

FILED



4:10 pm, 11/14/25

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

Margaret Botkins
Clerk of Court

AFG COMPANIES, INC.,

Plaintiff,

VS.

GENUINE LIFETIME LLC, a Wyoming Limited Liability Company; BRAND ENGAGEMENT NETWORK INC., a Wyoming for Profit Corporation, d/b/a/ BEN AI, d/b/a BEN, f/k/a BLOCKCHAIN EXCHANGE NETWORK INC.; OCTOBER 3RD HOLDINGS LLC, a Wyoming Limited Liability Company; MICHAEL LUCAS, individually; TYLER LUCK, Individually, DUE FIGLIE, LLC, a Wyoming Limited Liability Company, SHAWN LUCAS, individually,

Defendants,

Case No. 25-CV-104-ABJ

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This matter is before the Court on Defendants Genuine Lifetime LLC ("Genuine"), Brand Engagement Network Inc. ("BEN AI"), October 3rd Holdings, LLC ("October 3rd"), Michael Lucas, Due Figlie, LLC ("Figlie"), and Shawn Lucas's (collectively "Defendants") Motion to Dismiss. The Court has reviewed the motion, Plaintiff AFG Companies Inc's ("AFG") opposition, and Defendants' reply and is fully informed in the premises. The Court finds that AFG fails to state a claim for unjust enrichment, civil

conspiracy to commit fraud, fraud and constructive fraud, securities fraud, and business defamation and business defamation per se. Additionally, the Court finds that AFG failed to properly serve Defendant Shawn Lucas. For the following reasons, Defendants' motion to dismiss is GRANTED.

BACKGROUND

AFG provides finance and insurance products and services to the automotive industry, including custom software tailored to the clients' automotive needs. (ECF No. 2 at ¶¶ 17-19). BEN AI is a Wyoming for Profit Corporation with its principal place of business in Jackson, Wyoming. (*Id.* at ¶ 2). BEN AI holds itself out as offering a suite of configured and customizable applications including natural language processing, anomaly detection, encryption, recommendation engines, sentiment analysis, image recognition, personalization, and real-time decision-making. (*Id.* at ¶ 16). Defendant Tyler Luck ("Luck") is a co-founder of BEN AI and serves on its board as well as its chief product officer. (*Id.* at ¶ 5). Defendant Luck is also the Managing Member of Genuine Lifetime. (*Id.*). Defendant Michael Lucas is a co-founder and consultant of BEN AI. (*Id.* at ¶ 6). Defendant Shawn Lucas was formerly a contractor for a subsidiary of AFG pursuant to a consulting agreement which commenced in late 2021. (*Id.* at ¶ 7). In his role with AFG, Shawn Lucas provided advisory services to assist AFG with several aspects of corporate governance, including strategy, technology, and product development. (*Id.*). Defendant October 3rd Holdings LLC ("October 3rd") is a Wyoming Limited Liability allegedly owning an approximate 58% interest in Genuine Lifetime. (*Id.* at ¶ 4). AFG alleges that October 3rd is owned 50% by Tyler Luck and 50% by Michael Lucas. (*Id.*). Defendant

Due Figlie LLC, is a Wyoming LLC (“Due Figlie”). (*Id.* at ¶ 8). Its managing member is Shawn Lucas. (*Id.*).

This dispute stems from several contractual relationships between AFG and Defendants. Starting in 2023, AFG and Shawn and Micheal Lucas engaged in discussions for AFG to invest \$32.5 million over five years into BEN’s AI platform, in exchange for AFG’s exclusive rights to sell BEN AI’s products in the automotive field. (*Id.* at ¶ 22). During these discussions AFG alleges that “it was represented that BEN AI’s technology was commercial market ready.” (*Id.* at ¶ 23). AFG further alleges that Michael Lucas, along with “one or more of the other Defendants” represented that BEN AI was being used by several companies, including Facebook, Apple, and others. (*Id.* at ¶ 24). AFG claims that Micheal Lucas and the other Defendants failed to disclose that Michael Lucas was sentenced to 18 months in prison in or around 2022 for tax evasion. (*Id.* at ¶ 26). AFG claims that such a disclosure would have affected AFG’s decision to invest in the company. (*Id.* at ¶ 27). On August 19, 2023, AFG entered into an exclusive reseller agreement with BEN AI (“Reseller Agreement”). (*Id.* at ¶ 28). Pursuant to the Reseller Agreement, BEN AI agreed to issue AFG shares of common stock. (*Id.* at ¶ 29). The Reseller Agreement gave AFG the exclusive right to use BEN AI’s services in several automotive and recreational vehicle fields. (*Id.* at ¶ 30). However, AFG could not begin offering BEN AI services until they were of a reasonable quality similar to other commercial offerings. (*Id.* at ¶ 33).

