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.	

MEMORANDUM OF LAW IN OPPOSITION TO DAVID STEINBERG'S MOTION TO DISMISS THIRD-PARTY COMPLAINT OF SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

I. INTRODUCTORY STATEMENT

Mr. Steinberg's motion (No. 18-cv-12018, ECF No. 387) seeking dismissal of the claims against him brought by Senior Health Insurance Company of Pennsylvania ("SHIP") makes similar arguments to the other motions that preceded it in this matter. Just like the earlier movants, Mr. Steinberg attempts to minimize his role in the Platinum-Beechwood Scheme and makes a concerted effort to dispute the factual allegations against him. This is not a motion for summary judgment, however, and no request was made to convert it to one. Mr. Steinberg's motion should be denied because his arguments for dismissal are contrary to law, ignore the well-pled factual allegations against him, and do not consider that the pled allegations are assumed to be true for purposes of his motion to dismiss.

Consistent with the other movants, Mr. Steinberg argues that the detailed allegations in the TPC somehow do not place him on notice of the basis for the claims asserted against him. This Court has turned back prior attempts to dismiss claims asserted in this litigation on that ground, and it should do so again 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 ("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" Mr. Steinberg as a participant in that scheme. *Id.* at 43. The TPC contains individualized allegations against him, spelling out his precise role in the scheme and providing time periods and specific dates during which he engaged in relevant conduct. These allegations plainly pass muster under Rule 8(a)(2).

Mr. Steinberg also makes the argument that the allegations against him are false, and he tries to introduce extrinsic evidence outside of the TPC to prove his claims. He argues that the TPC has prejudiced him by requiring him to appear and defend against the allegations of his wrongdoing in the TPC. Neither of these bases support a motion to dismiss pursuant to Rule 12(b)(6). With respect to the actual causes of action against Mr. Steinberg, he makes similar arguments as past moving defendants that SHIP has not demonstrated his knowledge and substantial assistance on the claims of aiding and abetting fraud and aiding and abetting breach of fiduciary duty. Like all the past moving defendants, however, these arguments fail, and the Court should deny Mr. Steinberg's motion to dismiss in the same way it largely denied all the others. Finally, Mr. Steinberg argues that the TPC is improper under Federal Rule of Civil Procedure 14. This too is incorrect. SHIP's TPC is not prohibited under Rule 14 and is proper under Rules 13 and 20.

The well-pled allegations of the TPC, accepted as true for present purposes, establish that Mr. Steinberg knowingly participated in the fraudulent scheme for his benefit and that of his compatriots, to SHIP's severe detriment. His motion to dismiss should be denied in its entirety.

II. THE WELL-PLED ALLEGATIONS AS TO MR. STEINBERG

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 prior omnibus oppositions to the prior 14 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 Mr. Steinberg.

Mr. Steinberg is a Co-Conspirator, TPC ¶ 1 n.3, a Beechwood Insider, TPC ¶ 4 n.7, and a Platinum Insider. TPC ¶ 29 n.16. Mr. Steinberg was a portfolio manager at PPVA and worked

closely with Naftali Manela to structure many of the PPVA "investments" that harmed SHIP. TPC ¶ 43. He was also an investment advisor and co-chief risk advisor for PPVA. TPC ¶ 47. Mr. Steinberg was a member of the valuation committee at PPVA that had overall responsibility for valuing PPVA's assets – valuations that harmed SHIP. *Id.* Mr. Steinberg was intimately aware of the Platinum-Beechwood Scheme, and after first working at Platinum, in 2014 he began working at BAM as a co-investment advisor.[1] *Id.* Mr. Steinberg was paid significant performance fees in this role. *Id.*

