UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION	Master Docket No. 1:18-cv-6658 (JSR)
MELANIE L. CYGANOWSKI, AS RECEIVER, Plaintiff, v. BEECHWOOD RE LTD., et al., Defendants.	Case No. 1:18-cv-12018 (JSR)
SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, Crossclaimant, v. BEECHWOOD RE LTD., et al., Crossclaim Defendants.	
SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, Third-Party Plaintiff, v. PB INVESTMENT HOLDINGS LTD., et al., Third-Party Defendants.	

OMNIBUS MEMORANDUM OF LAW IN OPPOSITION TO MOTIONS TO DISMISS THIRD-PARTY COMPLAINT OF SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA

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Senior Health Insurance Company of Pennsylvania ("SHIP") submits this brief in opposition to the motions to dismiss filed by the following Third-Party Defendants:

1. Elliot Feit (No. 18-cv-12018, ECF No. 344)[1]
2. PB Investment Holdings Ltd., as successor-in-interest to Beechwood Bermuda Investment Holdings Ltd. ("PBIH") (No. 18-cv-12018, ECF No. 347)
3. Whitestar LLC, Whitestar LLC II, and Whitestar LLC III (collectively the "Whitestar Entities") (No. 18-cv-12018, ECF No. 350)
4. Lawrence Partners LLC (ECF No. 563)

I. INTRODUCTORY STATEMENT

These four motions to dismiss follow form to the other ten motions that preceded them. Just like the earlier movants, the Moving Defendants here attempt to minimize their respective roles in the Platinum-Beechwood Scheme and make concerted efforts to express their incredulity that SHIP would dare to hold them to account for their wrongdoing. In the final analysis, however, the Moving Defendants' motions should be denied because their arguments for dismissal are contrary to law and ignore the well-pled factual allegations against them.

Consistent with the other movants, each of the Moving Defendants argues that the detailed allegations in the TPC somehow do not place them on notice of the basis for the claims asserted against them. This Court has already turned back prior attempts to dismiss claims asserted in this litigation on that ground, and it should do the same here. To satisfy Rule 8(a)(2)'s notice pleading standard, the TPC need only "give the defendant fair notice of what the plaintiff's claim is and the ground upon which it rests." ECF No. 225, 4/11/19 Opinion & Order

[1] Unless otherwise noted, citations to the docket refer to the case captioned *In Re Platinum Beechwood Litigation*, No. 1:18-cv-6658-JSR. All terms not defined herein shall have the same meaning ascribed to them in SHIP's Crossclaims and Third-Party Complaint (the "TPC") (ECF No. 374). The moving parties may be referred to in this memorandum as "Defendants" or "Moving Defendants."

("PPVA MTD Op.") at 42 (internal quotation marks omitted). The TPC does far more than that by "describing in exhaustive detail the nature of the [Platinum-Beechwood Scheme] and by identifying the" Moving Defendants as participants in that scheme. *Id.* at 43. The TPC contains individualized allegations against each of the Moving Defendants, spelling out their precise roles in the scheme and providing time periods and specific dates during which they engaged in relevant conduct. These allegations plainly pass muster under Rule 8(a)(2).

The Moving Defendants also strain to deny, minimize, or sanitize their role in the illegal scheme. But those efforts fail, as the TPC's allegations—and the documentary evidence underlying them—directly contradict any such claim. The Moving Defendants' attempts to challenge the veracity of TPC's allegations on these motions to dismiss not only are procedurally inappropriate, they also ignore reality.

Moving Defendant Elliott Feit argues that he was merely a low-level employee who performed ministerial tasks, and he even improperly submits an affidavit in support of that contention. Yet the TPC, relying on documents and communications directly involving Feit, tells an entirely different story. Feit knew that Beechwood's valuations were fraudulent, yet continued to submit requests for payment of performance fees that he calculated based on those unsupportable valuations.

PBIH, the Whitestar Entities, and Lawrence Partners also try to distance themselves from the fraud by mischaracterizing the TPC's allegations against them, contending that they are alleged essentially to be holding companies who took no affirmative action in furtherance of the fraud. These organizations were instrumentalities of the architects of the Platinum-Beechwood Scheme that served key roles in the fraud against SHIP. For example, Lawrence Partners admits that it is the ultimate owner of certain Beechwood Entities, through its ownership of BRILLC

Series B, which contributed to the capitalization of Beechwood Re with a $100 million demand note. This $100 million demand note enabled Beechwood Re to get off the ground. The Whitestar Entities, who were the sole members of BRILLC Series F, G, and H, also assisted directly in that endeavor. The ownership structure of Beechwood was designed specifically to further the Platinum-Beechwood Scheme, and without these entities, that structure could not have existed. Lawrence Partners and the Whitestar Entities also directly participated in the August 5, 2016 Transactions that provided a vehicle to further obfuscate the significant economic interests in Beechwood held by Nordlicht, Huberfeld, and Bodner. PBIH's predecessor, Beechwood Bermuda Investment Holdings Ltd. ("BBIH"), was an integral part of the Agera Transactions that proved central to the fraudsters' designs to unwind the collapsing scheme and parachute out undetected with millions in money that rightfully belonged to others.

Because these well-pled allegations establish that these Moving Defendants knowingly participated in the fraudulent scheme for the benefit of themselves and their compatriots, and to SHIP's severe detriment, the motions to dismiss should be denied in their entirety.

II. THE WELL-PLED ALLEGATIONS AS TO THE MOVING DEFENDANTS

In the interest of conserving the Court's time and resources, and given the Court's deep familiarity with the facts in this litigation, SHIP respectfully refers the Court to its omnibus opposition to the prior 10 motions to dismiss for a broad summary of the Platinum-Beechwood Scheme. *See* ECF No. 522, SHIP Omnibus Opp. at 3-5. Set forth below are the allegations in the TPC that substantiate the claims asserted against each of the Moving Defendants.