On September 7, 2023, AFG entered into a subscription agreement with BEN AI to purchase \$6.1 million of BEN AI’s common stock (“First Subscription Agreement.”). (*Id.*

at ¶ 35). On September 29, 2023, AFG entered into a second subscription agreement with BEN AI for common stock (“Second Subscription Agreement.”). (*Id.* at ¶ 36). As part of the Second Subscription Agreement, AFG agreed to purchase shares in BEN AI, which would proportionally reduce the amount AFG owed in the First Subscription Agreement. (*Id.* at ¶ 37). On September 29, 2023, AFG purchased 456,621 shares of BEN AI for \$2.19 per share for an aggregate price of \$1 million dollars. (*Id.* at ¶ 38). In March of 2024, AFG paid an additional \$5.5 million, fulfilling the full \$6.5 million commitment from the First Subscription Agreement. (*Id.* at ¶ 39). At the time AFG entered into these agreements, BEN AI assigned Shawn Lucas as business developer for the BEN Auto project. (*Id.* at ¶ 40). Shawn Lucas was also responsible for coordinating and managing the business relationship with AFG and Genuine Lifetime, along with several other entities. (*Id.* at ¶ 41).

AFG alleges that on or about August 10, 2023, Shawn Lucas sent an email asking whether AFG had a cybersecurity policy. (*Id.* at ¶ 42). AFG claims that three (3) days later, on August 13, 2023, it incurred an alleged ransomware attack. (*Id.* at ¶ 43). AFG asserts that after an immediate, substantial, and expensive investigation, it determined that there was no exfiltration of any of AFG’s electronic information, including customer information. (*Id.* at ¶ 44). AFG alleges that Shawn Lucas improperly took screenshots of AFG’s confidential electronic communications during the immediate response to the attack. (*Id.* at ¶ 46). AFG also asserts that in October of 2023, Shawn Lucas led a technology summit that did not go well and AFG removed Shawn Lucas from the project. (*Id.* at ¶ 49). AFG canceled Shawn Lucas’ consulting agreement in March of 2024. (*Id.* at ¶ 50).

In what appears to be a separate, but related, series of contractual agreements, AFG claims that on October 17, 2023, it entered into a loan agreement with Genuine Lifetime (“Loan Agreement”). (*Id.* at ¶ 51). Pursuant to the Loan Agreement, AFG lent Genuine Lifetime \$4 million dollars. (*Id.* at ¶ 53). These funds were to be used for the purpose of purchasing BEN AI shares. (*Id.* at ¶ 54). As part of the loan agreement, October 3rd, the majority owner of Genuine Lifetime, agreed to execute a security agreement granting AFG a first priority lien on all Genuine Lifetime’s assets. (*Id.* at 57). Genuine Lifetime used the \$4 million to purchase 1,826,484 shares of Legacy Common Stock (presumably in BEN AI, although that is not clear from the Complaint) at \$2.19 per share. (*Id.* at ¶ 60). There is a separate lawsuit pending in Texas related to the Loan Agreement.

On October 17, 2023, Luck and AFG entered into a Lock-up Agreement for the BEN AI shares Genuine Lifetime was to acquire with the proceeds from the Loan Agreement. (*Id.* at ¶ 64). In the Lock-Up Agreement, Luck agreed not to directly or indirectly convey any BEN AI stock owned by Genuine Lifetime until it repaid the AFG Loan Agreement. (*Id.* at ¶ 65). Also on October 17, 2023, AFG and Genuine Lifetime entered into a Security Agreement (“Security Agreement”), in which Genuine Lifetime granted a lien on certain collateral, including Genuine Lifetime’s assets and any proceeds and products of any of Genuine Lifetime’s assets and any tangible or intangible property received upon the sale or disposition of any of its assets (the “Collateral”). (*Id.* at ¶¶ 67-69). Genuine Lifetime’s primary collateral was the \$4,000,000 in BEN AI shares. (*Id.* at ¶ 70). The Security Agreement required Genuine Lifetime to designate AFG as its attorney-in-fact with full authority to “take any action and to execute on any instrument which the

