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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 ABDOULAYE DIALLO; WILLIAM  
12 MERRITT,

13 Plaintiffs,

14 v.

15 REDWOOD INVESTMENTS, LLC;  
16 SOCAL METRO HOLDINGS, LLC;  
17 CHRISTOPHER CARNES; TONIKA  
18 MILLER; CHI KUANG HWANG,

Defendants.

Case No.: 18-CV-1793 JLS (JLB)

**ORDER GRANTING DEFENDANTS  
REDWOOD INVESTMENTS, LLC,  
AND CHI KUANG HWANG'S  
MOTION TO DISMISS SECOND  
AMENDED COMPLAINT**

(ECF No. 68)

19 Presently before the Court is the Motion to Dismiss Second Amended Complaint  
20 filed by Defendants Redwood Investments, LLC (“Redwood”), and Chi Kuang Hwang  
21 (collectively, “Moving Defendants”) (“Mot.,” ECF No. 68). Also before the Court are  
22 Plaintiffs Abdoulaye Diallo and William Merritt’s (collectively, “Plaintiffs”) Opposition  
23 to the Motion (“Opp’n,” ECF No. 69) and Moving Defendants’ Reply in support thereof  
24 (“Reply,” ECF No. 70). The Court vacated the hearing on the Motion and took it under  
25 submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). See ECF No.  
26 74. Having carefully reviewed the pleadings, the Parties’ arguments and evidence, and the  
27 law, the Court **GRANTS** Moving Defendants’ Motion **WITH LEAVE TO AMEND**.

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**BACKGROUND<sup>1</sup>**

The Court has attempted to distill the complex and troubling facts of the Second Amended Complaint (“SAC,” ECF No. 67), spanning 232 paragraphs over 30 pages, as concisely as possible.

**I. The First Grant Deed**

Mr. Merritt received a “notice of special tax lien,” dated March 17, 2018, indicating that he was in default on his property taxes. SAC ¶ 23. On or about the evening of April 30, 2018,<sup>2</sup> after Mr. Merritt had been drinking heavily all day, id. ¶ 27, Defendant Tonika Miller, a real estate agent, id. ¶ 14, and Defendant Christopher Carnes, her husband, id. ¶ 13, showed up at Mr. Merritt’s house, id. ¶ 24, situated at 4026 Charles Street, La Mesa, CA 91941 (the “Property”). Id. ¶¶ 9, 16.

Redwood is a California limited liability company located in Dana Point, California, which “deals in real estate transactions.” Id. ¶¶ 11, 218. Redwood is managed by Mr. Hwang. See id. ¶ 13. Plaintiffs allege that Mr. Carnes and Ms. Miller were commissioned by Redwood and SoCal to obtain properties financed by Redwood and subsequently sold to SoCal. Id. ¶ 26. Plaintiffs allege that “each of the named Defendants was at all times mentioned herein, the agent, employee, partner and/or representative of one or more of the remaining Defendants and was acting within the course and scope of such relationship,” and that “each of the Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the remaining Defendants.” Id. ¶ 15. Plaintiffs also claim that “[a]ll of the defendants have contractual or other relationships with each other.” Id. ¶ 192.

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<sup>1</sup> The facts alleged in Plaintiffs’ Second Amended Complaint (“SAC,” ECF No. 67) are accepted as true for purposes of this Motion. See *Vasquez v. Los Angeles Cnty.*, 487 F.3d 1246, 1249 (9th Cir. 2007) (holding that, in ruling on a motion to dismiss, the Court must “accept all material allegations of fact as true”).

<sup>2</sup> At one point the SAC states the date as “May 30, 2018,” but the Court assumes this is a typographical error. See SAC ¶ 151.

1 Mr. Carnes and Ms. Miller, acting as agents of Redwood and SoCal, offered Mr.  
 2 Merritt a case of beer. Id. ¶¶ 25, 28. They then took Mr. Merritt to a Claim Jumper  
 3 Restaurant and Saloon in La Mesa, California, and offered to help him with the back taxes  
 4 on his Property and his utilities if he signed a document (the “First Grant Deed”). Id.  
 5 ¶¶ 30–33. Mr. Carnes and Ms. Miller did not inform Mr. Merritt that they intended to take  
 6 the Property from him. Id. ¶ 39. Intoxicated, Mr. Merritt signed and notarized the First  
 7 Grant Deed, purporting to transfer ownership of the Property to Mr. Carnes. Id. ¶¶ 34–37.

8 On May 2, 2018, Mr. Carnes recorded the First Grant Deed at the San Diego County  
 9 Recorder’s Office. Id. ¶¶ 38, 47–48. While at the Recorder’s Office, Mr. Carnes and Ms.  
 10 Miller e-mailed and/or texted a copy of the recorded First Grant Deed to Redwood, SoCal,  
 11 and Mr. Hwang, “in order to inform their co-conspirators of their success in obtaining the  
 12 grant deed from Mr. Merritt,” id. ¶ 47, and sent another copy by mail to Mr. Carnes at an  
 13 address in Missouri, id. ¶ 48. Plaintiffs allege that Mr. Carnes and Ms. Miller, “in  
 14 association and conspiracy with all other Defendants, caused the fraudulent grant deed  
 15 obtained from Mr. Merritt to be sent through the interstate United States mails by recording  
 16 it at the San Diego recorder’s office with instructions to have it mailed to” Mr. Carnes at  
 17 an address in Missouri. Id. ¶ 95; see also id. ¶ 151.

18 On or around May 2, 2018, Redwood and Mr. Hwang paid the back taxes due on the  
 19 Property in the amount of \$36,137.81, approximately twice the back taxes of \$18,137.81  
 20 actually due on the Property. Id. ¶¶ 57, 156–58.<sup>3</sup> Thus, when Plaintiffs went to pay the  
 21 back taxes at the San Diego County Assessor’s Office, they were turned away. Id. ¶ 57.  
 22 Plaintiffs allege that Redwood “knowingly received stolen property from Defendant  
 23 Carnes and Miller through a purchase and sale agreement to purchase the subject property.”  
 24 Id. ¶ 159. Plaintiffs further claim that Redwood “provided no contract to purchase the  
 25 property from Mr. Merritt,” id. ¶ 160; “provided no legally bargained for consideration for  
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 28 <sup>3</sup> Plaintiffs allege Redwood overpaid the back taxes “in order to make it harder for [Mr. Merritt] to pay  
 the funds back and regain control of the property.” SAC ¶ 158.

