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, BY AND FOR PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP, et al., Plaintiffs, v. BEECHWOOD RE LTD., et al., Defendants.	Case No. 1:18-cv-12018 (JSR)
SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, Third-Party Plaintiff, v. PB INVESTMENT HOLDINGS LTD. et al, Third-Party Defendants.	

THIRD-PARTY DEFENDANT DAVID STEINBERG'S REPLY MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO DISMISS THE THIRD-PARTY COMPLAINT ("TPC")

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Defendant David Steinberg[1], *pro se*, respectfully submits respectfully submits this reply memorandum of law ("Reply") in further support of his motion to dismiss ("Motion") the Third-Party Complaint (Dkt. No. 367) ("TPC") filed by Third-Party Plaintiff Senior Health Insurance Company of Pennsylvania ("SHIP") and in reply to SHIP's Memorandum of Law in Opposition to David Steinberg's Motion to Dismiss Third-Party Complaint of Senior Health Insurance Company of Pennsylvania ("Opposition").

ARGUMENT

All claims against me must be dismissed because the TPC fails to meet even the basic notice pleading requirements of Fed.R.Civ.P. 12(b)(6), and falls far short of Rule 9(b)'s heightened particularity requirement for aiding and abetting fraud (count one) and aiding and abetting breach of fiduciary duty (count two), falls short of the requirement to claim civil conspiracy (count five), and claims for unjust enrichment (count seven) is barred under New York law when there are already claims for aiding and abetting fraud and aiding and abetting breach of fiduciary. Furthermore, the entire premise of the claims in the TPC run contrary to what is allowed under third-party practice.

A. SHIP'S TPC IS BARRED BY FEDERAL RULES OF CIVIL PROCEDURE (all counts)

1. THIRD PARTY COMPLAINTS ARE GOVERNED BY RULE 14

SHIP in its Opposition concedes that complaints filed pursuant to Rule 14 of the Federal Rules of Civil Procedure, which governs third-party practice, only allows a third party complaint to be served for 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. (Opposition at * 21). The TPC lists me only as a third-party defendant - I am not a counterclaim defendant or a crossclaim defendant. SHIP's cover sheet for the Summons On A Third Party Complaint (ECF 196) which was served upon me by SHIP explicitly states "**A lawsuit has been filed against defendant Senior Health Ins. Co. of Pa who as third-party plaintiff is making this**

[1] Nothing stated herein shall prejudice my claims for indemnification or contribution, or from making additional claims for indemnification or contribution, from the Plaintiff, Trott (PPVA), or other parties pursuant to operative indemnity provisions and/or law.

claim against you to pay part or all of what the defendant may owe to the plaintiff Melanie L. Cyganowski, as Receiver," which clearly tracks the language of Rule 14 which states the same, "a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff." Fed.R.Civ.P. 14(a). If SHIP's intention was to name me as a crossclaim or counterclaim defendant this language would be inappropriate as those claims would not be dependent on SHIP's liability to the Plaintiff. Since SHIP concedes that third-party complaints claiming liability for part or all of what the defendant may owe to the plaintiff are governed by Rule 14, the TPC must be dismissed in its entirety as the TPC is bereft of any claims for indemnification or contribution and the claims listed against me in the TPC are not dependent on SHIP's potential liability to the Plaintiff.

2. THE TPC MUST JOIN ME TO CLAIMS ASSERTED AGAINST CO-DEFENDANTS OR THE PLAINTIFF

After conceding that had Rule 14 been the governing rule over the TPC it would not survive, SHIP resorts to other rules of civil procedure which allow for joining new parties as part of a crossclaim or counterclaim. Under these rules, SHIP could also add me to their crossclaims and counterclaims without asserting claims for indemnification or contribution. However, this argument is deficient for at least three reasons:

(a) A defendant added pursuant to a crossclaim or counterclaim is not a third-party defendant as defined by the Federal Rules of Civil Procedure, but rather a crossclaim defendant or a counterclaim defendant. As styled and as clearly stated on SHIP's Summons on A Third Party Complaint (ECF 196), SHIP explicitly designates me as third-party defendant subject to Rule 14 and thus requires a claim for indemnification and contribution, which the TPC does not.

