

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

**ESTATE OF ELAINE PURCELL, through
PARKER WAGGAMAN as Personal
Representative; PARKER WAGGAMAN,
individually,**

Plaintiffs,

v.

Case No. 8:14-cv-1340-T-30TGW

**ARTURO ARAUZO, individually; ARTURO
ARAUZO d/b/a ARTURO ARAUZO, M.D.;
USA DRUG MART, INC.; PARK PLAZA
PHARMACY; USA DRUG MART d/b/a
PARK PLAZA PHARMACY; Pharmacist in
Charge, DAVID VERNON, JOHN DOES 1-
9,**

Defendants.

ORDER

THIS CAUSE comes before the Court upon Defendants U.S. Drug Mart, Inc. d/b/a Park Plaza Pharmacy and Pharmacist in Charge's Motion to Dismiss Plaintiffs' Third Amended Complaint with Prejudice (Dkt. 35), Defendants Arturo Arauzo, individually and Arturo Arauzo d/b/a Arturo Arauzo, M.D.'s Motion to Dismiss Plaintiffs' Third Amended Complaint with Prejudice (Dkt. 36), and Plaintiffs' Responses in Opposition (Dkts. 37 & 38). Upon consideration of the motions, responses, and being otherwise advised in the premises, the Court concludes that the motions should be granted and Plaintiffs' third amended complaint should be dismissed with prejudice.

DISCUSSION

The claims alleged in this action relate to Defendants' involvement with prescribing, dispensing, and shipping prescription medications to Elaine Purcell, the decedent. *Pro se* Plaintiffs Estate of Elaine Purcell and Parker Waggaman, individually, filed the instant action in state court. Parker Waggaman is Elaine Purcell's son. Plaintiffs allege that Defendants' actions enabled Elaine Purcell's addiction to prescription drugs.

On June 17, 2014, this Court dismissed Plaintiffs' complaint in its entirety, noting numerous pleading deficiencies. The Court provided Plaintiffs twenty days to file an amended complaint (Dkt. 6).

On July 7, 2014, Plaintiffs filed their amended complaint. The amended complaint fared no better. The amended complaint alleged the following claims: (1) civil conspiracy (Count I); (2) fraud (Counts II-IV); (3) negligence *per se* (Counts V-VII); (4) intentional infliction of emotional distress (Counts VIII-IX); (5) battery (Counts X-XII); and (6) Racketeer Influenced and Corrupt Organizations Act ("RICO") (Count XIII) (Dkt. 8).

On July 24, 2014, the Court entered an Order dismissing the amended complaint. The July 24 Order described how each claim was deficient; the Order also noted that Waggaman did not have standing to raise the claims as an individual, especially because Plaintiffs did not allege a wrongful death claim. The July 24 Order provided Plaintiffs a final opportunity to amend and noted that further dismissal of the complaint would be with prejudice (Dkt. 24).

On August 11, 2014, Plaintiffs filed a second amended complaint (Dkt. 15). Defendants subsequently moved to dismiss the second amended complaint and, on November

10, 2014, the Court held a hearing on the motions to dismiss and granted Plaintiffs' oral motion to amend their complaint for a third time (Dkt. 30).

On December 1, 2014, Plaintiffs filed their third amended complaint (Dkt. 34). The third amended complaint does not rectify the pleading and standing deficiencies that the Court addressed in the Court's prior Orders. And the additional claims of unjust enrichment, intentional infliction of emotional distress, and the tort of "overprescribing"¹ are also insufficient. Simply put, Plaintiffs' third amended complaint, Plaintiffs' *fourth* attempt to state an actionable claim, remains deficient under Federal Rule of Civil Procedure 12(b)(6). Thus, Plaintiffs' third amended complaint must be dismissed with prejudice at this juncture for the same reasons as the Court previously noted in its two prior Orders granting Defendants' motions to dismiss (Dkts. 6 & 14).

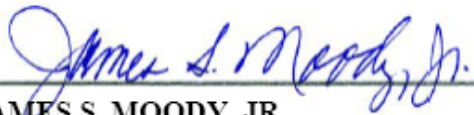
It is therefore ORDERED AND ADJUDGED that:

1. Defendants U.S. Drug Mart, Inc. d/b/a Park Plaza Pharmacy and Pharmacist in Charge's Motion to Dismiss Plaintiffs' Third Amended Complaint with Prejudice (Dkt. 35) and Defendants Arturo Arauzo, individually and Arturo Arauzo d/b/a Arturo Arauzo, M.D.'s Motion to Dismiss Plaintiffs' Third Amended Complaint with Prejudice (Dkt. 36) are granted to the extent stated herein. The Court denies Defendants' motions to the extent they seek attorney's fees and costs.
2. Plaintiffs' Third Amended Complaint is dismissed with prejudice.

¹ Notably, Florida does not recognize a tort of "overprescribing."

3. The Clerk of Court is directed to close this case.

DONE and **ORDERED** in Tampa, Florida on January 14, 2015.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

S:\Even\2014\14-cv-1340.denymtdismiss-finalattempt-pro-se-plaintiff.wpd