A. Elliot Feit

Moving Defendant Elliot Feit is a Beechwood Insider. TPC ¶¶ 4 n.7. Feit served in a senior finance role and was an officer within Beechwood. TPC ¶ 35. Feit was responsible for calculating performance fees to which any of the Beechwood Advisors were allegedly entitled

and submitted those performance fee requests to SHIP. *Id.* Although he feigns ignorance, Feit knew that these performance fee requests were based on materially inflated valuations. *Id.* In early 2014, Feit was copied on multiple correspondence from a Platinum portfolio manager with Golden Gate Oil that provided an increasingly grim outlook for Golden Gate Oil. TPC ¶ 240.a. [redacted] *Id.*

Feit had full knowledge of the Platinum-Beechwood Scheme. [redacted] TPC ¶ 335. [redacted] *Id.* Accordingly, Feit knew the valuations at Beechwood were inflated and unreliable.

Feit was *the* person responsible for requesting authorization from SHIP to withdraw funds from the IMA accounts in satisfaction of allegedly earned performance fees. For example, on April 2, 2015, Feit requested authorization from Paul Lorentz at SHIP to withdraw $3.5 million as a performance fee from the BAM IMA account. TPC ¶ 347. Feit represented to Lorentz that the assets in the BAM IMA account possessed a market value of $115,143,472.39, with an alleged excess of $4,362,671.02. *Id.* In reasonable reliance on the representation made by Feit, on April 6, 2015, Lorentz authorized the withdrawal of $3.5 million in "performance fees" from the BAM IMA account. TPC ¶ 348. Those representations made by Feit were false, because the valuations for the assets contained in the BAM IMA account were grossly misstated, overvalued, and unreliable. TPC ¶ 349.

On July 15, 2015, Feit requested authorization from Lorentz at SHIP to withdraw $2.1 million as a performance fee from the Beechwood Re IMA account. TPC ¶ 354. Feit

represented to Lorentz that the assets in the Beechwood Re IMA account possessed a market value of $86,726,769.37, with an alleged excess of $2,115,495.70. *Id.* In reasonable reliance on the representation made by Feit, on July 16, 2015, Lorentz authorized the withdrawal of $2.1 million in "performance fees" from the Beechwood Re IMA account. TPC ¶ 355. Those representations made by Feit likewise were false, because the valuations for the assets contained in the Beechwood Re IMA account were misstated, overvalued, and unreliable. TPC ¶ 356.

On February 3, 2016, Feit requested authorization from Lorentz at SHIP to withdraw $500,000 as a performance fee from the BBIL IMA account. TPC ¶ 360. Feit represented to Lorentz that the assets in the BBIL IMA account possessed a market value of $85,812,061, with an alleged excess of $514,998. *Id.* In reasonable reliance on the representation made by Feit, on February 9, 2016, Lorentz authorized the withdrawal of $500,000 in "performance fees" from the BBIL IMA account. TPC ¶ 361. Those representations made by Feit were false, because the valuations for the assets contained in the BBIL IMA account were misstated, overvalued, and unreliable. TPC ¶ 362.

SHIP has also alleged additional bases for Feit's knowledge of the Platinum-Beechwood Scheme. SHIP details the plan to transfer bad investments from the account of CNO (a Beechwood client) to the account of SHIP (also a Beechwood client). In his role as Finance Director at Beechwood, Feit knew that these transactions were between two clients to whom Beechwood owed fiduciary duties. This plan is revealed in a series of emails on and around July 23, 2015. TPC ¶ 377. [redacted] *Id.* [redacted]

[redacted]

Id. SHIP alleges that Feit took overt acts to facilitate one or more of the above-listed transactions. TPC ¶ 378. Feit also knew that these were not arm's-length transactions and that the valuations were inflated, [redacted] TPC ¶ 335.

Feit also knew that Nordlicht, Huberfeld, and Bodner were principally responsible for coordinating the Platinum-Beechwood Scheme, sending real-time updates and requests for direction to Nordlicht and Levy on how and where SHIP's funds would be invested. TPC ¶¶ 414, 423. Based on his involvement, Feit had direct knowledge that the valuations assigned to SHIP's investments were unsupported, false, and misleading. TPC ¶ 424.

B. PBIH

Moving Defendant PBIH is PB Investments Holdings Ltd., as successor-in-interest to Beechwood Bermuda Investment Holdings Ltd. ("BBIH"). BBIH was a Beechwood Entity organized under Bermuda law with its principal place of business in Bermuda. TPC ¶ 15. BBIH was a reinsurance and wealth management company that issued wealth management products for the Beechwood Insiders. *Id.* BBIH was the alter ego of Nordlicht, Huberfeld, Bodner, Levy, Feuer, and Taylor – having been dominated and controlled by them for the purpose of executing certain transactions to benefit the Co-Conspirators to the detriment of SHIP. *Id.* Nordlicht, Huberfeld, Bodner, Levy, Feuer, and Taylor created BBIH and PBIH as asset protection vehicles for use in siphoning off and secreting the ill-gotten gains from the Co-Conspirators' Platinum-Beechwood Scheme. *Id.*

BBIH played an instrumental role in the Agera Energy transactions. As the Court has been made aware, in June 2014 the Original Note issued by Agera Energy to PGS was amended and restated into a roughly $600,000 secured convertible promissory note (the "Convertible

Note"). TPC ¶ 271. The Convertible Note granted PGS the unconditional option to exchange the Convertible Note for 95.01% of the equity interests in Agera Energy. *Id.* PGS is owned 55% by PPVA and 45% by PPCO. *Id.*

Also in June 2014, Beechwood Re acquired $51.9 million of senior secured debt issued by Agera Energy. TPC ¶ 274. SHIP's funds provided $30 million of the $51.9 million. *Id.* Agera Energy used the loan proceeds to fund its purchase of Glacial assets for $53 million. *Id.* Although the senior secured debt was issued with a 14% interest rate, SHIP's principal was repaid by December 2014 without any accrued interest being paid. TPC ¶ 275. Platinum and Beechwood were able to own Agera Energy without any evidence of having spent any monies of their own. *Id.* In April 2015, Beechwood again caused SHIP's money to be used to fund the purchase of Energy.me LLC and Lumens Energy Group, LLC. TPC ¶ 277. The loans were repaid without interest. *Id.*

By April 2016, circumstances became dire for Platinum, and Narain (at Beechwood) began to seek a buyer for Agera Energy. TPC ¶ 279. Working with Platinum, Narain and Beechwood orchestrated the sale and resale of the Convertible Note to investors, including SHIP, in a series of transactions that ultimately resulted in the transfer of $65 million in cash and $105 million in other assets to PGS in order to prop up PPCO and PPVA. TPC ¶ 280.

