IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RALPH S. JANVEY, IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR THE STANFORD INTERNATIONAL BANK, LTD., ET AL.	§	
Plaintiff,	§	Case No. 3:09-CV-0724-N
JAMES R. ALGUIRE, ET AL.	§	
Defendants.	§	

BRIEF IN SUPPORT OF DEFENDANT JASON GREEN'S MOTION TO COMPEL ARBITRATION AND TO DISMISS

Respectfully submitted,

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I. BACKGROUND

Ralph Janvey, in his capacity as the Receiver for Stanford Group Company **("SGC")**, seeks to recover employment compensation SGC paid to Jason Green **("Green")** and the other Former Employee defendants sued in the Receiver's Second Amended Complaint.[1] The Receiver contends that sales of Stanford International Bank, Ltd. **("SIBL")** certificates of deposits generated substantially all of the income for the "Stanford Defendants," and that money received from deceived investors funded what the receiver calls "SIBL CD commissions, SIBL Quarterly Bonuses, and Branch Managing Director Quarterly Compensation" paid to Green and the other Former Employee Defendants. *See* Second Amended Compl. ¶2. The Receiver contends Green and the other Former Employee Defendants either performed no services in exchange for the CD proceeds or performed only services that were in furtherance of "the Ponzi scheme" in exchange for the CD proceeds. *Id.* ¶30.

Green denies these allegations against him. The briefs of the other Former Employee Defendants already on file succinctly capture the overwhelming obstacles the Receiver faces in bringing this action. For instance, the Alguire Brief (doc #201-2) demonstrates:

> "The Securities and Exchange Commission has publicly stated that Allen Stanford, James Davis, and Laura Pendergest-Holt 'lied to financial advisors.' SEC's Amend. Compl. ¶ 54-60 (Doc. 48 in Cause No. 3:09-cv-0072 1). Likewise, the Receiver has acknowledged previously that the financial advisors are "innocent and committed no wrongdoing." *See* Receiver's Amend. Compl. (Doc. 14), ¶¶ 9, 43. Nevertheless, the Receiver is seeking to recover compensation, and even loans, covering multiple years -- the vast majority of which had nothing whatsoever to do with the sale of Stanford CDs."

Alguire Brief at 1.

For his part, the Receiver does not specify in the Second Amended Complaint which Stanford entity supposedly paid the compensation he seeks to recapture. The Alguire Brief

[1] In addition to Green, the Receiver has sued 328 other Former Stanford Employees of SGC.

exposes, however, the Receiver's unstated desire to recover alleged SIB CD-related compensation that *SGC* paid to certain former financial advisors. *See* Alguire Brief (doc #201) at 3; Alguire App. (doc #202) at 79 (Exhibit 2 to Nielsen Decl.).

From Green the Receiver seeks to disgorge the following categories of compensation he allegedly received from SGC: "SIBL Commission," "SIBL Quarterly Bonuses," and "Branch Managing Director Quarterly Compensation." *See* Sec. Amend. Compl. At ¶¶50-51, 53 and App. at 4 (ID no. 121). To his knowledge, Green never received any payment from SIBL. SGC, his employer from February 1996 until the Receiver fired him in or about February 2009, (along with the others), paid him his compensation. Furthermore, Green was never an employee of SIB. Declaration of Jason Green ¶¶ 4 & 6, App. pp. 1-2; *see also* Report of Receiver Dated April 23, 2009 at 8.

Throughout the time of his SGC employment, Green was "registered" to transact securities through SGC. In that regard, Green served SGC in various roles, including that of registered representative or financial advisor (FA) and that of producing branch manager of the Baton Rouge, Louisiana office. Green later left production and joined the management of SGC, overseeing certain private client responsibilities. In April 2009, the Receiver, who then controlled SGC, presumably terminated his registration, because FINRA's BrokerCheck program reflects that Green's registration with SGC terminated at that time. *See* Green Declaration ¶ 3, App. at pp. 1-2 and Exhibit 1 thereto.

