No. 24-_____

In the

Supreme Court of the United States

WILD CHANG, KENNETH LO AND WILD CHANG, JR.,
Petitioner,

v.

FARMERS INSURANCE COMPANY, INC.,
FIRE INSURANCE EXCHANGE,
WOOLLS PEER DOLLINGER & SCHER, STACY CHERN
Respondent,

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIFORARI

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February 13, 2024

Tab 17

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United States District Court
Central District of California

WILD CHANG et al.,

Plaintiffs,

v.

FARMERS INSURANCE COMPANY, INC. et al.,

Defendants.

Case № 2:22-cv-02548-ODW (MARx)

ORDER GRANTING MOTION TO DISMISS FIRST AMENDED COMPLAINT [27]

I. INTRODUCTION

Plaintiffs Wild Chang Sr., Wild Chang Jr., and Kenneth Lo, proceeding pro se, bring suit against Defendants Farmers Insurance Company, Inc. ("Farmers Insurance"), Fire Insurance Exchange ("Fire Insurance"), Woolls Peer Dollinger & Scher ("Woolls Peer"), and Stacy Chern for alleged violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). (First Am. Compl. ("FAC"), ECF No. 26.) Defendants now move to dismiss Plaintiffs' First Amended Complaint under Federal Rule of Civil Procedure ("Rule") 12(b)(6). (Mot. Dismiss FAC ("Mot."

or "Motion"), ECF No. 27.) For the following reasons, the Court **GRANTS** Defendants' Motion.[1]

II. BACKGROUND

In resolving a Rule 12(b)(6) motion, the Court takes Plaintiffs' well-pleaded factual allegations as true. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). In addition, the Court may consider Plaintiffs' exhibits to the Complaint. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) ("A court may . . . consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting [a] motion to dismiss into a motion for summary judgment."). The Court "need not . . . accept as true allegations that contradict matters properly subject to judicial notice or by exhibit." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

Farmers Insurance is a corporation engaged in providing insurance. (FAC ¶ 8; *id.* Ex. 3 ("Giles Decl.") ¶¶ 15–16, ECF No. 26-1.) Fire Insurance is an inter-insurance exchange that sells insurance policies nationwide through contracted insurance agents. (Giles Decl. ¶¶ 4–6.) Chern is an agent authorized to sell insurance products on behalf of Fire Insurance and other Farmers Insurance companies. (FAC ¶ 10; *id.* Ex. 4 ("Chern Decl.") ¶ 3, ECF No. 26-1.) Woolls Peer is a law firm and counsel for Defendants in this case and a related case in state court. (*See* FAC ¶ 11.)

In April 2014, Chang Sr. and Lo purchased an insurance policy for a property in Rowland Heights, California ("Property"). (*See id.* ¶ 24; *see also id.* Ex. 1 ("Evidence of Property Insurance"), ECF No. 26-1.) On December 16, 2014, there was a fire incident at the Property. (*See* FAC ¶ 28.) As described further below, the parties have been litigating the loss associated with that fire since 2017.

[1] Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

On February 16, 2017, Chang Sr. and Lo filed a complaint in Los Angeles Superior Court against Farmers Insurance, Fire Insurance, and Chern, seeking relief for "conventional breach of contract," "related bad faith," and tort causes of action.[2] (Defs.' Req. Judicial Notice ISO Mot. ("RJN") Ex. 1 ("State Court Complaint"), ECF No. 27-1.) On July 19, 2021, the plaintiffs amended the State Court Complaint to, as relevant here, allege fraud as a cause of action and add the defendants' counsel, Woolls Peer, as a defendant. (RJN Ex. 2 ("Third Am. State Court Compl.").) The defendants demurred, and the state court sustained the demurrer in its entirety, allowing the plaintiffs leave to amend only the sixth cause of action for emotional distress. (*See* RJN Ex. 3 ("Notice of Ruling on Demurrer").)

