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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BORREGO COMMUNITY HEALTH
FOUNDATION,

Plaintiff,

v.

KAREN HEBETS, an individual, et al.,

Defendants.

Case No.: 3:22-cv-01056-BEN-SBC

**ORDER GRANTING MOTIONS
TO DISMISS PLAINTIFF’S FIRST
AMENDED COMPLAINT**

**[ECF Nos. 179, 180, 183, 184, 185,
187, 188, 191]**

Plaintiff Borrego Community Health Foundation brings its first amended complaint (“FAC”) alleging fifty-nine claims for relief against forty Defendants. *See* ECF No. 159. Plaintiff alleges Defendants engaged in various schemes to siphon money from Plaintiff for their own benefit. *Id.* Before the Court are eight motions to dismiss the FAC made by various Defendants.¹ Plaintiff submitted a consolidated opposition. ECF No. 194 (“Oppo.”). Defendants replied.² The motions were submitted on the papers without oral argument pursuant to Civil Local Rule 7.1(d)(1) and Rule 78(b) of the

¹ *See* ECF Nos. 179 (“Hawatmeh Mot.”), 180 (“Wallis Mot.”), 183 (“Thompson Mot.”), 184 (“Ness Mot.”), 185 (“Insiders Mot.”), 187 (“JH Mot.”), 188 (“Premier Mot.”) and 191 (“KH Mot.”).

² *See* ECF Nos. 195-97, 199, 201-204.

1 Federal Rules of Civil Procedure. ECF No. 206. For the reasons set forth below, the
2 Court **GRANTS** Defendants’ motions and **DISMISSES** the FAC in its entirety without
3 prejudice.

4 **I. BACKGROUND**³

5 Borrego Community Health Foundation (“Plaintiff” or “BCHF”) is a non-profit
6 public benefit corporation which provides healthcare services to underserved
7 communities in the state. FAC at ¶ 1. Between 2012 and 2020, Plaintiff alleges
8 Defendants engaged in twelve distinct schemes to siphon money out of BCHF and into
9 their own pockets or those of close associates. *Id.* at ¶ 2. The lengthy FAC conducts an
10 ambitious overview of a decade of alleged misconduct. Below is a summary of the
11 Defendants and schemes.

12 **A. The Defendants**

13 **1. Dentists.** The FAC identifies twenty-five Defendants collectively referred to as
14 “Dentist Defendants.” (hereinafter “Dentist Defendants” or “Dentists”). *Id.* ¶¶ 29-44.
15 With few exceptions, the Dentist Defendants are a combination of the individual Dentists
16 and corresponding corporate entities. *Id.* Six Dentist Defendants filed three motions to
17 dismiss addressed in this Order. *See* ECF Nos. 179, 183, 184. Thirteen more Dentist
18 Defendants filed four “Notices of Joinder” purporting to join the motion to dismiss filed
19 by Hawatmeh D.D.S. *See* ECF Nos. 182, 189, 192, 193 (“Joinders”). Two Dentists,
20 Michael Hoang D.M.D. and Mohammed Altekreeti D.D.S., filed Answers to the FAC.
21 *See* ECF Nos. 186, 190. One Dentist and his corporation were dismissed by stipulation;
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26 ³ For the purposes of the motions to dismiss, the Court assumes facts pled in the FAC are
27 true. *Mazarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).
28 The Court is not making factual findings.

1 another did not file a responsive pleading of any kind.⁴

2 **2. Borrego & Board Insiders.** The FAC refers to Defendants Karen Hebets,
3 Mikia Wallis, Diana Thompson, Harry Ilsley, Dennis Nourse, Mike Hickok, and Chuck
4 Kimball collectively as “Borrego Insiders.” FAC at ¶ 21. Defendant Karen Hebets was
5 the Vice President of Business Services at BCHF.⁵ *Id.* ¶ 13. Defendant Mikia Wallis is
6 an attorney who served as BCHF’s Chief Legal Officer (“CLO”) and served for a time as
7 BCHF’s CEO. *Id.* at ¶ 15. Ms. Wallis also served on the Board of Trustees until October
8 2, 2020. *Id.* Ms. Wallis was terminated by BCHF on December 15, 2020. *Id.*
9 Defendant Diana Thompson (formerly Diana Troncoso) served as BCHF’s Chief
10 Financial Officer (“CFO”) from March 2013 until her termination in March 2021. *Id.* at
11 ¶ 16. Together, the Borrego Insiders are alleged to have orchestrated and covered up the
12 various schemes from inside Borrego Health. Karen Hebets and Mikia Wallis each filed
13 a motion to dismiss addressed in this Order. ECF Nos. 180 (“Wallis Mot.”), 191 (“KH
14 Mot.”). Diana Thompson filed an Answer to the Complaint. *See* ECF No. 172.

15 Defendants Harry Ilsley, Dennis Nourse, Mike Hickok, and Chuck Kimball are
16 former members of BCHF’s Board of Trustees and Executive/Finance Committee. *Id.* at
17 ¶¶ 17-21. The FAC refers to these Defendants as a sub-group of the Borrego Insiders
18 called the “Board Insiders.” *Id.* ¶ 21. The Board Insiders collectively filed a motion to
19 dismiss. ECF No. 185 (“Insiders Mot.”).

20 **3. Premier Defendants.** Defendants Premier Healthcare Management, Inc.

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23 ⁴ *See* ECF No. 212 (dismissing Defendants George Jared D.D.S. and George Jared
24 D.D.S., Inc. by stipulation); *see also* ECF No. 178 (Dentist Santiago Rojo did not
25 participate in the May 4, 2023, status conference with Magistrate Judge Karen Crawford
and did not file a responsive pleading to the FAC).

26 ⁵ Karen Hebets was married to Bruce Hebets, who served as BCHF’s Chief Executive
27 Officer (“CEO”) from 2004 until his retirement in September 2018. *Id.* at ¶¶ 12-13.
28 Bruce Hebets was a central figure in most of the alleged schemes; the FAC states he
would have been named a Defendant but for his death in January 2019. *Id.* at ¶ 12.