Secured Party may deem necessary or advisable” during the pendency of loan. (*Id.* at ¶ 71). Following these agreements, AFG claims that “representations were made about the pending deliverables from BEN AI on the BEN Auto project – none of which were ever actually provided.” (*Id.* at ¶ 73).

In March of 2024, BEN AI took its business public. (*Id.* at ¶ 78). AFG claims that in the same month, “a letter was sent directly to the majority of AFG’s customers falsely alleging that AFG experienced a data breach.” (*Id.* at ¶ 78). This is the communication that appears to be the basis for AFG’s defamation claim. AFG asserts that on “information and belief, Shawn Lucas was directly assisting with the preparation of the letter.” (*Id.* at ¶ 79). AFG alleges that the email included “screenshots taken by Shawn Lucas, proprietary company information that only he could have created.” (*Id.* at ¶ 80).

AFG also claims BEN AI engaged in conduct to cause Travis Gates, former President of AFG Technologies, Inc. who oversaw the technology development, to resign from AFG. (*Id.* at ¶¶ 47-48; 81-82). AFG alleges that in the Spring of 2024, it “was informed by both the Chairman of the Board, an additional Board member, and the CEO, Michael Zacharski, of BEN AI, a now public company, that Michael Lucas disparaged Wright Brewer and AFG to BEN AI’s Board of Directors.” (*Id.* at ¶84).

In April of 2024, Genuine Lifetime defaulted on the Loan Agreement with AFG. (*Id.* at ¶ 85). AFG claims that a short time later, “Luck, Gates, Shawn Lucas, and Michael Lucas incited BEN AI to begin investigating AFG for the cyberattack that occurred mere days after Shawn Lucas inquired whether AFG had cyber insurance and while Gates and

Shawn Lucas were overseeing much of AFG's information technology systems." (*Id.* at ¶ 86).

Among other allegations, AFG claims that BEN AI did not, and still has not, provided any proof of concept or of a viable working product. (*Id.* at ¶ 94). AFG also alleges that “[u]pon information and belief, Genuine Lifetime, Luck, and BEN AI are intentionally engaging in actions to sell the BEN AI stock that is securing AFG's substantial payment to Genuine Lifetime for the purchase of that stock, in violation of the foregoing agreements.” (*Id.* at ¶ 95). On the same basis, AFG asserts that “BEN AI and its principals have engaged in stock splitting or similar release of new stock, intentionally diluting AFG's investments.” (*Id.* at ¶ 96).

On January 17, 2025, BEN AI sent AFG a letter indicating that it was terminating the Reseller Agreement because of the cyberattack on AFG's systems. (*Id.* at ¶¶ 97, 99). Based on these allegations, AFG brings several causes of action against several Defendants, including:

First Cause of Action (“Claim One”) – Breach of Lock-Up Agreement and Security Agreement against Genuine Lifetime and October 3rd Holdings.

Second Cause of Action (“Claim Two”) – Breach of Good Faith and Fair Dealing against Genuine Lifetime, October 3rd Holdings, and Tyler Luck.

Third Cause of Action (“Claim Three”) – UCC Foreclosure on Collateral of BEN AI Stock against Genuine Lifetime and October 3rd Holdings.

Fourth Cause of Action (“Claim Four”) – Unjust Enrichment against Genuine Lifetime, October 3rd Holdings, Michael Lucas, Shawn Lucas, Tyler Luck, and Due Figlie.

Fifth Cause of Action (“Claim Five”) – Tortious Interference with a Contract against Tyler Luck, Shawn Lucas, Due Figlie, and Michael Lucas.

Sixth Cause of Action (“Claim Six”) – Civil Conspiracy to Commit Fraud against Genuine Lifetime, October 3rd, Tyler Luck, Shawn Lucas, Due Figlie, and Michael Lucas.

