

Avraham C. Moskowitz (AM 8913)  
MOSKOWITZ & BOOK, LLP  
345 7<sup>th</sup> Avenue, 21<sup>st</sup> Floor  
New York, New York 10001  
Tel: (212) 221-7999  
Fax: (212) 39808835  
[amoskowitz@mb-llp.com](mailto:amoskowitz@mb-llp.com)

Attorneys for Defendant Platinum F.I. Group, LLC

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  
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 Rule of Civil Procedure 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 Complaint filed by the Joint Official Liquidators (the “JOLs”) of Platinum Partners Value Arbitrage Fund LP (“PPVA”) relies entirely on deficient group pleading allegations, claiming that the “Preferred Investors of the BEOF Funds,” of which PFIG is alleged to be one of at least twenty-four, were aware of the actions of the so-called “Platinum Defendants” and the “Beechwood Defendants” and received proceeds from the so-called “Renaissance Sale.” (See ¶¶ 56-57 of the Complaint). The Complaint further alleges, in conclusory fashion and without pleading any facts, that the Platinum Defendants, with the material assistance, inter alia, of the Preferred Investors of the BEOF Funds, breached their duty to operate PPVA in good faith (Complaint ¶¶ 33-34). The only fact alleged specifically against PFIG is that it was a direct or indirect investor in the BEOF Funds and received proceeds from the Renaissance Sale. Nowhere in the 765-paragraph Complaint is there a factual allegation of specific wrongdoing connecting PFIG to the alleged conduct of any of the other defendants. The Complaint is bereft of a single relevant statement, act, or omission by PFIG.

In addition to the Complaint’s group pleading deficiency, as outlined in the Memorandum of Law filed in support of defendant David Bodner’s motion to dismiss, each of the three causes of action alleged against PFIG—for aiding and abetting fraud (seventh count), aiding and abetting breach of fiduciary duty (sixth count), and unjust enrichment (twelfth count)—require heightened pleading pursuant to Rule 9(b).

The JOLs fail to plead even generally—much less with particularity—PFIG’s involvement in or assistance with any unlawful conduct.

The complaint fails to allege PFIG’s role in the alleged aiding and abetting of the fraudulent scheme or fiduciary duty breach with the specificity required under Rule 9(b). It does not allege that anyone acting on behalf of PFIG took part in a single conversation, or sent or received a single communication, in connection with the alleged fraudulent scheme. The JOLs thus have not identified any conduct by PFIG that could plausibly be described as providing substantial assistance in the commission of a fraud.

Further, the 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 basis, that the Preferred Investors of the BEOF Funds had actual knowledge of the so-called “Black Elk Scheme” perpetrated by the Platinum Defendants and of their breach of their fiduciary duty. (Compl. ¶¶ 629, 642). 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).

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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January 9, 2019

MOSKOWITZ & BOOK, LLP

By: /s/Avraham C. Moskowitz  
Avraham C. Moskowitz (AM 8913)  
Attorneys for Defendant  
Platinum F.I. Group, LLC  
345 7<sup>th</sup> Avenue, 21<sup>st</sup> Floor  
New York, NY 10001  
(212) 221-7999  
[amoskowitz@mb-llp.com](mailto:amoskowitz@mb-llp.com)

TO: Clerk of Court  
All Counsel of Record