(b) In their Opposition, SHIP heavily relies on *Trainum v. Rockwell Collins, Inc.*, No. 16-cv-7005 (JSR), 2017 WL 1093986 (S.D.N.Y. Mar. 9, 2017) ("*Trainum*") where this court allowed for a new party to be joined as a third party defendant due to the fact that the action also included crossclaims against existing defendants. However, an important distinction must be made between *Trainum* and the instant circumstances: SHIP is essentially time barred from adding new parties or new claims to the original SHIP

Action and should not be allowed to use Rule 13 as a way to circumvent this. The fact is that the allegations and schemes described in the TPC is a re-run of the SHIP Action and is an attempt to effectually amend the initial SHIP Complaint to add more parties and claims. The only claims it should be allowed to add utilizing joinder practice here should be claims for indemnification and contribution, which it has not.

(c) Even based on *Trainum,* SHIP could still only join me to claims which it is also asserting against co-defendants as crossclaims or join to claims which it is also asserting against the Plaintiffs as counterclaims. However, the TPC does not even do that. As all the counts in the TPC (except for the claims of Civil Conspiracy, which I will address below) in which I am joined do not contain any of the co-defendants or Plaintiffs in the PPCO Action except for three entities, B Asset Manager II, LP, Beechwood Bermuda Ltd, and BAM Administrative Services, LLC. The court should recognize that SHIP's inclusion of only these three specific entities as crossclaim defendants and yet not asserting crossclaims against the other co-defendants in the PPCO Action (such as Feuer, Taylor etc. which SHIP specifically carves out of the TPC), is because SHIP is already litigating against those parties in the SHIP Action and could not litigate against them here as well. SHIP fell into the good fortune of having a second bite at the apple and the opportunity to assert claims against these three new entities which it omitted in the SHIP Action, but SHIP then fell upon when they were named in the PPCO Action. Additionally, SHIP already asserted claims against nearly identical entities in the SHIP Action, namely; B Asset Manager, LLC (the TPC crossclaimants are B Asset Manager II and BAM Administrative Services) and Beechwood Bermuda International, Ltd (the TPC crossclaimant is Beechwood Bermuda Ltd). The duplicative nature of the three entities SHIP relies on as crossclaimants, which should probably be enjoined to the initial SHIP Action, cannot be the "strawmen" on which SHIP will rely on to then assert additional claims against additional parties in invoking *Trainum* in the TPC.

The singular instance in which SHIP joins me to a crossclaim which includes SHIP's co-defendants in the PPCO Action, is Count 5 Civil Conspiracy. However, the court has already dismissed this count as to the other defendants in the TPC and as discussed below, is not a viable cause of action. SHIP cannot be

allowed to simply rely on a claim which was dismissed with prejudice by the court to hang their hat on in invoking Rule 13(h).

The table below illustrates the four claims asserted against me and the parties to each of those claims:

Count	Claim and Defendants	Analysis
Count 1	Aiding and Abetting Fraud (Against the Co-Conspirator Defendants)	Co-Conspirator Defendants as defined in the TPC includes me, but does not include SHIP's co-defendants in the PPCO Action, except for B Asset Manager II, LP, Beechwood Bermuda Ltd, and BAM Administrative Services, LLC.
Count 2	Aiding and Abetting Breach of Fiduciary Duty (Against the Co-Conspirator Defendants)	Co-Conspirator Defendants as defined in the TPC includes me, but does not include SHIP's co-defendants in the PPCO Action, except for B Asset Manager II, LP, Beechwood Bermuda Ltd, and BAM Administrative Services, LLC.
Count 5	Civil Conspiracy (Against all Crossclaim Defendants and Third-Party Defendants except the SHIP Action Defendants)	Includes me and SHIP's co-defendants in the PPCO Action
Count 7	Unjust Enrichment (Against the Co-Conspirator Defendants, the Beechwood Owner Trusts, the BRILLC Series Entities, and the BRILLC Series Members)	Co-Conspirator Defendants as defined in the TPC includes me, but does not include SHIP's co-defendants in the PPCO Action, except for B Asset Manager II, LP, Beechwood Bermuda Ltd, and BAM Administrative Services, LLC.