Seventh Cause of Action (“Claim Seven”) – Fraud and Constructive Fraud against Genuine Lifetime, October 3rd, Tyler Luck, Shawn Lucas, Due Figlie, and Michael Lucas.

Eighth Cause of Action (“Claim Eight”) – Securities Fraud under Wyo. Stat. Ann. ¶ 17-4-501 against Genuine Lifetime, Tyler Luck, BEN AI, October 3rd Holdings, and Michael Lucas.

Ninth Cause of Action (“Claim Nine”) – Injunctive Relief against BEN AI, Genuine Lifetime, Travis Luck, and October 3rd Holdings, LLC.

Tenth Cause of Action (“Claim Ten”) – Business Defamation and Business Defamation Per Se against BEN AI, Travis Luck, Shawn Lucas, and Michael Lucas.

STANDARD OF REVIEW

In considering a Fed. R. Civ. P. 12(b)(6) motion to dismiss, district courts follow a two-pronged approach. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). First, a court “can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” *Id.* *Iqbal* clarified that “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions[,]” and “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* at 678.

Second, “[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 679. The Court stated that “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

“Rules 12(b)(4) and 12(b)(5) allow a defendant to defend against a claim on the grounds of insufficiency of process and insufficiency of service of process.” *Whitsell v. United States*, 198 F.3d 260, 260 (10th Cir. 1999). “A Rule 12(b)(4) motion constitutes an objection to the form of process or the content of the summons rather than the method of its delivery.” *Oltremari by McDaniel v. Kan. Soc. & Rehab. Serv.*, 871 F. Supp. 1331, 1349 (D. Kan. 1994). “A Rule 12(b)(5) motion . . . challenges the mode or lack of delivery of a summons and complaint.” *Id.* When the sufficiency of process is challenged, the “[p]laintiff must demonstrate that the procedure employed by him to effect service satisfied the requirements of Rule 4 of the Federal Rules of Civil Procedure.” *Sarnella v. Kuhns*, 2018 WL 1444210, at *1 (D. Colo. Mar. 23, 2018). A party does not waive the defense of insufficiency of service of process by appearing and contesting service. *See Fed.R.Civ.P. 12(b)(5), 12(g), Thompson v. Galetka*, 42 F. App'x 397, 399 (10th Cir. 2002).

ANALYSIS

Defendants filed their partial motion to dismiss seeking to dismiss AFG's Claim Four for unjust enrichment, Claim Six for civil conspiracy to commit fraud, Claim Seven for fraud and constructive fraud, Claim Eight for securities fraud under Wyo. Stat. Ann. § 17-4-501, and Claim Ten for business defamation and business defamation per se. Defendants also seek to require proper service for Defendant Shawn Lucas. Defendants assert that AFG's claim for unjust enrichment is precluded by its contract claims. Additionally, Defendants claim that AFG failed to allege its fraud claims with Fed. R. Civ. P. 9's required particularity. Finally, Defendants assert that AFG failed to properly serve Defendant Shawn Lucas.

1. AFG failed to state a claim for unjust enrichment.

Defendants assert that AFG cannot assert a claim for unjust enrichment because AFG's claims are based on contractual agreements and unjust enrichment is an equitable remedy that is unavailable for contract claims. AFG responds that it can plead unjust enrichment in the alternative to its contract claims.

The Wyoming Supreme Court has explained:

Unjust enrichment (or quantum meruit) is an equitable remedy which implies a contract so that one party may recover damages from another. One seeking damages based on unjust enrichment must prove four elements:

- (1) Valuable services were rendered, or materials furnished,
- (2) to the party to be charged,
- (3) which services or materials were accepted, used and enjoyed by the party, and,

(4) under such circumstances which reasonably notified the party to be charged that the plaintiff, in rendering such services or furnishing such materials, expected to be paid by the party to be charged. Without such payment, the party would be unjustly enriched.

Summit Constr. v. Koontz, 550 P.3d 106, 113 (Wyo. 2024) (citations omitted). “Unjust enrichment is an equitable remedy.” *Redland v. Redland*, 288 P.3d 1173, 1203 (Wyo. 2012). “[T]he unjust enrichment remedy is not available when an express contract exists.” *Sowerwine v. Keith*, 997 P.2d 1018, 1021 (Wyo. 2000) (citing 66 Am.Jur.2d *Restitution and Implied Contracts* § 6 (1973)). AFG argues that it can plead unjust enrichment in the alternative, because the claim would exist under the factual scenario in this case if there were no contract.