The Receiver first sought disgorgement from Green under a "relief defendant" theory in the First Amended Complaint filed November 13, 2009. (Doc #118) The Fifth Circuit prohibited the Receiver, however, from bringing "relief defendant" claims against Former Employees, including Green. *See Janvey v. Adams*, 588 F.3d 831, 835 (5th Cir. 2009)

("[R]eceipt of funds as payment for services rendered to an employer constitutes one type of ownership interest and would preclude proceeding against the holder of the funds as a nominal defendant."). Following the *Janvey v. Adams* ruling, and before Green had responded to the First Amended Complaint, the Receiver abandoned his relief-defendant theory against Green and the other Former Employee defendants. *See* Sec. Amend. Compl. at ¶ 10. Yet in the Second Amended Complaint the Receiver continues asserting vague claims of fraudulent transfer and unjust enrichment while still ignoring FINRA rules and contractual requirements that obligate him to submit his claims exclusively to FINRA arbitration.

In short, the Receiver wants Green and the other Former Employee defendants to disgorge their SGC employment compensation because, the Receiver asserts, the compensation they received allegedly came from fraudulent investments in SIB CDs. The Receiver claims that Green's and the other Former Employee defendants' sole business purpose was to sell SIB CDs, and that SGC was nothing more than the means by which SIB obtained CD investments. The Alguire Brief argues persuasively that the Receiver's allegation "is untrue -- the Receiver has expressly admitted" SGC derived more than 60% of its 2008 revenue "from *non-CD* brokerage activities." Alguire Brief (doc #201-2) at 4 (emphasis added).

Fortunately for Green and the other defendants, the Receiver's fraudulent transfer and unjust enrichment claims remain subject to the heightened pleading requirements of Rule 9(b) which the Receiver fails to meet. In fact, the Receiver does not meet even the more lenient standards of Rule 8.

Furthermore, the Receiver stands in the shoes of Stanford Group Company, and he is therefore obligated to arbitrate all claims asserted against the financial advisors. Indeed, the Receiver's failure to submit his claims to arbitration can be an express violation of FINRA rules,

which is subject to penalty as "inconsistent with just and equitable principles of trade." *See* FINRA IM-13000 "Failure to Act Under Provisions of Code of Arbitration Procedure for Industry Disputes." Green therefore requests that the Court issue an order compelling the Receiver to pursue his claims in arbitration.

II. THE RECEIVER'S CLAIMS MUST BE ARBITRATED

The Federal Arbitration Act (FAA) directs: "A written provision in any . . transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, ..." 9 U.S.C. §2. "Section 3, in turn, allows litigants already in federal court to invoke agreements made enforceable by section 2." *Arthur Andersen LLP v. Carlisle*, __ U.S. __, 129 S.Ct. 1896, 1899 (2009). Furthermore,

> "A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action . . . of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement . . . ."

9 U.S.C. §4.

The question whether parties have agreed to arbitrate a dispute involves two considerations: (1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the dispute in question falls within the scope of that agreement. *Webb v. Investacorp*, 89 F.3d 252, 258 (5th Cir. 1996). Here, a valid agreement to arbitrate exists between SGC and Green, and the compensation dispute falls squarely within the broad scope of the agreements.

A. An Agreement to Arbitrate Exists

The Receiver's obligation to arbitrate his claim against Green and the other Former Employee defendants arises from at least two separate provisions. The first is found in the FINRA CODE OF ARBITRATION PROCEDURE FOR INDUSTRY DISPUTES (**Industry Code**). The second is stated in the Uniform Application for Securities Industry Registration or Transfer Form U-4 (**Form U-4**). Each of these provisions bind SGC (now, the Receiver) to arbitrate his employment-compensation claims against Green.

1. Industry Code Rule 13200 Obligates the Receiver to Arbitrate.

The Industry Code at Rule 13200 instructs that "a dispute must be arbitrated under the Code if the dispute arises out of the business activities of a member or an associated person and is between or among: . . . members and associated persons . . . ." *See* Industry Code Rule 13200(a). Here, the dispute "arises out of the business activities of a member…"; SGC is and was at all relevant times a "member" of FINRA (or its predecessor, the NASD); and Green was an "associated person." Rule 13200(a) therefore requires this action be arbitrated.

