

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
A. The Company Has Strong Fundamentals	2
SUMMARY OF LEGAL ARGUMENT	9
ARGUMENT	15
I. The Complaint Should Be Dismissed For Failure To State A Plausible Claim For Relief.	17
A. The Equitable Claims Are Barred By the Doctrine of <i>In Pari Delicto</i>	17
B. Numerous Claims Are Outside the Lookback Period or Barred By the Statute of Limitations.....	19
C. The Fraudulent Transfer Claims Are Inadequately Pled.	21
1. Required Elements of the Transfers at Issue Are Not Pled.	21
a) Specific Dates and Amounts Are Not Alleged	22
b) Specific Transferors Are Not Alleged	23
c) Specific Transferees Are Not Alleged and All Claims Should Be Dismissed as to Majority of Defendants	24
2. The Actual Fraudulent Transfer Claims Fail to Satisfy Rule 9(b)'s Heightened Standard for Pleading Intent.	26
3. The Constructive Fraudulent Transfer Claims Fail Because the Complaint Fails to Plead Insolvency.	27
4. The Constructive Fraudulent Transfer Claims Fails Because the Complaint Fails to Plead Lack of Reasonably Equivalent Value.	30
D. The Complaint Fails to Adequately Plead a Claim of Illegal Dividend Against Patrick James.	31
E. The Complaint Fails to Adequately Plead a Claim for Turnover.	33
F. The Complaint Fails to Adequately Plead a Claim for Unjust Enrichment or Money Had and Received Against Any Defendant.....	35
G. The Complaint Fails to Adequately Plead a Claim for Constructive Trust or Accounting.....	36

II. Alternatively, the Court Should Order the Debtors to Provide a More Definite Statement Pursuant to Rule 12(e).	38
CONCLUSION.....	40

Patrick James and the so-called “**Related Entities**,”² i.e., (a) The Patrick James Trust, (b) Albion Realty, LLC, (c) Alester Technologies, LLC, (d) Battery Park Holdings LLC, (e) Bond Street Asset Management LLC, (f) Ignite Acquisition Holdings LLC, (g) Larchmont LLC, and (h) Pegasus Aviation LLC file this motion (the “**Motion**”) pursuant to Fed. R. Civ. P. 12(b)(6) and 12(e) and Fed. R. Bankr. P. 7012 (the “**Bankruptcy Rules**”) to dismiss the complaint in the above-captioned proceeding, Adv. Dkt. No. No. 17 (the “**Complaint**”), for failure to state a claim and for a more definite statement and respectfully state as follows.

PRELIMINARY STATEMENT

1. A discerning eye looking past the Complaint’s hyperbole finds a debilitating lack of legal support for its claims against Mr. James and the Related Entities. While it can be dismissed considering only the allegations within its four corners—or more precisely its pleading deficiencies—a brief examination of the circumstances surrounding the Adversary Proceeding is appropriate as the Court can bring common sense to bear on its decision.³

2. Importantly, these cases started with the Debtors casting aspersions exclusively at Mr. James—though, by their own admission, the allegations were based heavily “upon information and belief.”⁴ Yet as time passes and more facts emerge, it becomes increasingly clear

² Herein, “**Company**” or “**Debtors**” refers to First Brands Group, LLC and its affiliated debtors and debtors in possession. The “**FBG Debtors**” means the direct subsidiaries of First Brands Group, LLC. The “**SPV Debtors**” means those special purpose vehicles that are subsidiaries of Viceroy Private Capital, LLC that were parties to the off-balance-sheet financing transactions.

³ *Cf. Barnes v. Alexander*, 2011 WL 2552480, at *1 & n. 2 (S.D. Tex. June 27, 2011) (“Rule 8 does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions, and only a complaint that states a plausible claim for relief survives a motion to dismiss, a determination involving a context-specific task that requires the reviewing court to draw on its judicial experience and common sense”) (quoting *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1940 (2009)).

⁴ *See* Aff. Charles Moore, Interim Chief Executive Officer In Supp. Of Debtors’ Emergency Appl. For Prelim. Inj. Relief Including Emergency Mot. For TRO, Adv. Dkt. No. 19 (the “**TRO Affidavit**”) ¶¶ 27, 35 (allegations subject to “ongoing” investigation); *id.* ¶¶ 26, 28, 29, 30, 31, 34, 35, 37, 39, 40, 45, 46, 47, 51, 52, 53, 55, 56, 58 (allegations on “information and belief”); *see also* Compl. ¶¶ 10, 11, 17, 26, 27, 34(b), 34(c), 34(d), 34(e), 34(f), 34(g), 34(h), 34(i), 55, 58, 59, 60, 64, 65, 68, 70, 71, 77, 78, 79, 82, 83, 84, 86, 87, 89, 100, 101, 114 (allegations on “information and belief”); *id.* ¶ 15 (“currently believe”).

that other parties that the Debtors simply did not consider as potential targets for investigation and estate claims may have engaged in wrongdoing that they seek to pin on Mr. James.

A. The Company Has Strong Fundamentals

3. Initially, it is worth remembering the Company's strong, underlying viability. The Company is not, as the severity of the allegations intimate, crumbling under the weight of the alleged fraud perpetrated by Mr. James. Over the last two decades, Mr. James built a vertically-integrated global manufacturer and supplier of automotive parts that spans five continents and employs 26,00 people.⁵ It has twenty-five well-known brands and exclusively supplies the auto industry's largest after-market customers, including well-known automotive retailers (Napa Auto Parts, AutoZone, O'Reilly, and Advanced Auto Parts), national retailers (Walmart and Costco), and original equipment manufacturers (OEMs). Even though the Company faced a combination of the COVID-19 global pandemic, supply-chain disruptions, and increasing interest rates, its sales still grew from \$500 million in 2018 to \$5 billion in 2024. That resilience continued when recently 99% of the pre-petition secured term-loan lenders⁶ agreed to extend \$1.1 billion of debtor-in-possession (DIP) financing.⁷ And these lenders extended DIP loans notwithstanding the Debtors' allegations of factoring and other irregularities.⁸

⁵ See, e.g., Declaration Of Charles M. Moore In Support Of Debtors' Chapter 11 Petitions ¶¶ 8-10., Bankr. Dkt. No. 22 (the "**Moore Decl.**").

⁶ See Tr., Hr'g Ch. 11 First Day at 26:14-18 ("[AD HOC GROUP'S COUNSEL: [O]ur ad hoc group is comprised of lenders that currently hold approximately 99 percent of the first-lien term loan, 100 percent of the debtors' first lien side car term loans, and 83 percent of the debtors' second lien term loans"); *id.* at 58:13-16 (same).

⁷ See Tr., Hr'g Ch. 11 First Day at 24:20-25:2 ("[DEBTORS' COUNSEL]: That financing is essential to the business. It's essential not only to operate the business, but it's essential to send a message that we want to make loud and clear. This is a significant company. It's got significant assets and significant businesses. We have the financing to pay our employees. We have our financing to continue our relationships with our vendors and our customers, and we intend to maximize the value of this business."); *id.* at 25:7-13; *see also* Interim Order (I) Authorizing The Debtors To (A) Obtain Postpetition Financing, (B) Use Cash Collateral, And (C) Grant Liens And Provide Superpriority Administrative Expense Claims; (II) Granting Adequate Protection To Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling A Final Hearing; And (V) Granting Related Relief, Bankr. Dkt. No. 217.

⁸ Moore Decl. ¶¶ 32, 72 ("Following diligence performed by the Company's Advisors, the Debtors believe that an unpaid prepetition balance of approximately \$2.3 billion has accrued with respect to Third-Party Factoring

4. The Company's challenges do not stem from its product offerings or changes in consumer demand. Instead, external forces—tariffs in particular—constrained liquidity.⁹ Certain products were tariffed at rates as high as 73%, and tariffs led to landed inventory cost increases of approximately \$99 million between April and August 2025.¹⁰ But these challenges are temporary. The Company has the strength to withstand them, including particularly its products which have leading market-share positions in the U.S. in most categories.

B. The Debtors' Complaint Misdirects From Questionable "Financing" Transactions

5. Fact discovery has just started in the Adversary Proceeding, including third-party discovery of more than twenty (20) entities, including the Company's factors, off-balance-sheet lenders, and outside auditors. It is unclear what information will be unearthed. But even at this stage, with an evidentiary hearing having been held on the Debtors' application for a preliminary injunction and additional news reports and filings in the chapter 11 cases, facts are coming to light that do not square with the Debtors' narrative that only Mr. James should be scrutinized.

6. The preliminary injunction hearing on November 10, 2025 followed the supposed review of "millions of pages"¹¹ of documents, involved more than 60 trial exhibits, and included nearly six hours of testimony. Yet the Debtors did not directly link Mr. James to any allegedly

arrangements as of the Petition Date. The Debtors factoring practices are subject to the Special Committee's ongoing Investigation").

⁹ See Moore Decl. ¶ 12 ("Although the Company has implemented this acquisition strategy to great effect over the past fifteen years, in recent months geopolitical uncertainty and headwinds from newly imposed tariffs have pressurized global supply chains and layered additional complications to the Company's Operations At the same time, the Company faced mounting funded debt and lease obligations between May and August 2025, particularly with respect to its equipment and inventory lessor, Onset. These factors snowballed into a liquidity crisis"); Tr., Hr'g Ch. 11 First Day at 21:11-19 ("[DEBTORS' COUNSEL:] [H]ow did we get here? . . . We'll start off with the tariffs The tariffs have caused additional landing costs for good for the company, but also provided the company with an opportunity, given where some of its facilities were, to try to minimize the future exposure to tariffs, especially between the United States and Mexico, but that required capital and reinvestments.").

¹⁰ Moore Decl. ¶¶ 74-75.

¹¹ See Tr., Adv. Proc. Hr'g Nov. 10, 2025 at 32:18-20 ("[DEBTORS' COUNSEL:] And was the scope of the documents collected and under review millions of documents? [MR. MOORE] Yes.").

manipulated invoices or double-pledged collateral. Nor did they show he concealed facts.¹² It is implausible to suggest one individual is singularly responsible for what the Debtors claim is \$2.3 billion of irregular “factoring” and \$2.3 billion of off-balance-sheet financing. At the hearing, the Debtors also were forced to contend with the fact that Mr. James transferred (at least) tens of millions of dollars into First Brands.¹³ And as was discussed during that colloquy, payments to and from the Patrick James Trust appeared in the Company’s general ledger; an outside firm (BDO, after 2020) audited the Company’s financials.¹⁴

7. Critically, the Complaint does not account for the Debtors’ own evolving theories with respect to First Brand’s so-called Third-Party Factoring. The Debtors noted on the first day of the chapter 11 cases their concern about these arrangements and their Special Committee’s investigation into them.¹⁵ It is becoming clearer that substantively these financings were something different than standard third-party factoring. Typically, a factor purchases the company’s account receivable owing from a customer at a discount to face value and then removes the company from the relationship.¹⁶ Something different happened here. First Brands kept servicing the receivable; and the factors became lenders to First Brands, extending an unsecured

¹² See Tr., Adv. Proc. Hr’g Nov. 12, 2025 at 22:24-23:12 (“The Record shows that this does not appear to have been done alone if James is behind it. It doesn’t appear to have been done in the dark either, and doesn’t appear to be the work of one person. That’s not to let anyone off the hook here. This was all done while James was CEO.”); see also Tr., Adv. Proc. Hr’g Nov. 10, 2025 at 130:12-131:7 (email openly discussing “dummy” invoices); *id.* at 134:7-14 (no statement found where Mr. James directed double-pledging).

¹³ See Tr., Adv. Proc. Hr’g Nov. 12, 2025 at 21:16-19 (“Defendants’ counters that the same bank statements show that the James entities also transferred monies back to First Brands”); Tr., Adv. Proc. Hr’g Nov. 10, 2025 at 137:21-138:8 (Patrick James Trust deposits \$80 million between December 23 and December 27, 2024); *id.* at 139:12-17 (Patrick James Trust deposits at least \$34 million between July 15 and July 25, 2025).

¹⁴ See Tr., Adv. Proc. Hr’g Nov. 12, 2025 at 24:7-9 (“[I]t appears that many of these transfers were done with the knowledge of other First Brands parties as they appeared in the First Brands general ledger.”); Tr., Adv. Proc. Hr’g Nov. 10, 2025 at 152:22-25 (“[F]rom 2020 . . . through on or around December 31st, 2024, BDO provided an audit report for First Brands.”).

