IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ABRAHAM BEST,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 2:20-cv-02062-SHL-tmp
	)	
VISIBLE MUSIC COLLEGE,	)	
	)	
Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

Defendant VISIBLE MUSIC COLLEGE ("VMC"), by and through its undersigned counsel and pursuant to Federal Rule of Civil Procedure 12(b)(6), respectfully moves the Court for the entry of an order dismissing the claims for (1) negligent and intentional infliction of emotional distress; (2) fraud; (3) unjust enrichment; and (4) defamation and slander.[1] In support thereof, VMC submits the following:

[1] VMC is moving to dismiss only these four claims of the Complaint. It is not, at this time, responding to the first two claims of the Complaint (for breach of contract and negligence) because the filing of this motion tolls the time for responding to these remaining claims. *See* Fed. R. Civ. P. 12(a)(4)(A) ("serving a motion under this rule alters [the period of time in which a defendant is required to serve an answer such that] if the court denies the motion or postpones its disposition until the trial, the responsive pleading must be served within fourteen (14) days after notice of the court's action[.]"); *Jacques v. First Liberty Ins. Corp.*, No. 8:16-cv-1240-T-23TBM, 2016 U.S. Dist. LEXIS 80556, at *2 (M.D. Fla. June 9, 2016) (explaining that the majority of courts considering whether a partial motion to dismiss extends the moving party's period of time to answer the unchallenged claims have concluded that the moving party need not file an answer while a partial motion to dismiss is pending); *Banerjee v. Univ. of Tenn.*, No. 3:17-cv-526, 2018 U.S. Dist. LEXIS 232340, at *5 (E.D. Tenn. Oct. 9, 2018) (citing *Ideal Instruments, Inc. v. Rivard Instruments, Inc.*, 434 F. Supp. 2d 598, 637-41 (N.D. Iowa 2006)) (agreeing with the majority view); *Phoenix v. Esper*, No. 3:17-CV-00598-GNS-CHL, 2019 U.S. Dist. LEXIS 197587, at *18-19 (W.D. Ky. Nov. 14, 2019) (same); Moore's Federal Practice, § 12.12 (Matthew Bender 3d ed.) ("Serving any motion, even one that addresses only a few of the counts or claims in a pleading, is sufficient to postpone the time to answer the entire pleading.") To the extent that this Court adopts a different interpretation of this rule, VMC respectfully moves to extend the time to respond to Counts I and II of the Complaint until fourteen days after the disposition of the instant motion. The requested extension will serve the interests of judicial economy by avoiding the need for piecemeal responses to pleadings and eliminating uncertainties with respect to pleading and discovery obligations.

Background

This is a dispute between a former student and a private college. As alleged in the Complaint, in the fall of 2018, Plaintiff Abraham Best ("Mr. Best") enrolled at Visible Music College, a private Christian music college with its main campus here in Memphis. *See* Complaint at ¶¶ 2, 6. VMC trains and equips musicians, technicians, and business professionals for secular or religious careers in the music industry. *See* ECF 15 at Page ID 48.[2] Mr. Best was a student of Visible Music College from approximately August 2018 through May 2019. *See* Complaint at ¶¶ 6, 28. In February 2019, Mr. Best lodged a complaint regarding what he perceived to be improper copying of his student work by a certain professor at VMC, Dr. John Johnson. *See* Complaint at ¶¶ 9-20. VMC investigated the allegations. *See* Complaint at ¶ 21. Ultimately, Mr. Best was not satisfied with the school's investigation. *See, e.g.*, Complaint at ¶ 34 (taking issue with the investigative process). Mr. Best was subsequently suspended from VMC. *See* Complaint at ¶ 40.

Legal Standard

A complaint requires "a short and plain statement of the claim showing that the pleader is entitled to relief, in order 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, 545 (2007). A complaint needs to state "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). When reviewing a motion to dismiss, a court must construe a plaintiff's complaint in the light most favorable to the plaintiff and take the factual allegations stated therein as true. *See Handy-Clay v. City of Memphis*, 695 F.3d 531, 538 (6th Cir. 2012). However, pleadings that "are no more than

[2] After removal to this Court, Mr. Best filed the Visible Music College Student Handbook as an exhibit to his Complaint. VMC did not object to this filing, although it notes that Mr. Best filed the 2017-18 version of the Student Handbook, and not the 2018-19 version which was in effect during Mr. Best's tenure as a student.

conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Iqbal*, 556 U.S. at 678.

