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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE PLATINUM-BEECHWOOD LITIGATION	:	18-cv-06658 (JSR)
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MELANIE L. CYGANOWSKI,	:	
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Plaintif,	:	18-cv-12018 (JSR)
	:	
-v-	:	
	:	
BEECHWOOD RE LTD., et al.,	:	
	:	
Defendants.	:	
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**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE BEECHWOOD PARTIES' MOTION TO DISMISS SHIP'S THIRD-PARTY COMPLAINT**

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Cross-Claim Defendants B Asset Manager LP, B Asset Manager II LP, BAM Administrative Services LLC, Beechwood Re Ltd., Beechwood Re Holdings, Inc., Beechwood Bermuda Ltd., Beechwood Bermuda International Ltd., the Feuer Family Trust, and the Taylor-Lau Family Trust, and Third-Party Defendants B Asset Manager GP LLC, B Asset Manager II GP, LLC, MSD Administrative Services LLC, N Management LLC, Beechwood Global Distribution Trust, Feuer Family 2016 Acq Trust, Taylor-Lau Family 2016 Acq Trust, and Beechwood Capital Group LLC (collectively, “Movants”), by and through their undersigned counsel, respectfully submit this reply memorandum of law in support of their motion to dismiss the TPC pursuant to Rule 12(b)(6).<sup>1</sup>

### **ARGUMENT**

#### **I. SHIP’S CLAIMS AGAINST THE TRUSTS SHOULD BE DISMISSED BECAUSE IT FAILED TO SUE THE RIGHT PARTIES**

SHIP does not dispute that, by suing the Feuer Family, Taylor-Lau Family, and 2016 Acquisition Trusts, not their trustees, it sued the wrong the parties. Instead, it raises a series of erroneous arguments, all of which should be rejected.

First, SHIP argues that the trusts were established as alter egos of “Feuer, Taylor, Levy, and the other Co-Conspirators for the specific purposes of disguising true ownership of Beechwood and

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<sup>1</sup> SHIP contacted the Court yesterday to request permission to file belatedly a motion to dismiss Beechwood’s counterclaims nearly 100 days after it was due. The Court granted SHIP’s request, giving SHIP five days to respond. In light of the Court’s indulgence, Beechwood does not press its Rule 8(b)(6) or *in pari delicto* arguments here. But that does not change what is now obvious: SHIP knew about Platinum’s relationship to Beechwood, believed that the relationship was not material, chose not to conduct due diligence, and declined to evaluate or monitor the investments it now complains about. Put simply, SHIP’s leadership chose to pursue a misguided public relations campaign against Beechwood while privately conceding the ultimate issues in this case. In doing so, it has wasted this Court’s time and the parties’ resources, and walked itself into a federal racketeering lawsuit from the SEC-appointed Receiver to PPCO. To the extent SHIP’s claims against the asset manager entities survive, Beechwood looks forward to summary judgment.

of siphoning off and shielding ill-gotten gains from the Platinum-Beechwood Scheme.” (TPC at 60.) This argument is irrelevant and nonsensical. SHIP’s conclusory alter ego allegations are not an excuse to sue the wrong party, and SHIP does not cite any authority stating otherwise. Moreover, as discussed below, SHIP’s suggestion that the naming convention of trusts, which it does not allege it was even aware of, was somehow fraudulent is incorrect as a matter of law. *Am. Fin. Int’l Grp.-Asia, L.L.C. v. Bennett*, No. 05-cv-8988, 2007 WL 1732427, at \*9 (S.D.N.Y. June 14, 2007).

Second, the cases SHIP cites for the proposition that Movants have somehow waived this argument by not moving to dismiss on this ground in the CNO Crossclaim are not on point. They all concern a plaintiffs’ lack of capacity to sue, not a suit against a party that is incapable of being sued. As such, there has been no waiver.

Third, it is not clear why SHIP cites *Raymond Loubier Irrevocable Tr. v. Loubier*, 858 F.3d 719 (2d Cir. 2017). That case deals with a collateral issue, diversity of citizenship, and clearly supports Movants’ position. *Id.* at 731 (“In cases involving traditional trusts, and absent anything to the contrary in either the trust instruments or state law, a party does not really have the option of suing either the trust in its own name or its trustee. The action can be maintained *only* against the trustee.”). Accordingly, the trusts should each be dismissed from this case.

