UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. BURTON DOUGLAS MORRISS, *et al.*, Defendants, And MORRISS HOLDINGS, LLC, Relief Defendant.	)	Case No.: 4:12-cv-00080-CEJ

RELIEF DEFENDANT MORRISS HOLDINGS' MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION FOR MORE DEFINITE STATEMENT

Relief Defendant, Morriss Holdings, LLC ("Morriss Holdings"), moves to dismiss Counts I, II and III of the Plaintiff Security and Exchange Commission's Complaint for Injunctive and Other Relief pursuant to Rule 12(b) (6) and (e) because it fails to state a claim upon which relief can be granted, or in the alternative, fails to plead fraud with the requisite particularity and is so vague and ambiguous that Relief Defendant Morriss Holdings cannot prepare a proper response to it.

For the reasons explained more fully in Morriss Holdings' Memorandum in Support of its Motion to Dismiss, which is filed and served herewith, Morriss

Holdings respectfully requests this Court to dismiss Counts I, II and III of the Complaint.

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MEMORANDUM IN SUPPORT OF RELIEF DEFENDANT MORRISS HOLDINGS' MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION FOR MORE DEFINITE STATEMENT

Relief Defendant, Morriss Holdings, LLC ("Morriss Holdings"), moves to dismiss Counts I, II and III of the Plaintiff Security and Exchange Commission's ("SEC") Complaint for Injunctive and Other Relief pursuant to Rule 12(b) (6) and (e) because it fails to state a claim upon which relief can be granted, or in the alternative, fails to plead fraud with the requisite particularity as required by Rule 9 (b) and is so vague and ambiguous that Relief Defendant Morriss Holdings cannot prepare a proper response to it. Alternatively, Morriss Holdings requests this Court to order the SEC to replead its allegations to make them more definite.

Introduction

The SEC's Complaint against the six defendants, Burton Douglas Morris, Acartha Group, LLC ("Acartha"), MIC VII, LLC ("MIC VII"), Acartha Technology Partners, LP ("ATP"), Gryphon Investments III, LLC ("Gryphon Investments") and Relief Defendant Morriss

Holdings, LLC ("Morriss Holdings") (collectively "the Defendants"), uses a broad brush to allege corporate misconduct by all Defendants in this action but fails to demonstrate how this alleged misconduct comes within the scope of federal securities fraud. Despite the length of the Complaint, Plaintiff fails to plead facts with sufficient particularity to support is claims for securities fraud.

Instead, the Complaint broadly generalizes the allegations against the defendants as a group, then couples these general allegations with a recitation of all previous sections of the Complaint while merely reciting sections of the Securities and Exchange Act and Securities Act in Counts I, II and III. The Defendants, and this Court, are then expected to parcel the factual allegations and assemble the jigsaw pieces of the elements of securities fraud. As it stands now, no defendant, much less Morriss Holdings, can discern what he/they are accused of doing[1]. This "shotgun" approach to pleading provides no guidance whatsoever as to which entity might have cross claims against the other and fails to inform the defendants of the cause of action alleged against them.

A. Factual Allegations of the Complaint

In its eight-count Complaint, Plaintiff broadly alleges that all the Defendants violated §17(a) (1), (2) and (3) of the Securities Act of 1933 ("Securities Act"), 15 U.S. C. § 77q(a); § 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5 when Morriss and Acartha Group, MIC VII, ATP, and Gryphon Investments transferred funds to Morriss and Morriss Holdings between 2005 and

[1] In a recent filing, the Receiver has sought an extension of time to file its Answer on behalf of Defendants Acartha, MIC VII ATP and Gryphon (collectively "the Investment Entities". (Doc. 78, ¶¶ 1-4). The purported reason for the extension is because she is involved in discussions regarding resolution of the claims the SEC has against the Investment Entities. Given the state of the pleadings, the fact no specific defendant has been linked to a specific fraudulent statement, at a specific time, which caused a specific demonstrable loss to any identified investor, it seems incomprehensible that the Receiver could possibly settle any claims much less do so in a manner that might prejudice one of the other defendants and more importantly one of the many investors who are not parties to this suit.

2011. The SEC also alleges that Morriss and one of the defendant companies recruited new investors to purchase membership interest without the unanimous consent of the existing investors, which allegedly diluted their investments.

