SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. GERALD LEBOVITS** **PART** **07**

Justice

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ANDREW SAROFIM,

Plaintiff,

- v -

ITERATIVE CAPITAL MANAGEMENT, L.P., ITERATIVE INSTINCT UGP, LLC, ITERATIVE OTC, L.L.C., and ITERATIVE CAPITAL GP, L.L.C.,

Defendants.

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INDEX NO. 650668/2022

MOTION DATE 10/05/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 28, 30, 32

were read on this motion to DISMISS.

Dressel/Malikschmitt LLP, Somerville, NJ (Andrew J. Dressel and Christopher M. Malikschmitt of counsel), for plaintiff.
Brown Rudnick LLP, New York, NY (Stephen D. Palley, Timothy J. Rousseau and Marcus T. Strong of counsel), for defendants.

Gerald Lebovits, J.:

This action for breach of contract and unjust enrichment is brought by plaintiff Andrew Sarofim, against defendants Iterative Capital Management, L.P. (Iterative Management), Iterative Instinct UGP, L.L.C. (Iterative Instinct), Iterative OTC, L.L.C. (Iterative OTC), and Iterative Capital GP, L.L.C. (Iterative Capital GP) (collectively, defendants).

Defendants move under CPLR 3211 (a) (1), CPLR 3211 (a) (7), and CPLR 3211 (a) (8) to dismiss four of plaintiff's claims. The motion is granted in part and denied in part.

BACKGROUND

This action arises from three agreements entered into at two different times: an investor agreement, a note, and a guaranty of defendants' obligations under the note.

On October 31, 2017, Plaintiff, Iterative Capital GP, and Iterative Management entered into the investor agreement. Under this agreement, plaintiff would ultimately invest a total of $2.5 million in nonparty Iterative Capital, L.P., Iterative Capital GP, and Iterative Management. Iterative Instinct provided the actual signature on the investor agreement as the general partner of Iterative Management. (*See* NYSCEF No. 25.)

Section 3 (b) of the investor agreement gives plaintiff a right to compel defendants to repurchase its entire equity interest at fair market value upon the occurrence of a key man event—*i.e.*, the departure of either of the named principals, Brandon Buchanan and Chris Dannen. This buyback term contains notice requirements for defendants and plaintiff. One or more of defendants is required to give plaintiff a written notice within 10 days of a key man event. Conversely, within 30 days of receiving defendants' notice, plaintiff is required to give defendants written notice of his intent exercise his right under the buyback term. Section 6 (c) of the investor agreement allows those notices to be sent by email. (*See* NYSCEF No. 25 at 3-4, 7.)

Plaintiff alleges that defendants failed to give the notice when one named principal departed from the business in the summer of 2021. Plaintiff further alleges that his attempt to exercise his right under the buyback term was rebuffed by defendants. (*See* NYSCEF No. 13 at 7-8.)

On July 30, 2018, Iterative OTC executed a $3 million promissory note in favor of plaintiff. Iterative Management executed a guaranty of Iterative OTC's obligations under the note. Iterative Instinct provided the actual signature on both agreements as the general partner of both Iterative OTC and Iterative Management. (*See* NYSCEF No. 14.)

Through a series of amendments, the ultimate maturity date of the note was July 30, 2021. (*See* NYSCEF Nos. 15, 16.) Plaintiff alleges that defendants Iterative OTC and Iterative Management have been in default of their payment obligations under the note and the guaranty without any justification. (*See* NYSCEF No. 13 at 5-7.)

In February 2022, plaintiff brought this action against defendants for breach of contract and unjust enrichment. Plaintiff's complaint, as amended, asserts six causes of action:

Claim I: Breach of contract against Iterative OTC for its default in payment obligation under the note

Claim II: Breach of contract against Iterative Management for its default in payment obligation under the guaranty

Claim III: Breach of contract against Iterative Capital GP and Iterative Management for their default in buyback obligation under the investor agreement

Claim IV: Unjust enrichment against Iterative Instinct, Iterative Management, and Iterative OTC for their unjust benefit extended by plaintiff's $3 million investment

Claim V: Unjust enrichment against Iterative Capital GP for its unjust benefit extended by the cryptocurrency business funded by plaintiff's $3 million investment

Claim VI: Unjust enrichment against Iterative Capital GP for its unjust benefit extended by plaintiff's investment under the investor agreement.

