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), *et ano.*,

Plaintiffs,

- against -

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

Defendants.

18 Civ. 10936 (JSR)

**MEMORANDUM OF LAW IN SUPPORT OF DAVID STEINBERG'S MOTION TO DISMISS THE COMPLAINT**

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Defendant David Steinberg joins the motion filed by Defendant David Bodner (Dkt. No. 71), and respectfully submits this memorandum of law in support of his own motion pursuant to Federal Rule of Civil Procedure (the "Rules") 12(b)(6) to dismiss the Complaint of Plaintiffs Martin Trott and Christopher Smith, as Joint Official Liquidators (the "Liquidators") and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. ("PPVA") (in Official Liquidation), and Plaintiff PPVA (collectively, "Plaintiffs").[1]

## PRELIMINARY STATEMENT

David Steinberg has been swept up in Plaintiffs' dragnet Complaint, which spans 765 paragraphs, totals more than 1,600 pages (inclusive of exhibits), and makes allegations against no fewer than 191 defendants, including 100 pseudonymous "John Does." Despite its considerable length, the Complaint fails to allege any misconduct, misstatement, misrepresentation, or any other wrongdoing by Steinberg; for the most part, the Complaint fails to attribute any actions or statements to him at all. Instead, Plaintiffs make collective allegations against entire groups, one of which is the so-called "Platinum Defendants" — the label given to Steinberg, 12 other individuals, and the entity that formerly employed him. Plaintiffs' "group pleading" fails to identify with particularity who did or said what, when, or how. The Complaint mentions Steinberg by name just seven times, and what little the Complaint says about him fails to satisfy even the basic pleading standard under Rule 12(b)(6), let alone the heightened pleading standard for fraud and fraud-based claims under Rule 9(b).

[1] This motion addresses only the grounds to dismiss that this Court identified at its Initial Pretrial Conference held on December 19, 2018, which are group pleading and the insufficiency of factual allegations. Steinberg understands that all other bases to dismiss the Complaint — including lack of standing — are preserved and not waived. Steinberg reserves the right at a later time to move to dismiss on grounds not raised herein, consistent with the Court's scheduling order.

Plaintiffs allege four causes of action against David Steinberg—breach of the fiduciary duty of care and good faith (count one), breach of the fiduciary duty of loyalty/self-dealing (count two), fraud (count three), and civil RICO (count thirteen). Plaintiffs' claims fail for multiple reasons. *First*, Plaintiffs fail to show that Steinberg owed any duty to PPVA, and even assuming a duty, they fail to allege any breach. *Second*, Plaintiffs fail to plead any element of fraud; they fail to allege a false statement, an actionable nondisclosure, materiality, scienter, reliance, or damages. *Third*, Plaintiffs fail to plead the elements of civil RICO, namely, that Steinberg was employed by or associated with a RICO enterprise, that he conducted or participated in the conduct of any alleged RICO enterprise's affairs, or that he committed any predicate acts of racketeering or engaged in a pattern of racketeering activity.

Because the Complaint fails to allege a single fact as to what David Steinberg supposedly did or said or knew regarding the fraudulent schemes alleged in the Complaint, this Court should promptly dismiss him from this action. Such dismissal is necessary to prevent the injustice against which Rule 12(b)(6)'s notice pleading requirements—and Rule 9(b)'s heightened particularity requirement for fraud, and fraud-based fiduciary duty and RICO claims—were intended to guard, namely, the danger that an individual could be required to defend against serious allegations of fraud and misconduct absent adequate notice of his supposed wrongdoing. Because of these pleading deficiencies, Plaintiffs' four claims against David Steinberg must be dismissed. Additionally, for all of the reasons set forth in the Memorandum of Law filed by defendant David Bodner, dated January 9, 2019 (Dkt No. 72), the claims against David Steinberg must be dismissed.

## STATEMENT OF FACTS ALLEGED IN THE COMPLAINT

### A. Allegations as to David Steinberg.[2]

David Steinberg resides in New Jersey and began to work for Platinum Management[3] in May 2009. Compl. ¶ 44. The Complaint alleges that Steinberg held two titles at Platinum Management. First, he was a "portfolio manager" for "various PPVA investment positions," but none of those investment positions are identified anywhere in the Complaint. Id. Second, he was the "co-chief risk officer" at Platinum Management. Id. The Complaint does not allege what Steinberg actually did as an employee of Platinum Management, such as what his responsibilities were, what authority or discretion he had (if any) to act on behalf of Platinum Management or its investors (such as PPVA), or what kinds of tasks he typically performed.[4] David Steinberg is not mentioned at all in any of the marketing materials or offering documents that Plaintiffs attach to their Complaint, including the sections containing bios of key Platinum Management personnel.[5]

The Complaint makes scarce mention of David Steinberg individually. Apart from defining Steinberg as a "Platinum Defendant," the Complaint, which contains 765 paragraphs of allegations, mentions Steinberg in only ***six paragraphs***. And each makes no more than broad,

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[2] The Complaint's factual allegations are presumed to be true solely for purposes of this motion to dismiss. David Steinberg disputes their accuracy.

[3] For ease of reference and unless otherwise specified, this brief uses the same defined terms as used by Plaintiffs in their Complaint; however, Steinberg does not concede any of the factual assertions or characterizations as stated in those defined terms.

[4] By contrast, the Complaint alleges in multiple places that "ultimate decision making" for Platinum Management rested in some combination of defendants Nordlicht, Huberfeld, Small, Levy, and Bodner. See Compl. ¶¶ 38, 41, 627, 641, 733, 747. The Complaint also identifies others at Platinum Management as "founders," id. ¶¶ 12, 27, "owners," id. ¶ 94, 49, "Managing Partner and President," id. ¶ 40, and "Chief Investment Officers," id. ¶¶ 38-39.