1 (“Premier”), Summit Healthcare Management, Inc. (“Summit”), and individuals Daryl
2 Priest, Nicholas Priest and Travis Lyon are collectively referred to as “Premier
3 Defendants.” *Id.* ¶ 28. Daryl Priest is the owner of Premier. *Id.* ¶ 25. Nicholas Priest,
4 son of Daryl Priest, served as the CEO of Premier. *Id.* ¶ 26. Travis Lyon was the
5 President and COO of Premier. *Id.* ¶ 27. The Premier Defendants represent outside
6 parties and corporate entities which worked with the Borrego Insiders to engage in
7 unfavorable business deals to BCHF’s detriment. The Premier Defendants also
8 collectively filed a motion to dismiss addressed in this order. ECF No. 188 (“Premier
9 Mot.”).

10 **4. Jim Hebets & the Hebets Company.** James “Jim” Hebets is the brother of
11 deceased Bruce Hebets and the President and Founder of the Hebets Company. *Id.* at ¶
12 45-46. Jim Hebets is alleged to have designed and sold exorbitant compensation
13 packages (the 162B plans) to BCHF and provided false and misleading information to the
14 Board about these plans. *Id.* ¶ 414. Jim Hebets and the Hebets Company filed a motion
15 to dismiss addressed in this order. ECF No. 187 (“JH Mot.”).

16 **5. KBH Healthcare Consulting, LLC.** Defendant KBH Healthcare Consulting,
17 LLC (“KBH”) was a limited liability company formed in 2017 jointly owned by Bruce
18 and Karen Hebets. *Id.* ¶ 14. KBH has not filed a responsive pleading or otherwise
19 appeared in the case.

20 **B. The Schemes**

21 The FAC alleges several fraudulent schemes, a civil RICO violation, intentional
22 and negligent misrepresentations, and breaches of contract. The twelve schemes are
23 described below.

24 **1. The Borrego MSO/IPA Scheme.** Bruce Hebets and other Borrego Insiders
25 created two entities, Borrego Management Services Organization, LLC (“Borrego
26 MSO”) and Borrego Independent Physicians Association, A Professional Medical
27 Corporation (“Borrego IPA”), for the purpose of providing sham services to BCHF. *Id.*
28 ¶¶ 56-65. Mikia Wallis assisted with the formation of these entities without charge and

1 was listed as the agent of service. *Id.* ¶ 58. This scheme culminated in BCHF’s purchase
2 of Borrego MSO and Borrego IPA in November 2012 for \$ 2 million. *Id.* ¶ 64.

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4 **2. The Premier Scheme.** Similarly, the Premier Scheme involved the formation
5 of entities to provide “management services” for BCHF. *Id.* ¶¶ 66-131. Bruce Hebets
6 originally proposed that he would partially own the entity providing management
7 services, however the full BCHF Board rejected this proposal on October 29, 2015. *Id.* ¶
8 82.⁶ On March 1, 2016, unbeknownst to the full Board, Bruce Hebets and Premier
9 executed an agreement for Premier to provide management services for BCHF’s contract
10 dental program (the “Dental MSA”). *Id.* ¶ 85. The transition to Premier’s services
11 involved removal of existing staff managing the contract dental program. *Id.* ¶ 87-89.
12 The existence of the Dental MSA was “kept concealed” by the Borrego Insiders. *Id.* ¶
13 86. On September 8, 2017, Bruce Hebets and Premier entered into another Management
14 Services Agreement, this time for BCHF’s contract medical program (“Medical MSA”).
15 *Id.* ¶ 97. The Medical MSA was also executed without notice or consent from the full
16 BCHF Board. *Id.*

17 Premier did not perform the obligations set forth in either MSA. *Id.* ¶ 102.
18 Instead, Premier Defendants trained contract dental providers to engage in fraudulent
19 billing practices to “maximize their revenue at the expense of Borrego Health[.]” *Id.*
20 Premier then received \$25 per claim it “reviewed.” *Id.*

21 **3. Fraudulent Billing Scheme.** Noted above, Premier Defendants “coached
22 dentists on how to fraudulently bill Borrego Health[.]” *Id.* ¶ 139. Dentist Defendants
23 knowingly engaged in this fraudulent billing practice. *Id.* ¶¶ 146-281. This included: (1)
24 splitting services which could have been done in a single encounter into multiple
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27 ⁶ It is unclear whether the full Board’s rejection constituted a rejection of the plan
28 because of Bruce Hebets’ ownership interest, or a wholesale rejection of any outsourcing
of management services to third parties. FAC ¶ 82.

1 encounters; (2) providing multiple services during a single encounter but falsely billing
2 the services as occurring across multiple encounters; and (3) billing for services not
3 rendered. *Id.* ¶ 133. Between 2016 and 2020, thousands of fraudulent claims were
4 purportedly submitted by Dentists to BCHF through Premier. *Id.* ¶¶ 143-145.

5 **4. Priest Leases Scheme.** Plaintiff alleges the Borrego Insiders executed three
6 leases on behalf of BCHF. *Id.* ¶ 336. The specific terms of these leases were concealed
7 from the full Board. *Id.* ¶ 350. The terms of these leases were unconscionable and
8 provided for rents far above fair market value. *Id.* ¶ 348. Two of the three leases have
9 been terminated, with one remaining in effect and rent being paid under protest. *Id.* The
10 FAC does not allege the date the leases were signed and does not name the corporate
11 entity lessors as Defendants in this action.

12 **5. Compensation / Benefits Scheme.** Insiders Bruce Hebets, Karen Hebets,
13 Diana Thompson, and Mikia Wallis all received “high salaries.” *Id.* ¶¶ 360-363. The
14 Borrego Insiders disguised their above-market salaries and benefits by using improper
15 evaluations prepared by “Jim Hebets and his companies.” *Id.* ¶ 364.

16 **6. Nepotism Scheme.** Karen Hebets and Diana Thompson hired family members
17 who were not qualified to perform the positions for which they were hired. *Id.* ¶¶ 374-78.
18 Many of the family members were hired for positions in the billing department and failed
19 to recognize the fraudulent bills submitted by Premier because of “inexperience and the
20 deceptive training provided by Karen Hebets and Diana Thompson.” *Id.* ¶ 377. The
21 FAC does not allege when these family members were hired.