As a member of the PPVA valuation committee, Mr. Steinberg participated in the Platinum Management valuation committee meetings and helped set the inflated PPVA valuations key to each of the deals Beechwood foisted upon SHIP. *Id.* Working on both sides of the Platinum-Beechwood Scheme, Mr. Steinberg had full knowledge of the scheme and the inherent conflicts between Platinum and Beechwood and yet took material steps to further its ill goals anyway. *Id.* Mr. Steinberg aided and abetted certain of the Beechwood Entities, Feuer, Taylor, Levy, and Narain in their breaches of fiduciary duties to SHIP and aided and abetted fraud on SHIP, to SHIP's detriment. *Id.*

Mr. Steinberg knew that the deals and transactions were not arm's-length or legitimate. For example, on March 9, 2015, Murray Huberfeld from *Platinum* directed Steinberg at *Beechwood* to sell $10 million worth of PEDEVCO from CNO's WNIC 2013 LTC Primary trust to a third-party bank. TPC ¶ 113. Mr. Steinberg knew he was taking direction from a Platinum owner to sell the investments of a Beechwood client. *Id.* Mr. Steinberg made similar

[1] In his motion, Mr. Steinberg improperly suggests he can refute the well pled allegations of the TPC. At the appropriate time, SHIP will present documents which support the allegations of the TPC. For purposes of Mr. Steinberg's motion to dismiss, the allegations are accepted as true.

investments using SHIP's funds, including investments into numerous loans with personal friends or acquaintances. *Id.*

In January 2015, BAM, acting on SHIP's behalf, acquired an unsecured note issued by Montsant Partners, a wholly owned subsidiary of PPVA. TPC ¶ 240(b). The funds involved in the Montsant transactions were not for any specific purpose, but rather were simply disbursed to PPVA. *Id.* Mr. Steinberg knew of the related nature of the parties on both sides of this deal, and understood that SHIP could not know. He nevertheless executed the transaction documents on behalf of Montsant. *Id.*

As another example, Mr. Steinberg was involved in the 2016 Agera transaction and knew that it was not an arm's-length deal. The morning after Huberfeld's arrest in June 2016, Narain (on behalf of Beechwood) emailed both Beechwood and Platinum individuals (but not SHIP) and urged the group to "move aggressively to close and fund as soon as humanly possible." TPC ¶ 296. Mr. Steinberg knew that Platinum and Beechwood were on both sides of the deal, continued to work on preparing all of the deal documents to close it, TPC ¶ 304, and did nothing to alert SHIP of this fact.

Mr. Steinberg knew that the valuations assigned to various assets by Platinum and Beechwood were inflated. For example, by the end of 2014, PPVA valued its Golden Gate investment at $140 million. TPC ¶ 333. On May 23, 2014, however, Ari Hirt, a Platinum Management portfolio manager for Golden Gate Oil told Nordlicht, Levy, Saks, and Steinberg that a lender had noticed Black Elk's SEC filing where Black Elk valued its option to purchase Golden Gate at $60 million. *Id.* Mr. Hirt said "the issue is that it publicly discloses the value of the option and there pegs [Golden Gate's] value at $60M. This is ultimately a marketing issue

that could be deal with but something we should all be aware of." *Id.* Mr. Steinberg was fully aware that the valuation was wrongfully inflated and did nothing to prevent reliance on it.

III. ARGUMENT

A. The TPC's Well-Pled Allegations Place Mr. Steinberg on Notice of the Basis of the Claims Asserted Against Him

Consistent with the previous round of motions to dismiss the TPC, Mr. Steinberg argues that the TPC engages in "group pleading" in a way that violates Fed. R. Civ. P. 8(a)(2). ECF No. 388 ("Steinberg Br.") at 12-19. The TPC, however, "clear[s] the low bar imposed by Rule 8," which merely requires a plaintiff "to 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 ("PPVA MTD Op.") at 42 (internal quotation marks omitted). Like the complaint in the PPVA action, the TPC does so "by describing in exhaustive detail the nature of the [Platinum-Beechwood Scheme] and by identifying" Mr. Steinberg as a participant in that scheme. *Id.*

