UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION	Master Docket No. 1:18-cv-06658-JSR
MARTIN TROTT and CHRISTOPER 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), Plaintiffs, -v- PLATINUM MANAGEMENT (NY) LLC, et al., Defendants.	Case No. 1:18-cv-10936-JSR

MEMORANDUM OF LAW OF DEFENDANT HUBERFELD FAMILY FOUNDATION, INC. IN SUPPORT OF MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

MORRISON COHEN LLP
909 Third Avenue
New York, New York 10022
(212) 735-8600

Attorneys for Defendant Huberfeld Family Foundation, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Other Authorities

Defendant Huberfeld Family Foundation, Inc. (the "Foundation") respectfully submits this memorandum of law in support of its motion (the "Motion") to dismiss the First Amended Complaint (the "Amended Complaint" or "AC") pursuant to Federal Rules of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, and Rule 12(b)(6) for failure to state a claim upon which relief may be granted.[1]

PRELIMINARY STATEMENT

The Foundation does not belong in this lawsuit. It is a not-for-profit charitable organization that happens to bear the Huberfeld family name, hence its inclusion. In reality, however, it has donated millions of dollars to charitable causes and invested significant monies in PPVA.[2] Aside from its substantial direct investments in PPVA, its only other direct connection to the events laid out in the Amended Complaint is its receipt of the return of its approximately $1 million principal investment in one of the BEOF Funds, not PPVA. Yet, Plaintiffs still seek to pursue three claims against the Foundation for aiding and abetting the breach of fiduciary duties, aiding and abetting fraud, and unjust enrichment. (AC, Counts 9, 10 and 13.) All of these claims must be dismissed as a matter of law.

Most critically, Plaintiffs cannot meet their threshold burden to establish standing to bring their claims against the Foundation. Plaintiffs' claims are wholly premised on the Foundation's receipt of funds flowing from the proceeds of the Black Elk Renaissance Sale to the BEOF Funds, and then in turn to the Preferred Investors of the BEOF Funds (including the Foundation). Plaintiffs assert that they were injured by these events because "[i]f the Platinum

[1] The Foundation also incorporates herein and joins with the motions to dismiss the Amended Complaint by all other moving defendants on the same or similar grounds, including but not limited to the motion of any defendant included in the group defined as "Preferred Investors of the BEOF Funds."

[2] Unless otherwise defined herein, all capitalized terms or abbreviations refer to the definitions used in the Amended Complaint.

and Beechwood Defendants had not engaged in the Black Elk Scheme, the proceeds of the Renaissance Sale likely would have been used to pay off PPVA's secured debt. (AC ¶ 501.) The Amended Complaint, vitiates this claim of injury. As Plaintiffs themselves allege, Black Elk, now in bankruptcy, has sought to avoid and recover all transfers to PPVA and to equitably subordinate PPVA's claims in connection with its secured debt. (AC ¶ 497.) Thus, any injury caused by the Foundation's receipt of Black Elk's funds may only be asserted by Black Elk, who suffered the injury. In any event, any claim of injury (and any basis for standing), whether by Black Elk or PPVA, has been rendered moot because the Foundation recently settled the Black Elk claims, and obtained an agreement from Black Elk for dismissal with prejudice of all claims against the Foundation, as well as a broad release of liability from Black Elk concerning the Foundation's receipt of Black Elk Renaissance Sale proceeds. Accordingly, Plaintiffs now have no basis to assert any claim against the Foundation, even if they ever arguably had one.

In addition to Plaintiffs' lack of standing, the Amended Complaint separately fails to set forth facts sufficient to sustain Plaintiffs' claims against the Foundation for aiding and abetting the Platinum Defendants' alleged fraud and breach of fiduciary duty. Lacking any actionable facts – because there are no such facts – Plaintiffs resort to grouping the Foundation with individuals who allegedly caused PPVA's demise as the sole basis to support the Foundation's inclusion in this action. Plaintiffs have not alleged a single actionable or improper act or omission on the Foundation's part, however, much less one that shows (or even gives rise to a reasonable inference) that the Foundation knowingly and substantially aided and abetted the wrongdoers who may have defrauded PPVA. The paltry allegations concerning the Foundation fail to satisfy the liberal pleading standards of Rule 8, let alone the particularized pleading requirements of Rule 9(b), which govern Plaintiffs' claims all sounding in fraud.