For the purposes of the Industry Code, a "member" is any broker dealer admitted to FINRA membership, whether or not the membership has terminated or cancelled. Industry Code Rule 13100(o). SGC is currently a broker dealer admitted to FINRA membership and was a member during the time of Green's employment. *See* Green Declaration ¶3, App. p. 1; Alguire App. Ex. 3 (doc #202-4). Like the other Former Employee defendants, Green was an "associated person" as defined by FINRA. *See* FINRA Industry Code Rule 13100(a) and (r)(1) & (2) ("associated person means [a] natural person registered under the Rules of FINRA" or a ". . . natural person engaged in the . . . securities business who is directly or indirectly . . . controlled by a member . . . ."). Green is a natural person who was registered under the Rules of FINRA

until SGC terminated his registration in April 2009. He furthermore engaged in the securities business under the control of SGC. *See* Green Declaration ¶2-4, App. at 1-2.

The Receiver's allegations furthermore arise out of SGC and Green's business activities. The Receiver rests his compensation claims on Green's alleged securities business activities while employed by, and registered with, SGC and the compensation SGC paid him while employed with the firm. Sec. Amend. Compl. at ¶¶ 2, 4, 28, and 29. The Receiver seeks return of compensation SGC paid Green allegedly for selling SIB CDs (SIB commissions and bonuses) and for managing a SGC branch office (branch managing director compensation). *Id.* at ¶ 50-51, and 53 and App. at 4 (ID no. 121). Thus the Receiver's return-of-compensation-paid claim, regardless of the legal theory asserted, unquestionably "arises out of the business activities" of both SGC (a member firm) and Green (the associated person). In addition, the phrase "arises out of" in Rule 13200(a) is broadly construed and means "originating from," "growing out of," or "flowing from" the business activities of either SGC or Green. *See Williams v. Imhoff,* 203 F.3d 758, 765 (10th Cir. 2000). Hence, the Receiver's allegations about compensation paid unremarkably "arises out of business activities" at the firm.

For these reasons then, the Receiver's allegations in the Second Amended Complaint trigger SGC's unequivocal arbitration obligation under Industry Code Rule 13200(a).

2. Form U-4 Binds SGC and Green to Arbitrate Any Dispute, Claim, or Controversy.

There is a second provision evidencing an agreement to arbitrate. An associated person, Green, makes an application for registration with a member firm, SGC, via the so-called Form U-4. *See In re Stanford Group Co.*, 273 S.W.3d 807, 810 (Tex. App. — Houston [14th Dist.] 2008; FINRA Bylaws, Art. V, section 2; *see also* Green Declaration ¶4, App. p. 2; Alguire App.

at 386 (copy of a Form U-4). The Form U-4 includes an arbitration provision stating: **"I agree to arbitrate any dispute, claim, or controversy that may arise between me and my firm,** or a customer, or any other person, **that is required to be arbitrated under the rules, constitutions, or bylaws** of the [Self Regulatory Organizations]." Alguire App. (doc #202-13) at 400 (emphasis added). As noted above, Industry Code Rule 13200(a) is such a "rule" obligating SGC and Green to arbitrate this dispute. FINRA Rule 2263 in addition makes clear that by signing a Form U-4 the associated person is "agreeing to arbitrate any dispute, claim or controversy that may arise between you and your firm, or a customer, or any other person that is required to be arbitrated under the rules of the self-regulatory organizations with which you are registering." FINRA Rule 2263(1). In turn, FINRA holds a member firm, which SGC is, to the same arbitration requirements as it hold associated persons. *See* Millas *v. Morgan Stanley & Co., Inc.*, No. 09-cv-0573-MJR, 2008 WL 5095917, at *5 (S .D. Ill. Dec. 1, 2008) ("Morgan Stanley is held to the same arbitration requirements as [broker] under the FINRA regulations. Thus, there is no merit to [broker's] argument that arbitration provision in the U-4 is unilateral.").

Green's Form U-4 registration with SGC is yet a second, independent source evidencing an agreement to arbitrate. Therefore, the first requirement is met because there exists between the Receiver (SGC) and Green (as well as the other Former Employee defendants) a valid agreement to arbitrate. Simply stated, claims challenging compensation paid to a financial advisor are within the scope of Rule 13200(a) and Form U-4 arbitration requirements. *Brennan v. Aetna Life Ins. Annuity Co.*, No. Civ. A 3:00-cv-205-BC, 2001 WL 167954, at *2 (N.D. Tex. Jan. 19, 2001) (Boyle, M.J.).

