

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Derek Taylor (“Taylor”) and Alden Adams, LLC (“Alden Adams”) (together, “Defendants”) file this Motion seeking dismissal of the claims asserted against them in Plaintiff’s Original Complaint (the “Complaint”) [Dkt. #1], and in support thereof would show as follows:

I. INTRODUCTION

The claims against Taylor and Alden Adams should be dismissed because the heightened pleading requirements under Rule 9(b) apply to claims brought under the Texas Uniform Fraudulent Transfer Act (“TUFTA”),¹ and Plaintiff has failed to allege claims with specificity against Taylor or Alden Adams. Plaintiffs broadly allege that Taylor and Alden Adams worked for the Receivership Entities,² and that because the Receivership Entities engaged in alleged acts of fraud, any compensation paid to Taylor or Alden Adams must constitute fraudulent transfers under TUFTA. These general allegations are insufficient to meet the pleading requirements under the Federal Rules. Indeed, Plaintiffs fail to assert any particularized allegations against Taylor and Alden Adams, other than that they performed work for the Receivership Entities, for which they received compensation. Because Plaintiff fails to allege the “who, what, where, when, and how” with respect to Taylor and Alden Adams, the claims against them must be dismissed under Rule 12(b)(6).

II. ARGUMENT AND AUTHORITIES

A. Legal Standard for Rule 12(b)(6) Motions to Dismiss.

Rule 8 of the Federal Rules of Civil Procedure requires that a claimant plead “a short and plain statement of the claim showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2).

¹ See *Steadfast Ins. Co. v. Limestone Group SW Bluffs, LC*, 3:08-CV-0569-N, 2008 WL 11349994, at *2 (N.D. Tex. Oct. 31, 2008).

² Unless otherwise noted, defined terms have the same meaning as in the Complaint.

A complaint must plead “enough facts to state a claim to relief that is plausible on its face” and must contain “specific facts, not mere conclusory allegations.” *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 546, 570 (2007); *Tuchman v. DSC Comms. Corp.*, 14 F.3d 1060, 1067 (5th Cir. 1994). Legal conclusions are not entitled to a presumption of truth. *Twombly*, 550 U.S. at 570.

When ruling on a Rule 12(b)(6) motion, the Court accepts all well-pleaded facts as true and views them in the light most favorable to the claimant. *See Thompson v. City of Waco, Texas*, 764 F.3d 500, 502 (5th Cir. 2014). Dismissal is appropriate when a claimant fails to state a legally cognizable claim. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001, *cert. denied*, 536 U.S. 960 (2002)). The Court may also dismiss a claim “on the basis of a dispositive issue of law.” *Turner v. AmericaHomeKey Inc.*, 514 F. Appx. 513, 516 (5th Cir. 2013) (quoting *Neitzke v. Williams*, 490 U.S. 319, 326 (1989)). A claim must be dismissed if, as a matter of law, no relief could be granted under any set of facts that could be provided consistent with the allegations, or when a successful affirmative defense appears clearly on the face of the pleadings. *See Turner*, 514 Fed. Appx. at 516; *Clark v. Amoco Prod. Inc.*, 794 F.2d 967, 970 (5th Cir. 1986) (citation omitted). A statute of limitations supports dismissal under Rule 12(b)(6) where it is evident from the plaintiff’s pleadings that the action is barred and the pleadings fail to raise some basis for tolling. *Jones v. Alcoa, Inc.*, 339 F.3d 359, 366 (5th Cir. 2003).

Courts ruling on a Rule 12(b)(6) motion reviewing allegations of fraud must determine if they meet the heightened pleading requirements of Rule 9(b), which applies to each element of fraud. *See* FED. R. CIV. P. 9(b) (“In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.”); *Stanissis v. Dyncorp Int’l LLC*, 2016 WL 4159397, at *3 (N.D. Tex. Aug. 5, 2016) (Fitzwater, J.) (citation omitted); *Benchmark Elecs., Inc. v. J.M. Huber Corp.*, 343 F.3d 719, 724 (5th Cir. 2003)). “At a minimum, Rule 9(b) requires