Throughout the Complaint, Morris and Morriss Holdings are referenced together as if they were one person or one entity, and all the Defendants are improperly grouped together regardless of their involvement in the alleged actions. The Complaint makes no effort to reflect which Defendant made what misrepresentation or omission, whether the alleged misrepresentation or omission was in connection with the purchase or sale of a security, and whether any of the Defendants had the requisite *scienter* at the time the alleged misrepresentations or omissions were made.

B. Defendants' Alleged Misrepresentations and Omissions to Investors.

The Complaint alleges that Morriss and the four investment entities ---Acartha Group, MIC VII, ATP, and Gryphon Investments ("the Investment Entities"), defrauded investors by failing to disclose that Morriss would or could use investor funds to make personal transfers or loans to Morriss or Morriss Holdings. (Doc. 1, p. 9,¶ 30.) The Complaint further alleges that the Investment Entities' organizational documents contained allegedly misleading statements, including:

- § 7.7 of ATP's 2008 Agreement of Limited Partnership, which provides in part that the general partner "may not borrow or withdraw any funds or securities from the Partnership except as expressly permitted by this Agreement." (¶ 32.)

- Gryphon Investments' 2008 Limited Liability Company Operating Agreement, which provides that Gryphon Investments' management could make loans or advances to other person but excluded members, managers and affiliates of members and managers. (¶ 33.)

- The 2005 MIC VII Amended and Restated Limited Liability Company Operating Agreement, which provides that the "Managing Member is authorized and empowered on behalf of and in the name of the Company to carry out any and all

of the purposes of the Company and to perform all acts and enter into and perform all contracts and undertakings that it may, in its sole discretion, deem necessary, advisable and incidental thereto." (¶ 34.)

- Acartha Group's 2007 Private Placement Memorandum, which provides that "net proceeds of this offering after payment of expenses are anticipated to be used to repay existing obligations of the Company and for working capital purposes. Management will have broad discretion with respect to the application of these funds." (Doc. 1, pp. 9-10, ¶¶ 32-35.)

The Complaint also alleges that to pay back a certain loan, Morriss recruited additional investors to join MIC VII, thereby diluting the early investors' interests (Doc. 1, pp. 11-12, ¶¶ 37-39, 41.) However, the Complaint fails to allege that Morriss Holdings or any of the other defendants knew of these actions, represented them to investors or had a duty to disclose them to investors.

The Complaint further states that Morriss, Acartha Group and Gryphon Investments defrauded Gryphon Investments investors by failing to disclose that Morriss and Acartha Group would use their investment to fund Acartha Groups operations or provide loans to Morriss and Morriss Holdings. The Complaint also claims that Morriss and Gryphon Investments represented to investors that Gryphon Investments would be the manager of ATP when in fact Acartha Group acted as its manager. (Doc.1, p. 12, ¶ 42.) Yet the Complaint fails to allege when and to whom these representations were made and whether they occurred in connection with the sale or offer of a security.

What is missing in this lengthy Complaint is more telling. The Complaint calls Morriss Holdings a relief defendant but portrays it as a wrongdoer. The Complaint does not allege that Morriss Holdings holds ill-gotten funds or lacks a legitimate claim to those funds. The Complaint also fails to state with particularity the "who, what when where and why" of the alleged securities fraud. That is, which defendant made which alleged material misrepresentation

or omission, and importantly, was it made to any specific investors at the time they made their initial decision to purchase a membership interest in any investment offering? Last of all, the Complaint contains no factual allegations supporting that any defendant had the requisite *scienter* to support an allegation of securities fraud under § 17 (a) (1) and § 10 (b) (5) or Rule 10b-5.

Argument

In Counts I, II and III of its Complaint, the SEC asserts that Morriss Holdings and its five co-defendants violated § 17(a) (1), (2) and (3) of the Securities Act and of § 10 (b) (5) and Rule 10b-5 of the Exchange Act. To establish a violation of these antifraud provisions of these securities laws, the SEC must prove that *each* defendant made a material misstatement or omission *in connection with* the offer, sale or purchase of a security by means of interstate commerce. *See SEC v. Shanahan*, 646 F.3d 536, 541 (8th Cir. 2011).

