

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TEMESCAL WELLNESS OF
MARYLAND, LLC T/A EVERMORE
CANNABIS COMPANY,

*

*

Plaintiff,

*

Civil Action No. GLR-20-3648

v.

*

FACES HUMAN CAPITAL, LLC, et al.,

*

Defendants.

*

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Christopher Cassese's Motion to Dismiss (ECF No. 33); Defendant Gareth Heyman's Motion to Dismiss (ECF No. 39); and Defendant Francis Voegler s/h/a Frances Voegler's Motion to Dismiss (ECF No. 40).¹ The Motions are ripe for disposition, and no hearing is necessary. See Local Rule 105.6 (D.Md. 2021). For the reasons outlined below, the Court will grant the Defendant Voegler's Motion and deny Defendants Cassese and Heyman's Motions as moot.

I. BACKGROUND²

Plaintiff Temescal Wellness of Maryland, LLC ("Temescal") operates a cannabis business in Baltimore City and Baltimore County, Maryland under the name Evermore

¹ The Court will direct the Clerk to amend the docket to reflect the proper spelling of Defendant Francis Voegler's name.

² Unless otherwise noted, the Court takes the following facts from the Complaint and accepts them as true. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citations omitted).

Cannabis Company. (Compl. ¶¶ 6, 17, ECF No. 1). The factual allegations in Temescal’s Complaint are brief. (Id. ¶¶ 18–23). According to Temescal, between March 1, 2018 and September 2018, it engaged Defendant Faces Human Capital, LLC (“Faces”), a now-bankrupt payroll business based in Denver, Colorado, “to process the payroll of [Temescal], move approved funds from [Temescal] to the Faces account(s) and from the Faces account(s), pay employees’ taxes to the State and Federal Governments, pay employee benefits as directed and to initiate direct deposits to the bank accounts of [Temescal’s] employees.” (Id. ¶¶ 2, 7). Temescal alleges that around the end of August 2019 or the beginning of September 2019, it “learned that Faces failed to make the requisite deposits, including the State and Federal tax deposits,” in excess of \$115,000. (Id. ¶ 3). Temescal asserts that Faces used the money for its own benefit “and/or” for the benefit of the other named Defendants, namely (1) Christopher Cassese, a Colorado resident and “the CEO/Manager of Faces,” (2) Francis Voegler, a Colorado resident and “a manager” of Faces, (3) Holly Leaf Sitienei, a Maryland resident and “an owner” of Faces, (4) Gareth Heyman, a Colorado resident and “an owner” of Faces, (5) B44, LLC, a Colorado corporation and “an owner” of Faces, (6) Wizard, LLC, a Colorado corporation and “an owner” of Faces, and (7) Theresa Collins, who is not otherwise identified but who allegedly resides in Colorado (collectively, “Defendants”). (Id. ¶¶ 3, 8–13).

Temescal alleges that between July and December 2019, “Defendants, collectively, spoke with Temescal and, multiple times, Defendants promised to repay the stolen money.” (Id. ¶ 21). Ultimately Faces “failed to repay all funds” it owed Temescal “despite repeated demands and multiple promises to pay.” (Id. ¶ 22). Temescal does not, however, offer any

other information about these payment discussions; the above details represent all of Temescal's factual allegations.³

On December 17, 2020, Temescal filed suit against Defendants in this Court. Temescal's Complaint alleges claims for breach of contract against Faces and Cassese (Count I); fraud against Faces and Cassese (Count II); conversion against all Defendants (Count III); unjust enrichment against all Defendants (Count IV); and civil conspiracy

³ Below is the complete "Factual Allegations" section of Temescal's Complaint:

18. Faces is a national payroll and related services provider for the payroll industry. Faces contracts with multiple employers to process employee payrolls by handling the payroll funds to remit payment for Federal and State taxes, employee benefits and direct deposit by depositing those funds directly into the bank accounts of the clients' employees.

19. In the Spring of 2019, through investigation, [Temescal] learned and Faces admitted that Faces had failed to make employee related Federal and State tax and related deposits during the period of March 2018-September 2018 in excess of \$115,000.

