

IN THE CHANCERY COURT, STATE OF WYOMING

2022 WYCH 3

Cloud Peak Law Group, P.C.,

Plaintiff,

v.

Firstbase.IO, Inc.,

Defendant.

Case No. CH-2022-0000006

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**Order Denying Motion to Dismiss**

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[¶ 1] This matter comes before the court on Firstbase’s motion to dismiss, filed on September 12, 2022. (FSX No. 68092010). Cloud Peak filed a response on October 3, 2022 (FSX No. 68202374), and Firstbase a reply on October 18, 2022. (FSX No. 68271853). The court heard oral arguments on the motion on October 25, 2022. After considering the oral and written arguments, the court denies the motion.

**INTRODUCTION**

[¶ 2] In motions practice, as in life, perspective matters. Analyzing the same complaint under the same rule, the parties take two different perspectives. Cloud Peak views the allegations as true without extensive reference to outside materials. Firstbase views the complaint in light of exhibits attached to a separate motion to argue the allegations are inconsistent with the parties’ actual communications, interactions, and expectations. The proper perspective concentrates on the allegations alone and views them as true and in the light most favorable to Cloud Peak. This perspective requires denial of the motion.

**BACKGROUND**

[¶ 3] The court takes the following facts from Cloud Peak’s complaint and assumes them to be true for purposes of the motion to dismiss.

## A. The Parties

[¶ 4] Plaintiff Cloud Peak Law Group, P.C. is a Wyoming professional corporation with its principal place of business in Sheridan, Wyoming. *Compl.*, ¶ 1. Originally a trust and estates law firm, Cloud Peak now offers entity formation, registered agent, and legal and business document services. *Id.* ¶¶ 5-6. Cloud Peak primarily provides these services to Wyoming and Delaware entities. *Id.* ¶ 5.

[¶ 5] Defendant Firstbase.io, Inc. is a Delaware Corporation with its principal place of business in New York. *Id.* ¶ 2. Like Cloud Peak, Firstbase offers entity formation services. *Id.* ¶¶ 2,8. Unlike Cloud Peak, Firstbase could not (at least initially) provide entity formation and registered agent services to Wyoming entities. *Id.* ¶ 8.

## B. The Alleged 2019 Agreement

[¶ 6] Unable to provide formation and registered agent services to Wyoming entities, Firstbase approached Cloud Peak about a partnership in October of 2018. *Id.* ¶ 9. A year later, the parties engaged in telephone and email negotiations. *Id.*

[¶ 7] Cloud Peak alleges that in September 2019 the parties reached agreement on the following terms:

- Cloud Peak would “form new Wyoming entities for third parties and provides those formed entities’ first-year RA services.”
- Firstbase “would pay Cloud Peak \$149.00 (\$100.00 for Wyoming filing fees and \$49.00 for first-year RA services)” for each entity.
- Firstbase would “allow Cloud Peak to continue RA services for the entities—independent of and without interference by Firstbase – in future years.”

*Id.* ¶¶ 10-12, 34.

[¶ 8] Though the complaint alleges the parties reached agreement on these terms in September 2019, it does not allege the parties committed the terms to writing. *Id.* 9-13. *See also Pl.’s Resp.* at 2. What the complaint does allege is that the parties evidenced their mutual assent when “Firstbase places its first order for a Wyoming entity with Cloud Peak and the Parties worked out the specifics for placing orders.” *Compl.*, ¶ 13.

[¶ 9] From September 2019 to September 2020, the parties honored the alleged oral agreement. *Id.* ¶ 14. Firstbase funneled prospective Wyoming entities to Cloud Peak. *See id.* ¶¶ 10-14. In turn, Cloud Peak formed the entities in Wyoming and provided first-year registered agent services for \$49.00. *See id.*

### **C. The Alleged 2020 Amendment**

[¶ 10] After one year of operating under this arrangement, Firstbase asked Cloud Peak to waive its first-year Wyoming registered agent fees. *Id.* ¶ 15. Cloud Peak agreed to the waiver on the following terms:

- Cloud Peak would “waive its \$49.00 first-year Wyoming RA fee.”
- Firstbase would “continue its relationship with Cloud Peak in Wyoming.”
- Firstbase would “place all orders received by Firstbase for entity formations in Delaware with Cloud Peak.”
- Firstbase would “allow Cloud Peak to continue RA services for the entities—independent of and without interference by Firstbase – in future years.”