¹⁵ Moore Decl. ¶¶ 32, 72.

¹⁶ See Black’s Law Dictionary (12th ed. 2024) (defining “factoring” as “the buying of accounts receivable at a discount. The price is discounted because the factor (who buys them) assumes the risk of delay in collection and loss on the accounts receivable.”); *id.* (defining “factor’s lien” as “[a] lien, usu. statutory, on property held on consignment by a factor. It allows the factor to keep possession of the property until the account has been settled.”).

loan at high interest rates, *e.g.*, in the mid-teens.¹⁷ As recently as December 1, 2025, the Debtors announced that possibly \$150 million relating to certain supposed Third-Party Factoring was being retained by customers.¹⁸ What is more, certain factors' conduct may have invited the review of regulatory authorities.¹⁹

¹⁷ See, *e.g.*, Tr., Adv. Proc. Hr'g Nov. 10, 2025 at 147 (“[DEFENDANTS’ COUNSEL:] [T]hese are payments that were made to . . . Katsumi, . . . UBS . . . Jefferies -- These are lenders to First Brands and/or its affiliates[?] . . . [MR. MOORE:] These are not lenders. These are third-party factors . . . [DEFENDANTS’ COUNSEL:] But they’re creditors of the company. Correct? [MR. MOORE:] They shouldn’t be. In a normal factoring arrangement, they would have purchased the invoices from the company. [DEFENDANTS’ COUNSEL:] But they’re receiving funds from the company, according to this schedule. Correct? [MR. MOORE:] They’re supposed to be, yes But that’s one of the red flags”); Debtors’ Factoring Procedures Mot. ¶ 1, Bankr. Dkt. No. 807 (“Under the structure of the Factoring Facilities, even though the Company had technically sold the receivable to a Third-Party Factor, the Company continued to service the Factored Receivable (i.e., the Customer would remit the payment to the Company once the receivable became due and the Company would then transfer the amount owed to the Third-Party Factor related to that particular receivable.); .); Eric Platt et al., *First Brands Financier Says ‘A Lot of People Made a Lot of Money’ From Bankrupt Group*, Financial Times, Dec. 3, 2025, <https://www.ft.com/content/40e93423-b551-478c-ab0d-447a62dcfda5> (“First Brands often paid interest in the mid-teens percentage range, compared with the typical 5-8 per cent that might be charged on similar loans.”); Alexander Gladstone & Lauren Thomas, “How Jefferies Found Itself at the Center of the First Brands’ Collapse,” Wall Street Journal, Oct. 16, 2025, <https://www.wsj.com/finance/how-jefferies-found-itself-at-the-center-of-first-brands-collapse-290f0a74> (“Jefferies’ asset management arm, Leucadia, had become one of First Brands’ biggest financiers by purchasing First Brands’ accounts receivables, an arrangement known as factoring. Beginning in 2019, it had been buying the company’s expected payments from retailers First Brands made near-daily payments to Point Bonita [a Leucadia entity] for years, as customers paid invoices on the roughly \$715 million in accounts receivable that Point Pinta held.”).

¹⁸ See Debtors’ Factoring Procedures Mot. ¶ 4 (“[I]t has come to the Debtors’ attention that many of the Third-Party Factors sent prepetition notices to the Customer directing payment of their purchased receivables to accounts controlled by such Third-Party Factor, rather than to the Company-account that payments were historically made. This has created significant confusion among the Customers as to which receivables have been factored (and with which Third-Party Factor) and which receivables have not been factored, resulting in some Customers withholding all payments owed to the Debtors. A&M estimates a significant amount of money (approximately \$150 million) is being withheld from the Debtors by Customers on account of outstanding accounts receivable related to invoices that have no evidence of ever being factored.” (emphasis in original)); *id.* ¶ 22.

¹⁹ See, *e.g.*, Kaye Wiggins & Ortenca Aliaj, *SEC probes Jefferies over First Brands*, Financial Times, Nov. 27, 2025, <https://www.ft.com/content/86d90ce5-5800-4514-a757-f46a38aa521d> (“The US Securities and Exchange Commission is investigating investment bank Jefferies over its relationship with collapsed car parts company First Brands Group. The regulator is seeking information about whether Jefferies gave investors in its Point Bonita fund enough information about their exposure to the auto business It is also looking into internal controls and potential conflicts within and between different parts of the bank. . . . [A] specialist invoice-finance fund [Jefferies] manages, Point Bonita Capital, had about \$715 mm invested in ‘receivables’ — money owed under customer invoices — from retailers that bought First Brands products such as windshield wipers to sell to consumers. Jefferies has said the receivables were due from blue-chip companies including Walmart. Point Bonita documents did not list any exposure to First Brands as of June, but showed that the fund’s second and third largest exposures were to its customers, Walmart and auto parts retailer O’Reilly Bankruptcy filings have confirmed that invoice lenders that provided \$2.3bn of financing linked to receivables were all paid by First Brands rather than its customers The Financial Times also reported in October that Jefferies earned extra fees on financing it provided to First Brands through a ‘side letter’ with the company, which some lenders said was not disclosed to them and may have violated the terms of their loan. Jefferies has since confirmed the

8. Other than alleging in conclusory fashion that Mr. James’ “and his co-conspirators’ activities included” issuing “erroneous or fabricated invoices in connection with accounts receivable factoring activities” or that “upon information and belief” this happened at Mr. James’ direction, the Complaint does not connect Mr. James to the factoring.²⁰ Nor did evidence at the preliminary-injunction hearing connect Mr. James to supposedly manipulating invoices.²¹ The evidence did show that in some instances the invoices were not altered or were actually lower and that the factors themselves made changes to the schedules containing the allegedly changed invoices.²²

9. The Complaint lacks the same particularity concerning off-balance-sheet financing, stating opaquely that Mr. James’ activities “and those of his coconspirators” included “issues involving off-balance sheet financing arrangements”²³ It does not elaborate on what those “issues” are or connect Mr. James to the alleged double-pledging of collateral beyond saying it happened “under Mr. James’ leadership and direction . . . [and] is subject to ongoing investigation.”²⁴ Again, the evidence adduced at the preliminary-injunction hearing did not

existence of the arrangement. It stated that First Brands received a legal opinion confirming the fees did not breach its loan terms and that a document listing the letter was disclosed to all of the group’s lenders.”).

²⁰ Compl. ¶¶ 45, 55; *see, e.g., id.* ¶¶ 37, 47-55.

²¹ Tr., Adv. Proc. Hr’g Nov. 12, 2025 at 23:8-15 (“In James’ defense, there’s nothing I saw where he’s personally directing anyone to do anything. There are messages from parties indicating he is aware and messages between parties saying James wants funds transferred. I’m not sure what all that means yet. There’s nothing showing that James, himself, was manipulating invoices, but its clear First Brands was moving tens of millions of dollars through unaffiliated accounts”).

²² *See* Tr., Adv. Proc. Hr’g Nov. 10, 2025 at 61:14-20 (“[DEBTORS’ COUNSEL:] And so that’s an instance where the invoice number was not inflated Were there also some instances in the nomination packet sent to Katsumi or other third-party factors where there was no change reflected in the invoice value? [MR. MOORE:] Yes.”); *id.* at 62:7-12 (“[DEBTORS’ COUNSEL:] So we’ve now seen examples of invoices that were increased at significant proportions, and we’ve seen examples of invoices that were decreased, and we’ve seen at least one example where the invoice stayed the same. Despite that smattering of decreased invoices, unchanged invoices”); *id.* at 129:19-22 (“[DEBTORS’ COUNSEL:] And so the schedule that you testified about today was the schedule that [Katsumi representative] attached to her email. Correct? [MR. MOORE:] Yes.”); *id.* at 130:2-5 (“[DEFENDANTS’ COUNSEL:] So that’s Mr. Brumbergs’ file [from First Brand’s], but [Katsumi representative] created her own file, and that’s the one you testified to. Correct? [MR. MOORE:] She updated the file that he had sent for the specific areas that she mentioned.”).

²³ Compl. ¶ 45.

²⁴ Compl. ¶ 57.

connect Mr. James to any alleged double-pledging of collateral.²⁵ And these supposed lenders, Onset Financial Inc. in particular, charged onerous fees. Onset contends its claim totals \$1.9 billion, but incidentally has a guaranty from Viceroy that is inconsistent with its claim to be an equipment lender and more consistent with a commercial payday loan. Regardless, these off-balance-sheet lenders' predatory practices drilled the Company in the weeks leading up to the chapter-11 filing and the lenders themselves may face liability for chapter-5 transfers or improperly charging unconscionable fees and defaulting the Company.²⁶

10. Here, even a company as strong as First Brands could not absorb both extraordinary, intervening events, *e.g.*, tariffs, and usurious factor and off-balance-sheet lending practices. Indeed, the Company maintains a global supply chain with significant operations in Mexico, including thirty-six factories producing brake parts, spark plugs, and other products,²⁷ and factories and/or distribution centers in Canada, Argentina, Brazil, Germany, France, Romania, Italy, Belgium, Poland, China, Japan, Thailand, India, South Africa, and Australia.²⁸

11. Finally, it bears emphasizing what is now being said out loud in the market: these financiers earned significant amounts of money from their relationships with First Brands.

²⁵ See Tr., Adv. Proc. Hr'g Nov. 10, 2025 at 134:7-20 (“[DEBTORS’ COUNSEL:] Okay. But you don’t have a statement where he directed people -- you don’t have a statement made by him with respect to the double-pledging of assets. Isn’t that correct? You haven’t identified a single statement that he made in your testimony today, or in this affidavit, about the double-pledging of assets. Correct? [MR. MOORE:] Mr. James never said that he did, but he never said that he didn’t, either. [DEBTORS’ COUNSEL:] So the answer to my question is yes, sir. You have not identified a single statement made by Mr. James in connection with the allegations in paragraph 29 in your testimony today, or in the affidavit. Yes, or no? [MR. MOORE:] My response is he never made a statement either way, either denying it or affirming it.”). While the Complaint claims Mr. James received \$200 million from financing extended by Onset, it does not indicate the date, time, or transferor with respect to those amounts. See Compl. ¶ 75.

²⁶ See, *e.g.*, Moore Decl. ¶ 15 (“[U]pcoming maturity events, pressure from counterparties, and unrelenting systemic factors catalyzed a mounting liquidity crisis. Operational pressures rose as counterparties alleged that the Company was in default on certain financial obligations, threatened to exercise remedies, and/or demanded unconscionable late fees This onslaught of factors gave the Company little time to design, evaluate, and execute a complex restructuring solution.”).

²⁷ Moore Decl. ¶ 29.

²⁸ Moore Decl. ¶ 21.

Raistone, who was supposedly so disgruntled with First Brands that it was the first party to seek the appointment of an examiner,²⁹ openly admitted during a conference in New York earlier this month that “*a lot of people made a lot of money over many, many, years on First Brands So they’re not all sad. They’re not all kicking themselves.*”³⁰ Having made all that money off the Company’s back, the lenders seem content to have all the focus on Mr. James, be it from the Debtors or a Court-appointed examiner.

12. These observations show the Complaint’s allegations were made on an ever-evolving record. Regardless, the Complaint fails to state claims upon which relief can be granted and at the very least calls out for more definite allegations.

13. On September 24, 2025, certain SPV Debtors filed chapter 11 petitions and on September 28, 2025, the Debtors commenced the above-captioned chapter 11 cases in this Court. Voluntary Pet. For Non-Individuals Filing For Bankruptcy, Bankr. Dkt. No. 1.

14. On November 3, 2025, the Debtors initiated this adversary proceeding by filing the Complaint and an ex parte application seeking, among other things, a temporary restraining order and preliminary injunction “freezing the assets of Patrick James and any and all companies he owns and controls in connection with the misappropriation and potential dissipation of funds belonging to the Debtors’ estates.” Debtors’ Emergency *Ex Parte* Appl. for Prelim. Inj. Relief, Including an Emergency Mot. for a Temporary Restraining Order (“TRO”), Prelim. Inj., and

²⁹ See Emergency Mot. of Raistone Parties For Appointment of Examiner Pursuant To Section 1104(c) Of Bankruptcy Code, filed by Raistone Capital LLC and Raistone Purchasing LLC—Series XXXII (collectively, “**Raistone**”), Bankr. Dkt. No. 307.