22 **7. De Anza Country Club Scheme.** Borrego Insiders attempted to purchase De
23 Anza Country Club located in Borrego Springs. *Id.* ¶ 379. In October 2017, Insiders
24 made a formal purchase offer including earnest money on behalf of BCHF without
25 notification to the full BCHF board. *Id.* ¶¶ 382-83. At some point “others” became
26 aware of the purchase offer. *Id.* ¶ 384. Outside counsel for BCHF emailed Mikia Wallis
27 to warn of the potential negative ramifications of purchasing De Anza Country Club. *Id.*
28 ¶ 386. De Anza Country Club ultimately declined the offer sometime in 2018 and

1 returned the earnest money. *Id.* ¶ 390.

2 **8. Payout Scheme.** In March 2018, Bruce Hebets suffered from worsening illness
3 and stepped down from his position as CEO. *Id.* ¶ 391. The Borrego Insiders proposed
4 BCHF provide a \$5 million “payout” for Bruce Hebets. *Id.* BCHF hired a third party,
5 FW Cook, to conduct an independent evaluation of a potential payout. *Id.* ¶ 399. FW
6 Cook concluded that a \$2 million payout would be appropriate.⁷ *Id.* The full BCHF
7 Board eventually agreed to the \$2 million payout. *Id.* ¶ 402. At some point afterwards,
8 BCHF received a 20% remittance payment penalty from the Internal Revenue Service
9 (“IRS”) due to the payout. *Id.* ¶ 405.

10 **9. Jim Hebets Scheme.** In 2015, the Borrego Insiders contracted with the Jim
11 Hebets company to review and approve inflated salaries and compensation packages. *Id.*
12 ¶¶ 407-408. This included “162B plans” which “appeared at first glance to be life
13 insurance plans, [but] they were never intended as such but were instead a strategy to pay
14 above market to insiders without added scrutiny or tax liability.” *Id.* ¶ 414. Jim Hebets
15 took affirmative steps to conceal his involvement would reveal the “obvious conflict of
16 interest[.]” *Id.* ¶ 409.

17 **10. Julian Barn Scheme.** Borrego Insider Chuck Kimball was the Vice President
18 of a 501(c)(3) entity called Julian Medical Foundation, Inc. (“JMF”). *Id.* ¶¶ 423-24. In
19 April 2009, Kimball identified a piece of real estate with a horse barn already built on the
20 property (the “Horse Barn”) which could serve as a location for a future health clinic. *Id.*
21 JMF leased the Horse Barn to BCHF beginning in October 2010. *Id.* ¶ 433. The Horse
22 Barn was unusable, and the terms of the lease between Julian Medical Foundation and
23 BCHF were unfair and to BCHF’s detriment. *Id.* ¶¶ 434-438. The lease was terminated
24 in 2022. *Id.* ¶ 439.

25 **11. Property Development Scheme.** Board Insider Dennis Nourse owned
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28 ⁷ Plaintiff alleges a vital piece of Bruce Hebets’ compensation (a “162B plan”) was
concealed from FW Cook and therefore not factored into this analysis. *Id.*

1 property in Borrego Springs, California (the “Palm Canyon Parcel”). *Id.* ¶ 444.
2 Approximately half of the Palm Canyon parcel was undevelopable foothills. *Id.* ¶ 448.
3 Dennis Nourse, Bruce Hebets and Daryl Priest initially planned for Priest to acquire the
4 parcel from Nourse, develop it, and then lease it to BCHF. *Id.* ¶ 447. The plan, including
5 the proposed lease, was approved by either the full Board or Board Insiders. *Id.* ¶ 456-
6 58.⁸ However, development of the parcel was met with resistance during the local
7 government approval process. *Id.* ¶ 460. In response, Priest proposed that BCHF
8 purchase the Palm Canyon parcel directly from Nourse, and then Priest would develop
9 the land under contract. *Id.* ¶ 462. Bruce Hebets and Mikia Wallis then “facilitated and
10 directed the actions necessary to execute the deal documents[.]” *Id.* ¶ 467. The FAC does
11 not allege when these events took place.

12 **12. KBH Healthcare Consulting Scheme.** KBH Healthcare Consulting (“KBH”)
13 was a company created in 2017 and jointly owned Bruce and Karen Hebets. *Id.* ¶ 471-72.
14 In February 2017, KBH signed a contract to provide consulting services to Premier (the
15 “Consulting Agreement”). *Id.* ¶ 473. The contract stated KBH would assist Premier
16 attaining a contract with a third-party OMNI Family Health. *Id.* However, when Premier
17 did not secure the OMNI Family Health contract, the Consulting Agreement was
18 amended to reflect KBH would assist Premier more generally in the procurement of
19 management services agreements. *Id.* ¶ 477.

20 **II. LEGAL STANDARDS**

21 Rule 12(b)(6) permits dismissal for “failure to state a claim upon which relief can
22 be granted.” Fed. R. Civ. P. 12(b)(6). A complaint may survive a motion to dismiss only
23 if, taking all well pled factual allegations as true, it contains enough facts to “state a claim
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26 ⁸ It is unclear which gave the initial approval. While the FAC states “The Board Insiders
27 approved of the plan[.]” it later states that Bruce Hebets and Dennis Nourse “decided not
28 to go back to the full Borrego Health Board of Trustees...” implying the approval
initially came from the full Board. *See* FAC ¶¶ 456, 464.

