

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

PLATINUM-BEECHWOOD LITIGATION

Civil Action No. 18-cv-6658 (JSR)

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),

Civil Action No. 18-cv-10936 (JSR)

Plaintiffs,

- against -

PLATINUM MANAGEMENT (NY) LLC, *et al.*,

Defendants.

**OPPOSITION TO MOTION TO DISMISS OF MEADOWS CAPITAL LLC**

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## PRELIMINARY STATEMENT

Plaintiffs' Amended Complaint (“**Amended Complaint**”) contains 1,012 paragraphs and 101 exhibits. It describes in exhaustive detail Defendants' tortious and fraudulent conduct in connection with the First and Second Schemes, the Security Lock Up and the looting of PPVA for the benefit of Defendants, their friends, family and certain designated creditors/investors.<sup>1</sup>

Included in the Amended Complaint is a detailed set of allegations against Meadows Capital LLC and the other Preferred Investors of the BEOF Funds. The Black Elk Scheme enabled the Preferred Investors of the BEOF Funds, who were insiders, friends and designated investors/creditors, to take millions of dollars from the proceeds of the sale of the assets of what was then PPVA's largest investment, Black Elk, in contravention of the prior rights of PPVA and Black Elk's other creditors, while leaving the Black Elk investment worthless to PPVA, and PPVA liable for tens of millions of dollars of fraudulent conveyance and other claims.

The Amended Complaint includes extensive detail on the Preferred Investors of the BEOF Funds and their participation in the Black Elk Scheme, alleging that they all were Platinum investors who knew about Black Elk's financial difficulties and that the proposed “opportunity,” the “O” in BEOF, was directly at the expense of PPVA, but was being promoted by Platinum Management who was obligated to act in the interests of PPVA. Am. Compl. ¶¶ 145-172. The Amended Complaint details each of the Preferred Investors of the BEOF Funds' connections to the Platinum Defendants, the substantial assistance and financing they provided to the Black Elk Scheme, the specifics of their investments in the BEOF Funds and their receipt of the proceeds of the Renaissance Sale.

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<sup>1</sup> All capitalized terms not defined herein shall have the meaning prescribed to them in the Amended Complaint. Plaintiffs hereby incorporate the arguments set forth in its Opposition to Moving Defendants' Motion to Dismiss [Dkt. No. 223] (“**Omnibus Opposition Brief**”).

The Amended Complaint alleges that Meadows Capital LLC is an investment firm located in New Jersey and managed by Robert Cohen. Mr. Cohen was an acquaintance of Mr. Huberfeld, and held several meetings with Huberfeld and Bodner leading up to the Renaissance Sale. Amended Complaint, ¶ 164. As a result of the fraudulent Renaissance Sale, Meadows Capital LLC received a capital distribution of \$508,329 in August 2014. Amended Complaint, ¶ 493.

Despite the exhaustive detail provided in the Amended Complaint, Meadows Capital LLC argues that the Amended Complaint should be dismissed on the ground that it does not provide sufficient detail to support Plaintiffs' claims. This argument is meritless and should be rejected.

The Amended Complaint alleges facts showing how Meadows Capital LLC and the other Preferred Investors of the BEOF Funds knew about and substantially assisted the Platinum Defendants' various tortious actions during the Black Elk Scheme. As a recipient of a capital distribution in the wake of the Renaissance Sale, Meadows Capital LLC was unjustly enriched as a result.

This Court also should reject Meadows Capital LLC's specious claim that the Amended Complaint does not have sufficient specific allegations because it refers in certain places to the Preferred Investors of the BEOF Funds as a group. The Amended Complaint contains specific allegations against each Defendant more than sufficient to withstand a motion to dismiss under Fed. R. Civ. P. 12(b)(6). That there are certain instances where the Plaintiffs employ group pleading due to the "tight weave" of Defendants involved in the Black Elk Scheme, document readability, and the secondhand information being relied upon by the Plaintiffs is not sufficient to dismiss under Rule 12(b)(6). *Anwar*, 728 F. Supp. 2d at 405-06; *In re Hellas Telecomms. (Lux.) II SCA*, 535 B.R. 543, 561-62 (Bankr. S.D.N.Y. 2015) (noting that courts relax the particularity

requirement for pleading fraud where the plaintiff is a bankruptcy trustee or a third party who is pleading fraud on secondhand information.).