³⁰ See Eric Platt et al., *First Brands Financier Says ‘A Lot of People Made a Lot of Money’ From Bankrupt Group*, Financial Times, Dec. 3, 2025, <https://www.ft.com/content/40e93423-b551-478c-ab0d-447a62dcfda5> (“One of the largest middle men in the First Brands’ financings has said that ‘a lot of people made a lot of money’ lending to the bankrupt car parts maker, as they chased the high yields that it paid on its debt. The comments came from Raistone chief executive David Skirzenski on Wednesday at a conference for investors in trade and supply chain finance ‘Frankly a lot of people made a lot of money over many, many, years on First Brands,’ Skirzenski said at the Global Trade Review annual conference in New York. ‘So they’re not all sad. They’re not all kicking themselves.’”).

Request for Hr’g 5, Adv. Dkt. No. 18. The Court issued the TRO the same day. Order Granting TRO, Adv. Dkt. No. 14.

15. On November 10, 2023, the Court held a hearing on the Debtors’ request for a preliminary injunction. *See generally* Tr., Adv. Proc. Hr’g Nov. 10, 2025.

16. On November 12, 2025, the Court denied the preliminary injunction. *See* Tr., Adv. Proc. Hr’g Nov. 12, 2025, at 27:14–24, 31:1–3. In its transcript ruling, the Court found that there was no evidence of likelihood of success on the merits for Albion Realty LLC; Alester Technologies LLC; Bond Street Asset Management LLC; Ignite Acquisition Holdings LLC; Larmont LLC; or Pegasus Aviation, LLC for any claim. *Id.* at 24:3-5. The Court also found that there was no substantial threat of irreparable injury, *id.* at 27:14-24, and the balance of harms and public policy weighed in Defendants’ favor, *id.* at 29:1-5, 30:3-7.

SUMMARY OF LEGAL ARGUMENT

17. The eight (8)-count³¹ Complaint sounds in fraud without satisfying Federal Rule of Civil Procedure 9(b)’s stringent standards. The counts suffer from a lack of particularity, impermissible group pleading, and imprecision on critical elements, reducing the Debtors to rely on “upon-information-and-belief” caveats throughout the Complaint.³²

18. Nor are Mr. James’ or the Related Entities’ supposed contributions to fraudulent activity put forth on a defendant-by-defendant basis, *i.e.*, the “who, what, when, where, and why

³¹ The Counts are: Count 1: Turnover Of Estate Property Pursuant to 11 U.S.C. § 542; Count 2: Actual Fraudulent Transfer Pursuant to 11 U.S.C. §§ 548(a)(1)(A), 544(b), Ohio Rev. Code Ann. §§ 1336.04(A)(1), 6 Del. Code § 1304(a)(1); Count 3: Constructive Fraudulent Transfer Pursuant to 11 U.S.C. §§ 548(a)(1)(B), 544(b), Ohio Rev. Code Ann. §§ 1336.04(A)(2), 6 Del. Code § 1304(a)(2); Count 4: Money Had and Received; Count 5: Unjust Enrichment; Count 6: Constructive Trust; Count 7: Accounting; and Count 8: Illegal Dividend Pursuant to 8 Del.C. § 160 and 8 Del.C. § 174. *See* Compl. at 25-31.

³² *See* Compl. ¶¶ 10, 11, 15 (“currently” believe), 17, 26, 27, 34(b), 34(c), 34(d), 34(e), 34(f), 34(g), 34(h), 34(i), 55, 58, 59, 60 (three times), 64, 65, 68, 70, 71, 77, 78, 79, 82, 83, 84, 86, 87, 89, 100, 101, 114.

as to the fraudulent conduct,” as they must be.³³ Other than collective references to defrauding lenders,³⁴ the Complaint does not identify statements that Mr. James or any of the Related Entities made; indicate to whom Mr. James or the Related Entities made them; explain how the statement was false or how its recipient relied on the statement to its detriment; or list the date(s) when this supposedly occurred.³⁵ The Related Entities are referenced substantively in two paragraphs as “upon information and belief” having received funds.³⁶ Nothing more is said about them.

19. The Complaint does not satisfy even notice-pleading standards. The counts do not list the challenged transfers; the date they were made; the entity whose property was transferred; how or why the transfers were made for less than reasonably equivalent value or with the intent to hinder, delay, and defraud creditors; and whether the transferring debtor-entity was insolvent at the time. This shortcoming is dispositive—it precludes all eight (8) Counts. If the payments are not listed, then no determination can be made with respect to solvency or value—both of

³³ *In re Northstar Offshore Grp., LLC*, 616 B.R. 695, 733 (Bankr. S.D. Tex. 2020) (“Rule 9 applies whenever fraud is an essential part of the claim. In an actual fraudulent transfer case, fraud is an essential element . . . the Trustee must plead the who, what, when, where, and why as to the fraudulent conduct . . . General allegations, which lump all defendants together failing to segregate the alleged wrongdoing of one from those of another do not meet the requirements of Rule 9(b).”) (internal citations and quotations omitted).

³⁴ See Compl. ¶¶ 1, 3, 4, 11, 34(a), 62.

³⁵ See *In re RSL Com Primecall, Inc.*, 2003 WL 22989669, at *7 (Bankr. S.D.N.Y. Dec. 11, 2003) (dismissing fraud claims because of insufficient allegations concerning multiple defendants: “simply stating that [one defendant] was ‘insolvent from inception’ and that Defendants—all eighteen of them—are somehow culpable does not comport with the requirements of Rule 9(b).”); *Mascaro Aviation, LLC v. Diamond Aircraft Indus., Inc.*, 2011 WL 856805, at *10 (S.D. Fla. Mar. 8, 2011) (Where there are multiple claimants, Rule 9(b) require[s] that each Plaintiff must support its fraud claims on a showing of individualized facts and proofs” and dismissing the plaintiffs’ complaint because plaintiffs “failed to separate their unique transactions into different claims.”); *In re Shipley Garcia Enters., LLC*, 2014 WL 1329252, at *4 (Bankr. S.D. Tex. Mar. 28, 2014) (Rule 9(b) requires facts as to “each individual defendant” rather than “lumping the defendants together.” (internal quotations and citations omitted)); *In re Franklin Bank Corp. Sec. Litig.*, 782 F. Supp. 2d 364, 382 (S.D. Tex. 2011) (“[G]eneral allegations, which lump all defendants together failing to segregate the alleged wrongdoing of one from those of another, do not meet the requirements of Rule 9(b).”), *aff’d sub nom. Harold Roucher Trust U/A DTD 9/21/72 v. Nocella*, 464 F. App’x 334 (5th Cir. 2012).

³⁶ Compl. ¶¶ 84-85.

which are examined on the date of the transfer³⁷—and funds cannot be “turned over,” “accounted for,” or “traced.”

20. Scant as they are, though, the allegations of wrongdoing do present a significant obstacle—for the Debtors. The Debtors cannot surmount *in pari delicto* given the Company’s alleged involvement.³⁸

21. Additionally, the Complaint does not account for the Company’s structure and, in particular First Brands Group Holdings, LLC’s status as a Delaware limited liability company owned by Mr. James.³⁹ Delaware law purposely affords First Brands Group Holdings LLC freedom to craft the members’ rights and obligations as it deems fit.⁴⁰ And those members can rely on professionals to protect their decisions from rebuke.⁴¹ What is more, pass-through entities

³⁷ See *In re Louisiana Pellets, Inc.*, 838 F. App’x 45, 50 (5th Cir. 2020) (“Because value is determined at the time of transfer, neither subsequent depreciation in nor appreciation in value of the consideration affects the question of whether reasonably equivalent value as given” (internal quotations and citations omitted)).

³⁸ See *Rogers v. McDorman*, 521 F.3d 381, 387 (5th Cir. 2008) (under the defense of *in pari delicto*, “a plaintiff’s recovery may be barred by his own wrongful conduct”); *Matter of Royale Airlines, Inc.*, 98 F.3d 852, 855 (5th Cir. 1996) (same).

³⁹ See Tr., Adv. Proc. Hr’g Nov. 10, 2025 at 24:20-25:3 (“[DEBTORS’ COUNSEL:] You testified that First Brands organization includes over 100 entities. We just saw that on Exhibit 51, the web of entities. Can you tell the Court the ownership structure of those 100-plus entities? [MR. MOORE:] They eventually roll up to ownership by Mr. Patrick James. [DEBTORS’ COUNSEL:] So is Mr. James the sole owner of each and one of those entities? [MR. MOORE:] That’s my understanding”).

⁴⁰ The Delaware Limited Liability Company Act reflects the legislature’s intent that limited liability companies are creatures of contract under which parties can agree to exculpate fiduciary obligations in a way not available with respect to Delaware corporations. See 6 Del. Code § 18-1101(b) (“It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.”); 6 Del. Code § 18-1101(e) (“A limited liability company agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a member, manager or other person to a limited liability company.”); *DG BF, LLC v. Ray*, 2021 WL 776742, at *10 (Del. Ch. Mar. 1, 2021) (“[W]hile somewhat analogous to 8 Del. Code § 102(b)(7), which authorizes a corporation to adopt provisions limiting liability for a director’s breach of the duty of care, section 18-1101(e) goes further by allowing broad exculpation of all liabilities for breach of fiduciary duties—including the duty of loyalty.” (internal quotations and citations omitted)); *CML V, LLC v. Bax*, 6 A.3d 238, 250 (Del. Ch. 2010) (“[T]he conceptual underpinnings of the corporation law and Delaware’s alternative entity law are different.” (citation omitted)); *In re Bayou Steel BD Holdings, LLC*, 642 B.R. 371, 401 (Bankr. D. Del. 2022) (noting that the Delaware Limited Liability Company Act “is broad, allowing exculpation of all liabilities for breach of fiduciary duty, including fiduciary duty of loyalty”).

⁴¹ See 8 Del. Code § 141(e) (Under Delaware law, these directors are “fully protected in relying in good faith upon . . . opinions . . . presented . . . by any other person as to matters the member reasonably believes are within such other person’s professional or expert competence and who has been selected with reasonable care . . .”).

like Delaware LLCs commonly reimburse their members for tax payments⁴² and can otherwise distribute dividends when they are solvent.⁴³ To the extent the Debtors take issue with distributions from First Brands Holdings LLC to Mr. James for tax reimbursements, they face significant obstacles.⁴⁴ And even if Mr. James was party to a “conflicted” transaction, every conflicted transaction is not presumptively illegal. “[I]t is important to recognize that ‘an interest conflict’ is not a crime or tort necessarily injurious to others [H]aving a ‘conflict of interest’ is not something one is ‘guilty of.’” *In re Match Grp., Inc. Derivative Lit.*, 315 A.3d 446, 461 (Del. 2024). In any event, each individual Count suffers from its own infirmities.

- **Count 1: Turnover.** Section 542 of the Bankruptcy Code does not provide for entry of a money judgment. It further requires specifically identified property, title to which is not in dispute.⁴⁵ The Complaint alleges neither.
- **Count 2: Actual Fraudulent Transfer.** The Complaint does not properly plead an actual intent to hinder, delay, or defraud creditors because it contains no specific facts for each of Mr. James and the respective Related Entities.⁴⁶ The intent of the *transferor* is the legally relevant one—not that of the initial or subsequent transferee.⁴⁷ By opting

⁴² *Cf. In re F-Squared Inv. Mgmt., LLC*, 633 B.R. 663, 671 (Bankr. D. Del. 2021) (gathering cases “where the respective courts found reasonably equivalent value for tax distributions because the debtor elected into a pass-through tax status”).

⁴³ The Delaware Limited Liability Act provides that an LLC may not make a distribution to any member if, after giving effect to the distribution, all liabilities of the LLC exceed the fair market value of its assets. 6 Del. Code § 18-607(a).

⁴⁴ *See* Tr., Adv. Proc. Hr’g Nov. 10, 2025 at 90:2-91:8 (as much as \$339 million in First Brands general ledger marked as tax distributions). In 2024, the Company had revenues as high as \$5 billion. Moore Decl. ¶ 11.

