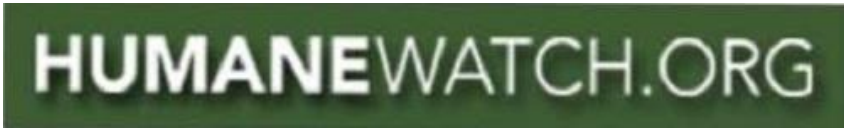


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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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10 Jodell Martinelli; Stephanie Booth; Melia)
11 Perry; Abbigail King; Nicole Kersanty;)
and Ruth Ross, on behalf of themselves)
and all others similarly situated,)

No. CV-09-529-PHX-DGC

ORDER

12 Plaintiffs,)
13)
14)

14 vs.)

15 Petland, Inc.; and The Hunte Corporation,)
16)

16 Defendants.)
17)

18 Petland, Inc. is a large national retailer of pets. Petland and its franchisees sell
19 puppies at more than 100 stores throughout the United States. The Hunte Corporation
20 supplies many of the puppies sold at Petland stores.

21 Plaintiffs are residents of various states who bought a Petland puppy. Plaintiffs filed
22 a class action complaint against Petland and Hunte on March 16, 2009. Dkt. #1. Plaintiffs
23 claim that they bought Petland puppies with the understanding that they were “bred under
24 safe and humane conditions by a reputable breeder with proper canine husbandry practices,”
25 but the puppies actually were bred at a “puppy mill.” *Id.* ¶¶ 8-13. A puppy mill, according
26 to Plaintiffs, is “a dog breeding operation in which the health of the dogs is disregarded in
27 order to maintain a low overhead and maximize profits.” *Id.* ¶¶ 2, 18. Plaintiffs allege that
28 their puppies were sick at the time of purchase or became ill shortly thereafter. *Id.* ¶¶ 8-13.

1 Plaintiffs assert that Petland has orchestrated a scheme to defraud consumers by
2 manufacturing a fictitious market for puppy mill puppies. Petland executes this scheme,
3 Plaintiffs claim, by requiring its stores to “sell puppies to unsuspecting consumers while
4 misrepresenting them as ‘the finest available’ puppies from ‘professional and hobby breeders
5 who have years of experience in raising quality family pets,’ which are ‘USDA approved.’”
6 *Id.* ¶¶ 3, 81. Petland also assures consumers that Petland “knows its breeders and deals only
7 with those who have ‘the highest standards of pet care[.]’” *Id.* ¶ 55. The limited warranty
8 Petland provides consumers allegedly perpetuates the scheme by “facilitating the fiction that
9 a consumer’s new puppy is not a sickly and/or dying puppy mill puppy.” *Id.* ¶ 49. The
10 results of an eighth-month investigation by the Humane Society of the United States
11 purportedly “confirm Petland’s practice of misrepresenting and concealing the origin of
12 puppy mill puppies.” *Id.* ¶ 53.

13 The complaint asserts a claim under the Racketeer Influenced and Corrupt
14 Organizations Act (“RICO”), 18 U.S.C. § 1962(c), which is predicated on alleged violations
15 of the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343. *Id.* ¶¶ 67-88
16 (count one). The complaint also asserts a RICO conspiracy claim under 18 U.S.C. § 1962(d)
17 (count two), violations of multi-state consumer protection laws (count three), a claim for
18 unjust enrichment (count four), and a violation of the Ohio Consumer Sales Practices Act
19 (count five). *Id.* ¶¶ 89-121. Plaintiffs purport to bring these claims on behalf of all persons
20 who purchased a puppy from a Petland store since November 20, 2004. *Id.* ¶ 57.

21 Hunte and Petland have filed motions to dismiss the complaint pursuant to Rules 9(b)
22 and 12(b)(6) of the Federal Rules of Civil Procedure. Dkt. ##33, 34. The motions have been
23 fully briefed. Dkt. ##44, 45, 47, 48. For reasons that follow, the Court will grant the motions
24 and dismiss the complaint without prejudice.¹

25
26 ¹The requests for oral argument are denied because the parties have fully briefed the
27 issues and oral argument will not aid the Court’s decision. *See Lake at Las Vegas Investors*
28 *Group, Inc. v. Pac. Dev. Malibu Corp.*, 933 F.2d 724, 729 (9th Cir. 1991); *Partridge v.*
Reich, 141 F.3d 920, 926 (9th Cir. 1998); *see also* Fed. R. Civ. P. 78(b).