As described in detail in Part II above, the TPC includes a wealth of well-pled allegations specific to Mr. Steinberg. The TPC describes his role in the criminal Platinum-Beechwood Scheme. The TPC easily satisfies Rule 8(a)'s "low bar" as to Mr. Steinberg. PPVA MTD Op. at 42. Courts in this District repeatedly have rejected attempts to use the Second Circuit's decision in *Atuahene* as a cudgel to obtain a quick dismissal of well-pled claims simply because they are asserted against more than one defendant. *See, e.g.*, *David v. Weinstein Co.*, No. 18-cv-5414 (RA), 2019 WL 1864073, at *5 (S.D.N.Y. Apr. 24, 2019) ("Nothing in Rule 8 prohibits collectively referring to multiple defendants where the complaint alerts defendants that identical claims are asserted against each defendant." (quoting *Consumer Fin. Prot. Bureau v. RD Legal Funding, LLC*, 332 F. Supp. 2d 729, 771 (S.D.N.Y. 2018)); *Canosa v. Ziff*, No. 18-cv-4115 (PAE), 2019 WL 498865, at *10 (S.D.N.Y. Jan. 28, 2019) (rejecting group pleading argument

where complaint pled "collective knowledge by the directors of Weinstein's intentional wrongs towards women, followed by collective inaction").[2] Consistent with its prior decisions in the PPVA Action and in this Action, the Court should do the same here.

B. Mr. Steinberg Misapplies the Separate and Distinct "Group Pleading" Doctrine, Which Relaxes Rule 9(b)'s Pleading Requirements by Allowing Attribution of Corporate Misstatements to Senior Executives

Like the prior moving parties in this Action, Mr. Steinberg also confuses cases evaluating a complaint's compliance with Rule 8(a) with cases permitting a plaintiff to attribute corporate misstatements to high-level executives for purposes of satisfying Rule 9(b) on a claim for fraud. As the Court previously has explained, the group pleading doctrine allows a plaintiff to attribute corporate misstatements to a group of individual defendants "where the defendants are a narrowly defined group of highly ranked officers or directors who participated in the preparation and dissemination of a published company document …." PPVA MTD Op. at 44 (quoting *Elliott Assocs., L.P. v. Hayes*, 141 F. Supp. 2d 344, 354 (S.D.N.Y. 2000)). Though the doctrine "allows plaintiffs only to connect defendants to statements," it applies not just to claims for fraud but "whenever Rule 9(b) applies, which is whenever the alleged conduct of defendants is fraudulent in nature." *Id.* at 23 (quoting *Schwartzco Enters. LLC v. TMH Mgmt., LLC*, 60 F. Supp. 3d 331, 350 (E.D.N.Y. 2014)).

Here, to the extent that SHIP employs the group pleading doctrine at all, it is solely to attribute misstatements collectively to Beechwood, Levy, Feuer, and Taylor for the purpose of establishing the direct fraud and breaches of fiduciary duty committed by those entities and

[2] For that reason, Mr. Steinberg's criticisms of SHIP's use of defined terms for convenience—particularly in the context of the intentionally convoluted, fraudulent scheme spanning multiple years in which he participated—are without merit.

individuals, which form the basis for the aiding and abetting and civil conspiracy claims that SHIP asserts against Mr. Steinberg. *See, e.g.*, TPC ¶¶ 411, 420, 446. Given Levy, Feuer, and Taylor's status as "highly ranked officers or directors" of Beechwood, use of the group pleading doctrine as to them is unquestionably appropriate. PPVA MTD Op. at 44. More to the point, the underlying fraud and breaches of fiduciary duty that Beechwood and its senior officers committed are the very ones that this Court already has sustained as sufficiently pled in the SHIP Action. *See In re Platinum-Beechwood Litig.*, 2019 WL 1759925, at *2.