On April 1, 2016, pursuant to an Assignment of Note and Liens, PGS assigned the Convertible Note to BBIL ULICO 2014, BBIH, and BBIL in exchange for $15 million in cash, of which $2.5 million was funded from SHIP's BBIL IMA account. TPC ¶ 281. PGS had the unconditional right to repurchase the Convertible Note by repaying the $15 million purchase price. *Id.* PGS did not exercise its repurchase right. *Id.* On May 12, 2016, BAM caused BBIL ULICO 2014, BBIH, and BBIL to enter into an amended and restated assignment of note and

liens that effectively resold the Convertible Note at a new purchase price of $25 million. TPC ¶ 282. Of that purchase price, $5 million was funded from SHIP's BBIL IMA account. *Id.* This transaction funneled $25 million in new money to PGS (and thus to PPVA and PPCO) at a time when both PPVA and PPCO were in the midst of a liquidity crisis. *Id.*

In order to assure a large payoff to Platinum, in May and June 2016, Beechwood caused the formation of AGH Parent to acquire the Convertible Note from PGS for $170 million. TPC ¶ 283. The purported value of the Convertible Note unfathomably increased from $15 million in April 2016, to $25 million in May 2016, and then to $170 million in June 2016. TPC ¶ 284. In order to complete this scheme, PGS first had to re-acquire the Convertible Note from BBLN-Agera and BBIL ULICO 2014, BBIH, and BBIL. TPC ¶ 297. On June 9, 2016, Narain, controlling Beechwood, completed this transaction using, among others, BBIH to get the deal done. *Id.* BBIH was instrumental as one of the buying and selling entities used by Beechwood to conduct and complete this set of fraudulent transactions. The allegations demonstrate that BBIH knew that the transactions were not arm's-length transactions and that they were done purely to move money out of SHIP's accounts and into Platinum and Beechwood accounts.

C. The Whitestar Entities and Lawrence Partners

1. The Formation of Beechwood Re Investments, LLC

Before reaching the allegations in the TPC specific to the Whitestar Entities and the Lawrence Partners, some brief background on the layers of entities and individuals that made up Beechwood's ownership structure is necessary. Beechwood Re Investments, LLC ("BRILLC") is a Delaware series LLC, comprising nine individual series lettered A through I (the "BRILLC Series Entities"), that was set up by Nordlicht, Huberfeld, and Bodner as part of their scheme to create Beechwood and subsequently to maintain and conceal their Beechwood ownership interests. TPC ¶ 29. Aside from its name, which was chosen specifically to conceal its

ownership by Platinum Insiders, BRILLC had no connection to Beechwood. TPC ¶ 29.

TPC ¶¶ 29, 68, 97.

TPC ¶ 97.

Id.

TPC ¶ 29.

TPC ¶¶ 31, 97.

Each of the BRILLC Series Entities, in turn, is 100%-owned and controlled by Nordlicht, Bodner, or Huberfeld through the "BRILLC Series Members," which directly owned the respective membership interests of the BRILLC Series Entities. TPC ¶¶ 30-31.

TPC ¶ 30(a), (d)-(e), (i).

Id.

TPC ¶¶ 30(c), (f)-(h).

[redacted] *Id.*; *see also* TPC ¶ 31.

[redacted] TPC ¶ 30(b), (f)-(h). [redacted]

[redacted] TPC ¶¶ 30(f)-(h), 31. [redacted]

[redacted] TPC ¶¶ 30(b), 31.

In sum, each of the BRILLC Series Entities and BRILLC Series Members is an alter ego of Nordlicht, Huberfeld, or Bodner that was used as part of an elaborate asset-protection scheme implemented by those fraudsters and their other co-conspirators. In particular, Nordlicht, Huberfeld, and Bodner used these instrumentalities and alter egos to shield assets—gained as a result of their fraudulent conspiracy—from creditors such as SHIP. TPC ¶¶ 31, 96. In addition, they prevented detection of and perpetuated the fraudulent scheme by masking their ownership and control of the BRILLC Series Entities through generic naming conventions. TPC ¶ 30. At all relevant times, the BRILLC Series Entities and Members were alter egos of Nordlicht, Huberfeld, and Bodner to exert their control over the Beechwood Entities. TPC ¶¶ 31, 96.

2. The Whitestar Entities

[redacted] TPC ¶ 30(f)-(h). [redacted]

[redacted] TPC ¶¶ 30(f)-(h), 31. Though the Whitestar Entities now attempt to distance themselves from Bodner and Huberfeld by

asserting that the TPC alleges mere guilt by association, *see* Whitestar Br. at 3, the TPC establishes that key insiders to the fraudulent scheme knew and understood that ownership and control by family members of Nordlicht, Huberfeld, and Bodner was the same as ownership and control by Nordlicht, Huberfeld, and Bodner. TPC ¶ 87. [redacted] TPC ¶ 87. [redacted] TPC ¶¶ 29, 31, 68, 97. [redacted] TPC ¶¶ 433-35. [redacted] TPC ¶ 436. In short, the Whitestar Entities offered substantial assistance in furtherance of the asset theft and protection scheme at the heart of the criminal conspiracy. TPC ¶ 381.

3. Lawrence Partners

Moving Defendant Lawrence Partners' role in the scheme is essentially the same as the Whitestar Entities' role. [redacted] TPC ¶ 30(b). [redacted]

[redacted] TPC ¶¶ 30(b), 31. Like the Whitestar Entities, Lawrence Partners attempts to distance itself from Huberfeld, claiming that the TPC alleges that Lawrence Partners merely is owned by Huberfeld's family members. [redacted] TPC ¶ 87.

Also like the White Star Entities, Lawrence Partners was there for the formation of Beechwood, [redacted] TPC ¶¶ 29, 31, 68, 97. [redacted] *See* TPC ¶¶ 433-35. Lawrence Partners thus was an integral part of the broad-ranging asset theft and protection scheme.

