

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE PLATINUM-BEECHWOOD LITIGATION,	:	No. 18 Civ. 6658 (JSR)
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	:	
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	:	No. 18 Civ. 10936 (JSR)
PARTNERS VALUE ARBITRAGE FUND L.P. (in	:	
OFFICIAL LIQUIDATION),	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
PLATINUM MANAGEMENT (NY) LLC, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	
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**MEMORANDUM OF LAW OF DEFENDANT MEADOWS CAPITAL LLC  
IN SUPPORT OF ITS MOTION TO DISMISS  
THE FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM**

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**PRELIMINARY STATEMENT**

Defendant Meadows Capital LLC (“Meadows”) respectfully submits this memorandum of law in support of its motion, pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6), to dismiss the following claims alleged in the First Amended Complaint (“FAC”) filed by the Joint Official Liquidators (“JOLs”) of Platinum Partners Value Arbitrage Fund LP (“PPVA”) and PPVA for failure to state a claim: (1) the Ninth Count for aiding and abetting breach of fiduciary duty; (2) the Tenth Count for aiding and abetting fraud; and (3) the Fifteenth Count for unjust enrichment. Meadows joins in each of the motions to dismiss that were filed by the other defendants collectively alleged to be the “Preferred Investors in the BEOF Funds.” FAC ¶¶ 3, 146; *see* Dkt. Nos. 175, 180, 184, 201, 203, 214. Meadows incorporates herein and joins in the memoranda of law filed by these other defendants. *See* Dkt. Nos. 178, 181, 185, 202, 205, 208, 216, 228-31, 234-35. Meadows also joins in and incorporates the motion of David Bodner on the grounds that the FAC’s group pleading fails to satisfy Rules 8 and 9(b). *See* Dkt. Nos. 182-83, 156.<sup>1</sup>

The FAC lacks allegations of specific facts to state any viable claim against Meadows, let alone fraud-based claims governed by the heightened pleading requirement of Rule 9(b). The FAC does not plead facts setting forth the who, what, when or how of Meadows’ alleged conduct that forms the basis of aiding and abetting or unjust enrichment claims. The allegations that Meadows was one of 30 “Preferred Investors” which invested in “BEOF Funds” (FAC ¶ 146), whose manager was an acquaintance of Murray Huberfeld and held undefined meetings with Huberfeld and David Bodner (FAC ¶ 164), and which received a distribution from the BEOF Funds (FAC ¶ 493), are woefully insufficient to state any viable claims against Meadows. Not a

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<sup>1</sup> Meadows was added as a defendant to the FAC and was served with the FAC on or about February 18, 2019.

single additional detail is alleged in the FAC regarding Meadows. The FAC should be dismissed with prejudice as against Meadows.

**RELEVANT ALLEGATIONS IN THE FAC**

The allegations relating to Meadows are set forth in 3 of the FAC's 1012 paragraphs.

The FAC alleges that the "Preferred Investors of the BEOF Funds" are "direct or indirect investors in the BEOF Funds and received proceeds from the Renaissance Sale." FAC ¶ 145. The FAC includes Meadows, together with 29 other defendants and 100 John Does, in the group defined collectively as "Preferred Investors in the BEOF Funds." FAC ¶ 146.

The FAC alleges in wholly conclusory fashion that the "Preferred Investors of the BEOF Funds were aware of the actions of the Platinum and Beechwood Defendants in furtherance of the Black Elk Scheme, as well as Beechwood's representations that it was unaffiliated with Platinum Management." FAC ¶ 145. Not a single factual detail is alleged to connect this conclusory allegation to Meadows. The only other allegations that relate specifically to Meadows are that it "is an investment firm located in New Jersey and managed by Robert Cohn (sic)" and "Mr. Cohen was an acquaintance of Mr. Huberfeld, and held several meetings with Huberfeld and Bodner leading up to the Renaissance Sale." FAC ¶ 164. Not a single factual detail is alleged to identify the timing, attendees or substance of any such purported "meetings," let alone a sinister purpose of any meeting. The FAC alleges, upon undefined information and belief, that the BEOF Funds "distributed the amounts they received to the Preferred Investors of the BEOF Funds," including \$508,329 to Meadows upon its \$500,000 investment. FAC ¶ 493.

The claims against the Preferred Investors of the BEOF Funds are supported by only conclusory and formulaic recitations of the elements of the claim against the group without any factual detail. *See* 9th Count (FAC ¶¶ 865-72), 10th Count (FAC ¶¶ 879-86), 15th Count (FAC

¶¶ 939-43).

These paltry allegations against Meadows cannot withstand a motion to dismiss.

### **ARGUMENT**

#### **I. THE FAC FAILS TO STATE A CLAIM FOR AIDING AND ABETTING AGAINST MEADOWS**

To state claims for aiding and abetting a breach of fiduciary duty and fraud, facts must be pleaded to establish that the defendant (a) had actual knowledge of the primary alleged wrong, and (b) provided substantial assistance in committing that primary wrong, which assistance proximately caused plaintiff to suffer actual damages. *See Krys v. Pigott*, 749 F.3d 117, 127 (2d Cir. 2013); *Sharp Int'l Corp. v. State Bank & Trust Co.*, 403 F.3d 43, 49 (2d Cir. 2005). The FAC falls woefully short of pleading facts to establish the existence of any one of these material elements against Meadows.

The authorities set forth in the incorporated memoranda of law demonstrate that the aiding and abetting claims against Meadows must be dismissed.

#### **II. THE FAC FAILS TO STATE A CLAIM FOR UNJUST ENRICHMENT AGAINST MEADOWS**

“The theory of unjust enrichment lies as a quasi-contract claim. It is an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties concerned.” *IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 N.Y.3d 132, 142, 879 N.Y.S.2d 355, 361 (2009) (citation omitted). To state a claim for unjust enrichment, a complaint must allege “that (1) defendant was enriched, (2) at plaintiff’s expense, and (3) equity and good conscience militate against permitting defendant to retain what plaintiff is seeking to recover.” *Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc.*, 373 F.3d 296, 306 (2d Cir. 2004); *see also In re Optimal U.S. Litig.*, 813 F. Supp. 2d 383, 402 (S.D.N.Y. 2011). The Fifteenth Count does not plead facts to state a viable claim of unjust enrichment against Meadows.

The authorities set forth in the incorporated memoranda of law demonstrate that the unjust enrichment claim against Meadows must be dismissed.

**CONCLUSION**

For all of the foregoing reasons, as well as the reasons set forth in the memoranda of law submitted by the defendants alleged to be “Preferred Investors in the BEOF Funds” and David Bodner, it is respectfully requested that the Court enter an order (a) dismissing the Ninth, Tenth and Fifteenth Counts as against Meadows Capital LLC with prejudice and without leave to replead, and (b) granting Meadows Capital LLC such further relief as the Court deems just.

Dated: New York, New York  
February 22, 2019

**MINTZ, LEVIN, COHN, FERRIS, GLOVSKY  
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