⁴⁵ *See In re ATP Oil & Gas Corp.*, 2015 WL 1093568, at *3 (Bankr. S.D. Tex. Mar. 10, 2015) (“Section 542 is inapplicable when there is a title dispute between parties.”); *Matter of Alofs Mfg. Co.*, 209 B.R. 83, 97 (Bankr. W.D. Mich. 1997) (until title passes to debtors, property is not part of the Debtors’ estate).

⁴⁶ *See In re Juliet Homes*, 2010 WL 5256806, at *19 (Bankr. S.D. Tex. Dec. 16, 2010) (applying Rule 9(b)’s heightened pleading standards to actual fraudulent transfer claims); *In re Northstar*, 616 B.R. at 732 (under Rule 9(b), “the plaintiff must plead the who, what, when, where, and why as to the fraudulent conduct”) (citation omitted); *see also Cosmas v. Hassett*, 886 F.2d 8, 11 (2d Cir. 1989) (“[A] complaint must adequately specify the statements it claims were false or misleading, give particulars as to the respect in which plaintiff contends the statements were fraudulent, state when and where the statements were made, and identify those responsible for the statements.”).

⁴⁷ *SEC v. Res. Dev. Int’l, LLC*, 487 F.3d 295, 301 (5th Cir. 2007) (TUFTA requires a finding of fraudulent intent on the part of the “debtor”; the transferee’s participation is irrelevant); *In re Andrew Velez Constr., Inc.*, 373 B.R. 262, 269 (Bankr. S.D.N.Y. 2007) (transferee’s intent irrelevant; dismissing claim because “the Complaint has no allegations whatsoever of the Debtor’s own intent to hinder, delay, or defraud its creditors”); *Jackson v. Mishkin (In re Adler Coleman Clearing Corp.)*, 263 B.R. 406, 444 (S.D.N.Y. 2001) (“The only inquiry concerning actual intent that matters is that of the debtor”).

to lump these individuals and entities together, the Complaint never states with the necessary precision whose intent controlled or what that intent was.

- **Count 3: Constructive Fraudulent Transfer; Count 8: Illegal Dividend.** Insolvency and lack of reasonably equivalent value have not been pled on a transfer-by-transfer, debtor-by-debtor, defendant-by-defendant basis.⁴⁸ Indeed, insolvency is only pled in a conclusory fashion, without any supporting factual allegations at all. Even assuming such allegations had been made (and they have not), it is not plausible that any transferring entity within the Company was insolvent years ago but continued operating until 2025.⁴⁹
- **Count 4: Money Had And Received; Count 6: Constructive Trust; Count 7: Accounting.** Each of these claims suffers from the same problem beleaguering the avoidance counts. The Debtors do not identify and trace the funds at issue with sufficient precision.⁵⁰

⁴⁸ See *In re Lyondell Chem. Co.*, 567 B.R. 55, 104-05, 107 (Bankr. S.D.N.Y. 2017) (finding testimony “regarding [debtor’s] insolvency on a consolidated basis” to be “seriously flawed;” observing “Maxwell’s testimony regarding LBI’s insolvency is simply not reliable. Notably, the Trustee chose not to present specific evidence of Lyondell’s stand-alone insolvency at trial”); *In re ATP Oil*, 711 F. App’x 216, 223 (5th Cir. 2017) (insolvency not pled by “conclusory assertions about [] financial condition and subjective determinations regarding the amount of available capital”); *In re M. Fabrikant & Sons, Inc.*, 394 B.R. 721, 733 (Bankr. S.D.N.Y. 2008) (plaintiff must “specify the property that was allegedly conveyed, the timing and frequency of those allegedly fraudulent conveyances, and the consideration paid” (citation omitted)); *Fed. Nat’l Mortg. Ass’n v. Olympia Mortg. Corp.*, 2006 WL 2802092, at *9 (E.D.N.Y. Sept. 28, 2006) (dismissing fraudulent transfer claims that lumped a series of cash transfers made over a three to five year period and failed to identify how many transfers were being challenged or specific dates or amounts of those transfers).

⁴⁹ See *In re Extended Stay, Inc.*, 2020 WL 10762310, at *97 (Bankr. S.D.N.Y. Aug. 8, 2020) (“[F]act[s] necessary to establish liability” when alleging an Illegal Dividend claim include “the dates, amounts and recipients of [the] dividends and distributions” and by whom they were “authorized.”); *ATP Oil*, 711 F. App’x at 223 (finding the “conclusory allegations about . . . financial condition and subjective determinations regarding the amount of available capital” do not state a claim); *In re Northstar*, 616 B.R. at 738 (connection between the two transactions was “far too tenuous;” declining to “leap from 2012 to 2014”); *Oliver v. Cooper (In re Bateman)*, 2012 WL 3061181, at *4 n.1 (Bankr. E.D.N.C. July 26, 2012) (“The Amended Complaint fails on its face . . . under the Twombly and Iqbal pleading standards The petition date was over a year and a half after the transfer date. As such, the Amended Complaint fails to reasonably allege the value of the Property at the time of the transfer.”); *Wallach v. Rothstein (In re Nanodynamics, Inc.)*, 474 B.R. 422, 427-28, 427 n.5 (Bankr. W.D.N.Y. 2012) (rejecting plausibility of allegations of insolvency 1-2 years before petition date; noting “Twombly and Iqbal call upon a court to use its ‘experience.’”). Cf. *MFS/Sun Life Trust-High Yield Series v. Van Dusen Airport Servs. Co.*, 910 F. Supp. 913, 944 (S.D.N.Y. 1995) (“That the company remained viable so long after the LBO strongly suggests that its ultimate failure cannot be attributed to inadequacy of capital as of the date of the buyout.”); *Credit Managers Assoc. of S. Cal. v. Fed. Co.*, 629 F. Supp. 175, 186-87 (C.D. Cal. 1986) (refusing to find unreasonably small capital when debtor “pa[id] its creditors and its debt service” for twelve months after transaction).

⁵⁰ See, e.g., *LRC Realty, Inc. v. B.E.B. Props.*, 166 N.E.3d 37, 41 (Ohio Ct. App. 2020) (money had and received requires showing defendant “acted to withhold money that in justice and equity belonged to another”); *Estate of Cowling v. Estate of Cowling*, 847 N.E.2d 405, 412 (Ohio 2006) (“[B]efore a constructive trust can be imposed, there must be adequate tracing from the time of the wrongful deprivation of the relevant assets to the specific property over which the constructive trust should be placed.”); *Phillippi v. Jim Phillippi, Inc.*, 2009 WL 1911763, at *3 (S.D. Ohio June 26, 2009) (“A bare allegation that the plaintiff is entitled to an accounting without any legal basis is insufficient to state a claim.”).

- **Count 5: Unjust Enrichment.** The Debtors do not identify the specific payments they intend to argue unjustly enriched Mr. James and the Related Entities.

22. To summarize:

COUNTS	ALTERNATIVE BASES FOR DISMISSAL
Count 1: Turnover Of Estate Property Pursuant to 11 U.S.C. § 542	<ul style="list-style-type: none"> • § 542(a) does not provide for entry of a money judgment • Specific property not identified • Property needs to be identified on debtor-by-debtor basis • Title to property is disputed
Count 2: Actual Fraudulent Transfer Pursuant to 11 U.S.C. §§ 548(a)(1)(A), 544(b), Ohio Rev. Code Ann. §§ 1336.04(A)(1), 6 Del. Code § 1304(a)(1)	<ul style="list-style-type: none"> • Fed. R. Civ. P. 8 not satisfied, e.g., no listing of transfers by day, date, amount, transferor, transferee • Fed. R. Civ. P. 9(b) not satisfied • Intent of transferor not identified • Transfers fall outside the applicable lookback periods
Count 3: Constructive Fraudulent Transfer Pursuant to 11 U.S.C. §§ 548(a)(1)(B), 544(b), Ohio Rev. Code Ann. §§ 1336.04(A)(2), 6 Del. Code § 1304(a)(2)	<ul style="list-style-type: none"> • Fed. R. Civ. P. 8 not satisfied, e.g., no listing of transfers by day, date, amount, transferor, transferee • Insolvency not properly pled • Lack of reasonably equivalent value not properly pled • Transfers fall outside the applicable lookback period
Count 4: Money Had and Received	<ul style="list-style-type: none"> • Not a stand-alone cause of action • Barred by statute of limitations • Fed. R. Civ. P. 8 not satisfied, e.g., no listing of transfers by day, date, amount, transferor, transferee
Count 5: Unjust Enrichment	<ul style="list-style-type: none"> • Barred by statute of limitations • Fed. R. Civ. P. 8 not satisfied, e.g., no listing of transfers by day, date, amount, transferor, transferee
Count 6: Constructive Trust	<ul style="list-style-type: none"> • Not a stand-alone cause of action • Barred by statute of limitations • Fed. R. Civ. P. 8 not satisfied, e.g., no listing of transfers by day, date, amount, transferor, transferee • Fed. R. Civ. P. 9(b) not satisfied • No identifiable res • Tracing not alleged sufficiently
Count 7: Accounting	<ul style="list-style-type: none"> • Not a stand-alone cause of action • Fed. R. Civ. P. 8 not satisfied, e.g., no listing of transfers by day, date, amount, transferor, transferee • Fed. R. Civ. P. 9(b) not satisfied

COUNTS	ALTERNATIVE BASES FOR DISMISSAL
Count 8: Illegal Dividend Pursuant to 8 Del. Code § 160 [sic] and 8 Del. Code § 174	<ul style="list-style-type: none"> Fed. R. Civ. P. 8 not satisfied, e.g., no listing of transfers by day, date, amount, transferor, transferee Insolvency/lack of surplus not properly pled

23. For these and other reasons discussed below, the Complaint should be dismissed in its entirety.

ARGUMENT

24. The Complaint should be dismissed in its entirety for failure to plead a plausible claim for relief under Federal Rule of Civil Procedure (“Rule”) 8 and for failing to plead its claims of actual fraudulent transfer with the particularity required under Rule 9(b). To survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). A court “will accept as true the well-pleaded factual allegations of the . . . complaint and any reasonable inferences to be drawn.” *Tuchman v. DSC Commc’ns Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994). “Although a district court must assume the veracity of well-pleaded facts, a complaint that ‘fail[s] to show more than mere conclusory allegations’ is properly met with dismissal for failure to state a claim.” *Smith ex rel. Smith v. Dep’t of Health & Hosps. Louisiana*, 581 F. App’x 319, 321 (5th Cir. 2014) (citation omitted). Likewise, a complaint with only “[g]eneral allegations lumping all defendants together and failing to identify specific actions of individual defendants” constitutes impermissible group pleading and does not satisfy the Rule 8 standard. *Callier v. Nat’l United Grp., LLC*, 2021 WL 5393829, at *4 (W.D. Tex. Nov. 17, 2021) (“A pleading must provide specific factual allegations of violations against specific defendants to suffice.”); *see also 7 Santini Bros. Trucking Inc. v. City Ocean Int’l Inc.*, 2024 WL 2836274, at *2 (S.D. Tex. June 4, 2024) (dismissing complaint as impermissible

shotgun pleading where the complaint “failed to differentiate between [the defendants] in critical respects” such that it failed to allege essential elements of the causes of action); *Burkette v. Travis*, 2024 WL 1253920, at *5 (M.D. La. Feb. 23, 2024), *report and recommendation adopted sub nom. Burkette v. E. Feliciana Par. Sheriff*, 2024 WL 1253594 (M.D. La. Mar. 22, 2024) (dismissing complaint where it “fail[ed] to delineate which of [p]laintiff’s alleged facts support each of his claims for relief, so that as to some claims, it is unclear which claim is being asserted against which defendant”).

25. Fraud claims, including claims for actual fraudulent transfer, must satisfy Rule 9(b)’s heightened pleading standard, requiring “a party [to] state with particularity the circumstances constituting fraud.” Fed. R. Civ. P. 9(b). “To plead fraud adequately, the plaintiff must ‘specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent.’” *Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 551 (5th Cir. 2010) (citation omitted).

26. To the extent the Complaint is not dismissed, the Debtors should be required to articulate a more definitive statement of their claims under Federal Rule of Civil Procedure 12(e). That Rule provides that “[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e). Courts are “given considerable discretion” in deciding a motion under Rule 12(e). *In re Briar Bldg. Houston LLC*, 2021 WL 2460979, at *11 (Bankr. S.D. Tex. June 16, 2021) (granting Rule 12(e) motion where movant was “not on proper notice to respond” because the pleading was “so vague and ambiguous”).