1 the property of Mr. Merritt,” id. ¶ 161; and paid the back taxes “[w]ithout a contractual  
2 interest or legitimate business purpose,” id. ¶ 162. Plaintiffs allege that “Defendant Hwang  
3 caused the RICO enterprise, Redwood Investments, LLC, to pay the property taxes on the  
4 subject property in order to fraudulently obtain, and thereafter fraudulently transfer, the  
5 subject property.” Id. ¶ 163.

## 6 **II. The Quitclaim Deed**

7 Also on or around May 2, 2018, unaware of the First Grant Deed, Plaintiff  
8 Abdoulaye Diallo offered to purchase the Property from Mr. Merritt for \$260,000. Id.  
9 ¶ 54. On or around May 4, 2018, Mr. Merritt and Mr. Diallo signed a contract for the sale  
10 of the Property, and Mr. Merritt also signed a quitclaim deed purportedly transferring the  
11 Property to Mr. Diallo. Id. ¶ 55. Mr. Merritt and Mr. Diallo recorded the quitclaim deed  
12 the same day, at which time they discovered the recorded First Grant Deed. Id. ¶¶ 56, 58.

## 13 **III. The Second Grant Deed**

14 In New York, another grant deed (the “Second Grant Deed”) was purportedly  
15 executed on or around June 6, 2018, and notarized on or around June 19, 2018, supposedly  
16 transferring the Property from Mr. Diallo to Mr. Carnes. Id. ¶¶ 61–63, Ex. 4.

17 The Mr. Diallo who signed the Second Grant Deed is not the same Mr. Diallo who  
18 is a party to this action; rather, he lives in Brooklyn, New York. Id. ¶¶ 64, 71. The Mr.  
19 Diallo who is a party to this action “had no knowledge or involvement in preparing the  
20 [Second Grant Deed],” “did not sign it,” “did not know about it,” and “was not in the State  
21 of New York” at the relevant time. Id. ¶ 71.

22 Plaintiffs allege that “Defendants defrauded Abdoulaye Diallo#2 into signing a fake  
23 grant deed for the sole purpose of creating a ‘clean’ chain of title in the San Diego County  
24 Records in favor of Christopher Carnes.” Id. ¶ 72; see also id. ¶ 185 (alleging all  
25 Defendants “acted together to defraud Abdoulaye Diallo#2”). “This enabled Christopher  
26 Carnes to transact title to Redwood Investments, LLC, through escrow which would not  
27 have been possible while the name ‘Abdoulaye Diallo’ remained on title.” Id. In  
28 connection with the Second Grant Deed, Ms. Miller e-mailed the Mr. Diallo living in

1 Brooklyn several documents, including a “Relinquishment of Ownership in Error” that  
2 indicates, when recorded, it should be mailed to Redwood. Id. ¶¶ 75–77; see also id. Ex.  
3 4. Thus, Plaintiffs allege that Redwood and Hwang “participated in the manufacture of the  
4 fake [Second Grant Deed],” id. ¶ 189, and that Redwood “is directly tied to the fraudulent  
5 signing and fraudulent filing of the [Second Grant Deed],” id. ¶ 78.

6 On or about June 28, 2018,<sup>4</sup> the Second Grant Deed was recorded in San Diego  
7 County. Id. ¶ 61. A copy of the recorded Second Grant Deed was mailed by the San Diego  
8 Recorder’s Office, at Mr. Carnes and Ms. Miller’s instruction, to Mr. Carnes at an address  
9 in Missouri, id. ¶¶ 70, 98, and also was e-mailed by Mr. Carnes and Ms. Miller from their  
10 apartment in North Hollywood, California, to Redwood, SoCal, and Mr. Hwang. Id. ¶¶ 82,  
11 101. Plaintiffs allege that, in so doing, “[a]ll other Defendants, acting in concert with  
12 Defendants Miller and Carnes, committed the acts of fraud, mail fraud, and wire fraud.”  
13 Id. ¶ 102.

14 Plaintiffs claim that “[a]ll Defendants, and each of them, conspired together to  
15 fraudulently file false grants deeds in violation of California Penal Code § 115.” Id. ¶ 84.  
16 They further claim that “Defendants, and each of them, in procuring both the fraudulent  
17 grant deeds . . . in favor of Defendant Carnes committed the criminal act of mail fraud.”  
18 Id. ¶ 85. Finally, they claim that “Defendants, and each of them, in causing the fraudulent  
19 grant deeds . . . to be filed in favor of Defendant Carnes committed the criminal act of wire  
20 fraud.” Id. ¶ 86. Plaintiffs broadly allege that “[a]ll Defendants acted in association and  
21 conspiracy by use of the telephone, mail, email or other communication facilities to  
22 communicate with each other regarding the conspiracy and to complete the unlawful  
23 execution of the grant deed and filing in the County Recorder’s office,” and that this  
24 constitutes racketeering activity. Id. ¶¶ 170–71.

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27 <sup>4</sup> Although the SAC says the Second Grant Deed was recorded on or around June 19, 2018, SAC ¶ 80, the  
28 Second Grant Deed indicates on its face that it was recorded on June 28, 2018, see id. Ex. 4. Accordingly,  
the Court assumes that “June 19” is a typographical error.

1 **IV. Other Predicate Acts**

2 Beyond these predicate acts related to the Property, Plaintiffs allege that Ms. Miller  
3 and Mr. Carnes have been involved in multiple fraudulent and criminal real estate  
4 activities. See id. ¶¶ 103–25, Ex. 5. Plaintiffs attach to the SAC a Felony Complaint filed  
5 in San Mateo County, California, alleging that Ms. Miller and an individual who is not a  
6 party to the instant case engaged in the felonious recording of a forged instrument. See  
7 generally id. Ex. 5. Plaintiffs claim that one of the fraudulent transactions concerned a  
8 property located on Sunkist Drive in Oakland, California (the “Sunkist Property”), which  
9 belonged to a third party and not Plaintiffs. Id. ¶¶ 115–25.

