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Sent via CM/ECF

April 4, 2024

The Honorable Theodore D. Chuang  
United States District Judge for the District of Maryland  
6500 Cherrywood Lane, Suite 245  
Greenbelt, MD 20770

**Re: Notice of Intent to File Motion For Judgment on the Pleadings**  
*Yao v. Chen et al.*, Case No. 8:23-cv-00889-TDC

Dear Judge Chuang:

Pursuant to the Case Management Order (ECF 4), Defendants Robert Chen, Otter Audits LLC, and RC Security LLC respectfully file this Notice of Their Intent to File a Motion for Judgment on the Pleadings, under Fed. R. Civ. P. 12(c). “A motion for judgment on the pleadings under Rule 12(c) is assessed under the same standard applicable to motions to dismiss under Rule 12(b)(6).” *Mancho v. Select Portfolio Servicing, Inc.*, No. 1:22-CV-02025-JRR, 2023 WL 2035928, at \*2 (D. Md. Feb. 16, 2023).

Briefly, the case concerns the dissolution of a Wyoming corporation, OtterSec LLC (“OtterSec”), following the death of one of its members, Sam Chen. Sam was a 40% owner of OtterSec and Defendant Robert Chen owned 60% of OtterSec. Defendants Otter Audits LLC and RC Security LLC are Robert’s South Dakota companies (“South Dakota Defendants”).

Three significant legal defects dominate this Complaint and doom its claims. First, dissolution of OtterSec was required and legal under the Operating Agreement and Wyoming law. Section 1.3 of the Operating Agreement, in effect at the time of Sam Chen’s death, *required* dissolution, as the Complaint concedes. Compl. ¶ 98. Dissolution was required under Section 1.3 of the Operating Agreement because, upon his death, Sam dissociated from OtterSec, Wyo. Stat. Ann. § 17-29-602(a)(vi)(A), terminating his membership in OtterSec. Furthermore, after his death, the Estate had no right to participate in the management or conduct of OtterSec, *see* Wyo. Stat. Ann. § 17-29-502(a)(iii)(A), and thus had no right to prevent dissolution of OtterSec. As a result of Sam’s death, dissolution was required and justified, and the claims that allege wrongful dissolution must be dismissed, including the claims for breach of fiduciary duty, fraud, misappropriation and conversion, breach of contract, and tortious interference, which all fail to state a claim for relief.

Second, the Estate (the Plaintiff) was never a member of OtterSec. When Sam died, he passed only his transferable interest in OtterSec—the economic interest in 40% of the LLC—to his Estate. (The Operating Agreement fails to address the transfer of member rights upon the death of a member, and thus the Wyoming statute controls. Wyo. Stat. Ann. § 17-29-110(b).) The Estate is therefore a mere transferee of his interest and under Wyoming limited liability companies law, has very limited rights. Wyo. Stat. Ann. §§ 17-29-102(a)(xxii), 17-29-502(a)(iii)(A) & 17-29-504.

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The Estate is *not* a member of OtterSec and does not have the rights of a member in an LLC. For instance, and fatal to many of the claims here, Robert did not owe fiduciary duties to the Estate. Wyo. Stat. Ann. § 17-29-409.

Third, many of the claims have been improperly pleaded as direct actions instead of derivative actions. These include the Lanham Act claim, the breach of fiduciary claims, and the claim for tortious interference. They should be dismissed on that basis. *Fritchel v. White*, 2019 WY 117, ¶ 21, 452 P.3d 601, 606 (Wyo. 2019). Moreover, the Estate, as a transferee and not a member, does not have standing to bring a derivative claim. Wyo. Stat. Ann. § 17-29-903.

For these reasons and others, such as those that follow, the Court should reject each of Plaintiff's counts because the Complaint fails to state a claim for relief.

*Lanham Act Claims, Compl. ¶¶ 111–22.* As discussed *supra* at 2, Plaintiff's Lanham Act claims are improper derivative claims and should be dismissed on that basis. Plaintiff, as a transferee of Sam's interest, cannot maintain a derivative action to enforce the rights of OtterSec. In addition, the Estate is not engaged in commerce, lacks the sort of interest that the Lanham Act protects, and thus has no cause of action under that statute. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129–31 (2014). Plaintiff's Lanham Act claims also fail to adequately and plausibly allege proximate cause, *id.* at 132, and do not plead the other required elements of a Lanham Act claim. *First Data Merch. Servs. Corp. v. SecurityMetrics, Inc.*, 672 F. App'x 229, 234 (4<sup>th</sup> Cir. 2016); *Lamparello v. Falwell*, 420 F.3d 309, 313 (4<sup>th</sup> Cir. 2005).

