



FILED IN DISTRICT COURT  
OKLAHOMA COUNTY  
IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

NOV 10 2022  
RICK WARREN  
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Oklahoma Department of Securities  
*ex rel.* Melanie Hall, Administrator

Plaintiff,

v.

Premier Global Corporation, a Kansas corporation,  
formerly known as Premier Construction Services,  
Inc., and doing business as Premier Construction  
Billing;  
Premier Factoring, LLC, a Kansas limited liability  
company;  
PF-2 LLC, a Kansas limited liability company;  
PF-3, LLC, a Kansas limited liability company;  
PF-4, LLC, a Kansas limited liability company;  
PF-5, LLC, a Kansas limited liability company;  
PF-6, LLC, a Kansas limited liability company;  
PF-7, LLC, a Kansas limited liability company;  
DDI Advisory Group, LLC, a Kansas limited liability  
company;  
Steve Jonathan Parish, an individual;  
Richard Dale Dean, an individual;  
Premier Marketing Management, a Kansas corporation;  
Joshua Dane Owen, an individual;  
J&H Holdings, LLC, a cancelled Oklahoma limited  
liability company;  
Kyle Blackburn, an individual;  
Mitzimack, Inc., an Oklahoma corporation;  
Erika Greggs, an individual;  
Elkins & Associates Inc., an Oklahoma corporation;  
Clyde Edward Elkins, an individual;  
James Scott Stanley, an individual;  
Edmond Brokerage, Inc. an Oklahoma corporation;  
Brent Lee Worley, an individual;  
Byron Kent Freeman, an individual;  
Karen Lynne Freeman, an individual; and  
Jay Michael Bogdahn, an individual,

Defendants.

Case No.: CJ-2022-5066  
The Honorable Don Andrews

**Motion to Dismiss Plaintiff's Petition and Brief in Support of  
Defendants J&H Holdings, LLC, Kyle Blackburn, Mitzimack, Inc., Erika Greggs,  
James Scott Stanley, Edmond Brokerage, Inc., Brent Lee Worley,  
Byron Kent Freeman, and Karen Lynne Freeman**

Defendants J&H Holdings, LLC, Kyle Blackburn, Mitzimack, Inc., Erika Greggs, James Scott Stanley, Edmond Brokerage, Inc., Brent Lee Worley, Byron Kent Freeman, and Karen Lynne Freeman (collectively herein, “Defendants”<sup>1</sup>), by and through their attorneys, file this Motion to Dismiss the claims of Plaintiff against Defendants contained in Plaintiff’s Petition, pursuant to Sections 12-2008(A)(1), 12-2009(B), and 12-2012(B)(6) of the Oklahoma Pleading Code. Okla. Stat. tit. 12, §§ 2008(A)(1), 2009(B), and 2012. Defendants jointly seek dismissal of all such claims for the reasons described below. In the alternative, Defendants jointly seek an order that the Plaintiff make its Petition more definite and certain in compliance with Oklahoma’s pleading requirements, and such other and further relief as the Court deems just and proper.

## I. INTRODUCTION

The Oklahoma Department of Securities *ex rel.* Melanie Hall, Administrator (“Plaintiff”), alleges a Ponzi scheme committed by various defendants named in the Petition. While certain of Plaintiff’s allegations detail the role in the so-called Ponzi scheme of defendants termed by Plaintiff as the “Premier Defendants,”<sup>2</sup> (Pet. ¶¶ 77, 79, 80), none of which include the moving Defendants herein, the Petition generally tramples Oklahoma’s rule against “group pleading”—that is, asserting undifferentiated allegations of wrongdoing against multiple distinct defendants as if they were a single collective entity. Although the Petition asserts claims against multiple defendants, including the Premier Defendants and the Defendants, the Petition repeatedly purports to attribute virtually all the alleged wrongdoing to all “Defendants,” without differentiation, *e.g.*,

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<sup>1</sup> For convenience, this brief may refer to individual Defendants as follows: J&H Holdings, LLC (“J&H Holdings”), Kyle Blackburn (“Blackburn”), Mitzimack, Inc. (“Mitzimack”), Erika Greggs (“Greggs”), James Scott Stanley (“Stanley”), Edmond Brokerage, Inc. (“Edmond Brokerage”), Brent Lee Worley (“Worley”), Byron Kent Freeman (“Kent Freeman”), and Karen Lynne Freeman (“Karen Freeman”).

