

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE PLATINUM-BEECHWOOD LITIGATION,	:	No. 18 Civ. 6658 (JSR)
	:	
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	:	
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	:	No. 18 Civ. 10936 (JSR)
PARTNERS VALUE ARBITRAGE FUND L.P. (in	:	
OFFICIAL LIQUIDATION),	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
PLATINUM MANAGEMENT (NY) LLC, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	
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**MEMORANDUM OF LAW OF DEFENDANT  
MEADOWS CAPITAL LLC IN SUPPORT OF ITS  
MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

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**PRELIMINARY STATEMENT**

Defendant Meadows Capital LLC (“Meadows”) respectfully submits this memorandum in support of its motion, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss the Second Amended Complaint (“SAC”) filed by the Joint Official Liquidators (“JOLs”) of Platinum Partners Value Arbitrage Fund LP (“PPVA”) and PPVA because the claims asserted against Meadows in the SAC are barred under the *in pari delicto* doctrine and the *Wagoner* Rule. Meadows joins in each of the motions to dismiss the SAC filed by defendant Michael Katz, defendant Leon Meyers, and other defendants collectively alleged to be the Preferred Investors in the BEOF Funds. SAC ¶¶ 3, 138. Meadows incorporates herein and joins in the memoranda of law filed by these other defendants. *See* Dkt. Nos. 301, 303-04, 307-09, 311, 313, 315-16, 319-20.

The Court dismissed Plaintiffs’ claims against Meadows for aiding and abetting (1) breach of fiduciary duty, and (2) fraud. Dkt. Nos. (18-cv-06658) 183, 225. For all of the reasons set forth in this Court’s Opinion dated April 11, 2019 (Dkt. No. 225 at 29-34), these same claims repeated in the SAC (the Ninth and Tenth Counts) should be dismissed. The sole remaining claim against Meadows is the Fifteenth Count for unjust enrichment. However, under the *in pari delicto* doctrine and the *Wagoner* Rule, the alleged bad acts and knowledge of the Platinum Defendants are imputed to the JOLs and PPVA. Thus, the JOLs and PPVA lack standing to assert the unjust enrichment claim against non-insider third parties (alleged Preferred Investors in the BEOF Funds) to seek to recover claimed damages allegedly caused to PPVA by the Platinum Defendants. The SAC should be dismissed with prejudice as against Meadows.

**RELEVANT ALLEGATIONS IN THE SAC**

Defendant Platinum Management (NY) LLC is the general partner of PPVA. SAC ¶¶ 7, 39, 228. The “Platinum Defendants” comprises a group of Platinum Management and the

individuals who allegedly owned, operated and managed Platinum Management. SAC ¶¶ 3, 7. The Platinum Defendants are alleged to have operated, managed and controlled PPVA. SAC ¶¶ 12, 269. The gravamen of the SAC is the allegation that the Platinum Defendants together with the “Beechwood Defendants” engaged in two alleged fraudulent schemes causing damages to PPVA. SAC ¶¶ 3, 9-11.

The SAC alleges that the “Preferred Investors of the BEOF Funds” are “direct or indirect investors in the BEOF Funds and received capital distributions as a result of the Renaissance Sale.” SAC ¶ 137. Meadows, together with 29 other defendants and 100 John Does, is included in the group defined collectively as “Preferred Investors in the BEOF Funds.” SAC ¶ 138.

Meadows is *not* alleged to be a member of the group of Platinum Defendants or Beechwood Defendants. The SAC adds the wholly conclusory allegation that the Preferred Investors of the BEOF Funds “were insiders of Platinum Management.” SAC ¶ 138. The SAC however is devoid of any factual detail to support this conclusory allegation as to Meadows.

The only allegations that relate specifically to Meadows are that it “is an investment firm located in New Jersey and managed by Robert Cohen” and “Mr. Cohen was an acquaintance of Mr. Huberfeld, and held several meetings with Huberfeld and Bodner leading up to the Renaissance Sale.” SAC ¶ 179. Not a single factual detail is alleged to identify the timing, attendees or substance of any such purported “meetings,” let alone a sinister purpose of any meeting. The SAC alleges that the BEOF Funds “distributed the amounts they received to the Preferred Investors of the BEOF Funds,” including \$508,329 to Meadows with respect to its \$500,000 capital investment in the BEOF Funds. SAC ¶ 506.

This Court previously found that “the allegations in the FAC establish no more than guilt by association with respect to the Preferred Investors.” Dkt. No. 225 at 31. The Court held that

Plaintiffs failed to “plausibly allege that the [Preferred Investor] defendant[s] had actual knowledge of the underlying tort.” *Id.* at 31-33. Because the SAC adds no new facts regarding Meadows, Plaintiffs fail plausibly to allege that Meadows was an insider of the Platinum Defendants.

This Court previously found that “the allegations in the FAC establish no more than guilt by association with respect to the Preferred Investors.” Dkt. No. 225 at 31. The Court held that Plaintiffs failed to “plausibly allege that the [Preferred Investors] had actual knowledge of the underlying tort.” *Id.* at 31-33. Because the SAC adds no new facts regarding Meadows, Plaintiffs fail plausibly to allege that Meadows was an “insider” of the Platinum Defendants.

### **ARGUMENT**

#### **PLAINTIFFS LACK STANDING TO SUE MEADOWS FOR UNJUST ENRICHMENT**

The authorities set forth in the incorporated memoranda of law demonstrate that the unjust enrichment claim against Meadows should be dismissed as a matter of law under the doctrine of *in pari delicto* and the related *Wagoner* Rule as set forth in *Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114, 118 (2d Cir. 1991).

### **CONCLUSION**

For all of the foregoing reasons, as well as the reasons set forth in the memoranda of law submitted by the defendants alleged to be “Preferred Investors in the BEOF Funds,” it is respectfully requested that the Court enter an order (a) dismissing the Ninth, Tenth and Fifteenth Counts as against Meadows Capital LLC with prejudice and without leave to replead, and (b) granting Meadows Capital LLC such further relief as the Court deems just.

Dated: New York, New York  
April 22, 2019

**MINTZ, LEVIN, COHN, FERRIS, GLOVSKY  
AND POPEO, P.C.**

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