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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

U-HAUL CO. OF NEVADA, INC., a Nevada corporation; and U-HAUL INTERNATIONAL, INC., a Nevada corporation

Plaintiffs,

v.

GREGORY J. KAMER, LTD d/b/a KAMER ZUCKER & ABBOTT, a Nevada professional corporation; DEBRA WILCHER; a Nevada resident; NATHAN W. ALBRIGHT, a Virginia resident; STEVEN WAMSER, a Nevada resident; DOES 1-10; inclusive; and ROE CORPORATIONS 1-10, inclusive,

Defendants.

2:06-cv-618-RCJ-PAL

**ORDER**

Currently before the Court are Kamer Zucker & Abbott's ("Kamer" or "Kamer firm") Request for Ruling Upon Pending Motions (#96) and Plaintiffs' U-Haul Company of Nevada, Inc. and U-Haul International Inc.'s Request for the Entry of Default (#100). The Court heard oral argument on June 3, 2011.

**BACKGROUND**

In May 2006, the United States filed a petition for removal alleging that an officer of the United States, Steven Wamser, had been named as a defendant in the case. (Pet. for Removal (#1) at 1-2). The government attached both Plaintiffs' complaint and a certification for Wamser stating that he was acting within the scope of his employment as an employee of the United States at all relevant times in the complaint. (See Compl. (#1-1) at 2; see Certification of Scope of Emp't (#1-1) at 25).

1 Plaintiffs complaint alleged the following against Defendants Gregory J Kamer, Ltd.  
2 d/b/a Kamer Zucker & Abbott; Debra Wilcher; Nathan W. Albright; and Steven Wamser.  
3 (Compl. (#1-1) at 2). Wamser and Albright were employees of the NLRB. (*Id.* at 3). In 2004,  
4 the NLRB initiated proceedings against Plaintiffs and appointed Wamser and Albright to  
5 prosecute the action. (*Id.* at 4). Plaintiffs hired the Kamer firm to provide legal representation  
6 during the NLRB proceedings. (*Id.*). At some time beginning in 2004 through October 2005,  
7 Albright and Wilcher, a paralegal employed by the Kamer firm, “conducted and carried on an  
8 illicit and clandestine sexual relationship.” (*Id.* at 5). Albright’s wife, Jennifer Cory, confronted  
9 Albright about the affair in February 2005 and threatened to report him to the state bar and the  
10 NLRB. (*Id.*). In March of 2005, Wilcher left the law firm’s employment but then returned to  
11 work there in early-May 2005. (*Id.*). During the course of the affair, Wilcher provided Albright  
12 “with confidential information, which was reviewed and utilized by” Albright in the NLRB  
13 proceeding. (*Id.* at 6). The confidential information included a document prepared by the law  
14 firm that had provided a critical analysis of the entire proceeding for U-Haul’s in-house  
15 counsel. (*Id.*). Albright and Wilcher had discussed all aspects of the proceeding during their  
16 affair. (*Id.*). Albright had “influenced” Wilcher to provide him with confidential information  
17 pertaining to Plaintiffs’ position in the proceeding. (*Id.*). Wilcher sat in on and participated in  
18 witness preparation, served as custodian for the trial record, and was present throughout the  
19 proceedings. (*Id.*).

20 Plaintiffs alleged that Wamser knew of the affair and had used the confidential  
21 information obtained by Albright. (*Id.*). On September 30, 2005, an administrative law judge  
22 (“ALJ”) issued a decision that Plaintiffs had violated the National Labor Relations Act (“NLRA”).  
23 (*Id.* at 7). On September 5, 2005, Albright informed the NLRB’s Regional Director of his  
24 wrongful behavior and asked Wilcher not to disclose the fact that confidential information had  
25 been exchanged between them. (*Id.*). On October 13, 2005, Albright contacted the Kamer  
26 firm and requested a meeting with Gregory Kamer. (*Id.* at 8). Upon learning of Albright’s  
27 meeting with Kamer, Wilcher provided Kamer with a one-page summary of her relationship  
28 with Albright, orally informed Kamer of the affair, and denied giving any confidential