This is Plaintiffs' second bite of the apple, and the only allegations that they could muster against the Foundation in an exhaustive 1,700+ page Amended Complaint (inclusive of exhibits) are patently inadequate group pleadings of collective culpability, and a handful of scattershot conclusory allegations wholly unsupported by particularized facts. (*See* AC ¶¶ 150, 151, 459, 493.) Plaintiffs have, apparently, taken a "kitchen sink" approach to this lawsuit, naming everyone and anyone who has ever had any relationship with any of the primary Platinum Defendants or Beechwood Defendants, regardless of whether any facts actually support including a given defendant in the action. The Foundation has been named without any legitimate basis simply because of its name. If Plaintiffs – who are custodians of PPVA's 13 million electronic documents and communications (*see* Plaintiffs' Pre-Conference Statement, Case No. 18-cv-10936-JSR, Doc. No. 21 at Para. 13) – had any legitimate basis to include the Foundation in this lawsuit, they clearly had sufficient time and access to documentation to plead a claim properly. They have failed to do so. The Amended Complaint should now be dismissed with prejudice.

FACTS RELEVANT TO THE INSTANT MOTION

A. The Foundation

The Foundation is a New York State not-for-profit corporation that was established in 1998. (*See* Declaration of Donald H. Chase, dated February 4, 2019 (the "Chase Dec."), Exhibit 1 (print-out of the Foundation's registration with the New York State Department of State, Division of Corporations).) According to the Foundation's publically available Returns of Private Foundation Form 990-PF, during the period of 2012-2016, the Foundation made over $11 million in charitable donations to a variety of charitable, religious, and educational organizations and needy individuals. (*See* Chase Decl., Exhibit 2 (relevant excerpts of the

Foundation's 2012-2016 IRS Forms 990).)[3] As the complete 2014 Form 990-PF attached as Exhibit 3 to the Amended Complaint discloses, the Foundation also had a significant investment in PPVA with a fair market value of $13,291,940 set forth therein.[4] (AC Ex. 3 at p. 28, or Sch. B at p. 8, or Document 159-1 on Court Docket at p. 36 of 251; *see* Chase Dec. ¶ 11.)

B. The Scant Facts In The Amended Complaint Directed At The Foundation

Despite its prolixity, the Amended Complaint directs only the following direct allegations to the Foundation. During the period of 2013-2014, the Foundation maintained a $1 million investment in the BEOF Funds. (AC ¶ 493.) On or about August 21, 2014, the Foundation received a $1,026,677 distribution from Platinum Partners Black Elk Opportunities Fund International LLC, one of the BEOF Funds (the "Black Elk Proceeds Payment"). (*Id.*) The funds comprising the Black Elk Proceeds Payment flowed from the proceeds of the Black Elk Renaissance Sale to the BEOF Funds, and then in turn to the Foundation. (*Id.* at ¶¶ 462, 490-493.) The amount of the Black Elk Proceeds Payment was commensurate with the Foundation's principal investment in the BEOF Funds. (*Id.* ¶ 493.) Additionally, during the time period of the Amended Complaint, the Foundation "appears to have had transactions/connections with certain of the other Preferred Investors of the BEOF Funds during the same time period, such as Aaron Elbogen." (AC ¶¶ 150, 161.) Specifically, it is alleged that the Foundation "maintained two separate loans, each in the amount of $1.5 million" to the Aaron Elbogen Irrevocable Trust. (*Id.* ¶ 161.) Plaintiffs fail to make any connection, however, between the Foundation's loan transactions with the Aaron Elbogen Irrevocable Trust and any of its claims against the

---

[3] The Foundation respectfully requests that the Court take judicial notice of these facts, which are based on publicly-filed documents of the New York Department of State and U.S. Internal Revenue Service. *See, e.g.*, *Kavowras v. N.Y. Times Co.*, 328 F.3d 50, 57 (2d Cir. 2003) (noting that courts may take judicial notice of public filings).

