

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 0:26-CV-60110-RS**

PT. LEGON PARI and
LOGISTICS PLUS, INC.,

Plaintiffs,

v.

GA TELESIS, LLC, KUEHNE + NAGEL,
INC., and PT. KUEHNE NAGEL INDONESIA
d/b/a PT. NAKU FREIGHT INDONESIA,

Defendants.

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KUEHNE + NAGEL, INC.’S MOTION TO DISMISS COMPLAINT

COMES NOW, Defendant Kuehne + Nagel, Inc. (“K+N” and/or “Defendant”), by and through its undersigned counsel, and pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, moves to dismiss Plaintiffs’ Complaint, and in support of its motion, states as follows:

I. INTRODUCTION AND BACKGROUND

By way of background, Plaintiff, PT. LEGON PARI (“PTL”) commenced a state court action on December 4, 2023, against K+N and Co-Defendant, GA TELESIS, LLC (“GAT”) for purported damages resulting from the export of three aircraft engines from Indonesia to the United States. (*PT Legon Pari v. GA Telesis, LLC, et al.*; Case No. CACE-23-021953) K+N responded, denying PTL’s allegations and asserting various defenses. Ultimately, Plaintiff amended its pleadings via its First Amended Complaint, however, the claims set forth therein remained unsustainable both as a matter of law, and due to a complete lack of evidentiary support as established in the discovery records in the referenced state court proceeding.

As a result, Defendant, on January 7, 2026, served PTL, but did not file with the Court, a Motion for Sanctions pursuant to Section 57.105, Florida statutes, providing a 21-day safe harbor period – similar to the corresponding Federal Rule of Civil Procedure 11. On January 16, 2026, PTL served a Notice of Voluntary Dismissal as to GAT and K+N on a Without Prejudice basis; however, unbeknownst to K+N, on the very same day, PTL simply refiled its claim(s) against K+N in Federal Court in the Southern District of Florida, continuing as before to seek recovery for Fraud, Civil Conspiracy, and Quantum Meruit/Unjust Enrichment. Under governing Florida law, K+N has now timely submitted (under Rule 1.525, Florida Rules of Civil Procedure) a Motion in the State Court seeking a recovery of attorney’s fees and costs pursuant to 772.11, Florida Statutes, Section 57.105(1), as well as Section 57.041. In instances where a Plaintiff voluntarily dismisses an action without prejudice and then refiles said action, Defendant is entitled to recoup the litigation expenses incurred in the original action; and further is entitled to a stay of the newly filed action until such time as Plaintiff has satisfied the outstanding litigation expenses (including legal fees). K+N has included this relief in its moving papers before the State Court asking for an Order directing the Plaintiff to submit a Motion for Stay in this case.

Equally problematic with respect to the recent filing of this litigation, it must be understood that Co-Plaintiff, Logistics Plus, Inc. (“LP”) was not a co-Plaintiff in the State Court proceedings outlined above, and never sought affirmative relief. Rather, it was a named *defendant*, with GAT bringing LP into the state court action by way of a third-party pleading. To be clear, at no point did PTL amend its complaint to add LP as a co-plaintiff, nor did LP assert a *compulsory* counterclaim against GAT. LP also failed to assert a crossclaim against K+N.

It is respectfully submitted that despite the bare, formulaic, and unsupported factual averments as to damages, Co-Plaintiff LP is *not* a substantial party to this litigation as a party

seeking recompense, but is rather – at best – a nominal party whose citizenship must be disregarded for purposes of evaluating subject matter jurisdiction. Inclusion of LP as a party Plaintiff appears designed to achieve a single purpose – the circumvention of application of the otherwise governing preclusion (as a matter of subject matter jurisdiction) of Federal Court cases resting upon diversity jurisdiction where the action is a Foreign Plaintiff against a Foreign Defendant.

Separate and apart from the jurisdictional issue(s) under 12(b)(1), or any stay relief that may be ordered or requested, the Complaint is also subject to dismissal under 12(b)(6), Federal rules of Civil Procedure.