Plaintiffs then brought this civil RICO action in federal court under the theory that Defendants conspired to fraudulently convert Plaintiffs' policy with Farmers Insurance into a policy with Fire Insurance and to shield Farmers Insurance from liability under the policy. (Compl. ¶¶ 69–98, ECF No. 1.) After Defendants moved to dismiss the Complaint, the Court found that Plaintiffs failed to timely bring their RICO claims within the four-year limitations period, and the claims are thus time-barred. (Mot. Dismiss Compl., ECF No. 13; Order Granting Mot. Dismiss Compl. 9, ECF No. 25.) However, because Plaintiffs contended that they could allege facts implicating the separate accrual rule, the Court provided Plaintiffs leave to amend to allege additional facts for that purpose. (*Id.*)

Plaintiffs then filed the First Amended Complaint, alleging that Defendants made misrepresentations in March 2021 for the purpose of perpetuating Defendants' RICO violations. (FAC ¶¶ 24–25.) Plaintiffs allege that Defendants made the alleged misrepresentations in two declarations filed in the state court case between the parties. (*Id.* ¶ 24.) First, Plaintiffs allege that, in the Giles Declaration, dated March 17, 2021,

[2] The Court grants Defendants' Request for Judicial Notice and takes judicial notice of Defendants' Exhibits 1 through 6 as related filings in a state court case. *See Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice of related court filings).

Defendants misrepresented that "Farmers Insurance was only a 'Service Mark,' when selling the Insurance to Plaintiffs." (FAC ¶ 24 (emphasis omitted); Giles Decl.) Second, Plaintiffs allege that, in the Chern Declaration, dated March 22, 2021, Defendants misrepresented that Chern "was selling the Membership as an agent of Fire [Insurance] all along, contrary to, and independent of, the facts that it was Farmers Insurance, as a legal entity, not a mere 'Service Mark,' that had sold the Insurance to Plaintiffs." (FAC ¶ 24 (emphasis omitted); Chern Decl.)

Defendants again move to dismiss Plaintiffs' claims on the basis that they are time-barred and that Plaintiffs fail to cure this deficiency by alleging facts supporting the application of the separate accrual rule. (Mot. 3.)

III. LEGAL STANDARD

A court may dismiss a complaint under Rule 12(b)(6) "based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). To survive a motion to dismiss, a complaint need only satisfy "the minimal notice pleading requirements of Rule 8(a)(2)"—"a short and plain statement of the claim." *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003) (quoting Fed. R. Civ. P. 8(a)(2)). However, the "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). That is, the complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

The determination of whether a complaint satisfies the plausibility standard is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. In making that determination, a court is generally limited to the pleadings and must construe "[a]ll factual allegations set forth in the complaint . . . as true and . . . in the light most favorable" to the plaintiff. *Lee*, 250 F.3d at 679 (9th Cir. 2001) (internal quotation marks omitted) (quoting *Epstein v.*

Wash. Energy Co., 83 F.3d 1136, 1140 (9th Cir. 1996)). Although a court must view these allegations in the light most favorable to the nonmoving party, it is not required to blindly accept "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell*, 266 F.3d at 988. Ultimately, there must be sufficient factual allegations "to give fair notice and to enable the opposing party to defend itself effectively," and the "allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

Although pro se pleadings are to be construed liberally, pro se litigants are "not excused from knowing the most basic pleading requirements." *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1107 (9th Cir. 2000); *see Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (construing pro se inmate's civil rights complaint liberally). A court may not "supply essential elements of the claim that were not initially pled." *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). A liberal reading cannot cure the absence of such facts. *Ivey v. Bd. of Regents of Univ. Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

IV. DISCUSSION

Defendants seek dismissal of Plaintiffs' RICO claims on the grounds that Plaintiffs "have not pleaded facts supporting invocation of the 'separate accrual rule'" and, thus, their claims are barred by the statute of limitations. (Mot. 3.)

A. Separate Accrual Rule

"[T]he 'separate accrual rule,' . . . provides that a new cause of action accrues for each new and independent injury, even if the RICO violation causing the injury happened more than four years before." *Grimmett v. Brown*, 75 F.3d 506, 510 (9th Cir. 1996). For the separate accrual rule to apply, a plaintiff must identify a "new overt act[]" within the limitations period, which must (1) "be a new and independent act that is not merely a reaffirmation of a previous act;" and (2) "inflict new and

accumulating injury on the plaintiff." *Id.* at 512–13 (emphasis omitted) (quoting *Pace Indus., Inc. v. Three Phoenix Co.*, 813 F.2d 234, 238 (9th Cir. 1987)).