1 to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “A
2 claim has facial plausibility when the plaintiff pleads factual content that allows the court
3 to draw the reasonable inference that the defendant is liable for the misconduct
4 alleged.” *Id.* “The bare recitals of the elements of a cause of action, supported by mere
5 conclusory statements, do not suffice.” *Id.* “In sum, for a complaint to survive
6 a motion to dismiss, the non-conclusory factual content, and reasonable inferences from
7 that content, must be plausibly suggestive of a claim entitling the plaintiff to
8 relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). Where
9 a motion to dismiss is granted, leave to amend should be liberally allowed “unless the
10 court determines that the allegation of other facts consistent with the challenged pleading
11 could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture*
12 *Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

13 **III. DISCUSSION**

14 **A. Rule 9(b) Particularity, Shotgun Pleading & “Defendant Lumping”**

15 For claims based on fraud, Federal Rule of Civil Procedure Rule 9(b) applies. “In
16 some cases, the plaintiff may allege a unified course of fraudulent conduct and rely
17 entirely on that course of conduct as the basis of a claim. In that event, the claim is said
18 to be grounded in fraud or to sound in fraud, and the pleading of that claim as a whole
19 must satisfy the particularity requirement of Rule 9(b). *Vess v. Ciba-Geigy Corp. USA*,
20 317 F.3d 1097, 1103-04 (9th Cir. 2003). Given the factual basis for all of Plaintiff’s
21 claims are the twelve fraudulent schemes, all must meet Rule 9(b)’s particularity
22 requirement.

23 “To comply with Rule 9(b), allegations of fraud must be specific enough to give
24 defendants notice of the particular misconduct...so that they can defend against the
25 charge and not just deny that they have done anything wrong.” *Swartz v. KPMG LLP*,
26 476 F.3d 756, 764 (9th Cir. 2007) (citation omitted). Rule 9(b) does not allow a
27 complaint to “merely lump multiple defendants together” and instead “requires plaintiffs
28 to differentiate their allegations when suing more than one defendant...and inform each

1 defendant separately of the allegations surrounding his alleged participation in the fraud.”
2 *Swartz*, 476 F.3d at 764-65 (citation omitted). A plaintiff must plead the elements of
3 fraud with the particularity demanded by Rule 9(b), outlining the who, what, when, and
4 where of the alleged fraudulent acts. *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066
5 (9th Cir. 2004). If the fraud concerns misrepresentations, then the complaint needs to
6 “state the time, place, and specific content of the false representations as well as the
7 identities of the parties to the misrepresentation.” *Edwards*, 356 F.3d at 1066 (citation
8 omitted).

9 **1. Defendant Lumping.** Moving Defendants universally challenge the FAC’s
10 tendency to lump Defendants together by groups. The Court agrees that referring to
11 Defendants collectively this way runs afoul of Rule 9(b)’s particularity requirement,
12 especially when describing actions taken by an entire group. *See, e.g.*, FAC ¶ 86 (“The
13 existence of the Dental MSA was kept concealed by the Borrego Insiders[,]”); FAC ¶ 102
14 (“[T]he Premier Defendants trained dentists how to maximize their revenue...”); FAC ¶
15 387 (“The Borrego Insiders continued to pursue this deal into 2018...”). This lack of
16 particularity is compounded by the fact that many of these allegations are also
17 conclusory.

18 Allegations referring to “Borrego Insiders” are prime examples of this problem.
19 The Borrego Insiders group is comprised of seven individuals. At times, the FAC makes
20 broad, conclusory statements about what the Borrego Insiders did (like “concealed”
21 something), but will only specifically describe the actions of one or two individuals from
22 this group.⁹ Other times, the FAC merely declares the Borrego Insiders did something
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25 ⁹ *See e.g.*, the FAC alleges Dental MSA was “concealed” by Borrego Insiders but does
26 not allege that Defendant Insiders Ilsley, Kimball or Nourse had any part in the Premier-
27 Fraudulent Billing Schemes, at all (FAC ¶¶ 86-120); FAC alleges, “[t]he Borrego
28 Insiders also attempted to conceal the impropriety of the generous 162B plan...” but only
describes actions taken by one Defendant, Mikia Wallis (FAC ¶¶ 404).

1 (*i.e.*, “concealed” or “schemed”) with no further explanation, leaving the Court and
2 Defendants to guess not only what action was taken but also by whom.¹⁰ In several
3 paragraphs, Plaintiff directly quotes a statement made by “[o]ne Borrego Insider” but
4 fails to identify the speaker, again leaving the reader to guess which one of seven possible
5 individuals made the statement. *See* FAC ¶¶ 365, 389.

6 Another example relates to decisions that “Borrego Insiders” made during
7 executive committee meetings. As Defendant Karen Hebets points out, she was not a
8 member of the executive committee and it was not even alleged that she attended these
9 meetings. KH Mot. at 9-10. The FAC describes an executive committee meeting that
10 occurred in October 2017 where “[b]oard members and staff attendees (including Bruce
11 Hebets, Mikia Wallis, and Diana Thompson) discussed a proposal...” *Id.* ¶ 379. This
12 list of attendees includes all the Borrego Insiders except Karen Hebets. However, three
13 paragraphs later the FAC alleges, “Borrego Insiders decided not to present the plan...to
14 full [BCHF] Board.” *Id.* ¶ 382. Although Karen Hebets is lumped into the Borrego
15 Insiders group, this allegation does not appear to apply to her. This and the other
16 examples above are exactly the type of confusion Rule 9(b) is designed to prevent.

17 Accordingly, the Court will disregard general, conclusory allegations or those
18 which impermissibly lump defendants together, examples of which are noted above.
19 While this is not fatal to Plaintiff’s FAC by itself, it reduces the number of properly
20 drafted allegations that the Court can review. Ultimately, the FAC does contain some
21 particularized allegations which delineate the actions of individuals and which are
22 sufficient under Rule 9(b) for the Court to consider. But, as will be seen later, this is true
23 of the allegations regarding some Defendants more than others.

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26 ¹⁰ *See e.g.*, “Harry Ilsley ... agreed to work with Bruce Hebets and Denis [sic] Nourse to
27 get the deal closed[,]” but provides no explanation of any actions taken by Harry Ilsley
28 (FAC ¶ 465); “Bruce Hebets, Diana Thompson, and Mikia Wallis also schemed with The
Hebets Company to increase executive compensation[,]” but does not describe any action
taken by any of these individuals (FAC ¶ 417).