B. The Receiver Stands in the Shoes of SGC and is Therefore Bound by SGC's Arbitration Agreements

There is furthermore no question that the Receiver must honor SGC's arbitration obligation and agreement. Black letter law recognizes that the "receiver stands in the shoes" of the person or entity over which he assumed control. As a result, the receiver "is bound to the arbitration agreements to the same extent that the receivership entities would have been absent the appointment of the receiver." *Javitch v. First Union Sec. Inc.*, 315 F.3d 619, 627 (6th Cir. 2003); *see also Capitol Life Ins. Co. v. Gallagher*, No. 94-1040, 1995 WL 66602, at *2 (10th Cir. Feb. 7, 1995) ("[receiver] may be compelled to arbitrate because a receiver 'stands in the shoes' of the [company]"); *U.S. Small Bus. Admin. v. Coqui Capital Mgmt.*, LLC, No. No. 08 Civ. 0978 (LTS) (THK), 2008 WL 4735234, at *2 (S.D. N.Y. Oct. 27, 2008) ("receiver's ability to litigate claims in federal court is limited by any valid agreement, previously executed by the receivership entity, that mandates arbitration."); *Moran v. US. Bank*, NA., No. 3:06-cv-050, 2007 WL 1023447, at *7 (S.D. Ohio Jan. 4, 2007) (applying arbitration agreement to receiver); *Phillips v. Lincoln Nat '1 Health & Cas. Ins. Co.*, 774 F.Supp. 1297, 1299 (D. Co. 1991).

Because the Mr. Janvey stands in the shoes of SGC, he is "*subject to the same claims and defenses as the receive[rship] entity he represents." See Wuliger v. Mfrs Life Ins. Co.*, 567 F.3d 787, 798- 99 (6th Cir. 2009) (emphasis added); *see also FDIC v. Ernst & Young, LLP*, 374 F.3d 579, 584 (7th Cir. 2004). Thus, Receiver Janvey is bound by the arbitration obligation mandated in Industry Code Rule 13200(a) and the agreement found in Green's SGC Form U4 registration. He cannot escape his obligation to arbitrate. *See* FINRA IM 13000 (member's failure to submit for arbitration a dispute required by the Code to be arbitrated may be deemed conduct inconsistent with just and equitable principles of trade).

C. The Court Should Compel Arbitration and Stay or Dismiss the Case

Once an agreement to arbitrate is established, the Court then considers whether the dispute falls with the scope of the agreement. *Webb v. Investacorp*, 89 F.3d at 258 (in deciding to compel arbitration, court determines first, "whether there is a valid agreement to arbitrate between the parties; and [second] . . . whether the dispute in question falls within the scope of that arbitration agreement."). Questions of scope are judged in light of a "national policy favoring arbitration." *See, e.g., Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984). The Supreme Court requires that the question of arbitrability be addressed with a "healthy regard for the federal policy favoring arbitration." *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). "Doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Id.* In other words, courts must "rigorously enforce arbitration agreements." *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987) (quoting *Dean Witter Reynolds v. Byrd*, 470 U.S. 213, 221 (1985)).

Once the court determines there is a valid agreement to arbitrate, it "must pay careful attention to the strong federal policy favoring arbitration and must resolve all ambiguities in favor of arbitration." *Banc One Acceptance Corp. v. Hill*, 367 F.3d 426, 429 (5th Cir. 2004). "We resolve doubts concerning the scope of coverage of an arbitration clause in a contract in favor of arbitration." *Neal v. Hardee's Food Sys.*, 918 F.2d 34, 37 (5th Cir. 1990). The compensation dispute the Receiver pleads in his Second Amended Complaint falls squarely within the scope of SGC's arbitration agreements. His claims against Green all "arise out of the [former] business activities" of both SGC and Green. *See* Industry Code Rule 13200(a). Furthermore, arbitration should not be denied "unless it can be said with positive assurance that an arbitration clause is not susceptible of an interpretation which would cover the dispute at issue." *Neal*, 918 F.2d at 37. Accordingly, pursuant to terms of 9 U.S.C. § 4 and applicable case

law, the Court should compel arbitration of all claims asserted in the Second Amended Complaint.