<sup>2</sup> The “Premier Defendants” include Steve Jonathan Parish; Richard Dale Dean; Premier Global Corporation; Premier Factoring LLC; PF-2, LLC; PF-3, LLC; PF-4, LLC; PF-5, LLC; PF-6, LLC; PF-7, LLC; DDI Advisory Group, LLC; Premier Marketing Management; and Joshua Dane Owen.

Pet. ¶¶ 63, 71, 75, 76, 77, 78, 80. This style of pleading fails to give Defendants herein fair notice of the claims against them and renders the Petition fundamentally defective.

In the few instances where the Petition purports to single out a given defendant by name—for some Defendants only one sentence in the 80 paragraphs of allegations contained in the Petition, for others none at all—it utterly fails to allege the facts constituting any alleged fraud with particularity, as Oklahoma law requires. Nor does it tie any alleged fraud to the three causes of action sounding in fraud, relying instead on impermissible “shot-gun pleading,” whereby the Plaintiff pleads several counts or causes of action, each of which incorporates by reference the entirety of its predecessors, placing too great of a burden on the Defendants and the Court. This too renders the Petition fundamentally defective.

## II. LEGAL STANDARD

Section 12-2008(A)(1) of the Oklahoma Pleading Code tracks its federal counterpart, Rule 8 of the Federal Rules of Civil Procedure,<sup>3</sup> and requires that every petition set forth at minimum a “short and plain statement of the claim showing that the pleader is entitled to relief.” Okla. Stat. tit. 12, § 2008(A)(1). A court considering the sufficiency of a petition must consider “only the well-pleaded facts and reasonable inferences emanating from them”; all “conclusions are to be ignored.” *Tanner v. W. Pub. Co.*, 1984 OK CIV APP 22, ¶ 11, 682 P.2d 239, 241. Accordingly, a petition must plead facts sufficient to give each Defendant “notice of what [the] claims [a]re and the grounds upon which they rest.” *Fanning v. Brown*, 2004 OK 7, ¶ 21, 85 P.3d 841. A petition can be dismissed “for lack of any cognizable legal theory to support the claim or for insufficient

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<sup>3</sup> Oklahoma courts often look to federal courts’ interpretation of the Federal Rules of Civil Procedure when interpreting Pleading Code provisions—like section 2008(A) and 2009(B)—that track their federal counterparts. See *Gay v. Akin*, 1988 OK 150, ¶ 8 & n.18, 766 P.2d 985, 990 & n.18.

facts under a cognizable legal theory.” *Kirby v. Jean’s Plumbing Heat & Air*, 2009 OK 65, ¶ 4, 222 P.3d 21, 24.

In addition, like Federal Rule 9(b), Oklahoma law requires that a plaintiff plead “the circumstances” of any alleged fraud “with particularity.” Okla. Stat. tit. 12, § 2009(B); see also *Da-ni v. Miller*, 2016 OK 35, ¶ 25, 374 P.3d 779, 791 (requiring “sufficient particularity to enable the opposing party to prepare his or her responsive pleadings and defenses”). The Oklahoma Supreme Court has instructed that “the particularity requirement extends to all averments of fraud, regardless of the theory of legal duty—statutory, tort, contract or fiduciary.” *Gay*, 1988 OK 150, ¶ 8, 766 P.2d at 990. To plead a fraud-based claim, a plaintiff must plead factual allegations showing “the time, place, and content of an alleged false representation.” *Id.* ¶ 18, 766 P.2d at 993; *Gianfillippo v. Northland Cas. Co.*, 1993 OK 125, ¶ 11, 861 P.2d 308, 310-11; see also *Norman v. Leach*, 1953 OK 17, ¶ 8, 252 P.2d 1020, 1022 (requiring plaintiff to “set forth material facts constituting the alleged fraudulent... conduct”). “[M]ere conclusions are insufficient.” *Sinclair Refining Co. v. Roberts*, 1949 OK 103, ¶ 16, 206 P.2d 193, 197.