The claims for aiding and abetting and conspiracy against Mr. Steinberg, on the other hand, do not rely on *misstatements* by him for their viability, but rather on his knowledge and conduct, as detailed above and below. Any argument that SHIP improperly invokes the group pleading doctrine as to Mr. Steinberg is a red herring—SHIP need not attribute any specific misstatement to Mr. Steinberg to sustain its claims, and thus does not require the group pleading doctrine to satisfy Rule 9(b).

Instead, because this Court has already determined that SHIP adequately pleads the underlying torts, the principal question to be answered on this motion is whether the TPC alleges Mr. Steinberg's knowledge of those torts with the requisite particularity. In that regard, Rule 9(b) permits a defendant's knowledge to be pled generally, "provided a factual basis is pled 'which gives rise to a strong inference of fraudulent intent.'" *JP Morgan Chase Bank v. Winnick*, 406 F. Supp. 2d 247, 252 (S.D.N.Y. 2005) (quoting *Wexner v. First Manhattan Co.*, 902 F.2d 169, 172 (2d Cir. 1990)). As set forth below, SHIP without question alleges such a factual basis as to Mr. Steinberg. These individualized and overwhelming allegations against Mr. Steinberg more than satisfy Rule 8(a)(2)'s "low bar," PPVA Op. at 42, and Mr. Steinberg's attempts to minimize his role should be rejected.

C. SHIP States Claims for Aiding and Abetting Fraud and Breach of Fiduciary Duty Against Mr. Steinberg

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.*

The TPC alleges that Mr. Steinberg knowingly participated in the fraudulent scheme and that his knowing participation proximately caused grievous injury to SHIP. The Court should reject his contrary arguments, which almost exclusively focus on attempts to dispute the underlying facts alleged in the TPC, which is not appropriate at this stage. The Court should sustain SHIP's aiding and abetting causes of action as to Mr. Steinberg.

1. Mr. Steinberg 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 Mr. Steinberg.

Mr. Steinberg was a high-level executive at both Platinum and Beechwood. At Platinum, he was a portfolio manager and worked closely with Naftali Manela in structuring many of the PPVA "investments" that harmed SHIP. TPC ¶ 43. He was also an investment advisor and co-chief risk advisor for PPVA, TPC ¶ 47, and a member of the valuation committee that had overall responsibility for valuing PPVA's assets – valuations that harmed SHIP. *Id.* At Beechwood, he was a co-investment advisor for BAM. *Id.*

The TPC describes internal email communications involving Mr. Steinberg in which he was fully aware of the inflated valuations of Golden Gate Oil. TPC ¶ 333. The TPC further alleges that Mr. Steinberg was aware of the valuation procedures, as he was on the valuation

committee. TPC ¶ 47. Working on both sides of the Platinum-Beechwood Scheme, Mr. Steinberg was fully aware of, and had full knowledge of, the scheme and the inherent conflicts between Platinum and Beechwood and yet took material steps to further its ill goals anyway.

Mr. Steinberg also knew that the various deals and transactions were not arm's-length and legitimate. For example, on March 9, 2015, Murray Huberfeld (from Platinum) directed Steinberg (at Beechwood) to sell $10 million worth of PEDEVCO from CNO's WNIC 2013 LTC Primary trust to a third-party bank. TPC ¶ 113. Mr. Steinberg knew he was taking direction from a Platinum owner to sell the investments of a Beechwood client. *Id.* In January 2015, BAM, acting on SHIP's behalf, acquired an unsecured note issued by Montsant Partners, a wholly owned subsidiary of PPVA. TPC ¶ 240(b). Mr. Steinberg knew of the related nature of the parties on both sides of this deal. He executed the transaction documents on behalf of Montsant. *Id.* As another example, Mr. Steinberg was involved in the Agera transaction and knew that it was not an arms-length deal. The morning after Huberfeld's arrest, Narain (on behalf of Beechwood) emailed both Beechwood and Platinum individuals (but not SHIP) and urged the group to "move aggressively to close and fund as soon as humanly possible." TPC ¶ 296. Mr. Steinberg knew that Platinum and Beechwood were on both sides of the deal, continued to work on preparing all of the deal documents to close it, TPC ¶ 304, and did nothing to alert SHIP of this fact or to ensure that valuations were adjusted to factor in the related party nature of the deals.