3. THE MAJORTY OF THE ALLEGATIONS IN THE TPC DO NOT ARISE OUT OF THE SAME FACTS AS THE PPCO ACTION

In its Opposition, SHIP concedes that its basis for adding me as party is based on Rule 13(h) and Rule 20 and that they must 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. Opposition at * 22. However SHIP glosses over the relatedness of the allegations in the instant TPC to the PPCO Action ("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, Opposition at * 22). The truth however is that there is little in common between the PPCO Action and the TPC. As detailed in my Motion, the TPC consists of three groups of claims; the Omission, Fee and Transaction Schemes. The Omission and Fee scheme are entirely unrelated to claims asserted by PPCO and not the same transaction or same question of law presented by the PPCO Action.

With regards to the Transaction Scheme, the 2016 Agera Sale is the singular transaction in which SHIP alleges I had involvement and also relates to the PPCO Action.

The reality is that there are very few instances within the TPC and the PPCO Action which 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." The TPC is essentially a re-run of the initial SHIP Action and has very little in common with the PPCO Action, and SHIP is attempting to utilize an interpretation of the Rules of Civil Procedure to essentially get a free shot at amending the SHIP Action, to add more parties and additional claims, in a manner unrelated to the PPCO Action.

4. SHIP CONCEDES THE TPC SEVERELY PREJUDICES THE THIRD-PARTY DEFENDANT (all counts)

SHIP offers no reply to the argument made in my Motion (*15) that adding me as a third-party defendant in this action severely prejudices me and that this prejudice should outweigh judicial economies.

B. SHIP FAILS TO STATE A CLAIM FOR AIDING AND ABEDING FRAUD AND AIDING AND ABEDING BREACH OF FIDUCIARY DUTY

In its Opposition, SHIP concedes that its use of the group pleading doctrine in the TPC was solely for the purposes of framing the actual primary wrongdoing by Beechwood, Feuer, Taylor and Levy (Opposition * 12), and as far asserting claims against me for aiding and abetting fraud and aiding and abetting breach of fiduciary duty SHIP concedes it does need to plead, with particularity, my knowledge that the underlying fraud and breach of fiduciary duty existed and my substantial assistance. Despite its claims, SHIP fails to do so.

1. SHIP FAILS TO PLEAD ACTUAL KNOWLEDGE OF THE PRIMARY FRAUD AND BREACH OF FIDUCIARY DUTY

The cornerstone of any aiding and abetting claim is knowledge of the primary fraud. In the case of the TPC, the primary fraud are the Omission, Fee and Transaction Schemes. SHIP concedes that it must plead with particularity that I had knowledge of these schemes. However, SHIP fails to allege a single fact in the TPC that imparts any knowledge or awareness on my part of the primary fraud. If SHIP cannot allege with particularity my knowledge the question of substantial assistance is mute.

Perhaps SHIP can argue that because SHIP alleges that I was involved in the formation of Beechwood, I was also on notice of the primary fraud and breach of fiduciary duty to SHIP. However, this argument fails for two reasons:

(a) the TPC does not allege I was involved at in the negotiation of the IMA's, Feuer Taylor and Levy's attempts to pitch SHIP for the IMA business, or that they even won SHIP's IMA business which al occurred twelve months after Beechwood's formation. That being the case, even if I had been involved in the formation of Beechwood, the TPC has no basis for alleging that I had knowledge of the primary fraud and breach of fiduciary duty since the TPC does not allege any facts that I even knew of the primary actors misrepresentations to SHIP or of the creation of a fiduciary duty to SHIP.

(b) The only fact pled in the TPC which allegedly connects me to the formation of Beechwood is the now debunked March 23, 2013 email. The Court has already ruled that the March 23, 2013 email does not support an allegation of the capitalization of Beechwood. 1:18-cv-10936-JSR ECF 290 ("Furthermore, regarding the fourth allegation, the exhibit cited does not provide any evidence that Platinum Management transferred money to Beechwood Capital, let alone for nefarious purposes.")