[4] Not surprisingly, the Amended Complaint makes no mention of the Foundation's substantial investment in PPVA which clearly undermines its claims against the Foundation.

Foundation. (*Id.*) Instead, Plaintiffs simply suggest something nefarious in the loan transactions because the "two loans purportedly each bore interest at the astounding rate of 700%." (*Id., citing* AC Ex. 3 at p. 34, Sch. B at p. 14, or Document 159-1 on Court Docket at p. 42 of 251 (the Foundation's 2014 Form 990-PT).) Of course, any fair reading of the Foundation's 2014 Form 990-PT discloses that the interest rate on the loan transactions at issue was 7%, not 700%. (*Id., see* Chase Dec., ¶ 10.)[5]

C. The "Group Pleading" Allegations Indirectly Referencing The Foundation

Plaintiffs generally allege that the Foundation was one of hundreds of individuals or entities (including 100 "John Does") that were "direct or indirect investors in the BEOF Funds and received proceeds from the [Black Elk] Renaissance Sale[]," a group denominated in the Amended Complaint as the "Preferred Investors of the BEOF Funds." (AC ¶ 145.) According to Plaintiffs, 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." (AC ¶ 145.)

Plaintiffs assert that the Preferred Investors of the BEOF Funds "made a conscious choice to participate in the Platinum Defendants' actions with respect to Black Elk and eventually the Black Elk Scheme," "substantially assisted and participated" in the Platinum Defendants' purported misconduct, and had "actual knowledge" of the schemes allegedly perpetrated by the Platinum Defendants. (AC ¶¶ 865, 867-68, 879, 881-82.) On the basis of these allegations, Plaintiffs assert claims against the Foundation (together with all of the Preferred Investors of the

---

[5] Plaintiffs' construction of the Form 990-PT schedule at issue would mean that "Mortgages Receivable", the Bates Loan, the JT Home Management Loan, and the Montage Holding LLC loan reflected on the same schedule were all at an interest rate of 1200% rather than 12%, as is obviously the case; likewise, loans to JMT Holdings LLC and M. Oratz would be at 500% rather than 5% as is obviously the case. In short, it is painfully obvious on review of the schedule where the decimal point belongs. (Chase Dec. ¶ 10.)

BEOF Funds) for aiding and abetting the Platinum Defendants' purported breach of fiduciary duties (Count 9) and fraud (Count 10), and, in the alternative, for unjust enrichment (Count 15). (AC ¶¶ 858-886, 935-943.)

The Amended Complaint does not, however, allege a single fact against the Foundation directly that supports any of the generalized allegations about the Preferred Investors of the BEOF Funds. More specifically, Plaintiffs do not allege what actions the Foundation undertook in order to "substantially assist and participate" in the Platinum Defendants' schemes, what "actual knowledge" the Foundation had concerning such schemes, or how and when the Foundation came to learn of such information. Nor does the Amended Complaint contain any allegations from which one could reasonably infer that the Foundation substantially assisted in the Platinum Defendants' fraud or breaches of fiduciary duty, or why and how it would benefit from any alleged scheme given its much more substantial investment in PPVA. (*See* Chase Dec. ¶ 11, AC Ex. 3 at p. 28.) To the contrary, since the Foundation was a significant investor in PPVA, with a stake in excess of $13 million, the Plaintiffs' entire theory makes no logical sense vis-a-vis the Foundation. Moreover, even Plaintiffs readily concede that the Foundation was also a mere "direct or indirect investor" in the BEOF Funds (AC ¶ 146), and the Amended Complaint contains no allegation that the Foundation (or, indeed, any of the Preferred Investors of the BEOF Funds) had any ability to control or direct the alleged actions of the Platinum Defendants.