20. Faces, instead of paying Federal and State payroll and related tax payments, utilized Temescal's money, and the money of Temescal employees, for its own benefit and use.

21. From July 2019 through December 2019, Defendants, collectively, spoke with Temescal and, multiple times, Defendants promised to repay the stolen money.

22. Faces has failed to repay all funds due and owing to Temescal, despite repeated demands and multiple promises to pay Temescal.

23. Defendants' unlawful conduct has caused more than \$115,000 in damages to Temescal, in addition to attorneys' fees and expenses that Temescal has incurred and will incur as a result of the ripple effect of Defendants' actions.

(Compl. ¶¶ 18–23).

against all Defendants (Count V). (Id. ¶¶ 24–56). Temescal seeks compensatory damages, punitive damages, interest, costs, and attorneys’ fees. (Id. ¶¶ 30, 38–39, 45–46, 50–52, 56). Temescal also seeks a temporary restraining order, a preliminary injunction, a permanent injunction, and restitution of at least \$135,000. (Id. ¶ 51).

Defendant B44, LLC filed a Motion to Dismiss on January 26, 2021 (ECF No. 13) and Temescal voluntarily dismissed all claims against it on February 11, 2021 (ECF No. 19). The Court approved the dismissal and denied B44, LLC’s motion as moot on February 12, 2021. (ECF No. 20). Defendant Theresa Enebo Collins filed a Motion to Dismiss on February 4, 2021 (ECF No. 17) and Temescal dismissed all claims against her on February 22, 2021. (ECF No. 28). The Court approved the dismissal and denied Collins’s motion as moot on February 22, 2021. (ECF No. 30). Temescal also voluntarily dismissed its claims against Defendants Holly Sitienei and Wizard, LLC on February 22, 2021. (ECF Nos. 26, 29). Presently, Temescal has active claims against Defendants Faces, Casesse, Voegler, and Heyman.

On March 4, 2021, Defendant Cassese filed a Motion to Dismiss (ECF No. 33) for failure to state a claim on which relief may be granted⁴ and Temescal filed its Opposition on March 15, 2021 (ECF No. 38). To date, Cassese has not filed a Reply. On March 19, 2021, Defendant Heyman moved to dismiss for lack of personal jurisdiction and for failure to state a claim. (ECF No. 39). Temescal filed its Opposition on April 2, 2021 (ECF No.

⁴ Defendant Cassese also preserved his defense of improper venue under Rule 12(b)(3). (Def. Cassese Mot. Dismiss at 2).

43) and Heyman filed his Reply on April 15, 2021 (ECF No. 47). Finally, on March 18, 2021, Defendant Voegler filed a Motion to Dismiss for lack of subject-matter jurisdiction, lack of personal jurisdiction, and failure to state a claim. (ECF No. 40). On March 26, 2021, Temescal filed its Opposition (ECF No. 41) and on April 9, 2021, Voegler filed his Reply (ECF No. 44).

On July 16, 2021, Temescal filed a Suggestion of Bankruptcy of Defendant Faces, (ECF No. 52), stating that Faces filed bankruptcy in May 2020. Temescal indicated that its notice was “without effect on any of [its] claims against parties other than Faces Human Capital, LLC,” (Suggestion Bankruptcy Defendant Faces at 1, ECF No. 52), namely, Defendants Cassese, Voegler, and Heyman.

II. DISCUSSION

A. Standard of Review

1. Subject-Matter Jurisdiction

Federal Rule of Civil Procedure 12(b)(1) governs motions to dismiss for lack of subject-matter jurisdiction. A defendant challenging a complaint under Rule 12(b)(1) may advance a “facial challenge, asserting that the allegations in the complaint are insufficient to establish subject matter jurisdiction, or a factual challenge, asserting ‘that the jurisdictional allegations of the complaint [are] not true.’” Hasley v. Ward Mfg., LLC, No. RDB-13-1607, 2014 WL 3368050, at *1 (D.Md. July 8, 2014) (alteration in original) (quoting Kerns v. United States, 585 F.3d 187, 192 (4th Cir. 2009)).

When a defendant raises a facial challenge, the Court affords the plaintiff “the same procedural protection as he would receive under a Rule 12(b)(6) consideration.” Kerns,

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