UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION	Master Docket No. 1:18-cv-06658-JSR
MARTIN TROTT and CHRISTOPHER SMITH, as Joint Official Liquidators and Foreign Representatives of PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (in Official Liquidation) and PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (in Official Liquidation), Plaintiffs, -against- PLATINUM MANAGEMENT (NY) LLC, et al., Defendants.	Case No. 1:18-cv-10936-JSR

DEFENDANT LEON MEYERS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
270 Madison Avenue
New York, New York 10016
(212) 545-4600

Counsel to Defendant Leon Meyers

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Defendant Leon Meyers respectfully submits this Memorandum of Law in Support of his motion to dismiss the First Amended Complaint (*Trott* D.E. 159, the "Complaint") under Federal Rule of Civil Procedure 12(b)(6).[1]

PRELIMINARY STATEMENT

Leon Meyers is mentioned all of four times in the 1012-paragraph Complaint. First, he is lumped together with 29 named defendants and 100 John Does as the "Preferred Investors of the BEOF Funds." ¶ 146. Second, he is alleged to be a "long term investor in various funds managed by the Platinum Defendants who was a personal friend of both Nordlicht and Levy." ¶ 153. Third, he is alleged to have "often had lunch and/or dinner with Levy or Nordlicht, and spent time with both men and their families away from the office during holidays and on weekends." ¶ 154. Finally, he is alleged to have received a distribution of the money he invested in the BEOF Funds. ¶ 493.

The Complaint then makes bare conclusory group allegations against the Preferred Investors of the BEOF Funds for aiding and abetting breach of fiduciary duty (9th count), aiding and abetting fraud (10th count) and unjust enrichment (15th count). Being someone's friend, having lunch and investing money do not amount to a cause of action. The Complaint fails to allege, let alone with specificity, any action or inaction by Meyers which may arguably subject him to liability, or any wrongdoing whatsoever by Meyers.

Accordingly, the Complaint fails to state a claim against Leon Meyers and must be dismissed as against him.

[1] Capitalized terms used but not defined herein have the same meaning as in the Complaint. References to ¶ are to the numbered paragraphs in the Complaint.

ARGUMENT

I. The Complaint Impermissibly Relies Upon Group Pleading

Rule 8(a)(2) requires the Complaint to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 9(b) requires fraud to be alleged with particularity, including allegations for aiding and abetting fraud. *Filler v. Hanvit Bank,* 156 F. App'x 413, 417 (2d Cir. 2005) ("the particularity requirements of Rule 9(b) apply to claims of aiding and abetting fraud no less than to direct fraud claims").

The Complaint must "give *each defendant* fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Atuahene v. City of Hartford*, 10 F. App'x 33, 34 (2d Cir. 2001) (emphasis added, quotation omitted). Generalized allegations directed against a group of defendants do not satisfy the pleading standards. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 565 n.10 (2007); *Atuahene*, 10 F. App'x at 34 ("[b]y lumping all the defendants together…and providing no factual basis to distinguish their conduct, [the] complaint failed to satisfy this minimum standard.").[2]

A narrow exception allows for group pleading against high-level corporate insiders directly involved in the day-to-day affairs of an entity that allegedly made a fraudulent statement. "However, the group pleading doctrine is extremely limited in scope." *Elliott Assocs., L.P. v. Hayes*, 141 F. Supp. 2d 344, 354 (S.D.N.Y. 2000).

> In order to invoke the group pleading doctrine against a particular defendant[,] the complaint must allege facts indicating that the defendant was a corporate insider, with direct involvement in day-to-day affairs, at the entity issuing the [fraudulent] statement.

[2] Additional reasons why group pleading is improper are set forth in detail in defendant David Bodner's initial memorandum of law (D.E. 72) at Point I, which Leon Meyers adopts.

Anwar v. Fairfield Greenwich, Ltd., 728 F. Supp. 372, 405-06 (S.D.N.Y. 2010) (quotation omitted); *see also Polar Int'l Brokerage Corp. v. Reeve*, 108 F. Supp. 2d 225, 237 (S.D.N.Y. 2000) (group pleading allowed "only to clearly cognizable corporate insiders with active daily roles in the relevant companies or transactions"); *SEC v. Landberg*, 836 F. Supp. 2d 148, 156 (S.D.N.Y. 2011) (group pleading allowed "only as to individuals with direct involvement in the everyday business of the company") (quotation omitted); *City of Pontiac Gen. Employees Ret. Sys. v. Lockheed Martin Corp.*, 875 F. Supp. 2d 359, 373 (S.D.N.Y. 2012) (group pleading doctrine is "a presumption that written statements [are] made by all individuals with direct involvement in the everyday business of the company." (emphasis original, quotation and citation omitted).

