STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: JULY 16, 2012)

RHODE ISLAND RESOURCE RECOVERY CORPORATION	:	
vs.	:	**C.A. No. PB 10-5194**
ALBERT G. BRIEN AND ASSOCIATES; ALBERT G. BRIEN; WILLIAM E. COYLE, JR. AND ASSOCIATES; WILLIAM E. COYLE, JR.; WILLIAM E. COYLE III; PILGRIM TITLE INSURANCE COMPANY; JEFFREY A. ST. SAUVEUR; JAMES J. BELLIVEAU; MACERA/TOWER FAMILY LIMITED PARTNERSHIP; ANTHONY MACERA, INC.; GERALD MACERA; MAUREEN B. MACERA; JOHN A. TZITZOURIS AND LYNN M. TZITZOURIS; MARY BACCARIE; BAC-MAC REALTY; SILVESTRI LEASING COMPANY; ANTHONY SILVESTRI, JR.; DANYA IZZO	:	

DECISION

SILVERSTEIN, J. Before the Court is the Motion to Dismiss of Defendants Pilgrim Title Insurance Company (Pilgrim), Jeffrey A. St. Sauveur, and James J. Belliveau (collectively, Pilgrim Defendants), the Motion to Dismiss of Defendants Maureen B. Macera, John A. Tzitzouris, and Lynn M. Tzitzouris (collectively, Macera/Tzitzouris Defendants), the Motion to Dismiss of Defendants William E. Coyle, Jr. and Associates, William E. Coyle, Jr., and William E. Coyle III (collectively, Coyle Defendants), and the Motion to Dismiss, or in the alternative, Motion for Summary Judgment of Defendants Silvestri Leasing Company and Anthony Silvestri, Jr. (collectively, Silvestri Defendants). The Motions to Dismiss are brought pursuant to Super.

R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. The various Defendants request this Court dismiss certain causes of action contained in Plaintiff Rhode Island Resource Recovery Corporation's (RIRRC or Plaintiff) 73-count, 622-paragraph Amended More Definite Statement.

I

Facts and Travel

This matter was the subject of a prior written Decision of this Court, filed May 13, 2011. See R.I. Res. Recovery Corp. v. Albert G. Brien and Assocs., No. PB 10-5194, 2011 WL 1936012 (R.I. Super. May 13, 2011). Although many of the same facts were set forth in that Decision, the Amended More Definite Statement modified the original Complaint, and as such, the pertinent facts will be once again summarized by the Court. For the purpose of the Motions to Dismiss presently under consideration, the Court takes the information alleged in the Amended More Definite Statement as true. The facts recited herein are gleaned directly from the Amended More Definite Statement.

A

Introduction and Parties

Broadly, the Amended More Definite Statement alleges that the Defendants, acting together and in concert with former commissioners and employees of RIRRC, "undertook a systematic course of action to enrich themselves while depriving the taxpayers of the State of Rhode Island of many millions of dollars." (Am. More Definite Statement (Compl.) Introduction.) Specifically, RIRRC alleges that the Defendants colluded with former RIRRC actors to purchase multiple parcels of real property at vastly inflated prices. Id. RIRRC, formerly known as Rhode Island Solid Waste Management Corporation, is a quasi-public

corporation established by legislative enactment in 1974 to own and operate the Central Landfill in Johnston, Rhode Island. (Compl. ¶ 1.)

In or around 2008, the Rhode Island Bureau of Audits (Bureau) conducted an investigation of RIRRC. Id. at ¶ 32. On September 22, 2009, the Bureau issued a Summary of Findings (Audit Report), highlighting numerous breaches of fiduciary duty, conflicts of interest, and other wrongful acts in connection with RIRRC's real estate purchases. Id. at ¶¶ 33-34. RIRRC summarizes the Audit Report as stating that:

> "(1) the majority of the purchase prices were in excess of market comparable statistics; (2) several properties were encumbered by known issues and some were tainted by relationship or potential conflict-of-interest concerns; (3) there were pervasive potential related-party and conflict-of-interest issues present; (4) RIRRC's real estate files lacked documentation; (5) cost/benefit analyses were apparently not performed regarding eminent domain versus negotiation to acquire properties; (6) RIRRC failed to follow legally prescribed protocol for property acquisitions; and (7) plans for the acquired property's use were often questionable, unclear, or absent." Id. at ¶ 35.

The Defendants in the case at bar are organized into a number of groups, both within Plaintiff's Amended More Definite Statement and in the various Defendants' Motions to Dismiss.[1] The Brien Defendants are Albert G. Brien and Associates and Albert G. Brien individually (collectively, Brien). Albert G. Brien is a real estate broker, and Albert G. Brien and Associates is a real estate brokerage firm. (Compl. ¶¶ 2-3.) Plaintiff alleges that Brien had close relationships with A. Austin Ferland, a former RIRRC chairman, as well as a number of the sellers of real estate, including Gerald Macera, Michael Macera, Steven Macera, Robert Cece, and John Cece. Id. at ¶¶ 4-5.

[1] Only the motions of four groups of the Defendants (the Pilgrim Defendants, the Macera/Tzitzouris Defendants, the Coyle Defendants, and the Silvestri Defendants) are before the Court and addressed in this Decision. The other Defendants are not the subject of this Decision.

The Coyle Defendants are William E. Coyle, Jr. and Associates, William E. Coyle, Jr., and William E. Coyle III (collectively, Coyle). William E. Coyle, Jr. and Associates is a real estate appraisal firm, and both William E. Coyle, Jr. and William E. Coyle III are licensed real estate appraisers. Id. at ¶¶ 7-9. William E. Coyle III allegedly had a prior relationship with Ferland, serving as his appraiser and testifying on his behalf as an expert witness on a number of occasions. Id. at ¶ 10.

The Pilgrim Defendants are Pilgrim Title Insurance Company, Jeffrey A. St. Sauveur, and James J. Belliveau (collectively, Pilgrim). Pilgrim Title Insurance Company is a closing, title, and escrow company owned and managed by St. Sauveur and Belliveau, who are both attorneys. Id. at ¶ 11. Plaintiff alleges that Pilgrim provided real estate and legal services, and as a title insurance and settlement agent, its services included the provision of legal services. See id. at ¶¶ 12-13. John St. Sauveur, the father of Jeffrey A. St. Sauveur, served as both a commissioner of RIRRC and a vice president of Pilgrim Title Insurance Company from at least 2001 to 2005. Id. at ¶¶ 14-16. While this was disclosed to the Rhode Island Ethics Commission, it was allegedly not disclosed to the full RIRRC Board of Commissioners. Id.

The Macera/Tzitzouris Defendants include the Macera/Tower Family Limited Partnership, Gerald Macera, Anthony Macera, Inc., Maureen B. Macera, John A. Tzitzouris, and Lynn M. Tzitzouris (collectively, Macera/Tzitzouris). Anthony Macera, Inc. is a Florida corporation with a principal place of business in Boca Raton, Florida, and Gerald Macera is a citizen of Boca Raton, Florida. Id. at 19-20. Gerald Macera is the general partner of the Macera/Tower Family Limited Partnership, and Plaintiff also alleges that Anthony Macera, Inc. is "an instrumentality or an alter ego of Gerald Macera." Id. at 18, 21. Anthony Macera, Inc.,

Gerald Macera, and the Macera/Tower Family Limited Partnership are collectively referred to as the Macera/Tower Defendants.

Maureen B. Macera is a Boca Raton, Florida resident and the widow of William R. Macera, the former mayor of Johnston, Rhode Island. Id. at ¶ 22. Lynn M. Tzitzouris is the sister of the former mayor, and her husband, John A. Tzitzouris, is a professional land surveyor (together, the Tzitzourises). Id. at ¶ 23.

The Baccarie Defendants are Mary Baccarie and Bac-Mac Realty (collectively, Baccarie). Bac-Mac realty is owned and controlled by Mary Baccarie. Id. at ¶ 25. Defendant Danya Izzo is a resident of Johnston, Rhode Island. Id. at ¶ 28.

The Silvestri Defendants are Silvestri Leasing Company and Anthony Silvestri, Jr. (collectively, Silvestri). Anthony Silvestri, Jr. is the general partner and president of Silvestri Leasing Company, a Rhode Island general partnership. Id. at 26-27.

B

Early Transactions

On December 7, 1995, RIRRC purchased a 50.5-acre lot designated as Plat 43, Lot 66 in Johnston, Rhode Island from Michael Macera, Steven Macera, Robert Cece, and John Cece for $2,675,000 (Macera/Cece Property). Id. at ¶ 36. Brien was the real estate broker and seller's agent for the sale. Id. at ¶ 37. A September 1995 appraisal of the Macera/Cece Property conducted by J.W. Riker Appraisal Services estimated an investment value of $2,700,000, based on excavatable materials on the property, and an actual market value of $500,000. Id. at ¶ 38. There were wetlands and hazardous waste on the Macera/Cece Property, and RIRRC was allegedly aware of that fact prior to the purchase. Id. at ¶ 39.

On December 29, 1997, RIRRC purchased a 55.8-acre lot designated as Plat 29, Lot 33 in Johnston, Rhode Island from Simmons Lake Realty for $1,575,000 (Simmons Lake Property). Id. at ¶ 40. Plaintiff alleges there is no evidence of an appraisal in connection with this purchase, but there was evidence of potential groundwater and soil contamination on the Simmons Lake Property prior to its purchase. Id. at ¶¶ 41-42. On February 27, 1998, RIRRC purchased a 18.15-acre lot designated as Plat 31, Lots 9, 35, and 36 in Johnston, Rhode Island from Ronald J. Rossi for $915,000 (Rossi Property). Id. at ¶ 43. During two separate appraisals by Northeast Real Estate in 1997, the Rossi Property was valued at $682,000 and $493,000. Id. at ¶ 44.

On June 3, 1998, RIRRC purchased a 52.48-acre lot designated as Plat 29, Lots 64, 65, and 66 in Johnston, Rhode Island from Alfred Russo and Vincent Russo for $1,900,000 (Russo Property). Id. at ¶ 45. The property had been appraised by Northeast Real Estate for $1,900,000 in April of 1997, but hazardous waste and potential groundwater or soil contamination had also been found on the Russo Property and the Simmons Lake Property prior to their purchase. Id. at ¶¶ 47-49. Brien was the seller's agent for the Simmons Lake Property, the Rossi Property, and the Russo Property. Id. at ¶ 50.

On February 29, 2000, RIRRC purchased an 18.7-acre lot designated as Plat 31, Lot 2 in Johnston, Rhode Island from the Ruth A. Tillinghast Living Trust for $1,125,000 (Tillinghast Property). Id. at ¶ 51. Pilgrim Title Insurance Company, Jeffrey A. St. Sauveur, and/or James J. Belliveau was the title insurance agent and settlement agent for the Tillinghast Property purchase. Id. at ¶ 52. Hazardous environmental conditions had been detected at the Tillinghast Property prior to its purchase. Id. at ¶ 54.

C

Macera/Tower Property

On November 10, 2000, RIRRC purchased by warranty deed a 36.7-acre lot designated as Plat 29, Lot 32; Plat 31, Lot 10; and Plat 44, Lot 159 in Johnston, Rhode Island from the Macera/Tower Family Limited Partnership and Anthony Macera, Inc. for $6,000,000 (Macera/Tower Property). Id. at ¶¶ 55-56. The tax-assessed value of Plat 31, Lot 10 (which made up 33.5 of the 36.7 acres) was $1,404,000. Id. at ¶ 57. Tillinghast Licht Perkins Smith & Cohen LLP (Tillinghast Licht) served as the settlement agent. Id. at ¶ 58. Pilgrim served as the title insurance agent and was allegedly compensated at least $12,825. Id. at ¶ 59. Pilgrim was allegedly hired as the title insurance agent by Tillinghast Licht at the instruction of former RIRRC executive director Sherry Mulhearn (Mulhearn). Id. at ¶ 60. Pilgrim allegedly charged more than Tillinghast Licht's usual title insurance agent, and RIRRC avoided compliance with the state's Purchasing Act because Pilgrim was hired by Tillinghast Licht. See id. at ¶ 61. According to the Plaintiff, Pilgrim provided legal services in connection with the purchase, including drafting multiple deeds, affidavits, certificates, and tax lien discharges. Id. at ¶ 75. Brien was the seller's agent in the transaction. Id. at ¶ 62.

Coyle prepared an Executive Summary Report in March of 1999 that included the Macera/Tower Property and appraised it, under one scenario, at $5,950,000, but did not take into account known environmental conditions on the property. Id. at ¶ 65. An October 2001 appraisal after the sale indicated an even higher property value, but again did not take into account environmental conditions. Id. at ¶¶ 66-67. Prior to the purchase of the Macera/Tower Property, RIRRC was allegedly aware that parts of the property were used as the Macera Dump,

and an August 1999 environmental site assessment revealed waste materials over approximately 8.5 acres, as well as various contaminants in the groundwater. Id. at ¶¶ 68-70. The estimated cost of removing the on-site waste was $6,750,000, while capping the area (preventing future construction) would have cost $600,000-700,000. Id. at ¶ 71. An early draft of the purchase and sale agreement for the Macera/Tower Property stated that the sellers would be responsible for the cost to cap the Macera Dump; however, that provision was not included in the final version of the purchase and sale agreement, which allegedly represented that there were no hazardous substances, pollutants, or contaminants on the premises. Id. at ¶¶ 72-74.

D

Macera/Tzitzouris Property

On April 29, 2002, RIRRC purchased by warranty deed a 67.9-acre lot designated as Plat 43, Lot 253 in Johnston, Rhode Island from William R. Macera, Maureen B. Macera, and the Tzitzourises for $2,050,000 (Macera/Tzitzouris Property). Id. at ¶¶ 76-77. The previous year, the Macera/Tzitzouris Property had a tax-assessed value of $212,400, but just prior to the sale, the Property was reassessed at $1,649,500 based on its potential use for real estate development. Id. at ¶ 78. Pilgrim was the title insurance agent for the sale and was compensated at least $5,695. Id. at ¶ 79. A separate law firm acted as settlement agent and legal counsel for RIRRC in the transaction. Id. at ¶ 80. Brien, as well as another individual, were the seller's brokers, and Brien was paid a commission of $120,000. Id. at ¶ 81. Brien was allegedly brought in as an additional agent by Gerald Macera and William Macera. Id. at ¶ 83.

The purpose of the Macera/Tzitzouris Property purchase was purportedly to obtain cover materials for the landfill, but prior to the purchase, RIRRC and Brien were allegedly aware that the soil was unsuitable as fill or cover material and only 66% of the site was outside of wetland

areas. Id. at ¶¶ 85-88. Nevertheless, Mulhearn proceeded with the purchase and requested a "supporting appraisal" for the established purchase price. Id. at ¶ 89. A fax cover sheet sent to RIRRC's counsel by Mulhearn indicates that Pilgrim was to perform the title search and Coyle was to appraise the property. Id. at ¶ 90. Plaintiff avers this evidences Mulhearn's control over the transaction and choice of title agent and appraiser. See id.

A February 2002 appraisal by Coyle valued the Macera/Tzitzouris Property at $2,135,000. Id. at ¶ 91. Plaintiff alleges this appraisal failed to conform with professional standards because it was based on purchase price comparisons of other properties that had been appraised by Coyle and purchased by RIRRC, including the Macera/Tower Property. Id. at ¶ 92.

In 2010, years after the sale, RIRRC discovered that a conservation easement had been placed on the Macera/Tzitzouris Property prior to its sale to RIRRC. Id. at ¶ 93. The easement and related consent agreement with the Rhode Island Department of Environmental Management (RIDEM) were never recorded. Id. at ¶ 95. They were not disclosed to RIRRC prior to the purchase, and the purchase and sale agreement purported to convey the Macera/Tzitzouris Property with good, clear, and marketable record title, free from all encumbrances. Id. at ¶ 96.

E

Baccarie Property

On March 10, 2003, RIRRC purchased by warranty deed a 10.14-acre lot designated as Plat 31, Lots 50 and 56 in Johnston, Rhode Island from Baccarie for $1,300,000 (Baccarie Property). Id. at ¶¶ 97-98. The tax-assessed value of the Baccarie Property at the time was $223,600. Id. at ¶ 99. Pilgrim was both the title insurance agent and the settlement agent for the sale and was compensated at least $3,745. Id. at ¶ 100. An executive director of RIRRC instructed RIRRC's attorney to have Pilgrim conduct the title search. Id. at ¶ 101. Brien was the

seller's agent and was paid a commission of at least $50,000 on the Baccarie Property sale. Id. at ¶ 102.

An appraisal conducted by Coyle in December of 2002 valued the Baccarie Property, together with two other properties later purchased by RIRRC, at a combined value of $3,000,000. Id. at ¶ 105. Plaintiff again alleges that the Coyle appraisal was faulty because it was based on purchase prices of other properties that were appraised by Coyle and then purchased by RIRRC. Id. at ¶ 106. Additionally, Baccarie was permitted to remain on the Baccarie Property until December 31, 2003 at a rent of only $1.00 per month. Id. at ¶ 107.

F

Bac-Mac Realty Property

On March 10, 2003, RIRRC purchased by warranty deed Plat 31, Lot 53 in Johnston, Rhode Island from Bac-Mac Realty for $400,000 (Bac-Mac Realty Property). Id. at ¶¶ 108-09. The Bac-Mac Realty Property consisted of 22,400 square feet of vacant land and a 4000 square foot building. Id. at ¶ 108. The tax-assessed value of the Bac-Mac Realty Property at the time was $112,500. Id. at ¶ 110. Pilgrim was both the title insurance agent and the settlement agent for the sale and was compensated at least $1,585. Id. at ¶ 111. Brien was the seller's agent and was paid a commission of at least $20,000 on the Bac-Mac Realty Property sale. Id. at ¶ 112. Once again, Baccarie was permitted to remain on the Bac-Mac Realty Property until December 31, 2003 at a rent of only $1.00 per month. Id. at ¶ 113.

G

Silvestri Leasing Company Property I

Also on March 10, 2003, RIRRC purchased by warranty deed a 1.7-acre lot designated as Plat 31, Lots 7 and 54 in Johnston, Rhode Island from Silvestri for $1,085,000 (Silvestri Leasing

Company Property I). Id. at ¶¶ 114-16. The tax-assessed value of the property at the time was $245,100. Id. at ¶ 117. Pilgrim was both the title insurance agent and the settlement agent for the sale and was compensated at least $1,585. Id. at ¶ 118. Brien was the seller's agent and was paid a commission of at least $50,000 on the Silvestri Leasing Company Property I. Id. at ¶ 119.

