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HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ALLSTATE INSURANCE COMPANY,
ALLSTATE PROPERTY AND
CASUALTY INSURANCE COMPANY,
ALLSTATE INDEMNITY COMPANY,
ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY,

Plaintiff,

v.

TACOMA THERAPY, INC, TACOMA
REHABILITATION THERAPY INC, PS,
ANDREW JACOBS, MELANIE
JACOBS, NANDY, INC, NATHAN
LEMINGS, JANE DOE LEMINGS,
LAW OFFICE OF MCLAUGHLIN AND
ASSOCIATES, INC, WESLEY
MCLAUGHLIN, JANE DOE
MCLAUGHLIN, DOES 1-100, ROES
101-200,

Defendant.

CASE NO. C13-5214 RBL

ORDER DENYING DEFENDANTS'
MOTIONS TO DISMISS

[DKT. 22], [DKT. 29], [DKT. 33]

This matter comes before the Court on three separate motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiffs, a group of four insurance companies, commenced this action on March 21, 2013, alleging that the Defendants have conspired to obtain payment for medical services that were either not medically necessary or not actually performed. Plaintiffs assert

1 common law claims for fraud and intentional misrepresentation, conspiracy to defraud, and
2 unjust enrichment. Plaintiffs also seek damages for violations of the Racketeer Influenced
3 Corrupt Organization Act, 18 U.S.C. § 1961, et seq. (“RICO”); the Washington RICO Act, RCW
4 9A.82.100, et seq.; and the Washington Consumer Protection Act, RCW 19.86, et seq. On June
5 20, 2013, Defendants Andrew and Melanie Jacobs moved to dismiss all of Plaintiffs claims. On
6 July 8, 2013, Defendants Law Office of McLaughlin & Associates, Inc. (“McLaughlin Law”),
7 Wesley McLaughlin, and Jane Doe McLaughlin also moved to dismiss all of Plaintiffs’ claims,
8 and Defendants Tacoma Therapy, Inc., a massage therapy provider, and Tacoma Rehabilitation
9 Therapy, Inc., a physical therapy provider, (collectively, “the Care Providers”) moved to dismiss
10 Plaintiffs’ RICO claims. For the reasons stated below, the Defendants’ motions are **DENIED**.

11 12 **I. BACKGROUND**

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14 According to the Complaint, the Defendants submitted fraudulent medical reports to
15 Plaintiffs, through the mail, and then used those reports to leverage artificially inflated insurance
16 settlements. Plaintiffs allege that Andrew Jacobs, then owner and manager of the Care
17 Providers, required the Care Providers’ therapists to treat patients according to a pre-established
18 treatment plan, regardless of the patients’ symptoms or diagnoses. Plaintiffs further allege that
19 the Care Providers falsely reported patient symptoms, complaints, and injuries to misrepresent
20 the need for continued therapy. Plaintiffs contend that based on these practices, which were
21 specifically implemented to generate large medical bills, the Care Providers billed for medically
22 unnecessary, excessive, and duplicative treatment and even treatment that they did not actually
23 provide. If Plaintiffs insured the patient, the Care Providers submitted the bills, themselves. If
24 the patient was injured by one of Plaintiffs’ insureds, the Care Providers referred the patient to
25 McLaughlin Law. McLaughlin Law then submitted the bills and medical reports to Plaintiffs
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1 and demanded a settlement. Plaintiffs' have attached to their Complaint a list of 200 claimants
2 with whom they claim to have settled based in part on the Care Providers' artificially inflated
3 bills.

4 II. DISCUSSION

5 A. Fed. R. Civ. P. 12(b)(6) Standard

6 Because cases should generally be decided on their merits, Rule 12(b)(6) motions are
7 generally disfavored. *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003). Dismissal under
8 Rule 12(b)(6) may be based on either the lack of a cognizable legal theory or the absence of
9 sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901
10 F.2d 696, 699 (9th Cir.1990). A complaint must allege facts to state a claim for relief that is
11 plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868
12 (2009). A claim has "facial plausibility" when the party seeking relief "pleads factual content
13 that allows the court to draw the reasonable inference that the defendant is liable for the
14 misconduct alleged." *Id.* Although the Court must accept as true a complaint's well-pled facts,
15 conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper
16 Rule 12(b)(6) motion. *Vasquez v. L.A. Cnty.*, 487 F.3d 1246, 1249 (9th Cir.2007); *Sprewell v.*
17 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.2001). "[A] plaintiff's obligation to provide
18 the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a
19 formulaic recitation of the elements of a cause of action will not do. Factual allegations must be
20 enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550
21 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (citations and footnote omitted). This
22 requires a plaintiff to plead "more than an unadorned, the-defendant-unlawfully-harmed-me
23 accusation." *Iqbal*, 556 U.S. at 678.