Any generalities contained in the Amended Complaint will be resolved through the discovery process, where Plaintiffs will gain access to documents and information in the possession of Meadows Capital LLC, other Defendants and third parties, including the nature of Mr. Cohen's discussions with Murray Huberfeld and David Bodner prior to the Renaissance Sale. Any arguments that the allegations themselves are insufficient to state the claims alleged are wholly without merit.

For all of these reasons, the Meadows Capital LLC's Motion to Dismiss should be denied.

#### **APPLICABLE LEGAL STANDARD**

"On a motion to dismiss under Fed R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted, the court must accept the well-pleaded factual allegations in the complaint as true ... to determine whether the complaint itself is legally sufficient." *In re Livent, Inc. Noteholders Sec. Litig.*, 151 F. Supp. 2d 371, 404 (S.D.N.Y. 2001) (citing *Grandon v. Merrill Lynch & Co.*, 147 F.3d 184, 188 (2d Cir. 1998)).

To survive a motion to dismiss, a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face,'" and claims based upon fraudulent conduct must be "stated with particularity." *In re Refco Sec. Litig.*, 759 F. Supp. 2d 301, 315 (S.D.N.Y. 2010) (Rakoff, J.) (citing Fed. R. Civ. P. 9(b)) ("*Refco I*"); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (setting forth pleading requirements under Rule 8). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *N.J. Carpenters Health Fund v. Royal Bank of Scotland Grp., PLC*, 709 F.3d 109, 120 (2d Cir. 2013) (internal quotation marks omitted).

Fraud claims require allegations sufficient to create a plausible inference of fraudulent intent and to provide “fair notice of the plaintiff’s claim and the factual ground upon which it is based.” *Refco I*, 759 F. Supp. 2d at 315. Fraudulent intent may be alleged generally, Fed. R. Civ. P. 9(b), and “may be established either (a) by alleging facts to show that defendants had both motive and opportunity to commit fraud, or (b) by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness.” *Id.* (quoting *Shields v. Citytrust Bancorp, Inc.*, 25 F.3d 1124, 1128 (2d Cir. 1994)).

This Court previously has held that “[t]he group pleading doctrine allows particular statements or omissions to be attributed to individual defendants even when the exact source of those statements is unknown” where the complaint “allege[s] facts indicating that the defendant was a corporate insider, with direct involvement in day-to-day affairs” in order to connect defendants to statements. *Anwar*, 728 F. Supp. 2d at 405-06; *see also In re Optimal U.S. Litig.*, 837 F. Supp. 2d 244, 262-64 (S.D.N.Y. 2011) (applying group pleading doctrine to common law claims). So too, this Court also has held that Rule 9(b) is satisfied where the complaint’s allegations “inform each defendant of the nature of his alleged participation in the fraud.” *Fernandez v. UBS AG*, 222 F. Supp. 3d 358, 388 (S.D.N.Y. 2016) (citation omitted).

## **ARGUMENT**

### **I. The Amended Complaint Is Sufficiently Pled against Meadows Capital LLC**

Plaintiffs’ Amended Complaint alleges aiding and abetting fraud and breach of fiduciary duty claims against Meadows Capital LLC and the other Preferred Investors of the BEOF Funds, along with a claim for unjust enrichment in connection with their receipt of the fraudulent proceeds from the Renaissance Sale.