H

Izzo Property

On October 1, 2003, RIRRC purchased by quitclaim deed a 10.1-acre lot designated as Plat 31, Lot 43 in Johnston, Rhode Island from Danya Izzo for $2,015,000 (Izzo Property). Id. at ¶¶ 120-21. The tax-assessed value of the Izzo Property at the time was $390,000. Id. at ¶ 122. Pilgrim was both the title insurance agent and the settlement agent for the sale and was compensated at least $1,585. Id. at ¶ 123. Pilgrim also allegedly performed legal services by commenting on the correct wording of the consent agreement that the seller was to sign with RIDEM. Id. at ¶ 124. William R. Macera held a mortgage on the Izzo Property, and the mortgage was discharged at the time of the sale by a payment of $112,010 to Macera. Id. at ¶ 125.

Coyle conducted an appraisal of the Izzo Property in March of 2002 and valued the Property at $1,500,000. Id. at ¶ 126. Plaintiff contends the appraisal was flawed because it relied on purchase price comparisons of properties that had been appraised by Coyle and purchased by RIRRC. Id. at ¶ 127. In December of 2002, Crossman Engineering had conducted a wetlands delineation on the Izzo Property, showing the presence of wetlands, which led Coyle to lower the appraisal to $1,400,000. Id. at ¶ 128-29. RIRRC was allegedly aware of this information, but still made an offer to purchase the Izzo Property for $1,600,000 in January

2003. Id. at ¶ 130. Also in January, RIRRC "began the process of taking the Izzo Property by eminent domain by depositing $1,400,000 with the Registry of Court." Id. at ¶ 131. An undated, handwritten letter from Mulhearn to a "John" indicated a $2,000,000 offer for the Izzo Property and noted that it exceeded the appraisal and did not take into account the wetlands on the Property, which would have lowered the value. Id. at ¶ 133. RIRRC knew of wetlands on the Property and allegedly knew of environmental and contamination issues prior to the purchase as well. Id. at ¶¶ 133-34. Although Danya Izzo agreed with the RIDEM to remove solid waste from the Izzo Property, an October 3, 2003 inspection revealed that solid waste remained after the sale. Id. at ¶¶ 135-37.

I

Coastal Atlantic Property

On July 29, 2004, RIRRC purchased by warranty deed a 3.1-acre lot designated as Plat 31, Lots 45, 46, and 47 in Johnston, Rhode Island from Coastal Atlantic, LLC for $1,475,000 "as is" (Coastal Atlantic Property). Id. at ¶¶ 138-40. The tax-assessed value of the Coastal Atlantic Property at the time was $786,800. Id. at ¶ 142. Coyle conducted two appraisals in April 2004 and valued the Coastal Atlantic Property at $1,400,000. Id. at ¶¶ 143-44. Plaintiff contends the Coyle appraisal was faulty because it used the other properties appraised by Coyle and sold to RIRRC as comparable properties. Id. at ¶ 145.

J

Coastal KJB Builders Property

On July 29, 2004, RIRRC purchased by warranty deed a 1.84-acre lot designated as Plat 31, Lots 49, 55, and 58 in Johnston, Rhode Island from Coastal KJB Builders, Inc. for $1,525,000 "as is" (Coastal KJB Builders Property). Id. at ¶¶ 146-48. The tax-assessed value of

the Coastal KJB Builders Property at the time was $790,100. Id. at ¶ 149. Coyle, through two appraisals, valued the Coastal KJB Builders Property at $1,306,200. Id. at ¶ 150. Plaintiff alleges the purchases of both the Coastal Atlantic Property and the Coastal KJB Builders Property were unnecessary because a related dispute concerning the properties' frontage along Shun Pike could have been resolved by compensating the property owners only for a taking of a portion of the property. See id. at ¶ 151.

K

Silvestri Leasing Company Property II

On July 6, 2005, RIRRC purchased by warranty deed a 5.14-acre lot designated as Plat 31, Lot 6 in Johnston, Rhode Island from Silvestri for $4,000,000 (Silvestri Leasing Company Property II). Id. at ¶¶ 152-53. The tax-assessed value of the property at the time was $1,036,100. Id. at ¶ 155. Pilgrim was both the title insurance agent and the settlement agent for the sale and was compensated at least $10,155. Id. at ¶ 156. Brien was the seller's agent and was allegedly hired as such because of his close relationship with Anthony Silvestri, Sr. Id. at ¶ 157-58. Brien represented to RIRRC that the value of the Silvestri Leasing Company Property II was $5,200,000. Id. at ¶ 159. Coyle appraised the Property at $4,700,000; however, Plaintiff contends the appraisal was flawed because it included inappropriate purchase price comparisons with the properties previously purchased by RIRRC. Id. at ¶ 160-61. Lastly, Silvestri was permitted to remain on the Silvestri Leasing Company Property II for five years after the purchase, at an annual rent of only $100, and to sublease the Property to existing tenants and retain all rent collected. Id. at ¶ 162.

L

Causes of Action

RIRRC's Amended More Definite Statement brings seventy-three Counts against the various Defendants. However, there are only a total of ten different causes of action. The ten causes of action are: (i) civil conspiracy, (ii) breach of fiduciary duty, (iii) aiding and abetting breach of fiduciary duty, (iv) fraud, (v) negligent omissions or misrepresentations, (vi) appraiser malpractice/professional negligence, (vii) legal malpractice/professional negligence, (viii) breach of contract, (ix) breach of warranty deed, and (x) civil liability for obtaining property by false pretenses. Not every cause of action is brought in connection with every property sale, and, naturally, the causes of action are alleged against different Defendants for different sales.

The counts for civil conspiracy generally allege that some of the Defendants "willingly and wantonly combined and agreed to work in concert with former employees and commissioners of RIRRC . . . to enrich themselves through the sale . . . at a price far exceeding market value . . . ." See Compl. ¶¶ 164, 236, 292, 344, 396, 448, 572. Plaintiff also mentions "flagrant disregard of the property's environmental issues" and "repetition of the same parties' involvement in multiple similar transactions," as well as an intent to "manipulate the market value" of the properties and an effort to "conceal their actions." See id. at ¶¶ 166, 236, 292-93, 344-45, 396-97, 448-49, 572-73. In further support of its conspiracy claims, RIRRC alleges what it characterizes as overt acts in furtherance of the conspiracy, including: conducting appraisals that do not meet professional standards; excluding environmental cleanup and other costs from consideration in calculating the purchase price; providing title insurance, acting as settlement agent, and/or providing legal services because of connections with RIRRC and failing to disclose problems in the purchase transactions; acting as the seller's agent because of

relationships with RIRRC actors; and knowingly selling properties at inflated prices exceeding market value, sometimes without disclosing easements or environmental conditions. See id. at ¶¶ 167, 238, 294, 346, 398, 450, 574.

The breach of fiduciary duty counts are alleged against either Pilgrim or Coyle. Typically, Plaintiff claims that Pilgrim "was acting as attorneys and an agent for RIRRC" and, therefore, "had a fiduciary duty to RIRRC to exercise the utmost good faith in the transaction with due regard to the interests of RIRRC, to make full and truthful disclosures of all material facts, and to refrain from obtaining advantage to itself at the expense of RIRRC." See id. ¶¶ 194-95, 321-22, 373-74, 425-26, 472-73, 601-02. Plaintiff alleges Pilgrim breached those fiduciary duties by "participating in the conspiracy to cause RIRRC to unwisely spend money," "failing to disclose conflicts of interest," and "failing to disclose . . . that the sale price . . . had been inflated far above fair market value." See id. at ¶¶ 197, 324, 376, 428, 475, 604. Plaintiff claims that Coyle "as a licensed real estate appraiser . . . had a fiduciary duty to RIRRC as his client and as the buyer of the property." See id. at ¶¶ 201, 266, 328, 380, 432, 479, 522, 556, 608. Plaintiff alleges Coyle breached that fiduciary duty by "[a]cting in concert with other conspirators to cause RIRRC to unwisely spend money through the purchase . . . for an inflated purchase price," "failing to disclose multiple conflicts of interest," and "failing to conduct appraisals that met the standards of his profession and reflected the fair market value of the property." See id. at ¶¶ 202, 267, 329, 381, 433, 480, 523, 557, 609.

Plaintiff's claims for aiding and abetting breach of fiduciary duty allege that a number of the Defendants knew RIRRC officers and commissioners owed a fiduciary duty to RIRRC, the Defendants knew that the officers' and commissioners' actions breached the duties, and the Defendants "assisted, aided, and abetted the breach of these fiduciary duties." See id. at ¶¶ 171-

74, 242-45, 298-301, 350-53, 402-05, 454-57, 504-07, 538-41, 578-81. Plaintiff sets forth that the Defendants aided and abetted the officers' and commissioners' breaches by acts or omissions, including: producing appraisals that did not meet professional standards; excluding environmental issues and other costs or considerations in negotiating the purchase price, or simply negotiating the purchase price; providing title insurance, acting as settlement agent, and/or providing legal services without disclosing problems with the transactions; and by selling the properties to RIRRC at inflated prices exceeding market value, sometimes not disclosing easements or environmental conditions. See id. at ¶¶ 174, 245, 301, 353, 405, 457, 507, 541, 581.

The counts of the Amended More Definite Statement for fraud claim that assorted Defendants "made false representations, though affirmative statements and/or through concealing facts and circumstances known to them, with the intent to induce RIRRC to rely thereon," and "RIRRC justifiably relied upon these false representations in purchasing the property." See id. at ¶¶ 178-79, 249-50, 305-06, 357-58, 409-10, 461-62, 511-12, 545-46, 585-86. Plaintiff alleges the false representations included: representing that property was sold in good faith and at a reasonable price; representing that there were no environmental problems or easements; representing that the appraisals met professional standards and reflected fair market value; failing to disclose material defects, such as environmental problems or excessive price; failing to disclose that the sale price had been inflated above fair market value; and failing to disclose the existence of a conspiracy. See id. at ¶¶ 178, 249, 305, 357, 409, 461, 511, 545, 585.

Plaintiff's counts alleging negligent omissions or misrepresentations against various Defendants contain similar averments. They specifically allege that Brien, as a licensed real estate agent and broker, had a duty to disclose material defects and breached that duty, knowing

RIRRC was acting under a misapprehension of facts. See id. at ¶¶ 183-87, 254-59, 310-314, 362-66, 414-18, 590-94. Further, various other Defendants "made false representations to RIRRC, which Defendants knew or should have known would cause RIRRC to rely thereon," including: representing that property was sold in good faith and at a reasonable price; representing that there were no environmental problems or easements; representing that the appraisals met professional standards and reflected fair market value; failing to disclose that the sale price had been inflated above fair market value; and failing to disclose the existence of a conspiracy. See id. at ¶¶ 188, 260, 315, 367, 419, 466, 516, 550, 595.

The appraiser malpractice or professional negligence counts are alleged against Coyle. Particularly, Plaintiff claims Coyle "had a duty of ordinary care and competence reasonably expected of members of the profession" and "a duty to follow [G.L. 1956] § 5-20.7-19, which requires state certified or licensed appraisers to comply with the Uniform Standards of Professional Appraisal Practice." See id. at ¶¶ 206, 271, 333, 385, 437, 493, 527, 561, 613. Coyle "knew or should have known that . . . by using properties previously purchased by RIRRC and appraised by Coyle at inflated prices, Coyle was artificially inflating measures of fair market value," constituting a breach of his duties. See id. at ¶¶ 207-08, 272-73, 334-35, 386-87, 438-39, 494-95, 528-29, 562-63, 614-15.

Plaintiff brought similar claims against Pilgrim for legal malpractice or professional negligence. In those counts, Plaintiff alleges Pilgrim "provided legal services to RIRRC" and "had a legal duty to not knowingly make a false statement of material fact or law to a third person, and to not knowingly fail to disclose material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client." See id. at ¶¶ 212-13, 484-86. In violation of that duty, Pilgrim allegedly failed to disclose environmental problems; failed

to disclose the existence of a conspiracy; failed to disclose to RIRRC that John St. Sauveur was serving as both a commissioner of RIRRC and as vice president of Pilgrim; caused RIRRC to unwisely spend money; and failed to disclose that sale prices were inflated above fair market value. See id. at ¶¶ 214-16, 488.

The Amended More Definite Statement includes two counts for breach of contract. More precisely, Plaintiff alleges a breach of the implied covenant of good faith and fair dealing in the purchase and sale agreement for the Macera/Tower Property because the agreement stated there were no hazardous substances, pollutants, or contaminants, but the Property contained substantial amounts of contaminated groundwater and waste. See id. at ¶¶ 221-22. Plaintiff also alleges breach of the implied covenant of good faith and fair dealing in the purchase and sale agreement for the Macera/Tzitzouris Property because the agreement stated it was "conveyed with good, clear, insurable, marketable, and perfect to record title, free from all encumberances [sic]," but there was a conservation easement on the Property. See id. at ¶¶ 277-79.

Plaintiff's two counts for breach of warranty deed also relate to the Macera/Tower Property and the Macera/Tzitzouris Property. Plaintiff alleges the Macera/Tower Defendants "knowingly conveyed a property encumbered by environmental problems . . . breach[ing] the covenant of seisin and the covenant of quiet enjoyment in that deed." See id. at ¶ 227. Separately, Plaintiff alleges that Maureen Macera and the Tzitzourises "convey[ed] title with the undisclosed encumbrance of a conservation easement, constitute[ing] breach of the covenant of seisin and the covenant of quiet enjoyment in that deed." See id. at ¶ 283.

Finally, Plaintiff brings counts against numerous Defendants for civil liability pursuant to G.L. 1956 § 9-1-2 for obtaining property by false pretenses in violation of G.L. 1956 § 11-41-4. Plaintiff alleges that various Defendants "obtained from RIRRC designedly, by false pretenses,

money or funds in connection with the purchase" of the properties "with the intent to cheat, mislead, or defraud RIRRC." See id. at ¶¶ 231-32, 287-88, 339-40, 391-92, 443-44, 499-500, 533-34, 567-68, 619-20. The Plaintiff claims the property-sellers "obtained proceeds of the sale of the property for a price above fair market value," Brien received a commission "dependent upon the final sale price of the property," Coyle "received fees for conducting appraisals," and Pilgrim received "fees that were dependent upon the final sale price of the property." See id. at ¶¶ 231, 287, 339, 391, 443, 499, 533, 567, 619.

M

Travel

Of particular relevance to the Motion at bar, this Court on May 13, 2011 issued a written Decision finding RIRRC's original Complaint "so vague, ambiguous, and conclusory, that it fails to provide the [Defendants] with adequate notice of the nature and extent of the allegations against them." R.I. Res. Recovery, 2011 WL 1936012, slip op. at 20. Accordingly, the Court granted the parties' Motions for a More Definite Statement and entered a consistent Order. The May 2011 Decision outlined this Court's requirements for the contents of an acceptable more definite statement. See id. at 12-19. Plaintiff filed a More Definite Statement in July 2011, and pursuant to this Court's Order dated January 19, 2012, filed the Amended More Definite Statement thereafter.

Pilgrim filed its current Motion to Dismiss all counts against it on August 26, 2011. The Macera/Tzitzouris Defendants filed their Motion to Dismiss all counts on August 29, 2011. The Silvestri Defendants filed their Motion to Dismiss, or in the alternative, Motion for Summary Judgment, on all claims on November 2, 2011. The Coyle Defendants filed a Motion to Dismiss

all counts except the counts for appraiser malpractice or professional negligence on November 7, 2011. RIRRC has opposed all of the instant Motions.

II

Standard of Review

It is well-settled in Rhode Island that the "sole function of a motion to dismiss is to test the sufficiency of the complaint." Narragansett Elec. Co. v. Minardi, 21 A.3d 274, 277 (R.I. 2011) (quoting Laurence v. Sollitto, 788 A.2d 455, 456 (R.I. 2002)). The court must "assume the allegations contained in the complaint are true, and examine the facts in the light most favorable to the nonmoving party." A.F. Lusi Constr., Inc. v. R.I. Convention Ctr. Auth., 934 A.2d 791, 795 (R.I. 2007) (citations omitted); McKenna v. Williams, 874 A.2d 217, 225 (R.I. 2005) ("examine the complaint to determine if plaintiffs are entitled to relief under any conceivable set of facts"). The trial judge "must look no further than the complaint . . . and resolve any doubts in the plaintiff's favor." Pellegrino v. R.I. Ethics Comm'n, 788 A.2d 1119, 1123 (R.I. 2002) (citations omitted); see Narragansett Elec., 21 A.3d at 277 (providing court "confined to the four corners of the complaint" in deciding motion to dismiss). Generally, the pleading must give fair and adequate notice of the plaintiff's claim, but need not contain a "high degree of factual specificity." See Hyatt v. Village House Convalescent Home, Inc., 880 A.2d 821, 824 (R.I. 2005); Hendrick v. Hendrick, 755 A.2d 784, 791 (R.I. 2000) ("Although a plaintiff is not obligated to set out the precise legal theory upon which his or her claim is based, he or she must provide the opposing party fair and adequate notice of the type of claim being asserted").

However, for claims sounding in fraud, Super. R. Civ. P. 9(b) applies and requires the plaintiff to adhere to the heightened pleading standard of stating the claim with particularity. See Super. R. Civ. P. 9(b) ("[i]n all averments of fraud or mistake, the circumstances constituting

fraud or mistake shall be stated with particularity"). In that case, the pleading must provide "fair and specific notice of the alleged fraud." Women's Dev. Corp. v. City of Central Falls, 764 A.2d 151, 161 (R.I. 2001). The standard of particularity requires specification of the time, place, and content of the allegedly false representations. See R.I. Res. Recovery, 2011 WL 1936012, slip op. at 11-12; Feinstein v. Resolution Trust Corp., 942 F.2d 34, 42-43 (1st Cir. 1991) (stating not enough for plaintiff to file claim, "chant the statutory mantra, and leave the identification of predicate acts to the time of trial"); Powers v. Boston Cooper Corp., 926 F.2d 109, 111 (1st Cir. 1991) (explaining "rule entails specifying in the pleader's complaint the time, place, and content of the alleged false or fraudulent representations"). This level of particularity demands more than "allegations based on 'information and belief,'" and is necessary "even when the fraud relates to matters peculiarly within the knowledge of the opposing party." Wayne Inv., Inc. v. Gulf Oil Corp., 739 F.2d 11, 13-14 (1st Cir. 1984).

A court should grant a 12(b)(6) motion only "when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim." Palazzo v. Alves, 944 A.2d 144, 149-50 (R.I. 2008) (quoting Ellis v. R.I. Pub. Transit Auth., 586 A.2d 1055, 1057 (R.I. 1991)); McKenna, 874 A.2d at 225 ("[i]f it appears beyond a reasonable doubt that plaintiff would not be entitled to relief, under any facts that could be established, the motion to dismiss should be granted"). Rhode Island state courts ascribe to notice pleading and have not formally adopted the newer, federal standard on a motion to dismiss, as set forth in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009). See Narragansett Elec., 21 A.3d at 277 (applying Rhode Island standard in 2011 decision); Barrette v. Yakavonis, 966 A.2d 1231, 1233-34 (R.I. 2009) (applying Rhode Island standard). But see Siemens Fin.