D. The Foundation's Recent Settlement With Black Elk

Black Elk was an oil and gas company based in Houston, Texas. (AC ¶ 428.) PPVA owned a majority of the common equity, as well as a significant portion of Black Elk's secured debt. (AC ¶¶ 428-431.) The BEOF Funds were also investors in Black Elk. (AC ¶¶ 438-39.) According to Plaintiffs, the Platinum Defendants and the Beechwood Defendants, as part of a larger Black Elk Scheme, conspired to help the Platinum Defendants and other unidentified

insiders, including the Preferred Investors of the BEOF Funds, to cash out of their investment in Black Elk ahead of the interests of PPVA. (AC ¶ 502.) The Platinum Defendants and the Beechwood Defendants purportedly accomplished this scheme by "divert[ing] the proceeds from the Renaissance Sale to redeem the series E preferred shares in Black Elk for the benefit of the Preferred Investors of the BEOF Funds . . . ." (AC ¶ 462, *see also* AC ¶¶ 490-493.)

In August 2015, an involuntary bankruptcy petition was filed against Black Elk, styled as *In re Black Elk Energy Offshore Operations, LLC*, Case No. 15-34287 (the "Black Elk Bankruptcy Case"), in the United States Bankruptcy Court for the Southern District of Texas, which subsequently was converted to a voluntary chapter 11 case in September 2015. (AC ¶ 494.) As part of the Black Elk Bankruptcy Case, the post-confirmation litigation trustee (the "Black Elk Trustee") commenced litigation against PPVA seeking to avoid and recover all transfers by Black Elk to PPVA, and to equitably subordinate PPVA's claims in connection with its secured debt. (AC ¶ 497.)

In connection with the Black Elk Bankruptcy Case, the Black Elk Trustee also commenced an adversary proceeding against the Foundation (the "Black Elk-Foundation Lawsuit"). In the Black Elk-Foundation Lawsuit, the Black Elk Trustee asserted a claim against the Foundation for repayment of the $1,026,676.83 that was transmitted from Black Elk to the Platinum Partners Black Elk Opportunities Fund International LLC (one of the BEOF Funds, *see* AC ¶ 144, 493), which was in turn transmitted in the same amount to the Foundation. (*See* Chase Decl., Exhibit 3 (Black Elk-Foundation Lawsuit Complaint) at ¶ 158.) This payment is one and the same as the Black Elk Proceeds Payment alleged as the fundamental basis for the claims against the Foundation set forth in the Amended Complaint. (*Compare* Chase Decl., Exhibit 3 (Black Elk-Foundation Lawsuit Complaint) at ¶ 158 Black Elk 158 *with* AC ¶ 493.)

On January 31, 2019, the Foundation resolved its dispute with the Black Elk Trustee. As part of that resolution, the Black Elk Trustee dismissed with prejudice all of its claims against the Foundation, and broadly released the Foundation from any claims relating to the $1,026,676.83 Black Elk Proceeds Payment. (*See* Chase Decl. ¶ 9.) As a result, any outstanding or potential liability of the Foundation to Black Elk has been released, including any liability related to the Black Elk Proceeds Payment.[6]

ARGUMENT

I.

Plaintiffs Lack Standing To Bring Their Claims Against The Foundation

Initially, the Amended Complaint must be dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction because Plaintiffs lack standing to assert their claims against the Foundation. Standing is a "threshold question in every federal case" and determines "the power of the court to entertain the suit." *In re Bernard L. Madoff Inv. Sec. LLC.*, 721 F.3d 54, 66 (2d Cir. 2013) (*quoting Warth v. Seldin*, 422 U.S. 490, 498 (1975)). The "irreducible constitutional minimum" of standing consists of three conjunctive elements: (1) injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (noting that the plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing standing). A corollary of this principal is the general bar on "third-party standing." That is, a party "must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *See Warth*, 422 U.S. at

---

[6] A formal order of dismissal with prejudice from the Bankruptcy Court is anticipated within a week and well before the return date of this motion.

499; *Madoff*, 721 F.3d at 66. Courts in the Second Circuit have "hewed to this principle." *Madoff*, 721 F.3d at 67.