III. ARGUMENT

A. The TPC's Well-Pled Allegations Place Each of the Moving Defendants on Notice of the Basis of the Claims Asserted Against Them

Consistent with the previous round of motions to dismiss the TPC, all of the Moving Defendants advance some form of the argument that the TPC engages in "group pleading" in a way that violates Fed. R. Civ. P. 8(a)(2). ECF No. 346, Feit Br. at 3 n.1; ECF No. 348, PBIH Br. at 5; ECF No. 351, Whitestar Br. at 4; ECF No. 564, Lawrence Partners Br. at 4-5. To avoid duplication, SHIP respectfully refers the Court to the discussion of the relevant legal principles in its omnibus memorandum of law in opposition to the prior round of motions to dismiss. ECF No. 522, SHIP Omnibus Opp. at 26-31.[2] Applying those legal principles in the context of the

[2] Also like the prior movants, these Moving Defendants conflate the doctrine of "group pleading" of fraud claims under Rule 9(b) with the Rule 8(a)(2)'s notice pleading standard. Feit Br. at 3 n.1; Whitestar Br. at 4. SHIP need not invoke Rule 9(b)'s group pleading doctrine to

instant motions, the TPC "clear[s] the low bar imposed by Rule 8" with respect to each of the Moving Defendants, as it gives each of those defendants "fair notice of what [SHIP's] claim is and the ground upon which it rests." ECF No. 225, 4/11/19 Opinion & Order ("PPVA MTD Op.") at 42 (internal quotation marks omitted). As detailed in Part II above, the well-pled allegations specific to each of the Moving Defendants implicate each of them directly in the Platinum-Beechwood Scheme.

1. Feit

Feit, a senior Finance Director at Beechwood and Chief Financial Officer of BAM, was responsible for (among other things) calculating Beechwood's "performance fees," which were based on asset valuations that Feit knew were fraudulently inflated and unreliable. For example, the TPC describes internal email communications involving Feit [redacted] The TPC further alleges that Feit was intimately familiar with BAM's unscrupulous valuation procedures [redacted] And as the executive at Beechwood with sole responsibility for calculating performance fees and submitting requests for payment to SHIP for approval, Feit interacted directly with SHIP executives on numerous occasions over a period of several years. All told, Feit directly requested withdrawal of more than $6 million in unearned performance fees from SHIP's accounts; all of those requests were granted based on Beechwood's fraudulent valuations of SHIP's investments. These individualized and overwhelming allegations against Feit more than

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satisfy Rule 8(a)(2), and because SHIP does not seek to attribute *misstatements* to the Moving Defendants but instead focuses on their *conduct*, the group pleading doctrine is irrelevant.

satisfy Rule 8(a)(2)'s "low bar," PPVA Op. at 42, and Feit's attempts to minimize his role should be rejected.[3]

2. PBIH

PBIH's attacks on the allegations specific to it similarly are without merit. PBIH claims that the TPC "lump[s]" PBIH together with other defendants, PBIH Br. at 5, ignoring entirely the individualized allegations concerning the key role played by its predecessor, BBIH, in the Agera Transactions—transactions that are at the center of the fraudulent scheme. *See* Part II.B. *supra*. In explaining "the extent of the supposed allegations against [PBIH]," PBIH Br. at 3, PBIH conveniently omits the key detail that it is BBIH's successor-in-interest.[4] And consistent with that omission, BBIH's role receives not a single mention at any point in PBIH's brief. That omission is fatal to PBIH's motion, as the specific allegations concerning BBIH's conduct defeat not only its technical "group pleading" argument, but also its substantive arguments.

[3] In a desperate attempt to avoid SHIP's allegations, Feit submits an affidavit in support of his motion in which he further seeks to minimize his role at Beechwood. *See* ECF No. 345, Affidavit of Elliot Feit. Though such an affidavit is not properly considered on a Rule 12(b)(6) motion, *see, e.g., Global Network Commc'ns, Inc. v. City of New York*, 458 F.3d 150, 156 (2d Cir. 2006), Feit's assertions are not credible in any event, given the documentary evidence adduced in the TPC.

[4] BBIH's integral role in the fraudulent scheme, as described in Part II.B. *supra,* gives rise to a plausible inference that BBIH was dissolved into PBIH "fraudulently for the purpose of evading liability." *Vorcom Internet Servs., Inc. v. L & H Eng'g & Design LLC*, No. 12 CV 2049, 2013 WL 335717, at *5 (S.D.N.Y. Jan. 9, 2013) (citing *New York v. Nat'l Serv. Inds., Inc.*, 460 F.3d 201, 209 (2d Cir. 2006)). To the extent that the Court believes that additional factual allegations concerning PBIH's successor liability would be helpful, however, SHIP respectfully requests leave to amend its pleading to include such facts. *New York v. Town of Clarkstown*, 95 F. Supp. 3d 660, 683 (S.D.N.Y. 2015) (granting leave to amend 'to allege facts sufficient to support an inference of successor liability").

3. The Whitestar Entities and Lawrence Partners

The Whitestar Entities and Lawrence Partners also do not have a basis to argue that the TPC's allegations concerning them do not satisfy Rule 8(a)(2). Each of them is alleged to have been involved in the Platinum-Beechwood Scheme since essentially its inception, [redacted] the fact that the TPC refers to them collectively with the other participants in those transactions for ease of reference does not equate to impermissible "lumping together," as the Moving Defendants contend. *See* PPVA MTD Op. at 37 ("While it is true that BAM I and BAM II are 'lumped' together as a single BAM entity, it cannot seriously be argued that the FAC fails as a result to give BAM II fair notice of what the plaintiff's claim is and the ground upon which it rests." (internal quotation marks omitted)).