1 **I. Petland’s Motion.**

2 Petland argues that the RICO claims and the claims asserted under state consumer
3 protection laws fail because (i) the alleged misrepresentations are mere puffery, rather than
4 actionable statements of material fact, (ii) the allegations of non-disclosure – “concealment”
5 and “omissions” on the part of Petland – fail to state a claim for relief, and (iii) the
6 allegations of fraud have not been pled with particularity. Dkt. #34 at 4-11. Petland further
7 argues that the complaint does not allege a legally cognizable injury or proximate causation
8 (*id.* at 11-17) and the unjust enrichment claim fails as a matter of law (*id.* at 18).

9 **A. The RICO Claims.**

10 **1. Allegations of non-disclosure.**

11 Petland argues that to the extent the RICO claims are based on an alleged failure to
12 disclose the origin of its puppies, the claims fail as a matter of law because “‘absent an
13 independent duty, such as a fiduciary duty or an explicit statutory duty, failure to disclose
14 cannot be the basis of a fraudulent scheme’ under the federal mail and wire fraud statutes.”
15 Dkt. #34 at 9 (quoting *Cal. Architectural Bldg. Prods., Inc. v. Franciscan Ceramics, Inc.*,
16 818 F.2d 1466, 1472 (9th Cir. 1987)). This argument is specious, Plaintiffs assert, because
17 the RICO claims are based on the affirmative misrepresentations pled in the complaint, not
18 a failure to speak on the part of Petland. Dkt. #44 at 14-15. Petland correctly notes that the
19 complaint is not only replete with allegations of concealment and omissions on the part of
20 Petland, but explicitly alleges that Petland has a “practice of misrepresenting *and concealing*
21 the origin of puppy mill puppies.” Dkt. #1 ¶ 53 (emphasis added); *see id.* ¶¶ 42, 60(a), 83,
22 98, 120. Plaintiffs do not assert that Petland has an independent duty to disclose to
23 consumers the origin of Petland puppies. The Court will therefore grant Petland’s motion
24 to the extent the RICO claims are based on allegations of non-disclosure. *See Cal.*
25 *Architectural Bldg. Prods.*, 818 F.2d at 1472; *Langford v. Rite Aid of Ala., Inc.*, 231 F.3d
26 1308, 1314 (11th Cir. 2000) (dismissing RICO claims predicated on mail and wire fraud
27 where the defendant had no duty to disclose its pricing scheme to consumers).

28

1 **2. Allegations of fraudulent misrepresentations.**

2 The RICO statute makes it unlawful for any person associated with an enterprise to
3 participate in the conduct of such enterprise's affairs "through a pattern of racketeering[.]"
4 18 U.S.C. § 1962(c). The alleged pattern of racketeering in this case is mail and wire fraud
5 under 18 U.S.C. §§ 1341 and 1343. Dkt. #1 ¶ 79. To plead a violation of those statutes,
6 Plaintiffs must allege that Petland formed a scheme to defraud, that Petland used the United
7 States mails and wires in furtherance of that scheme, and that Petland did so with the specific
8 intent to defraud. *See Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393,
9 1400-01 (9th Cir. 1986).

10 Petland argues that the RICO claims must be dismissed because the complaint does
11 not satisfy Rule 9(b)'s requirement that the "scheme to defraud" be pled with particularity.
12 Dkt. #34 at 10-11. The Court agrees.

13 Rule 9(b) "requires a pleader of fraud to detail with particularity the time, place, and
14 manner of each act of fraud[.]" *Lancaster Cmty. Hosp. v. Antelope Valley Dist.*, 940 F.2d
15 397, 405 (9th Cir. 1991). This requirement means that all "[a]verments of fraud must
16 be accompanied by 'the who, what, when, where, and how' of the misconduct charged."
17 *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (citation omitted).
18 "The Ninth Circuit has repeatedly insisted that this rule be followed in RICO actions alleging
19 the predicate act of mail fraud." *Lancaster*, 940 F.2d at 405 (citing *Schreiber*, 806 F.2d at
20 1401; *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 541 (9th Cir. 1989)).