Considering that the TPC is bereft of any facts plead with particularity which would impart knowledge of the primary fraud and breach of fiduciary duty. Counts 1 and 2 must be dismissed. In fact, SHIP in its Opposition concedes as much, and therefor resorts to a novel method to impart knowledge. As explained below, this novel method is actually contradictory to SHIP's own position in the case.

Essentially, SHIP resorts to the position that because it has alleged facts that I was involved in certain transactions, which occurred subsequent to the negotiation and execution of the IMA's and as part of my employment at Platinum, which SHIP claims it was harmed by because of Beechwood's misrepresentations, SHIP has then fulfilled its particularity requirement related to the point that I was therefore knowledgeable that others intended to use these transactions as means of harming SHIP.

However, for a claim of aiding and abetting to survive, SHIP must show that I knew there was a scheme for fraud or breach of fiduciary duty by others, and not just that I was involved in the transaction

which on its face did not seem fraudulent. To further this point with an example by turning the table around; at this point we all know SHIP invested into Agera in 2016 on its own account and outside the IMA's (see my Motion * 7 and the referenced exhibits) and that it knew the parties were Beechwood and Platinum, but yet SHIP still claims this transaction defrauded them, presumably because even though they saw Platinum and Beechwood on the signature blocks of the agreements alongside the signature of former SHIP CEO Brian Wegner, they presumably didn't understand there to be affiliation between Platinum and Beechwood. In other words, it's possible for a party to be involved in a transaction, perform due diligence, have its lawyers review the agreements, sign the documents and all looks like a good deal, but still not know that there was a fraud and breach of fiduciary duty running in the background. I am stating the same thing. SHIP needs to plead facts showing I knew of the scheme to defraud SHIP and not just that I signed a document, was involved in structuring a deal or had a title at Platinum. Furthermore, even if a party was aware of an affiliation between it and another party in a transaction, does that automatically mean the transaction is a fraud? By the time the Agera transaction occurred in 2016, SHIP was also heavily tied to Beechwood through its $270m of IMA capital invested in Beechwood, yet SHIP sees no issue with its participation in the Agera transaction in 2016, which an objective observer could certainly contend, given SHIP's $270mm worth of affiliation to Beechwood was really a scheme between SHIP and Beechwood to defraud Platinum! SHIP cannot contend its innocence while contending my liability with the same set of features pointing in both directions. The bottom line is that, simply being a counterparty in a transaction in it of itself does not impart knowledge of a fraud of breach of fiduciary duty perpetrated by others. SHIP must plead more facts, with particularity, to impart such knowledge to me and it does not.

SHIP contends that because the parties involved in these transactions were allegedly related, I was on notice that a fraud was taking place. However, from the very case SHIP sites Nigerian Nat'l Petroleum Corp. v. Citibank, it is clear that even knowledge that a transaction was not a good idea does not rise to actual knowledge of o the wrongdoing, "it is clear that Citibank's actions may well have been lamentable, ...even grossly negligent. But the amended complaint falls short of alleging that Citibank "had actual

knowledge of [the] wrongdoing or was somehow a participant in [the] fraudulent scheme." Nigerian Nat'l Petroleum Corp. v. Citibank, N.A., No. 98-cv-4960, 1999 WL 558141 (S.D.N.Y. July 30, 1999).

The table below highlights SHIP's fallback position as outlined in its Opposition, with which SHIP attempts to attach knowledge to me based on the following factual allegations stated in the TPC;