B. SHIP States Claims for Aiding and Abetting Fraud and Breach of Fiduciary Duty Against All of the Moving Defendants

A claim for aiding and abetting fraud consists of the following basic elements: "(1) the existence of an underlying fraud; (2) knowledge of this fraud on the part of the aider and abettor; and (3) substantial assistance by the aider and abettor in achievement of the fraud." *Anwar v. Fairfield Greenwich, Ltd.*, 728 F. Supp. 2d 372, 442 (S.D.N.Y. 2010) (quoting *Kottler v. Deutsche Bank AG*, 607 F. Supp. 2d 447, 466 (S.D.N.Y. 2009)). A claim for aiding and abetting breach of fiduciary duty similarly requires: "(1) breach of fiduciary obligations to another of which the aider and abettor had actual knowledge; (2) the defendant knowingly induced or participated in the breach; and (3) plaintiff suffered actual damages as a result of the breach." *Id.* Because "the same activity is alleged to constitute the primary violation underlying both claims"

in this case, the claims overlap "in several respects …." *Fraternity Fund Ltd. v. Beacon Hill Asset Mgmt., LLC*, 479 F. Supp. 2d 349, 360 (S.D.N.Y. 2007) (quoting *Pension Cmte. of Univ. of Montreal Pension Plan v. Banc of Am. Sec., LLC*, 446 F. Supp. 2d 163, 201 (S.D.N.Y. 2006)). In particular, "[k]nowledge of the primary violation with respect to one claim will entail knowledge of the primary violation with respect to the other," and "when a plaintiff adequately pleads substantial assistance in connection with a fraud claim, he or she fulfills also the participation element of the breach of fiduciary duty claim." *Id.*

As set forth below, the TPC alleges that each of the Moving Defendants knowingly participated in the fraudulent scheme and that their knowing participation proximately caused grievous injury to SHIP. The Court should reject the Moving Defendants' contrary arguments and sustain SHIP's aiding and abetting causes of action as to each of them.

1. The Moving Defendants Had Actual Knowledge of the Platinum-Beechwood Scheme

To establish the "actual knowledge" element of an aiding and abetting claim at the pleading stage, "plaintiffs must 'plead the events which they claim give rise to an inference of knowledge' of the underlying fraud …." *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, No. 12-cv-3723, 2016 WL 5719749, at *5 (S.D.N.Y. Sept. 29, 2016) (quoting *Krys v. Pigott*, 749 F.3d 117, 129 (2d Cir. 2014)). "[S]o long as fraudulent intent may be inferred from the surrounding circumstances," actual knowledge may be pled "generally, particularly at the prediscovery stage." *Landesbank Baden-Wurttenmberg v. RBS Holdings USA, Inc.*, 14 F. Supp. 3d 488, 514 (S.D.N.Y. 2014) (quoting *DDJ Mgmt., LLC v. Rhone Grp., LLC*, 911 N.Y.S.2d 7 (1st Dep't 2010)). That is because "[p]articipants in a fraud do not affirmatively declare to the world that they are engaged in the perpetration of a fraud." *Oster v. Kirschner*, 905 N.Y.S.2d 69,

72 (1st Dep't 2010); *see also Silvercreek Mgmt., Inc. v. Citigroup, Inc.*, 346 F. Supp. 3d 473, 487 (S.D.N.Y. 2018). The TPC meets this standard as to each of the Moving Defendants.

a. Feit

The TPC includes a bevy of well-pled allegations that easily satisfy the "surrounding circumstances" standard of actual knowledge applicable on a motion to dismiss. The TPC alleges that, by virtue of his position as BAM's Chief Financial Officer—one of the senior-most executives for the very entity responsible for managing all of SHIP's investments—Feit was responsible for calculation of Beechwood's performance fees and was in a position to know about Beechwood's fraudulent valuation practices. Feit also worked directly with the valuation firms in the preparation of those inflated valuations, and he was keenly aware of Beechwood's ongoing financial performance by virtue of his position on the Financial Committee. While these allegations alone constitute strong circumstantial evidence of Feit's actual knowledge of the scheme, they are far from the only allegations in the TPC.

Relying on email communications between Feit and other high-level Beechwood executives, [redacted]

These allegations plainly are sufficient at the pleading stage to give rise to plausible inference that Feit had actual knowledge of the fraudulent scheme. *See, e.g.*, *Landesbank*, 14 F. Supp. 3d at 514 (actual knowledge pled where complaint "set[] forth allegations as to each RBS Defendant's role in the securitization process and the preparation of offering materials" that were alleged to contain false statements). Feit's contrary contentions should be rejected.

b. PBIH

The allegations concerning PBIH and its predecessor, BBIH, also give rise to a plausible inference that PBIH was aware of the fraud. The TPC alleges that BBIH was at all times dominated and controlled by Nordlicht, Huberfeld, Bodner, Levy, Feuer, and Taylor—all individuals whose actual knowledge of the fraud is not subject to serious dispute at this stage of the proceedings. The TPC further alleges that PBIH and BBIH were created by those individuals specifically for the purpose of squirreling away assets in furtherance of the fraud. "[C]ourts have generally held that the scienter of a corporation's executive-level employees and corporate officers may be attributed to the corporation." *Thomas v. Shiloh Indus., Inc.*, No. 15-CV-7449, 2018 WL 4500867, at *3 (S.D.N.Y. Sept. 19, 2018); *see, e.g.*, *In re Marsh & McLennan Cos. Sec. Litig.*, 501 F. Supp. 2d 452, 482 (S.D.N.Y. 2006) (imputing knowledge of two senior executives to corporation). The knowledge of Nordlicht, Huberfeld, Bodner, Levy, Feuer, and Taylor thus appropriately is imputed to BBIH and PBIH under these circumstances.

c. The Whitestar Entities and Lawrence Partners

Because Lawrence Partners and the Whitestar Entities engaged in parallel conduct in connection with their roles as the sole members of BRILLC Series B, F, G, and H, SHIP addresses their knowledge together for purposes of efficiency. There can be little doubt that these defendants' actual knowledge of the fraud can plausibly be inferred from the surrounding circumstances set forth in the TPC. *Landesbank*, 14 F. Supp. 3d at 514. [redacted]

[redacted] *Thomas*, 2018 WL 4500867, at *3. SHIP should be permitted to test these allegations in discovery, and the Court should not reward this attempt to escape liability through formalistic adherence to the fiction that Huberfeld and Bodner had nothing to do with these entities because they were not listed on paper as the owners.