Co-Plaintiffs each commingle their factual and legal averments and fail to reasonably apprise responding Defendant as to the specifics required under both Rules 8 and 9 of the Federal Rules of Civil Procedure. The inartful pleading which improperly and arbitrarily lumps the Defendants together throughout the Complaint (as the “Defendants”) without any factual support to disregard the separate corporate entities and/or roles of these three companies, renders the pleading defective in violation of the pleading standard required under Federal Rule of Civil Procedure 8, *Iqbal* and *Twombly*; and Rule 9 as the claims also sound in Fraud

Next, based on Plaintiff’s own allegations, any claims for negligence are time barred by the statute of limitations under Florida Statutes Section 95.11 (5)(a) and are further barred by Florida’s prohibition on the recovery of economic damages in tort that stem from a contractual undertaking. Plaintiffs’ quantum meruit claims are similarly contrary to both logic and the discovery record established in the state court proceeding as Plaintiffs seek not the amount by which K+N was purportedly unjustly enriched, but rather all damages stemming from the actions or inactions of the Defendants. Quantum Meruit does not support, as a matter of law, such a recovery. Lastly, because the intentional tort underlying the averments in the civil conspiracy

claim are invalid, there remains no torts supporting civil conspiracy, as same cannot be maintained as a freestanding tort.¹ That claim must be dismissed.

For each of the reasons set forth herein, K+N now seeks dismissal of the instant Complaint both on substantive and procedural bases.

II. APPLICABLE LEGAL STANDARDS

A. Rule 8's pleading requirement.

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a pleading to contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “The purpose of this requirement is to give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also T.D.S. Inc. v. Shelby Mut. Ins. Co.*, 760 F.2d 1520, 1544 (11th Cir. 1985) (“The purpose of these rules is self-evident, to require the pleader to present his claims discretely and succinctly, so that, his adversary can discern what he is claiming and frame a responsive pleading, the court can determine which facts support which claims and whether the plaintiff has stated any claims upon which relief can be granted, and, at trial, the court can determine that evidence which is relevant and that which is not.”).

A pleading does not comply with Rule 8 if it offers “labels and conclusions,” “a formulaic recitation of the elements of a cause of action,” or “‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Twombly*, 550 U.S. at 555-57). The Eleventh Circuit has explained that “asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions” is improper. *See Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1323 (11th Cir. 2015).

¹ Claimant also asserts a claim for declaratory judgment, however, the relief sought is duplicative and the claim should be stricken.

This kind of shotgun pleading “fail[s] to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.” *Id*; see also *Naftali v. Capasso*, 2015 WL 4483995, at *4 (S.D. Fla. July 22, 2015) (“When a complaint indiscriminately lumps all defendants together it fails to comply with Rule 8.”) (quoting *Joseph v. Bernstein*, 2014 WL 4101392, at *3 (S.D. Fla. Aug. 19, 2014)).

The instant Complaint [DE 1] is replete with examples of impermissible shotgun pleading. Each of the Defendants had and undertook a different role with different responsibilities. Plaintiffs must separate out which Defendant specifically had what obligation; and how such an obligation was breached.

Rule 9(b)’s pleading requirement.

For allegations of fraud or mistake, the heightened pleading requirements of Federal Rule of Civil Procedure 9(b) apply. “In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.” Fed. R. Civ. P. 9(b). A plaintiff alleging fraud must allege the following: (1) the precise statements, documents, or misrepresentations made; (2) the time and place of and person responsible for the statement; (3) the content and manner in which the statements misled the Plaintiffs; and (4) what the Defendants gained by the alleged fraud. *Ambrosia Coal & Const. Co. v. Pages Morales*, 482 F.3d 1309, 1316–17 (11th Cir. 2007) (per curiam) (citation omitted); *Walker v. Hallmark Bank & Tr., Ltd.*, 707 F. Supp. 2d 1317, 1322 (S.D. Fla. 2010). Once again, Plaintiffs fail to provide the required who, what, where, and when attributable to each Defendant.

B. Rule 12(b)(6) motion to dismiss standard.

A motion to dismiss under Rule 12(b)(6) for “failure to state a claim upon which relief can be granted” tests the sufficiency of the allegations in the complaint. Fed. R. Civ. P. 12(b)(6). In ruling on a motion to dismiss, the Court accepts the well-pleaded factual allegations as true and construes them in the light most favorable for the plaintiffs. *See Speaker v. U.S. Dept. of Health and Human Serv.*, 623 F.3d 1371, 1379 (11th Cir. 2010). To survive a motion to dismiss, a “complaint must contain sufficient factual allegations, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 662 (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. This “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action.” *See Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 958 (11th Cir. 2009) (citing *Twombly*, 550 U.S. at 555).