21 Petland's alleged fraudulent scheme consists of misrepresentations about the origin
22 of Petland puppies. Dkt. #1 ¶¶ 3, 81. Plaintiffs sufficiently allege the contents of those
23 statements; that is, that Petland puppies are "the finest available," that they are bred by
24 "professional and hobby breeders who have years of experience in raising quality family
25 pets," and that these breeders are "USDA approved" and have "the highest standards of pet
26 care." *Id.* ¶¶ 3, 30, 37, 55, 81. Nowhere in the complaint, however, do Plaintiffs identify
27 *with particularity* the manner in which these statements were made. To the extent they were
28 made through the use of the mails and wires, the complaint is deficient. Plaintiffs allege that

1 the acts of mail and wire fraud involve “thousands of communications” made “throughout
2 the class period,” including marketing materials, advertising, and financial statements (*id.* ¶
3 83), but no specific mailings or transmissions are mentioned. Nor do Plaintiffs provide
4 specific facts relating to Petland’s limited warranty, alleging only generally that “Petland
5 provides purchasers of its puppy mill puppies a limited warranty.” *Id.* ¶ 49.

6 Plaintiffs themselves admit that they have alleged the incidents of fraud only
7 “generally,” claiming that access to Petland’s books and records is needed to provide the
8 requisite specificity. *Id.* ¶ 83. Plaintiffs cite *United States v. SmithKline Beecham, Inc.*, 245
9 F.3d 1048, 1052 (9th Cir. 2001), for the proposition that the requirements of Rule 9(b) may
10 be relaxed to permit discovery where the evidence of fraud is within a defendant’s exclusive
11 possession. Dkt. #44 at 12. But given the eight-month investigation by the Humane Society,
12 which purportedly confirms Petland’s practice of misrepresenting the origin of puppy mill
13 puppies (Dkt. #1 ¶ 53), Plaintiffs “cannot fairly allege that [Petland] has sole possession of
14 the facts evidencing [mail and wire fraud] violation[s].” *SmithKline Beecham*, 245 F.3d at
15 1052.

16 Moreover, “Rule 9(b) is intended to prevent the filing of a complaint as a pretext
17 for discovery[.]” *Carpa v. Smith*, No. CIV 96-1453 PHX EHC, 1998 WL 723153, at *4
18 (D. Ariz. July 20, 1998). The Supreme Court has recently made clear that even under the
19 more liberal pleading requirements of Rule 8(a), general allegations of misconduct do not
20 “unlock the doors of discovery[.]” *Ashcroft v. Iqbal* --- U.S ---, 129 S. Ct. 1937, 1950
21 (2009). “To allow Plaintiff[s] to conduct discovery as requested would subvert the purpose
22 of the pleading requirements.” *Carpa*, 1998 WL 723153, at *4.

23 Plaintiffs’ reliance on *Odom v. Microsoft Corporation*, 486 F.3d 541 (9th Cir. 2007),
24 is misplaced. The plaintiffs in that case specifically identified the circumstances of the
25 alleged wire fraud and the dates on which it occurred. The only deficiency in the allegations
26 was the names of the sales clerks who facilitated the challenged transactions. *See id.* at 554.
27 Plaintiffs describe Petland’s alleged mail and wire fraud as follows: “During the class
28 period, Defendants’ illegal conduct and wrongful practices were carried out by an array of

1 agents and/or employees, working across state boundaries, who necessarily relied upon
2 frequent transfers of documents, information and funds by the U.S. mails and interstate wire
3 facilities.” Dkt. #1 ¶ 82. This fraud is not nearly as specific as that alleged in *Odom*.

4 Plaintiffs assert that mail and wire fraud do not require a misrepresentation and
5 that the essential element of those offenses – a “scheme to defraud” – has been pled
6 with particularity. Dkt. #44 at 12; *see* Dkt. #45 at 10. The problem with this argument is that
7 the “scheme to defraud” described in the complaint consists of the alleged misrepresentations
8 about the origin of Petland puppies. Dkt. #1 ¶¶ 3, 81; *see id* ¶¶ 30, 37, 52; Dkt. #44 at 14-15.
9 The factual circumstances of those statements, whether communicated through the mails or
10 otherwise, must be alleged with particularity. *See Odom*, 486 F.3d at 554.