Argument

I. Mr. Best fails to state a claim for negligent or intentional infliction of emotional because VMC's alleged misconduct is not outrageous and there is no allegation that Mr. Best suffered a serious mental injury.

To state a claim for negligent infliction of emotional distress, a plaintiff must allege the elements of a typical negligence claim (duty, breach of duty, injury or loss, causation in fact, and proximate causation) plus a "serious or severe" mental injury. *See Lourcey v. Estate of Scarlett*, 146 S.W.3d 48, 52 (Tenn. 2004). A claim for intentional infliction of emotional distress requires that a plaintiff allege conduct by the defendant that was (1) intentional or reckless, (2) so outrageous that it is not tolerated by civilized society, and (3) a resulting serious mental injury. *See Rogers v. Louisville Land Co.*, 367 S.W.3d 196, 205 (Tenn. 2012). The common thread between both claims is the requirement of a serious mental injury. *See id.* at 206 (explaining that both claims share an identical element in the form of a plaintiff having suffered a serious or severe mental injury as a result of the defendant's conduct). And regardless of whether the conduct is characterized as intentional or negligent, liability will only attach "where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." *Jeffries v. Emerson Indus. Automation*, No. 2:14-cv-02431-SHL-tmp, 2015 U.S. Dist. LEXIS 178982, at *9 (W.D. Tenn. Feb. 20, 2015) (citations omitted); *see also Finley v. Kelly*, 384 F. Supp. 3d 898, 911-16 (M.D. Tenn. June 14, 2019) (explaining that for both intentional and negligent infliction of emotional distress, the underlying conduct must be "extreme and outrageous" in order to be actionable). The outrageousness requirement has been described as an "exacting standard" and

functions to provide a safeguard against fraudulent and trivial claims. *See Am. Nat'l Prop. & Cas. Co. v. Stutte*, No. 3:11-CV-219, 2015 U.S. Dist. LEXIS 6473, at *13 (E.D. Tenn. Jan. 21, 2015); *Jeffries*, 2015 U.S. Dist. LEXIS 178982, at *10. As the Tennessee Court of Appeals recently stated in affirming the dismissal of intentional and negligent infliction of emotional distress claims at the pleading stage, "this is not an easy burden to meet." *Word v. Knox Cty.*, No. E2018-01843-COA-R3-CV, 2020 Tenn. App. LEXIS 70, at *27 (Tenn. Ct. App. Feb. 20, 2020).

Here, Mr. Best's allegations fall mightily short of this pleading standard. As a threshold matter, Mr. Best presents his intentional and negligent infliction of emotional distress claims under a single heading, even though each is technically a separate cause of action. Under either theory, however, Mr. Best fails to state a claim because (1) VMC's alleged misconduct is not outrageous and (2) there are no facts alleged from which it can be inferred that Mr. Best suffered a serious mental injury.

The Complaint is sparse on allegations relating to VMC's alleged misconduct applicable to the emotional distress claims. Mr. Best alleges that VMC "caused him to incur significant debt," "improperly remove[d] him," and "allowed the staff [of the college] to continue to work without any repercussions" following his complaints. *See* Complaint at ¶¶ 42-43. Mr. Best also asserts that VMC's investigation "did not include all of the proper and relevant information[.]" *See* Complaint at ¶ 44.

Even taking these allegations as true, VMC's purported misconduct does not give rise to a viable cause of action. Simply stated, none of the allegations asserted are sufficiently extreme to meet the exacting standard required under Tennessee law to state a claim for emotional distress. *See, e.g., Jeffries v. Emerson Indus. Automation*, No. 2:14-cv-02431-SHL-tmp, 2015 U.S. Dist. LEXIS 178982, at *8-10 (W.D. Tenn. Feb. 20, 2015) (granting motion to dismiss intentional and

negligent infliction of emotional distress claims because the most outrageous thing that happened in the case was the defendant firing the defendant in violation of the Tennessee Jury Duty statute and refusing to reinstate him); *Epps v. Fedex Corp.*, No. 2:09-cv-02482-JPM-tmp, 2010 U.S. Dist. LEXIS 3610, at *5 (W.D. Tenn. Jan. 19, 2010) (granting motion to dismiss and holding that the plaintiff's allegation that she was displaced and demoted does not meet the high threshold for outrageousness under Tennessee law); *Foster v. Amarnek*, No. 3:13-516, 2014 U.S. Dist. LEXIS 66997, at *17-19 (M.D. Tenn. May 14, 2014) (dismissing plaintiff's intentional and negligent infliction of emotional distress claims at the pleading stage because receiving a letter from an insurance company indicating that the plaintiff may be legally responsible for damages as a result of a traffic accident is not sufficiently outrageous under Tennessee's exacting standard for asserting such claims); *see also Am. Nat'l Prop. & Cas. Co. v. Stutte*, No. 3:11-CV-219, 2015 U.S. Dist. LEXIS 6473, at *21-23 (E.D. Tenn. Jan. 21, 2015) (dismissing plaintiffs' intentional and negligent infliction of emotional distress claims where plaintiff alleged that its insurer's investigation concluding that plaintiffs committed arson was "one-sided, sloppy, not thorough, incorrect, and incomplete" because "such contentions do not translate" into actionable conduct.)