[5] See March 2016 PPVA Marketing Tearsheet (Compl. Ex. 4); September 2015 Platinum Management Due Diligence Questionnaire (Compl. Ex. 5); November 2012 PPM for Offshore Feeder Fund (Compl. Ex. 6); December 2015 PPVA Marketing Presentation (Compl. Ex. 7).

conclusory statements about Steinberg and others, makes virtually no concrete factual allegations about what he allegedly did, and fails to identify a single misrepresentation, false statement, or wrongful act by Steinberg. Specifically:

- Paragraph 44 alleges: (1) that Steinberg was "instrumental" to the "execution" of "numerous transactions" (all unidentified) involving PPVA; (2) that Steinberg had "direct knowledge" of unspecified misrepresentations made by other defendants regarding PPVA's net asset value; (3) that Steinberg was "instrumental" in creating Beechwood; (4) that Steinberg was a "direct participant" in the Black Elk scheme (because his wife sold ten bonds); and (5) that Steinberg was involved in closing the "Agera Transactions" that allegedly stripped PPVA of millions of dollars of assets.

- Paragraph 185 alleges that Steinberg received an email written by someone else raising an "issue" about the valuation of Golden Gate Oil in an SEC filing.

- Paragraph 202 alleges on information and belief that an email from Steinberg to Murray Huberfeld "concerning" wire transfers are evidence that the Platinum Defendants were funding Beechwood from overseas accounts.

- Paragraph 318 alleges that unspecified members of the "Beechwood Defendants" (which Steinberg is not defined to be among)[6] caused unspecified members of the "Beechwood Entities" (which Steinberg is not defined to be among) [7] to purchase Black Elk bonds,[8] including the wife of David Steinberg.

- Paragraph 452 alleges that the "terms of the Agera Sale were negotiated by and among Defendants Steinberg, Taylor and Narain," and that Steinberg was "operating under the instructions of the other Platinum Defendants, the Beechwood Defendants and SHIP."

- Paragraph 471 alleges that Steinberg sent an email that Agera's managing director—Kevin Cassidy—should be compensated as part of the impending sale of Agera. See also Compl. Ex. 86.

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[6] "Beechwood Defendants" are defined in the Complaint as Nordlicht, Huberfeld, Bodner, Levy, Beren, Manela, Ottensoser, Saks, Taylor, Feuer, Narain, Illumin Capital Management LP, and the "Beechwood Entities." Compl. ¶ 34.

[7] "Beechwood Entities" are defined in the Complaint as defendants Beechwood Re Investments LLC Series A through Beechwood Re Investments, LLC Series I, Beechwood Capital, Beechwood Holdings, BAM, Beechwood Investments, Beechwood Cayman, BAM Administrative, Beechwood Bermuda, the Beechwood Insurance Trusts, the Beechwood SPVs and the Beechwood Trusts. Compl. ¶ 76.

[8] Black Elk bonds are defined as the "13.75% Senior Secured Notes" in the Complaint.

David Steinberg is not mentioned anywhere else in the Complaint's 765 paragraphs. Instead, Plaintiffs define Steinberg and 13 other corporate and individual defendants—Platinum Management, Mark Nordlicht, Murray Huberfeld, David Bodner, Uri Landesman, David Levy, Ezra Beren, Naftali Manela, Gregg Donnenfeld, David Ottensoser, Joseph SanFilippo, Bernard Fuchs, and Daniel Small—as the "Platinum Defendants," Compl. ¶ 33, and proceed to level allegations against them collectively. In none of these collective allegations concerning the "Platinum Defendants" do the Plaintiffs attribute any conduct to Steinberg individually.[9]

**B. The Alleged Schemes.**

The Complaint alleges that PPVA's assets were misappropriated and diminished through various "schemes" — the "First Scheme," the "Black Elk Scheme," and the "Second Scheme." Each scheme involved numerous separate transactions and agreements, but the Complaint fails to connect any conduct by Steinberg in furtherance of any of these alleged "schemes."

**1. The "First Scheme."**

The Complaint defines the "First Scheme" as a "set of acts and transactions" from 2013 to 2015 in which the Platinum Defendants and the Beechwood Defendants caused PPVA to engage in a series of "non-commercial transactions" designed to (i) "falsely inflate the net value ascribed to PPVA's assets"; (ii) prioritize the interests of "Beechwood Entities" over the interests of PPVA; and (iii) enable Platinum insiders to take proceeds from the sale of PPVA's largest investment, Black Elk, in contravention of "prior rights of PPVA." See Compl. ¶ 9.

[9] Compl. ¶¶ 3, 9-11, 18-21, 24-26, 28-29, 33-34, 38-40, 46-47, 49, 51, 54-55, 62-63, 91, 97, 105-106, 108-118, 125, 139, 153-59, 163-173, 176, 182, 184, 186, 189-197, 217-218, 223, 246, 249-250, 253-254, 258, 262, 264-265, 268-275, 280-288, 292, 295, 299, 303-306, 312, 316, 319, 328-331, 336, 341, 343, 346-354, 357-358, 361-372, 375-376, 381-382, 385-387, 390, 392, 395-396, 409, 415, 427-431, 436, 451, 454-459, 464, 469, 473, 487, 489, 491, 494, 498, 502, 505, 510-513, 518, 520, 528-539, 542-543, 548-552, 556-565 (count one); 567-573 (count two); 575-595 (count three); 597-607 (count four); ¶¶ 706-722 (count thirteen).

The Complaint does not identify any conduct attributable to David Steinberg as part of the First Scheme, except for vague and conclusory allegations that he was "instrumental" to the creation of Beechwood and that, on information and belief, he sent an email "concerning" wires showing Beechwood was funded from "overseas accounts." See Compl. ¶¶ 44, 202. He is not alleged to have been involved in calculating the net value of assets ("NAV") and/or communicating the NAV to PPVA (or to any other investor or entity).[10] Nor is Steinberg alleged to have controlled, coordinated, or otherwise directed the affairs of Beechwood or any "Beechwood Entity."[11]

**2. The "Black Elk Scheme."**

The Complaint alleges a separate "Black Elk Scheme" as a sub-part of the "First Scheme," in which Plaintiffs allege that the Platinum Defendants and the Beechwood Defendants conspired to help the Platinum Defendants and other unidentified "insiders" to be able to "cash out" their investment in Black Elk ahead of the interests of PPVA. See Compl. ¶¶ 286-346. Black Elk was an oil and gas company in which PPVA owned a majority of the common equity, as well as a "significant portion" of the Black Elk bonds. See Compl. ¶¶ 287-88. Plaintiffs allege that the "Platinum Defendants" failed to disclose an interest in $72 million in bonds that

[10] See Compl. ¶ 40 ("In connection with the First Scheme, ***Landesman*** was responsible for marketing PPVA on behalf of Platinum Management, and making representations concerning PPVA's NAV."); Compl. ¶ 47 ("***SanFilippo*** served on Platinum Management's valuation committee and regularly worked with Nordlicht to arbitrarily inflate the value of PPVA's assets"); Compl. ¶ 49 ("***Fuchs*** was responsible for the misrepresentation of PPVA's NAV in order to generate unearned fees for the Platinum Defendants.") (emphasis added).