Additionally, the Court should exercise its discretion and dismiss the Receiver's suit because there is no need for the Court to retain jurisdiction. *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992). At a minimum, the Court must stay the case pending arbitration. 9 U.S.C. § 3.

III. IN THE ALTERNATIVE, THE RECEIVER HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

The Receiver's claims should be dismissed, in the alternative, for failure to state a claim under FED. R. CIV. P. 9(b) and 12(b)(6).

A. The Receiver Fails to Meet the Rigorous Pleading Standards of Rule 9(b)

All claims that "sound in fraud" must satisfy the requirements of Federal Rule of Civil Procedure 9(b). Here, the Receiver asserts a claim for fraudulent transfer, alleging that the "Stanford Defendants" made transfers "with the actual intent to hinder, delay, or defraud creditors." Sec. Amend. Compl. at ¶ 34-35. The Receiver also asserts an unjust enrichment claim. Both of these claims are subject to the heightened pleading requirements of Rule 9(b). *Quilling v. Stark*, 3:05-CV-1976-L, 2006 WL 1683442, at *5 (N.D. Tex. June 19, 2006) (Lindsay, J.) (Applying Rule 9(b) to fraudulent transfer claims); *Eastern Poultry Distributors, Inc. v. Yarto Puez,* Civ. A. 3:00-CV-1578-M, 2001 WL 34664163 (N.D. Tex. Dec. 3, 2001) (Lynn, J.) (Same); *Breckenridge Enterprises, Inc. v. Avio Alternatives*, LLC, 3:08-CV-1 782-M, 2009 WL 1469808, *10 (N.D. Tex., May 27, 2009) (Lynn, J.) (Dismissing unjust enrichment claim under Rule 9(b) because "it would be nonsensical to allow what is essentially a fraud claim

to evade the particularity requirements through pleading under an equitable, rather than legal, theory").

Rule 9(b) states that "all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." The Fifth Circuit has mandated that a plaintiff, in order to satisfy Rule 9(b), must plead "who, what, when, and where" with specificity. *Williams v. WMX Technologies, Inc.*, 112 F.3d 175, 178 (5th Cir. 1997), *cert. denied*, 522 U.S. 966 (1997). The Fifth Circuit has emphasized that Rule 9(b) should be applied stringently, and that all complaints failing to meet its requirements should be dismissed for failure to state a claim. As the *Williams* court noted, "we apply [9(b)] with force, without apology." *Williams*, 112 F.3d at 178.

These stringent pleading requirements must be met with respect to each defendant. General allegations that lump all 329 defendants together, rather than separately setting forth the alleged wrongdoings of each named defendant, do not satisfy Rule 9(b). *See In re URCARCO Sec. Lit.*, 148 F.R.D. 561, 566 (N.D. Tex. 1993), *aff'd sub nom.*, *Melder v. Morris*, 27 F.3d 1097 (5th Cir. 1994).

The Receiver fails to meet this well understood pleading standard. He has sued 329 different Former Employees without making any attempt to state an individual claim against any of them. The Alguire Brief hits the nail on the head: "Lumping together more than 300 former Stanford employees without once specifying any individualized facts, the Receiver asserts that they received, at unspecified times and from unspecified 'Stanford Defendants,' what the Receiver characterizes as 'CD Proceeds.'" *See* Doc #201-2 at 13. The Receiver offers no support for his contention that Green allegedly received "CD Proceeds." He pleads at Appendix ID no. 121 that Green received certain sums of money, but leaves Green (and the Court) to guess as to

when Green allegedly received these funds, how he calculated and assigned these sums to Green, what period of time is included in the alleged payments to Green, or even how he determined the sums were supposedly "tainted" by third-party investors' deposits given to SIB. The Receiver surely knows the time period when the payments he challenges were made. *See* Doc #15. Surely he also knows that Green was not even earning commissions or bonuses in 2007-08 and had ceased serving as a producing manager or "branch manager" in 2007.