27. The Debtors have not provided basic notice of the transactions they want to avoid. The Complaint is so bereft of baseline facts supporting the claims that Mr. James and the Related

Entities are incapable of fully defending against those claims. The Complaint should be dismissed or, in the alternative, the Debtors should be ordered to provide a more definitive statement under Federal Rule of Civil Procedure 12(e).

I. The Complaint Should Be Dismissed For Failure To State A Plausible Claim For Relief.

A. The Equitable Claims Are Barred By the Doctrine of *In Pari Delicto*.

28. The Debtors' equitable claims—unjust enrichment, money had and received, accounting, and constructive trust—must be dismissed because the Complaint's allegations, accepted as true for purposes of the Rule 12 motion, mean the Debtors themselves actively participated in the allegedly unlawful conduct. The doctrine of *in pari delicto* bars a plaintiff from "recovering damages resulting from [its] own wrongdoing." *In re Nat'l Century Fin. Enters., Inc., Inv. Litig.*, 604 F. Supp. 2d 1128, 1141 (S.D. Ohio 2009) (citing *Pinter v. Dahl*, 486 U.S. 622, 632 (1988)). "The defense is used to prevent one wrongdoer from recovering from the other because each should bear the consequences of his own actions without recourse against the other." *In re Motorwerks, Inc.*, 371 B.R. 281, 291 n.6 (Bankr. S.D. Ohio 2007). The *in pari delicto* defense is appropriate for resolution on a motion to dismiss where the complaint establishes conclusively that the defense applies. *See In re Dublin Sec., Inc.*, 133 F.3d 377, 380-81 (6th Cir. 1997).

29. Here, the Complaint itself contends that the Debtors actively participated in the very conduct that they allege was unlawful, barring any recovery on their equitable claims. *See, e.g.*, Compl. ¶¶ 8, 9, 53-55, 59-60, 72-74. The Complaint asserts that the Debtors and their employees falsified records and submitted doctored invoices to be sold to the Company's factoring counterparties, allegedly enabling the Debtors to obtain millions of dollars in financing from such parties. Compl. ¶¶ 53-55. The Debtors are also alleged to have factored certain

receivables multiple times and double pledged inventory to serve as collateral under multiple of the Debtors' financing facilities in order to obtain favorable terms under such facilities. Compl. ¶¶ 52-53, 59. The Complaint further alleges that the Debtors and their employees actively participated in the allegedly fraudulent transfers and transactions forming the basis for the Debtors' alleged claims against Defendants. *See, e.g.*, Compl. ¶ 8 (alleging that First Brands transferred the money to Mr. James or his affiliated entities); *id.* ¶ 53 ("it appears that in certain instances the Debtors sold erroneous or fabricated invoices to the third-party factors"); *id.* ¶ 54 (alleging a fabricated invoice where a Debtor sold a package of invoices to a factoring company for approximately \$11.18 million but the actual value was approximately \$2.3 million); *id.* ¶60 ("[Evolution] lent approximately \$240 million to a SPV Debtor, against what First Brands represented was \$370 million of First Brands' inventory on the SPVs balance sheet. First Brands, however, kept that inventory for itself, without paying the SPV, and by the end of September 2025, few if any assets remained in the SPV."); *id.* ¶ 72 (Debtor "Carnaby FA . . . paid Defendant Patrick James Trust approximately \$17 million."); *id.* ¶ 73 (Debtor "Carnaby IV paid \$25 million into an account belonging to Defendant Patrick James Trust."); *id.* ¶ 74 ("On March 13, [Debtor] Carnaby IV transferred an additional \$35 million to Patrick James Trust."); *see In re Dublin Sec., Inc.*, 133 F.3d at 381 (affirming dismissal of complaint upon finding that "[plaintiff] admit[ted] in his complaint that the debtors' own actions were instrumental in perpetrating the fraud on the individuals choosing to invest in the Dublin Securities schemes").

30. Indeed, other than conclusory and unsupported assertions that the Debtors' conduct was undertaken at Mr. James' direction (which assertions Mr. James disputes), there are no allegations that Defendants (as opposed to the Debtors) took any of the actions underlying the purportedly wrongful conduct. *See* Compl. ¶¶ 52, 55, 57, 83, 104, 134. Under these

circumstances, the *in pari delicto* defense plainly applies based on the allegations in the Complaint, mandating dismissal of the Debtor’s equitable claims for unjust enrichment, money had and received, accounting, and constructive trust. *See In re Dublin Sec., Inc.*, 133 F.3d at 380-81 (affirming dismissal of claims where the *in pari delicto* defense clearly applied on the face of the pleading); *see also In re Am. Int’l Grp., Inc., Consol. Derivative Litig.*, 976 A.2d 872, 895 (Del. Ch. 2009), *aff’d sub nom. Teachers’ Ret. Sys. of Louisiana v. Gen. Re Corp.*, 11 A.3d 228 (Del. 2010) (granting motion to dismiss on grounds of *in pari delicto*); *Nisselson v. Lernout*, 469 F.3d 143, 158 (1st Cir. 2006) (affirming district court’s grant of a motion to dismiss based on *in pari delicto* where “uncontroverted facts sufficient to establish the *in pari delicto* defense [we]re definitively ascertainable from the amended complaint and other allowable sources of information”).

B. Numerous Claims Are Outside the Lookback Period or Barred By the Statute of Limitations.⁵¹

31. Significant portions of the Debtors’ claims for fraudulent transfer and equitable relief must also be dismissed because they fall outside statutory lookback periods or are otherwise barred by the statute of limitations.

32. The Debtors’ fraudulent transfer claims under the Bankruptcy Code are subject to a two-year lookback period, *see* 11 U.S.C. §§ 548(a)(1)(A) & (B), and the analogous claims under Delaware and Ohio law are subject to a four-year lookback period, *see* Ohio Rev. Code Ann. § 1336.04(A)(1), 6 Del. Code §§ 1304(a)(1), 1309(1); Ohio Rev. Code Ann. § 1336.04(A)(2), 6 Del. Code §§ 1304(a)(2), 1309(2). Accordingly, the lookback period extends to September 28,

⁵¹ The Complaint’s failure to clear the Rule 8 threshold is laid bare by Defendants’ inability to definitively articulate the applicable state law to certain claims asserted by the Trustee, as more facts regarding the specific transaction(s) at issue—including the specific entities involved—are required in order to ascertain which state’s law should apply. Defendants reserve all rights to address any new allegations or arguments on this issue in reply briefing.

2023 for the claims under the Bankruptcy Code and to September 28, 2021 for the claims under state law.

33. Notwithstanding these clear time limitations on the transfers subject to avoidance, the Complaint improperly seeks to assert claims relating to purported fraudulent transfers dating back to at least 2018. Compl ¶¶ 8-9, 60, 63, 70, 80, 82, 85-86 (alleging transfers before September 28, 2023); *id.* ¶¶ 8, 63, 70, 80, 82, 85-86 (alleging transfers before September 28, 2021). This is improper. The Debtors' fraudulent transfers claims should be dismissed to the extent they seek recovery of funds transferred outside the relevant lookback periods. *See Matter of Life Partners Holdings, Inc.*, 926 F.3d 103, 119 (5th Cir. 2019) (affirming dismissal of fraudulent transfer claims on motion to dismiss where transfers occurred outside the lookback period); *In re Bolon*, 538 B.R. 391, 404 (Bankr. S.D. Ohio 2015) (dismissing fraudulent transfer claim brought under 11 U.S.C. § 548(a) on a motion to dismiss because the transfer occurred outside the lookback period).

34. Similarly, the statutes of limitations for claims of money had and received and unjust enrichment are three years in Delaware and six years in Ohio. *See Alban Tractor Co. v. Land Preparation Specialists, Inc.*, 2001 WL 914008, at *2 (Del. Super. Ct. July 30, 2001); *Stone & Paper Invs., LLC v. Blanch*, 2021 WL 3240373, at *33 (Del. Ch. July 30, 2021), *aff'd*, 312 A.3d 1155 (Del. 2024) ("Delaware law sets a three[-]year statute of limitations for claims for unjust enrichment." (quoting *Vichi v. Koninklijke Philips Elecs. N.V.*, 2009 WL 4345724, at *15 (Del. Ch. Dec. 1, 2009) (alteration in original))); *Drozeck v. Laws. Title Ins. Corp.*, 749 N.E.2d 775, 780 (Ohio Ct. App. 2000) (affirming dismissal of money had and received and unjust

enrichment claims as barred by the six-year statute of limitations in Ohio).⁵² Likewise, to the extent “the cause of action in which imposition of a constructive trust is sought as a remedy is barred by a statute of limitation, the imposition of a constructive trust is likewise barred.” *Cundall v. U.S. Bank*, 909 N.E.2d 1244, 1252 (Ohio 2009).

35. As such, to the extent the Debtors’ claims of money had and received, unjust enrichment, and constructive trust are based on purported transfers before November 3, 2019 or November 3, 2022, *see, e.g.*, Compl ¶¶ 8, 63, 70, 80, 82, 85-86 (alleging transfers before November 3, 2019); *id.* ¶¶ 8-9, 63, 70, 80, 82, 85-86 (alleging transfers before September 28, 2022), they should be dismissed under Ohio law and Delaware law, respectively. *See Drozeck*, 749 N.E.2d at 780 (affirming dismissal of complaint because “the complaint on its face [wa]s statutorily barred”); *Danziger & De Llano, LLP v. Morgan Verkamp, LLC*, 2023 WL 3606699, at *8 (Ohio Ct. App. May 24, 2023 (affirming dismissal on motion to dismiss “[b]ecause the limitations period for the unjust enrichment claim expired in December of 2020, well before [plaintiff] filed its Ohio complaint”); *see also Krohn v. Ostafi*, 2020 WL 1899529, at *6 (Ohio Ct. App. Apr. 17, 2020) (affirming dismissal of constructive trust claim with prejudice where the underlying fraud and breach of fiduciary duty claims were time-barred).

C. The Fraudulent Transfer Claims Are Inadequately Pled.

1. Required Elements of the Transfers at Issue Are Not Pled.

36. To adequately plead an actual or constructive fraudulent transfer claim, the Complaint must “plausibly plead facts establishing the time and contents of the transfer and the identities of the individuals involved in the transfer.” *In re Cyr*, 602 B.R. 315, 328 (W.D. Tex.

⁵² Because Debtors have pleaded their state law fraudulent transfer claims under Delaware and Ohio law, Defendants presume that Debtors assert their equitable claims under the laws of Delaware or Ohio as well. Defendants reserve the right to contest Debtors’ choice of law analysis at a later date. *See supra* at 20.