[11] Other defendants, however, are alleged to have established, controlled, or managed Beechwood. See Compl. ¶ 196 ("The effort [to establish Beechwood] was coordinated by Nordlicht, Levy, Huberfeld, Taylor, Feuer and Bodner."); Compl. ¶ 195 ("The majority ownership in and ultimate control of Beechwood was in fact held by Nordlicht, Huberfeld, Bodner and Levy, while Taylor and Feuer maintained ostensible and nominal management authority, with Levy."). In the numerous exhibits attached to the Complaint concerning the formation of Beechwood, including many emails, Steinberg appears on zero of them. See Compl. at Exhs. 29, 31, 32, 33, 35, 36, 37, 38, 40.

they controlled ahead of a consent solicitation; that consent solicitation included a proposed amendment whereby the bondholders could vote to amend the Indenture to permit certain equity holders to be paid ahead of the bondholders from the sale of certain of Black Elk's assets. See Compl. ¶¶ 327-330.

The Complaint does not identify any conduct attributable to David Steinberg that furthered the "Black Elk Scheme," except for an allegation that David Steinberg "was a direct participant in the Black Elk Scheme, having his wife purchase Black Elk bonds toward claiming they were not under insider control." See Compl. ¶¶ 44, 313-318. The exhibits attached by Plaintiffs to their Complaint make clear that the amount of Black Elk bonds involved was ten, and that these were ***sold*** by Steinberg's wife in December 2014.[12] Tellingly, the Complaint never alleges when Steinberg's wife ***purchased*** the bonds, which would be a necessary allegation to establish if they were actually purchased prior to the consent solicitation that took place four months prior in August 2014 that is so central to the alleged "Black Elk Scheme." See Compl. ¶ 332. Even assuming that they were purchased before August 2014, the Complaint never alleges whether Steinberg (or anyone else) directed his wife to vote in any particular way in the consent solicitation, or whether she gave her proxy to Steinberg, to a Platinum Defendant, or to anyone else. In fact, the Complaint never alleges if the ten bonds that Steinberg's wife may (or may not) have held in August 2014 were voted in the consent solicitation at all.

**3. The "Second Scheme."**

The Complaint defines the "Second Scheme" as a "set of acts and transactions" in late 2015 where the Platinum Defendants "with material assistance" from other, unidentified

[12] See Compl. Ex. 49 (explaining that a December 15, 2014 sale of Black Elk bonds was made from an account belonging to the wife of David Steinberg and describing the amount as 10 bonds).

defendants, transferred or encumbered "all or nearly all" of PPVA's remaining assets for the benefit of the Beechwood Defendants, unidentified "insiders," and PPCO. Compl. ¶ 10. The Complaint identifies five "significant wrongful acts" as part of the Second Scheme, including (i) the use of "Monstant" to hide Beechwood's encumbrance of PPVA assets, see Compl. ¶¶ 385-395; (ii) a side letter by defendant Mark Nordlicht to use the proceeds of the sale of an asset to pay unrecoverable debt owed to Beechwood, see Compl. ¶¶ 396-408; (iii) a March 2016 restructuring of PPVA, see Compl. ¶¶ 409-429; (iv) the "Security Lockup" where "select redeeming investors and creditors of PPVA" were preferentially granted security interests and liens on all assets of PPVA, see Compl. ¶¶ 487-554; and (v) the sale of Agera Energy to Beechwood and SHIP, see Compl. ¶¶ 11, 430-486.

The Complaint does not identify any conduct attributable to David Steinberg as part of the Second Scheme, which involved multiple transactions and restructurings spanning several years, except for vague and conclusory allegations regarding the sale of Agera. Specifically, the Complaint alleges that "the terms of the Agera Sale were negotiated by and among Defendants Steinberg, Taylor and Narain," see Compl. ¶ 452, and significantly, Steinberg is alleged to have been "operating under the instructions of the other Platinum Defendants, the Beechwood Defendants and SHIP," see id. Nothing further is alleged about Steinberg's specific conduct during the negotiations.

**C. The Present Action.**

In August 2016, PPVA entered liquidation proceedings in the Cayman Islands and Joint Official Liquidators were appointed to represent PPVA. Compl. ¶ 15. In November 2018, the Joint Official Liquidators commenced the present action, alleging 17 causes of action against 191 defendants. The Complaint asserts four claims against the "Platinum Defendants," of which David Steinberg is defined to be among—breach of the fiduciary duty of care and good faith

(count one); breach of the fiduciary duty of loyalty and self-dealing (count two); fraud (count three); and civil RICO (count thirteen).

## ARGUMENT

All claims against David Steinberg must be dismissed. Plaintiffs allege no facts against Steinberg individually sufficient to state any claims against him. The Complaint fails to meet even the basic notice pleading requirements of Rule 12(b)(6), and falls far short of Rule 9(b)'s heightened particularity requirement for fraud, fraud-based breach of fiduciary duty, and fraud-based RICO claims.

### A. Plaintiffs fail to state a claim for breach of fiduciary duty against David Steinberg (counts one and two).

The claims against David Steinberg for breach of fiduciary duty—which are based in fraud and subject to Rule 9(b)'s heightened particularity standard, Fernandez v. UBS AG, 222 F. Supp. 3d 358, 387 (S.D.N.Y. 2016)—must be dismissed for failure to adequately plead the three elements of that claim, namely, that (1) Steinberg owed Plaintiffs a fiduciary duty, (2) he breached that duty, and (3) Plaintiffs suffered damages as a result. Burry v. Madison Park Owner LLC, 84 A.D.3d 699, 699–700 (N.Y. 1st Dep't 2011).[13]

The breach of fiduciary duty claims fail for at least two independent reasons. *First*, to the extent that Plaintiffs allege that Steinberg breached a fiduciary duty owed to PPVA as a result of his employment by Platinum Management, the claims must be dismissed for failure to allege

[13] The Complaint does not indicate whether the fiduciary-duty based claims are brought under the law of New York (where Platinum Management had its principal place of business and where Steinberg was employed) or Delaware (where Platinum Management was incorporated). The Court need not undertake a choice-of-law analysis, however, because the substance of the law is the same in both jurisdictions. See Tronlone v. Lac d'Amiante Du Quebec, 297 A.D.2d 528, 528 (N.Y. 1st Dep't 2002). Although PPVA is a Cayman Islands entity, the Complaint makes no statement under Federal Rule of Civil Procedure 44.1 that any claims are being asserted on the basis of Cayman Islands law. For these reasons, we cite below to both New York and Delaware law in support of David Steinberg's motion to dismiss the fiduciary duty claims.

facts showing that such a duty existed. *Second*, the Complaint alleges no conduct by Steinberg that indicates a breach of any fiduciary duty.

