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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

JOHN BLACK, VICTOR GREGORY, THOMAS STEPHENSON, JACOB HUBER, CARLA MCCULLOUGH, TIM BRAYSHAW, DUSTIN FUJIWARA, JOSEPH VIOLA, JUSTIN VELOZ, GEOFFREY BARRETT, BRIAN PARK, RUSSELL THURMAN, BOYD MAYO, and VERNELL ROSS-MULLIN

Plaintiffs,

v.

CORVEL ENTERPRISE INC.; YORK RISK SERVICES GROUP, INC.; TANYA MULLINS; PAULA FANTULIN; BRITNEY FAITH, and MEXTLI HYDE,

Defendants.

Case No.: 5:14-cv-02588-JGB-KK

NOTICE OF MOTION AND MOTION BY DEFENDANTS CORVEL ENTERPRISE COMP, INC. and MEXTLI HYDE TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SAME

Date: September 21, 2015
Time: 9:00 a.m.
Place: Courtroom 1
Judge: The Hon. Jesus G. Bernal

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NOTICE OF MOTION AND MOTION TO DISMISS

TO PLAINTIFFS JOHN BLACK, VICTOR GREGORY, THOMAS STEPHENSON, JACOB HUBER, CARLA McCULLOUGH, TIM BRAYSHAW, DUSTIN FUJIWARA, JOSEPH VIOLA, JUSTIN VELOZ, GEOFFREY BARRETT, BRIAN PARK, RUSSELL THURMAN, BOYD MAYO, VERNELL ROSS-MULLIN, DEFENDANTS YORK RICK SERVICES GROUPS, INC., TANYA MULLINS, PAULA FANTULIN, BRITNEY FAITH, and their Attorneys of Record:

PLEASE TAKE NOTICE, that on September 21, 2015 at 9:00 am, or as soon thereafter as the matter may be heard, in Courtroom 1 of the above-referenced Court, located at 3470 Twelfth Street, Riverside, California, 92501-3801, Defendants CorVel Enterprise Comp, Inc., and Mextli Hyde will move, and hereby do move, for an Order from the Court dismissing Plaintiffs' First Amended Complaint ("FAC") with prejudice for the following reasons:

(1) Plaintiffs' First Cause of Action brought under the Racketeer Influenced and Corrupt Organizations Act ("RICO") fails to state a claim on which relief can be granted because Plaintiffs' lack standing to assert such a claim.

(2) Plaintiffs' First Cause of Action fails to state a claim on which relief can be granted for the additional reason that the claim is an improper attempt to federalize workers' compensation law, which is an area of regulation typically left to the states.

(3) Plaintiffs' First Cause of Action fails to state a claim on which relief can be granted for the additional reason that Plaintiffs have failed to allege sufficient facts showing that Defendants York and CorVel are part of the same RICO enterprise.

(4) Plaintiffs' First Cause of Action fails to state a claim on which relief can be granted for the additional reason that Plaintiffs have failed to allege sufficient facts showing that Defendants engaged in at least two predicate acts of

racketeering within the last ten years.

(5) Plaintiffs' First Cause of Action fails to state a claim on which relief can be granted for the additional reason that Plaintiffs have failed to allege fraud with particularity.

(6) Plaintiffs' First Cause of Action fails to state a claim on which relief can be granted for the additional reason that Plaintiffs have failed to allege that they were directly injured by relying on fraudulent misrepresentations.

(7) Plaintiffs' First Cause of Action fails to state a claim on which relief can be granted for the additional reason that Plaintiffs have failed to allege a pattern of racketeering activity or conspiracy.

(8) Plaintiffs' First Cause of Action fails to state a claim on which relief can be granted for the additional reason that RICO is reverse-preempted by the McCarran-Ferguson Act to the extent Plaintiffs are attempted to use RICO to create alternative avenues of appeal and additional remedies to the exclusive ones identified in the California Workers' Compensation Act.

(9) Plaintiffs' Second, Third and Fourth Causes of Action fail to state claims on which relief can be granted because the Court does not have jurisdiction over the claims.

(10) Plaintiffs' Second and Third Causes of Action fail to state claims on which relief can be granted for the additional reason that Plaintiffs have failed to allege fraudulent conduct with particularity.

(11) Plaintiffs' Second and Third Causes of Action fail to state claims on which relief can be granted for the additional reason that Plaintiffs have failed to allege that they justifiably relied on any misrepresentations and suffered an injury by doing so.

(12) Plaintiffs' Second Cause of Action fails to state a claim on which relief can be granted for the additional reason that Plaintiffs have failed to allege any of the defendants are or were fiduciaries of any of the Plaintiffs.

(13) Plaintiffs' Fourth Cause of Action fails to state a claim on which relief can be granted for the additional reason that Plaintiffs are seeking damages and not restitution.

(14) Plaintiffs' Fifth and Sixth Causes of Action fail to state claims on which relief can be granted because each of the Plaintiffs' individual claims under Section 1983 are time-barred.

(15) Plaintiffs' Fifth and Sixth Causes of Action fail to state claims on which relief can be granted for the additional reason that Plaintiffs do not have a property right in workers' compensation benefits and have failed to allege any facts asserting that they were deprived of due process.

(16) Plaintiffs' Sixth Cause of Action fails to state a claim on which relief can be granted because Defendants cannot be held liable for their employees' actions.

Local Rule 7-3 Certification

This Motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on June 15, 2015.

This Motion will be based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, all of which are served and filed herewith, the pleadings and papers on file herein, as well as such other oral and documentary evidence as may be presented at the hearing of this Motion.

Date: June 22, 2015

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

By: /S/ Gary S. Pancer
GARY SCOTT PANCER
DONALD P. SULLIVAN
AMIR D. BENACOTE

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs' First Amended Complaint ("FAC") is a misguided attempt to expand the remedies available to workers' compensation claimants to include compensatory and exemplary damages, despite the California legislature's deliberate exclusion of such remedies from the Workers' Compensation Act ("WCA"). Plaintiffs have alleged that CorVel Enterprise Comp, Inc., which is a third-party administrator hired by the cities of Rialto and Stockton to administer the cities' self-insured workers' compensation plans, and the other defendants improperly denied and delayed the Plaintiffs' individual workers' compensation claims in order to save the cities money. Plaintiffs are now asking the Court to review each of the defendants' claims-related decisions and opine as to the appropriateness of each of those decisions. In other words, Plaintiffs are asking that this Court become a workers' compensation appeals board, even though the California Workers' Compensation Appeals Board exists and has exclusive jurisdiction over Plaintiffs' grievances.

Each of the FAC's six purported causes of action must be dismissed. As explained in detail in York's brief, Plaintiffs' purported RICO claims fail as a matter of law because Plaintiffs lack standing and have failed to allege facts satisfying the elements of such a claim. Additionally, the McCarran-Fergusson Act reverse-preempts RICO to prevent it from interfering with the WCA.

Plaintiffs Second, Third and Fourth purported causes of action seeking relief under state law must be dismissed because the Workers' Compensation Appeals Board, and not this Court, has exclusive jurisdiction over Plaintiffs' grievances. These claims fail for the additional reasons that Plaintiffs have failed to allege the elements of the claims with particularity and have failed to allege any facts showing that they relied on any misrepresentations. Nowhere in the FAC do Plaintiffs allege that Defendants were fiduciaries of Plaintiffs, so their claim for Constructive Fraud fails. Plaintiffs' Section 17200 claim also fails because

Plaintiffs are seeking damages and not restitution.

Finally, Plaintiffs' Section 1983 claims must be dismissed because they are time barred. Even if they were timely, the claims would still need to be dismissed because Plaintiffs do not have a property right in workers' compensation benefits, have not shown how they were denied due process, and because CorVel and York cannot be held liable for their respective employees' actions.

I. PLAINTIFFS' RICO CLAIMS MUST BE DISMISSED

A. Plaintiffs Have Failed to State a RICO Claim as a Matter of Law

For the reasons stated in the Memorandum of Points and Authorities submitted by defendant York Risk Services Group, Inc. ("York"), Plaintiffs' alleged RICO claims fail as a matter of law. CorVel incorporates by reference the arguments set forth in Section I of York's Memorandum of Points and Authorities.

B. Plaintiffs' RICO Claims are Reverse Preempted by the McCarran-Ferguson Act

To protect state laws that regulate insurance from federal regulation, Congress passed the McCarran-Ferguson Act. The Act provides, in part, that "[t]he business of insurance, and every person engaged therein, shall be subject to the laws of the several States which related to the regulation or taxation of such business." 15 U.S.C. § 1012(a). It also contains the following reverse-preemption provision: "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance." 15 U.S.C. § 1012(b); *see also United States Dept. of Treasury v. Fabe*, 508 U.S. 491, 507 (1993). McCarran-Ferguson is noted to have "transformed the legal landscape by overturning the normal rules of preemption" and replacing them with the principle that federal laws that invalidate, impair or supersede state laws that regulate the business of insurance must yield to state laws, unless the federal statute specifically states otherwise. *Fabe*, 508 U.S. at 507.

A state law is enacted "for the purpose of regulating the business of insurance" if it is "aimed at protecting or regulating the relationship between [insurer and insured], directly or indirectly." *Fabe* at 501. It is immaterial whether the state law "itself constitutes the business of insurance, or directly regulates the business of insurance," provided that it "possess the end, intention, or aim of adjusting, managing, or controlling the business of insurance." *Id.* at 502-504. Finally, three factors must be considered in determining whether a practice constitutes the "business of insurance," none of which are determinative: (1) whether a practice has the effect of transferring or spreading risk; (2) whether the practice is an integral part of the policy relationship between the insurer and the insured; and (3) whether the practice is limited to entities within the insurance industry. *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 129 (1982).

The Workers' Compensation Act is a law that regulates insurance because it transfers the risk of an on-the-job injury from the worker to the employer. Transferring risk is an indispensable characteristic of the business of insurance. *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 127 (1999). California's workers' compensation systems does exactly that: it transfers the risk from the worker to the employer, regardless of fault or negligence. Cal. Labor Code § 3600. Indeed, California courts have repeatedly held that workers' compensation constitutes a social insurance program. *Sunderland v. Lockheed Martin Aero. Sys. Support Co.*, 130 Cal.App.4th 1, 10 (2d Dist. 2005); *Gigax v. Ralston Purina Co.*, 136 Cal.App.3d 591 (4th Dist. 1982); *Blackman v. Great Am. First Sav. Bank*, 233 Cal.App.3d 598, 605 (4th Dist. 1991).

The McCarran-Ferguson Act reverse-preempts RICO to the extent it seeks to create alternative avenues of claims review and additional remedies not found in the WCA. The WCA provides that it is the exclusive remedy not only for work-related injuries, but also for any claims arising out of or related to processing claims for those injuries. *See* Section II.A. The WCA has a specific provision

permitting a claimant to be awarded a statutory penalty if his or her claim is improperly denied or delayed. Cal Labor Code § 5814. Such claims fall within the exclusive jurisdiction of the Workers' Compensation Appeals Board. The California legislature's intent that the workers' compensation system be the exclusive remedy for work-related injuries could not be more clear.

Permitting the Plaintiffs to seek damages under RICO would obliterate the exclusivity of the exclusive remedy provisions of the WCA. Not only would it impair that critical part of the Act, but it would also radically alter the actuarial assumptions made when setting workers' compensation premiums. In other words, permitting Plaintiffs to seek damages under RICO would turn the California Workers' Compensation system on its ear.

II. PLAINTIFFS' COMMON LAW CLAIMS MUST BE DISMISSED

A. The Court Lacks Jurisdiction over Plaintiffs' Second, Third, and Fourth Causes of Action

1. The California Workers' Compensation Act Provides the Exclusive Remedy for All Work-Related Injuries

The WCA is a comprehensive statute that governs how workers are compensated for work-related injuries. *Vacanti v. State Comp. Ins. Fund*, 24 Cal.4th 800, 810 (2001); *Marsh & McLennan, Inc., v. Superior Court*, 49 Cal.3d 1, 5 (1989). The WCA is a "no fault" legislative compromise between injured workers and their employers known as the "compensation bargain." *Vacanti*, 24 Cal.4th at 811. "Pursuant to this presumed bargain, 'the employer assumes liability for industrial personal injury or death without regard to fault in exchange for limitations on the amount of liability. The employee is afforded relatively swift and certain payment of benefits to cure or relieve the effects of industrial injury without having to prove fault but, in exchange, gives up the wider range of damages potentially available in tort.'" *Id.*, quoting *Shoemaker v. Myers*, 52 Ca.3d 1, 16 (1990). To make this bargain work, the California legislature has made the

remedies found in the WCA the exclusive remedies available to an injured worker for claims against his or her employer, the employer's workers' compensation insurer, or the administrator of the employer's self-insured workers' compensation plan. *Vacanti*, 24 Cal.4th at 811; *Marsh & McLennan, Inc.*, 49 Cal.3d at 7-8; Cal. Labor Code §§ 3600(a), 3602(a), 3850(b).

2. The WCA's Exclusive Remedy Provisions Extend to Claims Alleging Tortious Activity in the Claims Process

California courts, including the Supreme Court, have repeatedly held that claims for damages arising out of or related to the workers' compensation claims process fall within the scope of the WCA's exclusive remedy provisions because they are derivative of the underlying workers' compensation claim. *Vacanti*, 24 Cal.4th at 815 (stating that courts have "consistently held that injuries arising out of and in the course of the workers' compensation claims process fall within the scope of the exclusive remedy provisions because this process is tethered to a compensable injury."); *Marsh & McLennan, Inc.,* 49 Cal.3d at 10; *Stoddard v. Western Employers Ins. Co.*, 200 Cal.App.3d 165, 168-69 (1988).

Allegations of intentional, deceitful, and fraudulent claims activity will not remove a claim for damages for mishandling of a workers' compensation claim from the reach of the WCA's exclusive remedy provisions. *Marsh & McLennan, Inc.,* 49 Cal.3d at 8, 10; *Stoddard*, 200 Cal.App.3d at 171-72; *Fremont Indem. Co. v. Superior Court*, 133 Cal.App.3d 879, 880-81 (1982); *Everfield*, 115 Cal.App.3d 15, 18 (1981). In *Everfield*, for example, the plaintiff alleged that its workers' compensation carrier consistently, intentionally, and fraudulently delayed the payment of benefits, arbitrarily reduced the amounts of the payments, and intentionally disregarded a subpoena from the California Workers' Compensation Appeals Board. *Everfield*, 115 Cal.App.3d at 18. The court held that the claims were barred by the WCA's exclusive remedy provisions because the alleged actions did not constitute "outrageous or extreme conduct totally unnecessary to

and far beyond the bounds of normal investigation and defense of a workers' claim." *Id.*

3. The Workers' Compensation Appeals Board has Exclusive Jurisdiction over Claims Related to the Claims Process

The WCAB has exclusive jurisdiction over all claims against an employer or plan administrator arising out of or related to an on-the-job injury. Cal. Labor Code § 5300(a); *Vacanti*, 24 Cal.4th 818. Any claims that fall within this jurisdiction must be dismissed. *Vacanti*, 24 Cal.4th at 815; *Marsh & McLennan, Inc.*, 49 Cal.3d at 10; *Stoddard*, 200 Cal.App.3d at 172.

4. Plaintiffs' Second, Third and Fourth Causes of Action Fall within the Exclusive Jurisdiction of the WCAB

This Court lacks jurisdiction over Plaintiffs' Second, Third, and Fourth Causes of action because they purport to assert claims for damages allegedly incurred as a result of the intentional mishandling of workers' compensation claims. Plaintiffs concede in the FAC that all of their claims are based on the alleged improper denial and delay in the payment of workers' compensation benefits. FAC ¶¶ 2, 5, 7, 10, 18-96, 116-17. The WCAB has exclusive jurisdiction over such claims. Consequently, this Court does not have jurisdiction over Plaintiffs' Second, Third, and Fourth Causes of Action and must dismiss them pursuant to Federal Rule of Civil Procedure 12(b)(1). *See, e.g.*, *Phillips v. Crawford & Co.*, 202 Cal. App. 3d 383, 389, 248 Cal. Rptr. 371 (Ct. App. 1988), *modified* (July 15, 1988) (action for damages against independent claims administrator of a self-insured employer for denial or delay of payment barred by the WCA's exclusive remedy provision to avoid a "'a partial disintegration' of the workers' compensation system by subjecting every delay and difference of opinion to independent third party court actions"); *Schlick v. Comco Mgmt., Inc.*, 196 Cal. App. 3d 974, 980, 242 Cal. Rptr. 241 (Ct. App. 1987) (employee may not bring a civil action against the independent claims administrator of the self-insured City of

Anaheim for its failure to pay benefits because exclusive recourse was the WCAB); *Dennig v. Esis Corp.*, 139 Cal. App. 3d 946, 948, 189 Cal. Rptr. 118 (Ct. App. 1983) (affirming dismissal of claims against self-insured employer and third party administrator stemming from defendants' alleged failure to pay workers' compensation benefits because WCAB was exclusive remedy for relief).

5. Plaintiffs Have Failed to Allege Extreme or Outrageous Conduct

Plaintiffs attempt to shoe horn their state-law claims into the judicially-created and limited exception to the WCAB's exclusive jurisdiction over all claims related to the claims adjudication process by labeling Defendants' conduct as "so extreme and outrageous that it is not within the range of activities expected of an insurance company." FAC, ¶¶ 135, 140. Plaintiffs have, however, failed to allege any facts showing extreme or outrageous conduct and their attempt to evade the exclusive jurisdiction of the WCAB fails as a matter of law.

California courts have created an extremely limited exception to the WCAB's exclusive jurisdiction for cases in which plan administrators who have engaged in conduct so extreme and outrageous that it cannot be considered normal administrator activity. *Vacanti*, 24 Cal.4th at 821-23; *Mitchell v. Scott Wetzel Services, Inc.*, 227 Cal.App.3d 1474, 1479-80 (1991); *Marsh & McLennan, Inc.*, 49 Cal.3d at 6-7. To qualify for this exception, a plaintiff must allege that the administrator engaged in conduct that was in no way related to the claim investigation or benefit payment. *Mitchell*, 227 Cal.App.3d at 1479-80. Such conduct includes causing a claimant to fall in love with an investigator, physical assault, and trespass. *See Unruh v. Truck Ins. Exchange*, 7 Cal.3d 616, 630-31(1972); *Teague v. Home Ins. Co.*, 168 Cal.App.3d 1148, 1153 (1985). It does **not** include intentional delay and improper denial of benefits, the cancelling of previously issued checks, lying to a claimant about benefit payments, committing perjury before the WCAB, or any other conduct that relates back to the

investigation of claims or payment of benefits. *Mitchell*, 227 Cal.App.3d at 1479-80. Finally, in deciding "whether a claim falls within the workers' compensation system, all doubt should be resolved in favor of finding jurisdiction within the workers' compensation system." *Mitchell*, 227 Cal.App.3d at 1480, citing *Fremont Indem. Co. v. Superior Court*, 133 Cal.App.3d, 879, 881 (1982).

Plaintiffs have failed to allege any facts showing that the Defendants engaged in extreme or outrageous conduct that was not related to the investigation of their claims or the payment of benefits. Instead, Plaintiffs simply repeat that the denials and delays were wrongful and were done to save the Stockton and Rialto money. All of these allegations relate back to claims handling and benefit payments. Plaintiffs' Second, Third, and Fourth Causes of Action, therefore, do not fall within the exception to the exclusive jurisdiction of the WCAB.

B. Plaintiffs Second, Third and Fourth Causes of Action Fail to State Actionable Claims Because they are Insufficiently Plead

Plaintiffs' Second, Third, and Fourth Causes of Action must be dismissed for the additional reason that Plaintiffs have failed to allege fraud with particularity, have failed to allege any facts showing that they justifiably relied on any of Defendants' alleged misrepresentations, and have failed to allege any facts showing that Defendants are fiduciaries of Plaintiffs.

1. The Essential Elements of Claims for Fraud and Violations of Section 17200 Based on Fraud

California law dictates the elements of a fraud claim, and federal civil procedure mandates that facts satisfying those elements be plead with particularity. *Alimena v. Vericrest Fin., Inc.*, 964 F.Supp.2d 1200, 1212 (E.D. Cal. 2013). The elements of a fraud claim are: (1) misrepresentation; (2) knowledge of the falsity; (3) intent to defraud (*i.e.*, induce reliance); (4) justifiable reliance; and (5) resulting damages. *Small v. Fritz Companies, Inc.*, 30 Cal.4th 167, 173 (2003); *Lazar v. Superior Court*, 12 Cal.4th 631, 638 (1996). To show justifiable reliance, a

plaintiff must allege that he actually relied on the defendant's misrepresentation and that he was reasonable in doing so. *OCM Principal Opportunities Fund v. CIBC World Markets Corp.*, 157 Cal.App.4th 835, 864 (2007). Finally, "[a]ctual reliance occurs when a misrepresentation is "'an immediate cause of [a plaintiff's] conduct, which alters his legal relations,'" and when, absent such representation, "'he would not, in all reasonable probability, have entered into the contract or other transaction.'" *Engalla v. Permanente Medical Group, Inc.*, 15 Cal.4th 951, 976 (1997), citing *Spings v. Clark*, 147 Cal. 439, 444 (1905).

Section 17200, California's unfair competition law ("UCL"), prohibits "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200. In order to assert a claim under Section 17200, a person must have "suffered injury in fact and . . . lost money or property ***as a result of*** such unfair competition." Cal. Bus. & Prof. Code § 17204 (emphasis added). The California Supreme Court has held that the phrase "as a result of" in Section 17204 imposes an actual reliance requirement on plaintiffs prosecuting a private enforcement action under Section 17200's fraud and unlawful prongs. *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 326 n. 9 (2011); *Hale v. Sharp Healthcare*, 183 Cal.App.4th 1373, 1385 (2010); *In re Tobacco II Cases*, 46 Cal.4th 298, 326 (2009).

2. Plaintiffs Have Failed to Plead Fraud with Particularity

For the reasons explained in Section I.G.1 of York's brief, Plaintiffs have failed to allege fraud with particularity.

3. Plaintiffs Cannot Plead Facts Showing Reasonable Reliance

Nowhere in their FAC do Plaintiffs allege any facts showing that they (1) actually relied on Defendants' alleged misrepresentations and (2) that their reliance was reasonable. Instead, Plaintiffs simply regurgitate the same allegation for each plaintiff: "[Plaintiff] relied on the fraudulent communication because he suffered financial loss including attorney's fees, medical care, and medical mileage." FAC

¶¶ 26, 34, 38, 45, 49, 60, 68, 72, 76, 80, 84, 90, 96. Not only is this allegation logically flawed in that it assumes that every person who incurs expenses must have relied on a misrepresentation, it also fails to satisfy the element of reasonable reliance because it does not state that Plaintiffs believed the misrepresentations and then took some sort of action to their detriment based on that mistaken belief. Likewise, the allegation fails to assert any facts showing that a reasonable person would have been similarly fooled and taken the same actions. Instead, Plaintiffs' allegations conflate the "actual reliance" element with "resulting damages," and then try to pass them off as facts supporting a finding of actual reliance. As the Supreme Court has instructed, "[A] pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937 1949 (2009), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 550 (2007). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.*, quoting *Twombly*, 550 U.S. at 557. For these reasons, Plaintiffs have failed to allege any facts that would satisfy the reasonable reliance elements of their Second, Third and Fourth Causes of Action.

Where Plaintiffs' allegations do succeed is in illustrating that none of the Plaintiffs actually believed any of the alleged misrepresentations or took any action based on those erroneous beliefs. In the FAC, each Plaintiff alleges that he or she suffered a physical injury, sought and received medical care and a diagnosis, and *only then* submitted their claims for workers' compensation benefits. FAC ¶¶ 19, 22, 28-30, 35, 39, 41, 46, 51, 54-56, 61, 65, 69, 73, 77, 81, 85, 91. Plaintiffs also allege that it was *after* they received medical care that Defendants denied their claims for benefits. FAC ¶¶ 21, 23, 32, 36, 41, 47, 52, 53, 56, 62, 66, 70, 74, 78, 82, 86, 92. Indeed, Plaintiffs assert that the Defendants' denials of their claims were fraudulent, in part, because they ignored the Plaintiffs' treating physicians instructions, indicating that they were already receiving treatment for their injuries.

Id. They also allege that they knew Defendants' claims decisions were erroneous, as demonstrated by the fact that they pursued appeals. FAC ¶¶ 150, 151; *see also* York MPA, §§ I.D, I.H. Consequently, Plaintiffs cannot amend the FAC to allege reasonable reliance without contradicting the allegations they have already made. The Court should, therefore, dismiss Plaintiffs' Second, Third, and Fourth Causes of Action with prejudice.

4. Plaintiffs' Second Cause of Action Fails

Plaintiffs Second Cause of Action seeking to assert a claim for "constructive fraud" fails to state an actionable claim because independent adjusters are not, as a matter of law, fiduciaries. To state a claim for constructive fraud, a plaintiff must allege it had a a fiduciary relationship with the defendant. *Sacramento E.D.M., Inc. v. Hynes Aviation Indus., Inc.*, 965 F.Supp.2d 1141, 1152 (E.D. Cal. 2013). Adjusters who adjust insurance claims are not fiduciaries of the insureds. *Thompson v. Cannon*, 224 Cal.App.3d 1413, 1418 (1990); *Cobarrubias v. Allstate Ins. Co.*, 1998 WL 656571, at *1 (C.D. Cal. July 10, 1998) ("an insurance adjuster does not owe a duty of care to the insured); *Homestead Ins. Co. v. Cornish & Carey Residential, Inc.*, No. C-92-20369-JW, 1995 WL 748018, at *5 (N.D. Cal. Dec. 11, 1995) (granting summary judgment for independent claims adjuster because it did not owe a "fiduciary or quasi-fiduciary" duty to the insureds). Because none of the Defendants were fiduciaries of Plaintiffs, Plaintiffs' Second Case of Action fails as a matter of law.

5. Plaintiffs' Fourth Cause of Action Fails for the Additional Reason that Plaintiffs are Seeking Damages

Damages are not available as a remedy under Section 17200. *Bank of the West v. Superior Court*, 2 Cal.4th 1254, 1266 (1992); *National Rural Telecomm. Coop. v. DirectTV, Inc.*, 319 F.Supp.2d 1059, 1078 (C.D. Cal. 2003). Instead, Plaintiffs may only be awarded restitution and injunctive relief. *Inline, Inc v. A.V.L. Holding Co.*, 125 Cal.App.4th 895, 903 (2005).

Plaintiffs' FAC reveals that Plaintiffs are seeking damages and not restitution because they have alleged Rialto and Stockton are self-insured and are responsible for paying claims with their own funds. FAC ¶¶ 3-4, 8-9, 14-15. Plaintiffs have also failed to allege that any of the Defendants wrongfully took anything from them. Consequently, Plaintiffs have admitted that, to the extent any benefit claim remains unpaid, it is the Cities, and not Defendants, that are in possession of the funds. *See Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 1148-49 (2003). Hence, Plaintiffs' Fourth Cause of Action must be dismissed because Plaintiffs are seeking relief that is not available under Section 17200.

III. PLAINTIFFS' SECTION 1983 CLAIMS MUST BE DISMISSED

A. Plaintiffs' Purported Section 1983 Claims that Accrued on or Before December 19, 2012 are Time Barred

1. Plaintiffs' Claims Under 42 U.S.C. § 1983 are Subject to a Two Year Limitations Period that Began to Run When Plaintiffs' Individual Requests for Benefits Were Denied

Claims brought under Section 1983 are subject to a two-year limitations period. *Pouncil v. Tilton*, 704 F.3d 568, 573 (9th Cir. 2012); *Lukovsky v. San Francisco*, 535 F.3d 1044, 1048 (9th Cir. 2008); *Canatella v. Van De Kamp*, 486 F.3d 1128, 1132 (9th Cir. 2007).

Federal law dictates when a claim accrues and, hence, when the limitations period begins to run. *Pouncil*, 704 F.3d at 573; *Lukovsky*, 535 F.3d at 1048; *Canatella*, 486 F.3d at 1133. A plaintiff's claim accrues when the plaintiff knows or has reason to know of the injury that serves as the basis for the plaintiff's cause of action. *Pouncil*, 704 F.3d at 573, citing *Wallace*, 549 U.S. 384, 388 (2007), and *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758, 760 (9th Cir. 1991).

In cases alleging multiple wrongful acts, the Supreme Court and Ninth Circuit have both instructed that each discrete act is subject to its own limitations period. *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002);

Pouncil, 704 F.3d at 578-79. They have also made it clear that an unconstitutional act that is time-barred because it occurred outside of the applicable limitations period is not somehow revived by the defendant engaging in related conduct within the limitations period. *Morgan*, 536 U.S. 101, 113 (2002); *Pouncil*, 704 F.3d at 578-79. In such an instance, the conduct occurring within the limitations period is actionable, but the stale claim is not. *Morgan*, 536 U.S. 101, 113 (2002); *Pouncil*, 704 F.3d at 578-79.

The Ninth Circuit has also made it clear that the time interval (*i.e.*, delay) between when a benefit is unconstitutionally denied or withheld and when it is eventually awarded does not have its own limitations period because it is not separately actionable. *Pouncil*, 704 F.3d at 580-81; *Ngo v. Woodford*, 539 F.3d 1108, 1109-10 (9th Cir. 2008); *Knox v. Davis*, 260 F.3d 1009, 1014 (9th Cir. 2001). In such cases, the limitations period begins to run when the benefit is denied, and any continuing effects following the denial are "nothing more than the delayed, but inevitable, consequence of the [initial determination]." *Ngo*, 539 F.3d at 1109, quoting *Knox*, 260 F.3d at 1014. In other words, the Ninth Circuit has rejected the notion that a delay constitutes a continuing violation that keeps the limitations period from running.

Finally, while federal law controls when a cause of action accrues and the limitations period begins to run, the Court may borrow and apply California's tolling rules in this case. *Tworivers v. Lewis*, 174 F.3d 987, 992 (9th Cir. 1999). California provides that a limitations period may be tolled if the defendant "fraudulently concealed" the existence of a cause of action "in such a way that the plaintiff, acting as a reasonable person, did not know of its existence." *Hexcel Corp. v. Ineos Polymers, Inc.*, 681 F.3d 1055, 1060 (9th Cir. 2012), citing *Hennegan v. Pacifico Creative Serv., Inc.*, 787 F.2d 1299, 1302 (9th Cir. 1986). To take advantage of this doctrine, the plaintiff must plead and prove facts showing that the defendant affirmatively mislead him or her and that he or she had neither

actual not constructive knowledge of the facts giving rise to the dispute. Critically, the plaintiff must "point to some fraudulent concealment, some active conduct by the defendant '*above and beyond* the wrongdoing upon which the plaintiff's claim is filed.'" *Coppinger-Martin v. Solis*, 627 F.3d 745, 751 (9th Cir. 2010), quoting *Lukovsky*, 535 F.3d at 1052. In other words, a plaintiff cannot invoke the fraudulent concealment doctrine by relying on factual allegations that also form the basis of his causes of action. *Coppinger-Martin*, 627 F.3d at 751; *Lukovsky*, 535 F.3d at 1052.

2. Plaintiffs' Allegations Show that Their Individual Section 1983 Claims are Untimely

a. Russell Thurman

Each of Mr. Thurman's individual Section 1983 claims are time-barred because all of the alleged wrongdoing occurred more than two years before this action was filed on December 19, 2014. To be timely under the two-year limitations period applicable to Section 1983 claims, a cause of action must have accrued on or *after* December 19, 2012. In the FAC, Mr. Thurman has alleged that York improperly denied his claim on November 5, 2009, and the CorVel denied is claim on November 1, 2011. FAC, ¶¶ 19-21, 23, 25-26. As discussed in Section I of York's brief, York and CorVel are not the same company. He does not allege that CorVel engaged in any unconstitutional conduct after December 19, 2012.

Mr. Thurman's alleged Section 1983 claims accrued on the dates he received the communications denying his claims because it was on those dates that Mr. Thurman knew of CorVel's alleged wrongdoing. A federal claim accrues when the plaintiff knows or has reason to know of the injury that serves as the basis for his cause of action. *Pouncil*, 704 F.3d at 573. Mr. Thurman alleged in the FAC that by the date he received notice of the denials, he had actual knowledge that he had been injured at work, needed and sought treatment for his injuries, his treating physician concluded his injuries were work related, his claims were "clearly

compensable," that his claims were denied despite all of the information that was submitted allegedly proving his entitlement to benefits, and that he was damaged by the improper denials. FAC ¶¶ 21, 23, 26. Because Mr. Thurman knew that his claims were clearly compensable when he submitted them, he knew as soon as he received the denial communications that the denials were improper. Accordingly, his claims based on the improper denials accrued, and the limitations periods began to run, as soon as he received those communications. Because Mr. Thurman received all of the denial communications more than two years before this action was filed, his alleged Section 1983 claims are time-barred.

b. Boyd Mayo

Like Mr. Thurman, each of Mr. Mayo's alleged Section 1983 claims are time-barred because all of the alleged wrongdoing occurred more than two years before this action. To be timely under the two-year limitations period applicable to Section 1983 claims, a cause of action must have accrued on or *after* December 19, 2012. In the FAC, Mr. Mayo has alleged that his workers' compensation claims were improperly denied on October 11, November 12, and December 6, 2012, and that he was damaged by these denials. FAC ¶ 32, 34. He has failed to allege that CorVel engaged in any unconstitutional conduct on or after December 19, 2012.

Mr. Mayo's alleged Section 1983 claims accrued, at the very latest, on December 10, 2012, when he received the denial communication. As discussed above, a federal claim accrues when the plaintiff knows or has reason to know of the injury that serves as the basis for his cause of action. *Pouncil*, 704 F.3d at 573. Mr. Mayo alleged in the FAC that by the date he received notice of the denials, he had actual knowledge that he had been injured at work, needed and sought treatment for his injuries, his treating physician put him on leave so he could recover, his claims were "clearly compensable," and that his claims were denied despite all of the information that was submitted allegedly proving his entitlement to benefits. FAC ¶ 28-32. Because Mr. Mayo knew that his claims were clearly

compensable when he submitted them, he knew as soon as he received the denial communications that the denials were improper. Accordingly, his claims based on the improper denials accrued, and the limitations periods began to run, as soon as he received those communications. Because Mr. Mayo received all of the denial communications more than two years before this action was filed, his alleged Section 1983 claims are time-barred.

c. Vernel Ross-Mullin

Ms. Ross-Mullin is asserting a single claim under Section 1983 for the wrongful denial of her request for workers' compensation benefits to cover her March 2010 cardiac injury. FAC ¶ 35-36. Mr. Ross-Mullin does not allege when her request for benefits was originally denied, but she does allege that "over a year" after the denial, Stockton and CorVel filed a Stipulation on August 16, 2011 covering Mr. Ross-Mullin's injury and agreeing to pay "any reasonable unpaid medical-legal expenses, with jurisdiction reserved." FAC ¶ 37. Because Ms. Ross-Mullin alleged that the denial occurred "over a year" before the August 2011 Stipulation was filed, the denial occurred sometime around July or August 2010.

Ms. Ross-Mullin's Section 1983 claim accrued sometime in 2010 when her claim was originally denied. At the time of the denial, she alleges that she knew that she had been diagnosed with coronary artery disease, that her treating physician confirmed that the injury was work-related, that she submitted all of the information to "Stockton and Defendants" establishing her right to workers' compensation benefits, and that York denied "medical treatment and payments for [her] on the job injuries" despite the evidence. FAC ¶¶ 35-36. She also alleges that the denial damaged her both physically and economically because it deprived her of needed benefits and medical care. FAC ¶ 38. Because Ms. Ross-Mullin had actual knowledge of the facts on which she is now basing her Section 1983 claim by sometime in 2010, her claim under Section 1983 accrued at that time. *Pouncil*, 704 F.3d at 573. And because she did not file this lawsuit until more than four

years after her claim accrued, her claim is time-barred.

d. Dustin Fujiwara

Each of Mr. Fujiwara's alleged Section 1983 claims are barred by the two-year statute of limitations because he has not alleged that CorVel engaged in any actionable conduct on or after December 19, 2012. In the FAC, Mr. Fujiwara has alleged that CorVel issued a denial dated March 24, 2011 denying pre-authorization for back surgery. FAC ¶ 41. He also alleged that CorVel sent him letters on September 2, 2011 and June 7, 2012 improperly delaying the payment of his benefits and that he was damaged by these actions. FAC ¶¶ 43, 44.

Mr. Fujiwara's alleged Section 1983 claims accrued, at the very latest, by June 7, 2012. By that day, he had actual knowledge that CorVel was improperly withholding benefits to which he was entitled. FAC ¶¶ 41-45. Because his current claims are based on conduct that he knew about more than two years before this action was filed, his purported Section 1983 claims are untimely and must be dismissed.

e. Victor Gregory

Mr. Gregory's Section 1983 claim based on the 2011 denial of workers' compensation benefits for his torn ACL is time-barred because the claim accrued more than two years before he brought this lawsuit. In the FAC, Mr. Gregory alleges that CorVel denied his claim for "medical treatment and payments for his on the job injuries" sometime in 2011. FAC ¶ 47. He also alleged that he incurred both physical and economic damages as a result of the denial. FAC ¶¶ 48, 49. Because Mr. Gregory knew all of the facts on which he is now basing his Section 1983 claim by sometime in 2011, his claim accrued that year and the two-year limitations period began to run at that time. Mr. Gregory's claim is time-barred because he did not file this lawsuit until more than two years after his claim accrued.

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f. Timothy Brayshaw

Mr. Brayshaw's Section 1983 claim based on the August 21, 2012 denial of his claim for workers' compensation benefits is barred by the applicable statute of limitations. On that date, Mr. Brayshaw had actual knowledge that he had suffered several work-related medical issues, including a neck injury, that he needed and received treatment for the issues, that his treating physicians concluded that his issues were work-related, and that CorVel denied the claim. FAC ¶¶ 55-58. He also knew that he was damaged by the denial because he was denied "medical treatment and payments for his on the job injuries," resulting in both physical and economic damages. FAC ¶¶ 55-58. Accordingly, his claim based on these facts accrued on August 21, 2012. Because this lawsuit was not filed until more than 2 years after August 21, 2012, Mr. Brayshaw's claims based on that denial are time-barred.

g. Joseph Viola

Mr. Viola's Section 1983 claim accrued sometime in the Spring of 2011 when his claim was originally denied. At the time of the denial, Mr. Viola alleges that he knew that he suffered a series of work-related injuries to his lower back, that his treating physician confirmed that he had suffered such injuries, and that he had submitted sufficient evidence to CorVel to establish his right to receive workers' compensation benefits. FAC ¶¶ 61, 62. He also alleges that he knew the denial was wrong and that he was damaged both physically and economically by the denial because it deprived him of "medical treatment and payments for his on-the-job injuries." FAC ¶ 62. Because Mr. Viola had actual knowledge of the facts on which he is now basing his Section 1983 claim by sometime in 2011, his claim under Section 1983 accrued at that time. *Pouncil*, 704 F.3d at 573. And because he did not file this lawsuit until after the applicable 2-year limitations period had expired, his claim is time-barred.

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h. Jacob Huber

Mr. Huber's Section 1983 claim accrued sometime in 2010 when his claim was originally denied. At the time of the denial, he alleges that he knew that he had injured his right shoulder, that he sought and received treatment for the injury, and that CorVel and York denied the claim despite the fact that Mr. Huber's treating physician opined that he needed the treatment. FAC ¶ 66. At the time of the denial, Mr. Huber not only knew that it was incorrect, but also that he had been damaged by the denial of "medical treatment and payments for his on the job injuries." *Id.* Because Mr. Huber had actual knowledge of the facts on which he is now basing her Section 1983 claim by sometime in 2010, his claim under Section 1983 accrued at that time. *Pouncil*, 704 F.3d at 573. And because he did not file this lawsuit until more than four years after her claim accrued, her claim is time-barred.

i. Carla McCullough

Ms. McCullough's allegations as to when CorVel denied her workers' compensation claim are vague because she alleges that CorVel denied multiple claims between 2010 and 2013. FAC ¶ 70. Any Section 1983 claim that Ms. McCullough tries to assert based on denials issued between 2010 and December 19, 2012 would be time-barred because the claim would have accrued more than two years before this lawsuit was filed.

j. John Black

In the First Amended Complaint, Mr. Black alleges that he injured his back while working in 2008. FAC ¶ 73. He alleges that the City of Rialto originally accepted his claim, but that CorVel and York sent him denial letters in 2011 and 2012. FAC ¶ 74. The denial letters were, however, sent before May 12, 2012, because it was on that date that the parties filed a stipulation regarding coverage for Mr. Black's injury. FAC ¶ 75. Accordingly, Mr. Black's Section 1983 claim based on the denials accrued sometime before May 12, 2012.

Mr. Black's Section 1983 claim accrued when he received the denial of his claim for workers' compensation benefits. At the time of the denial, Mr. Black not only knew that he had suffered a work-related back injury for which he sought and received care, but also that the decision to deny his claim was incorrect based on the information that he had submitted in support of his claim. FAC ¶¶ 73-74. He also knew that he had been economically injured by the withholding of benefits that he was previously being paid. FAC ¶ 76. Because Mr. Black had actual knowledge sometime before May 12, 2012 of the facts on which he is basing his Section 1983, his claim accrued before May 12, 2012. *Pouncil*, 704 F.3d at 573. Because this lawsuit was filed more than two years after May 12, 2012, Mr. Black's Section 1983 claim is time-barred.

k. Justin Veloz

Mr. Veloz's Section 1983 claim accrued sometime in 2011 when his workers' compensation claim was originally denied. At the time of the denial, Mr. Veloz knew that he had injured his shoulder and suffered a hernia in the line of duty, that he sought and received treatment for these injuries, that his treating physicians confirmed that treatment was necessary, and that CorVel denied the claim despite the fact that it was supported by Mr. Veloz's treating physicians. FAC ¶ 77, 78. Mr. Veloz also knew that he had been physically and economically injured by the denial of his claim because it meant that he was not going to be receiving medical treatment or payments for his on the job injuries. FAC ¶ 78. These facts are the very same facts on which Mr. Veloz bases his Section 1983 claim. Because Mr. Veloz knew these facts sometime in 2011, his claim under Section 1983 accrued in 2011 and the 2-year limitations period began to run. *Pouncil*, 704 F.3d at 573. Mr. Veloz did not, however, bring that lawsuit until December 19, 2014, which was more than 2 years after his claim accrued. Consequently, his Section 1983 claim is untimely.

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l. Thomas Stephenson

Mr. Stephenson's claim under Section 1983 for the wrongful denial of preauthorization for his shoulder surgery accrued sometime before December 10, 2012. FAC ¶¶ 81-83. Mr. Stephenson does not allege in the First Amended Complaint the date on which CorVel denied his request for pre-authorization, but he does allege that the surgery was later approved and that he had the surgery on December 10, 2012. FAC ¶ 83. Logically, the denial must have been sent sometime before December 10, 2012.

Mr. Stephenson's Section 1983 claim accrued on the date he received the denial from CorVel of his request for pre-authorization of shoulder surgery. At the time he received the denial letter, Mr. Stephenson knew that he had injured himself at work, that he sought and received treatment for the injury, that his treating physicians were instructing him that surgery was needed, and that CorVel denied the request despite all of the information he submitted in support of his claim. FAC ¶¶ 81-82. He also knew that he had been injured because he had been denied a medical treatment his doctors informed him that he needed. FAC ¶ 82. Mr. Stephenson, therefore, had actual knowledge of all of the facts on which he is now basing his Section 1983 claim by the date of the denial, which was sometime before December 10, 2012, and that is the date his claim accrued and the limitations period began to run. Because Mr. Stephenson did not file this lawsuit until more than two years after the accrual date, his Section 1983 claim is untimely.

m. Brian Park

Mr. Park's allegations are vague as to when CorVel allegedly denied his claims for workers' compensation benefits. However, any Section 1983 claim that Mr. Park tries to assert based on denials issued between 2010 and December 19, 2012 would be time-barred because the claim would have accrued more than two years before this lawsuit was filed.

3. Plaintiffs Have Failed to Allege Defendants Fraudulently Concealed Anything

The Plaintiffs have failed to allege any facts showing that Defendants took affirmative steps to conceal their actions or that they somehow mislead Plaintiffs away from discovering what they had done. Because the Plaintiffs base their fraudulent concealment theory on the very same facts that they use to support their underlying claims for violation of Section 1983, their fraudulent concealment arguments fail as a matter of law. *Hexcel Corp.*, 681 F.3d at 1060; *Coppinger-Martin*, 627 F.3d at 751.

B. Plaintiffs Lack a Constitutionally Protected Property Interest

Even if their claims were somehow timely, Plaintiffs' Section 1983 claims would still fail because "[t]he first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in 'property' or 'liberty.'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999). Only after the court has found that the plaintiff has been deprived of a protected interest does the court consider whether the procedures the state afforded to the plaintiff complied with due process. *Id.* The complaint does not establish the existence of such a property interest.

The Supreme Court has held that workers' compensation claimants do not have a constitutionally protected property interest in the payment of their benefits until they have demonstrated their entitlement to those benefits under state law. *Id.* at 61. In *American Manufacturers*, the claimants alleged that the defendants had withheld payment of medical benefits without notice and an opportunity to be heard, allegedly depriving them of property without due process. *Id.* at 48. Under the Pennsylvania statute, an employer facing a claim for workers' compensation benefits could undertake a "utilization review" under which the "reasonableness and necessity of an employee's past, ongoing, or prospective medical treatment could be reviewed before a medical bill must be paid." *Id.* at 45. Pennsylvania

law also mandated that "disputes over the reasonableness and necessity of particular treatment must be resolved *before* an employer's obligation to pay – and an employee's entitlement to benefits – arise." *Id.* at 60 (emphasis in the original). The Supreme Court held that because the plaintiffs had not proven their entitlement to receive workers' compensation benefits, they did not have a property interest in the payment of their benefits, and thus their due process argument failed. *Id.* at 60-61.