1 information to Albright. (*Id.*). On October 15, 2005, Albright told Kamer that he had obtained  
2 confidential information, including the aforementioned document, from Wilcher. (*Id.*). The  
3 Kamer firm initiated an investigation and placed Wilcher on administrative leave. (*Id.*). On  
4 October 19, 2005, an NLRB investigator, Terry Morgan, contacted the firm and requested an  
5 interview with Wilcher. (*Id.* at 9). After Morgan interviewed Wilcher on October 20, 2005,  
6 Wilcher resigned. (*Id.*). After meeting with the partners of the law firm that same day, Morgan  
7 learned that nobody at the law firm had informed Plaintiffs of Albright's conduct. (*Id.*). Morgan  
8 told the law firm that she would research whether she had a duty to inform Plaintiffs herself.  
9 (*Id.*). After meeting with Morgan, the partners held a meeting and, as a result, the law firm  
10 contacted Plaintiffs' general counsel and informed him of the affair. (*Id.*).

11 Plaintiffs alleged sixteen causes of action. (*Id.* at 10). In the first claim for relief,  
12 Plaintiffs alleged conversion against Albright and Wilcher for exerting an act of domain over  
13 their confidential communications. (*Id.*). In the second claim for relief, Plaintiffs alleged fraud  
14 against Albright and Wilcher. (*Id.* at 11). In the third claim for relief, Plaintiffs alleged  
15 constructive fraud against Albright and Wilcher. (*Id.* at 12). In the fourth claim for relief,  
16 Plaintiffs alleged civil conspiracy against Albright and Wilcher. (*Id.* at 13). In the fifth claim for  
17 relief, Plaintiffs alleged malpractice and professional misconduct against Albright. (*Id.*). In the  
18 sixth and seventh claims for relief, Plaintiffs alleged negligent supervision, professional  
19 misconduct, and acting in concert against Wamser. (*Id.* at 13-15).

20 In the eighth claim for relief, Plaintiffs alleged legal malpractice against the Kamer firm  
21 because the firm breached its duty to use skill, prudence, and diligence in exercising and  
22 performing their legal tasks. (*Id.* at 16). In the ninth claim for relief, Plaintiffs alleged a breach  
23 of fiduciary duty against the Kamer firm because of the firm's conduct before and after the  
24 discovery of the affair. (*Id.* at 17). In the tenth cause of action, Plaintiffs alleged a breach of  
25 the duty to maintain confidentiality against the Kamer firm. (*Id.*). In the eleventh cause of  
26 action, Plaintiffs alleged negligence against the law firm because it breached the duty of care  
27 it owed to Plaintiffs. (*Id.* at 18). In the twelfth claim for relief, Plaintiffs alleged negligent hiring  
28 against the law firm for hiring and then rehiring Wilcher even though the firm "knew, or should

1 have known” of Wilcher’s “unethical and dangerous propensities, including, without limitation,  
2 the existence and continuance” of the affair when it rehired Wilcher. (*Id.* at 19). In the  
3 thirteenth claim for relief, Plaintiffs alleged negligent supervision against the Kamer firm for  
4 breach of duty to properly supervise its employee, Wilcher. (*Id.* at 19-20). In the fourteenth  
5 claim for relief, Plaintiffs alleged vicarious liability/ respondeat superior against the Kamer firm  
6 for Wilcher’s acts of conversion and wrongful transfer of confidential information to Albright  
7 during the scope of her employment. (*Id.* at 20). In the fifteenth claim for relief, Plaintiffs  
8 alleged constructive fraud against the Kamer firm for breaching its legal and equitable duties  
9 by misrepresenting and concealing material facts related to the affair until the NLRB  
10 threatened to do it themselves. (*Id.* at 21). In the sixteenth claim for relief, Plaintiffs alleged  
11 unjust enrichment against the Kamer firm because it “unjustly retained the money and property  
12 of U-Haul against fundamental principles of justice, equity, and good conscience” and  
13 requested that the firm refund the attorneys’ fees that Plaintiffs had paid. (*Id.* at 22).