allegations of the particulars of time, place, and contents of the false representations, as well as the identity of the person making the representation and what he obtained thereby.” *Stanissis*, 2016 WL 4159397, at *3 (citations and quotation marks omitted). This Court has explained that the requirements of Rule 9 are “analogous to ‘the first paragraph of a newspaper story, namely the who, what, when, where, and how.’” *Waller v. DB3 Holdings, Inc.*, 2008 WL 373155, at *6 (N.D. Tex. Feb. 12, 2008) (Fitzwater, J.) (quoting *Melder v. Morris*, 27 F.3d 1097, 1100 n. 5 (5th Cir. 1994)). “This Rule should be applied ‘with force, without apology.’” *Id.* (quoting *Williams v. WMX Techs., Inc.*, 112 F.3d 175, 178 (5th Cir. 1997)). Failure to comply with this requirement leads to dismissal for failure to state a claim upon which relief can be granted. *See Lovelace v. Software Spectrum, Inc.*, 78 F.3d 1015, 1017 (5th Cir. 1996).

B. Plaintiff Fails to State a Claim for Fraudulent Transfer Against Taylor or Alden Adams.

Rule 9(b) applies to fraudulent transfer claims under TUFTA. *Steadfast Ins. Co. v. Limestone Group SW Bluffs, LC*, 3:08-CV-0569-N, 2008 WL 11349994, at *2 (N.D. Tex. Oct. 31, 2008) (holding that Rule 9(b) applies to TUFTA claims and granting motion to dismiss where Plaintiff failed to state fraudulent transfer claim under TUFTA with particularity). Under TUFTA, fraudulent transfers are divided into two types: actual and constructive. *Sourcing Management, Inc. v. Simclar, Inc.*, 118 F. Supp. 3d 899, 917 (N.D. Tex. 2015). Plaintiff has failed to plead specific facts against Taylor or Alden Adams to support either type. The relevant provisions under TUFTA provide as follows:

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(B) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

TEX. BUS. & COM. CODE ANN. § 24.005

Plaintiff has not specified a single specific transfer made to Taylor or Alden Adams, let alone has Plaintiff pled facts showing that each alleged transfer was made with “actual intent to hinder, delay, or defraud.” Similarly, Plaintiff has not pled any facts showing that Taylor and Alden Adams did not provide “a reasonably equivalent value in exchange for the transfer.” Indeed, Plaintiff has failed to allege a single specific action against Taylor or Alden Adams.

Plaintiff fails to specify *any* allegations directly against Taylor or Alden Adams, instead repeatedly asserting general and vague allegations against “the salespeople (including Defendants)...” [Doc. 1 at ¶¶ 17, 31, 32, 33, 36, 38, 39.] Plaintiffs “shotgun approach” of generally alleging violations against all of the Defendants is insufficient. *See In re Alamosa Holdings, Inc. Sec. Litig.*, 382 F. Supp. 2d 832, 857–58 (N.D. Tex. 2005) (“[I]t is the parties’ burden to present succinct pleadings which clearly lay out the elements as required by this Circuit.”).

C. Unjust Enrichment Is Not An Independent Cause of Action.

“Unjust enrichment, itself, is not an independent cause of action but rather ‘characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances that give rise to an implied or quasi-contractual obligation to repay.’” *Davis v. OneWest Bank N.A.*, 02-14-00264-CV, 2015 WL 1623541, at *1 (Tex. App.—Fort Worth Apr. 9, 2015, pet. denied). In any event, the heightened pleading requirements of Rule

9(b) apply to the unjust enrichment claim as it is intertwined with its TUFTA claims. Plaintiff's claim for unjust enrichment should be dismissed for all of the same reasons Plaintiff's claims against Taylor and Alden Adams based on TUFTA should be dismissed.

III. PRAYER

Defendants request that the Court grant this motion and dismiss Plaintiffs' claims against them pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANTS DEREK
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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2020, I electronically filed the foregoing paper(s) with the Clerk of the Court using the ECF system which will send notification to all parties of record.

/s/ Benjamin L. Riemer
Benjamin L. Riemer

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