

**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 First Amended Complaint (Dkt. 153) and Plaintiffs' Response in Opposition (Dkt. 162). The Court, having considered the motion, response, and being otherwise advised in the premises, concludes that the motion should be denied to the extent that it seeks to dismiss the fraud counts (Counts 1 and 2 of the Amended Complaint), because these counts are sufficiently pled as to Defendant Clark Marcus ("Marcus"), and granted with respect to the remaining counts.

The Court's previous order of dismissal (Dkt. 97) sets forth the motion to dismiss standard and discusses the allegations necessary for claims based on fraud. The Amended Complaint sets forth numerous allegations describing Marcus' alleged fraudulent activity. Marcus challenges the "credibility" of these allegations, however such an analysis is inappropriate at the motion to dismiss stage.

Accordingly, Marcus' motion to dismiss is denied with respect to Counts 1 and 2 and granted with respect to Counts 3, 5, 8, 9 and 10.<sup>1</sup> Also, the Court agrees that it was improper for Plaintiffs to amend the complaint to seek liability against previously dismissed parties and include claims that the Court previously dismissed. Thus, all portions of the amended complaint that seek relief against a previously dismissed party or allege claims that the Court previously dismissed are hereby stricken.

It is therefore ORDERED AND ADJUDGED that:

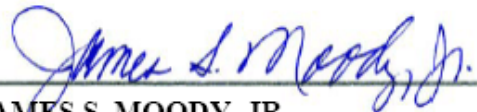
1. Defendant Clark Marcus' Motion to Dismiss the First Amended Complaint (Dkt. 153) is hereby DENIED as to Counts 1 and 2 and GRANTED as to Counts 3, 5, 8, 9, and 10. Marcus shall file an answer to Counts 1 and 2 within fourteen (14) days from the date of this Order.

2. All portions of the Amended Complaint (Dkt. 146) that seek relief against a previously dismissed party or allege claims that the Court previously dismissed are hereby stricken.

3. The CLERK is directed to terminate Defendants Giuseppe Crisafi, Guy Norberg, and Jerry Katzman.

**DONE** and **ORDERED** in Tampa, Florida on January 24, 2011.

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

  
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JAMES S. MOODY, JR.  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Plaintiffs do not oppose the dismissal of Counts 3, 5, 8, 9, and 10.