2. Each of the Moving Defendants Participated and Substantially Assisted in the Fraud and Breach of Fiduciary Duty

Substantial assistance exists where a defendant "affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables the fraud to proceed." *Nigerian Nat'l Petroleum Corp. v. Citibank, N.A.*, No. 98-cv-4960, 1999 WL 558141, at *8 (S.D.N.Y. July 30, 1999) (quoting *Diduck v. Kaszycki & Sons Contractors, Inc.*, 974 F.2d 270, 284 (2d Cir. 1992)). A defendant need not have been an active participant in the creation of the fraud since the "critical test for substantial assistance is whether the third party's conduct made a substantial contribution to the perpetration of the fraud." *In re Refco Inc. Sec. Litig.*, No. 07-cv-8663, 2011 WL 13261982, at *3 (S.D.N.Y. Apr. 11, 2011) (internal quotations omitted).

Consistent with this understanding, courts have recognized that "substantial assistance can take many forms …." *JP Morgan Chase Bank v. Winnick*, 406 F. Supp. 2d 247, 257 (S.D.N.Y. 2005) (internal quotation marks omitted); *accord Silvercreek* 346 F. Supp. 3d at 492.

Such forms may include, as particularly relevant here, "'[e]xecuting transactions' or helping a firm to present an 'enhanced financial picture to others.'" *Silvercreek*, 346 F. Supp. 3d at 487 (quoting *In re Enron Corp.*, 511 F. Supp. 2d 742, 806 (S.D. Tex. 2005)); *see also In re Refco*, 2011 WL 13261982, at *2-3. In situations where co-conspirators enjoy a common and mutually beneficial relationship in a "symbiotic fraudulent scheme," courts have rejected defendants' attempts to cast their activities as "ordinary-course transactions." *ABF Capital Mgmt. v. Askin Capital Mgmt., L.P.*, 957 F. Supp. 1308, 1330 (S.D.N.Y. 1997). The conduct alleged in the TPC with respect to each of the Moving Defendants meets this standard.

a. Feit

Feit claims that the TPC alleges merely that he was "carrying out his legitimate and appropriate job responsibilities," Feit Br. at 9, yet that plainly is not what the TPC alleges, and his attempt to recast his conduct as "ordinary-course" business activity would not absolve him of liability in any event. *ABF*, 957 F. Supp. at 1330. The TPC alleges that Feit was directly responsible for submitting millions of dollars of requests for performance fees to SHIP, which he knew at the time were based on fraudulently inflated valuations. The TPC goes into great detail about other actions Feit took, including his assistance in shepherding failing assets out of CNO's portfolio and into SHIP's. These allegations easily clear the substantial assistance bar.

b. PBIH

PBIH similarly tries to run away from the allegations against it, ignoring entirely the actions taken by BBIH in connection with the fraudulent Agera Transactions. Given the magnitude of those transactions and their negative impact on SHIP, BBIH's participation in them constitutes substantial assistance of the fraudulent scheme under New York law.

c. The Whitestar Entities and Lawrence Partners

The Whitestar Entities and Lawrence Partners substantially assisted the Beechwood fraud from its beginning until its ignominious end. Their refusal to acknowledge the TPC's allegations in that regard will not make the allegations go away. [redacted] These Moving Defendants also substantially assisted in the fraudsters' continued efforts to conceal the links between Platinum and Beechwood, [redacted] Those transactions—which were designed to render true, *after the fact*, the multiple false statements concerning Beechwood's ownership—could not have been consummated without the blessing of the Whitestar Entities and Lawrence Partners.

d. The TPC Pleads Proximate Causation

Finally, for the same reasons set forth in SHIP's omnibus opposition to the prior round of motions to dismiss, the TPC adequately alleges that each of the Moving Defendants proximately caused SHIP's injury. *See* SHIP Omnibus Opp. at 45-46. The Moving Defendants' attempts to obtain dismissal at the pleading stage based on that "fact laden" inquiry should be rejected. *In re Sept. 11 Prop. Damage & Bus. Loss Litig.*, 468 F. Supp. 2d 508, 531 (S.D.N.Y. 2006).

C. SHIP Has Sufficiently Stated a Claim for Civil Conspiracy Against All Moving Defendants

To "properly plead a cause of action to recover damages for civil conspiracy, the plaintiff must allege a cognizable tort, coupled with an agreement between the conspirators regarding the tort, and an overt action in furtherance of the agreement." *Perez v. Lopez*, 948 N.Y.S.2d 312,

314 (2d Dep't 2012). A "plaintiff may plead conspiracy in order to connect the actions of the individual defendants with an actionable underlying tort and establish that those acts flow from a common scheme or plan." *Ray Legal Consulting Grp. v. DiJoseph*, 37 F. Supp. 3d 704, 723 (S.D.N.Y. 2014) (citation omitted). SHIP's detailed factual allegations about each of the Moving Defendants—all of whom served as co-conspirators in a scheme to commit multiple underlying harms—adequately state a claim for civil conspiracy.

As outlined in Part II above, the TPC meets all of the elements and pleading requirements concerning civil conspiracy as to each Defendant by alleging: (1) a cognizable underlying tort, (2) an agreement by each defendant to commit the tort, and (3) an overt act by each defendant in furtherance of the agreement. *Perez*, 948 N.Y.S.2d at 314.

All Moving Defendants argue that the claim for civil conspiracy is duplicative of the claims for aiding and abetting. This argument for dismissal of the civil conspiracy count is without merit. While similarities exist between SHIP's claims of civil conspiracy and claims of aiding and abetting, the civil conspiracy count is not "duplicative" of aiding and abetting and does not warrant dismissal because conspiracy might be proved where other claims could fail. This Court has denied motions to dismiss aiding and abetting and civil conspiracy claims in the related SHIP Action and PPVA Action. *See* PPVA MTD Op. at 51-52.[5]

[5] SHIP recognizes that the Court dismissed civil conspiracy claims as duplicative in the PPVA Action with respect to defendants against whom it had upheld aiding and abetting claims. *In re Platinum-Beechwood Litig.*, No. 18-cv-6658, 2019 WL 2569653, at *10 (S.D.N.Y. June 21, 2019). In the event that the Court dismisses SHIP's aiding and abetting claims against any Moving Defendant, SHIP respectfully submits that its civil conspiracy claim should be sustained with respect to each such defendant.