14 In June 2006, Kamer filed a Motion to Dismiss. (See Docket Sheet Entry #9). In  
15 August 2006, Kamer filed a Motion to Dismiss Plaintiffs’ Unjust Enrichment Claim for Relief  
16 and a Motion for More Definite Statement Relating to U-Haul’s Constructive Fraud Case. (See  
17 Docket Sheet Entry #35-36). On August 17, 2006, Albright died. (Notice of Death (#46)). In  
18 November 2006, the Court granted Plaintiffs’ Motion for Substitution of Parties and substituted  
19 Jennifer Cory, Executrix of the Estate of Nathan Albright, as Defendant in place of Albright.  
20 (Order (#56)).

21 In June 2007, Judge Sandoval issued an order granting the government’s certification  
22 motion, certified that Wamser had acted within the course and scope of his employment, and  
23 substituted the United States in his place. (Order (#68) at 4-6). Although the government did  
24 not file a certification for Albright, the Court *sua sponte* concluded that Albright had also acted  
25 within the scope of his employment and substituted the United States in his place. (*Id.* at 8).  
26 After substituting the United States for both Wamser and Albright, the Court granted the  
27 government’s motion to dismiss based on lack of subject-matter jurisdiction for failure to  
28 exhaust under the Federal Tort Claims Act. (*Id.* at 8-9). The Court declined to exercise

1 jurisdiction over the remaining state law claims and denied Kamer's motions as moot. (*Id.* at  
2 10-11).

3 Plaintiffs appealed to the Ninth Circuit. (See Notice of Appeal (#71)). The Ninth Circuit  
4 held that this Court erred by substituting the United States for Albright, but did not err in  
5 upholding the Attorney General's certification of Wamser. (Opinion (#92) at 4). The Ninth  
6 Circuit remanded with instructions that this Court "reinstate U-Haul's claims against Albright  
7 . . . [and] reinstate the claims against the other defendants, Debra Wilcher and Kamer Zucker  
8 & Abbott, because [this Court] dismissed those claims under the mistaken belief that it lacked  
9 subject matter jurisdiction over Albright under the FTCA." (*Id.* at 5). The Ninth Circuit stated  
10 that, after reinstating those claims, this Court could decide whether to exercise supplemental  
11 jurisdiction over the remaining claims. (*Id.*).

12 In December 2010, this Court reinstated Plaintiffs' claims against Albright, Wilcher, and  
13 Kamer. (Order (#93)). The pending motions now follow.

#### 14 **LEGAL STANDARD**

15 When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, the  
16 court must accept as true all factual allegations in the complaint as well as all reasonable  
17 inferences that may be drawn from such allegations. *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1150  
18 n.2 (9th Cir. 2000). Such allegations must be construed in the light most favorable to the  
19 nonmoving party. *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000). In general, the  
20 court should only look to the contents of the complaint during its review of a Rule 12(b)(6)  
21 motion to dismiss. However, the court may consider documents attached to the complaint or  
22 referred to in the complaint whose authenticity no party questions. *Id.*; see *Durning v. First*  
23 *Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987).