Opposition's Examples of Particularity	Analysis
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	In the TPC, ¶43 is actually discussing Manela's role, not mine. In the Opposition, SHIP is now relying on this to use against me. Additional subversion is being employed by SHIP by inserting quotation marks around the word investments, those quotation marks are not present in the TPC. The words "that harmed SHIP" also do not appear in ¶43. Regardless, does not impart knowledge that I knew Feuer, Taylor and Levy were scheming against SHIP. This paragraph is discussing my alleged role at Platinum. The court has already dismissed Saks of certain claims based on the fact that portfolio manager does NOT imply insider and control status.
He was also an investment advisor and co-chief risk advisor for PPVA, TPC ¶ 47	Does not impart knowledge that I knew Feuer, Taylor and Levy were scheming against SHIP. This paragraph is discussing my alleged role at Platinum.
a member of the valuation committee that had overall responsibility for valuing PPVA's assets – valuations that harmed SHIP ¶47	Does not impart knowledge that I knew Feuer, Taylor and Levy were scheming against SHIP. Again, this is only relevant to my alleged role at Platinum. In my Motion, I further elaborate on the fact that committee membership cannot suffice for particularity. Once again, SHIP adds words NOT stated in the quoted in the referenced paragraph. ¶ 47 does not allege that valuations I was allegedly involved with harmed SHIP.
At Beechwood, he was a co-investment advisor for BAM ¶47	Does not impart knowledge that I knew Feuer, Taylor and Levy were scheming against SHIP. The court has already dismissed Saks of certain claims based on the fact that portfolio manager does NOT imply insider and control status.
Email communications involving Mr. Steinberg in which he was fully aware of the inflated valuations of Golden Gate Oil. TPC ¶ 333	Does not impart knowledge that I knew Feuer, Taylor and Levy were scheming against SHIP. Again, this is only relevant to my alleged role at Platinum. The TPC does not allege that I had any involvement in a SHIP investment into anything related to Golden Gate Oil. Furthermore, the quoted email in ¶ 333 actually states "This is ultimately a marketing issue that could be dealt with but something we should all be aware of." Clearly stating that the Golden Gate option was not an actual valuation issue but an optics issue.

He executed the transaction documents on behalf of Montsant. Id.	Does not impart knowledge that I knew Feuer, Taylor and Levy were scheming against SHIP. SHIP itself was a signatory on the Montsant Unsecured Note. Why should The Motion details that this loan had a secured guarantee and an executed confession of judgement from the owner of my employer and his wife, Mark and Dahlia Nordlicht
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	In ¶113, SHIP actually uses this email to show Huberfeld was giving instructions related to SHIP assets. Now SHIP is attempting to use this email against me, when the TPC does not allege that I took any action based on those instructions, let alone actually sold one of Beechwood's assets. Furthermore, again SHIP submits to subversive tactics, conveniently inserting parenthesis not present in ¶113, as the TPC does not state "(at Beechwood)" nor provides a basis for SHIP to now imply I was "(at Beechwood)" Regardless, does not impart knowledge that I knew Feuer, Taylor and Levy were scheming against SHIP.
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.	SHIP would have the same information. Does not impart knowledge that I knew Feuer, Taylor and Levy were scheming against SHIP, when SHIP itself was a party to the same deal and was similarly heavily tied to Beechwood at this point with $270mm of IMA money invested in Beechwood.
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.	As detailed in the Motion in great detail, SHIP invested in the Agera Sale on its own account and outside the IMAs. SHIP also knew that Beechwood and Platinum where parties to the transaction. How could I have helped SHIP if it knew what I allegedly knew? The TPC does not allege that I "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," again SHIP added these words to the actual text in the TPC. Additionally, the TPC does not allege that I had any duty to alert SHIP to anything.

The table below summarizes new allegations not mentioned in the TPC but rather conclusory statements made in the Opposition, which must be ignored:

Opposition's New Allegations not in the TPC	**Analysis**
Mr. Steinberg was a high-level executive at both Platinum and Beechwood.	The TPC only states I was a portfolio manager and co-chief risk advisor at Platinum - not the typical titles for a high-level executive. The TPC only alleges I was a sub-advisor at Beechwood (I wasn't), again not a high level-executive title.
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	This is a new allegation not pled in the TPC and must be ignored. Now the Opposition is trying to connect the fact that I allegedly held a position at Beechwood and Platinum, to impart knowledge that I knew Feuer, Taylor and Levy were scheming against SHIP. No facts are provided as a basis for this conclusory statement.

Mr. Steinberg also knew that the various deals and transactions were not arm's-length and legitimate	This is a new allegation not pled in the TPC and must be ignored. Regardless, the TPC provides no fact as a basis for this conclusory statement.
Mr. Steinberg knew of the related nature of the parties on both sides of this deal.	This is a new allegation not pled in the TPC and must be ignored. Regardless, the TPC provides no particular fact to provide a basis for this conclusory statement.