**1. Plaintiffs fail to allege facts demonstrating that Steinberg's employment with Platinum Management gave rise to any fiduciary duty to PPVA.**

Insofar as Plaintiffs' fiduciary duty claims are based on Steinberg's alleged employment by "Platinum Management," the claim must be dismissed because the Complaint alleges no facts from which it could be inferred that such a relationship gave rise to a fiduciary duty to PPVA.

To survive a motion to dismiss, the Complaint "must set forth specific facts constituting the alleged relationship with sufficient particularity to enable the Court to determine whether, if true, such facts could give rise to a fiduciary relationship." Naughright v. Weiss, 826 F. Supp. 2d 676, 695 (S.D.N.Y. 2011) (quoting World Wrestling Entm't, Inc. v. Jakks Pac., Inc., 530 F. Supp. 2d 486, 504 (S.D.N.Y. 2007)). Here, as against David Steinberg, the only allegation suggesting a "Platinum"-based fiduciary duty is that as "the general partner and/or the persons or entities who exercised day-to-day management over PPVA, its subsidiaries and its assets, the Platinum Defendants had fiduciary duties of due care and loyalty to PPVA." Compl. ¶ 116. But the Complaint alleges only that Platinum Management—not Steinberg individually—acted as general partner to PPVA. See Compl. ¶ 37. With respect to Steinberg, the Complaint alleges only that he served as "co-chief risk officer" and "portfolio manager" of Platinum Management, but Plaintiffs fail to identify a single investment position of PPVA for which Steinberg was allegedly the portfolio manager. See Compl. ¶ 44.

Plaintiffs' allegations are insufficient to state the existence of a fiduciary duty on Steinberg's part. Even if ***Platinum Management*** owed a fiduciary duty to PPVA as its general partner, it does not follow that Steinberg individually owed any such duty simply because he was employed by Platinum Management. Indeed, courts have repeatedly rejected the notion that a

corporation's fiduciary duty automatically gives rise to individual fiduciary duties on the part of corporate executives or employees. See, e.g., Sergeants Benev. Ass'n Annuity Fund v. Renck, 19 A.D.3d 107, 116 (1st Dep't 2005) ("Even where this Court has upheld a breach of fiduciary duty claim against a corporate defendant, we have not imposed personal liability upon the responsible executive."); Krasner v. Rahfco Funds LP, No. 11-CV-4092(VB), 2012 WL 4069294, at *9-10 (S.D.N.Y. Aug. 9, 2012) (dismissing fiduciary duty claim against officer of hedge funds' general partner, noting that "[t]he fact that an individual is a corporate officer of a corporation [that] has breached a fiduciary duty does not necessarily mean the individual may be held liable"); In re Refco Inc. Secs. Litig., 826 F. Supp. 2d 478, 511-12 (S.D.N.Y. 2011) (dismissing fiduciary duty claim against Chief Operating Officer, owner, and director of hedge funds' third-party administrator, holding that "[i]t does not follow that just because . . . [funds' administrator] had a relationship of trust and confidence with [funds], that [Chief Operating Officer, owner, and director of funds' administrator] did as well"); Am. Fin. Int'l Grp.-Asia, L.L.C. v. Bennett, No. 05-CV-8988 (GEL), 2007 WL 1732427, at *5 (S.D.N.Y. June 14, 2007) ("Even if such a relationship had existed between plaintiffs and [defendant company], nothing in the complaint suggests that any relationship existed between plaintiffs and [defendant company's] individual officers.").

For Plaintiffs to establish that Steinberg owed an independent fiduciary duty to PPVA, they would have to allege specific facts showing that PPVA reposed confidence in Steinberg personally, such that Steinberg held a position of "superiority and influence" over PPVA. See AG Capital Funding Partners, L.P. v. State Street Bank and Trust Co., 11 N.Y.3d 146, 158 (2008). Plaintiff alleges no such facts. To the contrary, most of the allegations describing the transactions that the "Platinum Defendants" allegedly entered into on PPVA's behalf attribute

those actions to Mark Nordlicht or others, see, e.g., Compl. ¶ 512, or do not identify an individual defendant at all, see, e.g., id. ¶ 390. The only involvement of Steinberg in a PPVA transaction that Plaintiffs allege is that the sale of Agera was "negotiated by and among" Steinberg, Taylor, and Narain, see id. ¶ 42. Plaintiffs allege the Agera sale was "initiated by" Michael Katz and Mark Nordlicht, see id. ¶ 431, that the plan for the sale was developed by Katz, Nordlicht, Levy, and others, see id. ¶ 51, and that the negotiations were under the instructions of other (unspecified) defendants, see id. ¶ 452. Given the involvement of so many others in the Agera sale, it is difficult to see how PPVA reposed confidence in Steinberg personally, and this allegation is insufficient to create a fiduciary relationship.

Furthermore, the Complaint does not allege that Steinberg possessed any discretionary trading authority or any other authority with respect to PPVA's assets.

Accordingly, the fiduciary duty claim against Steinberg must be dismissed.