24 The analysis and purpose of a Rule 12(b)(6) motion to dismiss for failure to state a  
25 claim is to test the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th  
26 Cir. 2001). The issue is not whether a plaintiff will ultimately prevail but whether the claimant  
27 is entitled to offer evidence to support the claims. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246,  
28 249 (9th Cir. 1997) (quotations omitted). To avoid a Rule 12(b)(6) dismissal, a complaint does

1 not need detailed factual allegations; rather, it must plead “enough facts to state a claim to  
2 relief that is plausible on its face.” *Clemens v. Daimler Chrysler Corp.*, 534 F.3d 1017, 1022  
3 (9th Cir. 2008) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955,  
4 1964, 167 L.Ed.2d 929 (2007)); *Ashcroft v. Iqbal*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1937, 1949, 173  
5 L.Ed.2d 868 (2009) (stating that a “claim has facial plausibility when the plaintiff pleads factual  
6 content that allows the court to draw the reasonable inference that the defendant is liable for  
7 the misconduct alleged”). Even though a complaint does not need “detailed factual  
8 allegations” to pass muster under 12(b)(6) consideration, the factual allegations “must be  
9 enough to raise a right to relief above the speculative level . . . on the assumption that all the  
10 allegations in the complaint are true (even if doubtful in fact).” *Twombly*, 550 U.S. at 555, 127  
11 S.Ct. at 1965. “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the  
12 elements of a cause of action will not do.” *Iqbal*, \_\_\_ U.S. at \_\_\_, 129 S.Ct. at 1949. “Nor  
13 does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual  
14 enhancements.’” *Id.* (quoting *Twombly*, 550 U.S. at 557, 127 S.Ct. at 1966).

## 15 DISCUSSION

### 16 I. **Kamer’s Motion for Ruling on Pending Motions (#96) & Plaintiffs’ Motion for Entry of Default (#100)**

17 Kamer argues that his Motion to Dismiss (#9), Motion to Dismiss Unjust Enrichment  
18 Claim for Relief (#35), and Motion for More Definite Statement Relating to U-Haul’s  
19 Constructive Fraud Cause of Action (#36) are pending motions before this Court. (Request  
20 for Ruling (#96) at 1-2). He asserts that this Court originally dismissed those motions as moot  
21 in a June 14, 2007, order. (*Id.* at 2). However, he argues that, upon remand from the Ninth  
22 Circuit, this Court reinstated the claims against Albright, Wilcher, and the Kamer firm. (*Id.*).  
23 He asserts that the above-referenced motions are no longer moot and should be ruled upon  
24 by this Court. (*Id.*).

25 Plaintiffs respond that the Court ruled on those motions in its previous order and,  
26 therefore, there are no pending motions. (Resp. to Request for Ruling (#99) at 3). Plaintiffs  
27 argue that the second and third motions to dismiss are procedurally improper because Kamer  
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1 was required to consolidate all of his available defenses and objections in his first Fed. R. Civ.  
2 P. 12 motion. (*Id.* at 3-4). Plaintiffs contend that the basis for the first Rule 12 motion no  
3 longer exists because the matter is no longer pending before the NLRB. (*Id.* at 4). Plaintiffs  
4 argue that Kamer failed to file a responsive pleading after the Ninth Circuit issued its mandate.  
5 (Mot. for Request for Default Entry (#100) at 5). Plaintiffs argue that Defendants are in default  
6 pursuant to Fed. R. Civ. P. 55(a). (*Id.* at 5-6).

7 Kamer replies that this Court never issued a substantive ruling on the motions because  
8 this Court denied them as moot. (Reply to Request for Ruling (#101) at 2). He asserts that  
9 Plaintiffs have never argued before that his second and third motions were procedurally  
10 improper. (*Id.* at 3).

11 In response to Plaintiffs' request for default entry, Wilcher argues that the Rule 12  
12 motions are still pending before this Court and, thus, no responsive pleading is required until  
13 after this Court's ruling on those motions. (Wilcher Resp. to Request for Default (#102) at 4).  
14 Wilcher asserts that, even if the Court determines that the Rule 12 motions are not properly  
15 pending before the Court, the Court should not enter a default entry because she had a good  
16 faith belief that the Rule 12 motions were properly pending before the Court and Plaintiffs have  
17 not suffered any prejudice from the minimal delay. (*Id.* at 6-7).