Because SHIP concedes in the Opposition that these claims cannot rely on group pleading and the TPC in fact does not plead with any particularity facts supporting its claims that I had requisite knowledge of the scheme being perpetrated by Levy, Feuer and Taylor, Counts 1 and 2 of aiding and abetting fraud and aiding and abetting breach of fiduciary duty must be dismissed.

2. THE TPC FAILS TO SHOW I SUBSTAINSTIALLY ASSISTED IN THE PRIMARY FRAUD AND BREACH OF FIDUCIARY DUTY

On the issue of substantial assistance, SHIP in its Opposition concedes that the singular method I allegedly took towards assisting the alleged fraud and breach of fiduciary duty was my alleged participation in the structuring and execution of certain transactions. This argument fails for a number of reasons:

(a) While if SHIP is correct in its allegations, these transactions would have ostensibly been the medium for Feuer, Taylor and Levy to profit from their Schemes, SHIP has not shown that these transactions on their own were the actual fraud and breach of fiduciary duty.

(b) SHIP's reliance on Silvercreek Mgmt., Inc. v. Citigroup, Inc., 346 F. Supp. 3d 473 (S.D.N.Y. 2018) to show that execution of transactions suffices for substantial assistance is not relevant. As the TPC only alleges that I executed the transactions on behalf of Platinum and not on behalf Beechwood. Had I been the one to execute the transactions on behalf of Beechwood the argument could be made that execution is substantial assistance to Beechwood's fraud against SHIP. However, the TPC does not allege I ever executed a transaction or structured a transaction on behalf of Beechwood.

Going back to my example of SHIP's participation in the Agera transaction; despite the existence of the IMAs and SHIP's relationship with Beechwood through its investment of $270m with Beechwood, SHIP is asserting there is nothing untoward about its participation in a transaction with a counter party with whom it has a close business relationship. I am stating the same argument. Simply pleading that I was allegedly involved in structuring a transaction or executing documents in which the counterparties

allegedly had a business relationship falls far short from showing that I substantially assisted a fraud or breach of fiduciary duty. As such the court should dismiss Count Two.

3. SHIP CONCEEDS THAT I HAD NO KNOWLEDGE THAT BEECHWOOD MADE REPRESENTATIONS TO SHIP OR OWED A FIDUCIARY DUTY TO SHIP

In the Opposition, SHIP does not reply to my argument in the Motion * 23 that the TPC fails to allege that I had knowledge that Beechwood, Feuer, Taylor and Levy ever owed a fiduciary duty to SHIP or made fraudulent representations to SHIP. This is a fatal flaw to the TPC's claims that I aided and abetted fraud and aided and abetted breach of fiduciary duty. As such the court should dismiss Counts One and Two.

4. SHIP CONCEDES THAT IT HAS NOT PLED WITH PARTICULARITY ASPECTS OF THE OMISSION AND FEE SCHEMES

Throughout my Motion, I assert that the TPC does not plead with requisite particularity that I had knowledge or substantially assisted the fraud and breach of fiduciary duty alleged against Feuer, Levy and Taylor. In their Opposition, SHIP only offers replies related to the Transaction Scheme, but offers no reply related to the Omission and Fee Schemes. Even if the court finds SHIP's pleadings sufficient (it should not, as I outline above), such conclusion should only be related to the Transaction Scheme, and the Court should dismiss the Counts One and Two as they relate to the Omission and Fee Schemes.

C. SHIP CANNOT SAVE ITS CLAIM OF CIVIL CONSPIRACY

SHIP fails to demonstrate how anything I participated in could plausibly be deemed "overt steps" in pursuit of a conspiracy, as opposed to the conduct of ordinary business by an investor and businessperson. Without evidence of an unlawful agreement between me and another person, the civil conspiracy claim must be dismissed. See Quinn v. Teti, No. 99-9433, 2000 U.S. App. *5 (2d Cir. 2000); Campbell v. Thales Fund Mgmt., LLC No. 10 Civ. 3177 (JSR) *19 (S.D.N.Y. Oct. 12, 2010) (Rakoff, J.).[2]

[2] In the event the Court permits the aiding and abetting claim to survive the motion, the conspiracy claim should be dismissed as duplicative. Trott v. Platinum Mgmt. (NY) LLC (In re Platinum-Beechwood Litig.), 2019 U.S. Dist. LEXIS 104562, at *39-40 (S.D.N.Y. June 21, 2019).