III. DISCUSSION

A. The Court lacks subject matter jurisdiction.

“As a matter of federal law, a plaintiff must ground diversity jurisdiction upon ‘citizens’ who are real and substantial parties to the controversy.” *Broyles v. Bayless*, 878 F.2d 1400, 1402 (11th Cir.1989) (citing *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 461, 100 S.Ct. 1779, 64 L.Ed.2d 425 (1980)). This requirement means only that a federal court should not look to a nominal or formal party's citizenship for diversity jurisdiction purposes if the party merely represents the interests of other, real parties to a controversy. *See Navarro Sav. Ass'n*, 446 U.S. at 461, 100 S.Ct. 1779.

Co-Plaintiff LP at most is a nominal Plaintiff who's citizenship should not be considered for purposes of a diversity jurisdiction analysis. It is a standard rule that federal courts do not have diversity jurisdiction over cases where there are foreign entities on both sides of the action, without the presence of citizens of a state on both sides. *See Cabalceta v. Standard Fruit Co.*, 883 F.2d 1553, 1558 (11th Cir.1989). It is clear that the crux and gravamen of the action relates to each of the Defendants' alleged role in purportedly misusing the identity and credentials of PTL for an export shipment from Indonesia in order to avoid tax consequences. As a result, PTL asserts, said Plaintiff avers that it received fines and penalties in excess of \$1 million dollars USD, which PTL failed to satisfy, ultimately resulting in suspension of its ability to transact business as an exporter of record, which ostensibly led to a claimed \$2.5 million dollar loss. Curiously, Co-Plaintiff LP, without any sufficient factual or evidentiary support alleges a mirror image loss.

The relationships between the Co-Plaintiffs and the various Defendants however are not mirror images. One need only review the related State Court action to reveal the unlikely monetary damages now proffered by LP in support of its alleged claim of more than \$2,500,000.00.

In that case, LP failed to file a compulsory counterclaim against GAT who impleaded it via third-party Complaint. If LP was truly damaged to the tune of \$2.5 million, it seems unlikely that they would have failed to seek recompense in that case. Rather, it was only upon the filing in Federal Court, and the commensurate need to establish diversity jurisdiction by pleading an independent claim by on U.S. entity against another diverse U.S. entity, that this was even revealed.

Federal courts have diversity jurisdiction over civil actions when the amount in controversy exceeds \$75,000, and the action is between citizens of different states or between citizens of a state and those of a foreign state. 28 U.S.C. § 1332(a)(2). "Diversity jurisdiction requires complete

diversity; every plaintiff must be diverse from every defendant.” *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 (11th Cir. 1998). Complete diversity is tested by determining the citizenship of the “real parties to the controversy.” *Navarro Savings Ass'n v. Lee*, 446 U.S. 458, 461 (1980). Consequently, for purposes of determining diversity jurisdiction, the Court disregards the citizenship of nominal or formal parties to the case. *Id.*; *Salem Trust Co. v. Manufacturers' Finance Co.*, 264 U.S. 182, 189-90 (1924).

Here, it appears evident that LP has been added as a co-Plaintiff solely in an attempt to create diversity jurisdiction, nearly 20 months after it failed to assert a compulsory counterclaim against Co-Defendant GAT, and after having failed to seek affirmative relief against either K+N, Inc. or K+N Indonesia in a 2023 action that was set for trial only a few short months prior to PTL’s voluntary dismissal of its claims therein.

B. All counts improperly lump some or all of the Defendants together, in violation of Rule 8 and *Twombly/Iqbal*.

At the start of their Complaint, Plaintiffs lump together all three of the Defendants and call them “the Defendants,” despite the fact that they are three separate and distinct corporate entities that each played a distinct role with respect to the transactions and occurrence that are the subject of the Complaint. *See* Compl. at ¶ 1, Dkt. No. 1. PTL subsequently brings Counts 1, 3, 4, 6 and 7 against all Defendants and LP brings Counts 2 and 5 against K+N and K+N Indonesia; both present the claims without enumerating their separate roles or engagement, if any, in relation to Plaintiffs and/or the instant matter. For example, in Paragraph 58 of the Complaint Plaintiff’s allege that “Defendants listed PTL as the shipper of record for each of the shipments”, failing to identify the separate roles in such conduct. *See id.* at ¶ 58. Additionally, Paragraph 71 of the Complaint, Plaintiffs allege that “Defendants represented that they would fill out any customer set up forms and pay quoted invoices for Plaintiffs’ services,” without further identification as to which of the

three made such representations. *See id.* at ¶ 71. These are just two examples; however, a review of the Complaint demonstrates that this fatal deficiency exists throughout the Complaint with respect to all of the counts.