18 Pursuant to Rule 12(a)(1), a defendant must serve a responsive pleading within 21 days  
19 of being served with the summons or complaint. Fed. R. Civ. P. 12(a)(1)(A)(i). However, if a  
20 defendant chooses to file a Rule 12 motion, the time to serve a responsive pleading depends  
21 on the court's action. Fed. R. Civ. P. 12(a)(4). If the court denies the motion, the defendant  
22 must file a responsive pleading within 14 days of the court's denial. Fed. R. Civ. P.  
23 12(a)(4)(A).

24 In this case, the Court interprets Kamer's Motion for Request for Ruling Upon Pending  
25 Motions (#96) as a motion to reinstate the motions that Judge Sandoval had denied as moot.  
26 Because this Court has not yet ruled on these Rule 12 motions—Motion to Dismiss (#9), Motion  
27 to Dismiss Plaintiffs' Unjust Enrichment Claim for Relief (#35), and Motion for More Definite  
28 Statement Relating to U-Haul's Constructive Fraud Cause of Action (#36)—no responsive

1 pleading is due. Therefore, Plaintiffs' request for a default entry based on Kamer's failure to  
2 file a responsive pleading is premature. Accordingly, the Court GRANTS Kamer's Motion for  
3 Request for Ruling Upon Pending Motions (#96) and DENIES Plaintiffs' Request for the Entry  
4 of Default (#100).

5 **II. Kamer's Motion to Dismiss (#9)<sup>1</sup>**

6 In June 2006, Kamer argued that Plaintiffs had appealed the ALJ's decision to the  
7 NLRB and had filed a motion to reopen upon learning about the affair. (Mot. to Dismiss (#9)  
8 at 4). Kamer argued that because the appeal was still pending there was no final judgment  
9 in the underlying matter between Plaintiffs and the NLRB. (*Id.* at 5). Kamer asserted that, in  
10 Nevada, a party cannot file a legal malpractice suit while an appeal on the underlying case is  
11 still pending. (*Id.* at 9). Kamer asserted that Plaintiffs' claims against it were premature. (*Id.*).  
12 Kamer sought dismissal, without prejudice, until after Plaintiffs had appealed the NLRB's  
13 ultimate decision to the Ninth Circuit. (*Id.* at 11).

14 In response to Kamer's motion to consider this "pending" motion, Plaintiffs argue that  
15 the basis for this motion no longer exists because there is no longer a pending matter before  
16 the NLRB. (Resp. to Request for Ruling (#99) at 4).

17 In reply, Kamer asserts that Plaintiffs have waived any claim for legal malpractice  
18 because they entered into a Formal Settlement Stipulation. (Reply to Request for Ruling  
19 (#101) at 4-5).

20 In this case, Plaintiffs are correct that the basis for Kamer's original motion to dismiss  
21 is no longer relevant because there is no proceeding pending before the NLRB. Accordingly,  
22 the Court DENIES the Motion to Dismiss (#9).

23 **III. Kamer's Motion to Dismiss Plaintiffs' Unjust Enrichment Claim for Relief (#35)**

24 Kamer argues that Plaintiffs' unjust enrichment claim fails as a matter of law because  
25 there can be no action for unjust enrichment when there is an express written agreement.  
26 (Mot. to Dismiss Unjust Enrichment (#35) at 4). Kamer asserts that Plaintiffs' unjust  
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28 <sup>1</sup> Wilcher filed a joinder to Kamer's motion to dismiss (#9). (Joinder (#20)).



1 enrichment claim is based on the attorney-client contract agreement between itself and  
2 Plaintiffs. (*Id.*).

3 Plaintiffs respond that the complaint does not address a contractual relationship  
4 between Plaintiffs and Kamer and does not allege a breach of contract against Kamer. (Opp'n  
5 to Mot. to Dismiss Unjust Enrichment (#43) at 6). Plaintiffs also assert that, under Fed. R. Civ.  
6 P. 8(e)(2), they can plead both contract and quasi-contract claims without being inconsistent.  
7 (*Id.* at 7).