Servs., Inc. v. Stonebridge Equip. Leasing, LLC, No. PB 09-1677, 2009 WL 4479246 (Silverstein, J.) (stating Rhode Island Supreme Court's "overall approach in analyzing a 12(b)(6) motion does not conflict with the holding in Ashcroft that a complaint that includes well-pleaded factual allegations and a plausible claim for relief should survive a motion to dismiss"); D.B. Zwirn Special Opportunities, Ltd. v. E. Display Acquisition, Inc., No. 07-1093, 2008 WL 2598133 (Silverstein, J.) (considering application of Twombly standard where claims rise to level of complexity contemplated in Twombly case).[2] As of the date of this Decision, the Rhode Island Supreme Court has yet to adopt (or reject) that standard.

III

Discussion

Because the instant Motions to Dismiss are brought by four separate groups of Defendants, this Court will address each set of Defendants in turn. Nevertheless, many of the

[2] The Superior Court has often pondered the application of the Twombly and Iqbal standard, but has generally deferred to the traditional, Rhode Island standard. See Woonsocket Sch. Comm. v. Chafee, No. PM 10-0946, slip op. at 5-6 (R.I. Super. July 12, 2012) (Vogel, J.) (explaining Rhode Island has not expressly adopted or rejected the federal standard and instead applying the Rhode Island standard); Jiminez v. People's Choice Home Loan, Inc., No. PC 10-5586, slip op. at 4-6 (R.I. Super. July 10, 2012) (Rubine, J.) (detailing federal standard and noting Massachusetts' adoption of it, but determining complaint in that matter could not survive even under the more lenient Rhode Island standard); Scarcello v. Mortg. Elec. Registration Sys., Inc., No. KC 11-0548, slip op. at 3-6 (R.I. Super. June 26, 2012) (Rubine, J.) (same); Chhun v. Mortg. Elec. Registration Sys., Inc., No. PC 11-4547, slip op. at 3-6 (R.I. Super. June 26, 2012) (Rubine, J.) (same); Kosiba v. Mortg. Elec. Registration Sys., Inc., No. KC 11-0874, slip op. at 3-5 (R.I. Super. June 25, 2012) (Rubine, J.) (same); LM Nursing Servs., Inc. v. Mobil Corp., No. PC 06-5973, 2011 WL 3556739 (R.I. Super. Aug. 4, 2011) (Stone, J.) (noting Rhode Island Supreme Court has not adopted heightened pleading standard in Twombly and Iqbal and continues to ascribe to notice pleading doctrine); McKenna v. Poisson, No. PC 09-4826, 2010 WL 3001703 (Stern, J.) (explaining Rhode Island has not expressly adopted (or rejected) the federal precedent and continues to ascribe to notice pleading). The Superior Court appears to have applied the federal, Iqbal standard in its consideration of a motion to dismiss in one recent case. See Rosano v. MERS, No. PC 2010-0310, slip op. at 5-6 (R.I. Super. June 19, 2012) (Rubine, J.).

same arguments and concepts will apply to multiple sets of Defendants, and, therefore, this Decision should be considered as a whole.

A

Pilgrim Defendants

The Pilgrim Defendants move this Court to dismiss all counts brought against them in the Amended More Definite Statement for failure to state a claim upon which relief can be granted and for failure to comply with the pleading requirements for claims sounding in fraud. The Counts against Pilgrim are civil conspiracy (Counts 1, 12, 21, 29, 37, 45, and 66), aiding and abetting breach of fiduciary duty (Counts 2, 13, 22, 30, 38, 46, and 67), breach of fiduciary duty (Counts 5, 25, 33, 41, 49, and 70), legal malpractice or professional negligence (Counts 8 and 51), fraud (Counts 14 and 47), negligent omissions or misrepresentations (Counts 15 and 48), and civil liability for obtaining property by false pretenses (Counts 20 and 53). The Court will address the various causes of action in seriatim.

1

Civil Conspiracy

The seven Counts for civil conspiracy against Pilgrim are brought by RIRRC in connection with the purchases of the Macera/Tower Property, the Macera/Tzitzouris Property, the Baccarie Property, the Bac-Mac Realty Property, the Silvestri Leasing Company Property I, the Izzo Property, and the Silvestri Leasing Company Property II. Pilgrim was the title insurance agent for the purchase of the Macera/Tower Property and the Macera/Tzitzouris Property. Pilgrim served as both the title insurance agent and the settlement agent for the purchase of the Baccarie Property, the Bac-Mac Realty Property, the Silvestri Leasing Company Property I, the Izzo Property, and the Silvestri Leasing Company Property II.

"To prove a civil conspiracy, plaintiffs [must] show evidence of an unlawful enterprise." Read & Lundy, Inc. v. Washington Trust Co. of Westerly, 840 A.2d 1099, 1102 (R.I. 2004) (citing ERI Max Entm't, Inc. v. Streisand, 690 A.2d 1351, 1354 (R.I. 1997)). Civil conspiracy is not an independent basis of liability and requires a valid, underlying intentional tort theory of liability. Read & Lundy, 840 A.2d at 1102 (citing Guilbeault v. R.J. Reynolds Tobacco Co., 84 F. Supp. 2d 263, 268 (D.R.I. 2000)); 15A C.J.S. Conspiracy § 29 (2012) ("civil conspiracy cannot be pleaded without also alleging an underlying tort"). Further, civil conspiracy requires the "specific intent to do something illegal or tortious." Guilbeault, 84 F. Supp. 2d at 268 (citing Fleet Nat'l Bank v. Anchor Media Television, Inc., 831 F. Supp. 16, 45 (D.R.I. 1993)). There must be evidence to at least "reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." Fleet Nat'l Bank, 831 F. Supp. at 45 (quoting Thompson Trading, Ltd. v. Allied Breweries Overseas Trading, Ltd., 748 F. Supp. 936, 945 (D.R.I. 1990)); see 15A C.J.S. Conspiracy § 4 (2012) ("The essential nature of a civil conspiracy is a common design establishing that two or more persons in any manner, either positively or tacitly, arrive at a mutual understanding, or meeting of the minds, as to how they will accomplish an unlawful design.").

Where the allegations charging a civil conspiracy are conclusions of law and not statements of fact that demonstrate the defendants conspired, a plaintiff fails to allege sufficient allegations from which an intent to conspire may reasonably be inferred. See Stubbs v. Taft, 88 R.I. 462, 464-68, 149 A.2d 706, 707-09 (1959). "The evidence must do more than raise a suspicion. It must lead to belief." Id. at 468, 149 A.2d at 709 (quoting 12 C.J. Conspiracy § 234). As a prominent secondary source cited in this jurisdiction explains:

> "A general allegation that the defendants entered into a conspiracy for a certain purpose and have committed acts in furtherance of it

> is ordinarily insufficient in the absence of facts constituting the conspiracy. A complaint that merely alleges in the most general terms that the defendants conspired to intentionally harm the plaintiff cannot survive a motion to dismiss. General allegations that lead to nothing more than speculation about the essence of the complaint should be dismissed for failure to state a claim." 15A C.J.S. Conspiracy § 29 (2012).

The plaintiff must allege the elements of a conspiracy to state a claim for civil conspiracy. See id. at § 29 (explaining plaintiff must plead the elements of a civil conspiracy to survive motion to dismiss); see also id. at § 4 (listing requisite elements as "(1) a combination between two or more persons; (2) to do a criminal or an unlawful act, or a lawful act by criminal or unlawful means; (3) an act done by one or more of the conspirators pursuant to the scheme and in furtherance of the object; (4) which act results in damage to the plaintiff"); Stubbs, 88 R.I. at 468, 149 A.2d at 708-09 (relying on Corpus Jurisprudence elements of civil conspiracy); Smith v. O'Connell, 997 F. Supp. 226, 241 (D.R.I. 1998) (requiring plaintiff allege existence of agreement between two or more parties and purpose of agreement to accomplish unlawful objective or lawful objective through unlawful means).

Because RIRRC's claim for civil conspiracy is based on its underlying claims of fraud and other counts sounding in fraud, Rule 9(b) applies to further test the sufficiency of the pleading. See R.I. Res. Recovery, 2011 WL 1936012, slip op. at 11-19 (describing all counts of the original Complaint as sounding in fraud and applying Rule 9(b) heightened pleading standard of particularity). RIRRC must state its civil conspiracy claims with particularity, providing the Defendants with "fair and specific notice" of the claim, which sounds in fraud. See Women's Dev. Corp., 764 A.2d at 161.

The relevant counts of the Amended More Definite Statement allege, as against Pilgrim, that it and other Defendants "combined and agreed to work in concert with former employees

and commissioners of RIRRC . . . to enrich themselves through the sale of the [properties] at a price far exceeding market value . . . ." See Compl. ¶¶ 165, 236, 292, 344, 396, 448, 572. The Defendants allegedly conspired "for the purpose of unlawfully inflating the market value of this and other properties and concealing their actions for as long as possible." See id. at ¶¶ 166, 237, 293, 345, 397, 449, 573. Specifically with regard to Pilgrim, RIRRC sets forth that Pilgrim's overt act in furtherance of the conspiracy was that Pilgrim "provided title insurance and acted as settlement agent for the transaction and knowingly chose not to disclose to RIRRC the problems with the transaction . . . despite its legal duty to do so." See id. at ¶¶ 238, 294, 346, 398, 450, 574. Further, RIRRC alleges "Pilgrim was selected through the intervention of John St. Sauveur, or with a view toward pleasing John St. Sauveur, and in order that his son Jeffrey St. Sauveur could benefit from the transaction."[3] See id. at ¶¶ 167, 238, 294, 346, 398, 450, 574.

Despite these assertions, RIRRC fails to set forth any facts demonstrating a mutual understanding or meeting of the minds creating a joint enterprise between and among the alleged conspirators. Rather, RIRRC sets forth the conclusory statement that the Defendants "agreed to work in concert." See Compl. ¶¶ 165, 236, 292, 344, 396, 448, 572; Feinstein, 942 F.2d at 42-43 (requiring plaintiff do more than "chant the statutory mantra" to establish claim sounding in fraud). General allegations of a conspiracy and acts allegedly in furtherance of it are insufficient to survive a motion to dismiss, and are especially insufficient to survive a motion to dismiss a pleading subject to the Rule 9(b) standard. See Stubbs, 88 R.I. at 464-68, 149 A.2d at 707-09;

[3] In some Counts, the facts with regard to Pilgrim vary slightly, such as by stating that Pilgrim was "chosen by RIRRC to provide title insurance for this transaction and for multiple similar transactions, knowing that RIRRC was purchasing property for a price that vastly exceeded market value." See Compl. ¶ 167. As an additional overt act in one of the counts, RIRRC claims "Pilgrim provided legal services to the sellers of the property and to the direct benefit for RIRRC . . . ." See id. In another, RIRRC claims "Pilgrim also assisted RIRRC's real estate attorneys by providing legal services and commenting on the correct wording of the consent agreement that Izzo was going to sign with RIDEM as part of the transaction." See id. at ¶ 450.

15A C.J.S. Conspiracy § 29 (2012) (stating "general allegation that the defendants entered into a conspiracy for a certain purpose and have committed acts in furtherance of it is ordinarily insufficient in the absence of facts constituting the conspiracy"); Super. R. Civ. P. 9(b) (requiring pleading with particularity of claims sounding in fraud). Directly with regard to Pilgrim, the facts that it provided title insurance and acted as settlement agent do not establish its participation in any enterprise. See Read & Lundy, 840 A.2d at 1102 (requiring plaintiff show evidence of joint enterprise to establish civil conspiracy). The facts fall short of even creating an inference of the joint assent of the parties to participate in an unlawful enterprise. See Fleet Nat'l Bank, 831 F. Supp. at 45 (requiring specific intent to do something illegal or tortious and evidence to at least infer joint assent in unlawful enterprise).

RIRRC had a third opportunity here to provide fair and specific notice of its conspiracy claims in the Amended More Definite Statement. See Women's Dev. Corp., 764 A.2d at 161 (providing heightened 9(b) standard of "fair and specific notice"). This Court directed RIRRC to provide factual detail as to Pilgrim's alleged participation in and overt acts in furtherance of a conspiracy. See R.I. Res. Recovery, 2011 WL 1936012, slip op. at 19. No facts in the pleading lead to a belief that Pilgrim attained a meeting of the minds with the other Defendants to engage in an unlawful enterprise. See Stubbs, 88 R.I. at 468, 149 A.2d at 709 (requiring facts do more than raise suspicion; they must create belief conspiracy existed). Even after its revisions, the current pleading fails to comply with the standard enunciated under Rule 9(b) and fails to state a claim upon which relief can be granted as against Pilgrim on the counts of civil conspiracy. See Wayne Inv., 739 F.2d at 13-14 (requiring heightened pleading standard even when claims relate to "matters peculiarly within the knowledge of the opposing party").

2

Aiding and Abetting Breach of Fiduciary Duty

Seven Counts of the Amended More Definite Statement allege that Pilgrim aided and abetted the breach of fiduciary duties by RIRRC officers and commissioners. Like the Counts for civil conspiracy, the seven counts for aiding and abetting breach of fiduciary duty are in connection with the Macera/Tower Property, the Macera/Tzitzouris Property, the Baccarie Property, the Bac-Mac Realty Property, the Silvestri Leasing Company Property I, the Izzo Property, and the Silvestri Leasing Company Property II. Again, Pilgrim was the title insurance agent for the purchase of the Macera/Tower Property and the Macera/Tzitzouris Property, and Pilgrim served as both the title insurance agent and the settlement agent for the purchase of the Baccarie Property, the Bac-Mac Realty Property, the Silvestri Leasing Company Property I, the Izzo Property, and the Silvestri Leasing Company Property II.

RIRRC alleges that Pilgrim and other Defendants knew RIRRC officers and commissioners owed a fiduciary duty to RIRRC, knew that the officers and commissioners were breaching the duties, and "assisted, aided, and abetted the breach of these fiduciary duties." See Compl. ¶¶ 171-74, 242-45, 298-301, 350-53, 402-05, 454-57, 578-81. With regard to Pilgrim in particular, RIRRC claims Pilgrim aided and abetted because it "provided title insurance and acted as settlement agent for the transaction and knowingly chose not to disclose to RIRRC the multitude of problems with the transaction." See Compl. ¶¶ 174, 245, 301, 353, 405, 457, 581. With regard to two of the Counts, RIRRC further alleges that Pilgrim "provided legal services for and to the direct benefit of RIRRC," and "assisted RIRRC's real estate attorneys by providing legal services and commenting on the correct wording of the consent agreement . . . ." Compl. ¶¶ 174, 457. However, Pilgrim argues that the Amended More Definite Statement fails to set forth any facts establishing Pilgrim's knowledge or involvement in any breaches by RIRRC

commissioners and fails to provide facts that Pilgrim substantially assisted in or encouraged any breach.

The Rhode Island Supreme Court has yet to recognize a cause of action for aiding and abetting a breach of fiduciary duty. However, under the decisional law of our sister state, Massachusetts, the elements of the tort of aiding and abetting a breach of fiduciary duty are: "(1) there must be a breach of fiduciary duty, (2) the defendant must know of the breach, and (3) the defendant must actively participate or substantially assist in or encourage the breach to the degree that he or she could not reasonably be held to have acted in good faith." Arcidi v. Nat'l Ass'n of Gov't Emps., Inc., 856 N.E.2d 167, 174 (Mass. 2006) (citations omitted); see R.I. Res. Recovery Corp. v. Van Liew Trust Co., No. PC 10-4503, 2011 WL 1936011, slip op. at 16 (R.I. Super. May 13, 2011) (Silverstein, J.) (applying Massachusetts elements for aiding and abetting breach of fiduciary duty in consideration of motion to dismiss); see also 74 Am. Jur. 2d Torts § 61 (2012) (setting forth similar elements for aiding and abetting a breach of duty and requiring a showing that defendant "substantially assisted or encouraged the primary tortfeasor").[4] The Supreme Judicial Court of Massachusetts also notes, however, that it is aware of "no case holding a third party liable to a principal merely for entering into an arm's-length transaction . . . ." Arcidi, 856 N.E.2d at 174. The aider and abettor must know of the breach and actively participate or substantially assist in or encourage the breach. See id.

"To establish a common law cause of action for aiding and abetting, plaintiffs must at least demonstrate some measure of 'active participation' and the knowing provision of

[4] Likewise, under Delaware law, to state a claim for aiding and abetting breach of fiduciary duty, "the Plaintiffs must plead four elements: (i) the existence of a fiduciary relationship, (ii) a breach of the fiduciary's duty, (iii) a knowing participation in the breach by a defendant who is not a fiduciary, and (iv) damages are proximately caused by the breach." In re Exide Techs., 299 B.R. 732, 749 (Bankr. D. Del. 2003) (citing Malpiede v. Townson, 780 A.2d 1075, 1096 (Del. 2001)).

substantial assistance by [the defendant] to the principal's alleged fraud." See Schultz v. R.I. Hosp. Trust Nat'l Bank, 94 F.3d 721, 730 (1st Cir. 1996); see also 37 Am. Jur. 2d Fraud and Deceit § 302 (2012) (discussing aiding and abetting fraud and requiring knowledge of fraud and substantial assistance in the achievement of the fraud to be an aider and abettor). Specifically, liability based on aiding and abetting "requires actual knowledge that a breach of fiduciary duty is occurring." 37 Am. Jur. 2d Fraud and Deceit § 306 (2012).

Here, under the applicable Rule 9(b) standard of pleading with particularity, RIRRC does not set forth a claim for aiding and abetting a breach of a fiduciary duty, as this Court defined the tort in Van Liew Trust. See 2011 WL 1936011, slip op. at 16. Initially, the Amended More Definite Statement provides no particular facts establishing that Pilgrim knew RIRRC commissioners or employees were breaching fiduciary duties, as would be required to establish aiding and abetting a breach. Moreover, there are no allegations demonstrating that Pilgrim "actively participate[d] or substantially assist[ed] in or encourage[d] the breach." See Arcidi, 856 N.E.2d at 174 (providing elements of aiding and abetting a breach of fiduciary duty). With most of the counts against Pilgrim, the only act alleged is that Pilgrim provided title insurance and acted as settlement agent on the transactions. Compl. ¶¶ 174, 245, 301, 353, 405, 457, 581. Simply being involved in a transaction that constitutes a breach by another does not automatically make that involved third party liable under a theory of aiding and abetting. See Arcidi, 856 N.E.2d at 174. On two of the counts, RIRRC further alleges that Pilgrim provided legal services; however, RIRRC fails to connect this statement to any facts demonstrating bad faith, active participation, encouragement, or substantial assistance by Pilgrim to the RIRRC commissioners' and employees' breach. See id.