**2. Plaintiffs fail to allege conduct by Steinberg constituting a breach of any fiduciary duty.**

Even assuming that Steinberg owed a fiduciary duty to PPVA (he did not), Plaintiffs do not adequately allege any conduct by him that would constitute a breach, as the fiduciary duty claims rest on insufficient, collective allegations, see Compl. ¶ 117 ("[T]he Platinum Defendants reneged on their obligations and breached their duties of due care and loyalty to PPVA . . . ."), the insufficiency of which is discussed further below, see infra Argument B.1. The Complaint does not identify any misconduct or misrepresentation made by Steinberg individually.[14] Nor does the Complaint allege any specific acts by Steinberg in furtherance of the various "Schemes"

[14] Plaintiffs base their breach of fiduciary duty claims on the fraudulent conduct alleged in the "First and Second Schemes," namely: (i) misrepresentations about the NAV that were used to generate unearned fees as part of the First Scheme; (ii) the "Black Elk Scheme" which allowed others to be paid ahead of PPVA; and (iii) the transfer or encumbrance of PPVA's assets as part of the Second Scheme. See Compl. ¶ 561 (count one), ¶ 569 (count two).

identified in the Complaint. The Complaint does not allege that Steinberg benefited personally from any transaction.

Where, as here, the Complaint has "failed to plead any specific acts which constitute any alleged fraud or breach of trust," dismissal of the fiduciary duty claim is required. Cf. Rasmussen v. A.C.T. Envt'l Servs., 292 A.D.2d 710, 712 (3d Dep't 2002).[15]

**B. Plaintiffs fail to state a claim against David Steinberg for fraud (count three).**

The Complaint fails to plead the essential elements of fraud against David Steinberg, which are, "a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages." Eurycleia Partners, LP v. Seward & Kissel, LLP, 12 N.Y.3d 553, 559 (2009). Nor does the Complaint meet the heightened pleading standard of Rule 9(b), which requires that allegations be plead with particularity and that a complaint must "(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." Lerner v. Fleet Bank, N.A., 459 F.3d 273, 290 (2d Cir. 2006).

**1. Plaintiffs allege no false statement by David Steinberg.**

The Complaint nowhere alleges that David Steinberg ***ever*** communicated with PPVA, let alone misrepresented any material fact to PPVA. The Complaint attributes only two alleged communications to David Steinberg individually. See Compl. ¶ 202 (email from Steinberg to Huberfeld "concerning" wire transfers), ¶ 471 (email from Steinberg to Narain re: the sale of Agera). Neither is alleged to have been false or even made to PPVA. As a result, they cannot support a fraud claim. See Robinson v. Crawford, 46 A.D.3d 252, 253 (N.Y. 1st Dep't 2007).

[15] Plaintiffs allege separate breaches of the duty of care and good faith (count one) and the duty of loyalty and self-dealing (count two), but because Plaintiffs have not alleged the existence of a duty, its breach, or any misconduct attributable to Steinberg, there is no analytical difference between the two.

To the extent any misrepresentations are alleged, they were allegedly made by other defendants,[16] or the speaker is not identified at all.[17]

Instead, Plaintiffs' fraud theory against Steinberg relies on collective allegations that blatantly violate Rule 9(b)'s particularity requirement. When applying Rule 9(b), courts dismiss fraud claims that fail to identify the particular representation made ***by each defendant*** against whom fraud is alleged, and when and to whom the alleged representation was made. See DiVittorio v. Equidyne Extractive Indus., Inc., 822 F.2d 1242, 1247 (2d Cir.1987) ("Where multiple defendants are asked to respond to allegations of fraud, the complaint should inform each defendant of the nature of his alleged participation in the fraud."); Yellow Cab SLS Jet Mgmt. v. Schwartz, No. 13-CV-7575 JSR, 2014 WL 2111688, at *1 (S.D.N.Y. May 12, 2014) (dismissing fraud claims under Rule 9(b) where allegations were "silent as to the identity of the speaker as well as to when and where the statements were made"); Odyssey Re (London) Ltd. v. Stirling Cooke Brown Holdings Ltd., 85 F. Supp. 2d 282, 293 (S.D.N.Y. 2000) ("When fraud is alleged against multiple defendants, a plaintiff must plead with particularity by setting forth separately the acts or omissions complained of by each defendant."), aff'd, 2 F. App'x 109 (2d Cir. 2001). Rule 9(b) prevents individuals from being swept into serious fraud allegations absent detailed allegations of their individual participation. See Mills v. Polar Molecular Corp., 12 F.3d 1170, 1175 (2d Cir. 1993) ("Rule 9(b) is not satisfied where the complaint vaguely attributes the

[16] See, e.g., Compl. ¶ 38 ("***Nordlicht*** was instrumental in orchestrating the First and Second Schemes, including by directing the Platinum Defendants to misrepresent PPVA's NAV from 2012 through 2016"), ¶ 40 (". . . ***Landesman*** routinely misrepresented PPVA's financial condition."), ¶ 49 ("***Fuchs*** was responsible for the misrepresentation of PPVA's NAV"), ¶ 138 (". . . ***Nordlicht's*** assertions as to the value of PPVA's assets were false . . .") (emphasis added).

[17] See, e.g., Compl. ¶ 170 ("An example of the Platinum Defendants misrepresenting the value of PPVA's assets concerns PPVA's debt and equity position in Golden Gate Oil"), ¶ 536 (". . . the misrepresentation of its NAV by the Platinum Defendants"), ¶ 582 (". . .the Platinum Defendants misrepresented the risk of loss to PPVA . . ."), ¶ 762 (". . . the Platinum Defendants and Beechwood Defendants were able to continue their misrepresentations . . .").

alleged fraudulent statements to 'defendants.' . . . [T]he plaintiffs also had to allege that the [defendants] ***personally*** knew of, or participated in, the fraud." (emphasis in original)).[18]

Aside from the improper collective allegations against so-called "Platinum Defendants," there are only limited direct references to Steinberg in the Complaint. Even assuming that Plaintiffs have adequately alleged the "Schemes" against the "Platinum Defendants" (they have not), the fleeting references to Steinberg fall far short of adequately alleging that Steinberg either participated in or furthered any of those "Schemes."

***First Scheme*** — the First Scheme alleges that PPVA's NAV was misrepresented and that Beechwood's interests were prioritized over PPVA's. The only connections Plaintiffs attempt to make between Steinberg and the First Scheme are to allege in a conclusory fashion that he was "instrumental" to the "execution" of "numerous transactions" (all unidentified) involving PPVA. See Compl. ¶ 44. Plaintiffs fail to identify any false statements, to whom they were made, when they were made, or where they were made. Plaintiffs also allege that Steinberg was "instrumental" in the creation of Beechwood. See id. ¶ 44. To support that conclusory allegation, Plaintiffs allege ***on information and belief*** that an email from Steinberg to Huberfeld in March 2013 concerning wire transfers are evidence that the Platinum Defendants (without specifying which defendants) were funding Beechwood from overseas accounts. See id. ¶ 202.