11 In summary, Plaintiffs’ allegations of fraud are simply “too generalized to satisfy the
12 dictates of Rule 9(b).” *Lancaster*, 940 F.2d at 405. The Court will grant Petland’s motion
13 to dismiss the RICO claims for failure to plead fraud with particularity. *See Schreiber*, 806
14 F.2d at 1401; *Moore*, 885 F.2d at 541; *see also Howard v. AOL Inc.*, 208 F.3d 741, 751 (9th
15 Cir. 2000) (failure to allege substantive RICO violation precludes RICO conspiracy claim);
16 *Pasamba v. HCCA, Int’l, Inc.*, No. CV-08-0247-PHX-NVW, 2008 WL 2562928, at *7
17 (D. Ariz. June 24, 2008) (same).

18 3. Proximate cause.

19 Plaintiffs’ alleged damages are the price they paid for a Petland puppy and
20 non-reimbursed veterinary expenses. Dkt. #1 ¶¶ 87, 99; *see* Dkt. #44 at 16. Petland argues
21 that the complaint alleges no facts showing that those damages were caused by Petland’s
22 “scheme to defraud.” Dkt. #34 at 14-17. Specifically, Petland contends that the absence of
23 any allegation of reliance on the purported misrepresentations precludes a finding of
24 proximate cause and mandates dismissal of the RICO claims. *Id.* at 15.

25 The complaint alleges that Plaintiffs purchased a Petland puppy “with the
26 understanding that he was bred under safe and humane conditions by a reputable breeder
27 with proper canine husbandry practices.” Dkt. #1 ¶¶ 8-13. The basis for this belief is
28 not provided, and the complaint does not otherwise allege that Plaintiffs relied on

1 misrepresentations about the origin of Petland puppies when they made their purchase.
2 Plaintiffs cite *Bridge v. Phoenix Bond & Indemnity Co.*, 128 S. Ct. 2131, 2142 (2008), for
3 the proposition that reliance is not an element of a civil RICO claim based on mail fraud.
4 Dkt. #44 at 15. *Bridge* made clear, however, that while reliance is not an element of the
5 cause of action, “the complete absence of reliance may prevent the plaintiff from establishing
6 proximate cause.” 128 S. Ct. at 2144.

7 Having made clear that they are not seeking damages on a “fraud on the market”
8 theory (Dkt. #44 at 17), Plaintiffs must allege facts showing that Petland’s statements about
9 the origin of its puppies were a direct cause of Plaintiffs’ injuries. *See Greenstein v. Peters*,
10 No. CV 08-6104 PSG, 2009 WL 722067, at *3 (C.D. Cal. Mar. 16, 2009). Although reliance
11 is not the only way a plaintiff can establish causation in a civil RICO claim predicated on
12 mail or wire fraud, the Court concludes that this is a case where proof of reliance is ““a mile
13 post on the road to causation.”” *Poulos v. Caesars World, Inc.*, 379 F.3d 654, 664 (9th Cir.
14 2004) (citation omitted); *see Negrete v. Allianz Life Ins. Co. of N. Am.*, 238 F.R.D. 482, 490
15 (C.D. Cal. 2006). The closest the complaint comes to alleging reliance is the allegation that
16 Plaintiffs unwittingly purchased puppy mill dogs “[a]s a direct result of Defendants’
17 fraudulent scheme[.]” Dkt. #1 ¶¶ 87, 99. “This is not enough. Plaintiffs’ mere recitations
18 of the causation element of the RICO claim[s] do not provide sufficient grounds for
19 entitlement to relief.” *In re Actimmune Mktg. Litig.*, 614 F. Supp. 2d 1037, 1051 (N.D. Cal.
20 2009) (citing *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007)); *see Abalos v.*
21 *Bronchick*, No. C07-844RSL, 2008 WL 1929893, at *3 (W.D. Wash. Apr. 28, 2008); *see*
22 *also Iqbal*, 129 S. Ct. at 1954 (“[T]he Federal Rules do not require courts to credit a
23 complaint’s conclusory statements without reference to its factual content.”).

24 Citing *Newcal Industries, Inc. v. IKON Office Solution*, 513 F.3d 1038, 1055 (9th Cir.
25 2008), Plaintiffs contend that proximate cause exists because Plaintiffs were “the targets of
26 Petland’s scheme to defraud and the most direct victim of that scheme having purchased
27 these puppies directly from Petland.” Dkt. #44 at 16. Absent some allegation of reliance,
28 however, Plaintiffs have not shown that they are *direct* victims of fraud.