This Court explicitly required RIRRC to provide "factual detail as to . . . [the] actions taken by Pilgrim Title to assist, aid, and abet RIRRC employees and commissioners in breaching the fiduciary duties or Pilgrim Title's knowledge thereof." R.I. Res. Recovery, 2011 WL 1936012, slip op. at 19. RIRRC's recitation that Pilgrim had knowledge and participated by acting as title insurance agent, settlement agent, or even providing legal services fails to meet the Rule 9(b) burden. See Super. R. Civ. P. 9(b) (requiring circumstances be stated with particularity). As such, RIRRC fails to state a claim against Pilgrim for aiding and abetting a breach of fiduciary duty.

3

Breach of Fiduciary Duty

RIRRC sets forth six counts against Pilgrim for breach of fiduciary duty. The six counts are in connection with the Macera/Tower Property, the Baccarie Property, the Bac-Mac Realty Property, the Silvestri Leasing Company Property I, the Izzo Property, and the Silvestri Leasing Company Property II. Pilgrim served only as title insurance agent on the Macera/Tower Property. Pilgrim served as both title insurance agent and settlement agent on the five other properties. RIRRC further claims that Pilgrim provided legal services at least with regard to the purchase of the Macrea/Tower Property and the Izzo Property.

To establish its breach of fiduciary duty claims, RIRRC alleges that "Pilgrim was acting as an attorney for RIRRC" and, therefore, "had a fiduciary duty to RIRRC to exercise the utmost good faith in the transaction with due regard to the interests of RIRRC, to make full and truthful disclosures of all material facts, and to refrain from obtaining advantage to itself at the expense of RIRRC." See Compl. ¶¶ 194-95, 321-22, 373-74, 425-26, 472-73, 601-02. RIRRC alleges Pilgrim breached those fiduciary duties by "participating in the conspiracy to cause RIRRC to

unwisely spend money," "failing to disclose conflicts of interest," and "failing to disclose . . . that the sale price . . . had been inflated far above fair market value." See id. at ¶¶ 197, 324, 376, 428, 475, 604.

Of course, for these acts by Pilgrim—if true—to constitute breach of fiduciary duties owed by attorneys to their clients, Pilgrim would have to be RIRRC's counsel. In the alternative—although not pled by RIRRC—Pilgrim might have duties to RIRRC as an intended third party beneficiary of its services. See generally Credit Union Central Falls v. Groff, 966 A.2d 1262 (R.I. 2009) (discussing duties owed by attorneys to non-client, third-party beneficiaries).

Besides the conclusory statement that "Pilgrim was acting as an attorney for RIRRC," there is no set of facts in the Amended More Definite Statement to support a finding that Pilgrim was RIRRC's attorney. See Compl. ¶¶ 194, 321, 373, 425, 472, 601 (alleging in conclusory fashion that Pilgrim acting as RIRRC's attorney). The only other facts in the pleading supporting the contention that Pilgrim was counsel to RIRRC are the statements that "Pilgrim provided legal services to RIRRC including drafting multiple deeds, affidavits, certificates, and tax lien discharges," in connection with the Macera/Tower Property and that "Pilgrim assisted RIRRC's real estate attorneys by providing legal services and commenting on the correct wording of the consent agreement that Izzo was going to sign with RIDEM as part of the [Izzo Property] transaction." (Compl. ¶¶ 212, 484.)

Despite these facts, the Amended More Definite Statement also establishes that RIRRC was represented by separate legal counsel in the land transactions. See, e.g., Compl. ¶¶ 58, 80, 101, 129, 145 (all identifying separate counsel as representing RIRRC in the transactions). Pilgrim, therefore, contends that it served in a limited capacity as title insurance agent or

settlement agent and did not provide legal services. Further, Pilgrim argues that the fact that its principals are attorneys does not attach any special fiduciary duties.

The elements of a claim for breach of fiduciary duty are "(1) the existence of a fiduciary duty; (2) breach of that duty; and (3) damage proximately caused by the breach." See Chain Store Maint., Inc. v. Nat'l Glass & Gate Serv., Inc., No. PB 01-3522, 2004 WL 877599, at *13 (R.I. Super. Apr. 21, 2004) (Silverstein, J.) (citations omitted). Generally, fiduciary duties exist between principals and agents and between attorneys and clients. See Restatement (Third) Agency § 8.01 (2012) ("An agent has a fiduciary duty to act loyally for the principal's benefit in all matters connected with the agency relationship."). "A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." Restatement (Second) Torts § 874 cmt. a (2012).

The duties of title insurance agents and settlement agents to purchasers in connection with the transfer of real estate are relatively limited in comparison with those duties owed by an attorney to its client. Pilgrim contends that as a title insurance agent, Pilgrim had no duty to assess the value of the real estate in the transaction, as title insurance policies themselves do not guarantee the actual value of the property they cover. Pilgrim, in its title role, was engaged only to inform RIRRC about the status of title to the property and procure title insurance. Pilgrim further contends that as settlement agent, Pilgrim similarly had no duty to advise on matters of the price or the seller's good faith. In its role as settlement agent, Pilgrim's duties, according to Pilgrim, were simply to receive and disburse funds based on the closing instructions and to complete a settlement statement.

RIRRC relies on the theory that Pilgrim, as an agent and attorney of RIRRC, had fiduciary duties to disclose any high prices, any conflicts of interest, and the existence of any

conspiracy. However, the Restatement (Third) of Agency, on which Plaintiff in part relies, makes clear that any duty to the principal exists only with regard to "matters connected with the agency relationship." Restatement (Third) Agency § 8.01 (2012). More specifically, an agent has a duty to disclose facts when "the agent knows or has reason to know that the principal would wish to have the facts or the facts are material to the agent's duties to the principal." See Restatement (Third) Agency § 8.11 (2012). Nevertheless, "the scope of the agent's duty to provide information to the principal is defined by the extent of their relationship." Id. at cmt. c. RIRRC's theory for breach of fiduciary duty against Pilgrim is based on the allegation that Pilgrim acted as an attorney to RIRRC.

"Whether an attorney-client relationship has formed is a question of fact governed by the principles of agency." Groff, 966 A.2d at 1268 (citing Rosati v. Kuzman, 660 A.2d 263, 265 (R.I. 1995). Agency forms when "(1) the principal manifests that the agent will act for him, (2) the agent accepts the undertaking, and (3) the parties agree that the principal will be in control of the undertaking." Id. (citing Lawrence v. Anheuser-Busch, Inc., 523 A.2d 864, 867 (R.I. 1987)).

Here, the Amended More Definite Statement is devoid of any facts or averments establishing that Pilgrim accepted to act for RIRRC, or that RIRRC was in control of the undertaking. See id. Rather, the pleading states that RIRRC's counsel hired Pilgrim, even if at the direction of RIRRC employees, and Pilgrim was hired as title insurance agent and settlement agent, not counsel. See Compl. ¶¶ 59, 79-80, 100-01, 111, 118, 123, 156. It is apparent that RIRRC was represented by separate legal counsel in the real estate transactions. Accordingly, Pilgrim's role was essentially—if not exclusively—limited to performing its duties as a title

insurance agent and a settlement agent.[5] Judging from the pleading, no claim can lie against Pilgrim for breach of any duty owed by an attorney to its client.

Generally, title examiners who examine record title and prepare title abstracts are not engaged in the practice of law. See Real Estate Bar Ass'n for Mass., Inc. v. Nat'l Real Estate Info. Servs., 946 N.E.2d 665, 676-77 (Mass. 2011) ("title examinations and the preparation of title abstracts generally do not constitute the practice of law"); Mass. Conveyancers Ass'n, Inc. v. Colonial Title & Escrow, Inc., No. 96-2746-C, 2001 WL 669280, at *5 (Mass. Super. June 5, 2001). Additionally, the issuance of title insurance policies does not constitute the practice of law. See Real Estate Bar Ass'n, 946 N.E.2d at 681-82 ("clear that the issuance of title insurance commitments and policies is not the practice of law"); see also Focus Inv. Assocs., Inc. v. Am. Title Ins. Co., 992 F.2d 1231, 1236 (1st Cir. 1993) (noting that absent express contract or actions otherwise, "courts have uniformly declined to hold a title insurance company liable for a negligent title search"). The Massachusetts court, in making that declaration, reasoned that title insurance protects against defects in title, but does not guarantee the state of the title or impose any duty on the title insurer to disclose defects in title. See id.; see also 43 Am. Jur. 2d Insurance § 528 (2003) ("Title insurance does not insure representations of the seller, but insures only the warranty of title contained in the deed.").

Further, in examining title, an agent does not guarantee value and does not necessarily act as an attorney or legal adviser. See Case v. Mortg. Guar. & Title Co., 52 R.I. 155, 158 A. 724,

[5] RIRRC had other counsel whose primary responsibility it was to represent RIRRC's interests in the transactions. In fact, a simple review of the Exhibits to the Amended More Definite Statement indicates that correspondence from Pilgrim was directed to the various counsels representing RIRRC in the land sale transactions. RIRRC, however, for reasons unknown to this Court, has elected to bring suit against its title insurance and settlement agent rather than its real estate counsel. For further discussion of Pilgrim as an attorney to RIRRC and the alleged performance of legal services, see infra part III(A)(4).

726 (1932) (ruling title examiner and title insurance agent "did not become a guarantor of the value" and did not act as the attorney and legal adviser for that purchaser). But see Groff, 966 A.2d at 1274 (listing legal services of a closing attorney as including performing a title search, preparing title insurance binder, preparing survey affidavit, and procuring title insurance policy, among other services enabling the closing). Our supreme court in Case ruled that a title examiner and title insurance agent corporation "did not engage to act as the attorney and legal adviser for plaintiff," an individual taking a second mortgage on a property for which the defendant examined and insured title. 158 A. at 726.

Additionally, preparation of settlement statements and filling out settlement forms does not constitute the practice of law. See Real Estate Bar Ass'n, 946 N.E.2d at 679. Disbursing funds during a closing procedure, in and of itself, does not qualify as the practice of law. Id. at 680. The duties of a settlement agent are similar to an escrow agent and are limited to disbursing funds as per the closing instructions and filing settlement statements.[6] A settlement or escrow agent generally has no duty to advise of the financial wisdom or desirability of the transaction, and doing so, in fact, may violate the escrow agent's duty to remain neutral. See Joyce Palomar, 2 Title Ins. Law § 20:4 (2011); see generally In re Johnson, 292 B.R. 821 (Bankr. E. D. Pa. 2003); Gebrayel v. Transamerica Title Ins. Co., 888 P.2d 83 (Or. App. 1995).

Separate and apart from title insurance and settlement services, closing attorneys, in contrast, have a number of duties to the clients, including protecting the interest of their clients in the transaction, ensuring marketable title, and effectuating a valid conveyance. See Real Estate Bar Ass'n, 946 N.E.2d at 684-88. Here, RIRRC had separate closing attorneys for the real estate transactions. See Compl. ¶¶ 58, 80, 101, 129, 145. The broad duties that RIRRC claims apply to

[6] Pilgrim, in fact, is described by RIRRC as an escrow agent. See Compl. ¶ 11.

Pilgrim have no basis either in the facts alleged in the Amended More Definite Statement or in law. The pleading, even viewed in the light most favorable to RIRRC, demonstrates that RIRRC had other counsel, and Pilgrim was retained only as title insurance agent and/or settlement agent.

Pilgrim's role as title insurance agent and/or settlement agent in no way obligated it with the duties ascribed to it by RIRRC. See Restatement (Third) Agency §§ 8.01, 8.11 (stating rule that agent's duties to principal exist only with regard to matters within scope and extent of agency relationship). The Court is not aware of any case law establishing such far-reaching duties to disclose on the part of title insurance and settlement agents. Without the existence of a duty, or without the broad duties advocated by RIRRC to attach to Pilgrim, there can be no breach of fiduciary duty. See Chain Store Maint., 2004 WL 877599 at *13 (requiring existence of duty, breach of duty, and damages). Further, attaching such duties to title insurance and settlement agents could vastly expand their current role in a real estate closing and the duties and liabilities associated therewith, as well as the cost. RIRRC's breach of fiduciary duties counts are based on the allegation that Pilgrim served as counsel to RIRRC, but this Court finds it clear beyond a reasonable doubt that no such relationship existed, even under any conceivable set of facts. See McKenna, 874 A.2d at 225 (explaining 12(b)(6) standard of examining complaint to determine if plaintiffs entitled to relief under any conceivable set of facts). Further, it is abundantly clear the Amended More Definite Statement fails to meet the Rule 9(b) standard of particularity. See Women's Dev. Corp., 764 A.2d at 161. Therefore, there can be no claim, particularly under the heightened Rule 9(b) standard, that Pilgrim breached a fiduciary duty to RIRRC.

4

Legal Malpractice or Professional Negligence

The Amended More Definite Statement includes two counts for legal malpractice or professional negligence against Pilgrim. The two counts concern the Macera/Tower Property transaction, for which Pilgrim was the title insurance agent, and the Izzo Property transaction, for which Pilgrim was the title insurance and the settlement agent. RIRRC claims that Pilgrim "provided legal services to RIRRC including drafting multiple deeds, affidavits, certificates, and tax lien discharges" for the Macera/Tower Property and "provid[ed] legal services and comment[ed] on the correct wording of the consent agreement that Izzo was going to sign with RIDEM as part of the transaction." Compl. ¶¶ 212, 484. RIRRC claims that Pilgrim had a legal duty not to make false statements to a third person and not to fail to disclose material information to a third person. See id. at ¶¶ 213, 486. Accordingly, RIRRC contends, Pilgrim committed malpractice by failing to disclose inflated sales prices, the existence of a conspiracy, and conflicts of interest. See id. at ¶¶ 214-16, 488.

The legal services alleged in the Amended More Definite Statement are evidenced by an invoice and letter from Pilgrim to RIRRC's counsel, and a fax from Pilgrim to RIRRC's counsel. See id. at Exs. 16-17, 40-41. The letter from Pilgrim to RIRRC's legal counsel offers to prepare a residency affidavit and corrective deeds in connection with the Macera/Tower Property purchase "if so authorized" by RIRRC's counsel. See id. at Ex. 16. A later invoice from Pilgrim to RIRRC's counsel indicates only a total amount due of $1500, but includes services of preparing corrective quitclaim deeds, preparing residency affidavits, preparing lien discharges, preparing warranty deeds, and preparing certificates. See id. at Ex. 17. In connection with the Izzo Property sale, Pilgrim sent RIRRC's counsel a fax including a copy of a Consent Order with

comments from Pilgrim. See id. at Ex. 40. The comments were to remember to attach a full copy of an exhibit, to change the word "recording" to "recorded," and to add the book and page number for the referenced land. See id. The fax cover sheet from Pilgrim indicates that the seller should revise the Consent Order in accordance with those comments. See id. at Ex. 41.

Pilgrim maintains that these actions did not rise to the level of legal services, and there was no attorney-client relationship with RIRRC. Pilgrim points out that the alleged legal services were really "standard activities incidental to conveyances that are routinely performed by title agents—whether lawyers or not." (Pilgrim's Post-Hr'g Mem. in Supp. of Mot. to Dismiss 2d Am. Compl. 2, June 8, 2012.) Further, RIRRC relies on Rule 4.1 of the Rules of Professional Conduct to establish Pilgrim's alleged malpractice; however, that argument is misguided for a number of reasons. First, Rule 4.1 applies to an attorney's statements or omissions to third persons, not its client. See R. Prof. Conduct 4.1. Curiously, RIRRC alleges the existence of an attorney-client relationship, then seeks to prove liability based on obligations owed to RIRRC as a third party. And second, Rule 4.1 provides no independent cause of action. See Vallinoto v. DiSandro, 688 A.2d 830, 837-38 (R.I. 1997) (explaining violation of rules of professional conduct does not automatically create private cause of action or constitute professional negligence).

To prevail on a legal malpractice claim, a plaintiff must prove that it retained the attorney to represent it, that the attorney was negligent, and that the attorney's negligence was the proximate cause of its damage or loss. Vallinoto, 688 A.2d at 834. This includes establishing the defendant attorney's duty of care, a breach thereof, and damages proximately resulting. See Ahmed v. Pannone, 779 A.2d 630, 632-33 (R.I. 2001). The plaintiff must establish an attorney-client relationship for purposes of the transaction in question. See DiLuglio v. Providence Auto

Body, Inc., 755 A.2d 757, 766 (R.I. 2000). RIRRC's legal malpractice claims are essentially claims for negligent breach a contractual duty, and therefore, closely related to its breach of fiduciary duties claims discussed above. See Groff, 966 A.2d at 1272 (". . . the essence of an action for attorney malpractice is the negligent breach of a contractual duty . . ." (citations omitted)); Ahmed, 779 A.2d at 632-33.

As another means of recovery for legal malpractice, RIRRC could have argued that Pilgrim owed duties to it as a non-client, third-party beneficiary. See Groff, 966 A.2d at 1271-74 (discussing duties of attorney to intended third party beneficiary). The Rhode Island Supreme Court has held that "liability of an attorney may extend to third-party beneficiaries of the attorney-client relationship if it is clear that the contracting parties intended to benefit the third party." Id. at 1272. However, the benefit to the third party must be "the end and aim of the transaction" for the third party to be an intended or direct beneficiary. Id. at 1273 (citations omitted). In Groff, the defendant attorney had "direct and extensive communications" with the third party and "received explicit closing instructions" from the third party, such that his "misfeasance [was] so blatant and the duty owed to the nonclient so clear" to support ruling in the third party's favor. See id. at 1274. The case law relied upon by the court noted the "rather narrow scope" of this exception extending duties to third parties. See id. at 1271 (quoting Flaherty v. Weinberg, 492 A.2d 618, 625-26 (Md. 1985)).

Here, the facts and exhibits set forth in the Amended More Definite Statement fail to establish an attorney-client relationship between RIRRC and Pilgrim and fail to establish a duty owed by Pilgrim to RIRRC, as an intended third party beneficiary or otherwise, that is alleged to have been breached. See supra part III(A)(3) (discussing Pilgrim's duties to RIRRC); Groff, 966 A.2d at 1271-74 (detailing potential duties owed by attorneys to non-client, intended third-party

beneficiaries). RIRRC fails to state a claim by alleging Pilgrim was its counsel, then alleging Pilgrim violated the Rules of Professional Conduct by making false statements or failing to disclose material information to RIRRC as a third party. See Compl. ¶¶ 212-13, 484-86. The Rules of Professional Conduct do not automatically provide malpractice liability for a rule infraction, and certainly the rules pertaining to third parties do not provide liability for actions to a client, as RIRRC alleges itself to be. Therefore, the Rules of Professional Conduct Rule 4.1 does not provide RIRRC with the basis for a claim against Pilgrim.