*Breach of Fiduciary Duties, Compl. ¶¶ 131–35.* As discussed *supra* at 1–2, because the Estate is not a member of OtterSec, Robert owed the Estate no fiduciary duties. The Estate cannot bring a breach of fiduciary claim on behalf of OtterSec because it: (1) did not plead a derivative action; and (2) is not a member, so it cannot bring a derivative action. Wyo. Stat. Ann §§ 17-29-902 to 904. Finally, the Estate fails to state a plausible claim that Robert engaged in any conduct prior to Sam's death that breached a fiduciary duty to Sam. Wyo. Stat. Ann. § 17-29-409.

*Claims of Fraud, Compl. ¶¶ 137–45.* The Complaint fails to plead each element of fraud under Wyoming law or to do so with the particularity required by the Federal Rules of Civil Procedure. Furthermore, the chat log between Robert and David, quoted extensively (albeit selectively) in the Complaint, and relied upon in Plaintiff's response to Defendants' Motion to Dismiss for Lack of Personal Jurisdiction, directly contradicts the allegations that David and Sam did not have notice of Robert's April 13, 2022 conversation with Jump. It also is not plausible that Sam thought the April 16, 2022 transfer of 10% of his interest was invalid because of lack of notice of Robert's April 13, 2022 conversation with Jump. Neither Sam nor David, nor later the Estate, ever raised this objection to the transfer prior to filing this lawsuit, despite Sam having allegedly learned of the conversation at least as early as April 18, 2022, just two days after the transfer. This claim is also barred by the doctrine of laches.

*Breach of Contract and Implied Covenant of Good Faith and Fair Dealing, Compl. ¶¶ 151–55.* Plaintiff alleges that Robert Chen breached Section 8.1 of OtterSec's Operating Agreement by dissolving OtterSec. The Complaint fails to plead facts plausibly alleging that there was a breach of this Section. Moreover, Section 1.3 of the Operating Agreement in effect at the time of Sam's death required the dissolution of OtterSec when Sam died, so this cannot be the basis for a claim that he breached the implied covenant of good faith and fair dealing.

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*Misappropriation and Conversion Claims, Compl. ¶¶ 146–50.* The Complaint does not plausibly allege the elements of conversion under Wyoming law. Among other things, the Plaintiff does not allege that she demanded the return of the supposedly converted property, that the Estate was harmed as a result of the supposed loss, or that Robert did anything to deny the Estate’s rights to use and enjoy its 40% economic interest in OtterSec. To the extent that this claim is meant to concern OtterSec’s assets, it additionally fails because those elements belonged to OtterSec, not to the Estate.

*Tortious Interference Claim, Compl. ¶¶ 156–59.* Plaintiff fails to state a claim for relief for tortious interference because, among other reasons, the Complaint alleges that Defendants intentionally and improperly interfered with “existing and prospective contracts, relationships, business expectancies, and opportunities,” belonging to *OtterSec*, not to the *Estate*. This claim suffers for the same problem as several of Plaintiff’s others—the Estate is the wrong plaintiff and lacks a claim. Indeed, as a transferee, Plaintiff had no rights to manage or control any contracts, relationships, business expectancies, or opportunities of OtterSec, and thus has no right to assert related claims. *Supra* at 1. The Complaint also fails to plausibly plead that the Defendants’ conduct was unjustified.

*Claim for Accounting, Compl. ¶¶ 160–64.* This claim fails because Plaintiff’s other claims must be dismissed and, as such, there is an adequate remedy at law.

*Declaratory Judgment, Compl. ¶¶ 123–30.* As the other claims fail to state a claim for relief, the Declaratory Judgment Act is not available as a basis for jurisdiction and the requests for declaratory relief are barred to the same extent that the claim for the substantive relief is barred.

*Claims against the South Dakota Defendants.* The Complaint alleges no tortious conduct—and very little conduct of any kind—by either company.

Defendants’ counsel and Plaintiff’s counsel have not met and conferred concerning this proposed 12(c) motion. However, after Plaintiff filed her Complaint, Defendants’ counsel met and conferred with Plaintiff’s counsel to attempt to resolve the case without litigation. That effort was not successful.

Defendants respectfully request permission to file their Motion for Judgment on the Pleadings. Thank you for your time and consideration.

Sincerely,

/s/ Rachel Clattenburg

Rachel Clattenburg

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