8 Kamer replies that Rule 8(e)(2) has no application because the unjust enrichment claim  
9 fails as a matter of law because the claim is based on an express contract between the  
10 parties. (Reply to Mot. to Dismiss Unjust Enrichment (#48) at 2). Kamer argues that, although  
11 the retainer agreement between the parties is not attached to the complaint, the unjust  
12 enrichment claim makes it clear that there is an express agreement between the two parties.  
13 (*Id.* at 3).

14 In a supplemental filing, Kamer attached a copy of the fee agreement executed  
15 between the Kamer firm and Plaintiffs in May 2003. (Suppl. Mot. (#51) at 1). The fee  
16 agreement provides the hourly rates for partners, associates, and paralegals, and  
17 acknowledged that it was a binding contract between the parties. (*Id.* at 5-6). Both Plaintiffs  
18 and Kamer signed the agreement. (*Id.* at 7).

19 In response to the supplemental filing, Plaintiffs argue that the agreement does not  
20 contain the scope and duration of the Kamer firm's representation of U-Haul. (Resp. to Suppl.  
21 Mot. (#53) at 2). Plaintiffs assert that the unjust enrichment claim is not governed by the fee  
22 agreement because the claim is based on the firm's mishandling of U-Haul's representation.  
23 (*Id.*).

24 In a Rule 12(b)(6) motion to dismiss, a court may consider documents attached to the  
25 complaint or referred to in the complaint whose authenticity no party questions. *Shwarz v.*  
26 *United States*, 234 F.3d 428, 435 (9th Cir. 2000); see *Durning v. First Boston Corp.*, 815 F.2d  
27 1265, 1267 (9th Cir. 1987).

28 In Nevada, unjust enrichment occurs when a person has and retains a benefit which

1 in equity and good conscience belongs to another. *Leasepartners Corp. v. Robert L. Brooks*  
2 *Trust*, 942 P.2d 182, 187 (Nev. 1997). The elements of unjust enrichment/quasi-contract  
3 include: “a benefit conferred on the defendant by the plaintiff, appreciation by the defendant  
4 of such benefit, and acceptance and retention by the defendant of such benefit under  
5 circumstances such that it would be inequitable for him to retain the benefit without payment  
6 of the value thereof.” *Id.* “An action based on a theory of unjust enrichment is not available  
7 when there is an express, written contract, because no agreement can be implied when there  
8 is an express agreement.” *Id.* The “doctrine of unjust enrichment . . . applies to situations  
9 where there is no legal contract but where the person sought to be charged is in possession  
10 of money or property which in good conscience and justice he should not retain but should  
11 deliver to another [or should pay for].” *Id.*

12 In this case, Plaintiffs do not dispute the validity of the fee agreement between the  
13 parties. However, in viewing the facts in the light most favorable to Plaintiffs, their unjust  
14 enrichment claim is based on more than just the fee agreement, and instead includes the  
15 scope of Kamer’s legal representation. There is no express agreement before the Court on  
16 that issue. Accordingly, the Court DENIES the motion to dismiss (#35).

17 **IV. Kamer’s Motion for More Definite Statement Relating to U-Haul’s Constructive**  
18 **Fraud Cause of Action (#36)**

19 Kamer seeks a more definite statement regarding Plaintiffs’ constructive fraud claim  
20 pursuant to Rule 12(e). (Mot. for Definite Statement (#36) at 4). Kamer argues that the  
21 pleading fails to plead fraud or mistake with particularity and seeks a list of detailed allegations  
22 pursuant to Rule 9(b). (*Id.* at 4-5).

23 Plaintiffs respond that constructive fraud claims are not subject to Rule 9(b)’s pleading  
24 requirements. (Opp’n to Mot. for Definite Statement (#45) at 7). Plaintiffs assert that, even  
25 if constructive fraud claims are subject to the heightened pleading standard, they pled with  
26 particularity. (*Id.* at 8).