1 Additionally, a party alleging fraud must “state with particularity the circumstances
2 constituting fraud,” but “[m]alice, intent, knowledge, and other conditions of a person’s mind
3 may be alleged generally.” Fed.R.Civ.P. 9(b). To comply with Rule 9(b), allegations of fraud
4 must state “the who, what, when, where, and how” of the misconduct charged. *Cafasso v.*
5 *General Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011). This heightened pleading
6 standard ensures that defendants have adequate notice of the alleged misconduct so that they can
7 defend against the charge and are not left to simply deny that they have done anything wrong.
8 *Kerns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2008). “A pleading is sufficient under
9 Rule 9(b) if it identifies the circumstances constituting fraud so that the defendant can prepare an
10 adequate answer from the allegations.” *Neubronner v. Milken*, 6 F.3d 666, 671-72 (9th Cir.
11 1993) (citing *Gottreich v. San Francisco Inv. Corp.*, 552 F.2d 866, 866 (9th Cir. 1977)) (internal
12 quotations omitted).
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15 **B. Civil RICO Claims**

16 To assert a civil RICO claim under 18 U.S.C. § 1962(c), plaintiffs must allege (1)
17 conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Sedima S.P.R.L. v.*
18 *Imrex Co.*, 473 U.S. 479, 496 (1985). RICO defines “racketeering activity” as any “chargeable”
19 or “indictable” act under a number of enumerated state and federal offenses. *See* 18 U.S.C. §
20 1961(1). Plaintiffs allege mail fraud and wire fraud as the predicate acts supporting their RICO
21 claims. Mail or wire fraud consists of the following elements: (1) formation of a scheme or
22 artifice to defraud; (2) use of the United States mails or wires in furtherance of the scheme; and
23 (3) specific intent to deceive or defraud. *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 557 (9th
24 Cir. 2010). Because Rule 9(b) allows plaintiffs to plead the conditions of a person’s mind
25 generally, only the factual circumstances of the fraud itself must be pled with particularity.
26 *Odom v. Microsoft Corp.*, 486 F.3d 541, 554 (9th Cir. 2007).
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1 Plaintiffs' describe in detail the alleged scheme to defraud and each of the Defendants'
2 roles in carrying out that scheme. The alleged fraud consisted of submitting falsified medical
3 reports and bills to Plaintiffs through the U.S. mails and wires. The Complaint includes a list of
4 200 specific claimants that the Defendants allegedly used as conduits to perpetrate their scheme
5 against Plaintiffs. In the body of the Complaint, Plaintiffs have identified specific claimants as
6 examples to illustrate various aspects of the alleged fraud. Although Plaintiffs did not allege the
7 time, place, and specific content of each communication sent through the mail or wires, Plaintiffs
8 have pled the circumstances of the alleged mail and wire fraud with sufficient particularity to
9 inform the Defendants of their alleged misconduct and allow them to prepare an adequate
10 answer. Rule 9(b) requires the circumstances constituting fraud to be stated with particularity. It
11 does not require the pleading of detailed evidentiary matter. *Walling v. Beverly Enters.*, 476 F.2d
12 393, 397 (9th Cir. 1973). The details of the mailings and interstate wire communications can be
13 dealt with in discovery.
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16 **C. Washington Consumer Protection Act Claim**

17 To assert a claim under the Washington Consumer Protection Act, a plaintiff must allege
18 that (1) the defendant engaged in an unfair or deceptive act or practice; (2) the act or practice
19 occurred in trade or commerce; (3) the act or practice impacted the public interest; (4) the
20 plaintiffs suffered injury to his or her business or property; and (5) the deceptive or unfair act or
21 practice caused the plaintiff's injury. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.*
22 *Co.*, 105 Wash.2d 778, 780, 719 P.2d 531, 533 (1986). Plaintiffs allege that the Defendants'
23 fraudulent billing scheme was an unfair trade practice that affected the public interest by
24 preventing legitimate clinics from treating the Care Providers' patients and by inducing
25 numerous insurance companies to pay illegitimate claims. Plaintiffs allege that they were one of
26 those insurers and that the Defendants' unfair practice accordingly injured their business.
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1 Plaintiffs have thus adequately pled their Consumer Protection claim and can proceed to
2 discovery. Whether the substance of Plaintiffs' allegations entitles them to relief on the merits is
3 an issue better addressed at trial.

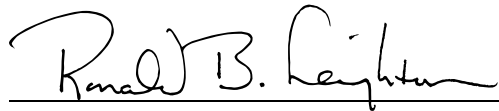
4 **D. Common Law Claims**

5 All of Plaintiffs' common law claims sound in fraud. As discussed above, the Complaint
6 sufficiently describes the circumstances of the alleged fraud to satisfy Rule 9(b) and survive
7 Defendants' motions to dismiss. For each claim, Plaintiffs have pled all of the elements and their
8 recitation of supporting facts makes the claims facially plausible. Plaintiffs are entitled to a
9 decision on the merits.
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11 **III. CONCLUSION**

12 For the reasons stated above, Defendants' motions to dismiss, [Dkts. 22, 29, & 33] are
13 **DENIED.**

14 Dated this 4th day of September, 2013.

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17 RONALD B. LEIGHTON
18 UNITED STATES DISTRICT JUDGE
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