Further, this Court finds as a matter of law that the actions undertaken by Pilgrim on behalf of RIRRC's actual counsel were in line with the performance of its duties as title insurance agent and settlement agent. The very fact that the alleged legal services performed by Pilgrim were directed to RIRRC's attorneys demonstrates that RIRRC did not lack legal representation, and RIRRC would have been owed duties by those attorneys. Pilgrim did not owe RIRRC further duties as an intended third-party beneficiary, but only would owe—at most—the "duty to use 'ordinary care and skill' in the exercise of [its] profession." Groff, 966 A.2d at 1274 (citing Holmes v. Peck, 1 R.I. 242, 245 (1849)). This Court has determined that Pilgrim, even if it failed to disclose inflated sales prices, the existence of a conspiracy, or any conflicts of interest, did not breach any duties it owed as title insurance agent or settlement agent. See supra part III(A)(3). Because RIRRC has not demonstrated a breach of any duties owed by Pilrim as title insurance agent and settlement agent to RIRRC, either directly or as an intended third-party beneficiary, RIRRC has failed to state a claim for legal malpractice against Pilgrim.

5

Fraud

RIRRC brings two counts of fraud against Pilgrim in connection with the Macera/Tzitzouris Property and the Izzo Property. Pilgrim served only as the title insurance agent on the Macera/Tzitzouris Property transaction, but as both the title insurance agent and settlement agent on the Izzo Property purchase. RIRRC claims that Pilgrim "made false representations to RIRRC, through affirmative statements and/or through concealing facts and circumstances known to them, with the intent to induce RIRRC to rely thereon," and "RIRRIC justifiably relied upon these false representations in purchasing the property," and suffered damages as a result. See Compl. ¶¶ 249-51, 461-63. Specifically with regard to the Macera/Tzitzouris Property sale, RIRRC claims:

> "(i) The members of Pilgrim, as attorneys, even when acting only as title agents, had a duty to not knowingly make a false statement of material fact or law to a third person, and to not knowingly fail to disclose material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.
> (j) Any knowledge of St. Sauvuer can be imputed by law to Pilgrim, since St. Sauveur was at the time both a commissioner of RIRRC and a vice president of Pilgrim.
> (k) At the closing on April 29, 2002, Pilgrim knowingly failed to disclose to the board of RIRRC that the sale price for the property had been inflated far above fair market value.
> (l) At the closing on April 29, 2002, Pilgrim also knowingly failed to disclose to the board of RIRRC the existence of the conspiracy.
> (m) At the closing on April 29, 2002, Pilgrim represented to RIRRC that Maureen Macera and the Tzitzourises was acting in good faith and selling the property at a reasonable price, while knowing that the sale price for the property have been inflated far above market value." (Compl. ¶ 249.)

The allegations in the Amended More Definite Statement with regard to the Izzo Property transaction are substantially the same.[7] See Compl. ¶ 461. Essentially, RIRRC's fraud claims against Pilgrim are that it failed to disclose that the sale prices were above market value, that it failed to disclose the existence of a conspiracy, and that it represented that the sellers were acting in good faith and selling at a reasonable price. There is no explanation as to how Pilgrim made such a representation as to the seller's good faith and reasonable price.

To establish a claim for fraud, "the plaintiff must prove that the defendant made a false representation intending thereby to induce plaintiff to rely thereon and that the plaintiff justifiably relied thereon to his or her damage." Parker v. Byrne, 996 A.2d 627, 634 (R.I. 2010) (quoting Bitting v. Gray, 897 A.2d 25, 34 (R.I. 2006)); Travers v. Spidell, 682 A.2d 471, 472-73 (R.I. 1996). The representation must be false at the time it is made. Parker, 996 A.2d at 634. Further, a misrepresentation is defined in this jurisdiction as a "manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts." Stebbins v. Wells, 766 A.2d 369, 372 n.4 (R.I. 2001) (quoting Travers, 682 A.2d at 471 n.1). "The general rule is that a misrepresentation should take the form of an expression of fact and not the offering of an opinion or estimate." St. Paul Fire & Marine Ins. Co. v. Russo Bros., Inc., 641 A.2d 1297, 1300 n.2 (R.I. 1994) (citing East Providence Loan Co. v. Ernest, 103 R.I. 259, 263, 236 A.2d 639, 642 (1968)) (emphasis added); see McGinn v. McGinn, 50 R.I. 236, 146 A. 636, 638 (R.I. 1929) (distinguishing statements of fact from statements of opinion as basis for fraud claim); Handy v. Waldron, 18 R.I. 567, 29 A. 143, 144-

[7] The only difference in the fraud Count for the Izzo Property sale is that Pilgrim was acting as title and settlement agent, and RIRRC alleges that fact applies to Pilgrim a duty to exercise utmost good faith in the transaction. See Compl. ¶ 461 (d)-(e). Additionally, of course, the dates and parties appropriately vary in the Izzo Property Count.

45 (1894) (stating general rule that value is a mere matter of opinion, absent false representations by defendant of particular facts affecting the value in question).

Fraud may "be grounded in either affirmative acts or concealment." W. Reserve Life Assurance Co. of Ohio v. Caramadre, Nos. 09-470 S, 09-471 S, 09-472 S, 09-473 S, 09-502 S, 09-549 S, 09-564 S, 2012 WL 399184, at *4 (D.R.I. Feb. 7, 2012) (quoting Guilbeault, 84 F. Supp. 2d at 268-69). In the context of concealment as the basis for a claim of fraud, mere silence is not fraudulent unless there is a duty to speak. McGinn, 146 A. at 638; see Guilbeault, 84 F. Supp. 2d at 269 ("a claim based on concealment will not lie absent a duty to speak") (citing Home Loan & Inv. Ass'n v. Paterra, 105 R.I. 763, 767, 255 A.2d 165, 168 (1969)). Whether there is a duty to disclose information turns on the facts of the case and is a flexible inquiry, considering, among other things, the customs of the trade. W. Reserve Life Assurance, 2012 WL 399184 at *4-5.

In essence, RIRRC's fraud claims are that Pilgrim misrepresented that the seller's were selling in good faith at a reasonable price, that Pilgrim concealed that sales prices were above market value, and that Pilgrim concealed the existence of any conspiracy. As discussed supra part III(A)(3) above, Pilgrim had no duty as title insurance agent and settlement agent to disclose inflated sales prices. In light of the trade customs and the findings herein, that duty simply does not exist. See supra part III(A)(3); W. Reserve Life Assurance, 2012 WL 399184 at *4-5 (considering trade customs in determining whether there is a duty to disclose). Without a duty to disclose, there cannot be a claim for fraudulent concealment. See Guilbeault, 84 F. Supp. 2d at 269. Further, RIRRC has failed to state a claim for civil conspiracy and, thus, cannot support the existence of any conspiracy that Pilgrim could have had a duty to disclose. See supra part III(A)(1) (discussing civil conspiracy counts against Pilgrim).

RIRRC's other basis for its fraud claim is that Pilgrim misrepresented that the sellers were acting in good faith and selling at a reasonable price. However, RIRRC has not directed the Court to any facts supporting that conclusory statement. See Super. R. Civ. P. 9(b) (requiring circumstances of fraud be stated with particularity). Notably missing from the Amended More Definite Statement are averments of the time and place of such misrepresentations. See Powers, 926 F.2d at 111 (requiring under Rule 9(b) that plaintiff specify the time, place, and content of allegedly fraudulent representations). This Court previously directed RIRRC to detail the nature of the fraudulent representations. Beyond conclusory statements, RIRRC has failed to do so. See R.I. Res. Recovery, 2011 WL 1936012, slip op. at 19. Under Rule 9(b), RIRRC fails to particularly state a claim to support its counts for fraud against Pilgrim.

6

Negligent Omissions or Misrepresentations

As with the fraud claims, RIRRC brings two counts of negligent omissions or misrepresentations against Pilgrim. The claims are in connection with the Macera/Tzitzouris Property and the Izzo Property. Pilgrim served as only the title insurance agent on the Macera/Tzitzouris Property transaction, but as both the title insurance agent and settlement agent on the Izzo Property purchase. RIRRC makes the same allegations against Pilgrim in its counts for negligent misrepresentations as it does in the counts for fraud. See Compl. ¶¶ 260, 466. Again, RIRRC alleges Pilgrim failed to disclose inflated sales prices, failed to disclose the existence of any conspiracy, and misrepresented that the sellers were acting in good faith and selling at a reasonable price.

A claim for negligent misrepresentation is established by showing:

> "(1) a misrepresentation of material fact; (2) the representor must either know of the misrepresentation, must make the

> misrepresentation without knowledge as to its truth or falsity or must make the misrepresentation under circumstances in which he ought to have known of its falsity; (3) the representor must intend the representation to induce another to act on it; and (4) injury must result to the party acting in justifiable reliance on the misrepresentation." Manchester v. Pereira, 926 A.2d 1005, 1012 (R.I. 2007) (quoting Mallette v. Children's Friend and Serv., 661 A.2d 67, 69 (R.I. 2007)) (emphasis omitted).

Negligent misrepresentation is similar to fraud, but different in that the defendant may negligently, rather than intentionally, make the misrepresentation or concealment. Nonetheless, like many of the other Counts, these are grounded in fraud, and this Court's review is tempered by the Rule 9(b) requirements. See R.I. Res. Recovery, 2011 WL 1936012, slip op. at 18.

The above analysis applicable to the fraud counts applies to the negligent omission or misrepresentation counts, as RIRRC alleges the same facts for both. Thus, as with fraud, RIRRC fails to comply with the particularity requirements for pleading a cause of action for negligent misrepresentation by Pilgrim's alleged misrepresentation that the sellers were acting in good faith and selling at a reasonable price. See supra part III(A)(5); Super. R. Civ. P. 9(b) (requiring pleading with particularity). No specific facts are pled demonstrating the alleged misrepresentation by Pilgrim. Also, Pilgrim cannot be liable for a negligent omission with regard to the inflated prices or the existence of a conspiracy when there is no remaining claim for conspiracy and where Pilgrim has no duty to disclose inflated prices. See supra parts III(A)(1)-(4). Accordingly, RIRRC's claims against Pilgrim for negligent misrepresentations or omissions are dismissed for failure to state a claim upon which relief can be granted.

7

Civil Liability for Obtaining Property by False Pretenses

RIRRC alleges that Pilgrim is liable for obtaining property by false pretenses in relation to the Macera/Tzitzouris Property and the Izzo Property. Again, Pilgrim acted only as title

insurance agent on the Macera/Tzitzouris Property transaction, but acted as both title insurance agent and settlement agent on the Izzo Property sale. RIRRC alleges in the Amended More Definite Statement that Pilgrim "obtained from RIRRC, designedly, by false pretenses, money or funds in connection with the purchase" and "with intent to cheat, mislead, or defraud RIRRC," causing damages to RIRRC. See Compl. ¶¶ 287-89, 499-501. With regard to Pilgrim in particular, RIRRC claims Pilgrim received fees of $5,695 and $1,585 for acting as title insurance agent and/or settlement agent in the sales of the two properties, and those fees were dependent upon the sale price of the property. Pilgrim argues this count is yet another iteration of RIRRC's allegations of fraud, that it is insufficiently pled, and that there is no allegation of fact against Pilgrim that rises to the level of criminal conduct constituting false pretenses.

The Rhode Island statute setting forth the criminal offense of obtaining property by false pretenses states, in pertinent part: "Every person who shall obtain from another designedly, by any false pretense or pretenses, any money, goods, wares, or other property, with intent to cheat or defraud . . . shall be deemed guilty of larceny." G.L. 1956 § 11-41-4. Accordingly, the elements of obtaining property by false pretenses are (1) obtaining money from another designedly by false pretense or pretenses, (2) with the intent to cheat or defraud. State v. Grant, 840 A.2d 541, 549 (R.I. 2004). A false pretense is typically "a misrepresentation of a past or existing fact," but may also be a misrepresentation with regard to a future transaction. State v. Letts, 986 A.2d 1006, 1011 (R.I. 2010) (citing State v. Aurgemma, 116 R.I. 425, 430-31, 358 A.2d 46, 49-50 (1976)). The intent to defraud may be inferred, but is defined as "an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate [that other person's] * * * right, obligation or power with reference to the property." Letts, 986 A.2d at 1012 (quoting State v. Fiorenzano, 690 A.2d

857, 859 (R.I. 1997)). Although section 11-41-4 is a criminal statute, Rhode Island Gen. Laws § 9-1-2 provides civil liability for a violation of it. G.L. 1956 § 9-1-2 ("Whenever any person shall suffer any injury to his or her person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender . . . .")

Pilgrim's claim for false pretenses relies on the assertion that the fees were dependent on the sale price of the properties, and that the false pretense by Pilgrim was the misrepresentation of the value of the property. In light of the findings herein—in effect, that Pilgrim had no duty to disclose inflated prices and that RIRRC has not stated a claim for misrepresentation of value by Pilgrim—the Court does not find any false pretense or misrepresentation of fact with the intent to cheat or defraud. See Letts, 986 A.2d at 1011; Grant, 840 A.2d at 549. There are no specific facts pled establishing a misrepresentation as to the sale price by Pilgrim. See Letts, 986 A.2d at 1011-12 (requiring misrepresentation of fact with intent to deceive). In fact, the counts for false pretenses state only that Pilgrim obtained its fees by false pretenses with the intent to mislead because they were dependent upon the final sale price. See Compl. at ¶¶ 287-88, 499-500. These conclusory allegations, as discussed above, fail to state a claim compliant with the Rule 9(b) standard for pleading claims sounding in fraud. See Super. R. Civ. P. 9(b). Therefore, RIRRC fails to state a claim upon which relief can be granted for civil liability for obtaining property by false pretenses.

B

Macera/Tzitzouris Defendants

The Macera/Tzitzouris Defendants request this Court to dismiss the Counts brought against them for failure to state a claim upon which relief can be granted and for failure to

comply with the Rule 9(b) requirements for pleading claims sounding in fraud. The relevant counts against the Macera/Tzitzouris Defendants are for civil conspiracy (Count 12), aiding and abetting breach of fiduciary duty (Count 13), fraud (Count 14), negligent omissions or misrepresentations (Count 15), civil liability for obtaining property by false pretenses (Count 20), breach of contract (Count 18), and breach of warranty deed (Count 19). The Court will address each count in seriatim and will rely on some of the foregoing analysis set forth as to the Pilgrim Defendants.

1

Civil Conspiracy

RIRRC's Count for civil conspiracy against the Macera/Tzitzouris Defendants alleges that they and other Defendants "combined and agreed to work in concert with former employees and commissioners of RIRRC . . . to enrich themselves through the sale of the Macera/Tzitzouris Property to RIRRC at a price far exceeding market value . . . ." (Compl. ¶ 236.) The Macera/Tzitzouris Defendants and others allegedly conspired "for the purpose of unlawfully inflating the market value of this and other properties and concealing their actions for as long as possible." Id. at ¶ 237. RIRRC alleges directly with regard to the Macera/Tzitzouris Defendants that Gerald Macera suggested Brien be hired as their agent, "knowing that Brien would be able to obtain [for] them a 'sweetheart deal' due to his close connections with [former RIRRC commissioners] Ferland and Badeau." Id. at ¶ 238. Further, RIRRC claims Maureen Macera and the Tzitzourises "sold the property to RIRRC, while knowing that a conservation easement existed on the property that was not disclosed to RIRRC." Id.

As discussed above, supra part III(A)(1), RIRRC's claims for civil conspiracy sound in fraud and will be considered under the purview of Rule 9(b). See R.I. Res. Recovery, 2011 WL

1936012, slip op. at 13 (finding Rule 9(b) pleading standard applies to claims against Macera/Tzitzouris Defendants for civil conspiracy and other causes of action). Specifically, in this Court's prior Decision, it ruled that RIRRC "fail[ed] to specify any fact alleging, on a collective or individual basis, how the Macera/Tzitzourises conspired and what acts they undertook." See id. The Court now considers whether the Amended More Definite Statement has met the burden to state a claim for civil conspiracy against the Macera/Tztizouris Defendants and finds that it has not.

The Court notes again that civil conspiracy claims require "evidence of an unlawful enterprise." Read & Lundy, 840 A.2d at 1102. There must be "joint assent of the minds of two or more parties to the prosecution of an unlawful enterprise" with the "specific intent to do something illegal or tortious." Fleet Nat'l Bank, 831 F. Supp. at 45. Furthermore, general allegations of a conspiracy and acts in furtherance of it are insufficient to withstand a 12(b)(6) motion to dismiss without more specific facts establishing the conspiracy. See Stubbs, 88 R.I. at 467-68, 149 A.2d at 708-09 (requiring plaintiff allege sufficient facts establishing elements of conspiracy rather than charging conspiracy through conclusions of law); 15A C.J.S. Conspiracy § 29 (2012).

Here, as with the Pilgrim Defendants, RIRRC fails to set forth any facts demonstrating a mutual understanding or meeting of the minds creating a joint enterprise between and among the alleged conspirators. The conclusory statement that the Defendants agreed to work in concert is insufficient to withstand a 12(b)(6) motion to dismiss and particularly insufficient under the applicable 9(b) pleading requirements. See Stubbs, 88 R.I. at 464-68, 149 A.2d at 707-09 (considering allegations sufficient to state a claim for conspiracy and determining conclusions of law insufficient); Feinstein, 942 F.2d at 42-43 (requiring plaintiff do more than "chant the

statutory mantra" to meet 9(b) standard); see also 15A C.J.S. Conspiracy § 29 (2012). The facts alleged with regard to the Macera/Tzitzouris Defendants—that it selected a real estate agent based on who may obtain a good deal for them and that it failed to disclose a conservation easement to the full RIRRC—do not establish participation in an enterprise or joint assent with the other Defendants to participate in a conspiracy. See Read & Lundy, 840 A.2d at 1102.

Even if the Macera/Tzitzouris Defendants committed some wrongdoing by not disclosing an easement, that does not indicate involvement in a vast conspiracy to inflate market values of properties to enrich themselves without alleging particular facts demonstrating a joint enterprise. Moreover, a seller of property surely selects an agent in an attempt to secure the best sale price for their property. RIRRC has failed to set forth how the Macera/Tzitzouris Defendants conspired. See R.I. Res. Recovery, 2011 WL 1936012, slip op. at 13 (requiring RIRRC to specify facts alleging how Defendants conspired). The acts alleged by RIRRC fail to provide the Defendants with fair and specific notice of their alleged participation in a conspiracy and the factual basis of such an accusation. See Women's Dev. Corp., 764 A.2d at 161 (providing 9(b) standard). Therefore, the Court grants the Macera/Tzitzouris Defendants' motion to dismiss the count for civil conspiracy.