The elements of § 17 (a) (1), § 10 (b) and Rule 10(b)(5) of the Exchange Act are essentially the same and require proof that the defendant made misrepresentations or misleading omissions with *scienter*. *Shanahan, 646 F.3d at 541*. Violations of § 17 (a) (2) and (3), however, merely require proof that the defendant acted negligently, and *scienter* is not an element of these claims. *Id*.

The SEC has failed to allege these elements, however, and has instead alleged general acts of corporate misconduct that are on the order of common-law fraud but do not fall within the scope of federal securities fraud. As courts have repeatedly held, federal securities laws are not intended to cast a state law breach of fiduciary claim as a securities fraud claim to reach for federal subject matter jurisdiction. *See Marine Bank v. Weaver*, 455 U.S. 551, 556 (1982) ("Congress, in enacting the securities laws, did not intend to provide a broad federal remedy for

all fraud"); *Andropolis v. Red Robin Gourmet Burgers, Inc.*, 505 F. Supp. 2d 662, 682 (D. Colo. 2007) (plaintiff may not "bootstrap" a claim for corporate mismanagement or breach of a fiduciary duty by alleging that the corporation or its directors failed to disclose alleged mismanagement or breach of a fiduciary duty.); *Weill v. Dominion Resources, Inc. 875 F. Supp. 331, 336 (E.D.Va. 1994)* (federal securities law not intended to provide a federal forum for corporate misconduct or state claims.) The Complaint's generalized allegations appear instead to support an action for breach of fiduciary duty—the type of action that is already pending against Defendants Morriss, MIC VII and Acartha in a lawsuit filed in St. Louis County entitled *Nixon v. Morriss*, et al., Case No. 11SL-CC04718.

A. Counts I, II and III of the Complaint Fail to Plead Fraud with the Particularity Required by Rule 9(b) in Securities Fraud Actions.

Fed. R. Civ. Pro. 9 (b) requires particularized pleading as to the circumstances constituting fraud. *Bennett v. Berg*, 685 F.2d 1053, 1062 (8th Cir. 1982). In the context of securities litigation, Rule 9(b)'s requirement that fraud be stated with particularity serves three important purposes: (1) it deters the use of complaints as a pretext for fishing expeditions of unknown wrongs designed to compel *in terrorem* settlements; (2) it protects against damage to professional reputations resulting from allegations of moral turpitude; and (3) it ensures that a defendant is given sufficient notice of the allegations against him to permit the preparation of an effective defense. *Shanahan*, 2008 U.S. Dist. LEXIS 100641, quoting *SEC v. Guenthner*, 212 F.R.D. at 533.

Here, the Complaint fails to allege with the required particularity which defendant made what representation or omission with *scienter*, nor does it state facts to support that the alleged fraud was done in connection with the sale of any security. Instead, the Complaint relies on broad generalities, lumping multiple defendants together as a group, and uses a "gunshot"

pleading style that improperly permits the SEC unlimited discretion to rephrase and reframe its charges against the Defendants as discovery proceeds.

1. Counts I, II and III of the Complaint Fail to Allege Fraud with the Requisite Particularity because They Fail to Identify Which Defendant Made Which Representation to Which Group of Investors and Explain Why Such Statements were False.

To meet the heightened pleading requirements of Rule 9 (b), the SEC's Complaint must specify the statements that are false, identify the speaker, state where and when the statements were made, and explain why they are false. *Bennett v. Berg*, 685 F.2d 1053, 1062 (8th Cir. 1982). That is, the Complaint must allege the "who, what, when, where, why and how" of the securities fraud. *Iron Workers Local 16 Pension Fund v. Hilb Rogal & Hobbs Co.*, 432 F. Supp. 2d 571 (D. Va. 2006). The SEC's group allegations directed at all the Defendants in Counts I, II and III fails to meet Rule 9 (b)'s specificity requirements. *Lagermeier v. Boston Scientific Corporation*, 2011 U.S. Dist. LEXIS 78525, *15 (D. Minn. July 19, 2011) (group pleading fails to meet Rule 9(b)'s stringent requirements).