1. Feit

Feit was an officer at Beechwood and was the senior Finance Director. *See* Part II.A (Feit). The fact that Feit might have been technically employed by MSD Administrative, while holding himself out as working for various Beechwood entities, using a beechwood email address and "Beechwood" in his email signature, just goes to show how purposefully opaque the entire organization was set up to be. Feit took several overt steps in furtherance of the Co-Conspirators' illegal objectives. *Id.* The TPC includes allegations about Feit's involvement in the part of the conspiracy to alter the valuations to benefit Beechwood. *Id.* He was also the person who calculated the alleged performance fees owed by SHIP, communicated those performance fee requests to SHIP, and made sure those funds were transferred from SHIP's accounts to Beechwood's accounts. *Id.* Feit committed each of these acts and others in furtherance of the Co-Conspirators' common fraudulent goal to acquire and misuse large sums of money from SHIP and others.

2. PBIH

PBIH, set up as an asset protection vehicle and an alter ego of Nordlicht, Huberfeld, Bodner, Levy, Feuer, and Taylor, was dominated and controlled by them specifically for the purpose of executing certain transactions to benefit the Co-Conspirators to the detriment of SHIP. *See* Part II.B (PBIH). BBIH's specific role in the numerous Agera transactions which were used to defraud SHIP multiple times are extensively detailed in the TPC. *Id.* Its role in furthering the Platinum-Beechwood conspiracy is outlined in the detailed allegations of the TPC.

3. The Whitestar Entities

The Whitestar Entities briefly argue that the civil conspiracy claim must be dismissed because the Whitestar Entities are owned by the wives of Bodner and Huberfeld, and so they must not be involved in the conspiracy perpetrated by their husbands. As outlined in Part II.C

above, the allegations in the TPC refute this argument. The TPC specifically alleges that these entities were created as part of the Platinum-Beechwood Scheme and that their ownership was nominally placed in the names of family members to specifically hide the true ownership. *Id.*[6]

4. Lawrence Partners

SHIP's allegations against Lawrence Partners are sufficient to support a claim for civil conspiracy. Lawrence Partners argues that SHIP has not detailed a formal or informal agreement, which is fatal to its claim. But SHIP has detailed the agreement. Lawrence Partners owned and controlled BRILLC Series B. *See* Part II.D. The TPC outlines how the Co-Conspirators set up the complex ownership structure specifically to mask who actually owned Beechwood. *Id.* This was a critical aspect and agreement of the conspiracy. If Beechwood's true ownership was not hidden, large investment accounts, especially insurers like SHIP, would never invest with Beechwood. By masking the ownership and control of BRILLC Series B through generic naming conventions, Huberfeld used BRILLC Series B to hide the ownership of those who truly controlled Beechwood to promote the secrecy and deception that protected the Platinum-Beechwood Scheme. Lawrence Partners agreed to and advanced the scheme.

D. The Motions to Dismiss SHIP's Unjust Enrichment Claims Should Be Denied

Under New York law, a claim for unjust enrichment requires (1) that the defendant was enriched, (2) at the plaintiff's expense, and (3) it is against equity and good conscience to permit the defendant to retain what plaintiff is seeking to recover. *Briarpatch Ltd., L.P. v. Phoenix Pictures Inc.*, 373 F.3d 296, 306 (2d Cir. 2004). SHIP has alleged sufficient facts to maintain

[6] PBIH and the Whitestar Entities also allege that SHIP has not sufficiently alleged an underlying tort, but again, this Court has already concluded that SHIP has. *See In re Platinum-Beechwood Litig.*, 377 F. Supp. 3d 414, 419-20 (S.D.N.Y. 2019); *Senior Health Ins. Co. of Pa. v. Beechwood Re Ltd.*, 345 F. Supp. 3d 515, 523-27 (S.D.N.Y. 2018) (holding that SHIP has pled actionable fraud and fiduciary duty claims against the SHIP Action Defendants).

unjust enrichment claims against each Moving Defendant. Each of the Moving Defendants alleges that SHIP did not plead sufficient factual allegations and lacked the particularity required by Rule 9(b) to support its claims. The Moving Defendants again overlook the overwhelming factual allegations laid out in the TPC.

1. Feit

Feit argues that no allegations in the TPC show that he was enriched by SHIP. Feit, however, served as Beechwood's Finance Director and played a critical role in perpetrating Beechwood's scheme. *See* Part II.A (Feit). Feit knew that the valuations portrayed by Beechwood were inflated, yet Feit sent SHIP performance fee demands anyway. *Id.* The falsely inflated valuations resulted in deceptively procured funds from SHIP, and unearned performance fees, from which Feit benefited in the form of annual bonuses and raises.

2. PBIH

PBIH argues that the TPC does not allege that PBIH received anything of value from SHIP. This is, of course, not true, as the TPC explicitly details how BBIH was involved in the Agera transactions, which used SHIP's assets to enrich BBIH itself, and others. *See* Part II.B. Second, PBIH also alleges that there was no relationship between PBIH and SHIP. But PBIH ignores the many Agera transactions were BBIH, the predecessor to PBIH, directly used SHIP monies to perpetrate a part of the Platinum-Beechwood Scheme. BBIH benefited from those transactions, by gaining assets it did not pay for and collecting management fees it did not earn.

3. The Whitestar Entities

The Whitestar Entities argue that SHIP's unjust enrichment claims must fail because there are no particularized allegations as required by Rule 9(b), but this is wrong. There are sufficient allegations against the Whitestar Entities, as detailed in Part II.C above. These entities were instrumentalities owned and controlled by Bodner and Huberfeld to perpetrate the

Beechwood-Platinum Scheme, and SHIP has met its burden in pleading unjust enrichment as to these Defendants.

4. Lawrence Partners

Lawrence Partners argues that because the TPC alleges, "*[t]o the extent* that [the Co-Conspirators] received the proceeds of unearned Performance Fees or monies earned from transactions favoring Beechwood's or Platinum's interests over SHIP's," no facts exist to suggest that Lawrence Partners was unjustly enriched. It argues that no allegations show any benefit bestowed upon Lawrence Partners. To the contrary, the TPC contains numerous factual allegations to support that Lawrence Partners was unjustly enriched at SHIP's expense. *See* Part II.D. Lawrence Partners was an instrumentality owned and controlled by Huberfeld—through his family—in order to perpetrate the Beechwood-Platinum Scheme, and SHIP has met its burden in pleading unjust enrichment as to this Defendant.