Defendants move to dismiss Claims III through VI. Defendants seek dismissal of Claim III under CPLR 3211 (a) (1) based on documentary evidence. (*See* NYSCEF No. 22 at 2-5.) Defendants contend that Claims IV through VI are subject to dismissal under CPLR 3211 (a) (7) for failure to state a cause of action because those claims assertedly duplicate plaintiff's contract claims. (*See* NYSCEF No. 22 at 6-7.) Finally, defendants argue that plaintiff's claim against Iterative Instinct should be dismissed under CPLR 3211 (a) (8) for lack of personal jurisdiction. (*See* NYSCEF No. 22 at 7-9.)

The court addresses first Iterative Instinct's personal-jurisdiction challenge; then considers defendants' other arguments for dismissal, going claim-by-claim (and, within each claim, defendant-by-defendant).

The branch of defendants' motion seeking dismissal of the claim against Iterative Instinct is granted. The branch of the motion seeking dismissal of Claim III is denied. The branch of the motion seeking dismissal of Claim IV is denied as to Iterative OTC and granted as to Iterative Management. The branches of the motion seeking dismissal of Claims V and VI are granted.

DISCUSSION

I. Whether This Court Has Personal Jurisdiction over Iterative Instinct

CPLR 3211 (a) (8) provides that a party may move to dismiss a cause of action on the ground that the court has no personal jurisdiction over the defendant. "[O]n a motion to dismiss, courts do not require the plaintiff to make a prima facie showing of jurisdiction, but only to demonstrate that facts 'may exist' to exercise jurisdiction over the defendant." (*Transasia Commodities Ltd. v Newlead JMEG, LLC*, 2014 NY Slip Op 51612[U], at *4 [Sup Ct, NY County 2014]; *see also Am. BankNote Corp. v Daniele*, 45 AD3d 338, 340 [1st Dept 2007].)

New York courts may exercise personal jurisdiction over a defendant if either general jurisdiction or specific jurisdiction exists. General jurisdiction exists when a defendant's ties to New York are so "continuous and systematic" as to "render [the defendant] essentially at home in the forum state." (*Matter of Renren Inc. Derivative Litig. v XXX*, 2020 NY Slip Op 50588[U], at *10 [Sup Ct, NY County May 20, 2020], *affd sub nom. Matter of Renren, Inc.*, 192 AD3d 539 [1st Dept 2021].) "[F]or a corporation, the paradigm forums are [its] place of incorporation and its principal place of business," and "[o]nly in an 'exceptional case' will a corporation be subject to general jurisdiction in any other forum." (*Id.* [internal quotation marks and citation omitted].)

Specific jurisdiction exists when "(1) the court has long-arm jurisdiction over [a] defendant under CPLR 302, and (2) the exercise of such jurisdiction comports with due process." (*Id.* [internal citation omitted].) Most relevant to this case, CPLR 302 (a) (1) provides that a court may exercise personal jurisdiction over a non-domiciliary defendant who "transacts any business within the state" when the disputed claim arises from those transactions. To be considered transacting business within New York, "[a] defendant must have purposefully availed itself of the privilege of conducting activities within New York, thus invoking the benefits and protections of its laws." (*Paterno v Laser Spine Inst.*, 24 NY3d 370, 377 [2014] [internal quotation marks and citation omitted].) For instance, when a defendant "seeks out and initiates

contact with New York, solicits business in New York, and establishes a continuing relationship," doing so constitutes transacting business in this State. (*Id.* [internal quotation marks and citation omitted].)