This lack of particularity is fatal to Plaintiff’s fraud claims against Defendants. The fraud claims against Defendants embodied by Plaintiff’s Third, Fourth, and Fifth Causes of Action require detailed pleading of facts supporting their key elements, meeting § 12-2009(B)’s heightened standards - pleading specific facts creating a strong inference that each of the Defendants violated the named fraud provisions of the Oklahoma Uniform Securities Act--which they manifestly have failed to do. Accordingly, the Court should dismiss the fraud claims against Defendants.

### III. ARGUMENT

#### A. The Petition's Improper Group Pleading Warrants Dismissal.

In a fraud-based action involving multiple defendants, “a plaintiff must plead facts from which fraud may reasonably be inferred as to each defendant.” *Gay*, 1988 OK 150, ¶ 8, 766 P.2d at 990; *see also Burnett v. Mortg. Elec. Registration Sys., Inc.*, 706 F.3d 1231, 1240 (10th Cir. 2013) (affirming dismissal “because [complaint] attribute[d] actions to a large group of collective ‘defendants’” and the court could not “tell which defendant is alleged to have done what”); *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008) (affirming dismissal because “the complaint’s use of... the collective term ‘Defendants’... [made it] impossible for any of these individuals to ascertain what particular unconstitutional acts they are alleged to have committed”). A petition must be dismissed where, as here, a plaintiff merely lumps all defendants together and asserts that all defendants committed all of the alleged improprieties. *See Gay*, 1988 OK 150, ¶¶ 8-9, 766 P.2d at 990.

The vast majority of Plaintiff’s allegations are allegations about the conduct of “Defendants”—14 companies in five unrelated corporate groups and 11 individuals—as if they were a single agglomerated whole, without differentiation among the various defendants. *See, e.g., Pet. ¶¶ 63, 71, 75, 76, 77, 78, 80.* This basic pleading violation defeats all claims.

In failing to distinguish among the multiple distinct defendants, the Petition fails to give any named defendant fair notice of the claims against it, and it violates the particularity requirement for claims sounding in fraud. *Gay*, 1988 OK 150, ¶ 8, 766 P.2d at 990. Given its improper and pervasive group pleading, the Petition fails to state a claim and must be dismissed.

#### B. Plaintiff Fails to Plead Any Fraudulent Misrepresentation of the Defendants, Let Alone with the Particularity Required by §12-2009(B).

The Petition also must be dismissed because it fails to plead the circumstances of any alleged fraudulent misrepresentation with particularity, even in the handful of instances where it

mentions a Defendant by name. Because Plaintiff's claims rest, in part, upon allegations that Defendants made untrue statements of material fact or omitted to state a material fact, *see, e.g.*, Pet. ¶¶ 71, 74, 75, 76, this failing also demands dismissal of the Petition's fraud claims in their entirety. *See Dani*, 2016 OK 35, ¶ 25, 374 P. 3d at 791; *Gianfillippo*, 1993 OK 125, ¶ 11, 861 P.2d at 311.<sup>4</sup>

Section 12-2009(B) requires a plaintiff to allege with particularity "the time, place, and content of an alleged false representation." *Gianfillippo*, 1993 OK 125, ¶ 11, 861 P.2d at 310-11. The allegations here fail that requirement. Although Plaintiff makes broad and conclusory allegations about Defendants' misrepresentations, *see, e.g.*, Pet. ¶¶ 71, 74, 75, 76, it fails to connect any purported misrepresentation to any specific investor or sale of securities. Plaintiff fails to identify who made or who received any of the alleged false statements that are the subject of the conclusory allegations made in the referenced paragraphs of the Petition. It does not allege the facts of any interaction between a Defendant and a purchaser of securities, including which of the Defendants allegedly had contact with that purchaser. Plaintiff fails to identify when any specific purchaser of promissory notes received any false statement.