## **II. SHIP FAILS TO SATISFY RULE 8 AND 9(B) BY RELYING ON IMPERMISSIBLE GROUP PLEADING**

SHIP’s response to Movants’ group pleading argument falls flat. SHIP ignores the relevant portions of this Court’s decision in *In re Platinum-Beechwood Litig.*, No. 18-CV-10936 (JSR), 2019 WL 1570808 (S.D.N.Y. Apr. 11, 2019), in which the Court dismissed similar allegations brought against Beechwood Capital, BBLN-PEDCO Corp., BHLN-PEDCO Corp., and Beechwood Trust Nos. 7-14. *Id.* at \*12. For the same reasons the Court dismissed those claims before, it should dismiss SHIP’s claims against Beechwood Holdings, BBL, Beechwood Capital, and MSD Administrative here.

SHIP argues that Beechwood Holdings and BBL are subject to liability “as the sole shareholders of Beechwood Re and BBL,” that Beechwood Capital is somehow subject to liability for the same reason,<sup>2</sup> and that MSD Administrative is subject to liability on the basis of an email referring to it as an [REDACTED] (Opp. 22.) Despite SHIP’s bluster, this Court has already held that similar allegations against Beechwood Holdings, BBL, and Beechwood Capital failed on group pleading and specificity grounds. *In re Platinum-Beechwood Litig.*, 2019 WL 1570808 at \*12 (dismissing all claims against Beechwood Capital); *In re Platinum-Beechwood Litig.*, No. 18-CV-10936 (JSR), 2019 WL 2569653, at \*9 (S.D.N.Y. June 21, 2019) (dismissing aiding and abetting claims against Beechwood Re and BBL, as well as all claims against Beechwood Capital). The rationale the Court applied in those decisions applies equally if not more so here.

In addition, SHIP’s claims against MSD Administrative, which have not been asserted by any of the other plaintiffs, are almost laughable. The claims against MSD Administrative seem to rest solely on an email referring to MSD as an administrative company for [REDACTED]. It remains unclear what SHIP thinks this means, let alone why it means something bad. And there is simply no conceivable way that one can infer from this email that MSD Administrative was “a sham vehicle through which the criminal enterprises funneled exorbitant amounts of money as fees for inscrutable—and in all likelihood mostly non-existent—[services].” (Opp. 29.) This is nonsense and should be treated as such.

Finally, SHIP offers no response to Beechwood’s argument that its sole allegation against Beechwood Capital is merely a repackaging of the specious allegation—initially asserted by PPVA—that Platinum transferred Beechwood Capital money in March 2013. (Mot. 11.) SHIP

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<sup>2</sup> It is not clear why this would be the case. Beechwood Capital is not a shareholder of either Beechwood Holdings or BBL and never has been. And SHIP does not allege that it ever was.

does not dispute that the Court has already considered this allegation, along with the underlying email on which it was purportedly based, and rejected it completely concluding that “the exhibit cited does not provide *any evidence* that Platinum Management transferred money to Beechwood Capital, let alone for nefarious purposes.” *See In re Platinum-Beechwood Litig.*, 2019 WL 1570808, at \*12 (emphasis added). Thus, for the same reasons as before, the claims against this entity should all be dismissed.

### III. SHIP’S AIDING AND ABETTING CLAIMS SHOULD BE DIMSSED

Additionally, SHIP has failed to allege substantial assistance and, thus, aiding and abetting as to Beechwood Holdings, BBL, MSD Administrative, Beechwood Capital, N Management, the Feuer Family Trust, the Taylor-Lau Family Trust, or the 2016 Acquisition Trusts. *See In re Platinum-Beechwood Litig.*, 2019 WL 2569653, at \*9. The claims against those entities should therefore be dismissed.

***Beechwood Holdings and BBL.*** SHIP scoffs at the suggestion that it is seeking to hold Beechwood Holdings and BBL liable for their role as holding companies. (Opp. 43.) But that is exactly what SHIP argues in its opposition brief, writing that “Beechwood Holdings and BBL ... cannot plausibly argue that they did not provide substantial assistance *as the sole shareholders of Beechwood Re and BBIL.*” (*Id.* at 44.) SHIP’s vague assertion that the entities received “significant management fees” and “significant assets” (Opp. 44) does not make any sense, much less show who they aided and abetted, how, when, or in what context. The allegations fall far short of the particularity requirement of Rule 9(b). As in the PPVA action, the aiding and abetting claims against these entities should be dismissed. *In re Platinum-Beechwood Litig.*, 2019 WL 2569653, at \*9.