10 Plaintiffs also allege that Redwood and Mr. Hwang, see id. ¶¶ 126–34, and SoCal,  
11 see id. ¶¶ 135–44, have been involved in various fraudulent and criminal real estate  
12 transactions. They claim that Redwood “participated in financing the fraudulent sale of”  
13 the Sunkist Property to a company named Pristine Holdings, LLC, on or about March 14,  
14 2018. Id. ¶ 126. They also allege that Redwood and Mr. Hwang engaged in a fraudulent  
15 real estate transaction concerning another property owned by a third party, Allan  
16 Hallenbeck, in Laguna Hills, California (the “Hallenbeck Property”). Id. ¶¶ 127–34.  
17 Plaintiffs claim Redwood and Mr. Hwang swindled Mr. Hallenbeck out of \$8,000 and also  
18 defrauded the bank involved in the sale via a “flopping” transaction. Id. ¶¶ 133–34.  
19 Plaintiffs do not appear to allege that Redwood or Mr. Hwang were involved in any of the  
20 allegedly fraudulent activities undertaken by SoCal. See id. ¶¶ 135–44.

21 Plaintiffs allege on information and belief that all Defendants “used the telephone,  
22 mail, email or other communication facilities to complete similar unlawful executions of  
23 grant deeds and filings in the County Recorder’s office against many other individuals in  
24 real estate transactions.” Id. ¶ 172. Because all the Defendants “each have been involved  
25 in multiple, serial, real estate fraud and swindle transactions,” they “[e]ach have a high  
26 probability of continuing to engage in similar real estate fraud activity in the future.” Id.  
27 ¶ 215.

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1 **V. The RICO Enterprise**

2 Plaintiffs mostly assert that the “RICO enterprise” is Redwood, including in their  
 3 first cause of action for “civil RICO.” See, e.g., id. ¶¶ 149, 163, 169, 197, 199, 202, 206–  
 4 08, 218. However, at several points in the SAC, Plaintiffs assert that the enterprise is  
 5 “Redwood Investments, LLC and or SoCal Metro Holdings, LLC.” See id. ¶¶ 192–93,  
 6 195. And, at one point, Plaintiffs allege that “Defendant SoCal is also a RICO enterprise.”  
 7 Id. ¶ 201. Plaintiffs allege that the enterprise has moved “Money, Funding, documents  
 8 purporting to transfer real property, and other services . . . in interstate commerce.” Id.  
 9 ¶ 218.

10 Plaintiffs claim that “[a]ll of the defendants agreed to participate in and assist the  
 11 enterprise with full knowledge of its overall aim of operating a RICO enterprise in the guise  
 12 of a real estate investment firm.” Id. ¶ 145; see also id. ¶ 195. Plaintiffs assert that Mr.  
 13 Hwang “makes all of the enterprise’s important decisions,” id. ¶ 196, including its  
 14 “financial decisions,” id. ¶ 197, and that he “mastermind[ed] and orchestrate[d] the  
 15 fraudulent transaction that occurred as alleged herein,” id. ¶ 210. Plaintiffs also claim that  
 16 Mr. Hwang “provides financing to the RICO enterprise in executing fraudulent real estate  
 17 transactions.” Id. ¶ 198. Plaintiffs allege that Mr. Hwang solicited SoCal to serve as a  
 18 “straw-man third-party purchaser” of the Property and others. Id. ¶ 200.

19 **VI. Procedural History**

20 On August 3, 2018, Mr. Merritt and Dasha Riley<sup>5</sup> filed the instant action in this Court  
 21 alleging causes of action for (1) violation of the Racketeer Influence and Corrupt  
 22 Organizations Act (“RICO”), 18 U.S.C. §§ 1961 et seq.; (2) civil conspiracy to commit  
 23 wire fraud; (3) expungement of fraudulent grant deeds; and (4) constructive fraud. See  
 24 generally ECF No. 1. On September 20, 2018, Plaintiffs filed a proof of service indicating  
 25 that SoCal was served through its registered agent, Trish Rosano of Solutions, Inc., on  
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27 <sup>5</sup> Ms. Riley allegedly purchased Mr. Merritt’s Property on July 23, 2018, see ECF No. 1 ¶ 18, after  
 28 Mr. Diallo’s purported purchase of the Property on May 4, 2018. Consequently, she is no longer a party  
 to this action, having been replaced in the Second Amended Complaint by Mr. Diallo.

1 August 24, 2018, see generally ECF No. 7, and requested entry of default as to SoCal. See  
2 generally ECF No. 8. The Clerk entered default as to SoCal on September 24, 2018. See  
3 ECF No. 9.

4 On October 3, 2018, Plaintiffs filed their First Amended Complaint (“FAC”), adding  
5 a fifth cause of action for Elder Financial Abuse in violation of California Welfare and  
6 Institutions Code §§ 15600 et seq. See generally ECF No. 13. On October 17, 24, and 26,  
7 2018, respectively, Mr. Carnes, Redwood and Mr. Hwang, and Ms. Miller filed Motions  
8 to Dismiss the FAC. See ECF Nos. 27, 30, 32. The Court vacated the hearing on the  
9 motions, see ECF No. 41, and, on August 6, 2019, issued an Order dismissing with  
10 prejudice Plaintiffs’ second cause of action, dismissing without prejudice Plaintiffs’ first  
11 cause of action, and declining to exercise supplemental jurisdiction over the remaining  
12 state law claims. See generally ECF No. 54. The Court further denied as moot the motion  
13 for default judgment as to SoCal. See *id.* The Court granted Plaintiffs thirty days in which  
14 to file an amended complaint. See *id.* at 22.

15 On September 3, 2019, Plaintiffs filed an *ex parte* motion seeking additional time to  
16 file an amended complaint. See ECF No. 56. The Court extended the deadline for Plaintiffs  
17 to file an amended complaint to October 7, 2019. See ECF No. 59. Plaintiffs subsequently  
18 requested a second extension, see ECF No. 63, which was denied, see ECF No. 66.

19 Plaintiffs filed their Second Amended Complaint (“SAC”) on October 7, 2019. See  
20 ECF No. 67. The SAC alleges two causes of action against all Defendants: (1) “Civil  
21 RICO” and (2) “RICO Conspiracy.”<sup>6</sup> See generally *id.* Redwood and Mr. Hwang filed the  
22 instant Motion on October 21, 2019. See ECF No. 68. On December 6, 2019, Plaintiffs  
23 requested entry of default against Mr. Carnes, Ms. Miller, and SoCal; however, the Clerk  
24 did not enter default due to Plaintiffs’ failure to provide proof of service to the defendants  
25 in question. See ECF Nos. 71–73.