Mr. Best's claim also fails because he does not allege that he suffered a serious mental injury. In the context of intentional and negligent infliction of emotional distress, serious mental injury occurs "where a reasonable person, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case[.]" *Rogers v. Louisville Land Co.*, 367 S.W.3d 196, 210 (Tenn. 2012) (internal quotation marks omitted). Being "unable to cope" means that a plaintiff "suffered significant impairment in his or her daily life resulting from the defendant's extreme and outrageous conduct." *Id.* The Tennessee Supreme Court has made clear that the mental injury must be "serious or severe" because "some degree of transient

and trivial emotional distress is a part of the price of living among people," and that the law only intervenes "where the distress is so severe that no reasonable [person] could be expected to endure it." *Miller v. Willbanks*, 8 S.W.3d 607, 615 n.4 (Tenn. 1999) (citing Restatement (Second) of Torts § 46 cmt. j (1965)) (alteration in original).

Here, Mr. Best merely avers in a conclusory fashion with no factual enhancement that he has "experienced severe emotional distress in the form of frustrations, anxiety, stress, and humiliation." *See* Complaint at ¶ 55. This is the sole allegation relating to a serious mental injury. This bare assertion is insufficient to meet Mr. Best's obligations under federal pleading standards. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 n.3 (2007) ("Rule 8(a)(2) still requires a 'showing,' rather than a blanket assertion, of entitlement to relief.") When considering similarly pled claims, district courts in this Circuit have not hesitated to dismiss such claims. *See, e.g.*, *Mhoon v. Metro. Gov't of Nashville*, No. 3:16-cv-01751, 2016 U.S. Dist. LEXIS 148301, at *11 (M.D. Tenn. Oct. 26, 2016) ("By stating simply that he suffered serious mental, psychological, and emotional injury, [p]laintiff does no more than provide a recitation of an element of the cause of action of outrageous conduct without actually *showing* how he suffered serious mental injury.") (emphasis in original); *see also Simpson v. Am. Credit Acceptance, LLC*, No. 3:16-CV-557-HBG, 2017 U.S. Dist. LEXIS 71752, at *12 (E.D. Tenn. May 11, 2017) (holding that allegations of the defendant wrongfully repossessing the plaintiff's car and listing that the car was repossessed on plaintiff's credit report were not circumstances where a reasonable person would be unable to cope with the mental stress of those acts); *Nesbitt v. Wilkins Tepton, P.A.*, No. 3:11-cv-0574, 2012 U.S. Dist. LEXIS 115407, at *30-32 (M.D. Tenn. Aug. 16, 2012) (finding no serious mental injury for a plaintiff who suffered extreme stress during pregnancy, cried, and suffered from anxiety; for a plaintiff who became angry at family members, was not able to function effectively as a friend,

took medication, and suffered nightmares; nor for a plaintiff who zoned out at work and would get upset and tearful when talking about work); *Vanderbilt Univ. v. Pesak,* No. 3:08-cv-1132, 2011 U.S. Dist. LEXIS 101251, at *43-44 (M.D. Tenn. Sep. 6, 2011) (holding that the plaintiffs did not allege a serious mental injury because embarrassment and humiliation do not amount to a serious mental injury and the bare allegation that the plaintiff's conduct "traumatized me" is also insufficient).

For these reasons, Mr. Best's claims for intentional and negligent infliction of emotional distress should be dismissed.

II. The fraud claim fails because it is not pled with any specificity nor does Mr. Best allege an intentional misrepresentation of a material fact or that he reasonably relied on any purported misrepresentation.