Indeed, in one of the few instances in which Plaintiff actually names one of the Defendants, Karen Freeman, Plaintiff specifically acknowledges that "Oklahoma investors ... did not know Karen Freeman was associated in any way with their purchases of their investments," Pet. ¶ 70. Given such an admission by the Plaintiff, it seems illogical that Karen Freeman can be said to have made any misrepresentations in connection with the offer, sale, or purchase of a security, Pet. ¶92.

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<sup>4</sup> Alternatively, Plaintiff should be compelled to provide the requisite factual details of each of its Third, Fourth, and Fifth Causes of Action, which all sound in fraud. *See A-Plus Janitorial & Carpet Cleaning v. Emp'rs' Workers' Compensation Ass'n*, 1997 OK 37, ¶ 36, 936 P.2d 916, 931.

Other Defendants, such as Blackburn, Greggs, and Stanley, are identified only in the section of the Petition entitled “Oklahoma Sales Agents” and are never mentioned again with respect to any misrepresentation made by any of them, the nature of any such misrepresentation, or to whom any such misrepresentation was made.

These pleading failures are fatal. Absent particularized allegations, there is nothing to connect any alleged false statement or omission to any offer and/or sale of securities by Defendants. *See Gianfillippo*, 1993 OK 125, ¶ 11, 861 P.2d at 311 (affirming dismissal where the fraud “allegations fail to specify the time, place, and content of the alleged false representations”).

**C. Plaintiff’s “Shotgun” Pleading Fails to Comply with §12-2009(B).**

Plaintiff also relies on shotgun pleading, as all of Plaintiff’s causes of action “sketch the elements of [Plaintiff’s] claims in skeletal fashion and incorporate all of the paragraphs that came before them.” *SEC v. Kameli*, 373 F. Supp. 3d 1194 (N.D. Ill. 2019). at 1202 (dismissing SEC’s complaint). Such shotgun pleadings “make it virtually impossible to know which allegations of fact are intended to support which claim(s) for relief.” *Deschepper v. Midwest Wine & Spirits, Inc.*, 84 F. Supp. 3d 767 (N.D. Ill. 2015) at 783 (internal quotations omitted). The Plaintiff’s Petition does not even indicate which time periods or transactions relate to the counts, much less tie the counts back to specific statements of Defendants herein, as required by §12-2009(B). *See Kameli*, 373 F. Supp. 3d at 1204 (dismissing SEC complaint for failure to indicate which “communications form the basis of its fraud allegations and must differentiate among the defendants sufficiently to give each defendant fair notice of its alleged role”). Instead, the Petition effectively forces Defendants herein to guess what conduct alleged in the 80 paragraphs of allegations the Plaintiff may use as the basis of each claim—exactly the opposite of what §12-2009(B) requires and is intended to prevent. *Deschepper*, 84 F. Supp. 3d at 783 (“To comply with Rule 9(b), allegations of fraud must be specific enough to give defendants notice of the particular

misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong.”).

The Petition contains 80 paragraphs of so-called “factual” allegations which purport to describe the alleged wrongdoing of the 25 defendants named in the Petition. While these paragraphs purport to separate the conduct of certain groups of defendants, the fraud claims asserted by Plaintiff do not, as they simply “incorporate by reference each and every allegation” contained in paragraphs 1 through 80 of the Petition or in the preceding causes of action, Pet. ¶¶91, 94, 97. This is, of course, problematic and subjects the Petition to dismissal for failure to comply with the pleading standards of §12-2008(A). As recently stated in *Gargano v. Owners Ins. Co.*:

Plaintiff relies on “shotgun pleading,” by which a party pleads several counts or causes of action, each of which incorporates by reference the entirety of its predecessors. This Court has previously criticized the practice, noting ‘the shotgun pleader foists off one of the pleading lawyer’s critical tasks--sifting a mountain of facts down to a handful of those that are relevant to a given claim--onto the reader.’ Courts roundly decry shotgun pleading as a subject of ‘great dismay,’ ‘intolerable,’ and ‘in a very real sense ... [an] obstruction of justice.’