It is well settled in the Eleventh Circuit that such pleading is impermissible. *See Weiland*, 792 F.3d at 1313. In *Weiland*, the Eleventh Circuit outlined four types of shotgun complaints:

The most common type—by a long shot—is a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint. The next most common type...is a complaint...replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action. The third type of shotgun pleading is one that commits the sin of not separating into a different count each cause of action or claim for relief. Fourth, and finally, there is the relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.

Id. at 1321–23 (footnotes omitted). The *Weiland* Court went on to note that “All four categories of shotgun complaints are deficient because ‘they fail...to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.’” *Id.* at 1323; *see also*, *Anderson v. Dist. Bd. of Trs. of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 366 (11th Cir. 1996). When faced with a shotgun pleading, district courts are obligated to mandate repleading. *See Ferrell v. Durbin*, 311 F. App’x 253, 259 n.8 (11th Cir. 2009) (per curiam).

As expressly stated by the Court in *Barmapov v. Amuial*, No. 9:18-CV-80390-WPD, 2018 WL 11267365, at *5 (S.D. Fla. Dec. 12, 2018), “This kind of shotgun pleading “fail[s] to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests,” requiring dismissal. *See also Ebrahimi v. City of Huntsville Bd. of Educ.*, 114 F.3d 162, (11th Cir. 1997) (describing as a “prototypical shotgun complaint” a pleading that “offered vague and conclusory factual allegations in an effort to support a multiplicity of discrimination claims leveled against 15 defendants”); *Mainardi v.*

Fontainebleau Florida Hotel, LLC, No. 23-23344-CIV, 2023 WL 7217100, at *2 (S.D. Fla. Nov. 2, 2023) (“This jumbling of parties makes it virtually impossible for each of the Defendants to ascertain which claims apply to them specifically.”)

In the instant case, this is precisely and indistinguishably the pleading method undertaken by Plaintiffs herein, Plaintiffs’ failure to separately allege facts and claims as to each of these Defendants violates Rule 8 and *Twombly/Iqbal*, requiring dismissal. *See Euro Marine Group, Ltd. v. Legacy Superyachts*, No. 0:23-CV-61722-WPD, 2024 WL 3762072, at *2 (S.D. Fla. Feb. 26, 2024) (citing *Naftali*, 2015 WL 4483995, at *4 (“When a complaint indiscriminately lumps all defendants together it fails to comply with Rule 8.”)). Accordingly, Plaintiffs’ complaint in its entirety should be dismissed.

C. LP Fails To Properly Support Any Causation Between Actions or Inactions on the Part of K+N and Damages it Purportedly Suffered

While it is difficult in the extreme to determine how it is that both PTL and LP allegedly suffered the same monetary loss, it appears that LP argues that as a result of PTL’s suspension, that LP will miss out on future business opportunities.

As a matter of law, such a legal theory cannot meet the causation test(s) of foreseeability remoteness and a lack of intervening conduct.

LP was not fined by the Indonesian customs authorities. Nor does it appear that PTL seeks any recovery from LP for any alleged wrongdoing either of LP, or LP’s agents or contractors with respect to the transactions and occurrences in the operative pleadings. Rather, the claim appears to be that the alleged harm purportedly inflicted upon Co-Plaintiff PTL resulting in a million dollar fine and the suspension of PTL’s ability to act as an exporter of record, has resulted in diminished revenue on yet to be contemplated shipments.

Such a claim is too attenuated and there are insufficient allegations of foreseeability. Additionally, it appears that PTL's suspension was a result of its non-payment to Indonesian Customs, an intervening cause. Finally, there are additionally no allegations that explain why PTL would be the only potential EOR which LP might utilize. Certainly the Defendants could never be in a position to foresee that LP uses PTL, and PTL only, as an Exporter of Record in Indonesia.