1 “It is well settled that, to maintain a civil RICO claim predicated on mail fraud, a
2 plaintiff must show that the defendants’ alleged misconduct proximately caused the injury.”
3 *Poulos*, 379 F.3d at 664 (citing *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268
4 (1992)). “Proximate causation requires ‘some direct relation between the injury asserted and
5 the injurious conduct alleged.’” *Canyon County v. Syngenta Seeds, Inc.*, 519 F.3d 969, 981
6 (9th Cir. 2008) (quoting *Holmes*, 503 U.S. at 268); see *Anza v. Ideal Steel Supply Corp.*, 547
7 U.S. 451, 461 (2006). In this case, the complaint does not allege facts showing a “direct and
8 proximate causal relationship” between Plaintiffs’ injuries and Petland’s purported fraudulent
9 scheme. *Oki Semiconductor Co. v. Wells Fargo Bank*, 298 F.3d 768, 774 (9th Cir. 2002).
10 The Court will grant Petland’s motion to dismiss the RICO claims for failure to plead
11 causation. See *Actimmune*, 614 F. Supp. 2d at 1053; *Greenstein*, 2009 WL 722067, at *4.

12 **B. The State Law Claims.**

13 Count three of the complaint asserts violations of twenty-one state consumer
14 protection statutes. Dkt. #1 ¶ 104(a)-(u). Count five asserts a claim under the consumer sales
15 practices act of Ohio, Petland’s principal place of business. *Id.* ¶ 116-21. Petland asserts,
16 and Plaintiffs do not dispute, that proximate causation is an essential element of claims
17 brought under state consumer protection statutes. Dkt. #34 at 14; see Dkt. #44 at 15-17.

18 Although the proximate cause requirements of RICO are more stringent than those of
19 the laws of most states, see *Actimmune*, 614 F. Supp. 2d at 1053, Plaintiffs’ allegations of
20 proximate cause are too general to survive Petland’s motion to dismiss. Count three alleges,
21 in conclusory fashion, that “[a]s a result of Defendants’ misrepresentations and/or omissions,
22 Plaintiffs and the proposed class members have suffered an ascertainable loss and are entitled
23 to relief[.]” Dkt. #1 ¶ 109. Count five similarly alleges that “[a]s a direct result of the
24 deceptive practices of the Defendants, Plaintiffs and the members of the Class suffered
25 damages[.]” *Id.* ¶ 121. Plaintiffs’ obligation under Rule 8(a) to allege facts *showing* an
26 entitlement to relief “requires more than labels and conclusions, and a formulaic recitation
27 of the elements of a cause of action will not do[.]” *Twombly*, 127 S. Ct. at 1965; see *Iqbal*,
28 129 S. Ct. at 1949 (“Threadbare recitals of the elements of a cause of action, supported by

1 mere conclusory statements, do not suffice.”). Moreover, to the extent the state law claims
2 are based on allegations of fraud, they “fail to meet the specificity required by Rule 9(b).”
3 *Actimmune*, 614 F. Supp. 2d at 1055. The Court will grant Petland’s motion with respect to
4 the claims brought under state consumer protection statutes.

5 **C. The Unjust Enrichment Claim.**

6 The unjust enrichment claim alleges that “Defendants have profited and benefitted
7 from their *scheme to defraud* purchasers of puppies from Petland.” Dkt. #1 ¶ 113 (emphasis
8 added). Because this claim is predicated on fraud, and Plaintiffs have not plead fraud with
9 particularity, the claim must be dismissed. *See Oestreicher v. Alienware Corp.*, 544 F. Supp.
10 2d 964, 975 (N.D. Cal. 2008) (“[S]ince plaintiff’s fraud-based claims have been dismissed,
11 plaintiff has no basis for its unjust enrichment claim.”); *Martis v. Grinnell Mut. Reinsurance*
12 *Co.*, 905 N.E. 2d 920, 928 (Ill. Ct. App. 2009) (“Because there was no valid underlying fraud
13 claim, the trial court properly dismissed plaintiff’s unjust enrichment claim.”).