Plaintiffs, like the trustees of an ordinary bankruptcy estate, stand in the shoes of the defunct corporation – here, PPVA. Consequently, Plaintiffs only have standing to assert claims belonging to PPVA, and do not have standing to assert claims belonging to PPVA's creditors, such as Black Elk. *See Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114, 118 (2d Cir. 1991) ("[A] bankruptcy trustee has no standing generally to sue third parties on behalf of the estate's creditors, but may only assert claims held by the bankrupt corporation itself."); *Pereira v. Farace*, 413 F.3d 330, 342 (2d Cir. 2005) ("Although corporate officers and directors owe fiduciary duties to creditors when a corporation is insolvent in fact, these duties do not expand the circumscribed rights of the trustee, who may only assert claims of the bankrupt corporation, not its creditors.") (internal citation omitted); *In re Mediators, Inc.*, 105 F.3d 822, 825-26 (2d Cir. 1997) (treating creditors committee as if it were a bankruptcy trustee for purposes of standing analysis).

In the instant action, Plaintiffs' claims against the Foundation are essentially premised on the allegation that the Foundation, as a Preferred Investor of the BEOF Funds, received the Black Elk Proceeds Payment with funds that flowed from the Black Elk Renaissance Sale through the BEOF Funds. Plaintiffs assert that they were injured by these events because "[i]f the Platinum and Beechwood Defendants had not engaged in the Black Elk Scheme, the proceeds of the Renaissance Sale likely would have been used to pay off" PPVA's secured debt. (AC ¶ 501.) The Amended Complaint, vitiates this claim of injury on its face. As Plaintiffs themselves allege, Black Elk, now in bankruptcy, has sought to avoid and recover all transfers to PPVA and to equitably subordinate PPVA's claims in connection with its secured debt. (AC ¶ 497.) Thus,

any injury caused by the Foundation's receipt of Black Elk's funds may only be asserted by Black Elk, who suffered the injury caused by the flow of the Black Elk Proceeds Payment to the Foundation.

Plaintiffs – who only have standing to assert claims by PPVA, and not Black Elk – lack standing to assert a claim against the Foundation for any damage suffered in connection with the Black Elk Proceeds Payment because that injury was ultimately passed on to Black Elk. Any other result would cause the Foundation to face the danger of duplicative recoveries for the same alleged conduct. *See Wagoner*, 944 F.2d at 118 (holding trustee lacked standing to bring claim alleging money damages to creditors); *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1094 (2d Cir. 1995) (holding that trustee had no standing to bring creditor claims against accountants and law firms that had provided services to the debtor, a real estate partnership operated as a Ponzi scheme); *In re Mediators, Inc.*, 105 F.3d at 826 (affirming dismissal of breach of fiduciary duty claim brought by creditors' committee functioning as bankruptcy trustee, against bank and law firm for allegedly aiding and abetting debtor's fraud).

In any event, the Foundation recently settled Black Elk's claims against the Foundation, and obtained a broad release of liability from Black Elk concerning the Black Elk Proceeds Payment. Hence, even if PPVA had a cognizable injury caused by the Foundation's receipt of the Black Elk Proceeds Payment, such as by the specter of civil liability to Black Elk or otherwise, PPVA's injury has been rendered moot. *See In re Brown*, Nos. 18-10617 & 18-01553-JLG, 2018 Bankr. LEXIS 2911, at *9-10 (Bankr. S.D.N.Y. Sept. 25, 2018) (dismissing claim for lack of subject matter jurisdiction where, after filing of complaint, the claim for relief was rendered moot because indebtedness was satisfied; noting, "[a] controversy ceases to exist, and the claim in question becomes moot, if 'events outrun the controversy' so that the court 'can

grant no meaningful relief.'") (citations omitted); *MFS/Sun Life Trust-High Yield Series v. Van Dusen Airport Servs. Co.*, 910 F. Supp. 913, 931 (S.D.N.Y. 1995) (noting that if debt underlying fraudulent conveyance claim had been extinguished by settlement and rendered moot, court would not have subject matter jurisdiction over action); *see also S.W. v. New York City Dep't of Educ.*, 646 F. Supp. 2d 346, 358 (S.D.N.Y. 2009) (observing that potential civil liability can constitute an injury in fact, but finding no standing where plaintiff could not establish any basis to incur liability).