Accordingly, the group pleading doctrine is limited to claims against corporate insiders sounding in fraud. It has no application to plaintiff's claims for aiding and abetting breach of fiduciary duty and unjust enrichment, which do not sound in fraud. Nor does it apply to plaintiff's claim for aiding and abetting fraud against Leon Meyers as he is not alleged to be a corporate insider; involved in day-to-day operations of any of the corporate defendants; or have had any role in making any alleged fraudulent statement. Being someone's friend, having lunch and making an investment do not fall under the group pleading doctrine as a matter of law. The suggestion he had any inside knowledge by virtue of his social relationships is rank speculation insufficient to support a cause of action. *See, e.g., Aulson v. Blanchard*, 83 F.3d 1, 3 (1st Cir. 1996) ("bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like need not be credited").

II. Plaintiff's Conclusory Allegations of Aiding and Abetting Are Insufficient

A claim for aiding and abetting fraud requires "the alleged abettor have *actual* knowledge of the primary wrong" and provide "substantial assistance" which "proximately caused the harm

on which the primary liability is predicated." *Rosner v. Bank of China,* No. 06-cv-13562, 2008 U.S. Dist. LEXIS 105984, at *11, *13 (S.D.N.Y. Dec. 18, 2008) (emphasis original), *aff'd*, 349 F. App'x 637 (2d Cir. 2009). Similarly, a claim for aiding and abetting breach of fiduciary duty requires "actual knowing participation" by the alleged abettor in the fiduciary's primary breach. *Mazzaro de Abreu v. Bank of Am. Corp.*, 525 F. Supp. 2d 381, 393 (S.D.N.Y. 2007).

These and the other elements must be sufficiently pleaded. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Yet bare recitals of the elements are all that is alleged against the Preferred Investors of the BEOF Funds, where Leon Meyers is lumped in with 29 named defendants and 100 John Does. *See* ¶¶ 865 – 68, 881 – 82; *Atuahene*, 10 F. App'x at 34 ("lumping all the defendants together… provid[es] no factual basis to distinguish their conduct" and fails to satisfy the minimum pleading standards). The Complaint does not allege that Leon Meyers individually had actual knowledge of any fraudulent scheme, knowingly assisted any breach of fiduciary duty or was anything more than a bona fide investor . As set forth in Point I above, plaintiff cannot evade the pleading requirements through the group pleading doctrine or otherwise.

Accordingly, plaintiff fails to state a claim against Leon Meyers for aiding and abetting fraud or aiding and abetting breach of fiduciary duty.

III. Plaintiff Fails to State a Claim for Unjust Enrichment

Unjust enrichment requires a defendant to have been enriched at plaintiff's expense in circumstances such that equity and good conscience require defendant to return the money to plaintiff. *See, e.g., Cohen v. BMW Invs., L.P.*., 668 F. App'x 373, 374 (2d Cir. 2016). The Complaint has no well-pleaded allegations that Leon was anything more than a bona-fide investor. Moreover, nothing in the Complaint suggests that the distribution received by Leon

Meyers was significantly in excess of his investment. Accordingly, the Complaint fails to plead that Leon Meyers was enriched, let alone unjustly. We are informed by our client that discovery will confirm that his investment in the Platinum Arbitrage Fund and the Platinum Credit Fund in a total amount in excess of $6.5 million is at risk of total loss. Accordingly, plaintiff fails to state a claim against Leon Meyers for unjust enrichment.

CONCLUSION

For the reasons above, the Court should dismiss the Complaint against defendant Leon Meyers and grant such other and further relief as the Court deems just and proper.

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February 4, 2019

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

/s/ Daniel Tepper
Daniel Tepper
270 Madison Avenue
New York, New York 10016
Tel.: (212) 545-4600
Fax: (212) 686-0114
tepper@whafh.com

Attorneys for defendant Leon Meyers