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[18] Plaintiffs' allegations are not the sort for which courts sometimes relax Rule 9(b)'s particularity requirement because "the facts comprising the alleged fraud are 'peculiarly within the opposing party's knowledge.'" See Brooke v. Schlesinger, 898 F. Supp. 1076, 1086 (S.D.N.Y. 1995). In fact, Plaintiffs have made clear that they are the custodians of Platinum Management's servers and are thus "currently in possession of more than 13 million documents" including "***all or nearly all*** of the relevant documentation." See Pls.' Pre-Conf. Stmnt., at ¶¶ 11-13 (filed on Dec. 12, 2018) [Dkt. No. 21] (emphasis added). Here, Plaintiffs have access to the facts, and should plead them if they can. The narrow exception for peculiar-knowledge facts does not alter the basic principle that a defendant who has not "made any representations [him]self with the intent to deceive" cannot be liable for fraud. See Silver Oak Capital L.L.C. v. UBS AG, 82 A.D.3d 666, 668 (N.Y. 1st Dep't 2011).

Even assuming the truth of this allegation that these were "funding" wires for Beechwood from "overseas accounts,"[19] nothing is alleged to be false about the email, nothing is alleged to have been misrepresented, and there is nothing that is inherently nefarious or fraudulent about funding coming from "overseas accounts." In short, there is no misconduct attributed to Steinberg regarding the creation of Beechwood.

***Black Elk Scheme*** — the Black Elk Scheme alleges that the Platinum Defendants hid their control of Black Elk bonds in order to rig the vote in the consent solicitation, which amended the Indenture governing the bonds to allow the proceeds from the sale of Black Elk assets to be used to pay certain equity holders ahead of others, including PPVA. Although Plaintiffs allege Steinberg's "direct participation" in the Black Elk Scheme, the only fact they allege to support this otherwise conclusory allegation is that his wife ***sold*** ten Black Elk bonds in ***December 2014***. See Compl. ¶ 318; Compl. Ex. 49. But nowhere do Plaintiffs actually allege that Steinberg's wife purchased the bonds in time for the vote, which was ***four months earlier, in August 2014***. See Compl. ¶ 332. Even assuming that she did own them at the time of the

[19] The exhibit attached to the Complaint and cited as support for this allegation, which is plead "on information and belief," is dubious at best. See Compl. Ex. 30. The cited email from Steinberg was not sent from his Platinum Management address, but rather from an "@grid4x.com" email address. Nothing is alleged about who or what "grid4x" might refer to, and nothing is alleged about whether it has anything to do with the establishment of Beechwood at all. The email from Steinberg to Huberfeld includes a chart with 19 separate entries, but eight unlabeled columns. Two of the columns are numbers that might be dollar amounts (no currency is noted), and one of the number columns appears to be a cumulative accounting of the amounts listed in the other number column. Only one of the 19 entries has "Beechwood Cap" listed as the entity, and because the columns are not labeled, it seems equally likely that the entries are transfers ***from*** the entities listed into a separate account, rather than a table showing 19 separate transfers ***to*** Beechwood, as Plaintiffs claim in their Complaint. More is required for allegations on "information and belief" to survive. See Aronov v. Mersini, No. 14-CV-7998 (PKC), 2015 WL 1780164, at *4 (S.D.N.Y. Apr. 20, 2015) ("[P]laintiffs fail to submit a statement of facts upon which their belief is based. Without such a statement, plaintiffs' allegations fail to satisfy the Rule 9(b) pleading requirements.").

vote,[20] they never actually allege that she (or anyone else) voted those ten bonds in the consent solicitation. Even assuming that the ten bonds were owned in August, and even assuming that they were voted in the consent solicitation (at the direction of a Platinum Defendant or someone else), the allegation that this particular conduct amounted to a fraud is not "plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009). To put these ***ten*** bonds in context, the total number of outstanding Black Elk bonds under the Indenture was 150,000, Compl. ¶ 327, and the number of bonds that Plaintiffs allege the "Platinum Defendants" and "Beechwood Defendants" concealed control over is at least 72,000, id. ¶ 328. Given the minute number of bonds at issue for Steinberg and/or his wife, without more specific factual allegations about how these ten bonds were used to conceal control, Plaintiffs have not plead enough factual matter to permit this Court to "draw [a] reasonable inference" that Steinberg is liable for fraud based on a scheme to conceal control. See Iqbal, 556 U.S. at 678; ATSI Commc'ns, Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 104 (2d Cir. 2007) ("The inference [plaintiff] asks us to draw is too speculative even on a motion to dismiss.").

***Second Scheme*** — the Second Scheme alleges that starting in 2015 the Platinum Defendants (and others) breached their duties to PPVA by transferring all or nearly all of PPVA's remaining assets for the benefit of Beechwood (and others) through a series of multiple transactions. The only connections to this scheme that Plaintiffs allege are (1) that the terms of

[20] Because neither Steinberg nor his wife owned any Black Elk bonds in August 2014, Plaintiffs should not be permitted to re-plead the purchase date of Black Elk bonds as to Steinberg or his wife because it would be futile, see Abu Dhabi Commercial Bank v. Morgan Stanley & Co. Inc., 651 F. Supp. 2d 155, 187 (S.D.N.Y. 2009), and Plaintiffs cannot show that they are "in possession of facts that could cure the pleading deficiencies," see Malgieri v. Ehrenberg, No. 12-CV-2517 (CS), 2012 WL 6647515, at *9 (S.D.N.Y. Dec. 21, 2012); see also Gallop v. Cheney, 642 F.3d 364, 369 (2d Cir. 2011) ("[I]n the absence of any indication that [plaintiff] could—or would—provide additional allegations that might lead to a different result, the District Court did not err in dismissing her claim with prejudice.").

the Agera sale were negotiated by and among David Steinberg, Scott Taylor, and Dhruv Narain, who were each operating under the instructions of other Platinum Defendants, the Beechwood Defendants, and SHIP, see Compl. ¶ 452; and (2) that Steinberg sent an email that Agera's then-managing director—Kevin Cassidy—should be compensated as part of the impending sale of Agera, see Compl. ¶ 471. Steinberg is not alleged to have made any misrepresentations to PPVA (or anyone else) during the negotiations. Steinberg is not alleged to have determined the price of the sale, and, absent more specific allegations, there is nothing nefarious or wrong about Steinberg's suggestion that the managing director of the entity being sold be compensated as part of the terms of the sale.

