

For example, the complaint alleges that consumers were "duped into believing" that the membership programs were being offered by an e-merchant, rather than Trilegiant, App'x at 282, but identifies no misrepresentation that induced such a belief. Similarly, the complaint labels datapass a "fraudulent tactic," *id.*, and alleges that each time an e-merchant shared a customer's billing information with Trilegiant, both the e-merchant and Trilegiant "committed an act of wire fraud," *id.* at 308. But the transfer of billing information from one merchant to another is not inherently fraudulent, and the plaintiffs do not identify any misrepresentation regarding such transfers by Trilegiant or any other defendant.

[*126] Neither the complaint's specific discussion of Trilegiant's allegedly deceptive tactics, **[**17]** nor its conclusory references to Trilegiant's fraudulent scheme, set forth a material misrepresentation with the requisite particularity.⁷ Cf. *Webloyalty.com*, 673 F. App'x at 104 (concluding that Trilegiant's practices at issue in that case not "sufficient to ground [a] fraud claim"). The complaint therefore fails to plead a scheme to defraud. Without an underlying scheme to defraud, the plaintiffs have not alleged a pattern of racketeering.

⁷ Plaintiffs also rely on *Delgado v. Ocwen Loan Servicing* for the proposition that the Trilegiant's tactics as alleged are sufficiently deceptive to qualify as a material misrepresentation. In *Delgado*, the defendant mailed checks for small amounts of free money together with materials separately disclosing that deposit of the check registers the recipient for an (unwanted and unrelated) service at a steep monthly fee. 2014 U.S. Dist. LEXIS 135758, 2014 WL 4773991, at *1-2. The *Delgado* plaintiffs' complaint alleged specific material omissions and misrepresentations as to the source of the charges. 2014 U.S. Dist. LEXIS 135758, [WL] at *18-19. *Delgado* accurately distinguished the Trilegiant scheme in which "the plaintiffs claimed they were deceptively enrolled in membership programs through the defendants' internet offer pages" but failed to describe any false or fraudulent content. 2014 U.S. Dist. LEXIS 135758, [WL] at *18.

The plaintiffs' RICO conspiracy claim fails as well. The alleged conspiracy involved an agreement to commit the same substantive RICO violations we have deemed insufficiently pled, and the plaintiffs have not alleged any further acts that, if carried out, would have satisfied RICO's requirement of a pattern of racketeering. See generally *Salinas v. United States*, 522 U.S. 52, 118 S. Ct. 469, 139 L. Ed. 2d 352 (1997). The plaintiffs therefore failed to plead the necessary agreement to violate RICO's substantive provisions. See *Cofacredit S.A. v. Windsor Plumbing Supply Co.*, 187 F.3d 229, 245 (2d Cir. 1999).

IV

Finally, we affirm the grant of summary judgment on the CUTPA and unjust enrichment claims substantially for the reasons set forth by the district court.

[HN11] CUTPA prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. Sec. 42-110b(a). The plaintiffs allege that Trilegiant's **[**18]** refund mitigation strategy caused them to lose a portion of a possible refund of membership fees. But the plaintiffs, who consented to their original enrollment, have not shown that they are entitled to any such refund. The fact that some plaintiffs were offered less than a full refund to which they would not have been entitled at law cannot constitute an "unfair or deceptive" act.

The district court was likewise correct in granting summary judgment on the unjust enrichment claim. An unjust enrichment claim for membership fees does not lie if the

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