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28 <sup>6</sup> The SAC alleges a third and final cause of action, “to cancel fraudulent grant deeds,” against Mr. Carnes  
only. See SAC ¶¶ 228–32.



## LEGAL STANDARD

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2 Federal Rule of Civil Procedure 12(b)(6) permits a party to raise by motion the  
3 defense that the complaint “fail[s] to state a claim upon which relief can be granted,”  
4 generally referred to as a motion to dismiss. The Court evaluates whether a complaint  
5 states a cognizable legal theory and sufficient facts in light of Federal Rule of Civil  
6 Procedure 8(a), which requires a “short and plain statement of the claim showing that the  
7 pleader is entitled to relief.” Although Rule 8 “does not require ‘detailed factual  
8 allegations,’ . . . it [does] demand more than an unadorned, the-defendant-unlawfully-  
9 harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
10 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, “a plaintiff’s obligation to  
11 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and  
12 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”  
13 *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A  
14 complaint will not suffice “if it tenders ‘naked assertion[s]’ devoid of ‘further factual  
15 enhancement.’” *Iqbal*, 556 U.S. at 677 (citing *Twombly*, 550 U.S. at 557).

16 To survive a motion to dismiss, “a complaint must contain sufficient factual matter,  
17 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting  
18 *Twombly*, 550 U.S. at 570); see also Fed. R. Civ. P. 12(b)(6). A claim is facially plausible  
19 when the facts pled “allow the court to draw the reasonable inference that the defendant is  
20 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 677 (citing *Twombly*, 550 U.S. at  
21 556). That is not to say that the claim must be probable, but there must be “more than a  
22 sheer possibility that a defendant has acted unlawfully.” *Id.* Facts “‘merely consistent  
23 with’ a defendant’s liability” fall short of a plausible entitlement to relief. *Id.* (quoting  
24 *Twombly*, 550 U.S. at 557). Further, the Court need not accept as true “legal conclusions”  
25 contained in the complaint. *Id.* This review requires context-specific analysis involving  
26 the Court’s “judicial experience and common sense.” *Id.* at 678 (citation omitted).  
27 “[W]here the well-pleaded facts do not permit the court to infer more than the mere  
28 possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the

1 pleader is entitled to relief.” Id.

2 “In reviewing a Rule 12(b)(6) motion to dismiss, a district court must accept as true  
3 all facts alleged in the complaint, and draw all reasonable inferences in favor of the  
4 plaintiff.” *Wi-LAN Inc. v. LG Elecs., Inc.*, 382 F. Supp. 3d 1012, 1020 (S.D. Cal. 2019)  
5 (citing *Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am.*, 768 F.3d 938,  
6 945 (9th Cir. 2014)). Moreover, “[a] document filed pro se is to be liberally construed,  
7 and a pro se complaint, however inartfully pleaded, must be held to less stringent standards  
8 than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)  
9 (internal quotation marks omitted) (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); Fed.  
10 R. Civ. P. 8(f) (“All pleadings shall be so construed as to do substantial justice”)); see also  
11 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (holding that *Iqbal* did not alter the  
12 “obligation” to construe pro se pleadings liberally).<sup>7</sup>

13 The Court will grant leave to amend unless it determines that no modified contention  
14 “consistent with the challenged pleading . . . [will] cure the deficiency.” *DeSoto v. Yellow*  
15 *Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v.*  
16 *Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)).

## 17 ANALYSIS

### 18 A. First Cause of Action for “Civil RICO”

19 Plaintiffs allege civil RICO violations as to all Defendants predicated on alleged  
20 federal wire and mail fraud offenses, as well as violation of California statutes prohibiting  
21 the filing of false documents and burglary. See SAC ¶¶ 203–22.

22 RICO permits civil suit by “any person injured in his businesses or property.” 18  
23 U.S.C. § 1964(c); see also *Compton v. Ide*, 732 F.2d 1429, 1433 (9th Cir. 1984). To state  
24 a claim under RICO, a plaintiff must allege: “(1) conduct (2) of an enterprise (3) through a  
25 pattern (4) of racketeering activity (known as ‘predicate acts’) (5) causing injury to the  
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28 <sup>7</sup> On August 27, 2020, Attorney James Cummins Diefenbach, III, appeared on behalf of Plaintiffs, see ECF No. 75, but at the time the SAC was filed and the present Motion was briefed, Plaintiffs were pro se.

1 plaintiff's 'business or property.'" *Grimmett v. Brown*, 75 F.3d 506, 510 (9th Cir. 1996),  
2 cert. dismissed, 117 S. Ct. 759 (1997); see also *Sedima, S.P.R.L. v. Imrex Co. Inc.*, 473  
3 U.S. 479, 496 (1985).

4 "[R]acketeering activity' is any act indictable under several provisions of Title 18  
5 of the United States Code, and includes the predicate acts of mail fraud[ and] wire fraud."  
6 *Turner v. Cook*, 362 F.3d 1219, 1229 (9th Cir. 2004) (citing 18 U.S.C. § 1961(1)). A  
7 "pattern of racketeering activity . . . requires at least two [predicate] acts of racketeering  
8 activity . . . within ten years." 18 U.S.C. § 1961(5). The Supreme Court has cautioned  
9 "that "while two acts are necessary, they may not be sufficient" to establish a pattern of  
10 racketeering activity. See *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 237–38 (1989); see  
11 also *id.* at 238 ("[P]roof of two acts of racketeering activity, without more, does not  
12 establish a pattern.") (quoting 116 Cong. Rec. 18940 (1970) (statement of Sen.  
13 McClellan)). Consequently, "to prove a pattern of racketeering activity a plaintiff . . . must  
14 show that the racketeering predicates are related, and that they amount to or pose a threat  
15 of continued activity." *Id.* at 239 (emphasis in original). Further, where a plaintiff alleges  
16 RICO claims against multiple defendants, the "plaintiff must allege at least two predicate  
17 acts by each defendant." *In re WellPoint, Inc. Out-of-Network UCR Rates Litig.*, 865 F.  
18 Supp. 2d 1002, 1035 (C.D. Cal. 2011) (emphasis in original).