It is "a well established principle of [the common] law, that in all cases of loss, we are to attribute it to the proximate cause, and not to any remote cause." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 132, (2014) (quoting *Waters v. Merchants' Louisville Ins. Co.*, 11 Pet. 213, 223, 9 L.Ed. 691 (1837)) (quotations omitted). "That venerable principle reflects the reality that 'the judicial remedy cannot encompass every conceivable harm that can be traced to alleged wrongdoing.'" *Id.* (quoting *Associated Gen. Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 536 (1983)). Courts are thus to construe federal causes of action in a variety of contexts to incorporate a requirement of proximate causation. *See id.* "[T]he proximate-cause requirement generally bars suits for alleged harm that is 'too remote' from the defendant's unlawful conduct." *Id.* at 133; *see also Pinares v. United Techs. Corp.*, No. 10-80883-CIV, 2018 WL 11422987, at *12 (S.D. Fla. Feb. 13, 2018) ("Ultimately, the remoteness of the injury in relation to the fraud-based RICO acts, the availability of a direct victim to vindicate the law violated, and the difficulty of determining the amount of Plaintiff's injuries caused by the alleged RICO violations compel the conclusion that proximate cause is lacking here as a matter of law on the alleged predicate of manifest fraud.")

Here, LP alleges that "[i]n addition to imposing tax liability on PTL for the engine export, the Indonesian authorities suspended PTL's license to serve as an export agent until PTL makes full payment of the tax liability and associated penalties. Plaintiffs conduct considerable business

in Indonesia, and they have suffered significant financial and reputational losses as a result of this suspension.” *See* Compl. at ¶ 104. However, these allegations for causation are too remote; K+N had no way of knowing or foreseeing that PTL would not pay its tax liability and further that PTL’s failure to do so would result in suspension of its license and ultimately alleged financial and reputational loss to LP. It is noted that the Complaint does not assert the relationship between PTL and LP is exclusive in nature and therefore, theoretically, LP could conduct its business with any other company which offers the same service as PTL in Indonesia.

D. Counts 1 and 2 for fraud fail to satisfy the heightened pleading standard required under Rule 9(b).

In alleging fraud, a party must state with particularity the circumstances constituting fraud. *See* Fed. R. Civ. P. 9(b). The Eleventh Circuit has made clear that a plaintiff alleging fraud must allege the following: (1) the precise statements, documents, or misrepresentations made; (2) the time and place of and person responsible for the statement; (3) the content and manner in which the statements misled the Plaintiffs; and (4) what the Defendants gained by the alleged fraud. *Ambrosia Coal & Const. Co. v. Pages Morales*, 482 F.3d 1309, 1316–17 (11th Cir. 2007) (per curiam) (citation omitted); *Walker v. Hallmark Bank & Tr., Ltd.*, 707 F. Supp. 2d 1317, 1322 (S.D. Fla. 2010).

Instead of alleging with particularity as required, PTL vaguely alleges that the Defendants *all* “represented that they would fill out any customer set up forms and pay quoted invoices for Plaintiffs’ services,” and “listed PTL as the shipper of record on the Air Waybills for the shipment of the airplane engines.” *see also* Compl. at ¶ 71 and 75, Dkt. No. 1. Similarly vague, LP alleges that the Defendants *all* “represented that they would fill out any customer set up forms and pay

quoted invoices for Plaintiffs’ services,” and “listed PTL as the shipper of record on the Air Waybills for the shipment of the airplane engines.” *see also* Compl. at ¶¶ 91 and 95, Dkt. No. 1.²

These allegations are problematic for at least three reasons. First, while the Plaintiffs cite to email communications as containing the purported representations, Plaintiffs fail to pinpoint any particular statements. With each of the exhibits containing various statements by each of the Defendants it is virtually impossible to know what representations Plaintiffs are referring to. Second, Plaintiffs attribute the same alleged representations to all of the Defendants. Certainly, it cannot be that *all* of the Defendants made the same exact representations to *all* of the Plaintiffs. Third, Plaintiffs fail to identify any particular time or place of the alleged representations—a deficiency likely attributed to Plaintiffs’ inability to specify any particular representations in the first place. *See Ambrosia Coal & Const. Co. v. Pages Morales*, 482 F.3d 1309, 1317 (11th Cir. 2007) (*quoting Brooks v. Blue Cross and Blue Shield of Florida, Inc.*, 116 F.3d 1364, 81 (11th Cir. 1997)) (“[I]n a case involving multiple defendants ... the complaint should inform each defendant of the nature of his alleged participation in the fraud.”); *Great Florida Bank v. Countrywide Home Loans, Inc.*, 2011 WL 382588, **3–4 (S.D. Fla. Feb. 3, 2011) (references to defendants plead “in a way that obscures the identity of the party or parties that are alleged to have actually committed the fraudulent actions ... [and] that makes it impossible for Defendants to know which of the Defendants is alleged to have made the claimed statements”); *Joseph v. Bernstein*, 2014 WL 4101392, at *6 (S.D. Fla. Aug. 19, 2014) (pleading failed to state who, what, when, where and how of allegedly false statements).