2

Aiding and Abetting Breach of Fiduciary Duty

The Count against the Macera/Tzitzouris Defendants for aiding and abetting breach of a fiduciary duty alleges that RIRRC commissioners had a duty to RIRRC, the commissioners breached that duty, the Macera/Tzitzouris Defendants knew or should have known of the breach, and the Macera/Tzitzouris Defendants "sold the property to RIRRC, knowing that a conservation easement existed on the property that was not disclosed to RIRRC." (Compl. ¶¶ 242-45.)

In addition to there being a breach of fiduciary duties of which the defendant is aware, to aid and abet the breach, a defendant "must actively participate or substantially assist in or encourage the breach to the degree that he or she could not reasonably be held to have acted in good faith." Arcidi, 856 N.E.2d at 174; see Schultz, 94 F.3d at 730 (requiring active participation in and knowing provision of substantial assistance to the principal's breach).

Beyond the Amended More Definite Statement's conclusory assertions of law, there are no specific facts establishing that the Macera/Tzitzouris Defendants had actual knowledge of a breach by RIRRC commissioners. See 37 Am. Jur. 2d Fraud and Deceit § 306 (2012) (requiring actual knowledge of breach of fiduciary duty occurring); Compl. ¶ 244 (stating simply that defendants knew or should have known of commissioners' breach). Similarly, there are no allegations demonstrating that the Macera/Tzitzouris Defendants "actively participate[d] or substantially assist[ed] in or encourage[d] the breach." See Arcidi, 856 N.E.2d at 174. Selling a property without disclosure of an easement, in and of itself, cannot constitute knowing and active participation in or encouragement of the RIRRC commissioners' breach of fiduciary duties. There is no connection made by RIRRC of the nondisclosure of the easement to any substantial assistance by the Macera/Tzitzouris Defendants to the RIRRC commissioners' breach. See id. (explaining third-party involvement in transaction without active participation or substantial assistance does not constitute aiding and abetting breach by principal party).

Especially due to the application of Rule 9(b)'s heightened pleading requirements, RIRRC fails to state a claim against the Macera/Tzitzouris Defendants for aiding and abetting a breach of fiduciary duty. See R.I. Res. Recovery, 2011 WL 1936012, slip op. at 13 (applying Rule 9(b)). This Court directed RIRRC to set forth facts alleging how and when the Macera/Tzitzouris Defendants caused RIRRC commissioners to breach their duties, and RIRRC

has failed to do so. See id. at 13-14. Notably, there is no specific assertion of the time, place, and content of the Macera/Tzitzouris Defendants' participation in any breach by RIRRC commissioners and employees. See Powers, 926 F.2d at 111 (setting forth Rule 9(b) requirements of pleading time, place, and content of underlying facts). Accordingly, RIRRC has failed to state a claim against the Macera/Tzitzouris Defendants for aiding and abetting a breach of fiduciary duty.

3

Fraud

RIRRC brings a Count for fraud against the Macera/Tzitzouris Defendants in connection with the sale of the Macera/Tzitzouris Property. As with the other Defendants, RIRRC claims the Macera/Tzitzouris Defendants "made false representations to RIRRC, through affirmative statements and/or through concealing facts and circumstances known to them . . . ." (Compl. ¶ 249.) Specifically as to the Macera/Tzitzouris Defendants, RIRRC states:

> "(a) At the closing on April 29, 2002 and in the purchase and sale agreement, Maureen B. Macera and the Tzitzourises misrepresented to RIRRC that they were acting in good faith and selling the property at a reasonable price, while knowing that the sale for the property had been inflated far above fair market value for the property.
> (b) At the closing on April 29, 2002 and in the purchase and sale agreement, Maureen B. Macera, and the Tzitzourises and the late William R. Macera, knowingly failed to disclose a conservation easement on the Macera/Tzitzouris Property and represented that there were no encumberances [sic] on the property." Id.

RIRRC's fraud claims against the Macera/Tzitzouris Defendants are based on allegations that they misrepresented that the property was selling at a reasonable price and that they failed to disclose a conservation easement on the Macera/Tzitzouris Property.

However, at minimum, some RIRRC employees were at least aware of the presence of wetlands on the Macera/Tzitzouris Property. See Compl ¶¶ 85-86 (stating Mulhearn was provided with information of wetland areas on property). The Macera/Tzitzouris Defendants claim RIRRC was "unquestionably aware" of the wetlands and the limitations on use of the property. See Mot. to Dismiss of Defs. Maureen Macera, John Tzitzouris, and Lynn Tzitzouris 3, Aug. 28, 2011.

It is well-settled that claims for fraud must be pled with particularity, even where knowledge of the facts constituting the fraud may lie with the opposing party—the Defendants. See Super. R. Civ. P. 9(b); Wayne Inv., 739 F.2d at 13-14. As discussed herein, Rule 9(b) requires the plaintiff to plead with particularity the facts supporting its claim for fraud, including the time, place, and content of the alleged misrepresentations or concealments. See supra part II.

RIRRC's fraud Count against the Macera/Tzitzouris Defendants fails to detail with particularity the circumstances constituting fraud. See Super. R. Civ. P. 9(b). This Court directed RIRRC to specify "which Defendants actually made the false representations, how the representations were made, what the actual representations were, when the representations were made, and to whom at RIRRC the false representations were made." R.I. Res. Recovery, 2011 WL 1936012, slip op. at 14. Yet, RIRRC has only stated that Maureen Macera and the Tzitzourises made misrepresentations that they were selling at a reasonable price and failed to disclose the easement. See Compl. ¶ 249. There is no indication how, when, or to whom the misrepresentation of value was made. The pleading fails to meet the Rule 9(b) standard of particularity and cannot withstand this motion to dismiss.

Furthermore, for a misrepresentation to constitute fraud, it generally must be an expression of fact, not opinion. See St. Paul Fire, 641 A.2d at 1300 n.2; East Providence Loan

Co., 103 R.I. at 263, 236 A.2d at 642; McGinn, 146 A. at 638. Any representation made by the Macera/Tzitzouris Defendants as to the value of the property they were attempting to sell likely constitutes opinion and not fact that could form the basis of a misrepresentation amounting to fraud. See Handy, 29 A. at 144 (stating seller's expressions of belief or opinion as to the value of articles sold by him cannot be made basis for fraud or deceit claim, while express warranty or false representations of particular facts affecting the quality or value may); 514 Broadway Inv. Trust, UDT 8/22/05 v. Rapoza, 816 F. Supp. 2d 128, 139 (D.R.I. 2011) (holding fraud or deceit action "requires showing of a false statement of fact, not an opinion or estimate . . ."); In re Frusher, 146 B.R. 594, 597 (Bankr. D.R.I. 1992) (holding statements of opinion in context of promoting a sale cannot form basis of misrepresentation). Here, RIRRC makes no allegation of the particular factual misrepresentation made by the Macera/Tzitzouris Defendants and, rather, makes a broad brushstroke statement that they misrepresented the value. Even if this Court had not found the count fails pursuant to Rule 9(b), it would have failed for not providing a misrepresentation of fact that could form the basis of a fraud claim. See 514 Broadway Inv. Trust, 816 F. Supp. 2d at 139 (requiring misrepresentation of fact, not opinion).

RIRRC also claims that the Macera/Tzitzouris Defendants had an obligation to disclose the existence of an easement. In order for concealment or nondisclosure to constitute fraud, there must be a duty to speak. See McGinn, 146 A. at 638; Guilbeault, 84 F. Supp. 2d at 269 (stating claim will not lie absent duty to speak). With regard to real estate transactions, this jurisdiction has recognized a "duty to disclose in situations where [the seller] has special knowledge not apparent to the buyer and is aware that the buyer is acting under a misapprehension as to facts which would be important to the buyer and would probably affect its decision." Stebbins, 766 A.2d at 373. Here, it is clear the buyer, RIRRC, at least had knowledge

of the wetlands on the Macera/Tzitzouris Property. See Compl ¶¶ 85-86.[8] Disclosure of a conservation easement on those very wetlands would not "probably affect" RIRRC's decision to purchase the Macera/Tzitzouris Property. See Stebbins, 766 A.2d at 373 (requiring disclosure of special knowledge that would probably affect buyer's decision). Additionally, by conveying the property by warranty deed, the Macera/Tzitzouris Defendants provided RIRRC with the associated statutory covenants. See G.L. 1956 § 34-11-15 (providing for warranty deed for conveyance of property). Failure to disclose the easement does not constitute an actionable claim for fraud, but may properly state a claim for breach of the covenants contained within a warranty deed. See infra part III(B)(6) (addressing RIRRC's claims for breach of contract and breach of warranty deed for failing to disclose easement). Accordingly, the fraud Count against the Macera/Tzitzouris Defendants shall be dismissed.

[8] The Amended More Definite Statement states that the wetland information was provided to Mulhearn and states that Mulhern orchestrated the Macera/Tzitzouris Property transaction. See Compl. ¶¶ 85-90. The study providing the wetland data, attached as an exhibit to the Amended More Definite Statement, indicates that it was prepared for RIRRC by GZA Geoenvironmental, Inc. See id. at Ex. 21. Further, there is no argument that Mulhearn's knowledge of the wetlands, as Executive Director of RIRRC, should not be imputed to RIRRC. See RIRRC's Mem. in Opp'n to Maureen Macera, John Tzitzouris and Lynn Tzitzouris' Mot. to Dismiss 6-7, Jan. 17, 2011 (acknowledging that "some former RIRRC employees . . . were aware that there were wetlands on the property" and arguing mainly that even with that knowledge of wetlands, that does not necessarily equate to knowledge of easement). Although the Amended More Definite Statement contains allegations that Mulhearn breached her fiduciary duties to RIRRC, there is no claim that she was acting outside the scope of her authority and that her knowledge should not be imputed to RIRRC. See Am. Underwriting Corp. v. R.I. Hosp. Trust Co., 111 R.I. 415, 422, 303 A.2d 121, 125 (1973) ("notice to an agent is notice to his principal as to matters within the actual or apparent scope of the agent's authority"); Paul Revere Life Ins. Co. v. Fish, 910 F. Supp. 58, 63 (D.R.I. 1996) (stating under R.I. law that notice to agent is notice to principal on matters within agent's scope of authority).

4

Negligent Omissions or Misrepresentations

As with Pilgrim, RIRRC's count for negligent omissions or misrepresentations against the Macera/Tzitzouris Defendants mirrors the Count against them for fraud. RIRRC again claims the Macera/Tzitzouris Defendants failed to disclose the conservation easement and misrepresented that they were selling the property at a reasonable price. See Compl. ¶ 260.

The above analysis on the fraud count applies to the claim for negligent misrepresentations and omissions as well. First and foremost, this Count fails to provide fair and specific notice of the facts giving rise to RIRRC's claim. See Women's Dev. Corp., 764 A.2d at 161; R.I. Res. Recovery, 2011 WL 1936012, slip op. at 13-15 (applying 9(b) standard). The Amended More Definite Statement lacks particularity in its pleading of these claims grounded in fraud. See Super. R. Civ. P. 9(b). Further, the Court is not convinced that an indication by the seller of the value of the property constitutes a misrepresented fact or that failure to disclose an easement prior to sale when the buyer may have been aware of it constitutes an actionable omission. See supra part III(B)(3). Even if RIRRC had no knowledge of the conservation easement, as discussed supra part III(B)(3), RIRRC fails to state a claim for fraud, and likewise, for negligent omissions. Accordingly, the Court grants the motion to dismiss this Count against the Macera/Tzitzouris Defendants.

5

Civil Liability for Obtaining Property by False Pretenses

In its false pretenses claim against the Macera/Tzitzouris Defendants, RIRRC claims the Defendants "obtained from RIRRC, designedly, by false pretenses, money or funds in connection with the purchase of the Macera/Tzitzouris Property" and "with the intent to cheat,

mislead, or defraud RIRRC." (Compl. ¶¶ 287-88.) Specifically with regard to the Macera/Tzitzouris Defendants, RIRRC alleges only that they "obtained the proceeds of the sale of the property for a price above fair market value . . . ." (Compl. ¶ 287.)

Under the Rule 9(b) standard, RIRRC again fails to plead a cause of action for false pretenses, which in this case, sounds in fraud. See R.I. Res. Recovery, 2011 WL 1936012, slip op. at 14 (applying 9(b) standard). RIRRC's claim for false pretenses depends on its assertion that the Macera/Tzitzouris Defendants obtained a price above fair market value on the sale of their real estate, allegedly by failing to disclose the conservation easement. However, the Amended More Definite Statement sets forth that RIRRC was aware of wetlands and other issues with the property value. See Compl. ¶¶ 78 (indicating property assessment discrepancies), 85-86 (indicating wetlands report provided to Mulhearn), 87, 89 (indicating Mulhearn's decision to continue with purchase). This Court cannot conclude the claim for false pretenses, under any set of facts contained in the pleading, establishes that the Macera/Tzitzouris Defendants obtained funds by false pretenses with the intent to cheat or defraud. See Grant, 840 A.2d at 549 (providing elements of false pretenses). Therefore, RIRRC fails to state a claim upon which relief can be granted for civil liability for obtaining property by false pretenses.

6

Breach of Contract

and

Breach of Warranty Deed

Both the breach of contract and breach of warranty deed claims involve the allegedly undisclosed existence of a conservation easement on the Macera/Tzitzouris Property. In its Count for breach of contract, RIRRC claims the Macera/Tzitzouris Defendants signed a purchase

and sale agreement to convey the Macera/Tzitzouris Property, and that agreement "specifically required the property to be conveyed with good, clear, insurable, marketable and perfect to record title, free from all encumberances [sic]." (Compl. ¶ 278.) RIRRC claims the Macera/Tzitzouris Defendants breached this agreement by "failing to disclose a conservation easement on the property and permitting the sale of the property with encumberances [sic]." Id. at ¶ 279. In the Count for breach of warranty deed, RIRRC makes similar claims. See id. at ¶¶ 283-85. There, RIRRC alleges that the Macera/Tzitzouris Defendants, in "conveying title with the undisclosed encumbrance of a conservation easement," "breach[ed] the covenant of seisin and the covenant of quiet enjoyment in that deed." Id. at ¶ 283.

The Amended More Definite Statement demonstrates for the purposes of this Motion that there exists a "Conservation Easement and Restrictions" on the Macera/Tzitzouris Property. See id. at ¶¶ 93-96, Exs. 26-27. Purportedly, in 1995, a conservation easement on a portion of the property was granted to RIDEM as part of a consent agreement with RIDEM, and the existence of this easement was not disclosed to RIRRC prior to its purchase of the property. See id. at ¶¶ 93-96. The grant of easement describes it as an easement for conservation and restriction purposes, preventing the grantor/property owner and its successors and assigns from engaging in various acts on a portion of the property. See id. at Ex. 26. The restricted acts include cutting and removing trees, dumping man-made materials, building, operating vehicles, changing the use or appearance of the property. See id. The easement was granted to RIDEM in exchange for a Freshwater Wetlands Alteration Permit to construct a roadway over another area of the property. See id. at Ex. 27. The easement, however, was never recorded. Id. at ¶ 95. The explicit language of the conservation easement provides that it is intended to "conform and comply with the definitions and purposes set forth in Title 34, Chapter 39," and that it "shall be deemed to be

conservation restrictions pursuant to the provisions of R.I. Gen. Laws Title 34, Chapter 39 (1956), as amended." Id. at Ex. 26.

While RIRRC argues the Macera/Tzitzouris Defendants breached both the purchase and sale agreement and the warranty deed covenants by failing to disclose the existence of the conservation easement on the property, the Macera/Tzitzouris Defendants argue RIRRC fails to state a claim for either breach. First, the Macera/Tzitzouris Defendants argue that any breach of contract claims based on the purchase and sale agreement were extinguished by the acceptance of the warranty deed. Second, they argue RIRRC has failed to state a claim for breach of the warranty deed covenants because RIRRC was on notice of the easement and because RIRRC has not alleged any title defect.

"The doctrine of merger by deed provides that once a warranty deed is accepted it 'becomes the final statement of the agreement between the parties and nullifies all provisions of the purchase-and-sale agreement.'" Lizotte v. Mitchell, 771 A.2d 884, 887 (R.I. 2001) (quoting Haronian v. Quattrocchi, 653 A.2d 729, 730 (R.I. 1995)). Accordingly, "by accepting the warranty deed, the plaintiffs waive[] any contract claims based on the sales agreement." Id. at 888; see G.L. 1956 § 34-11-4 (providing delivery of deed operative to convey title); Russo v. Cedrone, 118 R.I. 549, 557-58, 375 A.2d 906, 910 (1977) (holding that once delivered, "warranty deed is presumed to be the final agreement between the parties and conveys full rights to the property"). Because the deed, once accepted as performance of the contract to convey, is considered an instrument of higher dignity, it extinguishes all previous agreements, including the purchase and sale contract, and such prior agreements are without further legal consequence, leaving the deed as the sole binding instrument. See 26A C.J.S. Deeds §§ 221-22 (2011).

The primary exception to the doctrine of merger by deed applies when a party is induced by fraud or misrepresentation in the conveyance. See Deschane v. Greene, 495 A.2d 227, 229 (R.I. 1985) ("Absent a demonstration of fraud or misrepresentation, the warranty deed is the final embodiment of the agreement and conveys full rights to the property."); Russo, 118 R.I. at 557-58, 375 A.2d at 910 (applying merger by deed absent allegations of fraud or mistake); see also Caseau v. Belisle, No. PC 01-4441, 2005 WL 2354135, *5-6 (R.I. Super. Sept. 26, 2005) (Gibney, J.) ("Merger by deed does not apply where a party was induced by fraud or misrepresentation to enter into a contract for the purchase and sale of real property."). For the fraud exception to apply, evidence would have to "clearly and convincingly prove[] that a misrepresentation . . . existed when the deed was delivered." 26A C.J.S. Deeds § 224 (2011). However, there is Rhode Island authority for applying the merger by deed doctrine to prevent a breach of contract claim even where fraud or misrepresentation is alleged by the plaintiff. See Lizotte, 771 A.2d at 886-88 (barring contract claims under merger by deed even where plaintiff also claimed misrepresentations and fraudulent inducement in sale of property); Caseau, 2005 WL 2354135 at *5-6 (applying merger by deed to prevent breach of contract claim even where plaintiff brought fraud and misrepresentation claims regarding the transaction); McAllister v. Cook, No. 90-6469, 1996 WL 936923 (R.I. Super. Apr. 26, 1996) (Clifton, J.) (denying breach of contract claim on purchase and sale agreement even where plaintiffs also claim fraud and misrepresentations in sale of home).