*Id.* ¶¶ 15-16, 35.

[¶ 11] At once, the 2020 amendment reduced and expanded the 2019 agreement. Reduced because the agreement eliminated Cloud Peak’s \$49.00 registered agent fee for each client. Expanded because the agreement required Firstbase to send Cloud Peak not only all Wyoming entities, but also all Delaware entities.

[¶ 12] The complaint nowhere alleges that the parties committed the 2020 amendment to writing or that an integrated document exists delineating all terms in writing. *See Pl.’s Resp.* at 2.

### **D. Cloud Peak’s Alleged Reliance and Performance**

[¶ 13] The 2020 arrangement struck Cloud Peak as beneficial. *See Compl.* ¶¶ 16-19. Though it would forfeit first-year registered agent fees, Cloud Peak expected an “increase in clients” and “highly likely future revenue from RA services.” *Id.*

[¶ 14] With this expectation in mind, Cloud Peak took costly steps to perform under the alleged agreement. *Id.* ¶¶ 21-22. It secured a lease and hired employees in Delaware, created an automatic e-mail for entities referred to Cloud Peak under the agreement, revised the e-mail on Firstbase’s request, created an Application

Programming Interface to accelerate formation time and facilitate data sharing with Firstbase, and formed entities and provided first-year registered agent services for free. *Id.* ¶¶ 21-22, 24.

### **E. Firstbase’s Alleged Breach and Tortious Interference**

[¶ 15] While Cloud Peak incurred these expenses and provided services, Firstbase developed the ability to provide Wyoming entity formation and registered agent services on its own. *Id.* ¶¶ 23-25. Now capable of providing these services directly, Firstbase started offering registered agent services directly to new entities and marketed the services to existing entities using Cloud Peak’s registered agent services. *Id.* ¶¶ 25-26. Firstbase informed existing entities they must switch from Cloud Peak to Firstbase’s registered agent services “to remain compliant” and should “disregard notices received from Cloud Peak.” *Id.* ¶ 27.

[¶ 16] In one email to entities receiving first-year registered agent services from Cloud Peak, Firstbase warned registered agent services were set to expire and encouraged the entities to sign up for Firstbase’s services. *Id.* ¶ 28. Firstbase signed the email “Andrew, a name well known to the entities as a Cloud Peak employee” who helped form the entities. *Id.* ¶¶ 28-29. Cloud Peak alleges Firstbase used the first name Andrew and no last name to imply Cloud Peak had directed entities to switch to Firstbase’s registered agent services. *Id.* ¶ 29.

[¶ 17] After admitting it had developed its own registered agent services, Firstbase terminated its relationship with Cloud Peak. *Id.* ¶ 25.

### **PROCEDURAL HISTORY**

[¶ 18] On July 13, 2022, Cloud Peak commenced suit asserting claims for breach of contract, tortious interference with a contract or prospective economic advantage, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. (FSX No. 67818183). Cloud Peak neither attached nor incorporated any exhibits to its complaint.

[¶ 19] Cloud Peak followed its complaint with a motion for temporary restraining order and preliminary injunction. (FSX No. 67902428). Filed on August 4, 2020, this motion attaches exhibits including declarations and written communications.

[¶ 20] Firstbase opposed the motion for injunctive relief on August 15, 2020 (FSX No.67934024) and moved to dismiss the complaint under Rule 12(b)(6) on September 12, 2022. (FSX No. 68092010).

[¶ 21] Cloud Peak filed a reply in support of its motion for preliminary injunctive relief on August 30, 2022 (FSX No. 67999574), and a response to the motion to dismiss on October 3, 2022. (FSX No. 68202374).

[¶ 22] Firstbase filed a reply in support of its motion to dismiss on October 18, 2022. (FSX No. 68271853).

[¶ 23] The court heard oral arguments on both motions on October 25, 2022 and took this matter under advisement.