1 **2. Shotgun Pleading.** Several Defendants also argue that the FAC employs an
2 impermissible style of shotgun pleading. “Shotgun pleadings are pleadings that
3 overwhelm defendants with an unclear mass of allegations and make it difficult or
4 impossible for defendants to make informed responses to the plaintiff’s allegations. They
5 are unacceptable.” *Solberger v. Wachovia Securities, LLC*, 2010 WL 2674456 at *4
6 (C.D. Cal. Jun. 30, 2010). “One type of impermissible shotgun pleading is a complaint
7 that asserts multiple claims against multiple defendants without specifying which one of
8 the defendants are responsible for which acts or omissions, or which of the defendants the
9 claim is brought against.” *TV Ears, Inc. v. Joyshiya Development Ltd.*, 20-cv-1708-
10 WQH-BGS, 2021 WL 5396111 at *13 (S.D. Cal. Nov. 18, 2021); *see also Destfino v.*
11 *Reiswig*, 630 F.3d 952, 958 (9th Cir. 2011).

12 Unfortunately, this describes much of the FAC, including averments related to
13 many of Plaintiff’s state law claims. The FAC’s claims have two identifiable trends
14 which the Court considers shogun pleading: (1) the claims against “all Defendants”
15 which incorporate factual paragraphs only related to the Premier-Fraudulent Billing
16 Schemes; and (2) the claims against “all Defendants” which reincorporate all factual
17 allegations paragraph and contain only the most general legal descriptions of the basis for
18 the claim.

19 Plaintiff’s claim for inducing breach of contract is an example of the first trend.
20 This claim is brought against all Defendants. FAC ¶¶ 831-838. However, the only
21 factual allegations reincorporated into this claim are 1 through 56 (description of
22 Defendants), and 66-334 of the FAC (description of the Premier-Fraudulent Billing
23 Schemes). *Id.* ¶ 831. Right away there is a question whether this claim is meant to
24 include all twelve schemes or just the two cited. If forced to make an educated guess, the
25 Court could assume the later, because the FAC’s description of this claim only describe
26 actions related to the Premier-Fraudulent Billing Schemes. *Id.* ¶ 835 (“...Defendants
27 intended to cause the contracted dental providers to breach the terms of their
28 contract...”).

1 But this is unworkable in several ways. First, by the FAC’s own bare terms, not all
2 Defendants were involved in the Premier-Fraudulent Billing Schemes. For example, the
3 FAC does not allege Jim Hebets and the Hebets Company had any interaction or
4 involvement with any of the Dentists, Premier Defendants or those two schemes, but still
5 purports to include these Defendants in this claim. Second, removing allegations that
6 impermissibly lump Defendants together, it also appears the Board Insiders do not have
7 any well-pled allegations connecting them with the Dentists, Premier or the two schemes.
8 This leaves at least six Defendants without notice of the basis of Plaintiff’s claim.¹¹

9 The second “shotgun pleading” trend involves five claims brought against “All
10 Defendants” and which attempt to reincorporate all the factual allegations in the FAC.
11 See FAC ¶ 818 (False Promise), ¶ 826 (Conversion), ¶ 867 (UCL claim), ¶ 874
12 (Conspiracy) and ¶ 890 (Unjust Enrichment/Restitution). Plaintiff’s False Promise claim
13 is a prime example of the confusion arising from this practice. After incorporating 485
14 paragraphs, the FAC generally alleges, “As outlined herein, each and every Defendant
15 made promises to Borrego Health.” *Id.* ¶ 819. Reviewing the incorporated paragraphs,
16 the Court is at a loss to identify promises made by many of the Borrego Insiders
17 Defendants or the Jim Hebets Defendants that might apply to this claim.

18 **B. Remaining Allegations**

19 Given the sheer number of allegations which lump multiple Defendants together, it
20 is helpful and necessary at this point to outline the allegations remaining against each of
21 the Defendants.

22 **1. Dentists.** For the most part, the FAC provides a small section in its outline of
23 the Fraudulent Billing Scheme listing a “sampling” of the fraudulent billing practices of
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27 ¹¹ See also Plaintiff’s 46th, 47th and 48th claims for relief (also brought against “All
28 Defendants” but only reference the Premier & Fraudulent Dental Schemes, and only
reincorporate paragraphs related to those schemes). FAC ¶¶ 839-866.

1 each individual Dentist corporation. *See* FAC ¶¶ 167-281. However, there are no
2 specific examples of fraudulent billing listed for two of the Dentists. *See Id.* ¶¶ 265-271
3 (Ness), ¶¶ (Hoang, D.M.D.). Additionally, among the exemplar allegations there appear
4 to be inconsistencies arising from the copy and paste nature of the allegations. The FAC
5 alleges Dentist Jilbert Bakramian D.D.S. was an employee of Arkelyan beginning in
6 February 2018. *Id.* ¶ 238. However, the FAC goes on to allege that “Bakramian billed
7 for more than five visits for the same patient in a seven-day period 3, 470 times between
8 February 2017 and January 2021.” *Id.* ¶ 244. This time period includes an entire year
9 prior to Bakramian’s employment with Arkelyan.¹² Similar allegations noting this same
10 time period (February 2017 to January 2021) are used for seven other Dentists.

11 **2. Jim Hebets & the Hebets Company.** The FAC sets forth a number of
12 allegations about the Hebets Defendants. The FAC alleges that Jim Hebets “and/or his
13 companies”: (1) prepared a “sham” fair market analysis approving the salaries of BCHF
14 executives (*Id.* ¶ 407); (2) removed mention or indication of Jim Hebets name from the
15 salary analysis (*Id.* ¶ 409); (3) sold a product (162B plans) that “appeared at first glance
16 to be life insurance plans” but were actually “automatic bonuses” (*Id.* ¶ 414); (4) assisted
17 Bruce and Karen Hebets with withdrawals from their 162B plan accounts (*Id.* ¶ 414); and
18 (5) Jim Hebets praised that product twice.¹³ Unfortunately, the FAC does not indicate
19 when the sham fair market analysis was allegedly created or presented to the Board. *Id.* ¶
20 409. The FAC does not allege who presented this information to the Board, or how the
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24 ¹² Similarly, the FAC alleges examples of overbilling occurring in the same February
25 2017 to January 2021 time period against Mohammed Al Tekreeti D.D.S., who did not
26 begin providing services until August 2017. *See* FAC ¶ 232 (beginning of services), ¶
27 236 (general time period allegation).