In line with Rhode Island case law, and considering this Court's foregoing ruling on the fraud counts, the merger by deed doctrine applies here to bar RIRRC's Count for breach of contract on the purchase and sale agreement. Even in cases where fraud is alleged by the plaintiff, courts of this State have applied the merger by deed doctrine. See Lizotte, 771 A.2d at

886-88; Caseau; 2005 WL 2354135 at *5-6; McAllister, 1996 WL 936923. The claim of breach by failing to disclose an easement is more properly brought as a breach of the covenants of a warranty deed rather than the terms of a purchase and sale agreement. Furthermore, in this case, the Court has determined that the fraud counts against the Macera/Tzitzouris Defendants are to be dismissed. See supra part III(B)(3). Accordingly, there is not a demonstration of fraud sufficient to apply the exception to the merger by deed doctrine. See Deschane, 495 A.2d at 229 (explaining merger by deed applies absent demonstration of fraud). As RIRRC's fraud claims do not meet the Rule 9(b) and 12(b)(6) standards, they unmistakably do not provide clear and convincing evidence of misrepresentations in the transaction. See 26A C.J.S. Deeds § 224 (2011) (setting forth that clear and convincing evidence of fraud is necessary to avoid merger by deed). The Court finds the purchase and sale agreement and representations contained therein regarding the Macera/Tzitzouris Property sale merged into the delivered and accepted warranty deed, which now stands as the controlling document between the parties. See 26A C.J.S. Deeds §§ 221-22 (2011).

Under Rhode Island law, a warranty deed conveys fee simple title to real property along with five statutory covenants. See § 34-11-15. Among the covenants are the warranties that at the time of delivery of the deed, the grantee "is lawfully seised in fee simple of the granted premises," and that "the granted premises are then free from all incumbrances." Id. at (1)-(2). Further, the deed warrants that the grantee will "at all times after the delivery of such deed peaceably and quietly have and enjoy the granted premises." Id. at (4). Colloquially, these warranties are known as the covenants of seisin and quiet enjoyment. Conveying property with an undisclosed easement may subject a seller to liability for violating the covenants of a warranty deed. See Bitting v. Gray, 897 A.2d 25, 35 (R.I. 2006) (reversing denial of summary judgment

when seller conveyed with easement and undisclosed impediment because seller may be liable for breach of covenants).

Here, RIRRC argues that the unrecorded and undisclosed easement breaches the covenants of seisin and quiet enjoyment. However, the Macera/Tzitzouris Defendants argue that RIRRC had notice of the easement and, regardless, has not shown any injury to title caused by the unrecorded and undisclosed easement.

The general rule is that "[a] conveyance is valid and binding against a purchaser of property if that purchaser has notice of the conveyance, despite a recording error." Grady v. Narragansett Elec. Co., 962 A.2d 34, 44 (R.I. 2009) (citing Providence & Worcester Co. v. Blue Ribbon Beef Co., 463 A.2d 1313, 1318 (R.I. 1983)) (upholding existence of misrecorded easement where purchaser had knowledge of encumbrance). On the other hand, a "bona fide purchaser of land, without actual or constructive notice of existence of an easement, may take the land relieved of its burden." Wiesel v. Smira, 49 R.I. 246, 142 A. 148, 151 (R.I. 1928). Thus, easements, whether properly recorded or not, are typically binding on purchasers of the servient estate, except for bona fide purchasers for value without actual or constructive notice of the easement. See § 34-11-1 (providing that conveyance "shall be valid and binding though not acknowledged or recorded" as against "those having notice thereof"); 28A C.J.S. Easements §§ 133-37 (2008) (explaining purchaser with actual, constructive, or implied notice of easement takes the land subject to the easement); 25 Am. Jur. 2d Easements and Licenses § 93 (2012). Unrecorded easements are generally inoperative only against subsequent good faith purchasers for value without notice. 28A C.J.S. Easements § 69 (2008).

Conservation easements, however, are afforded special treatment under Rhode Island statutory law. See G.L. 1956 § 34-39-1 et seq. (providing laws on conservation and preservation restrictions on real property). Section 34-39-3 provides, in pertinent part:

> "No conservation restriction held by any governmental body . . . shall be unenforceable against any owner of the restricted land or structure on account of lack of privity of estate or contract, or lack of benefit to particular land, or on account of the benefit being assignable or being assigned to any other governmental body or to any entity with like purposes, or on account of any other doctrine of property law which might cause the termination of the restriction such as, but not limited to, the doctrine of merger and tax delinquency."

Essentially, the statute states that no conservation easement will be unenforceable against an owner of land on account of any doctrine of property law which might cause the termination of the restriction. Sec. 34-39-3. To this Court's knowledge, that statute has not yet been interpreted by any court.

In addition to the above, the statute provides that conservation easements are not subject to the thirty-year statutory limitation on other restrictive covenants, as provided in § 34-4-21. See § 34-39-3(c). It also provides the attorney general of the State with the authority to bring civil actions "to enforce the public interest in such [conservation] restrictions." See § 34-39-3(d). Further, § 34-39-5 provides that "[a] conservation or preservation restriction may not be terminated or amended in such a manner as to materially detract from the conservation or preservation values intended for protection, without the prior approval of the court . . . ." The court may only approve termination of a conservation easement "when it is found by the court that [it] does not serve the public interest or publicly beneficial conservation or preservation purpose . . . ." Sec. 34-39-5(c).

These statutory provisions indicate the public interest in land conservation and provide for more demanding and specific standards, conditions, and limitations for the termination of conservation easements in comparison to typical easements. See §§ 34-39-1 (providing purpose of chapter), 34-39-3 (limiting unenforceability of conservation easements), 34-39-5 (limiting termination of conservation easements); see also Restatement (Third) of Property (Servitudes) § 7.11, reporter's note (2012) (listing Rhode Island as state with more specific standards for termination of conservation easement than the Restatement position); Nancy A. McLaughlin, Conservation Easements and the Doctrine of Merger, 74 Law & Contemp. Probs. 279, 290 n.35 (Fall 2011) (listing Rhode Island statute as among those that "impose conditions or limitations on the release, transfer, modification, or termination of the [conservation] easements"). As recently as 2011, the Rhode Island General Assembly has amended Title 34, Chapter 39 to increase the difficulty in terminating a conservation restriction.[9]

The conservation easement on the Macera/Tzitzouris Property was intended to be deemed a conservation restriction pursuant to Title 34, Chapter 39, and the Court finds that it meets the definition of a conservation restriction provided by that chapter. See Compl. Ex. 26 (providing in easement deed that it shall be deemed a conservation restriction under Title 34, Chapter 39); § 34-39-2 (defining conservation restriction).[10] As such, the conservation easement on the

[9] See 2011 R.I. Pub. Laws ch. 120, § 1 (adding subsection (c) to § 34-39-5, effective June 28, 2011); 2010 R.I. Pub. Laws ch. 312, § 1 (adding subsections (d) and (e) to § 34-39-3, effective June 25, 2010).

[10] Section 34-39-2 defines a "conservation restriction" as:

> "a right to prohibit or require a limitation upon or an obligation to perform acts on or with respect to or uses of a land or water area, whether stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on

Macera/Tzitzouris Property will not be deemed unenforceable on the basis of "any other doctrine of property law which might cause the termination of the restriction." Sec. 34-39-3.

Generally, purchase of a servient estate by a bona fide purchaser for value without notice of the easement terminates the enforceability of the easement on the servient estate. See Wiesel, 142 A. at 151. Here, however, § 34-39-3 precludes a finding that a conservation easement is unenforceable under such doctrines of property law that could terminate the easement, including, but not limited to, the merger doctrine. Conveyance to a bona fide purchaser without notice, like merger of the dominant and servient estate, would terminate a typical easement. Considering that merger, pursuant to § 34-39-3, will not terminate a conservation easement, neither will conveyance to a bona fide purchaser under that doctrine of property law. See § 34-39-3(a). Moreover, a conservation easement expressly may not be terminated without prior approval of a court. See § 34-39-5. This Court will not here, on a Motion to Dismiss, consider the propriety of terminating a statutorily-regulated conservation easement.

Here, judging the Amended More Definite Statement in the light most favorable to RIRRC, it may state a claim for breach of warranty deed. Whether RIRRC was a bona fide purchaser for value without notice of the easement has no effect on the conservation easement's validity. See § 34-39-3 (providing conservation easements not unenforceable under such doctrines of property law). Pursuant to the statutory authority, the easement, even unrecorded

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> behalf of the owner of the area or in any order of taking, which right, limitation, or obligation is appropriate to retain or maintain the land or water area, or is appropriate to provide the public the benefit of the unique features of the land or water area, including improvements thereon predominantly in its natural, scenic, or open condition, or in agricultural, farming, open space, wildlife, or forest use, or in other use or condition consistent with the protection of environmental quality."

and following conveyance to a bona fide purchaser, will not be made unenforceable without proper consideration by a court. See §§ 34-39-3, 34-39-5.

As the purchase by RIRRC did not extinguish the conservation easement and it currently exists on the Macera/Tzitzouris Property, RIRRC states a claim for breach of warranty deed. At this stage, on a motion to dismiss, the Court must examine the facts in the light most favorable to the plaintiff and grant dismissal only when it is clear beyond a reasonable doubt that the plaintiff could not recover under any set of those facts. See Palazzo, 944 A.2d at 149-50; A.F. Lusi Constr., 934 A.2d at 795. The facts here may state a claim for breach of warranty deed because the property was conveyed with an apparently undisclosed conservation easement. See Bitting, 897 A.2d at 35 (determining conveyance with easement or impediment may breach covenants of deed). RIRRC could not have taken the property not subject to the easement, and the presence of an undisclosed easement may, depending on the facts as they unfold, breach the covenants of a warranty deed. Consequently, the Court will dismiss the breach of contract claim under the doctrine of merger by deed, but deny the motion to dismiss as to the breach of warranty deed Count against the Macera/Tzitzouris Defendants.

C

Coyle Defendants

The Coyle Defendants move the Court to dismiss all claims against them for failure to state a claim upon which relief can be granted, except for the claims for appraisal malpractice or professional negligence. As with many of the other Defendants, the counts that Coyle seeks to dismiss are for civil conspiracy (Counts 1, 12, 21, 29, 37, 45, and 66), aiding and abetting breach of fiduciary duty (Counts 2, 13, 22, 30, 38, 46, 54, 60, and 67), breach of fiduciary duty (Counts 6, 26, 34, 42, 50, 57, 63, and 71), fraud (Counts 3, 14, 23, 31, 39, 47, 55, 61, and 68), negligent

omissions or misrepresentations (Counts 4, 15, 24, 32, 40, 48, 56, 62, and 69), and civil liability for obtaining property by false pretenses (Counts 11, 20, 28, 36, 44, 53, 59, 65, and 73). The Court will address each count, but also rely on the preceding analysis applicable to the other sets of Defendants.

1

Civil Conspiracy

RIRRC brings seven Counts for civil conspiracy against the Coyle Defendants in connection with the purchases of the Macera/Tower Property, the Macera/Tzitzouris Property, the Baccarie Property, The Bac-Mac Realty Property, the Silvestri Leasing Company Property I, the Izzo Property, and the Silvestri Leasing Company Property II. Coyle conducted appraisals of all of the properties.

The civil conspiracy counts again allege that Coyle and the other Defendants "combined and agreed to work in concert with former employees and commissioners of RIRRC . . . to enrich themselves through the sale of the [properties] at a price far exceeding market value . . . ." See Compl. ¶¶ 165, 236, 292, 344, 396, 448, 572. The Defendants purportedly conspired "for the purpose of unlawfully inflating the market value of this and other properties and concealing their actions for as long as possible." See id. at ¶¶ 166, 237, 293, 345, 397, 449, 573. Specifically with regard to Coyle, RIRRC alleges that it "produced an appraisal to support the . . . price of the . . . property, that did not meet the standards of R.I.G.L. § 5-20.7-19 . . . ." See id. at ¶¶ 167, 238, 294, 346, 398, 450, 574. With regard to the Macera/Tower Property, RIRRC further alleged that Coyle "did not take into account the fact that the property was formerly used as a landfill and thus had numerous known environmental issues, including the existence of groundwater contaminants and the accumulation of waste materials up to twenty-two feet in depth . . . ." Id. ¶

167. The Amended More Definite Statement does not contain more detailed allegations in the counts for any of the other properties.

Section 5-20.7-19 requires that a "state licensed or certified real estate appraiser must comply with the uniform standards of professional appraisal practice promulgated by the appraisal standard board of the Appraisal Foundation." RIRRC claims that Coyle's appraisals failed to meet these standards by using the sales of other properties that were appraised by Coyle and sold to RIRRC as comparable sales in developing the appraisal. This claim is the foundation of RIRRC's appraiser malpractice claim, and RIRRC asserts that it also demonstrates Coyle's participation in a civil conspiracy.

The Court finds, however, that the civil conspiracy counts against Coyle patently fail to meet the Rule 9(b) pleading standard for claims sounding in fraud. The Amended More Definite Statement does not set forth any facts demonstrating a mutual understanding or meeting of the minds creating a joint enterprise between and among Coyle and the other alleged conspirators. See Fleet Nat'l Bank, 831 F. Supp. at 45 (requiring joint assent of minds in prosecution of unlawful enterprise with specific intent to do something illegal or tortious). As with the Pilgrim and Macera/Tzitzouris Defendants, RIRRC's conclusory allegations that Defendants agreed to work in concert, without particular facts in support, are insufficient to meet the Rule 9(b) pleading requirements. See Stubbs, 88 R.I. at 464-68, 149 A.2d at 707-09; Feinstein, 942 F.2d at 42-43.

The fact that Coyle may have failed to comply with professional standards in conducting appraisals on the property does not state a claim for its involvement in a conspiracy. Claims for defective appraisals are more properly brought as claims for appraiser malpractice or negligence, which claims by RIRRC are not before the Court on this Motion to Dismiss. Producing

appraisals for the properties is insufficient to state a claim for civil conspiracy, and RIRRC fails to provide any other fair and specific notice of Coyle's involvement. See Women's Dev. Corp., 764 A.2d at 161 (providing standard of fair and specific notice); Stubbs, 88 R.I. at 467-68, 149 A.2d at 708-09 (providing plaintiff must plead elements of conspiracy to state a claim, and general allegations will not survive motion to dismiss); see also 15A C.J.S. Conspiracy § 29 (2012). RIRRC has failed to provide sufficient factual detail of Coyle's involvement in a conspiracy to survive this motion to dismiss.

2

Aiding and Abetting Breach of Fiduciary Duty

Nine counts of the Amended More Definite Statement allege that Coyle aided and abetted the commissioners and employees of RIRRC in breaching their fiduciary duties to RIRRC. In addition to the general language applicable to all Defendants, RIRRC claimed that Coyle in particular assisted, aided, and abetted the breach because it "produced an appraisal to support the . . . price of the . . . property, that did not meet the standards of R.I.G.L. § 5-20.7-19." See Compl. ¶¶ 174, 245, 294, 353, 405, 457, 507, 541, 581. For the Macera/Tower Property and the Izzo Property, RIRRC also alleged that the appraisal "did not take into account known environmental issues." See Compl. ¶¶ 174, 457.

As determined with respect to the Pilgrim and Macera/Tzitzouris Defendants, RIRRC also fails to state a claim against Coyle for aiding and abetting a breach of fiduciary duty. There are no particular facts alleged to establish that Coyle knew RIRRC commissioners or employees were breaching fiduciary duties, and there are no particular facts demonstrating that Coyle actively participated in or provided substantial assistance to the commissioners in their alleged breach. See Arcidi, 856 N.E.2d at 174 (listing elements including knowing of the breach and

actively participating or substantially assisting in it). The simple fact that Coyle produced appraisals for the properties does not establish such active participation and substantial assistance. See Schultz, 94 F.3d at 730 (requiring plaintiff demonstrate active participation and the knowing provision of substantial assistance). As per this Court's Decision, RIRRC had the burden of pleading this claim with particularity, and here, on its third attempt, it has still failed to do so. See R.I. Res. Recovery, 2011 WL 1936012, slip op. at 12-19; see also Super. R. Civ. P. 9(b) (requiring pleading with particularity of circumstances of claims sounding in fraud). RIRRC's conclusory statements and singular fact that Coyle produced appraisals cannot withstand Coyle's motion to dismiss the counts for aiding and abetting a breach of fiduciary duty.

3

Breach of Fiduciary Duty

RIRRC's eight counts against Coyle for breach of fiduciary duty claim that "Coyle had a fiduciary duty to RIRRC as his client and as the buyer of the property." See Compl. ¶¶ 201, 266, 328, 380, 432, 479, 522, 556, 608. Coyle allegedly breached that duty by "caus[ing] RIRRC to unwisely spend money through the purchase of the . . . property for an inflated purchase price," "[f]ailing to disclose multiple conflicts of interest," and "[f]ailing to conduct appraisals that met the standards of his profession and reflected the fair market value of the property." See Compl. ¶¶ 202, 267, 329, 381, 433, 480, 523, 557, 609. RIRRC claims that a fiduciary relationship is shown by the statement that RIRRC relied on Coyle's appraisals. Coyle argues, however, that it does not owe fiduciary duties to a purchaser of property and was not in a fiduciary relationship with RIRRC. To the contrary, Coyle contends, as an appraiser it had a duty to act independently and impartially—not as a fiduciary to either party in the sales transaction.

It is true that "[a] fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." Restatement (Second) Torts § 874 cmt. a (2012). A fiduciary relationship may exist when a party "rightfully reposes trust and confidence" in the other. A. Teixeira & Co. v. Teixeira, 699 A.2d 1383, 1387 (R.I. 1997). Although "[t]he existence of such a fiduciary duty is a fact-intensive inquiry," A. Teixeira & Co., 699 A.2d at 1387, "whether a fiduciary duty exists 'is a question of law for the court.'" Id. at 1389 (Flanders, J., dissenting) (citations omitted). Factors that may demonstrate the existence of a fiduciary relationship include "the acting of one person for another; the having and exercising of influence over one person by another; the inequality of the parties; and the dependence of one person on another." Chain Store Maint., 2004 WL 877599 at *13 (citations omitted); see Santucci v. Citizens Bank of R.I., 799 A.2d 254, 258 (R.I. 2002) (listing factors to determine fiduciary relationship including "the reliance of one party upon another, the relationship of the parties prior to the incidents complained of, the relative business capacities or lack thereof between the parties, and the readiness of one party to follow the other's guidance in complicated transactions"). The party claiming the existence of a fiduciary relationship must prove its existence by clear and convincing evidence. See Clark v. Bowler, 623 A.2d 27, 29 (R.I. 1993).