### **LEGAL STANDARD**

[¶ 24] A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of claims alleged in the complaint. *Moses Inc. v. Moses*, 2022 WY 57, ¶ 8, 509 P.3d 345, 349 (Wyo. 2022). When deciding such a motion, the court accepts the facts stated in the complaint as true and views them in the light most favorable to the defendant. *Stroth v. N. Lincoln Cnty. Hosp. Dist.*, 2014 WY 81, ¶ 6, 327 P.3d 121, 125 (Wyo. 2014). “[D]ismissal is a drastic remedy” warranted only if “it is certain from the face of the complaint that plaintiff cannot assert any fact that would entitle him to relief.” *Moses*, ¶ 8, 509 P.3d at 349.

[¶ 25] If, a party presents, and the court considers, matters outside the pleadings, then the Rule 12(b)(6) “motion must be treated as one for summary judgment under Rule 56.” W.R.C.P.Ch.C. 12(d). Here, neither party attached matters outside the pleadings to its motion to dismiss briefing. Though it does not attach outside materials, Firstbase refers to and relies upon exhibits attached to Cloud Peak’s separate motion for preliminary injunctive relief. Firstbase asserts the complaint incorporates these exhibits by reference. The court finds no such incorporation. Accordingly, the court confines its review to the allegations contained in the complaint and declines to convert the motion to summary judgment.

### **DISCUSSION**

[¶ 26] Firstbase moves to dismiss Cloud Peak’s claims for breach of contract, breach of good faith and fair dealing, tortious interference, and unjust enrichment. This court takes each claim in turn and asks whether Cloud Peak cannot assert any fact that would entitle it to relief.

## A. Breach of Contract

[¶ 27] For its first cause of action, Cloud Peak alleges Firstbase breached the contract in three ways:

- Failing to direct new clients to Cloud Peak;
- Diverting existing clients away from Cloud Peak to Firstbase; and
- Thwarting Cloud Peak's future interests by terminating the parties' relationship.

*Compl.*, ¶¶ 31-36.

[¶ 28] To state a claim for breach of contract, a complaint must allege (1) a lawfully enforceable contract, (2) an unjustified failure to timely perform all or any part of what is promised, and (3) entitlement to damages. *Kappes v. Rhodes*, 2022 WY 82, ¶ 17, 512 P.3d 31, 36 (Wyo. 2022).

[¶ 29] Firstbase attacks the first element—enforceable contract—on two grounds. First, Cloud Peak did not adequately allege contract formation. Second, the statute of frauds bars enforcement because it could not be performed within one year. Examining the complaint under the plaintiff-friendly Rule 12(b)(6) standard, the court finds the allegations sufficient and the statute of frauds inapplicable.

### i. Contract Formation

[¶ 30] Firstbase argues Cloud Peak has not adequately alleged the existence of a contract because the allegations show ongoing negotiations, not agreement. Firstbase makes its argument by comparing the exhibits attached to Cloud Peak's motion for preliminary injunctive relief with the allegations in the complaint. Though Firstbase's analysis of the exhibits is careful and comprehensive, the present motion merely tests the sufficiency of the complaint's allegations. Consistent with that purpose, the court declines to consider materials outside the complaint.

[¶ 31] Instead of asking whether the complaint is consistent with the exhibits attached to a separate motion, the court asks whether the complaint alleges the elementary elements of contract formation. The basic elements of a contract are offer, acceptance, and consideration. *Kappes v. Rhodes*, 2022 WY 82, ¶ 18, 512 P.3d 31, 36 (Wyo. 2022). Whether these elements are satisfied and a contract exists is ultimately a question of fact resolved by the fact-finder. *Ewing v. Hladky Constr.*,

*Inc.*, 48 P.3d 1086, 1088 (Wyo. 2002). At this stage, Cloud Peak need only allege rather than prove these elements. *See Hesse v. Town of Jackson, Wyoming*, No. 06-CV-155-B, 2006 WL 8444873, at \*1 (D. Wyo. Dec. 13, 2006) (The court’s task at the Rule 12(b)(6) stage “is not to weigh potential evidence that might be presented” but to determine “whether the plaintiff is entitled to offer evidence to support his claim.”).