14 **D. Summary.**

15 The RICO claims must be dismissed to the extent they are based on allegations of
16 non-disclosure on the part of Petland because Petland owed no duty of disclosure to
17 Plaintiffs. The RICO claims and the state law consumer protection act claims must be
18 dismissed for failure to plead fraud with particularity and failure to plead causation
19 adequately. The unjust enrichment claim fails because it is predicated on the dismissed
20 fraud-related claims. Given these rulings, the Court need not address Petland’s arguments
21 that the alleged misrepresentations are mere puffery and that the complaint does not state a
22 legally cognizable injury.

23 **II. Hunte’s Motion.**

24 Hunte makes many of the same arguments advanced by Petland: that the complaint
25 fails to plead fraud with particularity, that it fails to allege facts showing proximate causation,
26 and that the unjust enrichment claim fails as a matter of law. Dkt. #33. For reasons
27 explained above, the Court will grant Hunte’s motion with respect to these issues.

28 Hunte also argues that the RICO conspiracy claim under 18 U.S.C. 1962(d) fails

1 because the complaint does not adequately allege an agreement between Hunte and Petland.
2 Dkt. #33 at 12. An agreement to violate RICO is an essential element of a RICO conspiracy
3 claim. *See Oki Semiconductor*, 298 F.3d at 774. Plaintiffs allege in the complaint that
4 Hunte’s agreement to participate in a RICO enterprise with Petland “can be inferred from its
5 distribution of puppies bred under inhumane and unsafe conditions and its willingness to
6 allow false representations about the value of the dogs it provided to Petland and the
7 conditions under which they were raised.” Dkt. #1 ¶ 94. Plaintiffs contend that this
8 allegation is sufficient because the agreement ““need not be express as long as its existence
9 can be inferred from the words, actions, or interdependence of activities and persons
10 involved.”” Dkt. #45 at 14-15 (quoting *Oki Semiconductor*, 298 F.3d at 775).

11 The complaint’s allegations do not permit the Court to infer more than the mere
12 possibility of a conspiratorial agreement between Hunte and Petland. The complaint has
13 therefore “alleged – but it has not ‘shown’ – ‘that [Plaintiffs are] entitled to relief.’” *Iqbal*,
14 129 S. Ct. at 1950 (quoting Fed. R. Civ. P. 8(a)(2)). Such a complaint must be dismissed.
15 *Id.*

16 Hunte contends that Plaintiffs lack standing to assert claims against Hunte. Dkt. #33
17 at 13-15. Plaintiffs admit that the Petland puppies they purchased were supplied by breeders
18 or distributors other than Hunte. *See* Dkt. #1 ¶¶ 8-13; Dkt. #45 at 17. Plaintiffs argue that
19 they nonetheless have standing because the complaint adequately asserts RICO claims
20 and Hunte’s role as a co-conspirator. Dkt. #45 at 17. Because the RICO claims will be
21 dismissed, this argument fails. *See Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 294 (9th Cir.
22 1990) (a RICO plaintiff ““only has standing if, and can only recover to the extent that, he has
23 been injured in his business or property by the conduct constituting the [RICO] violation””)
24 (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985)). Plaintiffs have not
25 otherwise shown that they have suffered an injury at the hands of Hunte. The Court will
26 therefore grant Hunte’s motion with respect to its standing argument.

27 **III. Plaintiffs’ Request for Leave to Amend.**

28 Plaintiffs seek leave to amend the complaint to cure any deficiencies found by the

1 Court. Dkt. ##44 at 12, 45 at 17. Because a motion to dismiss is not a “responsive pleading”
2 within the meaning of Rule 15(a), *see Schreiber*, 806 F.2d at 1401, Plaintiffs may file an
3 amended complaint as a matter of course. *See Fed. R. Civ. P. 15(a)(1)(A)*. The Court will
4 dismiss the instant complaint without prejudice because Plaintiffs can possibly cure its
5 deficiencies. *See Schreiber*, 806 F.2d at 1401; *Laron, Inc. v. Constr. Res. Servs., LLC*, No.
6 CV-07-0151-PCT-NVW, 2007 WL 1958732, at *6 (D. Ariz. July 2, 2007).

7 **IT IS ORDERED:**

- 8 1. The motions to dismiss filed Defendants Hunte Corporation and Petland, Inc.
9 (Dkt. ##33, 34) are **granted**.
- 10 2. The complaint (Dkt. #1) is **dismissed** without prejudice.
- 11 3. Plaintiffs shall have until **August 29, 2009** to file an amended complaint.

12 DATED this 7th day of August, 2009.

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David G. Campbell
United States District Judge