Rule 9 (b) does not allow a complaint to merely lump multiple defendants together but requires a plaintiff to differentiate its allegations when suing more than one defendant and inform *each* defendant separately of the allegations surrounding his alleged participation in the fraud. *Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir. 2007) (broadly alleging defendant's specific misconduct against remaining defendants without stated factual basis insufficient as a matter of law); In Re Bearingpoint, Inc., 525 F. Supp. 2d 759, 767 (D. Va. 2007) (Fourth Circuit bars group pleading); *Lagermeier*, 2011 U.S. Dist. LEXIS at *15; and *Iron Workers Local 16 Pension Fund v. Hilb Rogal & Hobbs Co.*, 432 F. Supp. 2d 571 (D. Va. 2006).

Nor does it permit a plaintiff to rely on "shotgun" pleading in a securities fraud case, as the SEC has done in the case at hand. *See Wagner v. First Horizon Pharm. Corp.*, 464 F.3d

1273, 1279 (11th Cir. 2006*); SEC v. Fraser*, 2010 U.S. Dist. LEXIS 7038, at *28 (unpublished), quoting *Teamsters Local 617 Pension & Welfare Funds v. Apollo Group, Inc*., 633 F. Supp. 2d 763, 783 (D. Ariz. 2009). "Shotgun pleadings" are pleadings that incorporate by reference all prior allegations in each subsequent claim for relief. *Id.*[2] Plaintiff's use of this pleading style fails to allege with Rule 9(b)'s required particularity which of all the prior allegations support its separate claims under § 17 (a)(1), (2) and (3) and Rule 12b-5 contained in Counts I, II and III of the Complaint.

The Complaint first mixes more than 12 pages of description of the corporate entities and Morriss' alleged misappropriation of funds from the entities and then incorporates all of these allegations into its fraud-based claims. Beyond the allegations describing Morriss' actions, the Complaint does not contain specific factual allegations of misconduct by Morriss Holdings or any other defendant. The Complaint's conclusory allegations that all the Defendants, including Morriss Holdings, made representations or omissions to investors, without any stated factual basis, fail to comply with Rule 9(b)'s specificity requirements and are insufficient as a matter of law. See *Swartz*, 476 F.3d at 766 (general allegations that all defendants engaged in fraudulent conduct but attributed specific misconduct only to two defendants lacked stated factual basis and were insufficient as a matter of law).

To meet the particularity requirements of Rule 9 (b), the complaint must identify the speaker and state where and when the statements were made. Here, the Complaint names five

[2] Numerous district courts have commented on the unhelpfulness of this pleading strategy in this context and have dismissed SEC complaints because of it. See, e.g., *SEC v. Mercury Interactive*, 2008 U.S. Dist. LEXIS 107706 (N.D. Cal. Sept. 30, 2008) (shotgun pleading makes it "difficult to discern which filings form the bases for each claim"); *SEC v. Patel*, 2009 U.S. Dist. LEXIS 64394 (D.N.H. July 7, 2009) (criticizing this pleading style because "to reasonably determine that any particular claim should not be dismissed would require the court to firmly comb the complaint in search of factual support for each element of the multiple claims pled as to each defendant, and then evaluate the adequacy of that factual support,' which "is, of course, plaintiff's job in the first instance, not the court's").

defendants and two groups of investors—the MIC VII investors and the Gryphon Investment investors, but fails to allege which defendant made which representation to which investor group. The Complaint lists as alleged representations certain statements found in the operating agreements or in one case a placement purchase memorandum that generally describe the Investment Entities' ability to make loans and apply funds. Two of the corporate documents quoted in the Complaint—the MIC VII operating agreement and the Acartha Group Private Placement Memorandum, do not even prohibit loans to members or managers of these entities. (See Doc. 1, p. 10, ¶ 34, Doc. 1, p. 10 ¶ 35.)

The other alleged representations include a provision from the ATP limited partnership agreement that the general partner may not borrow or withdraw any funds or securities from the Partnership except as expressly permitted by this Agreement (Doc. 1, p. 9, ¶ 32), and that Gryphon Investments' management may "make loans or advances to other Persons," but not "members, Managers and Affiliates of Members and Managers." (Doc. 1, p. 10, ¶ 33.) However, the Complaint fails to explain why the general corporate statements found in the quoted organizational documents were false. Where a complaint fails to identify the specific speaker and fails to detail when and where the alleged statements were made and why they are misleading, the complaint fails to meet the pleadings standards for fraud under Rule 9 (b). *S.E.C. v. Tiffany Indus., Inc*., 535 F. Supp. 1160, 1167 (E.D. Mo. 1982).