Here, it is undisputed that Iterative Instinct is incorporated in Delaware. At issue is whether its principal place of business is in New York, or whether there exist other "exceptional" situations that afford general jurisdiction. Defendants argue that New York courts have no general jurisdiction over Iterative Instinct because neither of its place of incorporation or its principal place of business is in New York. Although plaintiff alleged that Iterative Instinct's "principal place of business" is "at all relevant times in New York, New York," plaintiff has not supplied a basis for this conclusory statement. (*See* NYSCEF No. 13 at 2.) As defendants correctly argue, the *Oxbow Calcining USA Inc.* case cited by plaintiff differs from this case because the plaintiff did plead certain facts, such as a specific New York address, not merely a bare conclusion. (*Oxbow Calcining USA Inc. v Am. Indus. Partners*, 96 AD3d 646, 651 [1st Dept 2012].)

Nor has plaintiff alleged that Iterative Instinct has any "continuous and systematic" ties to New York that would amount to an exceptional situation affording general jurisdiction. Plaintiff argues that the New York address listed in the investor agreement's notice provision suggests Iterative Instinct's presence in New York. However, this argument is unavailing as that New York address, on its face, belongs to Iterative *Management*. (*See* NYSCEF No. 25 at 7.) Although Iterative Instinct is defined as "Iterative Parties" under the investor agreement and signed the contract on behalf of Iterative Management, it is not a party to the contract. (*See* NYSCEF No. 25 at 1, signature page.) Unless Iterative Instinct is doing business in New York in its own capacity, it cannot be subject to personal jurisdiction. (*See Okeke v Momah*, 132 AD3d 648, 649 [2d Dept 2015].) Plaintiff's argument based on the choice of forum clause under the note, to which Iterative Instinct is not a party, fails on the same ground. (*See* NYSCEF No. 30 at 8-9.)

With respect to specific jurisdiction, plaintiff also fails to show that such jurisdiction may exist. There is no factual allegation or evidence to suggest that Iterative Instinct conducts any purposeful business activities in New York. In fact, plaintiff never alleges that Iterative Instinct itself conducts *any* sort of in-state business activities. (*Paterno*, 24 NY3d at 377.) Instead, plaintiff argues only that Iterative Instinct has connection with New York because of the two contracts it signed on others' behalf. (*See* NYSCEF No. 30 at 8-9.) that is not enough.

The branch of defendants' motion seeking dismissal of plaintiff's claim against Iterative Instinct (*i.e.*, claim IV) is granted.

II. Whether Plaintiff's Claim III Fails Based on Documentary Evidence

CPLR 3211 (a) (1) provides that a party may move to dismiss a cause of action on the ground that a defense is founded upon documentary evidence. A trial court may only dismiss a complaint based on documentary evidence if "the factual allegations are definitively contradicted by the evidence" or "a defense is conclusively established as a matter of law." (*See VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019] [internal citation

omitted].) For evidence to qualify as "documentary," it must be unambiguous, of undisputed authenticity, and essentially undeniable. (*See id.*) Emails may be considered as documentary evidence, but only if they meet these criteria. (*See Seaman v Schulte Roth & Zabel LLP*, 176 AD3d 538, 539 [1st Dept 2019]; *see also Calpo-Rivera v Siroka*, 144 AD3d 568, 568 [1st Dept 2016].)

Here, at issue is the email communication between plaintiff and defendants. Defendants argue that in these emails they timely gave the notice for a key man event and plaintiff failed to respond with a timely written notice to require defendants to purchase his equity interest. Parties do not argue the authenticity of the emails but rather their content—whether those emails undeniably and conclusively establish that defendants had complied with the notice requirement and plaintiff had failed to exercise his right pursuant to the investor agreement.