The Court recognizes that at this stage Defendants have not answered the complaint, thus there is a potential dispute that a valid contract exists. However, in reviewing the allegations in AFG’s complaint, the unjust enrichment allegations all stem from AFG’s written agreements with Genuine Lifetime, October 3rd Holdings, and BEN AI. For example, AFG asserts that “BEN AI would be unjustly enriched if it were allowed to receive all the benefits of AFG’s agreement and substantial investments while failing to perform on its primary obligation to AFG.” (ECF No. 2 at ¶ 133). This is a classic claim for breach of contract.

For these reasons, the Court finds AFG’s claim for unjust enrichment are barred by AFG’s express written agreements with Defendants. Thus, AFG cannot assert a claim for the equitable remedy of unjust enrichment. Defendant’s motion to dismiss Claim Four is GRANTED and AFG’s claim for unjust enrichment is DISMISSED WITH PREJUDICE.

2. AFG has failed to allege their fraud claims with the required particularity.

AFG asserted three main fraud claims, Claim Six – Civil Conspiracy to Commit Fraud against Genuine Lifetime, October 3rd, Tyler Luck, Shawn Lucas, Due Figlie, and Michael Lucas; Claim Seven – Fraud and Constructive Fraud against Genuine Lifetime, October 3rd, Tyler Luck, Shawn Lucas, Due Figlie, and Michael Lucas; and Claim Eight – Securities Fraud under Wyo. Stat. Ann. § 17-4-501 against Genuine Lifetime, Tyler Luck, BEN AI, October 3rd Holdings, and Michael Lucas. Defendants argue that AFG failed to allege fraud with particularity for its fraud claims. AFG asserts that it has sufficiently pled its fraud claims.

First, the parties both appear to apply Wyoming law to the claims in this case, so the Court will also apply Wyoming law. Under Wyoming law, when a party alleges “fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” Wyo. R. Civ. P. 9(b). “Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.” *Id.* “Actions sounding in fraud must be pled with particularity and proved by clear and convincing evidence.” *Bitker v. First Nat. Bank in Evanston*, 98 P.3d 853, 855 (Wyo. 2004) (citing *Lee v. LPP Mortgage, Ltd.*, 74 P.3d 152, 158 (Wyo.2003)).

The elements for fraud are as follows:

Fraud is established when a plaintiff demonstrates, by clear and convincing evidence that, (1) the defendant made a false representation intended to induce action by the plaintiff; (2) the plaintiff reasonably believed the representation to be true; and (3) the plaintiff relied on the false representation and suffered damages. *Sundown, Inc. v. Pearson Real Estate Co.*, 8 P.3d 324, 330 (Wyo.2000). Fraud will never be presumed. *Richardson v. Hardin*, 5 P.3d 793, 797 (Wyo.2000).

Bitker v. First Nat. Bank in Evanston, 2004 WY 114, ¶ 12, 98 P.3d 853, 856 (Wyo. 2004).

Additionally, for a statutory claim for securities fraud, Wyo. Stat. Ann. § 17-4-501 provides:

(a) It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(i) To employ a device, scheme, or artifice to defraud;

(ii) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(iii) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

Wyo. Stat. Ann. § 17-4-501.

In reviewing AFG's Complaint, Defendants concerns are understandable. While AFG asserts false representations made by Defendants, those representations generally lack specificity related to the exact statement or representation, who made the representation, and when the representations were made. Additionally, many of AFG's allegations are not about actual representations, but general actions. These issues are compounded by the fact that there are numerous Defendants, including business entities and individual defendants, but many of the allegations generically refer to "Defendants." This lack of specificity makes it impossible for any specific Defendant to respond to the allegations. For example, in the Claim Six, AFG generally claims that Defendants all employed a scheme to defraud AFG. Specifically, AFG alleges that "Defendants intentionally withheld relevant information regarding Michael Lucas's background relating