2019); *see also In re Reagor-Dykes Motors, LP*, 2020 WL 4939180, at *10 (Bankr. N.D. Tex. Aug. 24, 2020) (For actual fraudulent transfer, “the complaint must allege specific information about each transfer, ‘including date and amount of the transfer, the identity of the transferor and initial transferor and initial transferee, and the consideration paid, if any.’” (quoting *In re Great Lakes Comnet, Inc.*, 588 B.R. 1, 21 (Bankr. W.D. Mich. 2018)); *In re All Tex. Elec. Contractors, Inc. v. NSPS Metals LLC*, 2022 WL 162786, at *7 (Bankr. S.D. Tex. Jan. 18, 2022) (“To adequately plead [constructive fraudulent transfer] [plaintiff] needs to recite sufficient factual information, including the date of the transfer, the amount of the transfer, the name of the transferor, and the name of the transferee.”).⁵³ The Complaint fails to plead specific facts as to each of these required elements.

a) Specific Dates and Amounts Are Not Alleged

37. For both the actual-intent and constructive fraudulent transfer claims, the Complaint fails to plead the dates on which the allegedly fraudulent transfers occurred or in what specific amounts they were made, opting instead to rely on vague allegations regarding over \$700 million in the aggregate of alleged transfers made between “First Brands” and Defendants or entities supposedly affiliated with Defendants dating from 2018 to 2025. *See* Compl. ¶ 70; *see also* Compl. ¶¶ 63, 70, 82, 85 (alleging that aggregate amounts of money were transferred between 2018 to 2025). Such “allegations that a debtor made an aggregate amount or series of cash or other transfers over a period of time, without further particularization, are insufficient to state an intentional fraudulent transfer claim.” *In re Reagor-Dykes Motors, LP*, 2020 WL 4939180, at *10 (quoting *In re M. Fabrikant & Sons, Inc.*, 394 B.R. 721, 733-34 (Bankr. S.D.N.Y. 2008)) (finding

⁵³ As explained further below, while this pleading requirement is the same for both actual and constructive fraudulent transfer claims, actual fraudulent transfer claims must meet the even higher particularity standard under Rule 9(b). *See infra* at 27-28.

complaint failed to plead actual fraudulent transfer claim where complaint made only “general allegations that deposits were made into . . . bank accounts of multiple [d]ebtor-plaintiffs over the past two years”); *see also In re M. Fabrikant & Sons*, 394 B.R. at 734 (dismissing actual fraudulent transfer claim where plaintiff “challenge[d] the ‘net’ transfers in the amount of \$175.3 million . . . between January 2003 and [November 17, 2006]”); *In re All Tex. Elec. Contractors*, 2022 WL 162786, at *6 (“[T]his Court finds that it must analyze not whether Plaintiff has met its burden in pleading that the sum total of alleged service, building equipment, and material transfers meet the elements of § 548(a)(1)(B), but rather whether each individual transfer meets the requirements.”). Without specifying the specific dates and amounts of the challenged transfers, Defendants are deprived of any reasonable notice which transfers are being challenged, as well as critical information needed to determine whether the relevant transferor was insolvent at the time the transfer was made, *see infra* at 28-30, and whether the transfers fall within the applicable lookback period, *see supra* at 20-21, among other information.

b) Specific Transferors Are Not Alleged

38. For both types of fraudulent transfer claims, the Complaint also fails to identify the specific transferor of any allegedly challenged transfer. Although the Complaint repeatedly alleges that the “Company” or “First Brands” transferred funds, *see, e.g.*, Compl. ¶¶ 8, 9, 47, 55, 59, 63, 65, 66, 68, 70, 80-82, 84, such terms are defined in the Complaint as “First Brands Group, LLC and its debtor affiliates (‘Debtors’ or ‘Plaintiffs,’ and together with Debtors’ non-debtor affiliates, ‘First Brands’ or ‘Company’),” *id.* at 1, which collectively encompasses more than 100 separate entities with different assets, debts, other liabilities, bank accounts, and other property, *id.* ¶ 12; Voluntary Pet. For Non-Individuals Filing for Bankruptcy 5-8, Bankr. Dkt. No. 1. Indeed, the term First Brands encompasses non-debtors that are not even part of the Chapter 11 Cases. Further,

the Debtors are in active litigation in the Chapter 11 cases with certain SPV Lenders over whether the SPV Debtors must be separately administered from the rest of “First Brands,” precisely because the SPV Debtors allegedly have separate assets and liabilities from the other Debtors. *See, e.g.,* Aequum Capital Financial II LLC’s Motion to Dismiss, Bankr. Dkt. No. 631; *Evolution Credit Opportunity Master Fund II-B, L.P. v. First Brands Group, LLC et al.*, Adv. Dkt. No. 3800 (Bankr. S.D. Tex.). For that reason, when the Complaint asserts, *e.g.*, that there were allegedly \$50 million in aggregate distributions made to certain Defendants on unspecified dates in January and October 2024, Compl. ¶ 68, but fails to specify which entity made the alleged distributions, such allegations are patently insufficient to state a plausible claim for relief. *See In re NM Holdings Co., LLC*, 407 B.R. 232, 263 (Bankr. E.D. Mich. 2009) (dismissing intentional fraudulent transfer claim where “the identity of a transferor [wa]s pled as being ‘the Debtors’ or ‘one or more of the Debtors,’ and “there [we]re eleven ‘Debtors’”); *In re Lyondell Chem. Co.*, 503 B.R. 348, 389 (Bankr. S.D.N.Y. 2014) (dismissing intentional fraudulent transfer claim where the complaint did not identify “the [d]ebtor or [d]ebtors that made the transfers” but rather a party that was “defined broadly to include . . . many of the respective direct and indirect subsidiaries . . . including all of [a company’s] major operating subsidiaries” (internal quotations omitted)), *abrogated in part on other grounds, In re Trib. Co. Fraudulent Conv. Litig.*, 818 F.3d 98 (2d Cir. 2016).

c) Specific Transferees Are Not Alleged and All Claims Should Be Dismissed as to Majority of Defendants

39. Both fraudulent transfer claims suffer from the Complaint’s failure to identify which Defendants are the transferees that allegedly received the Debtors’ purportedly misappropriated funds.

40. As to Alester Technologies LLC, Bond Street Asset Management LLC, Ignite Acquisition Holdings LLC, and Pegasus Aviation, LLC, there are no specific allegations in the

Complaint whatsoever that any of them received transfers from any specific entity, let alone allegations concerning the date or amount of the transfers. The only allegation that any of those Defendants received funds is the conclusory speculation “[u]pon information and belief” that they “were likewise recipients of transfers of funds from First Brands during this period.” Compl. ¶ 84.

41. As to Defendants Albion Realty LLC and Larchmont LLC, the Complaint includes no well-pleaded facts that they received specific transfers and instead refers only to vague and generalized allegations that they received funds over a period of *eight years* with no other meaningful detail. Compl. ¶ 85 (“From 2018 to 2025, approximately \$35 million was transferred to Larchmont LLC, another entity owned and controlled by Mr. James that is unrelated to First Brands and appears to bear no legitimate business relationship to First Brands. Significant additional transfers totaling in the millions of dollars were also made from First Brands to Mr. James’ real estate holding company (Albion Realty LLC) over the same period.”). This single vague paragraph, encompassing eight years, over 100 Debtors, non-debtors, at least two separate transferees, and unspecified “millions of dollars” in alleged transfers, comes nowhere close to meeting Debtors’ pleading burden under Fifth Circuit law. *See In re Cyr*, 602 B.R. at 328 (explaining that to adequately plead a fraudulent transfer claim, the complaint must include for each transfer the date and amount of transfer, transferee, and transferor); *see also In re Reagor-Dykes Motors*, 2020 WL 4939180, at *10 (same); *In re All Tex. Elec. Contractors*, 2022 WL 162786, at *6-7 (same).

42. For the same reasons, all claims in the Complaint should be dismissed as against these entities—Albion Realty LLC, Alester Technologies LLC, Bond Street Asset Management LLC, Ignite Acquisition Holdings LLC, Larchmont LLC, and Pegasus Aviation, LLC—as there are no other allegations of purported claims as against these entities. *See D & J Invs. of Cenla*,

LLC v. Baker Hughes a GE Co., LLC, 2021 WL 865302, at *5 (W.D. La. Mar. 8, 2021) (dismissing complaint as to two defendants where “the [c]omplaint’s bare allegations against [the two defendants] fail[ed] to provide a plausible link with th[e] alleged misconduct”); *Hood v. Collier*, 2019 WL 3412440, at *9 (S.D. Tex. July 29, 2019) (“Regarding all other [d]efendants, [p]laintiff makes no specific allegations against them and thus fails to state a claim upon which relief can be granted.”).

2. The Actual Fraudulent Transfer Claims Fail to Satisfy Rule 9(b)’s Heightened Standard for Pleading Intent.

43. To plead a claim for actual fraudulent transfer, the Complaint must allege specific facts showing that the alleged transferor acted with “actual intent to hinder, delay, or defraud a present or future creditor” with respect to the challenged transfers. *In re Cyr*, 602 B.R. at 327; *see also* Ohio Rev. Code Ann. § 1336.04(A)(1); 6 Del. Code § 1304(a)(1). Courts in the Fifth Circuit have applied the heightened pleading standard under Rule 9(b) to actual fraudulent transfer claims. *See In re Northstar Offshore Grp., LLC*, 616 B.R. 695, 733 (Bankr. S.D. Tex. 2020) (applying Rule 9(b) to actual fraudulent transfer claim); *In re Brown Med. Ctr., Inc.*, 552 B.R. 165, 168 (S.D. Tex. 2016) (same). “[Rule] 9(b) requires those asserting fraudulent transfer claims in bankruptcy proceedings to plead them with specificity.” *In re Fedders N. Am., Inc.*, 405 B.R. 527, 544 (Bankr. D. Del. 2009). This particularity requirement mandates that the Complaint plead “the ‘who, what, when, where, and why’ of the claim for relief.” *In re Legendary Field Exhibitions, LLC*, 2023 WL 7852657, at *18 (Bankr. W.D. Tex. Nov. 13, 2023). The Complaint’s actual fraudulent transfer claims fall woefully short of this standard for multiple reasons.

44. First, as noted above, the Complaint fails to plead the identity of the specific transferors and transferees (the “who”), the specific amounts of the alleged transfers (the “what”), or the specific dates on which the transfers were made (the “when”). *See supra* at 22-27.

45. Second, the Complaint includes no specific allegations that any specified transferor—namely, which one of the over one-hundred entities comprising “First Brands”—engaged in transactions for the purpose of hindering or otherwise defrauding creditors. Instead, the Complaint resorts to wholly conclusory assertions that Defendants “directed First Brands to pay Defendants with the actual intent of hindering, delaying, and/or defrauding First Brands’ creditors and investors,” Compl. ¶ 105, or “did not direct any of the transfers in good faith,” *id.* ¶ 108. These “formulaic recitation[s] of the elements of a cause of action” are insufficient to state a claim. *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

46. Further underscoring these deficiencies, the Complaint (i) fails to adequately plead insolvency, as described below—which is important since Delaware LLCs can distribute dividends when they are solvent,⁵⁴ and there is nothing inherently nefarious about such transfers; and (ii) does not even contain any factually supported allegations to permit an inference that any transactions were concealed; to the contrary, the Complaint acknowledges that the transfers were recorded in the Company’s general ledger, email systems, and bank account statements. *See* Compl. ¶¶ 11, 69 (acknowledging that transactions were in the Company’s general ledger); *id.* ¶ 68 (acknowledging transactions via internal communications); *id.* ¶ 72-74 (acknowledging transactions through bank account balances).

47. The Debtors have not met and cannot meet the requisite pleading standard for an actual fraudulent transfer.

3. The Constructive Fraudulent Transfer Claims Fail Because the Complaint Fails to Plead Insolvency.

48. To plead a claim for constructive fraudulent transfer, the Complaint must allege, among other elements, that the transferor was insolvent at the time of the challenged transfer or

⁵⁴ *See* 6 Del. Code § 18-607(a).

was rendered insolvent thereby. 11 U.S.C. § 548(a)(1)(B)); Ohio Rev. Code Ann. § 1336.04(A)(2); 6 Del. Code § 1304(a)(2). The Complaint contains no well-pleaded factual allegations evincing any transferor's alleged insolvency at the time of any particular transfer.

49. First, the Complaint only makes conclusory references to “First Brands” purported insolvency on an enterprise basis, *see* Compl. ¶¶ 1, 11, 14, 79, without “identify[ing] which specific transferors were insolvent at the time of the allegedly fraudulent transfers.” *In re Neighbors Legacy Holdings, Inc.*, 645 B.R. 864, 895 (Bankr. S.D. Tex. 2022). As noted, because the Complaint defines First Brands to include First Brands Group, LLC, its debtor affiliates, and its non-debtor affiliates (comprising over 100 separate entities), *see* Compl. 1, Defendants are left guessing which entities were purportedly insolvent or rendered insolvent by the challenged transfers or whether such entities are even Debtors at all. Insolvency must be alleged on an entity-by-entity basis. *See In re ATP Oil & Gas Corp.*, 711 F. App'x 216, 223 (5th Cir. 2017) (finding that “conclusory assertions about . . . financial condition and subjective determinations regarding the amount of available capital” do not state a claim).

