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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE

18-cv-6658 (JSR)

PLATINUM-BEECHWOOD LITIGATION

Trott, *et al.*,

18-cv-10936 (JSR)

Plaintiff(s),

-v-

**DEFENDANT ABRAHAM C.  
GROSSMAN’S JOINDER IN  
SECOND-ROUND MOTIONS TO  
DISMISS AND MEMORANDA OF  
LAW**

Platinum Management (NY) LLC, *et al.*,

Defendant(s).

Defendant Abraham C. Grossman (“Mr. Grossman”) respectfully joins in the second-round Motions to Dismiss and supporting Memoranda of Law filed in this action by defendants Michael Katz and Leon Meyers, and to the relevant extent the second-round motions and memoranda filed by any other moving defendants, which are hereby incorporated by reference.

Plaintiffs lack standing to bring claims against Mr. Grossman under the settled rule announced in *Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114, 120 (2d Cir. 1991). Under the *Wagoner* rule, which is closely related to the doctrine of *in pari delicto*,<sup>1</sup> a wrong-doer’s successor-in-interest lacks standing to recover against

<sup>1</sup> Because PPVA is alleged to have participated in the wrongs for which Plaintiffs, PPVA’s successors-in-interest, seek to recover, the doctrine of *in pari delicto* bars Plaintiffs’ claims against Mr. Grossman even if the Court determines that the *Wagoner* rule does not deprive Plaintiffs of standing herein.

outsiders for their participation in the wrong-doer's scheme. *In re ICP Strategic Income Fund, Ltd.*, 730 F. App'x 78, 81-82 (2d Cir. 2018). Here, Plaintiff's assert that the agents and managers of PPVA who are identified in the Second Amended Complaint as "Platinum Defendants," caused PPVA to transfer money to the BEOF Funds, which then distributed that money to the Preferred Investors of the BEOF Funds, including Mr. Grossman, to PPVA's detriment. (SAC ¶¶ 505-506, 950.) These allegations place the claims against Mr. Grossman—and the claims against all of the Preferred Investor defendants—squarely within the *Wagoner* rule.

Plaintiffs lack standing to bring claims against third parties for their predecessor-in-interest's own wrongdoing, and their claims against Mr. Grossman must therefore be dismissed. Moreover, even if Plaintiffs have standing to pursue claims against Mr. Grossman under *Wagoner*, and even if those claims are not barred by the related doctrine of *in pari delicto*, the relationship between PPVA and Mr. Grossman alleged in the SAC is too attenuated to support their claim for unjust enrichment. *Georgia Malone & Co., Inc. v. Rieder*, 19 N.Y.3d 511 (2012).

### **CONCLUSION**

For these reasons, and for the reasons articulated in the various first-round motions to which Mr. Grossman's joinder remains pending, all of Plaintiffs' claims against Mr. Grossman should be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

Dated: New York, NY  
April 22, 2019

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