



Movants' Motion must be denied because they incorrectly invert the particularity requirements of Rule 9(b) vis-à-vis allegations under the Texas Uniform Fraudulent Transfer Act ("TUFTA") with respect to (i) the fraudulent intent of the transferor in making a transfer and (ii) the intent of the transferee receiving the transfer. The Receiver's allegations of fraud and fraudulent intent with respect to the transferor Receivership entities and their control persons satisfy the particularity requirements of Rule 9(b). The Receiver's allegations with respect to Movants' receipt of fraudulent transfers from Receivership entities satisfy the requirements of Rule 8(a). Accordingly, the Receiver states a cause of action under TUFTA against Movants.<sup>1</sup>

In pleading a cause of action under TUFTA, the intent of the transferee is not an element of the plaintiff's case. *See* TEX. BUS. & COMM. CODE § 24.005. In fact, "the transferees' knowing participation is irrelevant under [TUFTA]' for purposes of establishing ... [even the actual fraud] premise ...." *SEC v. Res. Dev. Int'l, LLC*, 487 F.3d 295, 301 (5th Cir. 2007) (quoting *Warfield v. Byron*, 436 F.3d 551, 559 (5th Cir. 2006)). A transfer can be made fraudulently even though "[n]othing in the complaint or record indicates that [the transferees] committed any fraudulent act that caused the funds to be transferred." *GE Capital Comm., Inc. v. Wright & Wright, Inc.*, No. 3:09-CV-572-L, 2009 WL 5173954, at \*10 (N.D. Tex. Dec. 31, 2009).

Moreover, the Receiver's allegations regarding the Breitling fraudulent scheme, and the transfers made to salespersons in furtherance of that fraudulent scheme, comport with the particularity requirements of Rule 9(b). Rule 9(b) requires only that allegations be made simply, concisely, and directly. *Williams v. WMX Technologies, Inc.*, 112 F.3d 175, 178 (5th Cir. 1997) ("[W]e read Rule 9(b) as part of the entire set of rules, including Rule 8(a)'s insistence upon

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<sup>1</sup> The Court should deny the Movants' Motion with respect to the Receiver's Unjust Enrichment cause of action upon the same bases it denies the Motion with respect to his TUFTA cause of action. *See* Mot. at 6 ("Plaintiff's claim for unjust enrichment should be dismissed for all of the same reasons Plaintiff's claims against [Movants] based on TUFTA should be dismissed.").

‘simple, concise, and direct’ allegations.”). The Receiver has simply, concisely, and directly alleged the “who, what, when, where, and how” of the fraud committed by Faulkner and his confederates through the Receivership entities, *id.* at 179 (quoting *Melder v. Morris*, 27 F.3d 1097, 1100 n. 5 (5th Cir. 1994)), including how the Receivership entities paid salespersons like the Movants for recruiting victims into the fraudulent scheme, Complaint (ECF No. 1) at ¶40, and that these payments were made “with actual intent to hinder, delay or defraud creditors of the Breitling entities,” *id.* at ¶43 -- namely, the very investors that Movants were paid to recruit.

In this regard, the Receiver alleges that Faulkner and others (including Parker Hallam and Dustin Michael Miller Rodriguez), primarily through BOG<sup>2</sup>, BRC, BECC, Crude Energy, Crude Royalties, and Patriot (*who*), orchestrated and implemented a multi-million-dollar fraudulent scheme through the offer and sale of oil and gas-related securities (*what*). Compl. at ¶11. Breitling “solicited and received funds from investors regularly from approximately January 2011 through at least February 2016, totaling almost \$150 million in gross proceeds” (*when, where*). *Id.*

The Receiver then details the fraudulent scheme (*what, how*), namely that “securities offerings were provided to public investors through offering materials ... replete with material misrepresentations and omissions of material facts” such as inflated AFEs. Compl. at ¶¶13 – 14. The Receiver further alleges in detail other aspects of the fraud, including the regular over-selling of Units and subsequent movement of investors to non-comparable properties, *id.* at ¶16, misrepresentations regarding the compensation of salespersons, *id.* at ¶17, the extensive commingling of investor proceeds among the Receivership entities, *id.* at ¶18, the improper

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<sup>2</sup> Capitalized terms not defined in this Response have the same meaning given to them in the Complaint.

payment of business and personal expenses from Receivership entity accounts, *id.* at ¶19, and the misappropriation of millions of dollars of investor proceeds by Faulkner. *Id.* at ¶20, 23.<sup>3</sup>

Additionally, the Receiver alleges with particularity aspects of Faulkner's fraud with respect to the sales of securities by Defendants and others. Compl. at ¶¶31 – 39. Specifically, and without limitation, the Receiver alleges how Hallam and Miller managed Breitling's sales staff (*who*) and led the sales efforts; how Hallam, Miller, and the salespeople (including Defendants) (*who*) disseminated Breitling's materially misleading Offering Memoranda and reiterated the misrepresentations as part of their sales efforts to investors (*what, how*); how these salespersons generally solicited investors via cold calling and through internet advertisements (*where*); and how these salespersons were compensated contrary to the terms of the offering documents (*what*), including representations that non-company officers were registered securities broker-dealers. *Id.*

The Receiver then alleges -- simply, concisely, and directly -- how Defendants (including Movants) received transfers from the Breitling fraudulent scheme for their participation in and furtherance of the fraudulent scheme, the amount of those transfers, and the timeframe of those transfers. The Receiver alleged that Movants received transfers for "recruiting victims into Faulkner's fraudulent scheme," Compl. at ¶40, and that "these transfers were made with actual intent to hinder, delay or defraud creditors of the Breitling entities," *id.* at ¶43, *i.e.*, these transfers were made for the purpose of increasing the number of investors (creditors) who were defrauded into purchasing securities. *See Warfield v. Byron*, 436 F.3d 551, 560 (5th Cir. 2006) (citations omitted) ("It takes cheek to contend that in exchange for the payments he received, the [fraudulent] scheme benefitted from his efforts to extend the fraud by securing new investments."). The Receiver

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<sup>3</sup> The Receiver's allegations include how Crude Energy, Crude Royalties, and Patriot were used to continue the fraudulent scheme after BOG and BRC went public through a reverse merger with BECC. *Id.* at ¶¶21 – 30.

alleged that Movants received at least \$171,557.72 in transfers from Receivership entities, and that Defendants (including Movants) received their transfers “between February 24, 2011 and February 8, 2016”. *Id.*

Movants have been provided with the particular details of the “who, what, when, where, and how” of the Breitling fraudulent scheme, and how transfers were made from that scheme (including to Movants) with the intent to defraud investors (creditors). They have been placed on notice of the amount of such transfers they received and the time period in which those transfers were made. The Receiver’s Complaint complies with Rule 9(b) with respect to his allegations of fraud, and with Rule 8(a) in all other respects. The Receiver’s Complaint “states a valid claim when all well-pleaded facts are assumed true and are viewed in the light most favorable to” him. *Lone Star Fund V (U.S.)*, 594 F.3d at 387. Movants’ Motion should be denied.

## II. REQUESTED RELIEF

The Receiver requests that the Court deny the Motion in its entirety, and grant the Receiver all other relief to which he may be entitled.

Dated: October 2, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on October 2, 2020 I filed the foregoing document through the Court's CM/ECF filing system, and emailed the foregoing document to *lilmadu@hotmail.com*, which satisfies service requirements under FED. R. CIV. P. 5(b).

/s/ Andrew M. Goforth  
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