19 The heightened pleading requirement of Rule 9(b) of the Federal Rules of Civil  
20 Procedure applies to RICO claims. *Moore v. Kayport Package Express, Inc.*, 885 F.2d  
21 531, 541 (9th Cir. 1989); *Alan Neuman Productions, Inc. v. Albright*, 862 F.2d 1388, 1392-  
22 93 (9th Cir. 1988), cert. denied, 493 U.S. 858 (1989). Under Rule 9(b), plaintiff must  
23 specifically allege the time, place, and manner of the alleged wrongful conduct, as well as  
24 identify the parties to each wrongful act. *Moore*, 885 F.2d at 541; *Alan Neuman*  
25 *Productions, Inc.*, 862 F.2d at 1392–93. RICO allegations that do not meet this  
26 requirement should be dismissed. *Moore*, 885 F.2d at 541; *Alan Neuman Productions*, 862  
27 F.2d at 1392–93. Where multiple defendants allegedly engaged in fraudulent activity,  
28 "Rule 9(b) does not allow a complaint to merely lump multiple defendants together."

1 Swartz v. KPMG LLP, 476 F.3d 756, 764 (9th Cir. 2007). Rather, a plaintiff must identify  
2 each defendant’s role in the alleged scheme. *Id.* at 765.

3 Moving Defendants contend that Plaintiffs’ RICO claim must be dismissed pursuant  
4 to Rule 12(b)(6). See Mot. at 11–24. Specifically, Moving Defendants argue that (1)  
5 Plaintiffs failed to plead the predicate acts of wire and mail fraud with the requisite  
6 specificity under Rule 9(b), see *id.* at 12–16; (2) Plaintiffs failed to allege a “pattern” of  
7 conduct, see *id.* at 16–21; (3) Redwood cannot be both a RICO enterprise and a defendant,  
8 see *id.* at 22; and (4) Mr. Diallo lacks standing to bring the claim, see *id.* at 22–24.

9 1. Redwood as Both RICO Enterprise and Defendant

10 The Court will first address Moving Defendants’ third major argument against  
11 Plaintiffs’ civil RICO claim: that Redwood cannot be both a RICO enterprise and a  
12 defendant. See Mot. at 22 (citing *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158,  
13 160 (2001)). In their Opposition, Plaintiffs disagree with Moving Defendants’ reading of  
14 *Cedric*, see Opp’n at 8–9, but in the alternative argue that “Plaintiffs have alleged multiple  
15 RICO enterprises,” *id.* at 9. Moving Defendants do not address Plaintiffs’ alternative  
16 argument in their Reply.

17 The Court agrees with Moving Defendants that it is settled law that, in order to state  
18 a civil RICO claim, a complainant must allege both a “person” and an “enterprise” that are  
19 distinct, i.e., the enterprise cannot simply be one of the named defendants. See, e.g., *Living*  
20 *Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005) (citing  
21 *Cedric*, 533 U.S. at 164). However, the Court also agrees with Plaintiffs that the allegations  
22 of the SAC are adequate to survive the present Motion. The Ninth Circuit “ha[s]  
23 recognized that a group of individuals or corporations may together constitute a RICO  
24 enterprise even though they do not incorporate or otherwise form a legal entity.” *River*  
25 *City Markets, Inc. v. Fleming Foods W., Inc.*, 960 F.2d 1458, 1461 (9th Cir. 1992) (citations  
26 omitted). Moreover, the Ninth Circuit “consistently ha[s] held that in multiple-defendant  
27 RICO cases, some of the individual defendants may also be identified as members of the  
28 alleged association-in-fact enterprise.” *Id.* (citations omitted). Thus, drawing all

1 inferences in Plaintiffs’ favor and construing their pro se SAC liberally, as this Court must  
2 on a Rule 12(b)(6) motion, the Court believes Plaintiffs have pleaded an enterprise  
3 consisting of both Redwood and SoCal. See, e.g., SAC ¶ 192 (alleging that “the  
4 association-in-fact enterprise [is] known as Redwood Investments, LLC and or SoCal  
5 Metrol Holdings, LLC”); see also Cedric, 533 U.S. at 160 (“Assuming, as we must given  
6 the posture of this case, that the allegations in the complaint are true, we conclude that the  
7 ‘person’ and ‘enterprise’ here are distinct and that the RICO provision applies.”). Thus,  
8 the Court declines to dismiss Plaintiffs’ first cause of action on this ground.

9         3.       *Mr. Diallo’s Standing*

10         Second, the Court briefly addresses Moving Defendants’ argument that Mr. Diallo  
11 lacks standing, and therefore any claims asserted by Mr. Diallo should be dismissed. See  
12 Mot. at 23–24. As Moving Defendants’ own briefing acknowledges, it is not clear on the  
13 face of the pleadings which of the two plaintiffs has a legal interest in the Subject Property,  
14 and therefore any recovery, in this suit. See *id.* at 24 (“Either Merritt assigned this claim  
15 to Diallo and Diallo has standing OR Merritt didn’t assign his claim and only Merritt has  
16 standing.”). While it may be that ultimately only one of Plaintiffs will have standing to  
17 recover on the claims, Moving Defendants have failed to allege any prejudice they face at  
18 this early juncture by keeping both Plaintiffs in the case until the relevant facts concerning  
19 standing surface. Accordingly, the Court declines at this time to dismiss Mr. Diallo’s  
20 claims for lack of standing.

21         2.       Specificity Under Rule 9(b)

22         Finally, the Court addresses Moving Defendants’ first major argument against  
23 Plaintiffs’ claim for civil RICO violations: that Plaintiffs’ allegations fail to satisfy the  
24 heightened pleading standard of Rule 9(b). See Mot. at 12–16. Plaintiffs argue that their  
25 allegations are adequately specific, especially given that they allege that Mr. Carnes and  
26 Ms. Miller acted as Redwood and Mr. Hwang’s agents. See Opp’n at 6 (citing SAC ¶¶ 25,  
27 26, 224); *id.* at 7.

28         ///

1 Plaintiffs essentially allege Moving Defendants' involvement in four predicate acts,  
2 concerning the First Grant Deed, the Second Grant Deed, the Sunkist Property, and the  
3 Hallenbeck Property. See generally SAC; see also Opp'n at 3. Plaintiffs also assert that  
4 these four transactions constitute racketeering activity based on at least four statutes: 18  
5 U.S.C. § 1341 (mail fraud), 18 U.S.C. § 1343 (wire fraud), Cal. Penal Code § 115 (filing  
6 of false documents), and Cal. Penal Code § 460(b) (burglary). See SAC ¶ 207.