Because Plaintiffs have failed to make individualized allegations against Steinberg, including by connecting him individually to any of the collectively alleged "Schemes", the fraud claims must be dismissed.

**2. Plaintiffs allege no actionable nondisclosure by David Steinberg.**

The Complaint also alleges fraud by omission, see Compl. ¶¶ 579, 583, 588, 591, which must be dismissed because no fiduciary relationship is alleged, see Connaughton v. Chipotle Mexican Grill, Inc., 135 A.D.3d 535, 540 (N.Y. 1st Dep't 2016) ("[W]hen one alleges fraud based on an omission, the complaint must also allege the existence of a fiduciary relationship requiring disclosure of the unknown facts."); Rivietz v. Wolohojian, 38 A.D.3d 301, 301 (N.Y. 1st Dep't 2007). As previously discussed in connection with the breach of fiduciary duty claims, Plaintiffs have not alleged facts demonstrating that Steinberg's employment with Platinum Management gave rise to any duty to PPVA. See supra Argument A.1.

Even assuming that there was a duty (there was not), where the alleged fraud consists of an omission and the plaintiff is unable to specify the time and place because no act occurred, the complaint must still allege: "(1) what the omissions were; (2) the person responsible for the

failure to disclose; (3) the context of the omissions and the manner in which they misled the plaintiff, and (4) what defendant obtained through the fraud." See Odyssey, 85 F. Supp. 2d at 293. Plaintiffs have pleaded none of those things with respect to David Steinberg. Accordingly, Plaintiffs' fraud claims based on non-disclosure must be dismissed.

**3. Plaintiffs also fail to plead, as to David Steinberg, the fraud elements of materiality, scienter, reliance, and damages.**

The fraud claim must also be dismissed as to David Steinberg because none of the other elements of fraud—materiality, scienter, reliance, and damages—are pleaded. As the Complaint identifies no misrepresentation or actionable omission by Steinberg, it necessarily follows that materiality, scienter, reliance, and damages are lacking. See Zutty v. Rye Select Broad Market Prime Fund, L.P., No. 113209/09, 2011 WL 5962804 at *9-10 (N.Y. Sup. Ct. 2011). Not only is scienter not pleaded with respect to any ***statement*** by Steinberg, but the ***only*** mention of Steinberg's state of mind in the entire Complaint is that "Steinberg had direct knowledge of the Platinum Defendants' misrepresentation of PPVA's NAV." See Compl. ¶ 44. Because Plaintiffs allege no facts supporting this legal conclusion, it is insufficient to support a fraud claim. See Stephenson v. Citco Grp. Ltd., 700 F. Supp. 2d 599, 619–20 (S.D.N.Y. 2010) (explaining that plaintiffs must "plead the factual basis which gives rise to a 'strong inference' of fraudulent intent" to survive a motion to dismiss).

**C. Plaintiffs fail to state a claim against David Steinberg for civil RICO (count thirteen).**

Plaintiffs fail to allege facts establishing the requisite elements of a substantive RICO claim under § 1962(c), namely that: (i) a "person"; (ii) who is "employed by or associated with"; (iii) an "enterprise"; (iv) that is "engaged in, or the activities of which affect, interstate or foreign commerce"; (v) "conduct[ed] or participat[ed] . . . in the conduct of such enterprise's affairs"; (vi) through a "pattern"; (vii) of "racketeering activity"; and (viii) that plaintiff was "injured in

his business or property by reason of" the defendant's racketeering activity. 18 U.S.C. §§ 1962(c), 1964(c); see also Cruz v. FXDirectDealer, LLC, 720 F.3d 115, 120 (2d Cir. 2013); Moss v. Morgan Stanley Inc., 719 F.2d 5, 17 (2d Cir. 1983). RICO claims that allege predicate acts of fraud, see Compl. ¶¶ 714-17, are subject to the heightened pleading standard in Rule 9(b). See Lundy v. Catholic Health Sys. of Long Island Inc., 711 F.3d 106, 119 (2d Cir. 2013); Novomoskovsk Joint Stock Co. "Azot" v. Revson, No. 95 CIV. 5399 (JSR), 1997 WL 698192, at *3 (S.D.N.Y. Nov. 7, 1997).

**1. Plaintiffs fail to allege that David Steinberg was employed by or associated with a RICO enterprise.**

Plaintiff alleges the relevant RICO enterprise to be an associated-in-fact enterprise consisting of the "Platinum Defendants," "Beechwood Defendants," and "Beechwood Entities." The Complaint fails to allege facts showing the required elements: "a purpose, relationships among the [RICO Defendants], and longevity." Boyle v. United States, 556 U.S. 938, 946 (2009). Equally absent are facts "detail[ing] any ***course*** of fraudulent or illegal conduct separate and distinct from the alleged predicate racketeering acts themselves." First Capital Asset Mgmt., Inc. v. Satinwood, Inc., 385 F.3d 159, 174 (2d Cir. 2004) (emphasis in original); see also United States v. Turkette, 452 U.S. at 583. Even if the other Defendants acted as an associated-in-fact enterprise, the Complaint fails to allege that David Steinberg intended to join or actually joined such an enterprise. Cruz, 720 F.3d at 121 (finding that defendants as to whom "the amended complaint contain[ed] no specific factual allegation about . . . intent" were "properly excluded from the alleged RICO enterprise").