These allegations plainly are sufficient at the pleading stage to give rise to plausible inference that Mr. Steinberg 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).

2. Mr. Steinberg 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 Mr. Steinberg meets this standard.

Mr. Steinberg argues that there is "nothing untoward about preparing transaction documents," Steinberg Br. at 6, and that "signing transaction documents" are just "benign acts." Steinberg Br. at 23. To the contrary, the entire Platinum-Beechwood Scheme was executed through these transaction documents. Without the deal and transaction documents, there would have been no damage to SHIP. Equating a signature on a transaction document to nothing more than an innocent, clerical task ignores the reality of the fraudulent scheme, particularly where, as here, Mr. Steinberg knows that related parties are signing for all counterparties.

The individuals, including Mr. Steinberg, who prepared and executed these transaction documents played a critical role in effectuating the Platinum-Beechwood Scheme and harming SHIP. These allegations easily clear the substantial assistance bar.

D. SHIP Has Sufficiently Stated a Claim for Civil Conspiracy Against Mr. Steinberg

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 Mr. Steinberg, who served as a co-conspirator in a scheme to commit multiple underlying harms, adequately states 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 Mr. Steinberg by alleging: (1) a cognizable underlying tort, (2)

an agreement to commit the tort, and (3) an overt act by him in furtherance of the agreement. *Perez*, 948 N.Y.S.2d at 314.

Mr. Steinberg argues 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.[3]

Mr. Steinberg was a high-level executive at both Platinum and Beechwood. At Platinum, he was a portfolio manager and worked closely with Naftali Manela in structuring many of the PPVA "investments" that harmed SHIP. TPC ¶ 43. He was also an investment advisor and co-chief risk advisor for PPVA, TPC ¶ 47, and a member of the valuation committee that had overall responsibility for valuing PPVA's assets – valuations which harmed SHIP. *Id.* At Beechwood, he was a co-investment advisor for BAM. *Id.* Mr. Steinberg took several over steps in furtherance of the Co-Conspirator's illegal objectives, and even admits as much by trying to downplay his role in structuring and executing the various transaction documents which are at the heart of the harm to SHIP. Mr. Steinberg committed these acts and others in furtherance of the Co-Conspirators' common fraudulent goal to acquire and misuse large sums of money from

[3] 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 Mr. Steinberg, SHIP respectfully submits that its civil conspiracy claim should be sustained.

SHIP and others.

E. 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 unjust enrichment claims against Mr. Steinberg. Mr. Steinberg argues that SHIP did not plead sufficient factual allegations and lacked the particularity required by Rule 9(b) to support its claims. Mr. Steinberg argues that no allegations in the TPC show that he was enriched at the expense of SHIP. Mr. Steinberg, however, served in key roles at both Platinum and Beechwood and played a critical role in perpetrating the Platinum-Beechwood Scheme. *See* Part II, above. Mr. Steinberg knew that the valuations portrayed by Platinum and Beechwood were inflated. *Id.* The falsely inflated valuations resulted in deceptively procured funds from SHIP, and unearned performance fees, from which Mr. Steinberg benefited in the form of annual bonuses and raises.

F. SHIP's TPC Is Not Barred By Rule 14

Mr. Steinberg argues that SHIP's TPC must only include claims in the "nature of indemnity or contribution" and must only be "dependent on the outcome of the main claim." Steinberg Br. at 9. He also argues that a claim that "arises out of the same set of facts does not allow a third-party defendant to be impleaded." While this may be true in some circumstances, it has no application to SHIP's TPC here. Mr. Steinberg also states that "third-party pleading is appropriate only where the third-party defendant's liability to the third-party plaintiff is dependent on the outcome of the main claim." *Id.* (emphasis in original). This is incorrect.