By definition, an appraiser is an "impartial person who estimates the value of something, such as real estate, jewelry, or rare books." Black's Law Dictionary, appraiser (9th ed. 2009). Furthermore, Coyle presents to the Court that the uniform standards of professional appraisal practice, to which Coyle is bound to adhere by § 5-20.7-19, requires that appraisal service be performed "competently and in a manner that is independent, impartial, and objective." (Mem. in Supp. of Coyle's Mot. to Dismiss 11-12, Nov. 4, 2011.) Some courts of other jurisdictions

have determined that a fiduciary relationship—and, accordingly, claims for breach or nondisclosure—does not exist between appraisers and purchasers. See, e.g., Gibson v. Credit Suisse AG, No. 1:10 CV 001-EJL-REB, 2012 WL 1253007, at *4-8 (D. Idaho Mar. 30, 2012) (ruling no fiduciary relationship exists between appraiser and buyer, applying Rule 9(b) where plaintiff alleged appraiser's participation in conspiracy and fraud, and dismissing breach of fiduciary duty claims); Wells Fargo Bank v. Vandorn, No. 11 CVS 6940, 2012 WL 160090, at *2-4 (N.C. Super. Jan. 17, 2012) (finding no fiduciary duty of lender to be breached in connection with conducting improper appraisal); Brushwitz v. Ezell, 757 So.2d 423, 431-32 (Ala. 2000) (determining no fiduciary relationship or duties owed by appraiser particularly where buyer had experience in purchasing real estate and in ordering and reviewing appraisals); see also In re McCarter, 296 B.R. 750, 755 (Bankr. E. D. Tenn. 2003) ("Appraisers, in general, do not have a privileged relationship with their clients, nor are they advocates for their clients.").

The Court is convinced that without specific circumstances establishing a fiduciary relationship, no such relationship exits between an appraiser and a buyer. See Clark, 623 A.2d at 29 (requiring fiduciary relationship be proved); see also Mandarin Trading Ltd. v. Wildenstein, 944 N.E.2d 1104, 1108-10 (N.Y. 2011) (dismissing counts for fraud and negligent misrepresentation against art appraiser absent detailed factual allegations giving rise to fiduciary duty between appraiser and buyer). Considering the factors enumerated in the past by this Court and the Rhode Island Supreme Court, as a matter of law, the facts presented in the Amended More Definite Statement cannot support the existence of fiduciary duties between Coyle, the appraiser, and RIRRC, the buyer. See Santucci, 799 A.2d at 258 (listing factors for fiduciary relationship); McKenna, 874 A.2d at 225 (explaining dismissal appropriate where plaintiff not entitled to relief under any set of facts established by pleading). Moreover, RIRRC clearly had

not met the Rule 9(b) standard of pleading with particularity and providing the specific circumstances of their claim. See Women's Dev. Corp., 764 A.2d at 161.

The Amended More Definite Statement provides no facts upon which it could be determined that RIRRC substantially relied on Coyle, that RIRRC was an unsophisticated purchaser of real estate, that Coyle exercised influence over RIRRC, or that RIRRC depended on Coyle. See Santucci, 799 A.2d at 258 (listing factors to determine existence of fiduciary duty); Chain Store Maint., 2004 WL 877599 at *13 (same). To the contrary, the RIRRC states that Coyle produced appraisals to support the decided upon purchase prices of the properties, and that RIRRC directed Coyle in choosing comparable properties to use in the appraisals. The facts indicate RIRRC's sophistication and experience dealing in real estate and determining property values. See Brushwitz, 757 So.2d at 431-32 (finding no fiduciary relationship between appraiser and buyer particularly where buyer sophisticated entity with experience in real estate purchases). These alleged facts can in no way demonstrate that RIRRC relied at all on Coyle or that Coyle somehow influenced RIRRC. In conclusory fashion, RIRRC states in its claims for breach of fiduciary duty that Coyle "cause[d] RIRRC to unwisely spend money" by making the purchases. Such broad allegations—contrary to many factual statements in the pleading—fail to provide fair and specific notice of the claims. See Gibson, 2012 WL 1253007 at *4-8 (finding no fiduciary relationship with appraiser and dismissing breach of fiduciary duty claims).

This Court is not and has not been made aware of any controlling case law finding a fiduciary duty exits between real estate appraisers and the purchasers of the property. Considering the facts alleged in the Amended More Definite Statement, even in the light most favorable to RIRRC, it is clear that no fiduciary relationship existed in this case. See A. Teixeira & Co., 699 A.2d at 1387-89 (dealing with existence of fiduciary relationship); Gibson, 2012 WL

1253007 at *4-8. Were this Court to find support for a fiduciary relationship, as proposed by RIRRC, it would expand the nature of the relationship traditionally held between appraisers and buyers. Significantly, such a finding could affect the impartiality and independence demanded of appraisers. See § 5-20.7-19 (obligating licensed appraisers to abide by uniform standards of professional appraisal practice). Appraisers are already liable for their negligence and professional negligence. There are no grounds at law or under the facts alleged here for finding the existence of a fiduciary relationship between Coyle and RIRRC, and accordingly, the Court dismisses the breach of fiduciary duty claims against Coyle.

4

Fraud

The Amended More Definite Statement includes nine counts of fraud against Coyle. In addition to the basic allegations applicable to all Defendants in the fraud claims, RIRRC alleges with respect to Coyle that it "misrepresented to RIRRC that his appraisal met the standards of his profession and reflected the fair market value of the property, while knowing that his actions had inflated the appraised value far above fair market value for the property." See Compl. ¶¶ 178, 249, 305, 357, 409, 461, 511, 545, 585. In two counts, RIRRC further avers in support of its fraud claims that Coyle "permitted someone else to dictate which comparable purchases to use in the appraisals." See id. ¶¶ 511, 545.

Even if Coyle misrepresented the value of the properties purchased by RIRRC, the Amended More Definite Statement fails to state a claim for fraud against Coyle. Beyond a misrepresentation, a claim for fraud requires proof that the misrepresentation was made with the intention of inducing reliance of the plaintiff and that the plaintiff in fact relied on the

misrepresentation.[11] See Parker, 996 A.2d at 634; Travers, 682 A.2d at 472-73. RIRRC makes only the conclusory statements that the Defendants "made false representations . . . with the intent to induce RIRRC to rely thereon," and "RIRRC justifiably relied upon these false representations in purchasing the property." See Compl. ¶¶ 178-79, 249-50, 305-06, 357-58, 409-10, 461-62, 511-12, 545-46, 585-86. Beyond these conclusory statements, there are no particular factual allegations to indicate that Coyle intended RIRRC to rely on the appraisals or that RIRRC did rely on them. See supra part III(C)(3) (discussing that there are no facts in the pleading indicating any reliance on Coyle by RIRRC in the context of the breach of fiduciary duty claims, and, to the contrary, that there are facts indicating RIRRC did not rely on the content of Coyle's appraisals); Super. R. Civ. P. 9(b) (requiring pleading with particularity). The Rhode Island Rules of Civil Procedure indisputably require plaintiffs to plead with particularity the circumstances constituting the fraud, giving fair and specific notice. Super. R. Civ. P. 9(b); Women's Dev. Corp., 764 A.2d at 161. RIRRC, even in this third iteration of its complaint, fails to meet the heightened pleading standard for claims for fraud. Therefore, the Court will dismiss the fraud counts against Coyle, pursuant to Rules 9(b) and 12(b)(6).

5

Negligent Omissions or Misrepresentations

The counts for negligent omissions or misrepresentations against Coyle mirror the fraud counts and again allege that Coyle "misrepresented to RIRRC that his appraisal met the

[11] There may be a strong argument to be made that an appraisal more closely resembles an opinion or estimate that could not constitute a misrepresentation of fact; however, in light of the findings herein that there is no particular allegation of reliance by RIRRC or intent to induce that reliance by Coyle, this distinction is irrelevant. See 26 Williston on Contracts § 69:8 (4th ed. 2012) ("The statement of value set forth in a real property appraisal is not per se a factual representation of the sort which will support a fraud case; to the contrary, it has been said that real estate appraisals are generally considered statements of opinion, rather than statements of fact, for fraud or concealment claims . . . .").

standards of his profession and reflected the fair market value of the property, while knowing that his actions had inflated the appraised value far above fair market value for the property." See Compl. ¶¶ 188, 260, 315, 367, 419, 466, 516, 550, 595. As a claim clearly sounding in fraud, RIRRC's negligent omissions and misrepresentation causes of action are also judged under the Rule 9(b) pleading standard. See R.I. Res. Recovery, 2011 WL 1936012 at *11-12. And, like the fraud counts, the Amended More Definite Statement fails to provide fair and specific notice of the facts giving rise to RIRRC's claim. See Women's Dev. Corp., 764 A.2d at 161; Super. R. Civ. P. 9(b). Even for claims of negligent misrepresentations, "the representor must intend the representation to induce another to act on it" and "injury must result to the party acting in justifiable reliance on the misrepresentation." Manchester, 926 A.2d at 1012. Here, RIRRC fails to allege with any particularity when, where, or how RIRRC justifiably relied on the representations of Coyle. See Powers, 926 F.2d at 111 (requiring pleading of time, place, and content of circumstances constituting fraud). Accordingly, this Court will dismiss the negligent omission or misrepresentation claims against Coyle.

6

Civil Liability for Obtaining Property by False Pretenses

In the nine counts for false pretenses, RIRRC alleges Coyle, like the other Defendants, obtained money from RIRRC by false pretenses with the intent to cheat or defraud RIRRC. Specifically with regard to Coyle, RIRRC alleges simply that "Coyle received fees for conducting appraisals for the property." See Compl. ¶¶ 231, 287, 339, 391, 443, 499, 533, 567, 619.

False pretenses requires proof that one obtained money from another designedly by misrepresentation of a past or present fact with the intent to cheat or defraud. See Letts, 986

A.2d at 1011; Grant, 840 A.2d at 549. As with the fraud and negligent misrepresentation claims, there are no facts in the Amended More Definite Statement establishing that Coyle had the intent to cheat or defraud RIRRC in charging it fees to conduct appraisals. While it is apparent that the appraisals may be faulty, again, claims related to that are more properly brought as professional negligence claims. RIRRC fails to state a claim for false pretenses because there is no indication Coyle intended to deceive RIRRC and RIRRC relied on that deception to pay Coyle for the appraisals. Particularly under the Rule 9(b) standard this Court found to apply to the false pretenses claims, RIRRC's Amended More Definite Statement is insufficient with withstand the instant motion to dismiss.

Recognizing that RIRRC's claims for appraisal malpractice and professional negligence remain against Coyle, this Court has dismissed all other counts of the Amended More Definite Statement, as discussed above.

D

Silvestri Defendants

Finally, the Silvestri Defendants move this Court to dismiss all Counts against them, or in the alternative, to grant summary judgment in their favor. Unlike the numerous counts brought against some other Defendants and property sellers (such as the Macera/Tztizouris Defendants), the counts against Silvestri are limited to only civil conspiracy (Counts 37 and 66) and aiding and abetting breach of fiduciary duty (Counts 38 and 67).

Although the parties have submitted exhibits and affidavits in connection with the Motion, it is in the Court's discretion to confine its review to the four corners of the pleadings and treat the Motion as a motion to dismiss, rather than converting it to a motion for summary judgment. See Tidewater Realty, LLC v. State, 942 A.2d 986, 992 (R.I. 2008) (stating motion

converts to summary judgment when "matters outside the pleading are presented to and not excluded by the court" (citations omitted)); DiBello v. St. Jean, 106 R.I. 704, 707, 262 A.2d 824, 825 (1970) (explaining that it is within court's discretion whether to consider documents and convert motion to summary judgment); Warren Educ. Ass'n v. Lapan, 103 R.I. 163, 168, 235 A.2d 866, 869 (1967) (permitting trial justice to include or exclude extra pleading matters in its deliberation). In light of the following discussion, the Court will address the Silvestri Motion as a motion to dismiss and decide it on that basis, excluding from the Court's consideration the additional documents. The Court will address the causes of action in turn.

1

Civil Conspiracy

In the two Counts alleging civil conspiracy against the Silvestri Defendants, RIRRC claims that Silvestri and the other Defendants "combined and agreed to work in concert with former employees and commissioners of RIRRC . . . to enrich themselves through the sale of the [properties] to RIRRC at a price far exceeding market value . . . ." (Compl. ¶¶ 396, 572.) As to Silvestri, RIRRC alleges simply that it "sold the property to RIRRC at a price far exceeding fair market value" and that it permitted Brien to act as its real estate agent "knowing that Brien would be able to obtain for them a 'sweetheart deal' due to his close connections with [former RIRRC commissioners] Ferland and Badeau." Id. at ¶¶ 398, 574. These factual allegations directly match the allegations against the Macera/Tzitzouris Defendants for civil conspiracy, discussed supra part III(B)(1) and dismissed by this Court.

With respect to the claims of civil conspiracy against sellers of the properties, this Court has ruled that Rule 9(b) applies, and RIRRC must specify facts alleging how the Defendants conspired and what acts they undertook. See supra part III(B)(1); R.I. Res. Recovery, 2011 WL

1936012, slip op. at 13. Of note, the claims of civil conspiracy in this case require specific facts establishing the joint assent to form an unlawful enterprise with the specific intent to do something unlawful. See Read & Lundy, 840 A.2d at 1102; Fleet Nat'l Bank, 831 F. Supp. at 45; Stubbs, 88 R.I. at 467-68, 149 A.2d at 708-09; 15A C.J.S. Conspiracy § 29 (2012). Here, there are no particular facts establishing those elements of a civil conspiracy claim. The conclusory theory that all of the Defendants worked in concert is surely insufficient to meet the Rule 9(b) standard and also insufficient to survive a general 12(b)(6) motion to dismiss. See Stubbs, 88 R.I. at 464-68, 149 A.2d at 707-09 (considering allegations sufficient to state a claim for conspiracy and determining conclusions of law insufficient); Feinstein, 942 F.2d at 42-43 (requiring plaintiff do more than "chant the statutory mantra" to meet 9(b) standard); see also 15A C.J.S. Conspiracy § 29 (2012).

The facts that the Silvestri Defendants sold their property above market value and selected a real estate broker based on who may obtain a good deal for them in no way states a claim for civil conspiracy. The facts do not establish participation in a joint enterprise or mutual assent with the other Defendants to participate in a conspiracy. See Read & Lundy, 840 A.2d at 1102 (discussing requirements for civil conspiracy). Without doubt, all sellers of real estate seek to receive the best price for their property and retain a real estate agent that could do that for them. RIRRC has failed to set forth how the Silvestri Defendants conspired and what acts the Silvestri Defendants took in furtherance of the alleged conspiracy. See R.I. Res. Recovery, 2011 WL 1936012, slip op. at 13 (requiring RIRRC to allege those facts). Accordingly, the Court grants the Silvestri Defendants' Motion to Dismiss the civil conspiracy counts.

2

Aiding and Abetting Breach of Fiduciary Duty

RIRRC brings two counts in its Amended More Definite Statement against the Silvestri Defendants for aiding and abetting breach of fiduciary duty. The Counts allege that RIRRC commissioners had a duty to RIRRC, the commissioners breached that duty, the Silvestri Defendants knew or should have known of the breach, and the Silvestri Defendants assisted, aided, and abetted the breach because they "sold their propert[ies] to RIRRC at a price far exceeding fair market value." (Compl. ¶¶ 402-05, 578-81.)

This Court has held that to aid and abet a breach of fiduciary duty, a defendant "must actively participate or substantially assist in or encourage the breach to the degree that he or she could not reasonably be held to have acted in good faith." See Arcidi, 856 N.E.2d at 174; see also Schultz, 94 F.3d at 730 (requiring active participation in and knowing provision of substantial assistance to the principal's breach).

Before even considering whether the defendant actively participated or substantially assisted in the breach, the defendant must have had actual knowledge the breach of fiduciary duties was occurring. See 37 Am. Jur. 2d Fraud and Deceit § 306 (2012) (stating defendant must have actual knowledge breach occurring). However, the Amended More Definite Statement—while making the blanket statement that Defendants knew or should have known of the breach—does not provide any specific allegations or particularized facts establishing Silvestri's knowledge. See Compl. ¶¶ 404, 508; R.I. Res. Recovery, 2011 WL 1936012, slip op. at 13 (applying Rule 9(b) standard); Super. R. Civ. P. 9(b) (requiring circumstances be stated with particularity).

Furthermore, there are no allegations demonstrating that Silvestri actively participated or substantially assisted in the breach. See Arcidi, 856 N.E.2d at 174. Selling a property at a price above market value, in and of itself, cannot constitute knowing and active participation in or encouragement of the RIRRC commissioners' alleged breaches. Simply selling above market value and retaining a real estate agent who may obtain the best price does not mean that Silvestri could not have acted in good faith. See id. Particularly under the Rule 9(b) standard, RIRRC fails to state a claim against the Silvestri Defendants for aiding an abetting a breach of fiduciary duty, and this Court will dismiss those counts. See Powers, 926 F.2d at 111 (providing 9(b) standard for particularized pleading).

IV

Conclusion

After due consideration, the Court rules the following. The Court grants the Pilgrim Defendants' Motion to Dismiss as to the claims for civil conspiracy (Counts 1, 12, 21, 29, 37, 45, 66), aiding and abetting breach of fiduciary duty (Counts 2, 13, 22, 30, 38, 46, 67), breach of fiduciary duty (Counts 5, 25, 33, 41, 49, 70), legal malpractice or professional negligence (Counts 8, 51), fraud (Counts 14, 47), negligent omissions or misrepresentations (Counts 15, 48), and civil liability for obtaining property by false pretenses (Counts 20, 53). No counts remain against Pilgrim.

The Court grants the Macera/Tzitzouris Defendants' Motion to Dismiss as to the claims for civil conspiracy (Count 12), aiding and abetting breach of fiduciary duty (Count 13), fraud (Count 14), negligent omissions or misrepresentations (Count 15), civil liability for obtaining property by false pretenses (Count 20), and breach of contract (Count 18). The Court denies the

Macera/Tzitzouris Defendants' Motion to Dismiss RIRRC's claim for breach of warranty deed (Count 19).

The Court grants the Coyle Defendants' Motion to Dismiss as to the claims for civil conspiracy (Counts 1, 12, 21, 29, 37, 45, 66), aiding and abetting breach of fiduciary duty (Counts 2, 13, 22, 30, 38, 46, 54, 60, 67), breach of fiduciary duty (Counts 6, 26, 34, 42, 50, 57, 63, 71), fraud (Counts 3, 14, 23, 31, 39, 47, 55, 61, 68), negligent omissions or misrepresentations (Counts 4, 15, 24, 32, 40, 48, 56, 62, 69), and civil liability for obtaining property by false pretenses (Counts 11, 20, 28, 36, 44, 53, 59, 65, 73). The Counts with respect to appraiser malpractice and professional negligence remain, and they were not the subject of this Motion to Dismiss.

Lastly, the Court grants the Silvestri Defendants' Motion to Dismiss as to the claims for civil conspiracy (Counts 37, 66) and aiding and abetting breach of fiduciary duty (Counts 38, 67). No counts remain against Silvestri.

Prevailing counsel shall present an Order consistent herewith which shall be settled after due notice to counsel of record.