to crimes involving honesty of character, resulting in an order of restitution of approximately \$4.9 million dollars.” (*Id.* at ¶ 178). Similarly, as it relates to Claim Five for Civil Conspiracy, AFG makes allegations such as “Michael Lucas, Luck and the entities they oversee, either directly or indirectly (i.e. Genuine Lifetime and October 3rd) have conspired to undertake unlawful actions to compel Plaintiff AFG to make substantial investments into BEN AI and Genuine Lifetime, while knowing that they would not be able to provide any of their promised deliverables or repay the money they voluntarily sought to capitalize their companies.” (*Id.* at ¶ 149). This allegation does not provide context of what statements or actions any individual Defendant took, when they took them, how AFG relied on them, or how that reliance caused injury.

The complaint further alleges “[i]t is unlikely that BEN AI could have completed its public offering or a merger without AFG’s substantial investment and support” and “[u]pon information and belief, when Genuine Lifetime entered into the Security Agreement, it already knew that it would not repay the loan from AFG and began a plot to find a way out of honoring its substantial obligations to the detriment of AFG” and “[t]he goal of the Defendants was always to take AFG’s money for Defendants’ personal gain without giving anything of value in return.” (*Id.* at ¶¶ 150-152). Again, statements of this nature do not provide Defendants with sufficient facts about the content of the representations, how they were false or misleading, or how AFG relied on them.

While there are many other allegations, they are generally in the same vein, either broadly referring to “Defendants” or generally asserting damage to AFG without associating specific conduct or responsibility to any entity or person. The allegations are

unspecified representations without the necessary information as to what Defendant did what specific action. Additionally, while the complaint is rife with allegations of bad behavior, there are few specific statements or examples. The Court agrees with Defendants that these types of allegations are insufficient to allow Defendants to properly defend this case, thus AFG fails to state a claim for civil conspiracy to commit fraud, constructive fraud, or securities fraud.

As it relates to AFG's claim for civil conspiracy to commit fraud, Defendants assert that Wyoming has not recognized a claim for civil conspiracy. However, the Court agrees with AFG that Wyoming has adopted a cause of action for civil conspiracy. *Pinther v. Am. Nat'l Prop. & Cas. Ins. Co.*, 542 P.3d 1059, 1071 (Wyo. 2024). "To state a claim for civil conspiracy, a plaintiff must state an underlying cause of action in tort." *Id.* (citing *Action Snowmobile & RV, Inc. v. Most Wanted Performance, LLC*, 423 P.3d 317, 324 (Wyo. 2018)). While AFG's civil conspiracy claim is contingent on its fraud tort claim, it can assert a claim for civil conspiracy to commit fraud, if it properly asserts a fraud claim. However, as the Court noted, AFG's fraud claim does not meet Rule 9's pleading requirements, so there is no basis for AFG's civil conspiracy claim.

The next issue is whether to dismiss the claims with prejudice or allow AFG an opportunity to amend its complaint. The Wyoming Supreme Court has generally acknowledged that most courts that have stricken claims for failure to plead with particularity have allowed leave to amend. *Shriners Hosps. for Crippled Child, Inc. v. First Sec. Bank of Utah, N.A.*, 835 P.2d 350, 358 (Wyo. 1992). The Wyoming Supreme Court has "noted that the liberal amendment provisions of W.R.C.P. 15(a) make such a dismissal

[with prejudice] inappropriate unless the proposed amendment will unduly prejudice the opposing party, has not been offered in good faith, or the party seeking to amend has had repeated opportunities to cure the defect and has failed to do so. *Id.* at 358-59 (citation omitted). Thus, the Court will allow AFG an opportunity to amend its complaint to assert with particularity the specific acts of each Defendant that it is alleging for its civil conspiracy, fraud, and violations of Wyo. Stat. Ann. § 17-4-501. The amended complaint should contain allegations that specify specific statements or actions and attribute those statements or actions to a particular Defendant. Also, allegations should include the date or a close approximation of the date when the statements or actions occurred.

3. Business Defamation and Business Defamation Per Se

Defendants also seek to dismiss AFG's claim for business defamation and business defamation per se. Defendants assert that AFG has failed to assert an untrue defamatory statement. AFG asserts that it has sufficiently pled facts to support this claim.