[¶ 32] Cloud peak alleges negotiations, identifies the month and year the agreement was reached, specifies the contract’s terms, and identifies the benefits or consideration receive by each contracting party. *Compl.*, ¶¶ 9-14. Specifically, Cloud Peak alleges the parties engaged in telephone and email negotiations and reached agreement in September 2019 on specific terms. *Id.* ¶¶ 9-12, 34. Namely, Firstbase would funnel prospective Wyoming entities to Cloud Peak for formation and first-year registered agent services. Firstbase “would pay Cloud Peak \$149.00 (\$100.00 for Wyoming filing fees and \$49.00 for first-year RA services)” for each entity. *Id.* ¶ 10. And Firstbase would allow Cloud Peak to provide these services in future years without interference from Firstbase. *Id.* The benefit Firstbase received from these initial terms was having “fully formed Wyoming entities with RA services within days at little costs to Firstbase.” *Id.* ¶ 11. Cloud Peak expected to benefit from “the first-year RA fee and a high likelihood of future RA revenue for the businesses formed.” *Id.*

[¶ 33] In addition to alleging contract formation, specifying terms, and identifying the benefits of the bargain, Cloud Peak alleges the parties factually evidenced their mutual assent by operating under the terms from September 2019 to September 2020. *Id.* ¶¶ 13-14.

[¶ 34] Cloud Peak also alleges the month and year the parties amended the contract, specifies the terms of the amended contract, and identifies the benefits received. *Id.* ¶¶ 15-21. Specifically, Cloud Peak alleges that in September 2020, Cloud Peak agreed to waive its first-year registered agent fee in exchange for Firstbase continuing its relationship with Cloud Peak, placing all orders for Delaware entity formations with Cloud Peak, and allowing Cloud Peak to continue providing registered agent services in subsequent years without interference from Firstbase. *Id.* ¶¶ 15-19, 35. Firstbase benefited from the amended terms by having fully formed Wyoming and Delaware entities at no cost. *Id.* ¶¶ 11, 15-16, 24. And Cloud Peak expected to benefit from an “increase in clients” and “highly likely future revenue from RA services.” *Id.* ¶ 18.

[¶ 35] Accepting these allegations as true and giving Cloud Peak all reasonable inferences, the court finds Cloud Peak adequately alleged formation of an agreement. Although the complaint’s allegations are not a model of precision, they put Firstbase on adequate notice of the breach of contract claim.

[¶ 36] Firstbase raises concerns about the shape-shifting nature of Cloud Peak’s breach of contract claim. It argues that Cloud Peak alleges certain terms in the complaint and recites others in the briefing. Though any inconsistency in terms would be troubling, the court limits its review at this stage to the terms alleged in the complaint.

## ii. Statute of Frauds

[¶ 37] The court turns to Firstbase’s statute of frauds argument. While most contracts may be formed orally, certain contracts must be in writing to comply with the statute of frauds. Wyo. Stat. Ann. § 1-23-105. One such contract requiring a writing is a contract that cannot be completed within one year of its making. Wyo. Stat. § 1-23-105(a)(i). Despite this requirement, full or partial performance by one of the parties will take a contract lasting more than one year outside the statute of frauds. *Metz. Bevarge Co. v. Wyo. Beverages, Inc.* 2002 WY 21, ¶17, 39 P.3d 1051, 1056 (Wyo. 2002).

[¶ 38] The full and partial performance doctrines are common-law equitable exceptions to the statute of frauds. *Davis v. Harmony Dev., LLC*, 2020 WY 39, ¶¶ 16-17, 460 P.3d 230, 236–37 (Wyo. 2020). *See also* 6 A.L.R.2d 1053. Their purpose is the same as that of the statute of frauds—prevent fraud. *Id.* or *Simek v. Tate*, 2010 WY 65, ¶ 22 231 P.3d 891, 900 (Wyo. 2010). *See also* 73 Am. Jur. 2d Statute of Frauds § 291; 6 A.L.R.2d 1053. Given this purpose, when “necessary to avoid [] fraud and accomplish what justice and good conscience demand,” Wyoming courts will invoke the full or partial performance doctrines to enforce oral arguments not performable within a year. *Harmony Development, LLC*, ¶ 16, 460 P.3d at 236-37. Such is the case here when the court takes the allegations as true in the light most favorable to Cloud Peak.

[¶ 39] The alleged agreement fixes no definite time for performance. Yet, it falls within the statute of frauds because the parties intended that it should not be performed within a year. *See* 37 C.J.S. Frauds, Statute of § 43. (“A contract which is impossible to perform within a year is within the statute of frauds, even though it specifies no definite time for its performance.”).



