

Defendant, Twosons Corporation (“Twosons”) respectfully submits this reply to Plaintiff’s omnibus Opposition to Moving Defendants’ Motions to Dismiss (“Opposition”; ECF No. 222) and in support of its motion to dismiss all claims against it (the “Motion”; ECF No. 201) in the First Amended Complaint (“FAC”) for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).¹

I. PRELIMINARY STATEMENT

Plaintiffs’ Opposition celebrates the FAC’s 1,012 paragraphs and 101 exhibits to suggest that excessive verbiage trumps well-pled allegations. Yet none of those paragraphs or exhibits meet Plaintiffs’ pleading burden as to Twosons to credibly implicate it in any conspiracy to aid and abet fraud or breach of fiduciary duty, or support a theory of unjust enrichment. Rather, the FAC spills much ink to allege very little: (i) Twosons was indirectly invested in Black Elk² through BEOF, (ii) Twosons later redeemed its investments in BEOF, and (iii) subsequently, Twosons made a secured loan to BEOF. Other than those mundane facts, the FAC’s allegations directed towards Twosons consist substantially of vague, conclusory or wholly speculative statements that fail to meet well-established pleading requirements. Like the FAC, the Opposition uses collective and generalized allegations aimed at all the Preferred Investors of the BEOF Funds to impute an arbitrary and contrived collective knowledge to Twosons specifically, without establishing any real nexus between Twosons’ individual conduct and/or knowledge and the conspiracies alleged in the FAC. At bottom, Plaintiffs’ allegations against Twosons amount to nothing more than two unremarkable and, more importantly, non-actionable, assertions: 1) Twosons received redemption

¹ Twosons joins in and incorporates by reference the relief sought in the contemporaneously filed replies of the other defendants in support of their motions to dismiss.

² All capitalized terms not otherwise defined herein shall take the meaning ascribed to them in the Motion.

payments from its indirect investments in Black Elk; 2) people in the business of raising capital contact people they know to solicit investments.

II. LEGAL ARGUMENT

A. Plaintiffs Fail In Either The FAC Or The Opposition To Explain How Twosons' Returns On Its Investments Give Rise To Actionable Claims For Aiding And Abetting.

Plaintiffs' Opposition attempts to transform long recitations of the terms of Twosons and other investors' investments with the BEOF Funds into allegations that support their aiding and abetting fraud and breach of fiduciary claims (Counts Nine and Ten). *See* Opposition at p. 19 (citing FAC ¶¶ 685-714). But mere regurgitation of the terms and conditions of various offering memoranda and similar disclosures cannot and does not substitute for the particularity requirements of FRCP 9, which are nowhere to be found as to Twosons. Fed. R. Civ. P. 9(b); *Odyssey Re (London) Ltd. v. Stirling Cooke Brown*, 85 F. Supp. 2d 282, 293 (S.D.N.Y. 2000), *aff'd* 2 Fed. Appx. 109 (2d Cir. 2001) ("To pass muster under Rule 9(b) in this Circuit, a complaint must allege with some specificity the acts constituting fraud; conclusory allegations that defendant's conduct was fraudulent or deceptive are not enough.")

Regarding the so-called First Scheme Transactions, the Opposition notably distinguishes between transactions that gave "substantial assistance and financing" to the Black Elk Scheme allegedly perpetrated by certain unspecified Preferred Investors of the BEOF Funds, *which notably excludes Twosons* (Opposition at p. 3, bullet 3, citing FAC ¶¶ 145-172) and transactions in which Twosons allegedly was involved (Opposition at p. 3, bullet 5). Plaintiffs also conspicuously removed the allegation from their original Complaint that Twosons "had knowledge of certain First Scheme Transactions and Second Scheme Transactions, and materially assisted in same financially." *Cf.* Complaint ¶ 58 with FAC ¶ 172. As such, Plaintiffs' own averments exclude

Twosons from any alleged knowledge or participation in any conspiracy comprising the First Scheme Transactions. In fact, Plaintiffs' allegations regarding the so-called First Scheme Transactions are solely directed to the Beechwood Entities and Platinum Defendants and *not* Twosons. FAC ¶¶ 387-426.

Regarding the alleged Second Scheme Transactions, and contrary to the assertions in the Opposition, the FAC does not allege that Twosons was an "important client" or "good friend" of Murray Huberfeld.³ Even if it did, as articulated in Twosons' Motion, the FAC fails to state how any such association could give rise to actionable claims against Twosons. As the exhibits to the FAC make clear, all Plaintiffs can say is that certain of the Platinum Defendants solicited investments from the Hararis. *See* Exhibits 50-51 to FAC. Notwithstanding the Opposition's vague indication that the FAC now includes "background" on Twosons (Opposition at p. 18-19), there is no support in the Opposition for what this "background" means as to Twosons, let alone why it could possibly be material to Plaintiffs' aiding and abetting causes of action against Twosons.⁴

Taken as a whole, the FAC and Opposition concede that Twosons was in the dark as to the First and Second Scheme Transactions and that the primary basis on which Plaintiffs seek to establish culpability is that Twosons received redemption payments from its indirect investments in Black Elk. There is absolutely no nexus in the FAC between Twosons' receipt of redemption payments from BEOF and any actionable claims, nor can there be through any further pleading.

³ Rather, the FAC appears to direct these allegations to certain members of the Harari family, none of whom is a defendant.

⁴ The "background" consists largely of extraneous allegations about the Harari family and its non-Platinum and non-Twosons business ventures.

B. Plaintiffs' Opposition Fails To Articulate A Legitimate Basis for Their Unjust Enrichment Count As Against Twosons.

The FAC added absolutely no new allegations to the original Complaint regarding unjust enrichment as to Twosons (FAC Count Fifteen). The Opposition only confirms that the FAC consists of generalized and insufficient allegations as to Twosons to support its theory as to why it was “unjustly enriched.” True to form, the Opposition makes an ironically conclusory statement that “the factual allegations underlying the unjust enrichment claim (sic) against the Preferred Investors of the BEOF Funds are well-pled (sic) and non-conclusory.” Opposition at p. 20. Paragraphs 427 to 502 (80 paragraphs cited in passing by Plaintiffs in their Opposition and with no description to support their unjust enrichment claims) do not contain a single specific allegation against Twosons as to unjust enrichment other than stating the fact of its indirect investment in Black Elk. Nor does the FAC contain any assertions as to how the redemption payments eventually received by Twosons’ were ill-gotten and/or the product of Twosons’ allegedly bad conduct. As such, and for the reasons stated in the Motion, the claims for unjust enrichment against Twosons should also be dismissed with prejudice.

III. CONCLUSION

For all the foregoing reasons, the FAC falls well short of the pleading requirements necessary to sustain the causes of action asserted against Twosons and therefore should be dismissed with prejudice.

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