"A defamatory communication is one which tends to hold the plaintiff up to hatred, contempt, ridicule or scorn or which causes him to be shunned or avoided; one that tends to injure his reputation as to diminish the esteem, respect, goodwill or confidence in which he is held." *Lewis v. Francis*, 577 P.3d 433, 437 (Wyo. 2025) (citations omitted). "Defamation per se means a statement which is defamatory on its face and, therefore, actionable without proof of special damages." *Id.* (citations omitted). Defamation per se does not require proof of special damages. (*Id.*). However, defamation per se requires a *prima facia* showing that:

(1) the defendant made a false and defamatory communication concerning the plaintiff; and (2) the defendant made an unprivileged publication to a third party; and (3) at the time of the publication the defendant knew the communication was false, or the defendant acted in reckless disregard of whether the statement was false; or the defendant acted negligently in failing to ascertain whether the communication was false.

Id. (citations omitted). Only certain categories of statements are classified as defamatory per se. *Id.* Those categories “are those which impute (1) a criminal offense; (2) a loathsome disease; (3) a matter incompatible with business, trade, profession, or office; or (4) serious sexual misconduct. *Id.* (citation omitted).

AFG brought business defamation and business defamation allegations against BEN AI, Travis Luck, Shawn Lucas, and Micheal Lucas. The allegations related to the defamatory statements supporting this cause of action are as follows:

226. On or about January 17, 2025, BEN AI released a statement out of its Jackson, Wyoming office stating that AFG concealed a ransomware attack on its network shortly before the Reseller Agreement was executed.

227. The statement further explains that its [BEN AI] customer data and/or systems were not impacted, implying that AFG’s customer data and systems were impacted.

228. BEN AI further states that it has “zero tolerance” for actions that undermine trust, tying the statement to AFG’s data security and their reason for terminating the AFG Reseller Agreement.

229. Upon information and belief, Defendants have made other statements indicating that AFG failed to protect its customers’ information.

230. BEN AI’s statements appear to be repeated from allegations made by Luck, Shawn Lucas, and Michael Lucas.

231. Upon information and belief, BEN AI, Luck, Shawn Lucas, and Michael Lucas have made similar statements directly to numerous individuals and businesses, with the intended purpose of discouraging those that receive the information from doing business with AFG.

(ECF No. 2 at ¶¶ 226-231).

The only properly pled defamatory statement is the BEN AI statement that “AFG concealed a ransomware attack on its network shortly before the Reseller Agreement was executed.” (*Id.* at ¶ 226). The remaining allegations are alleged inferences from the statement or general allegations that do not assert a defamatory statement.

In further support of its claims, AFG also alleges that it “spent over one million dollars to investigate the alleged attack and to ensure that its systems were always safe.” (*Id.* at ¶ 233). “If anything, the alleged attack was a successful test of AFG’s cyber-security systems, processes, and response protocols, demonstrating that AFG’s security meets or exceeds industry standards.” (*Id.*). While this statement may be true, and an appropriate response to BEN AI’s statement, it does not refute the truthful content of the defamatory statement, specifically that “AFG concealed a ransomware attack on its network shortly before the Reseller Agreement was executed.” (*Id.* at ¶ 226). AFG has not provided any statement in its complaint that this statement was false. In fact, AFG acknowledges that it suffered an alleged ransomware attack. (*Id.* at ¶ 43). For these reasons, AFG has not made a *prima facia* showing that the defamatory remark was false, and this claim must also be dismissed with the opportunity to amend to assert a viable claim.

4. Lack of Service on Shawn Lucas

The final matter in Defendant’s motion to dismiss is the lack of proper service on Defendant Shawn Lucas. This case was originally brought in state court, thus the Court

will apply Wyoming law for service of process. (ECF No. 1). Wyoming Rules of Civil Procedure provides for service of an individual and allows service by:

(e) Serving an Individual Within the United States. An individual other than a person under 14 years of age or an incompetent person may be served within the United States:

- (1) by delivering a copy of the summons and of the complaint to the individual personally,
- (2) by leaving copies thereof at the individual's dwelling house or usual place of abode with some person over the age of 14 years then residing therein,
- (3) at the defendant's usual place of business with an employee of the defendant then in charge of such place of business, or
- (4) by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

Wyo. R. Civ. P. 4(e).