28 ¹³ *See* FAC ¶ 404 (Jim Hebets speaks in support of 162B plans during 2019 Board
meeting) and FAC ¶ 417 (Jim Hebets praises plans in a July 2019 email to Mikia Wallis).

1 approval of the salaries was a “sham.” *Id.* For the purposes of Rule 9(b), the allegations
2 regarding the fair market review of executive salaries are not well pled.

3 Regarding the 162B plans, only Jim Hebets’ email to Mikia Wallis in July 2019
4 identifies a specific misrepresentation—that the plans would not be subject to tax
5 penalties. *Id.* ¶ 417. The only other alleged misrepresentation is less specific and
6 occurred during a Board meeting presumably in “spring or summer 2019” where Jim
7 Hebets “praise[d] the 162B plan.” *Id.* ¶ 404. Even if the general word “praised” was a
8 sufficient description of a misrepresentation (it is not), the FAC also fails to provide an
9 explanation of how this is false or misleading. Given the above Rule 9(b) deficiencies,
10 the entirety of Plaintiff’s claims against Jim Hebets and the Hebets Company now rest on
11 only two facts: (1) the company sold a “misleading” product; and (2) Jim Hebets
12 represented this product would not incur tax penalties.

13 **3. Premier.** Premier is alleged to have entered into a contract with BCHF to
14 provide management services (the Dental MSA). *Id.* ¶ 85. Under the terms of the MSA,
15 Premier agreed to review claims submitted by contract dental providers for
16 documentation errors, inconsistencies and ensuring the claims were in the proper format.
17 *Id.* ¶ 92. Premier also agreed to provide “quality management, patient management,
18 reporting, and other general administrative services.” *Id.* The Dental MSA was amended
19 on July 1, 2017 (*Id.* ¶ 93), which required BCHF to pay \$25 for every contract dental
20 claim Premier reviewed on BCHF’s behalf. *Id.* ¶ 95. Premier was also responsible for
21 training contract dental providers how to properly submit their claims to Premier for
22 payment. *Id.* ¶ 135. The FAC alleges on information and belief Premier actively
23 supported fraudulent billing (*Id.* ¶¶ 139-141) and routinely approved claims that could
24 not have occurred (*Id.* ¶¶ 158, 173, 192).

25 **4. Travis Lyon.** Travis Lyon is the Premier Defendant about which the FAC
26 offers the most specific factual allegations. The FAC alleges Mr. Lyon directly
27 interfaced with BCHF’s billing department (*Id.* ¶¶ 114, 143-145) and BCHF’s Program
28 Integrity team (*Id.* ¶¶ 176-177, 308, 324). The FAC also alleges Mr. Lyon was the point

1 of contact between Dentists and BCHF (*Id.* ¶ 212), personally set up compliance audit
2 meetings for two Dentists (*Id.* ¶ 305) and weighed in on the Program Integrity teams’
3 recommendations (*Id.* ¶¶ 180-181, 320). Travis Lyon also interacted with various
4 Borrego Insiders. *See Id.* ¶ 135 (call with Karen Hebets to discuss training) ¶ 312
5 (worked with Mikia Wallis regarding approving new dental providers).

6 **5. Daryl Priest.** The FAC contains the following allegations specific to Daryl
7 Priest: (1) Daryl Priest signed the MSAs (*Id.* ¶¶ 94-95, 97); (2) negotiated a lease for the
8 Palm Canyon Parcel with Bruce Hebets (*Id.* ¶ 450); (3) negotiated a lease for the Palm
9 Canyon Parcel with BCHF (*Id.* ¶ 457); and (4) met with Bruce Hebets, Jim Hebets and
10 Jim Hebets’ son twice in a social setting (*Id.* ¶ 421). The FAC only identifies a single
11 misrepresentation by Daryl Priest, specifically: “Premier and Summit, through Daryl
12 Priest, represented that they had the skill and experience necessary to fulfill their
13 obligations under the Dental MSA and Medical MSA.” *Id.* ¶ 98. However, this does not
14 describe when this representation was made, or to whom, and accordingly fails to meet
15 Rule 9(b)’s heightened pleading requirement.

16 **6. Nick Priest.** The FAC mentions Defendant Nick Priest in three paragraphs,
17 only two of which describe his actions. Nick Priest is alleged to have: (1) attended a
18 single meeting of the credentialing committee in 2017 (*Id.* ¶ 314); and (2) occasionally
19 called or emailed Dr. Martinez or Dr. Venugopal after they expressed concerns about
20 Premier to Mikia Wallis (*Id.* ¶ 309).¹⁴ The FAC does not describe the dates or the
21 content of the emails or phone calls, or allege that misrepresentations were made.
22 Without more, the Court cannot conclude these sparse allegations are sufficient to state
23 any claim for relief against Nick Priest.

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26 ¹⁴ Even this allegation is unhelpfully vague: “...[Dr. Martinez and Dr. Venugopal] would
27 immediately receive a call or email from Travis Lyon or Nick Priest.” *Id.* (emphasis
28 added).

1 **7. Summit Healthcare, Inc.** Similarly, beyond the allegation that BCHF and
2 Summit entered into an MSA, the FAC contains no allegations related to Summit. The
3 FAC does not allege, for example, that Summit engaged in any fraud related to the
4 Medical MSA. The bare fact that Summit was owned by Daryl Priest and maintained a
5 contract with BCHF is not sufficient to state any claim against Summit.