The Federal Rules of Civil Procedure allow defendants to join third parties in multiple ways, not only by way of Rule 14. For example, Rule 14 only applies to "claims in which the third-party plaintiff can show that if he is found liable to the plaintiff then the third-party defendant will be liable to him." *Tyson v. Cayton*, No. 88-cv-8398, 1990 WL 209381, at *3 (S.D.N.Y. Dec. 10, 1990). Rule 13(b) allows a defendant to assert any claim against any opposing party. *Fed. R. Civ. P.* 13(b) ("A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.").

Rule 13(h) provides that parties may be added to any counterclaim in accordance with Rules 19 and 20. *Id.* at Rule 13(h) ("Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim."). Rule 18 provides that a "party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party." *Id.* at Rule 18(a). Rule 20 states that "persons … may be joined in one action as defendants if … (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action." *Id.* at Rule 19(a)(2).

In determining whether claims arose from the same transaction or occurrence "courts are to look to the logical relationship between the claims and determine 'whether the essential facts of the various claims are so logically connected that considerations of judicial economy and fairness dictate that all the issues be resolved in one lawsuit.'" *Kalie v. Bank of Am. Corp.*, 297 F.R.D. 552, 557 (S.D.N.Y. 2013) (quoting *United States v. Aquavella*, 615 F.2d 12, 22 (2d Cir. 1979)).

Here, the TPC included Mr. Steinberg as a third-party defendant and asserted claims against him for aiding and abetting fraud, aiding and abetting breach of fiduciary duty, civil conspiracy, and unjust enrichment. These claims are made alongside the crossclaims made against the original and existing defendants in the PPCO Action, namely, among others, B Asset Manager II, L.P., Beechwood Bermuda, Ltd., and BAM Administrative Services LLC.

Mr. Steinberg is properly joined to the crossclaims for aiding and abetting breach fraud, aiding and abetting breach of fiduciary duty, civil conspiracy, and unjust enrichment, as those claims are made against existing parties to the litigation. Here, there is no doubt that the claims asserted against Mr. Steinberg arise "out of the same transaction, occurrence, or series of transactions or occurrences," *and* involves a "question of law or fact common to all defendants," in the action. This Court previously held that same outcome applied in a very similar set of circumstances in *Trainum v. Rockwell Collins, Inc.*, No. 16-cv-7005 (JSR), 2017 WL 1093986 (S.D.N.Y. Mar. 9, 2017). There, this Court stated:

> While it is true that Rules 13 and 20 would not allow Rockwell to assert a single claim of unjust enrichment against Smith alone, that limitation is not a bar here. That is because, since Smith can be properly joined to the counterclaims for fraud and misrepresentation asserted against L. Scott Trainum, Rockwell can then assert additional claims against Smith under Rule 18. Specifically, Rule 18 provides that "[a] party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party." Fed. R. Civ. P. 18(a); see also 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1585 (3d ed. 2010) ("Rule 18(a) operates independently of the provisions in Rules 13, 14, 19, and 20 prescribing standards for party joinder. Once parties are properly joined under any of those rules as to a particular claim, additional claims, whether they are related or unrelated or they are by or against all or less than all of the parties may be joined under Rule 18(a)."). In other words, once Smith has been properly joined in the action, Rockwell may assert any additional claims it has

> against him. Accordingly, all of Rockwell's claims against Smith are properly asserted.

Id. at *3. Therefore, the claims against Mr. Steinberg are proper under Rules 13 and 20.

IV. CONCLUSION

For all these reasons, SHIP respectfully requests that Mr. Steinberg's motion to dismiss be denied in its entirety.

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