Plaintiffs’ failure to allege facts with particularity as to each of these Defendants violates Rule 9(b) and as such Plaintiffs’ fraud claims (Counts 1 and 2) should be dismissed.

² It is noted that in the title for LP’s claim for fraud the claim is asserted against only K+N and K+N Indonesia; however, its allegations lump all defendants together, which would include GAT.

E. Counts 4 and 5 for negligence are time barred by the statute of limitations under Florida Statutes Section 95.11 (5)(a).

Section 95.11, Florida Statutes restricts the time within which a party shall commence an actions for a myriad of actions including negligence. In 2023, there were various amendments to the section; in particular, the time in which to bring a negligence claim was shorten from four (4) years to two (2) years. § 95.11, Fla. Stat. (2023). The notes to the amendments explicitly provide that “[t]he amendments made by this act to s. 95.11, Florida Statutes, apply to causes of action accruing after [March 24, 2023].” *Id.* at n. 1. Under the current iteration of the statute, negligence claims must be commenced within two years. *See* § 95.11(5)(a) (2025). Furthermore, under Florida law, an action for negligence does not accrue until the plaintiff suffers an actual loss or damages. *Companion Prop. & Cas. Group v. Built Tops Bldg. Services, Inc.*, 218 So. 3d 989, 991 (Fla. 3d DCA 2017) (*citing Med. Data Sys., Inc. v. Coastal Ins. Group, Inc.*, 139 So.3d 394, 395 (Fla. 4th DCA 2014)).

Even though the shipments are alleged to have occurred in January of 2022, Plaintiffs expressly admit that receipt of the Indonesian Tax Bill and the suspension of PTL’s license—which form the basis of Plaintiffs’ alleged damages—did not occur until October of 2023. Therefore, the new shortened statute of limitations of two years applies to the subject claims and Plaintiffs were required under the statute to bring their claims for negligence against K+N on or before October of 2025. Here, Plaintiffs’ Complaint was filed on January 16, 2026—several months after. Therefore, Plaintiffs’ claims for negligence (Count 4 and 5) are time-barred and should be dismissed.

F. Florida Prohibits Recovery of Economic Damages in Tort stemming from a Contractual Relationship

To maintain an action for negligence, a plaintiff must establish that the defendant owed a duty, that the defendant breached that duty, and that this breach caused the plaintiff damages. *See*

Clampitt v. D.J. Spencer Sales, 786 So.2d 570, 573 (Fla. 2001). The Florida Supreme Court has held that while breach, causation, and damages are ordinarily questions for the jury, “duty exists as a matter of law and is not a factual question for the jury to decide.” *McCain v. Fla. Power Corp.*, 593 So.2d 500, 503 (Fla. 1992). However, the alleged duty in the plaintiff’s tort claim cannot stem from a contractual relationship between the parties. *Certain Underwriters at Lloyd’s of London v. Ocean Walk Resort Condominium Association, Inc.*, 2017 WL 3034069 (M.D. Fla. July 18, 2017) (citing *Elec. Sec. Sys. Corp. v. S. Bell Tel. & Tel. Co.*, 482 So.2d 518, 519 (Fla. 3d DCA 1986) (“It is only when a breach of contract is attended by some additional conduct which amounts to an independent tort that such breach can constitute negligence”).