6 **8. Mike Hickok.** Borrego Insider Mike Hickok is alleged to: (1) been present at
7 an August 27, 2015 meeting and supported a proposal that BCHF contract with a
8 company to provide management services (*Id.* ¶ 77); (2) acknowledge the full Board did
9 not approve of “Daryl” (the Dental MSA) (*Id.* ¶ 108)¹⁵; (3) failed to mention the Dental
10 MSA with Premier during presentation of monthly financial reports to the full BCHF
11 Board; (4) along with Harry Ilsley and Dennis Nourse, “decided to increase Bruce
12 Hebets’ salary in 2017[,]” and represented to the full BCHF Board this salary was fair
13 market and comparable to other FQHCs (*Id.* ¶ 360); and (5) “mentioned” that he wanted
14 BCHF to buy De Anza Country club during a committee meeting in October 2017 (*Id.* ¶¶
15 379, 381). These allegations, at most, appear to condense down to two lies by omission,
16 one recurring monthly, and one occurring at an undetermined point in 2017. Without
17 specifics, both fail to meet Rule 9(b)’s requirements.

18 **9. Harry Ilsley.** Allegations against Harry Ilsley are sparse. Borrego Insider
19 Harry Ilsley is alleged to: (1) been present at the August 27, 2015 meeting and supportive
20 of the proposal (*Id.* ¶ 77); (2) along with Hickok and Nourse, “decided to increase Bruce
21 Hebets’ salary in 2017[,]” and represented to the full BCHF Board this salary was fair
22 market and comparable to other FQHCs (*Id.* ¶ 360); and (3) suggested that certain BCHF
23 executive committee members recuse themselves from the vote regarding De Anza
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26 ¹⁵ The FAC also alleges Hickok “admitted to Chuck Kimball” that the Insiders had been
27 keeping the full Board “out of the loop” regarding the contract dental program. *Id.* ¶ 116.
28 *See also* ¶ 118 (July 2020 email by Hickok to unknown person); ¶ 368 (August 2020
email by Hickok to unknown person).

1 Country Club (*Id.* ¶ 388). The FAC also alleges Harry Ilsley was involved in the
2 Property Development Scheme, but these allegations are conclusory, not anchored in
3 time and do not describe any specific action taken by Ilsley. *See Id.* ¶ 465 (“Bruce
4 Hebets and Denis [sic] Nourse brought...Harry Ilsley into the fold. Harry Ilsley...agreed
5 to work with [them] to get the deal closed.”).

6 **10. Chuck Kimball.** Borrego Insider Chuck Kimball is alleged to have: (1) been
7 present at the August 27, 2015 meeting and supportive of the proposal (*Id.* ¶ 77); (2)
8 commented during an October 2017 committee meeting that the full BCHF Board would
9 “f**k it up” when referencing the De Anza Country Club purchase (*Id.* ¶ 382); (3)
10 exchanged emails with Mikia Wallis and Diana Thompson in July and September 2018
11 (*Id.* ¶¶ 398, 400); and (4) proposed offering Bruce Hebets “an accelerated payment
12 structure” so Bruce Hebets could receive his payout before his passing (*Id.* ¶ 401). The
13 FAC also alleges Chuck Kimball “blocked a number of reform efforts” before his
14 removal but does not describe what actions were taken or when they occurred. *Id.* ¶ 488.

15 Chuck Kimball is alleged to be the primary participant of the Julian Barn Scheme.
16 *Id.* ¶¶ 423-442. The Court notes the FAC does not allege Kimball or anyone else made
17 any misrepresentations to BCHF regarding the Horse Barn lease, or that the Horse Barn
18 lease was concealed from BCHF in any way. The FAC merely alleges “the lease terms
19 were one-sided[.]” *Id.* 433.

20 **11. Dennis Nourse.** Borrego Insider Dennis Nourse is alleged to have: (1) been
21 present at the August 27, 2015 meeting and supportive of the proposal (*Id.* ¶ 77); (2)
22 participated in a phone call with Bruce Hebets, Mikia Wallis and Diana Thompson on
23 October 21, 2015 to discuss the management services proposal (*Id.* ¶ 81); and (3) along
24 with Hickok and Ilsley, “decided to increase Bruce Hebets’ salary in 2017[.]” and
25 represented to full BCHF Board this salary was fair market and comparable to other
26 FQHCs (*Id.* ¶ 360).

27 Dennis Nourse is alleged to be the primary participant of the Property
28 Development Scheme. *Id.* ¶¶ 443-468. The allegations related to the Property

1 Development Scheme are overwhelmingly conclusory, even as to those facts readily at
2 Plaintiff’s disposal (such as Mikia Wallis’ “flawed” analysis). Most notably, there are no
3 dates alleged for any of the activities surrounding the Property Development scheme.
4 The FAC does not allege BCHF actually purchased the Palm Canyon Property or paid
5 Nourse.

6 **12. Mikia Wallis.** As Travis Lyon is the Premier Defendant with the most
7 specific allegations remaining against him, Mikia Wallis is the Borrego Insider with the
8 most specific allegations surviving the Defendant lumping cull. Almost unique among
9 Defendants, allegations against her specifically are too numerous to reproduce in detail.
10 Accordingly, only the most significant allegations regarding each scheme will be
11 identified below.

12 Regarding the Premier-Fraudulent Billing Schemes, Mikia Wallis is alleged to
13 have: (1) drafted the MSAs and amendment documents (*Id.* ¶¶ 85, 94, 95); (2) told
14 outside counsel BCFH had decided not to move forward with the management services
15 proposal on December 26, 2015 (*Id.* ¶ 84); (3) edited minutes of committee meetings (*Id.*
16 ¶ 113); (4) been part of the BCHF team making decisions to take “further action” in
17 relation to the Program Integrity Team’s findings (*Id.* ¶ 298); (5) was resistant to
18 recommendations of Program Integrity Team or refused to address issues identified by
19 Program Integrity team (*Id.* ¶¶ 309, 311-13, 321, 331); and (6) instructed Dr. Martinez to
20 “cease further investigation” regarding Marua Tusó’s allegations of fraud in March 2019
21 (*Id.* ¶¶ 324-25).