Simply stated, since the Foundation has resolved the underlying dispute with Black Elk, PPVA has no legal standing under any circumstances to pursue its claims in this action, and the Complaint must accordingly be dismissed with prejudice as a matter of law for lack of subject matter jurisdiction.

II.

The Amended Complaint Fails To State A Claim Against The Foundation

As an alternative and independent basis for dismissal, Plaintiffs' claims against the Foundation fail because they allege no facts against the Foundation individually sufficient to state any claim against it. The Amended 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 claims alleging aiding and abetting fraud and breaches of fiduciary duty, and unjust enrichment, sounding in fraud.

1. *The Amended Complaint Employs Only Impermissible Group Pleading Against The Foundation*

For brevity, the Foundation has joined in the motions to dismiss of the other moving defendants, including those defendants' statements of applicable law, based on the insufficiency of the Amended Complaint's "group pleading" to satisfy applicable pleading standards and to

state a viable claim for relief. As stated, other than being included in the Amended Complaint as a member of the Preferred Investors of the BEOF Funds, Plaintiffs have utterly failed to allege specific facts against the Foundation in its individual capacity and failed to give the Foundation fair notice of the allegations asserted against it for which it is purportedly liable. For this reason alone, the claims against the Foundation should be dismissed.

2. *The Amended Complaint Also Fails To Plead The Aiding And Abetting Fraud And Breach Of Fiduciary, And Unjust Enrichment Claims Against The Foundation With Requisite Particularity*

The Foundation similarly joins in the motions to dismiss of the other moving Preferred Investors of the BEOF Funds defendants, including those defendants' statements of applicable law, based on Plaintiffs' failure to allege their aiding and abetting fraud and breach of fiduciary duty, and unjust enrichment claims with the requisite particularity mandated by Rule 9(b).

The only relevant allegations contained in the Amended Complaint directed specifically toward the Foundation claim that the Foundation was an investor in one or both of the BEOF Funds and received an approximately $1 million distribution in 2014 as a result of the Black Elk Renaissance Sale, an amount commensurate with its principal investment in the BEOF Funds. (AC ¶¶ 145-146, 493.)[7] The mere fact that the Foundation invested in a BEOF Fund over which it had no control, however, is insufficient to state a claim for aiding and abetting the Platinum Defendants' alleged fraud or breach of fiduciary duty directed toward PPVA, let alone to sustain those claims in view of Rule 9(b)'s heightened pleading requirements. For this additional reason, Counts 9 and 10 against the Foundation should be dismissed.

---

[7] As noted above, any reference in the Amended Complaint to loans by the Foundation to the Aaron Elbogen Irrevocable Trust are inapposite and do not advance any claim. Contrary to the assertion in the Amended Complaint, the loans at issue clearly carried an interest rate of 7%, not 700% as alleged, and are not probative of any claim against the Foundation. (Chase Dec. ¶ 10.)

For the same reasons, Plaintiffs' unjust enrichment claim, sounding in the same alleged fraud as the claims for aiding and abetting fraud and breach of fiduciary duty, also fails for lack of properly particularized pleading. *See, e.g.*, *Welch v. TD Ameritrade Holding Corp.*, No. 07 Civ. 6904 (RJS), 2009 U.S. Dist. LEXIS 65584, at *32-33 (S.D.N.Y. July 27, 2009) (holding that Rule 9(b) applied to unjust enrichment claim premised on alleged fraudulent actions). This claim also fails in light of the recent settlement between the Foundation and Black Elk which also negates any claim of unjust enrichment.

CONCLUSION

For the reasons set forth herein, as well as in the motion papers filed by the other similarly situated defendants, all of Plaintiffs' claims against the Foundation should be dismissed with prejudice.

Date: February 4, 2019

Respectfully submitted,

MORRISON COHEN LLP

/s/ Donald H. Chase
Donald H. Chase
Y. David Scharf
Daniel C. Isaacs
909 Third Avenue
New York, NY 10022
Tel: (212) 735-8600
dchase@morrisoncohen.com
dscharf@morrisoncohen.com
disaacs@morrisoncohen.com

Attorneys for Defendant Huberfeld Family Foundation, Inc.