***MSD Administrative.*** As discussed above, SHIP’s claims against MSD Administrative are nothing short of bizarre. SHIP suggests that MSD Administrative was paid inflated fees, but

the TPC does not allege what MSD Administrative was paid, when it was paid, what work it did, or any facts from which one could reasonably infer that the amount of fees, if any, were incommensurate with the work performed by the entity. SHIP's repeated references to [REDACTED] continue to make no sense. The aiding and abetting claims against MSD Administrative should be dismissed along with everything else.

**Beechwood Capital.** SHIP claims that it adequately alleged substantial assistance against Beechwood Capital because that entity supposedly (1) "len[t] its name as a trade reference to other Beechwood Entities" and (2) "served as the vehicle for Platinum's initial investment in Beechwood." (Opp. 44.) The suggestion that Beechwood lent its name as a trade reference is not pleaded with the requisite specificity under Rule 9(b). However, even if it had been, "this allegation has no bearing on liability." *In re Platinum-Beechwood Litig.*, 2019 WL 1570808, at \*12. Moreover, SHIP makes no attempt whatsoever to explain how this "proximately caused the harm on which the primary liability is predicated." *Berman v. Morgan Keegan & Co., Inc.*, 455 F. App'x 92, 96 (2d Cir. 2012). Regarding the second allegation, this Court has already reviewed the document upon which it is based and concluded that it "does not provide any evidence that Platinum Management transferred money to Beechwood Capital, let alone for nefarious purposes." *In re Platinum-Beechwood Litig.*, No. 18-CV-10936 (JSR), 2019 WL 1570808, at \*12 (S.D.N.Y. Apr. 11, 2019). SHIP's stubborn repetition of this false allegation is nothing short of frivolous.

**N Management.** According to SHIP, it has pleaded substantial assistance against N Management because N Management was "instrumental in the formation of Beechwood Re and BBIL." (Opp. at 44.) This is a conclusion, not a fact. Moreover, it is exactly the kind of allegation that this Court has dismissed in the consolidation actions. *In re Platinum-Beechwood Litig.*, 2019 WL 2569653, at \*9.



*The Feuer Family Trust, the Taylor-Lau Family Trust, or the 2016 Acquisition Trusts.*

In the moving brief, Movants argued, among other things, that these claims must be dismissed because SHIP does not allege, and cannot maintain, that it relied on any statement from Beechwood after July 2016. Indeed, as Movants explained, this Court has already held twice that SHIP failed to allege reliance and injury in connection with July and August representations purportedly made on behalf of Beechwood. *Senior Health Ins. Co. of Pa. v. Beechwood Re Ltd.*, 345 F. Supp. 3d 515, 529 (S.D.N.Y. 2018) (July 2016 letter: “SHIP does not explain how it relied on these communications, or how it was injured by that reliance.”); *In re Platinum-Beechwood Litig.*, No. 18-CV-6658 (JSR), 2019 WL 1759925, at \*6 (S.D.N.Y. Apr. 22, 2019) (August and October 2016 communications: “SHIP does not explain, however, how it relied on these misrepresentations to its detriment.”). SHIP failed to respond to this argument.

Accordingly, it has conceded the issue.

#### **IV. SHIP’S CIVIL CONSPIRACY CLAIM SHOULD BE DISMISSED**

In its opposition, SHIP states that “each of the Moving Beechwood Defendants conspired with Platinum and Platinum employees to harm SHIP.” (Opp. 47.) But that is not what the TPC says, and SHIP cannot amend its pleading through an opposition brief. *In re Platinum-Beechwood Litig.*, 2019 WL 2569653, at \*19. The TPC specifically alleges that Movants conspired with “Beechwood, Feuer, Taylor, and Levy.” (See TPC ¶¶ 446-48.) Movants are all Beechwood entities, and the named individuals were all Beechwood principals. Accordingly, the intra-corporate conspiracy doctrine applies, and SHIP’s civil conspiracy claim must be dismissed. (Mot. 15.)<sup>3</sup>