50. Second, the Debtors do not plausibly allege a factual basis for their assertions of insolvency, which requires “‘specific reference to [the specific transferor’s] financial condition at the time’ of the transfer.” *In re Neighbors Legacy Holdings*, 645 B.R. at 895 (quoting *In re ATP Oil & Gas Corp.*, 711 F. App'x at 223). The Debtors have made no such allegations. Instead, the Complaint resorts to ipse dixit, asserting that all of First Brands “was insolvent or became insolvent as a result of [each relevant] transfer,” without alleging specific facts that would support such assertions. Compl. ¶ 117. These blanket assertions are insufficient to plead insolvency under well-settled law. *See In re Cyr*, 602 B.R. at 332 (finding that trustee “failed to properly plead insolvency for purposes of a constructively fraudulent transfer claim” where “[t]he [t]rustee presented no

allegations regarding the value of the [debtor's] debt relative to the value of the [debtor's] assets at the time the transfers were made"); *see also In re Uplift RX, LLC*, 667 B.R. 665, 685 (Bankr. S.D. Tex. 2024) (dismissing constructive fraudulent transfer claim with prejudice where the "[c]omplaint [did] not allege[] any facts demonstrating that [transferor] was insolvent at the time of the transfers"); *In re All Tex. Elec. Contractors*, 2022 WL 162786, at *8 (finding failure to plead insolvency where the complaint "provide[d] no factual support for [allegations of insolvency] such as balance sheets or additional financial information").

51. Additionally, the Complaint assumes perpetual, longstanding insolvency dating back years before the bankruptcy filing. It is simply not plausible that First Brands was insolvent years ago (as far back as 2018) but continued operating until 2025—or even that such transfers “contributed to First Brands’ insolvency.” *See* Compl. ¶¶ 63, 79, 117 (alleging that First Brands was insolvent on the date of each transfer and alleging transfers back to 2018); *Compare In re Northstar*, 616 B.R. at 738 (link from transaction in September 2012 to need for loan in 2013 was “far too tenuous”; declining to “leap from 2012 to 2014”); *Oliver v. Cooper (In re Bateman)*, 2012 WL 3061181, at *4-5, 5 n.1 (Bankr. E.D.N.C. July 26, 2012) (“The [a]mended [c]omplaint fails on its face . . . under the *Twombly* and *Iqbal* pleading standards The petition date was over a year and a half after the transfer date. As such, the [a]mended [c]omplaint fails to reasonably allege the value of the [p]roperty at the time of the transfer.”); *Wallach v. Rothstein (In re Nanodynamics, Inc.)*, 474 B.R. 422, 427-28, 427 n.5 (Bankr. W.D.N.Y. 2012) (rejecting plausibility of allegations of insolvency 1-2 years before petition date; noting “*Twombly* and *Iqbal* call upon a court to use its ‘experience’”); *cf. MFS/Sun Life Trust-High Yield Series v. Van Dusen Airport Servs. Co.*, 910 F. Supp. 913, 944 (S.D.N.Y. 1995) (“That the company remained viable so long after the LBO strongly suggests that its ultimate failure cannot be attributed to inadequacy

of capital as of the date of the buyout.”); *Credit Managers Assoc. of S. Cal. v. Fed. Co.*, 629 F. Supp. 175, 186-87 (C.D. Cal. 1986) (refusing to find unreasonably small capital when debtor “pa[id] its creditors and its debt service” for twelve months after transaction).

4. The Constructive Fraudulent Transfer Claims Fails Because the Complaint Fails to Plead Lack of Reasonably Equivalent Value.

52. Again, the Complaint’s failure to plead each transfer on a debtor-by-debtor basis, with specific reference to the date and amount in question, is fatal to the Debtors’ claims for constructive fraudulent transfer because they do not permit any inference that the Debtors did not receive reasonably equivalent value in the transactions. “Reasonably equivalent value” is determined on the date of the transfer. *In re Louisiana Pellets, Inc.*, 838 F. App’x 45, 50 (5th Cir. 2020) (citation omitted) (“Because value is determined at the time of transfer, “[n]either subsequent depreciation in nor appreciation in value of the consideration affects the question whether reasonable equivalent value as given”). To determine reasonably equivalent value, “a court determines whether the debtor received an economic benefit at the time of the transfers or obligations” and whether “the value provided must be ‘reasonably equivalent’ to what the debtor received.” *In re Triplett*, 651 B.R. 196, 203 (Bankr. E.D. Tex. 2023).

53. Here, the sum total of the Complaint’s efforts to plead a lack of reasonably equivalent value is the conclusory statement that “First Brands did not receive reasonably equivalent value in exchange for the transfers.” Compl. ¶ 115. Fifth Circuit law requires more. *See In re Reagor-Dykes Motors, LP*, 2021 WL 2546664, at *4-5 (Bankr. N.D. Tex. June 21, 2021) (“A complaint that only states that the debtor received less than reasonably equivalent value does not meet the pleading standard of Rule 8[;]” a “complaint must plausibly allege that the debtor received less than reasonably equivalent value”); *In re All Tex. Elec. Contractors*, 2022 WL

162786, at *7 (On a motion to dismiss, “it [i]s [p]laintiff’s burden to break down each transfer and show that it did not receive reasonably equivalent value.”).

54. In fact, more specific allegations concerning the Debtors’ basis for alleging lack of reasonably equivalent value are particularly important here because First Brands Group, LLC was a Delaware limited liability company owned by Mr. James. *See* Compl. ¶¶ 2, 16. Pass-through entities like Delaware LLCs commonly reimburse their members for tax payments. But the Debtors fail to acknowledge in their Complaint that at least some of the so-called distributions to the Patrick James Trust were, in fact, tax distributions which are presumed to be for reasonably equivalent value. *See In re Northlake Foods, Inc.*, 715 F.3d 1251, 1255 (11th Cir. 2013) (finding that transfer to shareholder of a pass-through corporation in the amount of personal income tax attributable to shareholder’s share of the corporation’s tax was made for reasonably equivalent value “[b]ecause [S corporation] would have had to pay income taxes itself had it not elected to be an S corporation” and so its creditors were no worse off); *In re F-Squared Inv. Mgmt., LLC*, 633 B.R. 663, 671 (Bankr. D. Del. 2021) (gathering cases “where the respective courts found reasonably equivalent value for tax distributions because the debtor elected into a pass-through tax status”).

D. The Complaint Fails to Adequately Plead a Claim of Illegal Dividend Against Patrick James.

55. The Debtors’ claim against Mr. James for illegal dividend fails for many of the same reasons that the fraudulent transfer claims fail, *i.e.*, the Complaint fails to specify which specific transfers the Debtors contended were improper dividends and alleges no facts showing that the Company lacked net profits or that its capital was impaired at the time the “dividends” were allegedly paid.

56. The Debtors purport to assert a cause of action for illegal dividend under 8 Del. Code § 160, claiming that “Mr. James directed First Brands to approve and complete numerous dividend distributions to himself, his trust, and other entities he controlled.” Compl. ¶ 145. As a threshold matter, the Debtors presumably intended to invoke 8 Del. Code § 170, not § 160, because the latter applies only to stock repurchases, *see* 8 Del. Code § 160 (titled “Corporation’s powers respecting ownership, voting, etc. of its own stock; rights of stock called for redemption”), and no such repurchases are alleged in the Complaint, *see generally* Compl. Accordingly, any claim under 8 Del. C. § 160 should be dismissed.

57. In any event, 8 Del. Code § 170 “provides in general terms that dividends may be paid only out of the corporation’s ‘surplus’ or ‘net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year.’” *JPMorgan Chase Bank, N.A. v. Ballard*, 213 A.3d 1211, 1235 (Del. Ch. 2019) (quoting 8 Del. Code § 170). To plead a claim of director liability for improper dividend, the Complaint must plead the (i) declaration of dividend (ii) that was not paid out of the corporation’s surplus or net profits. 8 Del. Code § 174. The Complaint fails to adequately alleged either element.

58. First, the Complaint does not even attempt to identify the purported “dividends” it seeks to challenge with any level of specificity. This alone is fatal because “[w]hen evaluating claimed violations of the DGCL, Delaware law takes a formal and technical approach.” *Quadrant Structured Prods. Co. v. Vertin*, 102 A.3d 155, 201 (Del. Ch. 2014). Although the Complaint characterizes certain transfers to Defendants variously, as “dividends” or “distributions,” Compl. ¶¶ 64, 68, it fails to articulate which such transfers are subject to 8 Del. C. § 170. This failure is notable because “[n]o section of the DGCL extends the restrictions governing the payment of

dividends to other transactions between a corporation and stockholders, including its sole stockholder.” *Quadrant Structured Prods.*, 102 A.3d at 202.

59. Second, the Complaint fails to allege that the purported dividends paid to Mr. James were not paid out of First Brands’ surplus or net profits. To do so, the Complaint must allege facts showing that the corporation’s net assets were less than its stated capital, the dividend exceeded the corporation’s available surplus, or the dividend rendered the corporation balance sheet insolvent. *See* 8 Del. C. § 170; *In re Chemours Co. Derivative Litig.*, 2021 WL 5050285, at *15 (Del. Ch. Nov. 1, 2021) (dismissing claims for illegal dividend on a motion to dismiss for the years at issue where “[t]he [c]omplaint concede[d] that [the company’s] net profits exceeded its dividend payments”). As noted above, the Complaint pleads no specific facts whatsoever concerning the Company’s financial condition, the value of its assets versus its liabilities, or its profitability as of any particular date, much less as of the specific dates (which are not alleged) that any alleged dividends were paid to Mr. James. Accordingly, the claim under 8 Del. C. § 170 must be dismissed for this reason as well.

E. The Complaint Fails to Adequately Plead a Claim for Turnover.

60. The Complaint fails to allege a legal or factual basis for the turnover claim asserted under 11 U.S.C. § 542. To adequately plead such a claim, the Debtors must allege facts showing that (1) the property sought is property of the estate; (2) the property was in the possession, custody, or control of the defendant during the case; and (3) the trustee may use or sell the property under § 363. *See In re Longhorn Paving & Oilfield Servs., Inc.*, 647 B.R. 679, 689–90 (Bankr. S.D. Tex. 2022) (“It is well-settled that, in turnover proceedings, the trustee must prove by clear and convincing evidence both that the property at issue is property of the bankruptcy estate and that it is in the possession of the party proceeded against.”).

61. As a threshold matter, to the extent that the Debtors are seeking “turnover” of the funds that are allegedly subject to the fraudulent transfer claims or other claims seeking imposition of a money judgment, such invocation of § 542(a) is improper. Where, as here, the trustee seeks to recover only money, § 542(a) does not apply because it “does not provide for entry of on a money judgment.” *See In re Network Staffing Servs., Inc.*, 2004 WL 3007082, at *2 (Bankr. N.D. Tex. Oct. 22, 2004) (“Assuming that the plan trustee proves the allegations of the complaint, the plan trustee will establish a claim under 11 U.S.C. §§ 544(b), 547 and/or 548, with a resulting judgment under § 550 . . . The plan trustee does not seek to recover property other than money. Section 542(a) does not provide for the entry of a money judgment. Section 542(a) therefore cannot be invoked to obtain a money judgment against [Defendant]. Section 542(a) does not apply to this dispute.”).

62. As to the elements of the claim, the Debtors’ turnover action fails to allege that Defendants are in the possession of the Debtors’ property for the same reasons that fraudulent transfer claims fail: the Complaint fails to plead any specific facts that any identifiable property of the estate was transferred from a specific Debtor to a specific transferee, the amounts and time of any such transfers, or that such property is in any specific Defendants’ possession.⁵⁵ *See In re All Tex.*, 2022 WL 162786, at *5 (dismissing turnover claim on motion to dismiss where, *inter alia*, “[p]laintiff ha[d] not met its pleading burden under § 542(a) to allege [d]efendant [wa]s in possession of property”). In other words, the Complaint is devoid of any sort of specific asset-tracing analysis that would support an inference that Defendants are in possession of specific property of the Debtors that would support a turnover action.

⁵⁵ As noted *supra*, there are no substantive allegations that Albion Realty LLC; Alester Technologies LLC, Bond Street Asset Management LLC, Ignite Acquisition Holdings LLC, Larchmont LLC, and Pegasus Aviation, LLC ever received improper transfers from the Debtors. *See* Compl. ¶¶ 84-85.

