶ 36–40, 109–
19 116. The FAC does not allege the location of the \$137 million dollars before K-sure paid
20 it out. *See id.* Because K-sure is allegedly a Korean corporation domiciled and
21 headquartered in Korea, it is not reasonable to infer that the \$137 million dollars was
22 located in the United States before K-sure paid it out. The FAC also does not allege where
23 Bank of Korea, the Korea Exchange Bank, and Nonghyup Bank are headquartered or
24 domiciled. *See id.* Considering the names of those banks and K-sure’s role as an export
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27 ⁴ While K-sure alleges that its “business interests, which include operations within the United
28 States . . . , suffered significant damages as a result of Defendants’ conduct,” K-sure does not allege any
facts showing any damage to its business interests beyond the \$137 million dollars of payments.

1 credit agency, it is not reasonable to infer that the banks are headquartered or domiciled in
2 the United States. In sum, the FAC alleges that the injuries suffered were payments made
3 by a Korean company to other Korean companies in Korea.

4 The Court finds that K-sure has failed to allege that it suffered a domestic injury
5 under § 1964(c). Consequently, K-sure has failed to state any civil RICO claims. *RJR*
6 *Nabisco*, 136 S. Ct. at 2111. K-sure's RICO claims are dismissed.

7 4. Leave to Amend

8 Defendants request K-sure's RICO claims be dismissed without leave to amend.
9 (ECF No. 14-1 at 23). K-sure contends that it should be permitted to file a second amended
10 complaint because it "can add additional allegations and details in an amended pleading to
11 cure [the] deficiencies identified by the Court." (ECF No. 16 at 30).

12 A district court may dismiss a claim without leave to amend if "any proposed
13 amendment would be futile." *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir.
14 1990) (citing *Klamath-Lake Pharmaceutical Ass'n v. Klamath Medical Serv. Bureau*, 701
15 F.2d 1276, 1292-93 (9th Cir.)). Defendants contend that any amendment to the FAC
16 would be futile because "K-sure cannot dispute that [the \$137 million dollars in] payments
17 took place in Korea, where both K-sure and the Korean Banks are located," and "all of the
18 circumstances surrounding the financing, the substantive communications, and the claims
19 made by and payments made to the Korean Banks[] occurred in Korea." (ECF No. 14-1 at
20 23). The Court does not find that any amendment to the FAC would be futile at this stage
21 of the proceedings.

22 B. Fraud and Misrepresentation

23 In addition to their RICO claims, K-sure brings claims under state law for fraud
24 (intentional misrepresentation), fraud (concealment), and negligent misrepresentation.
25 FAC at 1. K-sure alleges that the Court "has subject matter jurisdiction . . . over K-sure's
26 claims under state laws as such claims are so related to claims in the action under the laws
27 of the United States of America that they form part of the same case or controversy"
28

1 *Id.* at ¶ 18. Defendants ask the Court to decline to exercise pendant jurisdiction over
2 K-sure’s state law claims. (ECF No. 14-1 at 10).

3 Under 28 U.S.C. § 1367,

4 In any civil action of which the district courts have original jurisdiction, the
5 district courts shall have supplemental jurisdiction over all other claims that
6 are so related to claims in the action within such original jurisdiction that they
7 form part of the same case or controversy under Article III of the United States
8 Constitution.

9 “A state law claim is part of the same case or controversy when it shares a ‘common
10 nucleus of operative fact’ with the federal claims” *Bahrampour v. Lampert*, 356 F.3d
11 969, 978 (9th Cir. 2004) (quoting *Trs. of the Constr. Indus. & Laborers Health & Welfare
12 Trust v. Desert Valley Landscape Maint., Inc.*, 333 F.3d 923, 925 (9th Cir. 2003)).

13 A district court may decline to exercise supplemental jurisdiction over a state law
14 claim if the district court has dismissed all claims over which it has original jurisdiction.

15 28 U.S.C. §1367(c). In deciding whether to exercise supplemental jurisdiction, a court
16 must consider the underlying objective of “most sensibly accommodating the values of
17 economy, convenience, fairness, and comity.” *Exec. Software N. Am., Inc. v. USDC for
18 the Cent. Dist. of Calif.*, 24 F.3d 1545, 1557 (9th Cir. 1994) (internal quotations omitted).

19 “The decision whether to continue to exercise supplemental jurisdiction over state law
20 claims after all federal claims have been dismissed lies within the district court’s
21 discretion.” *Satey v. JPMorgan Chase & Co.*, 521 F.3d 1087, 1091 (9th Cir. 2008) (citing
22 *Foster v. Wilson*, 504 F.3d 1046, 1051 (9th Cir. 2007)). “[I]n the usual case in which all
23 federal-law claims are eliminated before trial, the balance of factors to be considered under
24 the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—
25 will point toward declining to exercise jurisdiction over the remaining state-law claims.”
26 *Id.* (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351 (1988)).

27 The Court has dismissed all of K-sure’s claims brought under federal law. The Court
28 finds that “the balance of factors to be considered under the pendent jurisdiction doctrine—
judicial economy, convenience, fairness, and comity— . . . point toward declining to

1 exercise jurisdiction over the remaining state-law claims.” *Id.* (quoting *Carnegie-Mellon*
2 *Univ. v. Cohill*, 484 U.S. 343, 351 (1988)). Accordingly, the Court declines to exercise
3 jurisdiction over K-sure’s state law claims for fraud and negligent misrepresentation.

4 **V. Conclusion**

5 Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint (ECF No. 14)
6 is HEREBY GRANTED. The FAC (ECF No. 13) is DISMISSED without prejudice and
7 with leave to file a motion to file an amended complaint within thirty days of the date of
8 this order. If no motion is filed, the Court will direct the clerk to close the case.

9
10 DATED:

3/9/18


WILLIAM Q. HAYES
United States District Judge