

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

WILLIAM S. WOLLESEN, IOWA
PLAINS FARMS, BYRITE FARM
SUPPLY, INC., KRISTI J.
WOLLESEN, and JOHN W.
WOLLESEN,

Plaintiffs,

vs.

WEST CENTRAL COOPERATIVE,
JEFFERY B. STROBURG, SUSAN
TRONCHETTI, DARRELL JENSEN,
CHRISTOPHER S. COEN, CRAIG
HEINEMAN, JAY DREES, ROGER
GINDER, JAMES CARLSON, CARYL
DOERDER, DELBERT
CHRISTENSEN, GLEN
CHRISTENSEN, SAM SPELLMAN,
DANIEL HELLER, SCOTT B.
CHESNUT, HARRY A.
AHRENHOLTZ, LINDA BUSS,
TIMOTHY WEIGEL, DAWN
THIELEN, WESTCO AGRONOMY
COMPANY, L.L.C., WIXTED, INC.,
d/b/a WIXTED POPE NORA
THOMPSON, WIXTED POPE NORA
THOMPSON & ASSOCIATES, L.L.C.,
EILEEN WIXTED, GARDINER
THOMSEN, P.C., DANIEL MARK
GARDINER, MILAN KUCERAK, and
FARMERS COOPERATIVE
COMPANY,

Defendants.

No. C 16-4012-MWB

**ORDER REGARDING
DEFENDANTS' MOTIONS TO
DISMISS**

This case is before me on the April 22, 2016, Motion To Dismiss Pursuant To Fed. R. Civ. P. 12(b)(6), 12(b)(1), and 9(b) (docket no. 24) by defendants Gardiner Thomsen, P.C., and Daniel Mark Gardiner (Gardiner Thomsen); the April 22, 2016, Motion To Abstain Pursuant To *Colorado River* Abstention Doctrine Or Alternative Dismiss Pursuant To Rule 12(b)(6) (docket no. 27) by defendants WCC, Westco, and Farmers Cooperative (the Cooperatives); the April 22, 2016, Joinder In Motions To Dismiss And Abstain (docket no. 30) by the individual officers and directors of WCC; and the April 22, 2016, Motion To Dismiss (docket no. 29) by defendants Wixted, Inc., and Eileen Wixted (the Wixted Defendants). The principal issues raised in these motions is whether or not the Wollesens' only federal claim, their RICO claim, states a claim upon which relief can be granted and, if not, whether the Wollesens should be allowed to amend their RICO claim. While the remaining issues do involve some independent challenges to certain state-law claims, they primarily challenge supplemental jurisdiction over those state-law claims, if the RICO claim is dismissed.

I have reviewed the Wollesens' pleading of their RICO claim in Count VII of their First Amended Complaint (docket no. 11), and I find that it fails to state a claim upon which relief can be granted, and fails to plead fraud with the required particularity, in most of the respects identified by Gardiner Thomsen. *See* FED. R. CIV. P. 12(b)(6) and 9(b); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009); *Richter v. Advance Auto Parts, Inc.*, 686 F.3d 847, 850 (8th Cir. 2012); *see also Crest Constr. II, Inc. v. Doe*, 660 F.3d 346, 353-58 (8th Cir. 2011) (pleading RICO claims). I cannot say, however, that allowing the Wollesens to attempt to replead their RICO claim would be futile or unfairly prejudicial to the defendants. *Crest Constr. II, Inc.*, 660 F.3d at 358-59. Consequently, I will allow the Wollesens the opportunity to file a second amended complaint attempting to replead their RICO claim adequately, then allow

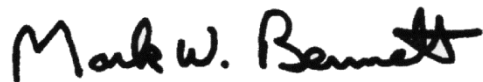
the defendants to renew and supplement their motions to dismiss, if they deem it appropriate to do so.

THEREFORE,

1. The pending motions to dismiss, docket nos. 24, 27, and 29, are **denied as moot**;
2. The Wollesens shall have **to and including August 9, 2016**, to file a second amended complaint repleading their RICO claim;
3. The defendants shall have **to and including August 30, 2016**, either to file answers or motions to dismiss as to the second amended complaint, with deadlines for resistances and replies as set forth in applicable Local Rules.

IT IS SO ORDERED.

DATED this 19th day of July, 2016.



MARK W. BENNETT
U.S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA