IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Emmanuel Dunagan, Jessica Muscari, Robert J. Infusino, and Stephanie Porreca, on behalf of themselves and a class of similarly situated persons,

Plaintiffs,

v.

Illinois Institute of Art-Chicago, LLC, an Illinois limited liability company; Illinois Institute of Art-Schaumburg, LLC, an Illinois limited liability company; Dream Center Foundation, a California non-profit corporation; Dream Center Educational Holdings, a Pennsylvania limited liability company; and John Does 1-10, in their individual capacity

Defendants.

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Case No. 19-cv-809

Judge: Hon. Charles Norgle

DEFENDANT DREAM CENTER FOUNDATION'S MOTION TO DISMISS PLAINTIFFS' AMENDED CLASS ACTION COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)

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Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Dream Center Foundation (the "Foundation") by and through its undersigned counsel, hereby moves this Court for an order dismissing all claims contained in Plaintiffs' Amended Class Action Complaint against the Foundation in their entirety, with prejudice. In support of this Motion, the Foundation states as follows:

INTRODUCTION

The Plaintiffs, who are or were all students at the Illinois Institute of Art ("IIA") schools in Chicago ("IIA-Chicago") and Schaumburg ("IIA-Schaumburg," collectively, the "IIA Schools"), believe that certain employees of the two IIA Schools, and of Dream Center Education Holdings, LLC ("DCEH"), made statements concerning the accreditation status of IIA-Chicago and IIA-Schaumburg that were not accurate, and that these Defendants failed to inform students of the Schools' actual accreditation status. Plaintiffs allege that these actions amounted to misrepresentations and material omissions and bring claims under the Illinois Consumer Fraud and Deceptive Practices Act ("ICFA"), 815 ILCS 505/2, as well as common law claims for negligent misrepresentation and fraudulent concealment. Plaintiffs purport to bring their claims on behalf of a class.

In addition to suing the IIA, the IIA Schools and DCEH, however, Plaintiffs also named as a defendant the Dream Center Foundation, a faith-based charitable organization headquartered in Los Angeles, California that is a "member" of DCEH.[1] The Foundation moved to dismiss Plaintiffs' original Complaint on the grounds that it failed to allege that the Foundation made **any**

[1] DCEH, in turn, is a member of a limited liability company called Arts Institutes International, LLC. The Art Institutes International, in turn, is the sole member of IIA. The IIA is the member of, and/or does business as, the higher educational institutions IIA-Schaumburg and IIA-Chicago. The Foundation never "managed" the Schools—instead, the Schools are managed by an independent board of directors.

statements to Plaintiffs—misleading or otherwise—concerning the IIA School's accreditation status. Relatedly, the Foundation moved to dismiss on the grounds that it made no statements to students that omitted any pertinent information, and that it did not have a duty to disclose the accreditation status of IIA-Chicago and IIA-Schaumburg to the Plaintiffs. (*See* dkt. 24.) Simply put, Plaintiffs wholly failed to allege any wrongdoing by the Foundation.

In the face of this motion, the Plaintiffs chose to amend their Complaint. Plaintiffs' Amended Complaint contains the same fundamental flaws that doomed their original Complaint—namely, it fails to allege that the Foundation made ***any*** misrepresentations concerning the School's accreditation status, or omitted ***any*** material information from the Plaintiffs despite a duty to disclose. Unfortunately, Plaintiffs persist in pursuing claims against the Foundation even though they cannot allege that the Foundation did anything wrong.

Because Plaintiffs cannot state a claim against the Foundation directly, Plaintiffs seemingly attempt to plead that the Foundation should be liable for the alleged actions of the co-Defendants because of "interrelatedness" between the Foundation and the co-Defendants. Plaintiffs' allegations, however, do not meet the heavy burden that must be shown to ignore corporate formalities and impute liability on a separate corporation for the actions of its subsidiaries. Instead, Plaintiffs' allegations show nothing more than an ordinary parent-subsidiary relationship. And, ironically, the additional allegations and documentation included in Plaintiffs' Amended Complaint conclusively establish the **corporate separateness** of the Foundation to the IIA Schools. Specifically, Plaintiffs' Amended Complaint, and the documents attached thereto, demonstrates that:

- The schools would be governed by an independent board of directors (*See* Structural Change Site Visit Report,[2] attached to the Amended Complaint as Exhibit 2, at 4, 19-20);

[2] Plaintiffs include and cites to this Report in an attempt to frame the relationship between the Foundation and the co-Defendants in this case, even though this Report pertains to another school—Argosy

- The schools' operations would be managed by DCEH and its independent leadership, not the Foundation (Ex. 2 at 5);
- Personnel and management decisions would remain with the schools (Ex. 2 at 20);
- System-wide support services for the schools would be managed by Dream Center Education Systems, LLC, not the Foundation (Ex. 2 at 14); and
- The "key leadership team and institutional capabilities [of the schools] would remain the same, including its financial operations" post-acquisition (Ex. 2 at 17).

For these reasons, and those that follow, the Foundation respectfully requests that this Court dismiss all the counts against it in their entirety. The Foundation should not be forced to expend resources to defend this class action lawsuit where Plaintiffs fail to allege any wrongdoing by the Foundation, and fail to provide any basis to impute liability onto the Foundation. Because this is Plaintiffs' second attempt to state a claim against the Foundation, this dismissal should be with prejudice.

FACTS ALLEGED IN THE COMPLAINT

The allegations in Plaintiffs' Amended Complaint, taken as true for this Rule 12(b)(6) motion, are as follows:

I. The Parties And Corporate Structure Of The Defendants

Plaintiffs were (or still are) students at the Illinois Institute of Arts ("IIA") schools. (Amended Complaint ("Compl.") ¶¶ 213, 223, 232, 244.) Plaintiffs Dunagan and Muscari enrolled at IIA-Chicago, and Plaintiffs Infusino and Porreca enrolled at IIA-Schaumburg. (*Id.*; *see also* ¶¶ 18-21.)

The Foundation is a California non-profit corporation. (Compl. ¶ 26.) Plaintiffs allege

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University. However, Plaintiffs cannot pick-and-choose the portions of the Report it wishes to use to support their Amended Complaint, then disregard everything else, including the portions that undermine their allegations that the Foundation and the IIA Schools were "interrelated."

that on March 3, 2017, the Foundation entered into a preliminary agreement with a seller, Education Management Corporation, to purchase the Illinois Institute of Art schools. (*Id.* ¶ 37.)[3] The purchase of IIA Schools was completed on January 20, 2018. (*Id.* ¶ 43.) According to the press release cited in Plaintiffs' Complaint, the operations of the schools would be managed by DCEH. (*Id.* ¶ 35, *citing* Press Release, Acquisition of Education Management Corporation, *available at* https://dreamcenter.org/dream-center-foundation.) At the same time, Plaintiffs cite to pre-purchase statements disseminated by the Foundation that state that the Foundation intends to own and operate the IIA schools as non-profit institutions (*Id.* ¶¶ 52, 61-62.) Plaintiffs also allege that "because all entities downstream from the [Foundation] will be single member LLC's, of which [the Foundation] will be the ultimate upstream single member, all of the subsidiaries will share [the Foundation's] tax exempt status." (*Id.* ¶ 66.) Plaintiffs further allege that, in furtherance of this arrangement, the Foundation and DCEH chose to treat DCEH as a "disregarded entity" for tax purposes. (*Id.* ¶ 68.)

Defendant DCEH is an Arizona non-profit limited liability company. (Compl. ¶ 25.) The Foundation is the sole owner of DCEH. (*Id.* ¶ 27.)

Defendant IIA is an institute of higher education with campuses in Chicago, Illinois, Schaumburg, Illinois, and Novi, Michigan. (Compl. ¶ 23.) Plaintiffs allege that IIA is a subsidiary of DCEH "through an intermediary company." (*Id.* ¶ 24.) Plaintiffs allege that Defendant IIA-Schaumburg is owned by Defendant IIA. (*Id.* ¶ 22.)

Based on the allegations in Plaintiffs' Amended Complaint, the relationships of the parties are as follows:

[3] As noted in the Introduction, these allegations are taken as true for purposes of this Rule 12(b)(6) Motion; however, Plaintiffs' allegations do not reflect the actual structuring of the purchase agreement, or of these entities.

The Foundation	Non-profit charitable organization, and parent company to DCEH. (Compl. ¶¶ 26-27.)
DCEH	Subsidiary of the Foundation, and operator of IIA Schools (Id. ¶¶ 25, 27)
IIA	Subsidiary of DCEH, and an institute of higher learning that operates the IIA-Chicago campus (*Id.* ¶¶ 23-24.)
IIA-Schaumburg	Institute of higher learning, and subsidiary of IIA (*Id.* ¶ 22.)

As the above chart demonstrates, the Foundation is a company two layers removed from the institutes of higher education that Plaintiffs were actually enrolled in.

Plaintiffs allege that IIA and DCEH have one overlapping manager and that the president of the Foundation is also on the DCEH board of managers. (Compl. ¶ 46-48.) Plaintiffs also allege that the three managers of IIA are also DCEH's CEO, a director of the Foundation, and the president of the Foundation. (*Id.* ¶¶ 45-46.) Plaintiffs further allege that the Foundation, DCEH, and the IIA Schools are "integrated" because they have a shared vision, and because each entity will mutually benefit from the Foundation's acquisition of the IIA Schools. (Compl. ¶¶ 51-60.)

II. IIA Schools Are Placed on Candidacy Status By the Higher Learning Commission

Plaintiffs claim that on January 20, 2018, the Higher Learning Commission ("HLC"), a private, non-profit accrediting agency recognized by the U.S. Department of Education, removed IIA's status as an accredited institution of higher education, and instead placed it on "Change of Control—Candidacy" status. (Compl. ¶ 100.) This change of status meant that IIA would not be accredited, but was still eligible to receive federal funds under the Higher Education Act. (*Id.* ¶ 104.) On that same date, the HLC instructed IIA to inform students of the consequences of this

change in status, and provide proper advisement and accommodation to its students (*Id.* ¶¶ 107-108.) According to Plaintiffs, the accreditation of a school is "the primary means of assuring and improving the quality of higher education" and is an important factor that employers consider when evaluating graduates for employment, as well as schools considering transfer credits. (*Id.* ¶¶ 91-96.)

III. The Alleged Misleading Statements

Plaintiffs allege that after the change in accreditation status, IIA, IIA-Schaumburg, IIA-Chicago, and DCEH, made statements that misrepresented the accreditation status of the IIA Schools, as well as failed to inform students of the HLC's actions. Specifically, Plaintiffs claim that, after January 20, 2018, IIA's course catalogs stated that "we remain accredited as a candidate school seeking accreditation under new ownership and our new non-profit status." (Compl. ¶ 118.) Plaintiffs also allege that IIA-Schaumburg and IIA-Chicago sent emails to students shortly after January 20, 2018, that failed to inform students of the change in accreditation status. (*Id.* ¶¶ 113-116.) On February 28, 2018, the IIA released an addendum to its course catalogue with an "accreditation update," which stated that IIA "remain[ed] accredited as a candidate school seeking accreditation . . . ." (*Id.* ¶ 118.) Plaintiffs also claim, generally, that the schools and DCEH continued to recruit students while not informing students or prospective students of their accreditation status (*Id.* ¶¶ 120-124.)

On or around June 20, 2018, the presidents of IIA-Schaumburg and IIA-Chicago sent emails to current students informing them that "we are a candidate school seeking accreditation under new ownership and our new non-profit status. During candidacy status, an institution is not accredited, but holds a recognized status with HLC indicating the institution meets the standards for candidacy . . . ." (Compl. ¶ 146.) Then, on July 10, 2018, IIA-Chicago president Ramey sent

an email to students informing them that DCEH's Chief Operating Officer John Crowley would go to the IIA-Chicago campus to address the situation. (*Id.* ¶ 156.) Plaintiffs allege that during this July 11 visit, Crowley made numerous misleading statements to the students about the IIA Schools' accreditation status. (*Id.* ¶¶ 158-170.)

Throughout the Complaint, Plaintiffs make general allegations, without differentiating between the various entities, that "Defendants" made certain misrepresentations or omissions. (*See, e.g.*, Compl. ¶¶ 6-13, 102, 112,118-121, 123, 167, 221, 230, 242, 254, 261-264, 267, 274, 282-289, 291-293, 301, 304.) This is in contrast to the more specific allegations plead against IIA, IIA-Schaumburg, and DCEH discussed above.

LEGAL STANDARD

"To survive a motion to dismiss, a 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 citations omitted); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Allegations that are merely legal conclusions, however, are insufficient to survive a Rule 12(b)(6) motion. *Izsak v. Draftkings, Inc.*, Case No. 14-CV-07952, 2016 WL 3227299, at *2 (N.D. Ill. June 13, 2016); *Koval v. City of Chicago*, Case No. 16 CV 7341, 2017 WL 1386181, at *2 (N.D. Ill. Apr. 18, 2017) ("a court must construe all factual allegations as true and draw all reasonable inferences in the plaintiff's favor, but the court need not accept legal conclusions or conclusory allegations.").

In addition, "[t]he Federal Rules of Civil Procedure impose a heightened pleading standard for fraud claims, requiring that a party 'state with particularity the circumstances constituting fraud.'" *H.C. Duke & Son, LLC, v. Prism Marketing Corp.*, No. 4:11–CV–04006–SLD–JAG, 2013 WL 5460209, at *3 (C.D. Ill. Sept. 30, 2013) (quoting Fed. R. Civ. P. 9(b)).

"Specifically, this means alleging (1) the identity of the person who made the misrepresentation, (2) the time, place, and content of the misrepresentation, and (3) the method by which the misrepresentation was communicated to the plaintiff." *Id.* (citing *Windy City Metal Fabricators v. CIT Tech. Fin. Servs., Inc.*, 536 F.3d 663, 668 (7th Cir. 2008)). This heightened pleading standard applies to ICFA claims, as well as claims for fraudulent concealment, for example. *Id.* at *3-4.

In ruling on a motion to dismiss, "the district court is entitled to consider exhibits attached to the complaint as part of the pleadings." *Beam v. IPCO Corp*, 838 F.2d 242, 244 (7th Cir. 1988). In particular, "[a] plaintiff may plead himself out of court by attaching documents to the complaint that indicate that he or she is not entitled to judgment." *In re Matter of Wade*, 969 F.2d 241, 249 (7th Cir. 1992).

ARGUMENT[4]

Plaintiffs cannot, maintain their claims against the Foundation because, despite having an opportunity to amend their Complaint, they do not allege anywhere in their Amended Complaint that the Foundation made any misrepresentations concerning the IIA Schools' accreditation status. And, Plaintiffs cannot maintain claims based on the Foundation's supposed "omissions" concerning IIA's accreditation status for two reasons: First, the Foundation never made any

[4] Defendant IIA-Schaumburg removed this case and invoked the subject-matter jurisdiction of this court by alleging diversity jurisdiction under 28 U.S.C. § 1332(d)(2). (Dkt. # 1). "When a federal court hears a case in diversity…it applies the choice-of-law rules of the forum state to determine which state's subjective law applies." *Auto-Owners Ins. Co. v. Websolv Computing, Inc.*, 580 F.3d 543, 547 (7th Cir. 2009). Illinois courts, and therefore federal courts sitting in Illinois, apply the "most significant contacts" test to determine what substantive law applies. *Id., citing Westchester Fire Ins. Co. v. Heileman Brewing Co.*, 747 N.E. 2d 955, 961 (Ill. App. 1st Dist. 2001). This requires the court to apply "the law of the jurisdiction that has the 'most significant relationship' to the events out of which the suit arose, and to the parties." *Carris v. Marriott Intern., Inc.*, 466 F.3d 558, 560 (7th Cir. 2006) (quoting *Esser v. McIntyre*, 661 N.E.2d 1138, 1141 (Ill. 1996)). Here, all Plaintiffs are citizen of Illinois, bring claims under Illinois law, and the alleged actions described in the Complaint occurred in Illinois. For purposes of this motion, Illinois substantive law applies.

communications, one way or another, to Plaintiffs. Therefore, there were no communications that could have possibly "omitted" material information. And second, the Foundation had no relationship with Plaintiffs, fiduciary or otherwise, and therefore had no duty to disclose information concerning the IIA Schools' accreditation status. Finally, Plaintiffs provide no basis for this Court to ignore the corporate separateness of the Foundation to the co-Defendants and impute liability onto the Foundation.

For these reasons, Plaintiffs' Amended Complaint must be dismissed.

I. Plaintiffs' Claims Against The Foundation Fail

A. Plaintiffs Do Not Allege That The Foundation Made Any Misrepresentations Or Fraudulent Statements

Counts I and III of the Amended Complaint are ICFA claims based on the alleged misrepresentations concerning the IIA Schools' accreditation. (Compl. ¶¶ 255-264, 276-289.) Count IV is a negligent misrepresentation claim, and is also based on the statements concerning the IIA schools' accreditation. (*Id.* ¶¶ 290-299.) All of these claims must be dismissed as to the Foundation, because ***nowhere*** in the Amended Complaint do the Plaintiffs allege that the Foundation made ***any*** misrepresentations. Rather, all the statements concerning accreditation are alleged to have been made by other entities and persons, and not the Foundation. At most, Plaintiffs allege, in a conclusory fashion, that the "Defendants," collectively, made misrepresentations. But these vague allegations fail to state a claim against the Foundation, especially since Plaintiffs here must satisfy the more stringent pleading standards of Rule 9(b).[5]

[5] Plaintiffs may claim that Count III, which alleges "unfairness" under the ICFA, should not be subject to the pleadings requirements of 9(b). This however, is incorrect, as the Seventh Circuit has held that Rule 9(b)'s pleading requirements apply to *allegations* of fraud, not simply *claims* of fraud. *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Tr. v. Walgreen Co.*, 631 F.3d 436, 446–47 (7th Cir. 2011). The court held that an "unfair practice" claim under the ICFA was subject to Rule 9(b)'s pleading requirements because the claim was premised on fraudulent conduct. *Id.*; *see also Camasta v. Jos. A. Bank Clothiers, Inc.*, 761 F.3d 732, 736–37 (7th Cir. 2014). The same is true in this case, as Plaintiffs' ICFA claim for

It is well established that to state a claim under the ICFA, it requires that the Plaintiffs allege that the Foundation personally engaged in a deceptive act or practice. *Fleming-Dudley v. Legal Investigations, Inc.*, No. 05 C 4648, 2007 WL 952026, at *16 (N.D. Ill. Mar. 22, 2007); *see also Murry v. Am.'s Mortg. Banc, Inc.*, No. 03 C 5811, 2004 WL 5010145, at *7 (N.D. Ill. July 6, 2004) ("The *sine qua non* of an allegation of a violation of the Illinois Consumer Fraud Act, however, is that the defendant actually participated in the scheme to defraud the plaintiff.") (citing *Jackson v. South Holland Dodge, Inc.*, 197 Ill.2d 39, 258 Ill.Dec. 79, 755 N.E.2d 462, 471 (Ill. 2001)). And, a negligent misrepresentation claim requires allegations of a breach of duty—*i.e.*, that the Foundation made some misrepresentations that breach some duty of candor the Foundation had to Plaintiffs.[6] *Univ. of Ill. v. First Am. Nat. Bank of Nashville*, No. 87 C 7044, 1989 WL 91859, at *3 (N.D. Ill. Aug. 8, 1989).

Here, Plaintiffs' Amended Complaint is totally lacking in ***any*** allegations, much less specific allegations required in this case under Rule 9(b), of the "who, what, when and where" of any misrepresentations made by the Foundation. *Windy City Metal Fabricators*, 536 F.3d at 668. Plaintiffs' Amended Complaint fails to allege that the Foundation (the "who"), made any misrepresentations (the "what") at any time (the "when" and "where"), in any form, either written or orally (the "how"). Instead, Plaintiffs allege that ***other entities***, and their employees, made statements concerning the IIA Schools' accreditation. (*See, e.g.*, Compl. ¶¶ 113-116, 118, 120-124, 146, 156, 158-170.)

In addition, to state an ICFA claim against the Foundation, Plaintiffs must claim they

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"unfairness" is based on the same alleged misrepresentations and omissions as their other counts. (Compl. ¶¶ 276-289.)

[6] As explained in Section B.2 below, the Foundation also owed no duty to the Plaintiffs, as they do not allege that the Foundation had any relationship with Plaintiffs, fiduciary or otherwise, that would give rise to a duty. This provides another, independent reason to dismiss Count IV as to the Foundation.

were actually deceived by some alleged misrepresentations made by the Foundation in order to satisfy the proximate cause element and state a claim under ICFA. *See Avery v. State Farm Mut. Auto Ins. Co.*, 835 N.E.2d 801, 861 (Ill. 2005). But nowhere in the allegations specific to Plaintiffs do they claim they received any communications from the Foundation, one way or another. (Compl. ¶¶ 212-254.)

Because Plaintiffs make no allegations that the Foundation made any misrepresentations, Plaintiffs' ICFA claims (Counts I & III) and negligent misrepresentation claim (Count IV) against the Foundation must be dismissed.

1. Plaintiffs' Allegations Against "Defendants" Collectively Are Insufficient To State A Claim Against The Foundation

Plaintiffs also allege, in various parts of their Amended Complaint, that the "Defendants," collectively, made misrepresentations concerning the IIA Schools' accreditation status.[7] These allegations fail to differentiate between the Defendants, and fail to identify any misrepresentations that the Foundation is alleged to have made. They are also largely conclusory, boilerplate allegations that are not entitled to the presumption of truth in any event. (*See, e.g.*, Compl. ¶ 257, stating "*Defendants* engaged in a course of trade or commerce that constitutes deceptive acts or practices declared unlawful under Section 2 of the ICFDPA"). These allegations also fail to state a claim against the Foundation.

Courts in this district are clear that "generic allegations that fail to differentiate among [] defendants" are insufficient to state a claim. *Sears v. Likens*, 912 F.2d 889, 893 (7th Cir. 1990) (affirming trial court's finding that Rule 9(b) was not satisfied where "the complaint lumps all the defendants together and does not specify who was involved in what activity."); *Rossy v. Merge Healthcare Inc.*, 169 F. Supp. 3d 774, 781 (N.D. Ill. 2015); *In re R.H. Donnelley Corp.*

[7] *See, e.g.*, Compl. ¶¶ 6-13, 102, 112,118-121, 123, 167, 221, 230, 242, 254, 261-264, 267, 274, 282-289, 291-293, 301, 304.

ERISA Litig., No. 09 C 7571, 2011 WL 86623, at *5 (N.D. Ill. Jan. 10, 2011) (dismissing complaint where, *inter alia*, Plaintiffs "fail[] to differentiate between defendants" when describing alleged bad acts); *Green v. Morningstar, Inc.*, No. 17 C 5652, 2018 WL 1378176, at *9 (N.D. Ill. Mar. 16, 2018) (dismissing RICO claims where the complaint "treats all of the defendants collectively as one and [] frequently fails to differentiate . . . .").

This prohibition against indiscriminately "lumping" all Defendants together is true regardless of whether courts are applying Rule 8, or the more stringent Rule 9(b) pleading standard. *Green*, 2018 WL 1378176, at *8 (applying Rule 8); *Rossy*, 169 F. Supp. 3d at 781 (applying Rule 9(b)); *Sears*, 912 F.2d at 893 (applying Rule 9(b)); *In re R.H. Donnelley Corp. ERISA Litig.*, 2011 WL 86623, at *3, n.1 (applying Rule 8).

Plaintiffs' attempts to implicate all Defendants, including the Foundation, by making vague and conclusory allegations about "Defendants" actions are legally insufficient and cannot form the basis of ICFA or negligent misrepresentation claims against the Foundation. These allegations fail Rule 9(b)'s particularity requirement, and violate the prohibition against "lumping" all Defendants together in pleading a cause of action. In addition, it is clear from the other allegations in the Amended Complaint that Plaintiffs' allegations concerning the "Defendants," collectively, cannot include the Foundation, as none of the *specific* allegations of misrepresentation implicate the Foundation at all. As such, Plaintiffs' misrepresentation claims against the Foundation cannot be salvaged by these vague, conclusory allegations.

B. The Foundation Did Not Make Any Material Omissions, And Had No Duty To Make Any Statements Concerning The Co-Defendants' Accreditation Status

Like Plaintiffs' misrepresentation claims, Plaintiffs' claims based on the Foundation's supposed "omissions" must also be dismissed. Specifically, Plaintiffs bring two claims that

allege the Foundation failed to inform Plaintiffs of the IIA Schools' accreditation status; Count II under the ICFA (Compl. ¶¶ 265-275), and Count V, which alleges fraudulent concealment (*Id.* ¶¶ 300-318.) Count II fails because under the ICFA, there can only be an "omission" if the defendant first makes a communication to the plaintiff that "omits" the alleged material information, and Plaintiffs do not allege that the Foundation made any offending communications here. And as to the fraudulent concealment claim, Plaintiffs do not, and cannot, allege that the Foundation had any duty to communicate the IIA Schools' accreditation status to them.

1. Plaintiffs' ICFA Claim Against The Foundation Based On Alleged Omissions Fails

As noted above, Plaintiffs' allegations of omissions under the ICFA, like the alleged misrepresentations, must be pled with particularity under Rule 9(b), requiring the "who, what, when, where and how" of the alleged omissions. *Windy City Metal Fabricators*, 536 F.3d at 668. A claim under the ICFA for alleged material omissions means "omission from a communication, not a general failure to disclose." *Darne v. Ford Motor Co.*, No. 13 C 03594, 2015 WL 9259455, at *9 (N.D. Ill. Dec. 18, 2015) (citing *De Bouse v. Bayer*, 235 Ill. 2d 544, 555, 922 N.E.2d 309, 316 (2009)). In the *De Bouse* case, the Illinois Supreme Court made clear that "if there has been no communication with the plaintiff, there have been no statements and no omissions. In such a situation, a plaintiff cannot prove proximate cause." *Id.* at 555.

Turning to this case, nowhere in Plaintiffs' Amended Complaint do they allege that they received, or saw, any communication ***from the Foundation*** post-January 20, 2018 that fails to disclose the accreditation status of any IIA School. All of the specific communications alleged in the Amended Complaint, whether oral, via email, or contained in course catalogues or brochures, came from co-Defendants or their agents, and not from the Foundation. (*See, e.g.*, Compl. ¶¶

113-116, 118, 120-124, 146, 156, 158-170.)

In addition, nowhere in the allegations specific to the four named Plaintiffs do they allege that they received any communications from the Foundation that supposedly "omitted" information concerning the IIA Schools' accreditation status. (Compl. ¶¶ 212-254.) There are no specific allegations in the Amended Complaint alleging that the Foundation made any communications to Plaintiffs at any time that omitted any material information. Because of this, Plaintiffs' ICFA claim based on "omissions" must fail.

Additionally, Plaintiffs' vague, conclusory allegations that "Defendants," collectively,[8] failed to disclose the accreditation status of the IIA Schools cannot save Count III because, as explained in Section I.A.1 above, allegations that "Defendants," collectively, did or did not engage in misstatements or material omissions fail to satisfy any pleading standard this Court may apply, and certainly fail to plead claims with specificity under Rule 9(b).

2. Plaintiffs' Fraudulent Concealment Claim Fails Because The Foundation Had No Duty To Disclose the IIA School's Accreditation Status To Plaintiffs

Finally, Plaintiffs' fraudulent concealment claim against the Foundation fails for the simple reason that the Foundation had no duty to Plaintiffs to disclose the accreditation status of the IIA Schools. Under Illinois law, a duty to disclose only arises in the course of a fiduciary or other close relationship, and Plaintiffs fail to plead that they had any relationship with the Foundation at all.

"A plaintiff pleading fraudulent concealment 'must allege that a defendant intentionally omitted or concealed a material fact *that it was under a duty to disclose to the plaintiff.*'" *H.C. Duke & Son*, 2013 WL 5460209 at *4 (quoting *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 571 (7th Cir. 2012)) (emphasis added). A duty to disclose arises only when "the plaintiff and

[8] *See* Compl. ¶¶ 61, 71, 77, 78, 196-197.

defendant are in a fiduciary or confidential relationship" or "in a situation in which the plaintiff 'places trust and confidence' that is "'very similar' to that of a fiduciary relationship." *Id.* (citing *Benson v. Stafford*, 941 N.E.2d 386, 402 (Ill. App. 1st Dist. 2010)). Such a relationship exists between attorney and client, principal and agent, and other similar cases "where one party is heavily dependent on the advice of another." *Id.* (citing *Carey Elec. Contracting, Inc. v. First Nat'l Bank of Elgin*, 392 N.E.2d 759, 765 (Ill. App. 2d Dist. 1979)). "State and federal courts in Illinois have rarely found a special trust relationship to exist in the absence of a more formal fiduciary one." *Toulon v. Cont'l Cas. Co.*, 877 F.3d 725, 738 (7th Cir. 2017).

Here, Plaintiffs fail to describe ***any*** relationship between themselves and the Foundation that could be described as a "fiduciary or confidential relationship." Instead, the only relationship that Plaintiffs allege they had with any Defendant in this case was with their respective schools, IIA-Chicago and IIA-Schaumburg. (Compl. ¶¶ 18-21, 213, 223, 232, 244.) And, in Plaintiffs' allegations for fraudulent concealment, the most Plaintiffs can say about a duty to disclose is the conclusory allegation that "Defendants had a duty to inform Named Plaintiffs and the class about IIA's loss of accreditation." (Compl. ¶ 304.) This allegation contains numerous deficiencies: In addition to being a threadbare legal conclusion not afforded the presumption of truth, also improperly lumps all of the Defendants together, and fails to describe a "confidential or fiduciary relationship" between themselves and the Foundation as required under Illinois law.

Perhaps recognizing this deficiency, Plaintiffs attempt to impose a duty to disclose on the Defendants, including the Foundation, in three ways: (1) By way of a January 20, 2018 letter from the HLC to IIA concerning accreditation (Compl. ¶¶ 305), (2) by referencing the United States Department of Education Regulations, which prohibits institutions of higher learning from making misrepresentations concerning their education programs (*id.* ¶¶ 306-307), and (3) the

Illinois Administrative Code (*id.* ¶ 308). None of these three sources, however, creates a fiduciary relationship between Plaintiffs and the Foundation as required under Illinois law, and in any event, none apply to the Foundation.

First, Plaintiffs' attempt to impose a duty on the Foundation based on a January 20, 2018 letter the HLC published. In that letter, the HLC instructed Defendant IIA, but ***not*** the Foundation, to inform its students on the accreditation status of its schools, and provide proper advisement and accommodation to its students. (Compl. ¶¶ 107-108.) The letter does not instruct the Foundation to communicate with the students of IIA-Chicago or IIA-Schaumburg ***at all***. Nor does this letter purport to create a fiduciary relationship between the Foundation and the students of the IIA-Chicago and IIA-Schaumburg schools. This letter cannot, by its plain terms, impose a duty on the Foundation to communicate with IIA students, as it specifically instructs a different entity, IIA, to do so.

Second, United States Department of Education Regulations create no duty on the Foundation to communicate with students of IIA. Rather, the provisions cited by Plaintiffs simply recite prohibitions applicable to institutes of higher education from making misrepresentations about their schools. *See* 34 C.F.R. § 668.71; § 668.72(a). Plaintiffs do not allege that the Foundation is an "institute of higher education"—nor could they, as such entities are defined in the Regulations as institutions that (1) admit students, and (2) are legally authorized to provide an education program, and (3) provide an educational program that awards degrees, and that are (4) accredited or preaccredited, or, are approved by a state agency listed in the Federal Register. 34 C.F.R. § 600.4. The Foundation is none of these things. And, Plaintiffs' Complaint clearly distinguishes between the Foundation, on the one hand, and actual institutions of higher education (such as IIA), on the other. (*See* Compl. ¶ 23 (stating that the IIA is an

"institute of higher education") and ¶ 26 (stating that the Foundation is a California nonprofit corporation)). These regulations impose no obligations on the Foundation, and certainly create no fiduciary relationship between the Foundation and Plaintiffs.

Likewise, Illinois' Administrative Code creates no fiduciary relationship between the Foundation and the Plaintiffs. And, like the Department of Education Regulations, the Illinois Administrative Code cited by Plaintiffs applies to institutions offering degrees or course credits, which does not apply to the Foundation. Ill. Admin. Code tit. 23 § 1030.10.

In short, there is no fiduciary or other close relationship between Plaintiffs and the Foundation, and thus no duty on the Foundation to disclose the IIA schools' accreditation status.[9]

C. The Foundation's Status As An Alleged "Parent Company" Provides No Basis To Impute Liability Onto It

Because, as discussed above, there is no basis to impose liability on the Foundation, Plaintiffs' Amended Complaint suggests (but does not explicitly allege) that the Foundation is somehow implicated[10] because it is alleged to have purchased, and is the ultimate parent company to, the IIA Schools, and because the Foundation shares some common directors with the co-Defendants. (Compl. ¶¶ 21, 37-38.) Plaintiffs also allege that the Foundation was

[9] In an attempt to save their "omission" claims against the Foundation, Plaintiffs included the same, cut-and-paste conclusory allegations in their "ICFA – Omissions" claim and Fraudulent Concealment claim; namely, that "DCF provided knowing, substantial assistance to the other Defendants in the coordinated effort to wrongfully conceal, for a period of approximately five months, that IIA lost its status as an accredited institution of higher education." (Compl. ¶¶ 273, 313.) This lone allegation, however, is insufficient to save Plaintiffs' omissions claims against the Foundation for multiple reasons: First, it is a conclusory allegation not entitled to a presumption of truth. *See Jones v. Connors*, No. 11 C 8276, 2012 WL 4361500, at *3 (N.D. Ill. Sept. 20, 2012) ("a motion to dismiss may be properly granted where the plaintiff "assert[s] only speculative or conclusory allegations . . . ."). Second, Plaintiffs' allegations cannot satisfy Federal Rule 9(b)'s heightened pleading requirement, as Plaintiffs completely fail to allege the "who, what, when and how" regarding the Foundation's alleged "knowing, substantial assistance" provided to the co-Defendants. Third, Plaintiffs' allegations are not plausible, as the Amended Complaint is devoid of ***any*** factual assertions that corroborate these allegations.

[10] The Plaintiffs never specifically allege that veil-piercing is appropriate here—however, they do attempt to indiscriminately "lump" all Defendants together at various points in their Amended Complaint. (*See* Section I.A.1 supra.) To the extent Plaintiffs attempt to use their allegations of the "interrelatedness" of the Foundation to the Co-Defendants as a basis to impute liability, that attempt must fail.

"interrelated" with its subsidiaries, and stood to enjoy "benefits and synergies" from the parent-subsidiary relationship. All of these allegations are included, presumably, to impute the alleged wrongdoing of the co-Defendants onto the Foundation.

These facts, however, even taken as true for purposes of this Motion,[11] are a far cry from what is required under Illinois law to hold a parent company liable for the acts of its subsidiaries. Instead, Plaintiffs allege nothing more than the features of a normal parent-subsidiary relationship between the Foundation and the co-Defendants. And in fact, Plaintiffs' allegations, and the documents they attach in support, establish the *opposite*, that the Foundation is separate and distinct from the IIA Schools.

Under Illinois law, a parent company is separate and distinct from its subsidiaries, and, as a result, the general rule is that a parent company is not liable for the acts of its subsidiaries. *Bright v. Roadway Servs., Inc.*, 846 F. Supp. 693, 700–01 (N.D. Ill. 1994) (citing *Main Bank of Chicago v. Baker*, 86 Ill.2d 188, 56 Ill.Dec. 14, 21, 427 N.E.2d 94, 101 (1981)); *see also Paulsen v. Abbott Labs.*, No. 15-CV-4144, 2018 WL 1508532, at *10 (N.D. Ill. Mar. 27, 2018). In the same vein, a parent company sharing directors and officers with its subsidiaries is normal, and does not provide a basis for imposing liability on the parent company. *Main Bank of Chicago*, 86 Ill. 2d at 204–05, 427 N.E.2d at 101; *see also Gass v. Anna Hosp. Corp.*, 392 Ill. App. 3d 179, 187, 911 N.E.2d 1084, 1092 (2009). As one court noted,

> Parents of wholly-owned subsidiaries necessarily control, direct and supervise the subsidiaries to some extent, but unless there is a basis for piercing the corporate veil, and thus attributing the subsidiaries' torts to the parent, it is not liable for those torts . . . .

Abelesz v. OTP Bank, 692 F.3d 638, 658–59 (7th Cir. 2012).

"Veil-piercing" under Illinois law "is a task which courts should undertake reluctantly."

[11] As noted in the Introduction, Plaintiffs' Complaint does not allege the true structuring of these entities.

Hills of Palos Condo. Ass'n, Inc. v. I-Del, Inc., 255 Ill. App. 3d 448, 479–80, 626 N.E.2d 1311, 1333 (1993). In order to make a showing that a distinct corporation should be held liable for the torts of its subsidiaries, facts must be pleaded to satisfy two elements:

> (1) there must be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist; and (2) circumstances must be such that an adherence to the fiction of a separate corporate existence would sanction a fraud or promote injustice.

Id. at 480.

As for the first factor, a separate corporate identity will be disregarded where a subsidiary "is so controlled and its affairs so conducted that it is a mere instrumentality of another . . ." *Main Bank of Chicago*, 86 Ill. 2d at 204–05, 427 N.E.2d at 101–02. Another court noted that veil-piercing is appropriate "if one corporation is merely a dummy or sham for another corporation . . . ." *Gass*, 392 Ill. App. 3d at 184–85, 911 N.E.2d at 1090–91. Factors courts consider when making this determination include:

> (1) inadequate capitalization, (2) failure to issue stock, (3) failure to observe corporate formalities, (4) nonpayment of dividends, (5) insolvency of the debtor corporation at the time, (6) non-functioning of other officers or directors, (7) absence of corporate records and (8) whether in fact the corporation is only a mere facade for the operation of the dominant stockholders.

Hills of Palos Condo. Ass'n, 255 Ill.App.3d at 480. Courts may also factor in whether two entities "have substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership." *Hales v. Timberline Knolls, LLC*, No. 15 C 2622, 2017 WL 25174, at *8 (N.D. Ill. Jan. 3, 2017). In addition to this factor, a plaintiff must also plead that observance of the corporate fiction "would, under the circumstances, sanction a fraud or promote injustice." *Main Bank of Chicago*, 86 Ill. 2d at 204–05, 427 N.E.2d at 101–02.

1. Plaintiffs' Additional Allegations Fail To Demonstrate That Liability Should Be Imputed Onto The Foundation

As an initial matter, Plaintiffs' Amended Complaint is devoid of any allegations that relate to any of the "unity of interest" factors that Illinois courts consider when examining allegations of veil-piercing. Plaintiffs fail to allege that the Foundation's subsidiary organizations were inadequately capitalized, that they failed to observe corporate formalities, that they were insolvent at the time, that their officers or directors were "non-functioning," the absence of corporate records, or that the co-Defendants here were merely a "façade" of the Foundation. There is nothing in the Amended Complaint that suggests that DCEH, or the IIA Schools, were "dummy" or "sham" corporations completely dominated by the Foundation; in fact, as explained in section I.C.2 below, the allegations establish the *opposite*.

In addition, there are no allegations that the Foundation, DCEH, and the IIA Schools "have substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership." *Hales*, 2017 WL 25174, at *8. On the contrary, Plaintiff alleges that the business purpose of the Foundation is to fund and support the mission of numerous charitable organizations, and that the Foundation has "no experience operating institutes of higher education." (Compl. ¶¶ 32, 34.) The co-Defendants, on the other hand, operate educational institutions. (Compl. ¶¶ 22-25.) The board of directors and executive leadership of the educational institutions operate separate and independently from the Foundation (Compl., Ex. 2 at 4, 19-20.) Finally, Plaintiffs fail to allege that observance of corporate formalities would "sanction a fraud or promote injustice." In short, Plaintiffs' Amended Complaint pleads no facts that would result in imputing the alleged co-Defendant's actions onto the Foundation under Illinois law.

Still, Plaintiffs' Amended Complaint contains various new allegations that attempt to show that corporate formalities should be ignored in this case, and that the Foundation can be liable for the alleged torts of the co-Defendants. These allegations include: (1) the overlap of certain managers of the Foundation, IIA, and DCEH. (Compl. ¶¶ 44-50), (2) the operation of the IIA Schools as non-profit entities, and the corresponding tax treatment of DCEH as a "disregarded entity" (*id.* ¶¶ 61-69); and (3) the "interrelatedness" of the Defendants, and the mutual benefits that the Foundation's acquisition of the IIA Schools would have for the Foundation's charitable mission (*id.* ¶¶ 51-60; 71-76). However, none of these allegations are sufficient to impute liability onto the Foundation. On the contrary, these allegations establish nothing more than normal features of a parent-subsidiary relationship.

First, Plaintiffs believe corporate forms should be ignored in this case because two of the managers of IIA were also part of the Foundation, and on the board of managers for DCEH. (Compl. ¶¶ 46-48.) This, however, is a non-starter, as a parent company sharing directors and officers with its subsidiaries is "normal," and is not a basis for imposing liability on the parent company. *Main Bank of Chicago*, 86 Ill. 2d at 204–05 (noting that the commonality of officers and directors between parent and subsidiary "are common and exist in most parent-subsidiary relationships"); *Corp. Safe Specialists, Inc. v. Tidel Techs., Inc.*, No. 05 C 3421, 2005 WL 1705826, at *4–5 (N.D. Ill. July 15, 2005) (noting that commonality of two officers is a "normal feature[] of a parent-subsidiary relationship."). As the court in *Gass* noted, "it is entirely appropriate for a parent corporation's directors to serve as directors of its subsidiary, and that fact alone does not expose the parent corporation to liability for its subsidiary's acts." 392 Ill. App. 3d at 184–85.

Second, Plaintiffs point to the tax treatment of DCEH, and specifically, that the Foundation and DCEH chose to designate DCEH as a "disregarded entity" under IRS rules, to suggest that the corporate separateness of the Foundation to its subsidiaries should be ignored. (Compl. ¶¶ 65-69.) Other courts, however, have already considered, and rejected this proposition. *Alkanani v. Aegis Def. Servs.*, LLC, 976 F. Supp. 2d 1, 9–10 (D.D.C. 2013) (rejecting a finding of "unity of ownership" of two entities due to "the existence of a pass-through tax structure of a disregarded entity"); *Cent. de Fianzas, S.A. v. Bridgefarmer & Assocs., Inc.*, No. CA 3:01-CV-1841-R, 2002 WL 1477444, at *3 (N.D. Tex. July 5, 2002) (rejecting finding of alter-ego where two entities filed a consolidated corporate return). One court noted the strong policy reasons for rejecting the use of the tax treatment of subsidiaries to ignore corporate formalities: "[C]ourts should not create a scenario in which a single-member limited liability company would be confronted with a catch-22: either follow federal tax law and risk losing limited liability, or forego advantages available under federal tax law to assure limited liability." *GreenHunter Energy, Inc. v. W. Ecosystems Tech., Inc.*, 2014 WY 144, ¶¶ 47-48, 337 P.3d 454, 467–68 (Wyo. 2014). So too here, the fact that the Foundation has chosen a particular tax status for its subsidiary does not open it up to liability for acts of DCEH.

Finally, Plaintiffs' Amended Complaint cites to statements made by the Foundation concerning acquisition of the IIA Schools that "touted its tight integration with the acquired schools" that would "provide important benefits to students and the public at large." (Compl. ¶ 51.) This "tight integration" Plaintiffs describe consists of a press release that described how the IIA Schools would provide benefits to individuals being assisted by the Dream Center charitable network, including through academic programs, scholarships, and GED training. (Compl. ¶¶ 53-55; 73-74.) In addition, the Foundation believed that graduates of the schools would have

opportunities to work within the Dream Center charitable network after graduation. (*Id.* ¶¶ 75-76.)

This "integration" that Plaintiffs discuss, however, has nothing to do with the veil-piercing analysis Illinois courts undertake, and does not support imputing liability onto the Foundation. The mere fact that individuals who happen to benefit from the Foundation's mission and services may also benefit from educational opportunities provided by the IIA Schools does not support the proposition that the IIA Schools are the "alter-ego" of the Foundation. Similarly, Plaintiffs' suggestion that graduates of the IIA Schools may find opportunities with the Dream Center charitable network post-graduation does not factor into any of the "unity of interest" factors Illinois courts consider. The fact that the Foundation and the IIA Schools may jointly benefit from their relationship should be obvious and expected—as one court has noted, "wholly-owned subsidiaries are expected to operate for the benefit of their parent corporations; that is why they are created." *Abrams v. McGuireWoods LLP*, 518 B.R. 491, 501 (N.D. Ind. 2014).

In short, Plaintiffs allege nothing that would call for a departure from the default rule in Illinois that parent corporations are not liable for the alleged torts of their subsidiaries. Instead, Plaintiffs simply describe an asset purchase of the IIA Schools, along with normal features of a parent-subsidiary relationship. This cannot, as a matter of law, be a basis to impute liability onto the Foundation.

2. Plaintiffs' Allegations, In Fact, Establish The Separateness of The Foundation And The Co-Defendants, Such That Imputing Liability Onto The Foundation Would Be Unwarranted

Not only do Plaintiffs fail to plead any of the elements for veil piercing under Illinois law, the additional documentation Plaintiffs attach to their Amended Complaint confirms that DCEH, and the IIA Schools, were not "alter-egos" of the Foundation.

For example, Plaintiffs attach, and cite to, a "Structural Change Site Visit Report" generated by a college accreditation organization called the Western Senior College University Commission (WASC). The WASC prepared the report concerning the purchase of Argosy University, another group of schools acquired at the same time as the IIA Schools. (Compl. Ex. 2.) Plaintiffs cite to this document for the proposition that the WASC's findings are also applicable to the relationship between the Foundation and DCEH, and the IIA Schools. (Compl. ¶¶ 70-78.) If Plaintiffs use this document to support their Amended Complaint, however, they must accept *all* the contents of this document. *Williamson v. Curran*, 714 F.3d 432, 436 (7th Cir. 2013) ("What makes it appropriate for us to consider the documents that [plaintiff] has attached to her complaint is that she has not only cited them in the body of her complaint, but she has, to some degree, relied on their contents as support for her claims.") A review of this document confirms the separateness of the Foundation.

Contrary to Plaintiffs' suggestions about the "interrelatedness" of the Foundation and the IIA Schools, the WASC's Report is clear that the schools acquired would be governed by an independent board of directors (Exhibit 2, at 4, 19-20) ("the Argosy board of trustees will continue to function as an independent board . . . ." and "the DCF board of directors intends 'for its wholly owned Argosy system parent limited liability company to keep the Board of Trustees of Argosy fully functional and independent"). The Foundation also intended that the school's operations would be managed by DCEH, not the Foundation. (Ex. 2 at 5) ("University operations will be managed by [DCEH] under newly named CEO and Co-Chairman Brent Richardson."). Similarly, personnel and management decisions would remain with the schools (Ex. 2 at 20.) Indeed, the schools intended to remain "fundamentally unchanged" and keep their "key leadership team an institutional capabilities" intact, which included financial operations. (Ex. 2

at 17).

The exhibits attached to Plaintiffs' Amended Complaint do not show that DCEH, and the IIA Schools, are "dummy" or "sham" corporations controlled by the Foundation, but rather that they are independently-operated subsidiaries. There are no allegations in the Amended Complaint that make it plausible that liability for the co-Defendant's alleged actions should be imputed onto the Foundation.

II. Dismissal of Plaintiffs' Claims Should Be With Prejudice

Plaintiffs' Amended Complaint constitutes the second time that they have attempted to bring claims against the Foundation. Plaintiffs' original Complaint, and their Amended Complaint, however, both fail to allege any wrongdoing on the part of the Foundation. And, despite Plaintiffs' best attempts to do so, their Amended Complaint falls woefully short of establishing a basis to impute liability onto the Foundation. As further attempts at amendment would be futile, dismissal of Plaintiffs' claims against the Foundation should be with prejudice. *See Jain v. Butler Sch. Dist*. 53, 303 F. Supp. 3d 672, 683 (N.D. Ill. 2018) (citing *Bogie v. Rosenberg*, 705 F.3d 603, 608, 616 (7th Cir. 2013)).

In addition, dismissal should be with prejudice because the Plaintiffs' insinuation in their Amended Complaint that liability should be imputed onto the Foundation as a parent company is undermined by the allegations and Exhibits attached to the Amended Complaint, which establish the opposite. *See* Section I.C.2; *Rocha v. Rudd*, 826 F.3d 905, 911–12 (7th Cir. 2016) (affirming dismissal with prejudice because the plaintiff's allegations defeated any plausible claim).

WHEREFORE, the Foundation respectfully requests that this Court enter an order granting its Rule 12(b)(6) Motion to Dismiss and dismissing Plaintiffs' Counts I – V against it, with prejudice.

Dated: May 31, 2019

Respectfully Submitted,

By: /s/ John C. Ochoa
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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2019, I electronically filed **Defendant's Motion To Dismiss Plaintiffs' Amended Class Action Complaint Pursuant To Fed. R. Civ. P. 12(b)(6)** with the Clerk of the Court for the United States District Court for the Northern District of Illinois by using the CM/ECF system, which sent notification of such filing to all CM/ECF participants.

[x] Pursuant to 28 USC Section 1746(2), I certify under penalty of perjury that the foregoing is true and correct.
Executed on: May 31, 2019.

/s/ John C. Ochoa