

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**TY BRUGGEMANN, et al.,**

**Plaintiffs,**

**v.**

**Case No. 8:09-cv-2562-T-30MAP**

**THE AMACORE GROUP, INC., et al.,**

**Defendants.**

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**ORDER**

THIS CAUSE comes before the Court upon Defendant Clark Marcus' Motion to Dismiss the Complaint and Incorporated Memorandum of Law (Dkt. 137) and Plaintiffs' Brief in Opposition (Dkt. 139). The Court, having reviewed the motion, response, and being otherwise advised in the premises, concludes that the motion to dismiss should be granted.

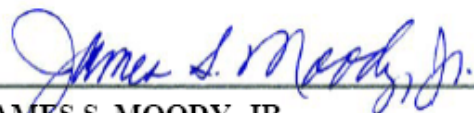
The Court issued three previous Orders on three prior motions to dismiss filed by other Defendants in this case (*see* Dkts. 69, 97, and 124). Thus, the background of this case and an explanation of Plaintiffs' claims do not bear repeating. Nor does it bear repeating the legal elements of Plaintiffs' claims and the standard of review for a motion to dismiss. Indeed, Defendant Clark Marcus' motion to dismiss is virtually identical to the motions to dismiss previously filed by Defendants Jerry Katzman and Guy Norberg. Accordingly, for the same reasons as stated in the Orders granting Jerry Katzman and Guy Norberg's motions

to dismiss (*see* Dkts. 97 and 124), the Court grants Clark Marcus' motion to dismiss as to Counts 1-3, 5-10, and 12 of Plaintiffs' complaint.<sup>1</sup>

It is therefore ORDERED AND ADJUDGED that:

1. Clark Marcus' Motion to Dismiss the Complaint and Incorporated Memorandum of Law (Dkt. 137) is hereby GRANTED.
2. Counts 1, 2, 3, 5, 8, 9, and 10 are dismissed without prejudice to Plaintiffs to amend these claims within fourteen (14) days from the date of this Order.
3. Counts 6 and 7 are dismissed with prejudice.
4. Count 12 is dismissed without prejudice to Plaintiffs to file a timely motion to amend their complaint to add a petition to pierce Amacore's corporate veil, if such a claim becomes relevant.

**DONE** and **ORDERED** in Tampa, Florida on December 8, 2010.

  
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JAMES S. MOODY, JR.  
UNITED STATES DISTRICT JUDGE

**Copies furnished to:**  
Counsel/Parties of Record

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<sup>1</sup> Plaintiffs concede in their response that the Court should dismiss all of the counts against Clark Marcus based on the Court's previous Orders, except Counts 1 and 2. As to Counts 1 and 2, Plaintiffs rely on Ty Bruggemann's declaration, filed as an exhibit to the response to the motion to dismiss, as further support of the allegations of fraud contained in Counts 1 and 2 of the complaint. It would be inappropriate for the Court to consider this declaration at the motion to dismiss stage, because the Court cannot consider evidence outside the complaint. If Plaintiffs choose to amend Counts 1 and 2 as to Clark Marcus, they can include these additional allegations in the amended complaint.