7 i. Wire Fraud and Mail Fraud

8 a. The First and Second Grant Deeds

9 As to the First Grant Deed, Plaintiffs allege that, on May 2, 2018, the First Grant  
10 Deed "was sent electronically by wire via email and or text message by Defendant Carnes  
11 and Miller . . . to Defendant[s] Redwood . . . and . . . Hwang." FAC ¶ 47. Plaintiffs claim  
12 "[t]his was done in order to inform their co-conspirators of their success in obtaining the  
13 grant deed from Mr. Merritt." Id. Plaintiffs also allege that, while at the County Recorder's  
14 Office, "Defendants Carnes and Miller caused the [First Grant Deed] to be sent through  
15 the United States interstate mails . . . to: 6188 Dupree Street, Saint Louis, MO 63135."  
16 Id. ¶ 48 (emphasis in original).

17 As to the Second Grant Deed, Plaintiffs allege that, "[o]n or about June 28, 2018,"  
18 Mr. Carnes and Ms. Miller "caused [the Second Grant Deed] to be transmitted in interstate  
19 commerce and then recorded in the San Diego Recorders office knowing that it was a false  
20 filing in violation of California Penal Code § 115." Id. ¶ 97. On or around the same day,  
21 they "caused the [Second Grant Deed] to be illegally mailed in the United States Mails by  
22 requesting that the San Diego Recorders office mail it to" Mr. Carnes's attention at a  
23 Missouri address. Id. ¶ 98. On information and belief, on or around the same day, Mr.  
24 Carnes and Ms. Miller also "caused the [Second Grant Deed] to be sent via wire and or  
25 email to all other Defendants" from their apartment in North Hollywood, California. Id. ¶  
26 101.

27 As relevant to both the First and Second Grant Deeds, Plaintiffs generally allege that  
28 "[a]ll Defendants acted in association and conspiracy by use of the telephone, mail, email,



1 or other communication facilities to communicate with each other regarding the conspiracy  
2 and to complete the unlawful execution of the grant deed and filing in the County  
3 Recorder’s office.” Id. ¶ 170. Plaintiffs also claim that “each of the named Defendants  
4 was at all times mentioned herein, the agent, employee, partner and/or representative of  
5 one or more of the remaining Defendants and was acting within the course and scope of  
6 such relationship,” and that “each of the Defendants herein gave consent to, ratified and  
7 authorized the acts alleged herein to each of the remaining Defendants.” Id. ¶ 15.

8 Moving Defendants contend that Plaintiffs have failed to adequately allege Redwood  
9 and Mr. Hwang’s specific involvement in the First and Second Grant Deed transactions.  
10 Mot. at 15–16. They claim that “Plaintiffs fail to allege that Redwood or Hwang ever made  
11 any representations to Plaintiffs, much less the time, place, manner, and specific content of  
12 those unalleged representations.” Reply at 8.

13 However, Moving Defendants’ argument misses the mark, as it appears, from the  
14 face of the SAC, that Plaintiff is seeking to hold Redwood and Hwang liable on the theory  
15 of respondeat superior—in other words, Redwood and Mr. Hwang are liable for the acts  
16 of Mr. Carnes and Ms. Miller as Moving Defendants’ agents. See, e.g., SAC ¶¶ 15, 25,  
17 192. This interpretation of the SAC is confirmed by Plaintiffs’ argument in their  
18 Opposition that Mr. Carnes’s and Ms. Millers’s status as agents of Redwood and Mr.  
19 Hwang “ties the conduct of Carnes and Miller, as to all of their fraudulent conduct, to  
20 Defendants Redwood and Hwang.” Opp’n at 6. Notably, Moving Defendants do not  
21 appear to address this argument in reply.

22 It is established Ninth Circuit law that “an employer that is benefited [sic] by its  
23 employee or agent’s violations of section 1962(c) may be held liable under the doctrines  
24 of respondeat superior and agency when the employer is distinct from the enterprise.”  
25 *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 619–20 (9th Cir. 2004) (quoting *Brady v.*  
26 *Dairy Fresh Prods. Co.*, 974 F.2d 1149, 1154 (9th Cir. 1992)) (emphasis in original).

27 Nonetheless, while the Court finds that Plaintiffs could, potentially, state a claim  
28 premised on Moving Defendants’ liability based on the acts of their purported agents, the

1 Court agrees with Moving Defendants’ overarching argument that the allegations of the  
2 SAC are not adequate to do so. These allegations “are ‘nothing more than legal conclusions  
3 of the type prohibited by *Iqbal* and *Twombly*.’” *Siegel v. Scripps Networks Interactive,*  
4 *Inc.*, No. CV1602166ABFFMX, 2016 WL 10968138, at \*3 (C.D. Cal. May 18, 2016)  
5 (citation omitted); see also *United Bhd. of Carpenters & Joiners of Am. v. Bldg. & Const.*  
6 *Trades Dep’t*, 911 F. Supp. 2d 1118, 1136 (E.D. Wash. 2012), *aff’d sub nom. United Bhd.*  
7 *of Carpenters & Joiners of Am. v. Bldg. & Const. Trades Dep’t*, AFL-CIO, 770 F.3d 834  
8 (9th Cir. 2014) (finding “repeated allegations made by Plaintiffs that both named and  
9 unnamed individuals acted as ‘BCTD Defendant’s agents’ . . . is merely a formulaic legal  
10 conclusion prohibited under *Iqbal* and *Twombly*,” and that “Plaintiffs failed to plead facts  
11 showing that the putative agents committing these acts were subject to the control of  
12 ‘BCTD Defendants.’”) (citation omitted).

13 Plaintiffs only make generalized statements that Mr. Carnes and Ms. Miller are  
14 agents of Redwood and/or Mr. Hwang, without pleading necessary facts, such as Redwood  
15 and/or Mr. Hwang’s right to control their purported agents’ activities. Without sufficient  
16 factual allegations concerning the purported agency relationship to tie Redwood and Mr.  
17 Hwang to the alleged mail and wire fraud connected to the First and Second Grant Deeds,  
18 Plaintiffs have failed to adequately allege these purported predicate acts.