Here, Plaintiffs fail to allege facts satisfying either element of the separate accrual rule. Plaintiffs argue that Defendants committed independent acts violating RICO in March 2021 with the Giles Declaration and the Chern Declaration. (Opp'n 5.) However, each of these alleged acts are "mere[] reaffirmations of . . . previous act[s]." *Grimmett*, 75 F.3d at 513. First, Plaintiffs contend that, via the Giles Declaration, Defendants misrepresented that Farmers Insurance was only a "Service Mark" when Defendants sold the relevant insurance policy to Plaintiffs in April 2014 and later renewed that policy in 2016. (*See* FAC ¶ 24.) Second, relying on the Chern Declaration, Plaintiffs contend that Defendants misrepresented that Chern acted as an agent of Fire Insurance when she was actually an agent of Farmers Insurance. (*See id.*). However, with each of these identified statements, Defendants merely reaffirmed prior acts that occurred in April 2014 and 2016—that Fire Insurance used the Farmers Insurance mark and that Chern acted as an agent of Fire Insurance when selling and renewing the relevant insurance policy. (*See* FAC ¶ 24; Evidence of Property Insurance.) Thus, Plaintiffs fail to allege any "new and independent act that is not merely a reaffirmation of a previous act." *See Grimmett*, 75 F.3d at 513 (emphasis omitted).

Moreover, Plaintiffs fail to allege that these acts "inflict[ed] new and accumulating injury." *See id.* Plaintiffs allege damages from the "temporary accommodations during the alleged fake investigations of 14 months," and "stroke, broken ankle, heart surgeries, emotional distress" from the "unreasonable denial" of Chang Sr. as an insured and "unreasonably insufficient settlement offer to cover the fire damages." (FAC ¶ 29.) Thus, Plaintiffs' alleged injuries stem from the temporary accommodations during the 14-month investigation following the fire incident on December 16, 2014; Defendants' denial of Chang Sr. as an insured; and Defendants' settlement offer for the fire damages. (*See id.*) Plaintiffs do not allege any "new and

accumulating injur[ies]" caused by Defendants' alleged misrepresentations in the Giles Declaration and the Chern Declaration. *See Grimmett*, 75 F.3d at 513 (emphasis omitted).

Accordingly, the Court finds that Plaintiffs fail to allege facts supporting the application of the separate accrual doctrine.

B. Leave to Amend

Where a district court grants a motion to dismiss, it should generally provide leave to amend unless it is clear the complaint could not be saved by any amendment. *See* Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Thus, leave to amend "is properly denied . . . if amendment would be futile." *Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011). "[W]here the Plaintiff has previously been granted leave to amend and has subsequently failed to add the requisite particularity to its claims, the district court's discretion to deny leave to amend is particularly broad." *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009) (internal quotation marks omitted).

Here, the Court concludes that leave to amend is not warranted. After finding that Plaintiffs' claims were time-barred, the Court provided Plaintiffs an opportunity to amend their pleadings to allege facts in support of the application of the separate accrual doctrine. (Order Granting Mot. Dismiss Compl. 9.) However, as explained above, Plaintiffs fail to allege such facts. Given Plaintiffs' previous opportunity to cure this deficiency, Plaintiffs' failure to plead sufficient facts in the First Amended Complaint indicates that further amendment would be futile. *See Zucco Partners*, 552 F.3d at 1007 (finding failure to cure pleading deficiencies is "strong indication that the plaintiffs have no additional facts to plead").

V. CONCLUSION

For the reasons discussed above, the Court **GRANTS** Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint **without leave to amend**. (ECF No. 27.)

IT IS SO ORDERED.

July 12, 2023

OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE

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United States District Court
Central District of California

WILD CHANG et al., Plaintiffs, v. FARMERS INSURANCE COMPANY, INC. et al., Defendants.	Case № 2:22-cv-02548-ODW (MARx) **JUDGMENT**

Pursuant to the Court's Order Granting Defendants' Motion to Dismiss, it is therefore **ORDERED, ADJUDGED, and DECREED** as follows:

1. Plaintiffs shall recover nothing from Defendants; and
2. Plaintiffs' First Amended Complaint is dismissed on the merits and with prejudice.

IT IS SO ORDERED.

July 12, 2023

OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE

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UNITED STATES COURT OF APPEALS

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILD CHANG; et al., Plaintiffs-Appellants, v. FARMERS INSURANCE COMPANY, INC., a Kansas corporation; et al., Defendants-Appellees.	No. 23-55705 D.C. No. 2:22-cv-02548-ODW-MAR Central District of California, Los Angeles ORDER

Before: CHRISTEN, MILLER, and H.A. THOMAS, Circuit Judges.

Upon a review of the record and the responses to the court's September 8, 2023 order, we conclude this appeal is frivolous. We therefore deny appellants' motion to proceed in forma pauperis (Docket Entry No. 3), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

No further filings will be entertained in this closed case.

DISMISSED.