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<sup>3</sup> SHIP is mistaken if it believes that Beechwood is arguing that Beechwood and Platinum were a single entity. That is profoundly not the case. Beechwood’s argument is simply that the TPC

Moreover, SHIP barely even attempts to respond to Movants argument that SHIP's civil conspiracy allegations are wholly conclusory, impermissibly pled against Movants without differentiation, and merely re-hash SHIP's underlying allegations of fraud and breach of fiduciary duty. (Mot. at 16.) Instead, channeling the conclusory allegations from the TPC, SHIP argues that "each of the Moving Beechwood Defendants played a unique and integral role within the Platinum-Beechwood conspiracy, which has committed several underlying torts." (Opp. 49.) In support of this, SHIP then cites back to its own recitation of the facts. (*Id.*) This argument is completely circular, and merely serves to reinforce the inadequacy of the allegations in the TPC. *See In re Platinum-Beechwood Litig.*, 2019 WL 2569653, at \*18.

#### **V. SHIP'S UNJUST ENRICHMENT CLAIM SHOULD BE DISMISSED**

As set forth in the moving brief, SHIP's unjust enrichment claim fails for two independent reasons: (1) an unjust enrichment claim cannot stand where an express agreement governs the rights at issue; and (2) merely alleging a general, non-specific benefit is insufficient to plead an unjust enrichment claim. (Mot. 16-18.) In its opposition, SHIP responds to the first argument, but ignores the second. As a result, it has effectively abandoned this claim. *In re Platinum-Beechwood Litig.*, 2019 WL 2569653, at \*10.

However, even if that were not the case, SHIP does not dispute that the IMAs govern the payment of performance fees or the transactions at issue in the TPC. Instead, it maintains that its claim "has nothing to do with the IMAs" but instead is "rooted in the misrepresentations and concealments that favored the interests of Platinum and Beechwood entities and individuals to SHIP's detriment." (*See* Opp. 54.) But that does nothing to help save SHIP's claim. As this Court

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alleges that Movants conspired with Beechwood and its principals, nobody else. And those allegations clearly fall within the scope of the intra-corporate conspiracy doctrine.

has explained repeatedly, “an unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim.” *Id.* at \*14. SHIP has succeeded, through its contortions, in describing a conventional tort claim.

Moreover, SHIP is wrong on the law. Amazingly, although it attempts to distinguish the authority cited in Beechwood’s moving brief (Opp. 54), SHIP refuses to engage with either this Court’s prior decisions on this issue or the cases that this Court cited with approval (*see* Mot. 17-18 (citing *In re Platinum-Beechwood Litig.*, 377 F. Supp. 3d 414, 427 (S.D.N.Y. 2019); *Law Debenture v. Maverick Tube Corp.*, No. 06 Civ. 14320 (RJS), 2008 WL 4615896, at \*12 (S.D.N.Y. Oct. 15, 2008), *aff’d sub nom. Law Debenture Tr. Co. of New York v. Maverick Tube Corp.*, 595 F.3d 458 (2d Cir. 2010); *Senior Health Ins. Co. of Pennsylvania v. Beechwood Re Ltd.*, 345 F. Supp. 3d 515, 533 (S.D.N.Y. 2018)).) As this Court has already explained in dismissing SHIP’s prior unjust enrichment claims, “courts in New York state and in this District have found that the existence of a valid and binding contract governing the subject matter at issue in a particular case precludes a claim for unjust enrichment even against a third party non-signatory to the agreement.” *In re Platinum-Beechwood Litig.*, 2019 WL 1759925, at \*9 (internal marks and citations omitted). SHIP’s refusal to engage with this Court’s own rulings on identical issues is telling.

Finally, as noted above, SHIP offers no response to the argument that it failed to allege with the requisite specificity how any Movant received or utilized SHIP’s assets. Because SHIP does not dispute that its allegations are entirely conclusory, they should be dismissed.

**CONCLUSION**

For the foregoing reasons, the reasons set forth in the moving brief, and the reasons set forth in the briefs of all similarly situated defendants, Movants respectfully request that the Court enter an order granting their motion to dismiss, and such other and further relief as this Court deems just and proper.

Dated: July 12, 2019  
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