Mr. Best has failed to plead fraud with specificity and particularity, as required by Federal Rule of Civil Procedure 9(b) which provides that "a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). To state a claim for fraud, the Sixth Circuit has emphasized that "at a minimum" a plaintiff must "allege the time place, and content of the alleged misrepresentation on which [he or she] relied; the fraudulent scheme; the fraudulent intent of the defendants; and the injury resulting from the fraud." *Heinrich v. Waiting Angels Adoption Servs.*, 668 F.3d 393, 403 (6th Cir. 2012) (internal citations and quotation marks omitted). There are four essential elements to properly plead a claim for fraud under Tennessee law: (1) an intentional misrepresentation of a material fact; (2) knowledge of the representation's falsity; (3) an injury caused by reasonable reliance on the representation; and (4) the misrepresentation must relate to an existing or past fact. *See Warren v. Warrior Golf Capital, LLC*, 126 F. Supp. 3d 988, 995 (E.D. Tenn. 2015) (citing *Oak Ridge Precision Indus. Inc. v. First Tenn. Bank*, 835 S.W.2d 25, 28 (Tenn. Ct. App. 1992)).

Here, Mr. Best fails to plead fraud with the requisite level of particularity because he does not allege a specific misrepresentation of material fact. In fact, Mr. Best's fraud claim is a mere three sentences, *see* Complaint at ¶¶ 45-47, only one of which is even reasonably germane: "[VMC] made false representations, or misleading representations in its investigative report, in order to protect its image, and the image of its staff." Complaint at ¶ 46. Mr. Best, however, fails to specify the nature of the purported misrepresentation. In other words, Mr. Best does not allege "the content of the alleged misrepresentation." *Heinrich*, 668 F.3d at 403. For this reason alone, the fraud claim is deficient. *See, e.g.*, *Power & Tel. Supply Co. v. SunTrust Banks, Inc.*, 447 F.3d 923, 931-32 (6th Cir. 2006) (affirming dismissal of a fraud claim under Tennessee law when the alleged misrepresentations were nothing more than generalized statements not involving specific representations of material facts).

Mr. Best's fraud claim also fails because he does not allege that he reasonably relied on any misrepresentation to his detriment. Reasonable reliance is an essential element of a fraud claim. *See Avery Outdoors LLC v. Peak Rock Capital, LLC*, No. 16-cv-2229-SHL-tmp, 2017 U.S. Dist. LEXIS 217731, at *17 (W.D. Tenn. Jan. 23, 2017). Without any allegation that Mr. Best reasonably relied on VMC's purported misrepresentation to his detriment, there is no cause of action for fraud against VMC. *See PNC Multifamily Capital Institutional Fund XXVI Ltd. P'ship v. Bluff City Cmty. Dev. Corp.*, 387 S.W.3d 525, 550-1 (Tenn. Ct. App. 2012) (citing *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 (Tenn. 1992)) (explaining that a plaintiff's damages must have been caused by his reasonable reliance on the misrepresentation in the sense that the plaintiff gained an undue advantage as a result of the misrepresentation or the defendant would have acted differently had it known the truth). The fraud claim should be dismissed.

III. Mr. Best's unjust enrichment claims fails because the allegations asserted do not establish that he conferred a benefit on VMC and, in any event, there is a contractual relationship between the parties that governs the same subject matter.

One district court has summarized the law of unjust enrichment as follows:

> "Actions brought upon theories of unjust enrichment, quasi contract, contracts implied in law, and quantum meruit are essentially the same." *Paschall's, Inc. v. Dozier*, 219 Tenn. 45, 407 S.W.2d 150, 154 (Tenn. 1966). Tennessee courts have explained that a plaintiff must prove three elements to recover for unjust enrichment: (1) "[a] benefit conferred upon the defendant by the plaintiff," (2) "appreciation by the defendant of such benefit," and (3) "acceptance of such benefit under such circumstances that it would be inequitable for him to retain the benefit without payment of the value thereof." *Freeman Indus., LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 525 (Tenn. 2005) (quoting *Paschall's, Inc.*, 407 S.W.2d at 155); *Bennett v. Visa U.S.A., Inc.*, 198 S.W.3d 747, 756 (Tenn. Ct. App. 2006) (citation omitted). Tennessee courts have sometimes required a plaintiff to show two additional elements to recover for unjust enrichment: (1) that "[t]here is no existing, enforceable contract between the parties covering the same subject matter," and (2) that "[t]he circumstances indicate that the parties to the transaction should have reasonably understood that the person providing the goods or services expected to be compensated." See *Swafford v. Harris*, 967 S.W.2d 319, 324 (Tenn. 1998) (citing *Castelli v. Lien*, 910 S.W.2d 420, 427 (Tenn. Ct. App. 1995); see *First Nat. of N. Am., LLC v. Marks*, No. M2002-03104-COA-R3-CV, 2004 Tenn. App. LEXIS 325, 2004 WL 1114574, at *5 (Tenn. Ct. App. May 18, 2004) (citation omitted). "The most significant requirement of an unjust enrichment claim is that the benefit to the defendant be unjust." *Freeman Indus.*, 172 S.W.3d at 525 (citing *Paschall's, Inc.*, 407 S.W.2d at 155).

