

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

EILEEN L. ZELL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:16-cv-01293-AGF
	)	
DAVID DALE SUTTLE, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff’s motion (ECF No. 25) for clarification regarding the Court’s November 15, 2016, dismissal of Plaintiff’s state-law claims for fraud and fraudulent misrepresentation. The Court dismissed those claims on res judicata grounds, and alternatively, for failure to state a claim. ECF No. 9. On December 21, 2017, the Eighth Circuit reversed the res judicata ruling, but affirmed the dismissal of the state-law fraud claims because Plaintiff “failed to allege sufficient facts to support those claims.”<sup>1</sup> ECF No. 16 at 2. The Eighth Circuit then remanded the remaining contract claims to this Court for further proceedings. Plaintiff now asks this Court to clarify that the dismissal of her state-law fraud claims was without prejudice. Defendants have not responded to Plaintiff’s motion, and the time to do so has passed.

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<sup>1</sup> The Court also dismissed Plaintiff’s claims for violation of the Racketeer Influenced and Corrupt Organization (“RICO”) Act, 18 U.S.C. §§ 1961-1968, and the Eighth Circuit affirmed this dismissal. In her current motion, Plaintiff concedes that she cannot state a RICO claim. Therefore, the dismissal of the RICO claim is with prejudice.

In light of the Eighth Circuit's grounds for affirming the dismissal of the state-law fraud claims, the Court concludes that the dismissal of these claims is without prejudice to Plaintiff seeking leave to amend, in order to cure the pleading deficiencies.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's motion to clarify is **GRANTED in part**, as set forth above. ECF No. 25. Any motion for leave to amend the complaint in the manner discussed in Plaintiff's motion shall be filed no later than **March 19, 2018**, and shall include as an attachment the proposed amended complaint.

  
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AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE

Dated this 7th day of March, 2018.