22 Regarding the Compensation & Nepotism Schemes, Mikia Wallis is alleged to
23 have: (1) received a high salary (*Id.* ¶ 363); (2) failed to “look into” the legality of free
24 perks executives received (*Id.* ¶ 369); (3) submitted several reports which “lacked the
25 necessary information to make any appropriate decisions[,]” (*Id.* ¶ 371); and (4) “created
26 a position” for her husband to work for BCHF (*Id.* ¶ 375).

27 Regarding the Payout Scheme, Mikia Wallis is alleged to have: (1) drafted the
28 ‘transition agreement’ relating to Bruce Hebets (*Id.* ¶ 391); (2) told an unknown BCHF

1 Board member that she “represented no one” in the payout transaction (*Id.* ¶ 392); (3)
2 received an email on September 27, 2018 where Kimball admitted “Insiders” were
3 making decisions regarding BCHF that were “dodging the law[,]” (*Id.* ¶ 401); and (4)
4 sometime in 2019, told an FW Cook employee that the 162B plans were performance-
5 based bonuses (*Id.* ¶ 403).

6 Regarding the Property Development Scheme, Mikia Wallis is alleged to have: (1)
7 at Bruce Hebets’ request, “perform[ed] an analysis” regarding the Palm Canyon Parcel
8 proposal (*Id.* ¶ 452); (2) the analysis was flawed and rendered poor legal advice (*Id.* ¶
9 453); and (3) “facilitated and directed actions necessary to execute the deal documents”
10 along with Bruce Hebets (*Id.* ¶ 467). The FAC does not describe how the analysis was
11 flawed, or what actions were taken to facilitate and direct the execution of the Palm
12 Canyon deal documents.

13 **13. Karen Hebets.** Borrego Insider Karen Hebets is alleged to have: (1) hired
14 family members to work for BCHF (*Id.* ¶ 374); (2) trained these family members poorly,
15 either intentionally or negligently (*Id.* ¶¶ 111, 302, 377); (3) was responsible for contract
16 dental billing audits prior to 2017 (*Id.* ¶ 136); (4) participated in a telephone call with
17 Travis Lyon to discuss training protocols for contract dental providers on February 20,
18 2018 (*Id.* ¶ 135); (5) “occasionally” did not follow through on claim reversals identified
19 by the Program Integrity team (*Id.* ¶ 306); and (6) received a “high salary.” (*Id.* ¶ 361).

20 **14. Diana Thompson.** Allegations regarding Borrego Insider Diana Thompson
21 are very similar in number and nature to those against Karen Hebets. Diana Thompson is
22 alleged to have: (1) hired family members to work for BCHF (*Id.* ¶ 376); (2) trained these
23 family members poorly, either intentionally or negligently (*Id.* ¶¶ 111-12, 302, 377); and
24 (3) suggested Insiders needed to inform the full BCHF Board they were continuing to
25 discuss De Anza Country Club proposal (*Id.* ¶ 387).

26 Regarding the management services proposal (the beginning of the Premier
27 Scheme), Diana Thompson is alleged to have: (1) been present during August 2015
28 meeting discussing the initial management services proposal (*Id.* ¶ 77); (2) in September

1 2015, was among those who tried to convince other Insiders it was a good idea (*Id.* ¶ 79);
2 and (3) participated in a phone call with Bruce Hebets, Mikia Wallis and Dennis Nourse
3 regarding the proposal (*Id.* ¶ 81).

4 **15. KBH Healthcare.** Finally, Defendant KBH Healthcare is alleged only to
5 have: (1) been created in February 2017 (*Id.* ¶ 471); (2) entered into a consulting
6 agreement with Defendant Premier (*Id.* ¶ 473); (3) modified the consulting agreement in
7 May 2017 (*Id.* ¶ 476); and (4) made several ATM withdrawals from a KBH bank account
8 at Barona Resort and Casino between February 2017 and October 2017 (with one
9 withdrawal made in June 2019) (*Id.* ¶¶ 480-85).

10 **C. Plaintiff's Claims**

11 Plaintiff's FAC is an ambitious undertaking attempting to describe a decade of
12 fraudulent conduct. Plaintiff's ambition, however, does not relieve it of RICO's
13 substantive requirements or procedural requirements under Rule 9(b). The FAC suffers
14 many deficits. The Court has carefully sifted through the allegations of the FAC to find
15 those sufficiently alleged for inclusion in Plaintiff's claims. Unfortunately, except for
16 Defendants Mikia Wallis and Travis Lyon, once conclusory allegations are removed most
17 Defendants are described in ten or fewer of the allegations out of the FAC's 510 factual
18 paragraphs. The remaining allegations are simply insufficient to support any of
19 Plaintiff's claims, especially given the scatter-shot nature of the complaint.

20 Should Plaintiff elect to amend its complaint, Plaintiff will need to be more
21 precise in its averments. Regarding factual allegations, Plaintiff should remove
22 those which improperly lump Defendants into groups when alleging specific
23 actions, decisions, or statements. With respect to Plaintiff's averments in its claims
24 for relief, Plaintiff will need to remedy the shotgun nature of the claims and
25 general lack of specificity when reincorporating the corresponding factual
26 paragraphs. Plaintiff should state how each Defendant is related to each claim for
27 relief (or at least cite paragraphs that provide the basis of their claim as to each
28 Defendant).

1 Plaintiff is reminded that, “Judges are not like pigs, hunting for truffles
2 buried in briefs.” *U.S. v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991). Plaintiff’s
3 counsel is reminded under Rule 11(b), by presenting the Court with a pleading they
4 represent to the Court that the legal contentions therein are “warranted by existing
5 law” and the factual contentions “have evidentiary support or...will likely have
6 evidentiary support[.]” Fed. R. Civ. P. 11(b)(2)-(3).


7 **VI. CONCLUSION**

8 For the foregoing reasons, Defendants’ motions to dismiss are **GRANTED**. The
9 FAC is **DISMISSED** without prejudice in its entirety.

10 Plaintiff may file a Second Amended Complaint within twenty-one (21) days of
11 this Order that cures the deficiencies identified herein.

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13 **IT IS SO ORDERED.**

14 Dated: March 25, 2024

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17 **HON. ROGER T. BENITEZ**
18 United States District Judge
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