McKee v. Meltech, Inc., No. 10-2730, 2011 U.S. Dist. LEXIS 49612, at *26-27 (W.D. Tenn. May 9, 2011).

Respectfully, Mr. Best's claim for unjust enrichment is an untenable attempt to fit a round peg into a square hole. Start with the purported benefit conferred by Mr. Best. Although not explicitly clear, there are two benefits ostensibly asserted: (1) "the money that [Mr. Best] paid as intuition [sic]" and (2) "Plaintiff's work" that "allow[ed] Dr. Johnson to work on a book, which would make [VMC] wealth either directly, or indirectly." Complaint at ¶¶ 50-51. Obviously, to enroll and take classes at VMC, Mr. Best was required to pay tuition. Mr. Best does not allege that VMC charged him tuition for classes he did not take. There is nothing unjust about a student having

to pay tuition. *See McKee*, 2011 U.S. Dist. LEXIS 49612, at *29 (explaining that there is no injustice when the defendant has provided consideration for the benefit conferred). Accordingly, this purported benefit cannot sustain an unjust enrichment claim.

As far as the second purported benefit, it rests on entirely on pure speculation. The assumption—seemingly—is that Mr. Best's work "would" (i.e., might) enrich VMC. *See* Complaint at ¶51. While it is true that Tennessee permits a claim for unjust enrichment based on an *indirect* benefit conferred from the plaintiff, *see Freeman Indus.*, 172 S.W.3d at 525, there is no legal authority that would allow Mr. Best to recover for a *speculative* benefit. Such an attenuated theory of unjust enrichment finds no support in the law. *See Sterling Mortg. & Inv. Co. v. CitiMortgage, Inc.*, No. 14-10709, 2015 U.S. Dist. LEXIS 35628, at *49 (E.D. Mich. Mar. 23, 2015) (dismissing plaintiff's unjust enrichment claim under Michigan law when it rested upon rank speculation); *Auto Chem Labs., Inc. v. Turtle Wax, Inc.*, No. 3:07cv156, 2009 U.S. Dist. LEXIS 86126, at *14-15 (S.D. Ohio Sep. 21, 2009) (adopting report and recommendation dismissing plaintiff's theory of unjust enrichment because, contrary to *Iqbal's* strictures, the reader is left to speculate whether the value the plaintiffs provided to the defendant exceeded the value of what they received in return); *Se. Fla. Laborers Dist. Heath & Welfare Tr. Fund v. Philip Morris*, Case No. 97-8715-CIV-RYSKAMP, 1998 U.S. Dist. LEXIS 5440, at *16 (S.D. Fla. Apr. 13, 1998) (dismissing plaintiff's unjust enrichment claim under Florida law where it was purely speculative as to whether plaintiff conferred a benefit onto defendant). Mr. Best's novel theory that through his student assignments he was able to confer a benefit to Dr. Johnson who, in turn, *might* be able to confer a benefit to VMC is too attenuated to sustain a claim for unjust enrichment.

In any event, Mr. Best has alleged a contractual relationship between VMC and himself. *See* Complaint at ¶¶ 7, 32. Accordingly, he cannot simultaneously plead a claim for unjust

enrichment. *Vanderbilt Univ. v. Scholastic, Inc.*, No. 3:18-cv-00046, 2019 U.S. Dist. LEXIS 214318, at *8-9 (M.D. Tenn. Dec. 11, 2019). To be sure, Mr. Best is entitled to plead in the alternative; however, he specifically does not do this, instead stating that every heading incorporates all allegations as if restated verbatim. *See* Complaint at ¶ 5. For all the foregoing reasons, Mr. Best's unjust enrichment claim fails as a matter of law.

IV. Mr. Best's defamation claim fails because he does not allege publication to a third-party nor does he assert facts from which it can be reasonably inferred that his reputation has been harmed.