At its heart, the subject transactions for the movement of goods from Indonesia to the United States were for the purchase and sale of those goods. In order to accomplish that goal, various logistics providers and service providers were hired. The services described in [D.E. 1] were not performed in a vacuum but pursuant to contractual relationships intentionally skirted by Plaintiff’s allegations.³ The reason for this is simple, Plaintiffs’ averments of duty – to the extent present – appear designed to circumvent prohibition for recovery of economic damages in tort stemming from contractual performance. This is known as a breach of contract claim masquerading as negligence. *See Shackelford v. Sailor’s Wharf, Inc.* 2016 WL 4247946 (MD FL), citing *Indem. Ins. Co. of N. Am.*, 891 So. 2d at 536 [receded from on other grounds by Tiara Condominium, *infra*] (citing *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 494 (Fla. 3d DCA 1994) (“Where damages sought in tort are the same as those for breach of contract a plaintiff

³ K+N, Inc. was in fact hired by Co-Defendant GAT and its services are subject to contractual terms, including but not limited to choice of law and venue provisions (New York) which are hereby expressly preserved. Thus, any alleged duty owing to LP or PTL has at its source if any a contract at its base. Plaintiffs either take K+N’s performance subject to those conditions or not at all.

may not circumvent the contractual relationship by bringing an action in tort”). The Eleventh Circuit notes that while the Florida Supreme Court has limited the formal version of the Economic Loss Rule to product liability cases, this does nothing to change the fact that a claimant must still demonstrate that the tort is independent of any breach of contract claim. *Lamm v. State Street Bank and Trust*, 749 F.3d 938, 947 (11th Cir. 2014). See also *Monsoon, Inc. v. Bizjet Int’l Sales & Support, Inc.*, No. 16-80722-CIV, 2017 WL 747555 (S.D. Fla. Feb. 27, 2017).

Courts in this District have continually followed the interpretation of *Tiara* suggested by the Eleventh Circuit in *Lamm*. See, e.g., *Burdick v. Bank of Am., N.A.*, 99 F. Supp. 2d 1372, 1378 (“[T]he alleged duty [element of a negligence claim] cannot stem from a contractual relationship between the parties.... To bring a negligence claim under Florida law, a party must demonstrate that ‘the tort is independent of any breach of contract claim.’”) (quoting *Tiara*, 110 So. 3d at 408 (Pariente, J., concurring)); *Kaye v. Ingenio, Filale de Loto-Que, Inc.*, No. 13-61687, 2014 WL 2215770, at *4 (S.D. Fla. May 29, 2014) (“to set forth a claim in tort between parties in contractual privity, a party must allege action beyond and independent of breach of contract that amounts to an independent tort”); *Altenel, Inc. v. Millennium Partners, L.L.C.*, 947 F. Supp. 2d 1357, 1369 (S.D. Fla. 2013); *Callaway Marine Technologies, Inc. v. Tetra Tech, Inc.*, 2016 WL 7407769, at *3 (S.D. Fla. 2016).

Here, Plaintiffs’ negligence claims sounds entirely from the alleged acts, omissions, and damages stemming from contractual relationships. See Compl. at ¶¶ 114-119, 121-126. Plaintiff fails to allege a legally cognizable duty running from K+N to Plaintiffs independent of any contractual undertaking by K+N. See *Ocean Walk Resort*, 2017 WL 3034069, at * 10 (citing *Elec. Sec. Sys. Corp. v. S. Bell Tel. & Tel. Co.*, 482 So.2d 518, 519 (Fla. 3d DCA 1986) (“It is only when a breach of contract is attended by some additional conduct which amounts to an independent tort that such breach can constitute negligence”). Based upon the reasons stated herein, Plaintiffs’ claim for negligence fails and should be dismissed.

G. Count 6 Quantum Meruit against K+N Seeks Damages that are Impermissible as a Matter of Law.

Quantum Meruit, or unjust enrichment is the equitable remedy that seeks to prevent a Defendant from benefitting in an inequitable fashion. In the instant case, there is a single bare allegations as to the supposed benefit received by K+N; namely that ‘the Defendants were able to complete the shipment because of Plaintiff’s Exporter of Record status. This statement is both unsupported and nonsensical.