AFG filed Shawn Lucas's return of service on April 11, 2025. (ECF No. 10). That document indicated that service was accomplished through substitute service accepted by John Vredenburg, the subject's father. (*Id.*). The return of service does not provide the address where the service occurred. (*Id.*). In support of the motion to dismiss Shawn Lucas provided an affidavit attesting that John Vredenburgh was not his father and that John Vrendenburgh was not his agent appointed by law to receive service on his behalf. (ECF No. 17-1 at ¶¶ 6-7).

AFG acknowledges that it does not have evidence to contradict Defendant Shawn Lucas's declaration. (ECF. No. 21 at 9). Rather, AFG argues that Shawn Lucas had actual notice of the action and can appear and defend himself, so the Court should disregard the

lack of proper service. Alternatively, AFG argues that the Court should allow an additional opportunity to serve Shawn Lucas and to allow the service to relate back to the filing of the complaint.

The Wyoming Supreme Court explained that:

A summons is the means of compelling a defendant to subject his person to the jurisdiction of the court from which the summons issues. Strict compliance with the requirements of service of process is mandatory. Any omissions of statements that are required under W.R.C.P. 4 are fatal and such omission prevents the trial court from obtaining jurisdiction of the defendant. A judgment entered without proper service of the summons is void and subject to attack directly or collaterally. Without proper service of summons, a default judgment is void and must be vacated.

Hoke v. Motel 6 Jackson, 131 P.3d 369, 374 (Wyo. 2006) (internal citations and quotation marks omitted). While the Wyoming Supreme Court has recognized that even if there are errors with the summons, the Court may still acquire jurisdiction if the error is not “radical.” *Reynolds v. Moore*, 318 P.3d 362, 366 (Wyo. 2014).

In this case, the issue is not an error in the summons, but rather the fact that Defendant Shawn Lucas was not served at all. As such, this Court lacks personal jurisdiction over Shawn Lucas until he is properly served in this case.

Under both the Wyoming Rules of Civil Procedure and the Federal Rules of Civil Procedure, the district court must extend the time for service for an appropriate period if the plaintiff shows good cause. See Wyo. R. Civ. P. 4(w) and Fed. R. Civ. P. 4(m). “In deciding whether to extend time for service, a district court must consider both (1) whether the plaintiff has shown good cause, and (2) whether the facts of the case otherwise justify an extension.” *Oldroyd v. Kanjo*, 432 P.3d 879, 883 (Wyo. 2019) (citations omitted). In

this case, AFG believed they properly served Defendant Shawn Lucas within the required time. It was not until Defendants filed their motion to dismiss that AFG became aware of the error. (ECF No. 21 at 8-9). The Court finds AFG has established good cause for this Court to allow AFG an additional 30 days from the date of this order to effectuate service on Shawn Lucas.

CONCLUSION

For all the above stated reasons, the Court finds that AFG's claim for unjust enrichment is barred by the existence of a contract between AFG and Defendants. The Court also finds that AFG failed to sufficiently plead its fraud claims with the required particularity. The Court further finds that AFG failed to assert a claim for business defamation and business defamation per se. Finally, the Court finds that AFG failed to properly serve Defendant Shawn Lucas. The Court will allow AFG an opportunity to amend its complaint to make proper allegations of fraud and defamation. The Court will also extend the time to allow AFG to accomplish service on Defendant Shawn Lucas.

IT IS ORDERED that Defendant's motion is GRANTED.

IT IS FURTHER ORDERED that AFG's Claim Four for unjust enrichment is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that AFG's claims in Claim Six for civil conspiracy to commit fraud, Claim Seven for fraud and constructive fraud, Claim Eight for statutory securities fraud, and Claim Ten for defamation and defamation per se are DISMISSED WITHOUT PREJUDICE. AFG shall have 30 days from the date of this order to amend its

complaint to state its fraud claims with the required particularity and to assert a prima facie case for defamation and defamation per se.

IT IS FINALLY ordered that the Court finds that AFG failed to properly serve Defendant Shawn Lucas. AFG shall have 30 days from the date of this order to properly effect service on Shawn Lucas.

Dated this 14th day of November, 2025.



Alan B. Johnson
United States District Judge