

To evidence intentional deceit, the plaintiffs present: expert witness testimony describing the characteristics of the pages as inherently deceptive; a 2010 congressional report condemning Trilegiant's post-confirmation offer and refund mitigation practices as deceptive and exploitative in 2010;² **[*121]** and the testimonials of duped plaintiffs. For example, Debbie Williams testified that she was enrolled in the "Great Fun" program after booking a hotel room on Priceline in 2009. Supp. App. 42. She cancelled her membership in October 2011 after discovering the recurring charges on her bank statements. At her deposition, she did not recall ever seeing the offer screen, but also did not deny that she may have selected "YES" or entered her personal information. *Id.* The other named plaintiffs claimed similar experiences.

² The report published by a joint committee of the United States Senate condemning Trilegiant's practices led in part to legislation that outlawed *passive* datapass and related conduct. The banned practices are not directly at issue in this lawsuit.

The plaintiffs initiated a class action in 2010 against Trilegiant and (its parent) Affinion Group LLC. Their 2012 amended complaint ("the complaint") included claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968; the Electronic Communications Privacy Act ("ECPA"), 18 U.S.C. § 2511; the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. Sec. 42-110; the **[**7]** California automatic renewal statute, Cal. Bus. & Prof. Code § 17600 et seq.; and common law unjust enrichment. The e-merchants and various financial institutions were also added as co-defendants. In 2014 the district court dismissed the RICO claims, the California state law claims, and most of the CUTPA claims. Claims against certain defendants were dismissed entirely. After extensive discovery, the district court granted summary judgment dismissing the ECPA claim and remaining state claims.

On appeal, Plaintiffs challenge only the grant of summary judgment on the ECPA claim, the dismissal of the RICO and RICO conspiracy claims, and the grant of summary judgment on the CUTPA and unjust enrichment claims.

II

[HN1] We review *de novo* the grant of summary judgment on the ECPA claim. *N.Y. State Rifle and Pistol Ass'n v. Cuomo*, 804 F.3d 242, 252 (2d Cir. 2015). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* Because the appellants fail to raise a triable issue of fact as to their consent to the alleged interception of electronic communications, we affirm the dismissal of their claim under the ECPA.

[HN2] The ECPA regulates the interception of an electronic communication. 18 U.S.C. § 2511. Section 2511(1)(a) states that, except as otherwise provided, **[**8]** anyone who "intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any ... electronic communication" violates the statute. *Id.* § 2511(1)(a). There is a safe harbor for interceptions made with prior consent. *Id.* § 2511(2)(d).

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