19 b. The Sunkist and Hallenbeck Properties

20 Plaintiffs also allege two other predicate acts of wire and mail fraud as relevant to  
21 Redwood and Mr. Hwang. First, Plaintiffs allege “[o]n information and belief” that  
22 Redwood participated in financing the fraudulent sale of the Sunkist Property on or around  
23 March 14, 2018. SAC ¶ 126. However, Plaintiffs fail to allege any act in relation to this  
24 particular predicate act that might constitute mail or wire fraud, much less the time, place,  
25 and manner of, and parties to, those communications. The same is true of the allegations  
26 concerning the allegedly fraudulent sale of the Hallenbeck Property in 2016. See generally  
27 *id.* ¶¶ 127–34. Plaintiffs explicitly allege no acts that might be construed as wire or mail  
28 fraud, much less allege the facts concerning those acts with particularity. The bare

1 allegation that all Defendants “used the telephone, mail, email or other communication  
 2 facilities to complete similar unlawful executions of grant deeds and filings in the County  
 3 Recorder’s office against many other individuals in real estate transactions,” id. ¶ 172, is  
 4 inadequate under Rule 9(b). Accordingly, Plaintiffs have failed to plead wire or mail fraud  
 5 as to the Sunkist and Hallenbeck Properties with the requisite detail.

6 ii. Cal. Penal Code §§ 115 and 460(b)

7 Moving Defendants utterly overlook the other bases Plaintiffs assert for the alleged  
 8 predicate acts: violations of California statutes prohibiting the filing of false documents  
 9 (Cal. Penal Code § 115) and burglary (Cal. Penal Code § 460(b)). See SAC ¶¶ 84, 207.  
 10 Nonetheless, the Court may “sua sponte ‘note the inadequacy of a complaint and dismiss  
 11 it for failure to state a claim’” where the Court finds that Plaintiffs “cannot possibly win  
 12 relief” on the claim as stated. *Sotanski v. HSBC Bank USA, Nat’l Ass’n*, No. 15-CV-01489-  
 13 LHK, 2015 WL 4760506, at \*6 (N.D. Cal. Aug. 12, 2015), *aff’d sub nom. Sotanski v. HSBC*  
 14 *Bank USA, NA*, 671 F. App’x 999 (9th Cir. 2016) (quoting *Sparling v. Hoffman Const. Co.*,  
 15 864 F.2d 635, 638 (9th Cir.1988)).

16 The Court finds the allegations of the SAC insufficient to state predicates acts  
 17 premised on these two statutory provisions. As relevant here, Section 1961(1)(A) of Title  
 18 18 of the United States Code provides that the following may constitute racketeering  
 19 activity:

20 [A]ny act or threat involving murder, kidnapping, gambling,  
 21 arson, robbery, bribery, extortion, dealing in obscene matter, or  
 22 dealing in a controlled substance or listed chemical (as defined  
 23 in section 102 of the Controlled Substances Act), which is  
 24 chargeable under State law and punishable by imprisonment for  
 more than one year . . . .

25 However, the allegations of the SAC plainly fail to allege “racketeering activity” that falls  
 26 within this definition. The only offenses in the list that the Court can presume Plaintiffs  
 27 intend to evoke, based on the allegations contained in the SAC, are robbery and extortion.  
 28 However, robbery under California law requires that the taking of the property be

1 “accomplished by means of force or fear.” Cal. Penal Code § 211. There are no allegations  
2 in the SAC that Defendants used force or fear to induce Mr. Merritt to part with his  
3 property. The same is true of the alleged predicate acts involving the Sunkist Property and  
4 the Hallenbeck Property: there are certainly troubling allegations of duplicity, but not force  
5 or fear.

6 Similarly, extortion under California law is defined as “the obtaining of property or  
7 other consideration from another, with his or her consent, . . . induced by a wrongful use  
8 of force or fear, or under color of official right.” Cal. Penal Code § 518. The obtaining of  
9 Mr. Merritt’s signature on the deed “by any extortionate means,” per California Penal Code  
10 § 522, would satisfy the “obtaining of property” requirement. See, e.g., *The Rutter Group*,  
11 California Criminal Law § 8:79 (“Penal Code § 522 specifically identifies any instrument  
12 that would transfer property or create a right as one of the property rights protected by the  
13 Penal Code’s prohibitions against extortion.”). But again, Plaintiffs face the problem that  
14 there are no allegations that Defendants used “extortionate means,” i.e., “force or fear,” to  
15 obtain Mr. Merritt’s signature. Such allegations are similarly missing as to the signatures  
16 of the owners of the Sunkist Property and the Hallenbeck Property.

17 Accordingly, the Court also finds that Plaintiffs fail to satisfactorily allege predicate  
18 acts by Moving Defendants premised on various California state law provisions. Because  
19 the Court finds that Plaintiffs have not adequately alleged any predicate acts, the Court  
20 declines to address Moving Defendants’ second argument for dismissal of Plaintiffs’ first  
21 cause of action: that Plaintiffs fail to plead a “pattern” of violative conduct. See *Mot.* at  
22 16–21; see also *Comwest, Inc. v. Am. Operator Servs., Inc.*, 765 F. Supp. 1467, 1477 (C.D.  
23 Cal. 1991) (“Without these predicate acts of racketeering activity, plaintiff can state no  
24 claim under RICO,” and, accordingly, “it is unnecessary for the Court to consider the other  
25 deficiencies in [the plaintiff’s] pleading of its RICO claims.”).

26 Thus, the Court finds that Plaintiffs have failed to state a claim for “Civil RICO” and  
27 accordingly **GRANTS** Moving Defendants’ Motion with regard to Plaintiffs’ first cause  
28 of action. Although the Court remains skeptical that Plaintiffs will be able to adequately

1 allege this cause of action, the Court also is not convinced that the defects identified are  
2 intrinsically incurable. C.f. Mot. at 27–28. Accordingly, the Court **DISMISSES** Plaintiffs’  
3 first cause of action **WITHOUT PREJUDICE**.

4 **B. Second Cause of Action for “RICO Conspiracy”**

5 Plaintiffs additionally allege a conspiracy to violate RICO as to all Defendants. See  
6 SAC ¶¶ 223–27. Under Section 1962(d) of Title 18 of the United States Code, “[i]t shall  
7 be unlawful for any person to conspire to violate any of the provisions of subsection (a),  
8 (b), or (c) of this section.” “To establish a violation of section 1962(d), Plaintiffs must  
9 allege either an agreement that is a substantive violation of RICO or that the defendants  
10 agreed to commit, or participated in, a violation of two predicate offenses.” *Howard v.*  
11 *America Online Inc.*, 208 F.3d 741, 751 (9th Cir. 2000). “A conspirator must intend to  
12 further an endeavor which, if completed, would satisfy all of the elements of a substantive  
13 criminal offense, but it suffices that he adopt the goal of furthering or facilitating the  
14 criminal endeavor.” *Salinas v. United States*, 522 U.S. 52, 65 (1997). Moreover, “[a]  
15 defendant must also have been ‘aware of the essential nature and scope of the enterprise  
16 and intended to participate in it.’” *Howard*, 208 F.3d at 751 (quoting *Baumer v. Pacht*, 8  
17 F.3d 1341, 1346 (9th Cir.1993)).