63. For the same reason, the turnover claim also fails because the Complaint does not plead that the Debtors possess undisputed title to the property allegedly subject to turnover. *In re ATP Oil & Gas Corp.*, 2015 WL 1093568, at *3 (“Section 542 is inapplicable when there is a title dispute between parties.”); *In re Alofs Mfg. Co.*, 209 B.R. 83, 97 (Bankr. W.D. Mich. 1997) (until title passes to debtors, property is not part of the Debtors’ estate). Instead, the Complaint simply asserts that Defendants are in possession of “cash, accounts receivable, and other matured payment obligations due and payable to the creditors, and any proceeds thereof” and that such amounts are property of the estate because the Debtors will prevail on their other causes of action. Compl ¶ 95. Such an assumption is not a valid basis for a turnover action because Defendants dispute their liability as to such claims. *See Trefny v. Bear Stearns Sec. Corp.*, 243 B.R. 300, 320 (S.D. Tex. 1999) (“Unless and until [d]ebtor’s claims against the defendants are liquidated in a court of competent jurisdiction or by agreement, they cannot be enforced here through a turnover order.”); *In re All Tex.*, 2022 WL 162786, at *5 (dismissing turnover claim on motion to dismiss where “[i]n the [m]otion to [d]ismiss, [d]efendant clearly dispute[d] that it is personally liable to [p]laintiff for the damages sought in the [complaint]” for a breach of contract).

F. The Complaint Fails to Adequately Plead a Claim for Unjust Enrichment or Money Had and Received Against Any Defendant

64. The Complaint fails to adequately allege equitable claims for unjust enrichment and money had and received for the same reasons that the fraudulent transfer and turnover claims fail, namely, there are no specific allegations that Defendants have wrongfully received or retained specific funds belonging to the Debtors. An unjust enrichment claim requires “retention of [a] benefit by defendant in circumstances where retention without payment to plaintiff is unjust,” *In re Est. of Udell v. Seely*, 71 N.E.3d 724, 727 (Ohio 2016), or “an enrichment” of defendant without “justification,” *Nemec v. Shrader*, 991 A.2d 1120, 1130 (Del. 2010). “The common law claim

for money had and received is a quasi-contractual claim akin to unjust enrichment.” *Lorad, LLC v. Azteca Milling L.P.*, 670 F. Supp. 3d 470, 514–15 (N.D. Ohio 2023). A money had and received claim “is an equitable action, based not on contract but on a moral obligation to make restitution where retention of benefits bestowed would result in inequity and injustice.” *LRC Realty, Inc. v. B.E.B. Props.*, 166 N.E.3d 37, 41 (Ohio Ct. App. 2020) (quoting *Nat’l City Bank v. Stang*, 618 N.E.2d 241, 242 (Ohio Ct. App. 1992)); *In re Mission of Care, Inc.*, 164 B.R. 877, 879 (Bankr. D. Del. 1994) (explaining that a money had and received claim requires that a payment benefitted the defendant and “it would be inequitable not to reimburse [plaintiff] for the[] benefits”). It is appropriate where a party “acted to withhold money that in justice and equity belonged to another.” *LRC Realty*, 166 N.E.3d at 41.

65. Here, the Complaint contains no factual allegations that any “benefit” was conferred on or retained unjustly by Defendants; nor are there specific allegations concerning purported assets rightfully belonging to the Debtors. Without specifically identifying the assets at issue or articulating the facts and circumstances mandating their return to the Debtors, the Complaint fails to plead that Defendants wrongfully retained any funds. *See Theobald v. Wells Fargo Bank, N.A.*, 2014 WL 1330632, at *3 (S.D. Ohio Apr. 1, 2014) (dismissing unjust enrichment claim on motion to dismiss for “fail[ure] to allege any facts that demonstrate that [defendant] retained funds which in all fairness belong to [p]laintiff”); *cf. Wick v. Ach*, 139 N.E.3d 480, 486 (Ohio Ct. App. 2019) (“Simply pleading . . . that the other party was unjustly enriched by keeping money that ‘properly belongs’ to [plaintiff] leaves too much to the imagination.”).

G. The Complaint Fails to Adequately Plead a Claim for Constructive Trust or Accounting.

66. The Debtors’ constructive trust claim must be dismissed because “a constructive trust is not an independent cause of action,” but a remedy that may be imposed under appropriate

circumstances and based on adequate proof that its imposition is consistent with principles of equity. *Figgie v. Figgie*, 2021 WL 1309775, at *9, *11 (Ohio Ct. App Apr. 8, 2021); *Kobal v. Edward Jones Sec.*, 2021 WL 1235200, at *3 (Ohio Ct. App. Apr. 1, 2021) (affirming dismissal of constructive trust claim because it is not an independent cause of action); *Miller v. Mott*, 2023 WL 6467368, at *9 (Bankr. D. Del. Oct. 4, 2023) (dismissing claim for constructive trust on motion to dismiss because “[u]nder Delaware law, constructive trust is not a cause of action”). So too for Debtors’ claim for an accounting: “An accounting, like a constructive trust, is an equitable remedy, not a cause of action, and the claim for an accounting remedy is properly dismissed under [Rule 12(b)(6)].” *Krohn*, 2020 WL 1899529, at *7; *Garza v. Citigroup Inc.*, 192 F. Supp. 3d 508, 511 (D. Del. 2016), *aff’d*, 724 F. App’x 95 (3d Cir. 2018) (quoting *Stevanov v. O’Connor*, 2009 WL 1059640, at *15 (Del. Ch. Apr. 21, 2009)) (“[A]n accounting ‘reflects a request for a particular type of remedy, rather than an equitable claim in and of itself.’”).

67. Even if a separate cause of action for constructive trust could be maintained as a legal matter, the Complaint here fails to allege facts showing that the remedy is available under these circumstances. To start, a constructive trust claim must be based in allegations that the subject property “was acquired through fraud, duress, undue influence, or mistake, through a breach of a fiduciary duty, or through the wrongful disposition of another’s property,” including unjust enrichment. *Johnson v. Kuehn*, 2020 WL 4036875, at *5 (Ohio Ct. App. July 10, 2020); *see Stewart v. Martin*, 2023 WL 2401720, at *8 (S.D. Ohio Mar. 8, 2023) (“[I]f [p]laintiffs’ claim for constructive trust is going to survive, it must contain a viable claim for unjust enrichment.”). For the reasons discussed above, the Complaint fails to allege any facts supporting the conclusory assertion that that Defendants received or obtained property of the Debtors through improper means.

68. A constructive trust claim also requires “a claimant . . . [to] specify the particular property over which the constructive trust is to be placed” because it “is an equitable remedy imposed on particular assets, not on a value.” *Weyard v. Barnes*, 945 N.E.2d 530, 534 (Ohio Ct. App. 2010) (citation omitted); *McMahon v. New Castle Assocs.*, 532 A.2d 601, 608 (Del. Ch. 1987) (A constructive trust is “primarily a proprietary [remedy] that is, a remedy relating to specific property or identifiable proceeds of specific property[,]” and it can be used for recovery of money where there is “an identifiable fund to which plaintiff claims equitable ownership through tracing[.]”). Here, the Complaint makes no effort to allege facts or otherwise engage in a tracing analysis for “identifying the specific asset[s] or identifiable product[s] that [are] being wrongfully held” and that would fall under the constructive trust. *Weyand*, 945 N.E.2d at 532.

69. And, even if accounting could be sustained as an independent cause of action, discovery in this adversary proceeding will provide the Debtors with an adequate remedy as to the subject of their accounting claim, mandating dismissal of the separate accounting claim. *See, e.g., Phillippi v. Jim Phillippi, Inc.*, 2009 WL 1911763, at *3 (S.D. Ohio June 26, 2009) (“[Plaintiff’s] breach of fiduciary duty claim, and the liberal discovery it affords, provides [plaintiff] an adequate legal remedy for determining whether and the extent to which [d]efendants commingled and misused corporate assets.”).

II. Alternatively, the Court Should Order the Debtors to Provide a More Definite Statement Pursuant to Rule 12(e).

70. To the extent that the Debtors’ claims are not dismissed in their entirety—and they should be—the Court should require the Debtors to provide a more definitive statement of such claims. A court should grant a motion under Rule 12(e) where “a pleading . . . is so vague or ambiguous that the [defendants] cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e). The motion “must point out the defects complained of and the details desired.” *Id.* “The decision

to order a more definite statement lies within the Court’s discretion, and if a complaint is overly prolix or complex, a more definite statement may assist the court in ‘the cumbersome task of sifting through myriad claims, many of which may be foreclosed by various defenses.’” *In re WonderWork, Inc.*, 626 B.R. 94, 135 (Bankr. S.D.N.Y. 2020) (quoting Moore’s Federal Practice ¶ 12.36).

71. Unless the Debtors specifically identify certain basic information concerning the transactions they seek to challenge, it is impossible for Defendants to meaningfully respond to the Complaint or prepare their defense. Defendants have no way to determine, for example, whether there was reasonably equivalent value, whether the transfers were made in the ordinary course of business, whether the relevant transferor was even a debtor, whether such transferor was insolvent at the time of transfer or otherwise rendered insolvent by the transfer, whether any Defendant was a recipient of the alleged transfers, or whether the transfers fall within applicable lookback periods. *In re WonderWork, Inc.*, 626 B.R. at 136 (granting Rule 12(e) motion on fraudulent transfer claim where “[t]he shotgun approach to recover all American Express payments made over several years, without differentiation, makes it impossible for [defendant] to frame his answer”); *In re Motorwerks, Inc.*, 371 B.R. at 293 (granting Rule 12(e) motion on fraudulent transfer claim where the complaint “fail[ed] to identify, by date or amount, even one actual transfer from the [d]ebtor to [defendant] that is to be avoided” and therefore “fail[ed] to provide [defendant] with notice of the underlying transfers to be avoided hindering the bank’s ability to prepare an adequate answer and affirmative defenses”).

72. Accordingly, if the Complaint is not dismissed in its entirety, the Court should order the Debtors in accordance with Rule 12(e) to file an amended pleading setting forth a more definitive statement, providing at a minimum, the following information:

- The specific details and date of each transfer forming the basis of the claims, including facts and circumstances surrounding transfer, *e.g.*, whether the transfer was a dividend, a distribution, or otherwise;
- The identity of the specific Debtor who made each alleged transfer;
- In the case of actual-intent claims, the specific “intent to hinder, delay or defraud,” including who held that intent and whether that person caused the transfer;
- The identity of Defendant who allegedly received each transfer;
- The specific amount of each transfer; and
- The date on which each of the relevant Debtors allegedly became insolvent and supporting factual allegations detailing the basis for such insolvency.

CONCLUSION

73. For the reasons stated above, the Court should dismiss the Debtors’ Complaint or in the alternative, order the Debtors to provide a more definite statement.

RESERVATION OF RIGHTS

Mr. James and the Related Entities have rights to a trial by jury with respect to the claims filed in the adversary proceeding. Any and all rights to demand a trial by jury at the appropriate time are reserved. Similarly, Mr. James and the Related Entities reserve any and all rights to seek to withdraw the reference at the appropriate time, and nothing herein should be construed as a waiver or admission with respect to the same.

Respectfully submitted

Dated: December 15, 2025

DEBEVOISE & PLIMPTON LLP

Erica S. Weisgerber (admitted *pro hac vice*)
Matthew J. Sorensen (admitted *pro hac vice*)
66 Hudson Boulevard
New York, NY 10001
Telephone: (212) 909-6000
eweisgerber@debevoise.com
mjsorensen@debevoise.com

-and-

**QUINN EMANUEL URQUHART & SULLIVAN,
LLP**

/s/ Cameron Kelly

Cameron Kelly (SBN: 24120936)
700 Louisiana Street, Suite 3900
Houston, Texas 77002
Telephone: (713) 221-7000
Email: cameronkelly@quinnemanuel.com

Michael B. Carlinsky (admitted *pro hac vice*)
James C. Tecce (admitted *pro hac vice*)
Scott Hartman (admitted *pro hac vice*)
Eric S. Kay (admitted *pro hac vice*)
Reece Pelley (admitted *pro hac vice*)
Grace Sullivan (admitted *pro hac vice*)
295 Fifth Avenue
New York, New York 10016
Telephone: (212) 849-7000

Attorneys for Defendants Patrick James, The Patrick James Trust, Albion Realty, LLC, Alester Technologies LLC, Battery Park Holding LLC, Bond Street Asset Management LLC, Ignite Acquisition Holdings LLC, Larchmont LLC, Pegasus Aviation, LLC

CERTIFICATE OF SERVICE

I, Cameron Kelly, hereby certify that a copy of the foregoing Motion was filed on the 15th day of December, 2025, with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to all counsel of record.

/s/ Cameron Kelly

Cameron Kelly