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 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), Plaintiffs, -against- PLATINUM MANAGEMENT (NY) LLC, et al., Defendants.	Case No. 1:18-cv-10936-JSR

DEFENDANT LEON MEYERS' REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT

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TABLE OF CONTENTS

PRELIMINARY STATEMENT 1
ARGUMENT 1
I. Plaintiffs Concede the Group Pleading Doctrine Does Not Apply to Meyers 1
II. Plaintiffs' Bald Conclusory Allegations Cannot Support Claims for Aiding and Abetting 2
III. Plaintiffs' Claim for Unjust Enrichment Fails 3
CONCLUSION 3

TABLE OF AUTHORITIES

CASES **Page(s)**

Anwar v. Fairfield Greenwich, Ltd.,
728 F. Supp. 372 (S.D.N.Y. 2010)....................1

Ashcroft v. Iqbal,
556 U.S. 662 (2009).................... 2-3

Aulson v. Blanchard,
83 F.3d 1 (1st Cir. 1996)....................2

DiVittorio v. Equidine Extractive Indus., Inc.,
822 F.2d 1242 (2d Cir. 1987)....................2

Elliott Assocs., L.P. v. Hayes,
141 F. Supp. 2d 344 (S.D.N.Y. 2000)....................1

Lorely Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Secs., LLC,
797 F.3d 160 (2d Cir. 2015)....................2

Polar Int'l Brokerage Corp. v. Reeve,
108 F. Supp. 2d 225 (S.D.N.Y. 2000).................... 1-2

SEC v. Landberg,
836 F. Supp. 2d 148 (S.D.N.Y. 2011)....................1

Sunrise Indus. Joint Venture v. Ditric Optics, Inc.,
873 F. Supp. 765 (E.D.N.Y. 1995) 2

Szulik v. Tagliaferri,
966 F. Supp. 2d 339 (S.D.N.Y. 2013)....................2

Defendant Leon Meyers ("Myers") respectfully submits this Reply Memorandum of Law in Further Support of his motion to dismiss the First Amended Complaint (*Trott* D.E. 159, the "Complaint").

PRELIMINARY STATEMENT

Plaintiffs' opposition (D.E. 223, the "Opp.") only serves to underscore why the Complaint must be dismissed against Meyers.

ARGUMENT

I. Plaintiffs Concede the Group Pleading Doctrine Does Not Apply to Meyers

Plaintiffs allege Meyers is a "long term investor in various funds managed by the Platinum Defendants who was a personal friend of both Nordlicht and Levy" and that he "often had lunch and/or dinner with Levy or Nordlicht, and spent time with both men and their families away from the office during holidays and on weekends." ¶¶ 153, 154.

Plaintiffs concede the group pleading doctrine applies only to "to 'corporate insiders' with direct involvement in the everyday business in the company." Opp. at 30, quoting *City of Pontiac Gen. Employees Ret. Sys. v. Lockheed Martin Corp.*, 875 F. Supp. 2d 359, 373 (S.D.N.Y. 2012) (Rakoff, J.). Plaintiffs' authority which addresses this point is uniformly in accord. *See, e.g., SEC v. Landberg*, 836 F. Supp. 2d 148, 156 (S.D.N.Y. 2011) (group pleading allowed "only as to individuals with direct involvement in the everyday business of the company"), cited in Opp. at 29; *Elliott Assocs., L.P. v. Hayes*, 141 F. Supp. 2d 344, 354 (S.D.N.Y. 2000) (noting the group pleading doctrine applies to "individuals with direct involvement in the everyday business of the company"), cited in Opp. at 29; *Anwar v. Fairfield Greenwich, Ltd.*, 728 F. Supp. 2d 372, 405-06 (S.D.N.Y. 2010) ("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"), cited in Opp. at 31; and *Polar Int'l Brokerage Corp.*

v. Reeve, 108 F. Supp. 2d 225, 237 (S.D.N.Y. 2000) (group pleading allowed "only to clearly cognizable corporate insiders with active daily roles in the relevant companies or transactions"), cited in Opp. at 31. *See also Sunrise Indus. Joint Venture v. Ditric Optics, Inc.*, 873 F.Supp. 765, 772 (E.D.N.Y. 1995) ("the particularity requirement…is appropriately relaxed where the individual defendant is a corporate insider"), cited in Opp. at 33.[1]

Plaintiffs cite no authority extending the group pleading doctrine to friends and lunch partners, because there is none. Meyers is not alleged to be a corporate insider with day-to-day control over any relevant entity, because he is not. The group pleading doctrine thus does not encompass Meyers, and the Complaint must be dismissed against him for failure to state a claim.

II. Plaintiffs' Bald Conclusory Allegations Cannot Support Claims for Aiding and Abetting

Should the Court reach this argument despite the group pleading doctrine not being applicable to Meyers, it is undisputed that claims for aiding and abetting require the alleged abettor to have actual knowledge of the primary wrong. *See* Meyers' moving brief (D.E. 178) at Point II. Plaintiffs' assertion that Meyers had knowledge of the alleged fraud because he was a friend and lunch partner of Nordlicht and Levy is rank speculation and cannot be credited on a motion to dismiss. *Aulson v. Blanchard*, 83 F.3d 1, 3 (1st Cir. 1996) ("bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like need not be credited"). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to plead a cause of action. *Ashcroft v. Iqbal*, 556 U.S. 662, 678

[1] *Lorely Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Secs., LLC*, 797 F.3d 160, 173 (2d Cir. 2015), has no application to Meyers because that case concerned the application of the group pleading doctrine to corporate subsidiaries, and in any event held the doctrine applies to "insiders and affiliates," which Meyers is not alleged to be. *Szulik v. Tagliaferri,* 966 F. Supp. 2d 339 (S.D.N.Y. 2013) and *DiVittorio v. Equidine Extractive Indus., Inc.*, 822 F.2d 1242 (2d Cir. 1987) likewise refer to "insiders or affiliates."

(2009). Plaintiff's *ipse dixit* assertion that Meyers had knowledge is thus insufficient as a matter of law to support claims for aiding and abetting. Indeed, Meyers' lack of knowledge of any wrongdoing is evidenced by his investment in excess of $6.5 million in the Platinum Arbitrage Fund and the Platinum Credit Fund, all of which is at risk of total loss.

III. Plaintiffs' Claim for Unjust Enrichment Fails

As set forth in Point III of Meyers' opening brief, the Complaint has no well-pleaded allegations that Meyers was anything more than a bona-fide investor and fails to plead that he received distributions significantly in excess of his investment. Nothing in the Opp. changes this.

CONCLUSION

For the reasons above and in Meyers' opening brief, the Court should dismiss the Complaint against Meyers and grant such other and further relief as the Court deems just and proper.

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