18 Moving Defendants raise three chief arguments for dismissal of Plaintiffs’ second  
19 cause of action pursuant to Rule 12(b)(6): (1) the new cause of action exceeds the scope of  
20 amendment granted by this Court’s August 6, 2019 Order, see Mot. at 24–25; (2) because  
21 Plaintiffs’ claim for civil RICO violations is deficient, the RICO conspiracy claim must  
22 likewise fail, see *id.* at 25–26; and (3) the allegations of RICO conspiracy are deficient, see  
23 *id.* at 26–27.

24 Regarding Moving Defendants’ first argument, the Court notes that the proper  
25 vehicle for raising this argument would have been a motion to strike pursuant to Federal  
26 Rule of Civil Procedure 12(f); however, the Court will address the substance of the  
27 argument as though it were a properly designated motion to strike. See, e.g., *Kelley v.*  
28 *Corr. Corp. of Am.*, 750 F. Supp. 2d 1132, 1146 (E.D. Cal. 2010) (converting improperly

1 designated motion to strike to 12(b)(6) motion); *Mijares v. Ryder Truck Rental, Inc.*, No.  
2 CV 20-1328-MWF (KS), 2020 WL 1912217, at \*4 (C.D. Cal. Apr. 17, 2020) (construing  
3 motion to dismiss as motion to strike). While the Court agrees that the new cause of action  
4 for RICO conspiracy exceeds the scope of amendment granted in the August 6, 2019 Order,  
5 “[e]xceeding the scope of a court’s leave to amend is not necessarily sufficient grounds for  
6 striking a pleading or portions thereof.” *Allen v. Cnty. of Los Angeles*, No. CV 07-102-R  
7 (SH), 2009 WL 666449, at \*2 (C.D. Cal. Mar. 12, 2009) (citations and internal quotation  
8 marks omitted). Ultimately, Moving Defendants do not argue that they have been  
9 prejudiced by the addition of this new claim, which relies on the same facts as the  
10 previously asserted claim for civil RICO violations. See *id.* at \*3. And, as Plaintiffs note,  
11 they were pro se at the time the SAC was filed, and should therefore be accorded some  
12 latitude. See *Opp’n* at 9. Accordingly, the Court will neither dismiss nor strike Plaintiffs’  
13 second cause of action against Moving Defendants on this ground.

14 As to Moving Defendants’ second argument, the Court agrees that the deficiency of  
15 Plaintiffs’ first cause of action merits dismissal of their second cause of action. In *Howard*,  
16 *supra*, the Ninth Circuit affirmed the district court’s holding that the plaintiffs failed to  
17 state a claim for a conspiracy to violate RICO, as “[p]laintiffs cannot claim that a  
18 conspiracy to violate RICO existed if they do not adequately plead a substantive violation  
19 of RICO.” 208 F.3d at 751; see also *Ewing v. Flora*, No. 14CV2925 AJB (NLS), 2015  
20 WL 12564225, at \*5 (S.D. Cal. Mar. 25, 2015) (“The failure to adequately plead a  
21 substantive violation of RICO precludes a claim for conspiracy.”) (citing *Howard*, 208  
22 F.3d at 751); *Ewing v. 8 Figure Dream Lifestyle, LLC*, No. 18-CV-1063-AJB-AGS, 2019  
23 WL 1429589, at \*7 (S.D. Cal. Mar. 29, 2019) (“Plaintiff has failed to adequately plead a  
24 RICO violation, accordingly Plaintiff’s cause of action for RICO conspiracy also fails.”).

25 Because the Court has determined that Plaintiffs failed to state a claim for violation  
26 of RICO, see *supra* at 10–19, the Court finds Plaintiffs likewise have failed to allege a

27 ///

28 ///



1 claim for conspiracy to violate RICO.<sup>8</sup> Accordingly, the Court **GRANTS** Moving  
2 Defendants’ Motion as to this cause of action as well. Again, the Court **DISMISSES** this  
3 cause of action, which Plaintiffs have only attempted to state once, **WITHOUT**  
4 **PREJUDICE**.

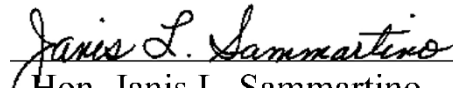
5 **CONCLUSION**

6 In light of the foregoing, the Court **GRANTS** Moving Defendants’ Motion.  
7 Specifically, the Court **DISMISSES WITHOUT PREJUDICE** Plaintiffs’ first and  
8 second causes of action as to Moving Defendants.

9 The Court will grant Plaintiffs one final opportunity to amend. Plaintiffs **MAY**  
10 **FILE** an amended complaint within thirty (30) days of the electronic docketing of this  
11 Order. Should Plaintiffs elect to file an amended complaint, it must cure the deficiencies  
12 noted herein and must be complete in itself, without reference to Plaintiffs’ prior  
13 complaints. See S.D. Cal. CivLR 15.1. Any claims not re-alleged in the amended  
14 complaint will be considered waived. See Lacey v. Maricopa Cnty., 693 F.3d 896, 925,  
15 928 (9th Cir. 2012). To be clear, Plaintiffs are **only** granted leave to amend the causes of  
16 action currently asserted in their SAC. **Should Plaintiffs fail to file an amended complaint**  
17 **within thirty (30) days of the electronic docketing of this Order, this action will proceed**  
18 **against the remaining Defendants, but Plaintiffs’ claims against Redwood and Mr.**  
19 **Hwang will be dismissed with prejudice.**

20 **IT IS SO ORDERED.**

21 Dated: October 14, 2020

  
22 Hon. Janis L. Sammartino  
23 United States District Judge  
24  
25  
26  
27

28 <sup>8</sup> In light of this disposition, the Court declines to address Moving Defendants’ third argument regarding the sufficiency of Plaintiffs’ conspiracy allegations.