**2. Plaintiffs fail to allege that David Steinberg conducted or participated in the conduct of any alleged RICO enterprise's affairs.**

To establish that David Steinberg "conduct[ed] or participat[ed] . . . in the conduct of" a RICO enterprise's affairs, as § 1962(c) requires, Plaintiffs must allege facts demonstrating that

he had "***some*** part in directing the enterprise's affairs." Reves v. Ernst & Young, 507 U.S. 170, 179 (1993) (emphasis in original). Here, Steinberg is not alleged to have had any "discretionary authority" to manage the affairs of Platinum Management or Beechwood. See U.S. v. Viola, 35 F.3d 37, 41, 43 (2d Cir. 1994), abrogated on other grounds by Salinas v. U.S., 522 U.S. 52 (1997). He appears nowhere in Plaintiffs' description of Beechwood's activities or management. See Compl. ¶ 196 ("The majority ownership in and ultimate control of Beechwood was in fact held by [Mark] Nordlicht, Huberfeld, Bodner and Levy, while Taylor and Feuer maintained ostensible and nominal management authority, with Levy."). Nor does plaintiff allege with particularity any involvement by Steinberg in "directing [Platinum Management's] affairs." See Compl. ¶¶ 92-554. Mark Nordlicht and Moshe Feuer, respectively, are alleged to have directed the affairs of Platinum Management and Beechwood. Id. ¶¶ 38, 62.

**3. Plaintiffs fail to allege that David Steinberg committed any predicate act of racketeering or engaged in a pattern of racketeering activity.**

Plaintiff also fails adequately to plead any predicate racketeering act by David Steinberg. Plaintiffs' collective allegations that the "Platinum Defendants," "Beechwood Defendants," and "Beechwood Entities" committed various predicate acts, Compl. ¶¶ 712, 714-15, do not allege any particularized conduct by David Steinberg and thus are insufficient as a matter of law. Lundy, 711 F.3d at 119; Gross v. Waywell, 628 F. Supp. 2d 475, 495 (S.D.N.Y. 2009). ("[L]umping the defendants into collective allegations results in a failure to demonstrate the elements of § 1962(c) with respect to each defendant individually, as required."). Among other things, the Complaint alleges no fact indicating that David Steinberg individually:

(i) "transmit[ted] or cause[d] to be transmitted" any wire communication for purposes of executing a scheme to defraud or to obtain money by false pretenses, 18 U.S.C. § 1343 (wire fraud); (ii) took any action to conceal the source of unlawful proceeds, 18 U.S.C. § 1956 (money

laundering); (iii) received any monetary benefit without the agreement of his employer or principal, N.Y. Penal Law § 180.08 (commercial bribery); or (iv) accepted any bribe or kickback in connection with any fraud under 18 U.S.C. §§ 1343, 1346, Skilling v. U.S., 561 U.S. 358, 408 (2010) (honest services fraud).[21]

Nor has plaintiff satisfied the "pattern" element of § 1962(c), which requires factual allegations that David Steinberg personally committed a minimum of two predicate racketeering acts that were "related" and "amount to or pose a threat of continued criminal activity." H.J. Inc. v. N.W. Bell Tel. Co., 492 U.S. 229, 239 (1989); McLaughlin v. Anderson, 962 F.2d 187, 192 (2d Cir. 1992). To show the requisite relationship and continuity, H.J., 492 U.S. at 239, plaintiff must plead "either an 'open-ended' pattern of racketeering activity (i.e., past criminal conduct coupled with a threat of future criminal conduct) or a 'closed-ended' pattern of racketeering activity (i.e., past criminal conduct 'extending over a substantial period of time')." GICC Capital Corp. v. Tech. Fin. Grp., Inc., 67 F.3d 463, 466 (2d Cir. 1995). Here, Plaintiffs rely only on a theory of closed-ended continuity, which requires allegations of, among other things, "a series of related predicates extending over a substantial period of time." Cofacredit, S.A. v. Windsor Plumbing Supply Co., 187 F.3d 229, 242 (2d Cir. 1999) (internal quotation marks and citation omitted); see also GICC, 67 F.3d at 467. Closed-ended continuity is "primarily a temporal concept," Gross v. Waywell, 628 F. Supp. 2d 475, 486 (S.D.N.Y. 2009), and time periods of less than two years are held not to be sufficient, Cofacredit, 187 F.3d at 242; GICC, 67 F.3d at 467. However, "other considerations, such as the number and variety of predicate acts, the number of participants and victims and the presence of separate schemes, may also be germane to this

[21] Plaintiff also has wholly failed to allege any facts demonstrating that it suffered any RICO injury proximately caused by any alleged predicate act of David Steinberg. Anza v. Ideal Steel Supply Corp., 547 U.S. 451, 461 (2006); Hecht v. Commerce Clearing House, Inc., 897 F.2d 21, 23 (2d Cir. 1990).

inquiry." Gross, 628 F. Supp. 2d at 486 (citing Spool v. World Child Int'l Adoption Agency, 520 F.3d 178, 184 (2d Cir. 2008)). Where only mail or wire fraud is alleged, "the potential for transforming garden-variety common law actions into federal cases is greater . . . . RICO claims premised on mail or wire fraud must be particularly scrutinized because of the relative ease with which a plaintiff may mold a RICO pattern from allegations that, upon closer scrutiny, do not support it." Gross, 628 F. Supp. 2d at 493; see also Airlines Reporting Corp. v. Aero Voyagers, Inc., 721 F. Supp. 579, 584 (S.D.N.Y. 1989) ("[T]he raw number of predicate acts has never been determinative, especially when only mail and wire fraud are alleged.").

Although Plaintiffs have barely crossed the two-year minimum requirement by alleging that predicate acts were continuous for two years and four months, see Compl. ¶¶ 713, 717, the predicate acts identified in the Complaint are all mail or wire frauds under 18 U.S.C. §§ 1341, 1343, and almost all of them are identified as emails, see Compl. ¶ 715. Because the period of time is barely two years and only wire frauds by use of emails are alleged, the period of time is not "substantial," and Plaintiffs fail the continuity requirement.

The Complaint also fails to satisfy the "relatedness" element of a pattern by showing that the alleged predicate acts "have the same or similar purposes, results, participants, victims, or methods of commission." H.J., 492 U.S. at 240. Plaintiffs allege only that the representations and transactions were all "fraudulent," Compl. ¶ 716, which is insufficient as a matter of law. Gross, 628 F. Supp. 2d at 494.

## CONCLUSION

The Liquidators have had nearly two and a half years to investigate claims on behalf of PPVA. With access to "all or nearly all" of the relevant documents, see supra note 18, the most Plaintiffs could muster against David Steinberg are either inadequate group allegations, or a few scattered conclusory allegations based on exhibits that are largely unrelated to the claims they

attempt to allege. For the reasons stated above, all of Plaintiffs' claims against David Steinberg should be dismissed with prejudice.

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New York, NY

Respectfully submitted,

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