The Complaint further alleges that Defendants did not disclose that Morriss would use investor funds for personal use or make personal, unsecured loans to Morriss and Morriss Holdings. This alleged omission, however, is insufficient as a matter of law to support a claim for securities fraud because securities laws do not require a defendant to accuse itself of

wrongdoing. *See Iron Workers Local 16 Pension Fund v. Hilb Rogal & Hobbs Co.*, 432 F. Supp. 2d 571, 588 (D. Va. 2006), quoting *In re Citigroup*, 330 F. Supp. 2d at 377.

This issue arose in a securities fraud suit, *Iron Workers*, *supra*, where the plaintiff pension fund alleged that the defendant insurance intermediary firm and its officers and directors made false statements and omissions that hid the defendant's reliance on questionably illicit agreements for nonstandard commissions that inflated their revenues. In response to the plaintiff's contention that defendants should have disclosed the questionable nonstandard commissions, the court refused to construe the complaint "that HRH should have disclosed that its practices were illicit and improper." *Iron Workers*, 432 F. Supp. 2d at 587. The court noted that "federal securities laws do not require a company to accuse itself of wrongdoing," quoting *In re Citigroup*, 330 F. Supp. 2d at 377. See also *Weill v. Dominion Resources, Inc.*, 875 F. Supp. 331 (D. Va. 1994) (courts have held that the securities laws do not obligate defendants to reveal the culpability of their activities or their impure motives for entering a transaction).

Furthermore, the Complaint fails to allege that any of the generalized representations or omissions alleged were a *material* fact as required to successfully state a securities fraud claim under § 17 (a) and rule 10b-5. See *Iron Workers*, 432 F. Supp. 2d at 579. A fact is material "if there is a substantial likelihood that a reasonable investor would consider the fact important in deciding whether to buy or sell the security or would have viewed the total mix of information made available to be significantly altered by disclosure of the fact." *Id*. Accordingly, the Complaint fails to state a claim for securities fraud under § 17 (a) and Rule 10b-5 and should be dismissed. In the alternative, Plaintiff should be ordered to plead their allegations with sufficient particularity to ensure that Morriss Holdings has notice of the claims against it and can prepare an effective defense.

2. Counts I, II and III of the Complaint Fail to Plead with Particularity that any of the Defendants' Alleged Misconduct was made in Connection with the Offer, Sale or Purchase of a Security.

As a preliminary matter, the Complaint neglects to allege that the investments or membership interests at issue in this action are even "securities" as defined by § 2(a)(1) of the Securities Act or by § 3 (a) (a) of the Exchange. Again, the securities fraud provision of the Securities Act and Exchange Act only govern fraudulent misconduct that occurs *in connection with the offer or sale of a security*, not common law corporate fraud. Although the Complaint cites the jurisdictional sections of the Securities Act and Exchange Act, it does not discuss whether the investments or membership interests fall within the definition of securities under federal securities law.

The Complaint broadly alleges that Morriss and certain companies he controls fraudulently transferred monies from these companies to himself and Morriss Holdings but does not state sufficient facts demonstrating why this is a violation of federal securities law. The Securities Act and Exchange Act are not construed so broadly as to convert every common-law fraud that happens to involve securities into a violation of 10(b)(5). See *Weill v. Dominion Resources, Inc. 875 F. Supp. 331, 336 (D.Va. 1994)* (federal securities law not intended to provide a federal forum for corporate misconduct or state claims.)

To state a claim under § 17 (a), the SEC must allege that the defendants' deceptive act, scheme or material misrepresentation affected the market for securities or was otherwise *in connection with their offer, sale or purchase*. *SEC v. George*, 426 F.3d 786, 792 (6th Cir. 2005). See also § 17(a), which provides that: "It shall be unlawful for any person *in the offer or sale of any securities* . . . (1) to employ any device, scheme, or artifice to defraud, or (2) to obtain money or property by means of any untrue statement of a material fact or any omission … or (3)

to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. 15 U.S.C. § 77q(a) (emphasis added).