Meadows Capital LLC is an investment firm located in New Jersey and managed by Robert Cohen. Mr. Cohen was an acquaintance of Mr. Huberfeld, and held several meetings with



Huberfeld and Bodner leading up to the Renaissance Sale. Amended Complaint, ¶ 164. As a result of the fraudulent Renaissance Sale, Meadows Capital LLC received a capital distribution of \$508,329 in August 2014. Amended Complaint, ¶ 493.

Plaintiffs allege that Preferred Investor of the BEOF Funds Meadows Capital LLC, a longstanding Platinum investor and close friend of Murray Huberfeld, was offered an interest in an “unaffiliated” fund labeled *Black Elk Opportunities* by Platinum Management. As a longtime Platinum investor, Meadows Capital LLC knew that Platinum Management had fiduciary duties to PPVA, and knowingly participated and executed the wrongful “opportunity” – a scheme to recoup its failed investment at the expense of PPVA.

The Amended Complaint includes detailed allegations as to the substantial assistance and financing the Preferred Investors of the BEOF Funds provided to the Platinum Defendants in connection with the Black Elk conspiracy, and their knowledge of the tortious conduct at the heart of the Black Elk Scheme. The Amended Complaint alleges that the BEOF Funds were a standalone mechanism by which Platinum Management personnel, their family and friends, and certain preferred investors such as Meadows Capital LLC were offered the opportunity to knowingly invest in Black Elk “outside of the regular funds,” to the detriment of PPVA. Am. Compl. ¶¶ 145-172, 439. Collectively, the Preferred Investors of the BEOF Funds purchased \$40 million of the Series E preferred equity pursuant to contribution agreements executed between Black Elk and BEOF I during the first quarter of 2013. Am. Compl. ¶ 442.

Black Elk’s financial difficulties throughout 2013 were publicly known and the Preferred Investors of the Black Elk Funds had raised concerns regarding their investments by early 2014. Am. Compl. ¶¶ 460-462. Meadows Capital LLC provided substantial assistance to the Black Elk Scheme, by swapping its Black Elk equity for bonds, in order to rig the consent solicitation vote

for the Black Elk Indenture. Am. Compl. ¶¶ 465-471. The Preferred Investors of the BEOF Funds received a total of \$36 million in connection with their participation in the Black Elk Scheme. Am. Compl. ¶ 492.

In summary, Meadows Capital LLC used its personal relationship with Huberfeld to avoid significant losses notwithstanding having invested in Black Elk equity at a time when Black Elk's financial condition was on the brink of insolvency.

The argument adopted by Meadows Capital LLC – that it was only a passive investor with no knowledge of the tortious conduct of the other Defendants – is simply not credible given that its principal was a longtime associate of Huberfeld and that Meadows Capital LLC willfully invested and then rolled over its investment in the BEOF Funds at a time when Black Elk was publicly reporting significant financial difficulties in the wake of the Black Elk Explosion. The scheme is clear on its face: Meadows Capital LLC is an insider to which PPVA's rights were subordinated, leaving PPVA with significant creditor claims and Meadows Capital LLC, rather than PPVA, with the proceeds resulting from the Renaissance Sale. Moreover, the well-pled and plausible allegations in the Amended Complaint must be accepted as true for the purposes of a motions to dismiss.

These allegations sufficiently plead aiding and abetting claims against Meadows Capital LLC, as they allege substantial assistance provided to Platinum Defendants and others in execution of the Black Elk Scheme.

The Amended Complaint also sufficiently plead a claim for unjust enrichment against Meadows Capital LLC. An unjust enrichment claim is available in situations where “circumstances create an equitable obligation running from the defendant to the plaintiff.” *Corsello v. Verizon N.Y., Inc.*, 18 N.Y.3d 777, 790 (2012); see *Senior Health Insurance Co. of Pa.*,

345 F.Supp. 3d 515, 532-33 (S.D.N.Y. 2018) (permitting SHIP to amend its unjust enrichment claims against various Beechwood Defendants to include non-conclusory factual allegations).