In Florida, damages for a quantum meruit/unjust enrichment claim may be calculated as either “(1) the market value of the services; or (2) the value of the services to the party unjustly enriched.” *F.H. Paschen, S.N. Nielsen & Assocs. LLC v. B&B Site Dev., Inc.*, 311 So. 3d 39, 50 (Fla. 4th DCA 2021) (internal citations omitted). “The measure of damages for unjust enrichment is the value of the benefit conferred, not the amount the plaintiff hoped to receive or the cost to the plaintiff.” *Id.*; *see also Kane v. Stewart Tilghman Fox & Bianchi, P.A.*, 85 So. 3d 1112, 1115 (Fla. 4th DCA 2012) (“[D]amages for unjust enrichment are based on value from [the] standpoint of the recipient of the benefits.”). Here, Plaintiffs admit that the calculation of alleged monetary damages do not stem from the value of its Exporter of Record services nor the value of those services to the Defendants but rather stem from the Indonesian tax bill and associated penalties as well as the financial loss as a result of its export license being suspended. *See Compl.* at ¶¶ 64, 66, 136.

Plaintiff complains that it would be inequitable to allow Defendants to retain the benefit they obtained from PTL without providing compensation for the same. (*see Compl.* at ¶ 134); and yet, it then seeks \$2.5 million in compensation. K+N never stood to gain \$2.5 million by temporarily depriving PTL (allegedly) of the use of its identity and license. Nor did K+N stand to gain the entirety of the \$422,175.00 cost set forth in the freight quotation since that had hard transportation costs; K+N would only stand to gain the slim profit margins between the cost and

the charges that transportation intermediaries generally charge for such logistics operations. K+N itself would never have been responsible for the payment of any duties or taxes, and would only have stood to gain—in comparison to the PTL’s claims—a de minimis amount.

It is clear and evident that the facts as applied to the law cannot and do not support the damage award as sought by PTL, and therefore, same should be dismissed.

H. Count 3 for civil conspiracy cannot be maintained as an independent cause of action.

There is no freestanding cause of action in Florida for “civil conspiracy.” In order to state a claim for civil conspiracy, a plaintiff must allege an underlying independent tort. The conspiracy is merely the vehicle by which the underlying tort was committed, and the allegations of conspiracy permit the plaintiff to hold each conspirator jointly liable for the actions of the coconspirators. As we reaffirmed in *Banco de los Trabajadores v. Cortez Moreno*, 237 So.3d 1127, 1136 (Fla. 3d DCA 2018):

Florida does not recognize civil conspiracy as a freestanding tort. *SFM Holdings Ltd. v. Banc of Am. Secs., LLC*, 764 F.3d 1327, 1338-39 (11th Cir. 2014) (applying Florida law). The gist of a civil conspiracy is not the conspiracy itself, but the underlying civil wrong occurring pursuant to the conspiracy and which results in the plaintiff’s damages. *Marriott Int’l, Inc., v. Am. Bridge Bahamas, Ltd.*, 193 So.3d 902, 909 (Fla. 3d DCA 2015). The conspiracy does not give rise to an independent cause of action, but is a device to allow a plaintiff to spread liability to those involved in causing the underlying tort. *Lorillard Tobacco Co. v. Alexander*, 123 So.3d 67, 80 (Fla. 3d DCA 2013) (observing: “Conspiracy is not a separate or independent tort but is a vehicle for imputing the tortious acts of one coconspirator to another to establish joint and several liability.”) (quoting *Ford v. Rowland*, 562 So.2d 731, 735 n.2 (Fla. 5th DCA 1990)). The conspiracy therefore, is inextricably linked with the underlying tort. *Blatt v. Green, Rose, Kahn & Piotrkowski*, 456 So.2d 949, 950-51 (Fla. 3d DCA 1984).

Because the alleged underlying tort is subject to dismissal, so too is the civil conspiracy claim which rests upon the defective intentional tort. With no freestanding cause of action to support the civil conspiracy claim remaining, the instant claim should be dismissed.

IV. CONCLUSION

For all the foregoing reasons, Defendant Kuehne + Nagel, Inc. respectfully request that the Court enter an Order dismissing the Complaint for failure to state a claim for which relief can be granted, together with costs, attorney's fees, and such other relief as the Court deems just and proper. Alternatively, the Court should order Plaintiffs to replead their complaint in compliance with the requirements under *Twombly*, *Iqbal*, their Eleventh Circuit progeny, and the Federal Rules of Civil Procedure.

Dated: February 17, 2026

Respectfully submitted,

SPECTOR RUBIN, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed on February 17, 2026, via the Court's CM/ECF system, which shall notify all parties of record.

SPECTOR RUBIN, P.A.

By: /s/ Andrew R. Spector
Andrew R. Spector (FBN: 634093)