Lawrence Partners and the other Moving Defendants attempt to impose an unreasonably high standard of proof on SHIP at the notice pleading stage. The Court should reject such efforts. The TPC details the numerous investments and vast sums of money and financial benefit that were unjustly received by the Moving Defendants. The fact that SHIP cannot presently trace the exact flow of funds through numerous Moving Defendants and pin an exact dollar amount on each party at the pleading stage does not provide an adequate basis for dismissal. The fraudulent scheme's central mission was to secure SHIP's funds and convert them for the Moving Defendants' own benefit. The Moving Defendants were not working for free, nor have any renounced ownership interests in the entities to which SHIP funds flowed. Thus, equity and good conscience require the Moving Defendants be accountable for their unjust enrichment.

5. SHIP's Unjust Enrichment Claims Are Not Barred By The IMAs

The Whitestar Entities and Lawrence Partners also mistakenly assert that SHIP's unjust enrichment claim duplicates its claims arising under the IMAs. The Whitestar Entities and Lawrence Partners were not parties to the IMAs and the claims against them are not subsumed by SHIP's breach of contract claims against the Beechwood Advisors. The factual allegations against the Whitestar Entities and Lawrence Partners are not based on performance fees payable under the IMAs. Instead, SHIP's allegations relate to their ownership and control of the BRILLC Series Entities and their role in the Platinum-Beechwood Scheme. *See* Part II.C-D. By virtue of their ultimate ownership of the BRILLC Series Entities, the Whitestar Entities and Lawrence Partners received the benefit of SHIP's funds. The existence of the IMAs does not bar claims of unjust enrichment against parties with whom SHIP had no contractual agreement.

E. PBIH Is Subject To Personal Jurisdiction In New York

PBIH's attempt to evade this Court's jurisdiction should be rejected for several reasons.

First, PBIH has waived its jurisdictional challenge, as it failed to raise any such challenge in moving to dismiss the Second Amended Complaint in the PPVA Action. *See* No. 18-cv-10936, ECF No. 379, PBIH Br.[7] Given the similarities between the claims asserted against

[7] SHIP and Fuzion incorporate by reference the arguments made in BCLIC's and WNIC's memorandum of law with regard to PBIH's personal jurisdiction challenge. ECF No. 439. In addition, to the extent the Court requires additional facts to conduct its analysis, SHIP respectfully requests that the Court permit jurisdictional discovery of PBIH as successor-in-interest to BBIH. *City of Almaty v. Ablyazov*, 278 F. Supp. 3d 776, 809 (S.D.N.Y. 2017) (jurisdictional discovery appropriate where, as here, plaintiff has "made a sufficient start toward establishing personal jurisdiction"). *MWH Int'l, Inc. v. Inversora Murten S.A.*, No. 11 Civ. 2444, 2012 WL 3155063, at *5 (S.D.N.Y. Aug, 3, 2012) (courts have broad discretion to grant jurisdictional discovery). As fact discovery is well under way, jurisdictional discovery would not delay the case.

PBIH in the PPVA Action and the claims SHIP asserts against it here, there can be no rational explanation for PBIH's failure to raise jurisdictional defenses in that case if it had merit.

Second, PBIH is being sued in its capacity as successor-in-interest to BBIH. The TPC alleges that BBIH participated in the Agera Transactions, which were negotiated and consummated in New York. BBIH accordingly would have been subject to personal jurisdiction on the basis of that participation if it still existed, and under New York law, "personal jurisdiction can be based on successor liability." *Vorcom*, 2013 WL 335717, at *3. PBIH is subject to this Court's jurisdiction based on BBIH's pre-existing contacts with New York.

Third, the TPC alleges that PBIH was the alter ego of Nordlicht, Huberfeld, Bodner, Levy, Feuer and Taylor and was used by them to advance the Platinum-Beechwood Scheme. *See* Part II.B., *supra*. According to New York law, "alter egos are treated as one entity for purposes of jurisdiction." *D'Amico Dry D.A.C. v. Primera Mar. (Hellas) Ltd.*, 348 F. Supp. 3d 365, 390 (S.D.N.Y. 2018), *reconsideration denied*, No. 09-CV-7840, 2019 WL 1294283 (S.D.N.Y. Mar. 20, 2019) (citing *Wm. Passalacqua Builders Inc. v. Resnick Dev. So., Inc.*, 933 F.2d 131, 142–43 (2d Cir. 1991)). Consequently, "personal jurisdiction exists over a party where its corporate alter ego has 'participated fully in the proceedings and therefore waived any objections to lack of service of process.'" *Id.* (quoting *Kidder, Peabody & Co. v. Maxus Energy Corp.*, 925 F.2d 556, 562 (2d Cir. 1991)). "Under New York law, if a court has personal jurisdiction over a defendant, it may also exercise personal jurisdiction over an alter ego defendant." *Micro Fines Recycling Owego, LLC v. Ferrex Eng'g, Ltd.*, No. 17-CV-1315, 2019 WL 1762889, at *5 (N.D.N.Y. Apr. 22, 2019) (quoting *S. New England Tel. Co. v. Glob. NAPs Inc.*, 624 F.3d 123, 138 (2d Cir. 2010)); *Int'l Equity Invs. v. Opportunity Equity Partners, Ltd.*,

475 F. Supp. 2d 456, 459 (S.D.N.Y. 2007). As an alter ego of Beechwood's owners who undisputedly are subject to this Court's jurisdiction, PBIH is subject to this Court's jurisdiction.

Finally, "the waiver resulting from th[e] voluntary submission to New York's jurisdiction is as attributable to [a second defendant] as [the waiving defendant's] alter ego." *See New Media Holding Co., LLC v. Kagalovsky*, 985 N.Y.S.2d 216, 222 (1st Dep't 2014). Huberfeld, Bodner, Levy, Feuer and Taylor have all submitted various motions to dismiss the various claims against them, and none have raised jurisdictional challenges, resulting in waiver as to PBIH.

IV. CONCLUSION

For all these reasons, SHIP respectfully requests that each of the Moving Defendants' motions to dismiss be denied in their entirety.

Dated: New York, New York
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