The Court had previously dismissed this count against other third-party defendants 1:18-cv-12018-JSR ECF 380 * 6 and 7.

D. SHIP CONCEDES THE CLAIM OF UNJUST ENRICHMENT MUST BE DISMISSED

SHIP's makes little attempt to save its throw-in unjust enrichment claim. The claim is defective for numerous reasons:

First, SHIP fails to allege with specificity that I was enriched at SHIP's expense, or that I was enriched at all. In its Opposition, SHIP has merely states, "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" (Opp. at 14). This is a new allegation not asserted in the TPC, and in fact the TPC does not allege that I received any bonuses or raises, does not and cannot identify with any specificity (or even generally) which transaction is alleged to have contributed to such raises or bonuses, who paid it, in what amount, when it occurred and how it was at SHIP's expense. Furthermore, salary and bonuses paid by a company to its employees for general employment are not considered enrichment.

Second, SHIP fails to heed the principle of New York law that an unjust enrichment claim cannot merely duplicate a conventional tort claim, even where (as here) the conventional tort claim fails to state a claim. Corsello v. Verizon N.Y., Inc., 18 N.Y.3d 777, 790 (2012).

Third, the count ignores settled law that quasi-contract claims are barred where a valid and binding agreement exists even when such claim is made against a nonparty to the agreement, and this Court's ruling that SHIP "cannot state a claim for unjust enrichment based on the payment of contractually owed performance fees." Senior Health Ins. Co. v. Beechwood Re Ltd., No. 18-cv-6658 (JSR), April 22, 2019 *32, 33-34. The Court had previously dismissed this count against other third-party defendants 1:18-cv-12018-JSR ECF 380 * 6 and 7.

E. HIGHLY RELEVANT EXTRINSIC DOCUMENTS ARE APPROPRIATE AT A MOTION TO DISMISSS

In its Opposition, SHIP contends "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… Neither of these bases support a motion to dismiss pursuant to Rule 12(b)(6)." Opposition * 2. However, SHIP provides no basis for its contention. In my Motion, I offer exhibits that either (a) have already been provided as exhibits in complaints in the consolidated case, or (b) are the actual transaction documents referenced in the TPC or otherwise highly relevant to the allegations in the complaint. In all instances, they are documents whose existence and relevance was known to SHIP when it filed the TPC and is either in SHIP's possession or highly accessible to SHIP. These documents show that (a) SHIP was a party to the 2016 Agera Transaction on its own accord, (b) I was not responsible for valuation at Platinum, (c) I was not an executive or high ranking officer at Platinum, (d) the Montsant loan contained a personal guarantee with an executed confession of judgement from the owner of Platinum and his wife, and (e) there was no attempt or intent to hide my membership in the board of directors of PEDEVCO.

CONCLUSION

For the reasons stated above, all of SHIP's claims against me should be dismissed with prejudice.

Dated: October 3, 2019
New York, NY

Respectfully submitted,
David Steinberg

By: /s/ David Steinberg
David Steinberg

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MELANIE L. CYGANOWSKI, AS RECEIVER, BY AND FOR PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP, et al.,
Plaintiffs

Case No. 1:18 CV 12018 (JSR)

-against-

BEECHWOOD RE LTD., et al.,

NOTICE OF REPLY IN SUPORT OF MOTION TO DISMISS

PLEASE TAKE NOTICE that defendant David Steinberg

requests that the Court:
Consider this reply in support of Motion to Dismiss ECF 388

In support of this motion, I submit the following documents (check all that apply):

X a memorandum of law

☐ my own declaration, affirmation, or affidavit

☐ the following additional documents:

October 3, 2019
Dated

/s/ David Steinberg
Signature

David Steinberg
Name

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Address | City | State | Zip Code

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