Here, the factual allegations underlying the unjust enrichment claim against Meadows Capital LLC are well-pled and non-conclusory. The Amended Complaint sets forth in exhaustive detail how the Preferred Investors of the BEOF Funds such as Meadows Capital LLC knowingly entered into transactions outside the structure of PPVA in order to subordinate PPVA and unjustly enrich themselves by way of the Renaissance Sale Proceeds. Am. Comp. ¶¶ 427-502. Paragraph 493 of the Amended Complaint contains a table listing the indirect equity investment held by Meadows Capital LLC, and the distribution it received as a result of the Renaissance Sale. These factual allegations and others set forth in the Amended Complaint are sufficient to plead a claim for unjust enrichment under New York law.

## **II. The Plaintiffs Employ the Group Pleading Standard as Permitted**

Meadows Capital LLC seeks dismissal on the ground that the claims are pled with insufficient particularity and instead rely on group pleading. Contrary to this argument, it is clear that the Amended Complaint provides ample detail as to the actions of Meadows Capital LLC and the substantial assistance it provided to the Black Elk Scheme.

That being said, given the number of Preferred Investors of the BEOF Funds and the scope, timeframe and collective nature of the fraudulent conduct set forth in the Amended Complaint, Plaintiffs employ group pleading where appropriate to describe the series of tortious acts committed by a tight weave of corporate insiders controlling and executing the day-to-day operations of Platinum Management and the BEOF Funds. Under circumstances such as those present in this case, the group pleading doctrine “allows particular statements or omissions to be attributed to individual defendants even when the exact source of those statements is unknown.” *Anwar*, 728 F. Supp. 2d at 405.

In a complex, multi-defendant action such as this, the group pleading doctrine allows a plaintiff to comply with the general pleading rule that fraudulent statements must be linked directly to the party accused of the fraudulent intent, at least as to individuals with direct involvement in the business of the company and the alleged fraudulent conduct. *SEC v. Landberg*, 836 F. Supp. 2d 148, 156 (S.D.N.Y. 2011) (citing *In re Refco, Inc. Sec. Litig.*, 503 F. Supp. 2d 611, 641 (S.D.N.Y. 2007)); *Elliott Assocs., L.P. v. Hayes*, 141 F. Supp. 2d 344, 354 (S.D.N.Y. 2000), *aff'd*, 26 F. App'x 83 (2d Cir. 2002) (“The group pleading doctrine is an exception to the requirement that the fraudulent acts of each defendant be identified separately in the complaint.”). Contrary to Meadows Capital LLC’s assertions, the group pleading doctrine also applies to common law fraud claims and breach of fiduciary duty claims that are rooted in fraud. *See Schwartzco Enters. LLC v. TMH Mgmt., LLC*, 60 F. Supp. 3d 331, 345, 352-53 (E.D.N.Y. 2014). Both forms of claims are alleged with respect to the Black Elk Scheme with substantial particularity in the detailed Amended Complaint.

The doctrine applies to “corporate insiders” with direct involvement in the everyday business of the company. *City of Pontiac Gen. Emps.’ Ret. Sys. v. Lockheed Martin Corp.*, 875 F. Supp. 2d 359, 373 (S.D.N.Y. 2012) (Rakoff, J.) (citing *Camofi Master LDC v. Riptide Worldwide, Inc.*, No. 10 Civ. 4020(CM), 2011 WL 1197659, at \*6 (S.D.N.Y. Mar. 25, 2011)); *Anwar*, 728 F. Supp. 2d at 405-06 (“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 issuing the statement.”) (citing *In re Alstom SA*, 406 F. Supp. 2d 433, 449 (S.D.N.Y. 2005)).

*Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372 (S.D.N.Y. 2010), which arose out of an action against feeder funds to the Madoff Ponzi scheme and the individuals who ran them,

is directly on point. In that case, the court held that group pleading was appropriate given the “tight weave of connections” between certain defendants, identified as the “Fraud Defendants.” *Id.* at 406. The court further held that because one of the Fraud Defendants, FGG, controlled the day-to-day operations of FGG and its corporate partners, “any entity that in turn was a corporate insider to FGG’s day-to-day operations has the requisite connection for the group pleading doctrine to apply.” *Id.*; see also *Polar Int’l Brokerage Corp. v. Reeve*, 108 F. Supp. 2d 225, 238 (S.D.N.Y. 2000) (group pleading doctrine was appropriate for grouping defendants—including a private equities firm initiating a tender offer, an indirectly owned subsidiary of the firm, individual officers and directors of the target corporation, and investment banks working on the offer—where they drafted and/or approved offering documents).

The Preferred Investors of the BEOF Funds consist of a group of insiders, including family members, friends and select investors, each of whom either is a Platinum Defendant or is personally connected to Mark Nordlicht, Murray Huberfeld, Bernard Fuchs, David Bodner or one of the other Platinum Defendants. The Preferred Investors all share common characteristics:

- they were acutely aware of the actions of the Platinum and Beechwood Defendants in furtherance of the Black Elk Scheme, as well as the wholly false nature of Beechwood’s representations that it was unaffiliated with Platinum Management in connection with the Black Elk subordination;
- they each entered into a series of transactions in order to intentionally place their preferred investments outside of the corporate structure of PPVA at PPVA’s expense; and
- they materially and knowingly aided and abetted the Platinum Defendants’ breach of their fiduciary duties to PPVA and were unjustly enriched from the fraud that they aided and abetted, namely, receipt of a significant portion of the Renaissance Sale proceeds to PPVA’s detriment and while saddling PPVA with substantial liabilities.

Am. Compl. ¶¶ 427-502.

Under the circumstances, group pleading is appropriate because the Preferred Investors of the BEOF Funds form a tight weave of corporate insiders, affiliates, preferred investors and their family members, who worked in concert to defraud PPVA and loot PPVA's by engaging in a series of deceptive transactions permeated by fraud and which were papered in the most complex manner so as to obfuscate the truth and provide a veneer of legitimacy.

For all of these reasons, the group pleading doctrine applies to the Amended Complaint, and the allegations against the Preferred Investors of the BEOF Funds are sufficient and appropriate. *See, e.g., Sunrise Indus. Joint Venture v. Ditrac Optics, Inc.*, 873 F. Supp. 765, 772 (E.D.N.Y. 1995) (holding that "the particularity requirement of Rule 9(b) is appropriately relaxed where the individual defendant is a corporate insider").

### **III. The Relaxed Pleading Standard Afforded to the JOLs**

Further, as set forth in the Plaintiffs' Omnibus Opposition Brief, there is no question that the Amended Complaint meets the relaxed pleading standard applicable to fraud claims brought by bankruptcy trustees and liquidators such as the JOLs. *See In re Hellas*, 535 B.R. at 561-62; *In re Ahead by a Length, Inc.*, 100 B.R. 157, 166-68 (Bankr. S.D.N.Y. 1989) (applying a relaxed pleading standard where bankruptcy trustee asserted fraud and defendants had "first-hand knowledge of the acts described.").

While the JOLs currently have access to the PPVA-specific documents previously stored on Platinum Management's servers, they only gained access to those documents recently and have not by any means completed a review of the same, nor have they obtained any discovery from Meadows Capital LLC, the other defendants in this case or many relevant third parties. So too, documents do not tell the complete story, particularly given that many were created so as to be intentionally misleading or obfuscatory. Thus, discovery of conversations among the Defendants, including those between representatives of Meadows Capital LLC and Platinum Management

alleged in the Amended Complaint, will provide a fuller understanding of the facts.

Under all of these circumstances, this Court should deny Defendants' motion and find that Plaintiffs have satisfied both Rule 8(a) and Rule 9(b).

**CONCLUSION**

WHEREFORE, the Plaintiffs respectfully request that this Court deny the Meadows Capital LLC's Motion to Dismiss in its entirety, and grant any appropriate relief that this Court deems just and proper.

Dated: March 11, 2019  
New York, New York

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