American Manufacturers requires dismissal of Plaintiffs' Section 1983 claims here because these Plaintiffs similarly have not established a property interest in the payment of their benefits. While Plaintiffs appear to hang their hat on the argument that their claims were compensable under California law based on statutory presumptions of coverage for certain classes of injured workers (¶¶ 5(c), 10(d)), these presumptions are ***rebuttable***. *See* Cal. Labor Code §§ 3212.1, 3212, 3213.2. A rebuttable presumption can be refuted; California's Labor Code authorized Defendants on behalf of Stockton and Rialto to controvert these presumptions. *See id.* These presumptions do not create automatic liability for injuries. *See, e.g., Jackson v. Workers' Comp. Appeals Bd.*, 133 Cal. App. 4th 965, 971 (2005); *Reeves v. W.C.A.B.*, 80 Cal. App. 4th 22, 30 (2000); *see also Sameyah v. Los Angeles Cnty. Employees Ret. Ass'n*, 190 Cal. App. 4th 199, 214-15 (2010). Thus, as in *American Manufacturers*, Plaintiffs did not have a property interest in workers' compensation benefits because their entitlement to such benefits had not been finally determined. *See Am. Mfrs*, 526 U.S. at 60-61.

Plaintiffs cannot cite to a single case holding that under California law, they have property interests in workers' compensation benefits before their entitlement to those benefits is finally determined.

Because plaintiffs have failed to plead facts demonstrating that they had a property interest in workers' compensation benefits at the time of the alleged due process violation, dismissal is warranted. *See Sherwin v. Piner*, 2003 WL

24051574, at *4 (E.D.N.C. July 22, 2003), *aff'd*, 91 F. App'x 312 (4th Cir. 2004); *Justice v. Pope*, 2007 WL 3028389, at *2 (E.D.N.C. Oct. 15, 2007), *aff'd*, 264 F. App'x 277 (4th Cir. 2008); *Sullivan Downs v. Liberty Life Assurance Co. of Boston*, 2005 WL 2455193, at *8 (N.D. Tex. Oct. 5, 2005).

C. Plaintiffs Do Not Allege a Deprivation of Due Process

Even if Plaintiffs had a constitutionally protected property interest in workers' compensation benefits, they still have not alleged a due process violation. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotation marks omitted); *see also Barnes v. Healey*, 980 F.2d 572, 579 (9th Cir. 1992). Here, Plaintiffs do not allege that they failed to receive notice regarding their benefits claims or an opportunity to be heard. Rather, they vaguely complain that the "defendants" (as an undifferentiated group) denied benefits claims without a reasonable basis and compelled them to litigate their claims, including by attending medical examinations and hearings. FAC ¶¶ 150-151.

These allegations do not amount to a due process violation because the complaint expressly alleges that the Plaintiffs were given notice of the claim determinations and the opportunity to contest them (FAC ¶¶ 150-151) – which is precisely what due process requires. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Pinnacle Armor, Inc. v. United States*, 648 F.3d 708, 716-18 (9th Cir. 2011); *Johnson v. Cnty. of Los Angeles,* 2015 WL 179773, at *5 (C.D. Cal. Jan. 14, 2015); *McGowan v. Washington*, 2008 WL 4148886, at *4 (E.D. Wash. Aug. 29, 2008), *aff'd*, 362 F. App'x 883 (9th Cir. 2010).

D. York and CorVel are Not Liable for Employees' Actions

Plaintiffs' Sixth Cause of Action fails because Defendants cannot be held liable for the actions of their employees under the doctrine of *respondeat superior*. *See Connick v. Thompson*, 131 S. Ct. 1350, 1359 (2011); *see also Board of*

Comm'rs of Bryan Cty. v. Brown, 520 U.S. 397, 403 (1997). Plaintiffs who seek to impose liability on entities under Section 1983 "must prove that 'action pursuant to official ... policy' caused their injury." *Connick*, 131 S. Ct. at 1359 (quoting *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 691 (1978)); *see also Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1139 (9th Cir. 2012) (private entities are only liable for violations of Section 1983 if an official policy or custom of the entity caused the violation); *Butler v. Riverside County*, 2015 WL 1823353, at *5 (C.D. Cal. Apr. 22, 2015) (under Section 1983, court will assess actions of a private entity under the same standard as a municipality).

Plaintiffs have failed to plead facts giving rise to any inference (let alone a plausible one) that York and CorVel had official policies or customs that resulted in Plaintiffs' alleged due process violations. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, their Section 1983 claims fail because Plaintiffs must plead facts showing that York or CorVel had an official policy that was "***so persistent and widespread as to practically have the force of law***." *Connick*, 131 S. Ct. at 1359; *see also Nelson v. City of Los Angeles*, 2015 WL 1931714, at *17 (C.D. Cal. Apr. 28, 2015); *Mong Kim Tran v. Garden Grove*, 2011 WL 5554370, at *5 (C.D. Cal. Nov. 14, 2011); *Canas v. Sunnyvale*, 2011 WL 1743910, at *6 (N.D. Cal. Jan. 19, 2011).

CONCLUSION

The First Amended Complaint should be dismissed with prejudice.

Date: June 22, 2015

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

By: /S/ Gary S. Pancer
GARY SCOTT PANCER
DONALD P. SULLIVAN
AMIR D. BENACOTE

SERVICE via CM/ECF

John Black, et al. v. CorVel Enterprises Inc., et al.
USDC, Central District, Eastern Division, Case No. 5:14-cv-02588-JGB-KK
WEMED File No. 15355.00010

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 555 South Flower Street, Suite 2900, Los Angeles, California 90071

On June 22, 2015, I served the within document(s) described as: **NOTICE OF MOTION AND MOTION BY DEFENDANTS CORVEL ENTERPRISE COMP, INC. and MEXTLI HYDE TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SAME**

BY ELECTRONIC FILING/SERVICE: I provided the document(s) listed above to be electronically served on the interested parties on the Service List maintained by the Court's CM/ECF for this case. If the document is provided to CM/ECF electronically by 5:00 p.m., then the document(s) will be deemed served on the date that it was provided to CM/ECF. A copy of the "Notice of Electronic Filing" page will be maintained with the original document(s) in our office.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 22, 2015, at Los Angeles, California.

Colleen Uno