27 In Nevada, constructive fraud is “the breach of some legal or equitable duty which,  
28 irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive

1 others or to violate confidence.” *Perry v. Jordan*, 900 P.2d 325, 337 (Nev. 1995).  
2 “Constructive fraud is characterized by a breach of duty arising out of a fiduciary or confidential  
3 relationship.” *Id.*

4 Nevada courts require plaintiffs to plead constructive fraud with Rule 9(b) particularity.  
5 See *Patterson v. Grimm*, No. 2:10-cv-1292-JCM-RJJ, 2010 WL 4395419, at \*3-5 (D. Nev. Nov.  
6 1, 2010) (noting that any claim of fraud must be pled with particularity under Rule 9(b)  
7 including plaintiff’s constructive fraud claim); *Hutchison v. KFC Corp.*, 809 F.Supp. 68, 70 (D.  
8 Nev. 1992) (granting plaintiffs leave to amend to plead their common law and constructive  
9 fraud claims with more particularity).

10 Pursuant to Rule 9(b), a party alleging fraud “must state with particularity the  
11 circumstances constituting fraud . . . Malice, intent, knowledge, and other conditions of a  
12 person’s mind may be alleged generally.” Fed. R. Civ. P. 9(b). In alleging fraud with  
13 particularity, a party must aver the “who, what, when, where, and how” of the misconduct  
14 charged. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003).

15 In this case, Plaintiffs have satisfied the Rule 9(b) requirements for their constructive  
16 fraud claim against the law firm. (See Compl. (#1-1) at 21). By incorporating their factual  
17 allegations into the claim, Plaintiffs identified specific members of the law firm who breached  
18 a confidential relationship—Gregory Kamer, Carol Davis Zucker, Scott Abbott, Edwin Keller,  
19 and Jody Florence. (See *id.* at 3, 8-9). Plaintiffs alleged the “what” and “how” by stating that  
20 those attorneys had “failed to inform U-Haul of the Affair and related matters until forced to do  
21 so by the threat of Ms. Morgan to do it herself. During the time of concealment, the Law Firm  
22 acted to protect its own interest and abandoned the interests of U-Haul.” (See *id.* at 21).  
23 Plaintiffs alleged the “when” between October 14, 2005, and October 20, 2005. (See *id.* at 8-  
24 9). Plaintiffs alleged that the “where” occurred at the offices of the Kamer firm. (See *id.*).  
25 Accordingly, Plaintiffs have pled their constructive fraud claim with Rule 9(b) particularity and  
26 this Court DENIES Kamer’s Motion for More Definite Statement Relating to U-Haul’s  
27 Constructive Fraud Cause of Action (#36).

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**CONCLUSION**

For the foregoing reasons, IT IS ORDERED that Kamer's Request for Ruling Upon Pending Motions (#96) is GRANTED.

IT IS FURTHER ORDERED that Plaintiffs' Request for Entry of Default (#100) is DENIED.

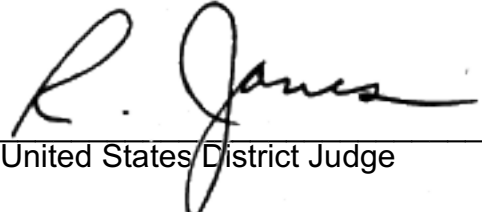
IT IS FURTHER ORDERED that Kamer's Motion to Dismiss (#9) is DENIED.

IT IS FURTHER ORDERED that Kamer's Motion to Dismiss Plaintiffs' Unjust Enrichment Claim for Relief (#35) is DENIED.

IT IS FURTHER ORDERED that Kamer's Motion for More Definite Statement Relating to U-Haul's Constructive Fraud Cause of Action (#36) is DENIED.

IT IS FURTHER ORDERED that Defendants file an answer. Pursuant to oral argument discussions, the Court grants Defendants permission to file subsequent motions to dismiss.

DATED: This 5th day of July, 2011.

  
\_\_\_\_\_  
United States District Judge