Likewise, to state a violation of § 10(b)(5) and Rule 10b-5, the SEC must allege that defendant's material misrepresentation or omission was done *in connection with the purchase or sale of securities*. *George*, 426 F. 3d at 792 (emphasis added). Many federal courts draw no distinction between the phrase "in the offer or sale" found in Section 17 (a) and "in connection with the purchase or sale" language of Rule 10b-5. *SEC v. Forman*, 2010 U.S. Dist. LEXIS 56802, *7 (D. Mass. June 9, 2010). To fulfill this requirement, it is enough that the securities transaction and alleged deceptive conduct coincide. *SEC v. Mannion*, 789 F. Supp. 2d 1321, 1332 (N.D. Ga. 2011). That is, there must be some *nexus* between the alleged fraud and the securities transaction, and the fraud must touch upon the securities transaction. *Mannion*, 789 F. Supp., at 1331.

The Complaint does not meet this requirement because it fails to allege facts to support this nexus between the alleged fraud and the securities transaction. That is, the Complaint fails to state with the requisite particularity that the MIC VII or Gryphon Investment investors' purchase of a membership interest in these entities was connected to or coincided with the alleged fraudulent conduct of Morriss or any other defendant. In fact, the Complaint contains no allegations specifically describing the date of the offerings underlying the facts alleged in the Complaint, nor does it state the contents of any of the offering and operating materials distributed to either group of investors or when these materials were distributed to them. Lastly, the Complaint fails to allege that the corporate organizational documents identified in the Complaint were even disseminated to the MIC VII investors, the Gryphon Investment investors or any investors.

If the alleged misappropriations occurred long after what was originally a lawful offering, then the alleged misconduct is not in connection with the sale or offer of a security. The Complaint's general allegations of corporate misconduct and misappropriation, standing alone, do not support a claim for securities fraud.

3. The Complaint Fails to State Facts that Morriss Holdings and Each Defendant Acted with Scienter in Making the False Statements or Omissions.

To successfully state a securities fraud claim under § 17 (a) (1) and Rule 10b-5, the SEC must show that the alleged statements or omissions were made with *scienter*, that is, with the intent to deceive, manipulate or defraud. *Shanahan,* 646 F.3d at 541, citing *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193, n. 12 (1976). The Eighth Circuit holds that a finding of scienter may be based upon severe recklessness, defined as highly unreasonable misrepresentations or omissions that involve not simple or inexcusable negligence but an extreme departure from the standards of ordinary care and that present a danger of misleading buyers or sellers that the defendant either knew or was so obvious that the defendant must have been aware of it. *Id.*, quoting *Fla. State Bd. of Admin. v. Green Tree Fin. Corp.*, 270 F.3d 645, 654 (8th Cir. 2001).

While Rule 9 (b) permits intent to be alleged generally, the "group pleading" of this element by which the SEC alleges *scienter* against all the defendants is improper. *See In re Bearingpoint, Inc. Sec. Lit.*, 525 F. Supp. 2d 759, 767 (4th Cir. 2007); and *Iron Workers*, 432 F. Supp. 2d 571, 594 (E.D. Va. 2006). Instead, a plaintiff should specifically allege *scienter* on the part of each individual defendant. *In re Bearingpoint*, 525 F. Supp. 2d at 767.

The SEC does not allege that Morriss Holdings or any of the corporate defendants had this state of mind or level of knowledge in making any of the alleged misrepresentations or omissions nor does it allege underlying facts demonstrating this. Likewise, the Complaint fails to allege sufficient facts to support an allegation of severe recklessness, that is, that the alleged

representations or omissions were highly unreasonable, beyond negligence and an extreme departure from ordinary care standards. See *Shanahan*, 646 F.3d at 541. Accordingly, the SEC has failed to allege the essential element of scienter, and Counts I, II and III of the Complaint should be dismissed.

Conclusion

For the reasons explained, Plaintiff has failed to state a claim for relief, therefore Relief Defendant Morriss Holdings respectfully requests this Court to dismiss Counts I, II, and III of the Complaint as to all defendants pursuant to Fed. R. Civ. Pro. 12 (b) (6), or, in the alternative, to require Plaintiff to state its cause of action in those Counts with the particularity required by Fed. R. Civ. Pro. 9 (b).

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CERTIFICATE OF SERVICE

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