[¶ 40] Cloud Peak specifically alleges full performance under the agreement would take longer than one year. Cloud Peak alleges that in exchange for entity formation and first-year registered agent services, Firstbase would “allow Cloud Peak to continue RA services for the entities – independent of and without interference by Firstbase – **in future years**. *Compl.*, ¶ 10 (emphasis added). Indeed, as the complaint alleges, the benefit of the “agreement to Cloud Peak was future RA services.” *Id.* ¶ 59. The complaint is replete with references to Cloud Peak’s interest in expected revenues for future register-agent services. *See id.* ¶¶ 11, 40, 43, 50, 51, 59 and ¶ 60. While the agreement entitled Cloud Peak to seek these revenues in future years without interference, Firstbase diverted existing clients away from Cloud Peak. *Id.* ¶¶ 15-16, 35, 43. Given these allegations, the court declines to interpret the agreement as being capable of full performance within a year.

[¶ 41] Though the allegations support application of the statute of frauds, they also support application of the full or substantial performance exceptions. Firstbase placed orders and Cloud Peak provided the services from September 2019 to 2020. *Id.* ¶¶ 13-14. After the parties amended the agreement to encompass Delaware entities, Cloud Peak leased property and hired employees in Delaware, created an automatic e-mail for entities referred to Cloud Peak under the agreement, revised the e-mail on Firstbase’s request, created an Application Programming Interface to accelerate formation time and facilitate data sharing with Firstbase, and formed entities and provided first-year registered agent services for free. *Id.* ¶¶ 21-22, 24.

[¶ 42] Cloud Peak alleges it provided these services to its detriment and Firstbase’s benefit. *Id.* ¶ 57-58. While Cloud Peak incurred expenses and provided registered-agent services at no cost, Firstbase developed its own register-agent services and then deprived Cloud Peak of future registered-agent revenues. *Id.* ¶¶ 20-26. Thus, taking the allegations at true, the court must invoke the full or partial performance doctrines to “accomplish what justice and good conscience demand.” *See Harmony Development, LLC*, ¶ 16, 460 P.3d at 236-37.

## **B. Good Faith and Fair Dealing**

[¶ 43] Next, the court considers Cloud Peak’s closely related cause of action for breach of the covenant of good faith and fair dealing. Firstbase argues the claim must be dismissed because Cloud Peak does not allege an enforceable contract. For the reasons above, the court finds the complaint adequately alleges an enforceable contract. It follows, then, that Cloud Peak also alleges a claim for breach of the covenant of good faith and fair dealing.

[¶ 44] Indeed, any enforceable contract carries “a duty of good faith and fair dealing in its performance and enforcement.” *Ultra Res., Inc. v. Hartman*, 2010 WY 36, ¶ 84, 226 P.3d 889, 919 (Wyo. 2010) (citing Rest. 2d Contracts § 205 (1981)). This duty requires each party to act consistent with the agreed common purpose and the justified expectations of the other contract party. *White v. Shane Edeburn Const., LLC*, 2012 WY 118, ¶ 20, 285 P.3d 949, 955 (Wyo. 2012).

[¶ 45] Cloud Peak alleges Firstbase breached this duty by usurping Cloud Peak’s expected future registered agent revenues when it offered registered agent services directly to new entities, marketed the services to existing entities using Cloud Peak’s services, and terminated the parties’ relationship. *Compl.*, ¶¶ 23-26. Taking these allegations as true, the breach of the covenant of good faith and fair dealing claim must be sustained at this stage.

### **C. Tortious Interference**

[¶ 46] Up next is Cloud Peak’s cause of action for tortious interference. To state a claim for tortious interference, Cloud Peak must plead facts establishing four elements: (1) A valid contractual relationship or business expectancy; (2) Firstbase’s knowledge of the relationship or expectancy; (3) intentional and improper interferences inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage to Cloud Peak from the disrupted expectancy. *See Sheaffer v. State ex rel. Univ. of Wyoming ex rel. Bd. of Trustees*, 2009 WY 19, ¶ 51, 202 P.3d 1030, 1044 (Wyo. 2009).