The Receiver also alleges that the "uncontroverted facts establish that the Stanford Defendants were running a Ponzi scheme . . . ." *Id.* at ¶ 35. The Receiver does not, however, identify what "uncontroverted facts" he relies upon, nor does he make any attempt to show that SGC -- from whom Green received his compensation -- was a Ponzi scheme, as opposed to SIB, which is the entity identified by the SEC as the Ponzi scheme. The Receiver pleads no specific facts to support his contention that Green or the other Former Employee defendants received their compensation "solely for the purpose of concealing and perpetuating the fraudulent scheme." *Id.* at ¶ 30. The Receiver also leaves a mystery as to which creditor(s) for whom he seeks to recover the alleged fraudulent transfers.

Under Texas law, to recover for unjust enrichment, a plaintiff must show that the defendant obtained a benefit from another by fraud, duress, or the taking of an undue advantage. *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992). The Receiver's complaint contains no facts supporting an inference that Green obtained any benefit by fraud, duress, or the taking of undue advantage, or that Texas law will even apply to him. Regardless of which state's law might apply, Rule 9 obligates the Receiver to plead the how, what, when, where, and how as to the fraudulent transfer claim and the unjust enrichment claim.

In short, the Receiver's group pleading and conclusory allegations are wholly insufficient under Rule 9(b). The Complaint should be dismissed for failure to state a claim.

B. The Receiver Also Fails to Meet the Pleading Standards of Rule 8

In ruling on a motion to dismiss under FRCP 12(b)(6), the court must assume that all facts contained in the complaint are true. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007); *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000). However, the court should dismiss a claim when the complaint does not state factual allegations sufficient to show that the right to relief is plausible and above mere speculation. *Bell Atlantic*, 550 U.S. at 555-56. Conclusory legal assertions, unsupported factual allegations which create mere suspicion of a right to relief, or a formulaic recitation of the elements of a cause of action in a complaint will not defeat a FRCP 12(b)(6) motion. *Id.* In considering a motion to dismiss, the court considers the pleadings, including attachments thereto, and may consider documents attached to the motion if they are referred to in the complaint and are central to the claim. *Collins*, 224 F.3d at 498-99.

Indeed, the Receiver has not even bothered to identify the legal grounds on which he seeks relief from Green. At a minimum, the Receiver must provide "fair notice of what the claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 555. The Receiver's complaint fails to provide Green with the requisite Rule 8 "fair notice" because it does not identify which state's fraudulent transfer laws apply to the claims. As the Alguire Brief points out, "This is important, as the Receiver's counsel acknowledged to the Fifth Circuit during oral argument:

> Now, why did we not bring fraudulent transfer claims? And if that's where this Court is headed, an opinion that says we are restricted to state law fraudulent transfer claims, here's what happens. We have hundreds of trials under different states' fraudulent transfer laws on the investors' affirmative defenses of objective good faith. We will spend millions of dollars wasted in litigation pursuing that

> kind of process. . . . Fraudulent transfer statutes do differ. For example, here in Louisiana there is not even a fraudulent transfer statute."

Alguire Brief (doc #201-2) at 14-15.

Here, back in the Northern District, the Receiver has not bothered to indentify in the Second Amended Complaint how he can bring a fraudulent transfer claim against Green, a Louisiana resident. The Receiver's failure to identify the fraudulent transfer law he rests his fraudulent transfer claim on denies Green the adequate notice needed to defend himself properly against the Receiver's claims. The Receiver's complaint, therefore, should be dismissed on this additional basis.

IV. CONCLUSION

In support of the relief he requests, Green furthermore relies upon and incorporates the arguments and authorities in the Groesbeck Defendants Motion to Compel and Brief in Support (doc #211) at pages 20 (regarding the TUFTA) and 23-25 (regarding the agreement to arbitrate); the Ulloa Motion to Dismiss (doc. # 203) and Brief in Support (doc #203-2); and the Alguire Brief in Support (doc. # 201-2) and Alguire Appendix.

For the reasons stated herein, the Court should compel arbitration of all claims asserted against Jason Green in the Receiver's Second Amended Complaint, and dismiss or stay all proceedings in this action. In the alternative, the Court should dismiss all claims asserted in the Receiver's Second Amended

Respectfully submitted,

WINSTEAD PC

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CERTIFICATE OF SERVICE

I certify that on the 19th day of January 2010, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro* se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2)

/s/ John P. Kincade
One of Counsel