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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARTIN TROTT and CHRISTOPHER SMITH, as Joint Official Liquidators and Foreign Representatives of PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (in OFFICIAL LIQUIDATION) and PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (in OFFICIAL LIQUIDATION), *et al.*, Plaintiff(s), -v- Platinum Management (NY) LLC, *et al*., Defendant(s).	18-cv-10936 (JSR)

MEMORANDUM OF LAW OF DEFENDANT PLATINUM FI GROUP, LLC IN SUPPORT OF ITS MOTION TO DISMISS THE AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM

Defendant Platinum FI Group, LLC ("PFIG") respectfully submits this memorandum of law in support of its motion to dismiss all claims against it for failure to state a claim under Federal Rules of Civil Procedure 9(b) and 12(b)(6). PFIG respectfully joins in the legal arguments made by defendant David Bodner and all other defendants, to the extent that such arguments are applicable to PFIG.

The Amended Complaint filed by the Joint Official Liquidators (the "JOLs") of Platinum Partners Value Arbitrage Fund LP ("PPVA") relies entirely on deficient group pleading allegations for its claims against PFIG. PFIG is identified as one of thirty identified and one hundred additional unidentified "John Doe" "Preferred Investors of the BEOF Funds," all of whom who were allegedly aware of the actions of the so-called "Platinum Defendants" and "Beechwood Defendants." and received proceeds from the so-called "Renaissance Sale." (See Amended Complaint ¶¶ 145-146). Some of these 130 "Preferred Investors of the BEOF Funds" are also Platinum Defendants (though the Amended Complaint does not clearly state which, and how many, of the Preferred Investors of the BEOF Funds are in this category), while unspecified others are "persons and entities who are friends and family of or otherwise personally or professionally connected to one or more of the Platinum Defendants." (Amended Complaint ¶ 147.) As to PFIG, the purported "personal or professional connection" to a Platinum Defendant is that PFIG "is a longtime client" of defendant Murray Huberfeld, and that PFIG's principal, Mark (Moshe) Leben "is a close friend of Huberfeld." (Amended Complaint ¶ 162.)

Beyond those purported "personal and professional connections" between PFIG and Huberfeld and the fact that PFIG invested in one of the Black Elk funds,[1] the Amended Complaint is silent as to any specific acts or omissions undertaken by PFIG. Instead, the Amended Complaint alleges generally that some or all of the 30 known and 100 unknown Preferred Investors of the BEOF Funds (along with unidentified other friends and family members of unspecified Platinum Defendants) held a "substantial portion" of Black Elk's interests (Amended Complaint ¶ 459) and that "certain" investors in BEOF Funds—though perhaps not PFIG or any of the 129 other investors defined as Preferred Investors of the BEOF Funds—raised unspecified concerns about their investments, to unspecified persons, at an unspecified time no later than the beginning of 2014 (Amended Complaint ¶ 460). Apparently in response to those unspecified "concerns," the Platinum Defendants and the Beechwood Defendants developed the Black Elk Scheme—though there is no allegation that any of the thirty identified or 100 unidentified Preferred Investors of the BEOF Funds played any role in the creation or implementation of that scheme. (Amended Complaint ¶¶ 461-462.) Thereafter, each of the Preferred Investors of the BEOF Funds participated in an offering by the BEOF Funds. (Amended Complaint ¶¶ 468-469.) Specifically, PFIG is alleged to have invested $750,000 in Black Elk Opportunity Partners, LLC. (Amended Complaint ¶ 493.) The Amended Complaint then goes on to allege that the Platinum Defendants and the Beechwood Defendants carried out the Black Elk Scheme but fails to allege any facts showing that PFIG played any part in that scheme, or that PFIG was even aware of it.

Each of the three causes of action alleged against PFIG—aiding and abetting breach of fiduciary duty (ninth count), aiding and abetting fraud (tenth count),

[1] PFIG is alleged to have invested $750,000 in Black Elk Opportunity Partners, LLC. (Amended Complaint ¶ 493.)

and unjust enrichment (fifteenth count, pleaded in the alternative)—require heightened pleading pursuant to Fed R. Civ. P. 9(b). But the JOLs fail to plead even generally—much less with particularity—PFIG's involvement in or assistance with any unlawful conduct. The Amended Complaint does not even allege that PFIG had actual knowledge of the alleged fraudulent scheme. Rather, the complaint alleges, in conclusory fashion, without any factual predicate other than the fact that they chose to invest at all, that each and every one of the thirty identified and 100 unidentified Preferred Investors of the BEOF Funds necessarily had actual knowledge of the so-called "Black Elk Scheme" perpetrated by the Platinum Defendants and aided and abetted their breach of their fiduciary duty. (Amended Complaint ¶¶ 470, 879.) Those conclusory assertion lacks any factual support from which a factfinder could reasonably infer that PFIG specifically had actual knowledge of the alleged fraud. The Complaint contains no allegations that PFIG was told, or otherwise knew, that by making an investment in Black Elk Funds it was engaging in conduct designed to help the Platinum Defendants breach fiduciary duties or perpetrate a fraud upon PPVA.

Finally, the complaint does not contain a single allegation of wrongful conduct by PFIG such that any payments it received was detrimental to PPVA. The complaint does not allege that PFIG did anything in furtherance of the so-called "Black Elk Scheme" and certainly does not describe any wrongful conduct with the particularity required by Rule 9(b).

After certain defendants, including PFIG, moved to dismiss the initial Complaint, the JOLs filed a memorandum in opposition in which they argued that the group pleading doctrine excuses them from the heightened pleading standard required by Rule 9(b). But the group pleading doctrine does not cure the Amended Complaint's

deficient pleading against PFIG, because PFIG is not alleged to have been a corporate insider with direct involvement in the day-to-day affairs of any of the Platinum Defendants or Beechwood Defendants. *See Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372, 405-06 (S.D.N.Y. 2010) ("In order to invoke the group pleading doctrine against a particular defendant the complaint must allege facts indicating that the defendant was a corporate insider, with direct involvement in day-to-day affairs, at the entity" that engaged in fraudulent conduct.) Instead, the sole alleged connection between PFIG and any Platinum Defendant or Beechwood Defendant is that PFIG was a long-term client of Huberfeld, and that PFIG's principal was his friend. These sparse facts are far from sufficient to state a claim with the particularity required by Rule 9(b), whether under the Rule's traditional heightened pleading standard or the JOLs' proposed "totality of the circumstances" standard, or to invoke the group pleading doctrine.

Because the complaint fails to state a claim against PFIG, much less with the particularity required by Rule 9(b), it must be dismissed.

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