Defamation includes the torts of libel and slander. *See Quality Auto Parts Co. v. Bluff City Buick Co.*, 876 S.W.2d 818, 820 (Tenn. 1994) "A libel action involves written defamation and a slander action involves spoken defamation." *Id.* Slander is "the speaking of base and defamatory words which tend to prejudice another in his reputation, office, trade, business, or means of livelihood." *Brown v. Christian Bros. Univ.*, 428 S.W.3d 38, 50 (Tenn. Ct. App. 2013) (quoting *Little Stores v. Isenberg*, 26 Tenn. App. 357, 172 S.W.2d 13, 16 (Tenn. Ct. App. 1943)).

To state a claim for defamation, a plaintiff must allege that: (1) a party published a statement; (2) with knowledge that the statement is false and defaming to the other; or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement. *See Sullivan v. Baptist Mem'l Hosp.*, 995 S.W.2d 569, 571 (Tenn. 1999). Publication, as embraced by the first element, "is a term of art meaning the communication of defamatory matter to a third person." *Quality Auto Parts Co.*, 876 S.W.2d at 821. Importantly, publication is "an essential element" without which a complaint for defamation must be dismissed. *See Siegfried v. Grand Krewe of Sphinx*, No. W2002-02246-COA-R3-CV, 2003 Tenn. App. LEXIS 845, at *5-6 (Tenn. Ct. App. Dec. 2, 2003) (citations omitted).

Mr. Best's claim for defamation is styled as "Defamation and Slander" and comprises one single sentence referencing purported verbal and written acts. *See* Complaint at ¶ 53 ("[VMC], verbally, and in writing . . ."). Critically absent, however, is any allegation regarding publication—either written or oral—by VMC to any third-parties. This is fatal to Mr. Best's claim. *See Multari v. Bennett*, No. 1:05-cv-355, 2006 U.S. Dist. LEXIS 16687, at *14-15 (E.D. Tenn. Apr. 5, 2006) (dismissing with prejudice claim of libel/defamation because there was no allegation of publication). Accordingly, this claim should be dismissed on that basis alone. However, an additional basis exists for dismissal.

"The basis for an action for defamation, whether it be slander or libel, is that the defamation has resulted in an injury to the person's character and reputation." *Quality Auto Parts Co.*, 876 S.W.2d at 820. Thus, "the allegedly defamatory statement must 'constitute a serious threat to the plaintiff's reputation.'" *Davis v. Tennessean*, 83 S.W.3d 125, 128 (Tenn. Ct. App. 2001) (quoting *Stones River Motors, Inc. v. Mid-South Publ'g Co.*, 651 S.W.2d 713, 719 (Tenn. Ct. App. 1983)). The case law makes clear that the focus in a defamation claim is injury to a person's reputation. *See Brown v. Christian Bros. Univ.*, 428 S.W.3d 38, 50-51 (Tenn. Ct. App. 2013).

Like the absence of any allegations regarding third-party publication, there are no facts alleged from which it can be reasonably inferred that Mr. Best has suffered an injury to his reputation. While Mr. Best may disagree with VMC's characterization of his behavior and the reason for his suspension, this disagreement does not translate into a claim for defamation against VMC.

Conclusion

Mr. Best's claims for negligent and intentional infliction of emotional distress should be dismissed because VMC's alleged misconduct is not outrageous and Mr. Best fails to allege the he suffered a serious mental injury. The claim for fraud should similarly be dismissed because it is not pled with specificity in violation of Rule 9(b). Additionally, Mr. Best does not allege an intentional misrepresentation of a material fact that he reasonably relied upon to his detriment. The unjust enrichment claim does not fare much better as it does not reasonably assert that Mr. Best conferred an actual (as opposed to a speculative) benefit on VMC, the retention of which would be unjust. Finally, the defamation claim fails as a matter of law because there is no allegation that VMC published defamatory statements to third-parties or that Mr. Best's reputation has been harmed.

Accordingly, the Court should dismiss these claims.

Respectfully submitted,

LEWIS, THOMASON, KING, KRIEG & WALDROP, P.C.

s/ Isaac S. Lew
Jason M. Pannu (#23816)
jpannu@lewisthomason.com
Isaac S. Lew (#36702)
ilew@lewisthomason.com
40 S. Main St., Suite 2900
Memphis, TN 38103
Telephone: (901) 525-8721
Fax: (901) 525-6722

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail through the CM/ECF system on this 4th day of March, 2020, on all counsel of record on the service list below.

s/ Isaac S. Lew
Isaac S. Lew

Service List

Terrell L. Tooten, Esq.
attorneyterrelltooten@gmail.com
1160 Vickery Ln., Suite #2
Memphis, TN 38016

Attorneys for Plaintiff