*Gargano v. Owners Ins. Co.*, No. 12-CV-01109-CMA-BNB, 2014 WL 3843786, at \*5 (D. Colo. Aug. 5, 2014). In the Petition’s current form, it is impossible to decipher what specific allegations supposedly support any of Plaintiff’s five causes of action, but especially the Third, Fourth and Fifth Causes of Action, which sound in fraud.

In addition to improperly incorporating ‘all’ prior paragraphs, the Petition likewise fails because it lumps all “Defendants” together for purposes of its five purported causes of action. *See Robbins v. Okla.*, 519 F.3d 1242, 1248 (10th Cir. 2008) (reversing district court and ordering the dismissal of a complaint because the allegations indiscriminately lumped all defendants together). In dismissing the complaint, the court held:

We need not speculate, because the burden rests on the plaintiffs to provide fair notice of the grounds for the claims made against each of the defendants. Given the complaint’s use of either the collective term “Defendants” or a list of the defendants named individually but with no distinction as to what acts are attributable to whom,



it is impossible for any of these individuals to ascertain what particular unconstitutional acts they are alleged to have committed.

*Id.* (emphasis added); *see also Hart v. Salois*, No. 14-4053, 2015 WL 1020369 (10th Cir. Mar. 10, 2015) (affirming dismissal of pro se complaint where plaintiff made collective allegations against multiple defendants and failed to identify the specific conduct attributable to each). Here, each of the causes of action in the Petition is asserted against “Defendants” without any attempt to identify which defendant(s) such claim is asserted against or which conduct is attributable to that defendant(s). Defendants herein should not be forced to guess whether it is part of some nebulous group of unidentified “Defendants” that a claim is asserted against. This type of pleading fails the notice requirements of §12-2008(a), and should not be tolerated by the Court.

Therefore, because the Petition is a shotgun pleading, it should be dismissed, or in the alternative, stricken and re-pled.

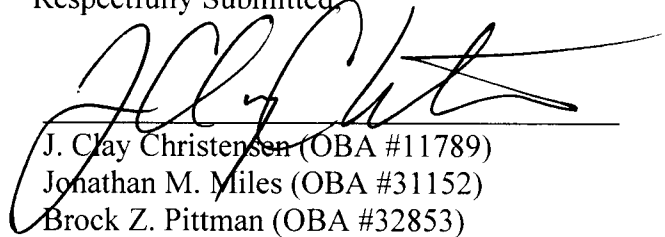
For all of the foregoing reasons, the Petition fails to satisfy §12-2008(A) and §12-2009(b) and all fraud claims should be dismissed under §12-2012(B)(6).

#### **IV. CONCLUSION**

For the reasons set forth above, Defendants herein respectfully requests an order dismissing Plaintiff’s Petition, and granting all other and further relief deemed as the Court deems just and appropriate.

Dated: November 10, 2022

Respectfully Submitted



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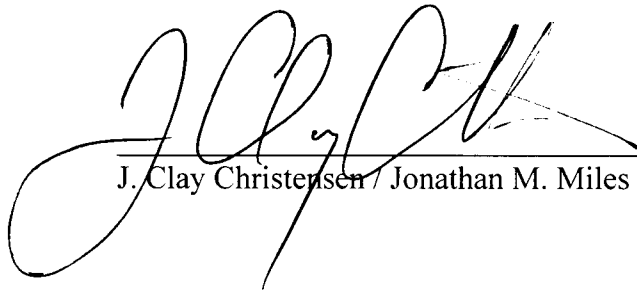
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**CERTIFICATE OF MAILING**

This shall certify that on this 10 day of November, 2022, a true and correct copy of the above and the foregoing was mailed, via U.S. Mail, postage prepaid, to the following:

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