[¶ 47] Of these four elements, Firstbase targets the third element. And within the third element, Firstbase hones in on the term “improper interference.” It argues Cloud Peak does not allege tortious interference because all alleged communications were truthful. Yet, when viewed in the light most favorable to Cloud Peak, some of these communications are misleading at best and outright false at worse.

[¶ 48] Consider Firstbase’s email informing entities they must switch from Cloud Peak to Firstbase’s registered agent services “to remain compliant.” *Compl.*, ¶ 27. To remain regulatory compliant, a Wyoming entity must maintain an active registered agent. Wyo. Stat. Ann. § 17-28-101. Nothing in Wyoming law or regulation required entities to name Firstbase as registered agent to remain compliant. Thus, this statement that entities must switch registered agent providers is improper.

[¶ 49] Consider also the email signed “Andrew,” a name allegedly “well known to the entities as a Cloud Peak employee” who formed the entities. *Compl.*, ¶¶ 28-29. This email warns entities Cloud Peak’s registered agent services were set to expire and encouraged entities to sign up for Firstbase’s services. *Id.* ¶ 28. Entities may well have interpreted this email as direction from Cloud Peak to switch to Firstbase’s competing registered agent services.

[¶ 50] These allegations support a claim for tortious interference when viewed through the 12(b)(6) lens.

#### **D. Unjust Enrichment**

[¶ 51] For its fourth cause of action, Cloud Peak alleges unjust enrichment. To state a claim for unjust enrichment, Cloud Peak must allege facts establishing four elements: (1) valuable services were rendered, or materials furnished, (2) to the party to be charged, (3) which services or materials were accepted, used, and enjoyed by the party, and, (4) under such circumstances which reasonably notified the party to be charged that the plaintiff, in rendering such services or furnishing such materials, expected to be paid by the party to be charged. *Elec. Wholesale Supply Co. v. Fraser*, 2015 WY 105, ¶27, 356 P.3d 254, 261 (Wyo. 2015).

[¶ 52] The heart of an unjust enrichment claim is the fourth element. *Id.* ¶34, 356 P.3d at 263. Getting at the heart of the claim, Firstbase argues the circumstances did not reasonably notify Firstbase that Cloud Peak expected compensation for the services because Cloud Peak (not Firstbase) benefited from the arrangement. Firstbase’s referrals expanded Cloud Peak’s client base and bought it valuable time to impress the clients and convince them to renew for future years. Firstbase received no benefit because it passed the first-year registered agent service fee waiver on to the entities.

[¶ 53] Firstbase presents one view of this claim. Cloud Peak presents another. It asserts the allegations show Cloud Peak expended “time, resources, know-how, and legal expertise” in providing entity formation and registered agent services. *Plf. Rsp.* at 14. In return for these efforts, Cloud Peak received nothing. *Id.* at 13. But Firstbase profited. *Id.* at 13-14.

[¶ 54] The view the court must adopt at this plaintiff-friendly stage is Cloud Peak’s. When viewed in the light most favorable to Cloud Peak, the complaint alleges circumstances putting Firstbase on reasonable notice that Cloud Peak expected compensation. Allegations show Cloud Peak provided entity-formation and

registered agent services at no cost to Firstbase. *Compl.*, ¶¶ 15, 21-24. Firstbase accepted, used, and enjoyed these services. *See id.* As compensation, Cloud Peak expected to provide registered-agent services without interference from Firstbase. *Id.* ¶¶ 10, 11, 40, 43, 50, 51, 59 and ¶ 60. Given these allegations, the court cannot say there is no set of fact which would entitle Cloud Peak to relief on the unjust enrichment claim.

[¶ 55] Firstbase also points to communications contained in exhibits to the motion for preliminary injunctive relief to establish Firstbase was not reasonably notified of Cloud Peak's expectation. While this factual argument may have merit at a later stage, it has no merit at the present stage. The court declines to consider matters outside the pleadings.

#### CONCLUSION

[¶ 56] When viewed through the proper perspective, the complaint makes sufficient allegations to withstand a Rule 12(b)(6) challenge. Firstbase has not established that it is certain from the face of the complaint that Cloud Peak cannot assert any fact that would entitle it to relief. Accordingly, the court **DENIES** Firstbase's motion to dismiss.

**IT IS SO ORDERED.**

**DATED:** 12/21/2022

/s/ Steven K Sharpe  
CHANCERY COURT JUDGE