Defendants argue that the email sent on July 2, 2021, served as a notice for Mr. Buchanan's departure, because the email indicated that Mr. Buchanan and Mr. Dannen were involved in ongoing litigation, and Mr. Buchanan "[had] indicated he [was] exiting the business." Defendants argue that plaintiff's email reply on July 4, 2021, failed to require defendants to purchase his equity interest, and after that plaintiff did not give any timely written notice to exercise his right either. (*See* NYSCEF No. 22 at 4.) Moreover, defendants argue that the email sent on July 29, 2021, which indicated that "[Mr. Buchanan] [was] no longer with the firm," once again served as a key man event notice to which plaintiff (assertedly) failed to respond with a timely written notice. (*See* NYSCEF No. 22 at 5.) In opposition, plaintiff argues that defendants' two emails did not comply with the notice requirement as they contained ambiguous language and failed to identify the exact date of Mr. Buchanan's departure.

It is questionable whether defendants have complied with the literal terms of the notice requirement. According to the investor agreement, a notice for a key man event must be given within 10 days when one principal "ceases to be involved in the business." Defendants argue that Mr. Buchanan in fact ceased his involvement before his formal resignation on July 7, 2021. (*See* NYSCEF No. 22 at 5; *see also* NYSCEF No. 23 at 2.) However, the exact date of his departure is unclear. In this regard, first, the July 2 email did not comply with the notice requirement as its language was ambiguous about Mr. Buchanan's departure. The email only shows that Mr. Buchanan indicated his intention to exit the business, without providing any concrete departure date. The July 29 email did not comply with the notice requirement, either: On defendants' own position that Mr. Buchanan's departure occurred before July 7, the July 29 email was sent well after the 10-day notice period.

Defendants contend that "substantial compliance" with the notice requirement is enough to establish their defense. This court is not persuaded. Under Delaware law (which governs the investor agreement), "substantial compliance" with notice provisions may be sufficient. But "[i]n order to deviate from clear and unambiguous contract terms without consequence, a party must justify its deviation, by, for instance, showing that it has acted reasonably, in light of the circumstances, to substantially comply in a way that preserves the benefits of the contract to the counterparty." (*Vintage Rodeo Parent, LLC v Rent-a-Ctr., Inc.*, 2019 WL 1223026, *14 [Del Ch, Mar. 14, 2019, No. 2018-0927-SG].) Accordingly, a "substantive" deviation from notice provisions will not be allowed as it would "make contractual notice a meaningless formality."

For instance, in *Vintage Rodeo Parent LLC*, the court rejected the plaintiff's argument that the defendant's action implied its intention to extend the closing date, thus putting the plaintiff on notice of such extension. (*See Vintage Rodeo Parent, LLC*, 2019 WL 1223026 at *14-15.)

Here, the July 2 email was a 14-page document, focusing largely on the disagreements between the parties, with only *one sentence* about Mr. Buchanan's departure. (*See* NYSCEF No. 26.) To be sure, the investor agreement does not require that a key-man notice take a particular form. But given that a key-man event could have the significant consequence of ultimately terminating the parties' business relationship, this court is skeptical that a passing reference in a long email focusing on other topics is sufficient to satisfy the investor agreement's notice requirement. That is particularly true given the vague and ambiguous character of the information about Mr. Buchanan's potential departure. Nor is this court persuaded by defendants' agreement that plaintiff's response on July 4 indicated plaintiff's awareness of the key-man event. Defendant may not make up for the deficiencies in its notice by arguing, in effect, that plaintiff was not prejudiced thereby.

As for the July 29 email, it was sent after the required 10-day period. (*See* NYSCEF No. 28.) Defendants argue that the delay was merely a "useless gesture." The facts in this case, however, differ from the *Crede CG III, Ltd.* decision on which defendants rely. That is, plaintiff's response on July 4 did not amount to an explicit repudiation of the agreement that would make defendants' further notice "futile." (*Crede CG III, Ltd. v 22nd Century Group, Inc.*, 2019 WL 652592, *7-8, [SD NY, Feb. 15, 2019].) Instead, plaintiff's July 4 response mostly addressed the arguments in defendants' previous email, and merely touched upon the issue by one sentence, saying "[he] [was] not saying that he [wanted] to exit the business" and "[he] certainly [did] not want to cripple the business by exiting." (*See* NYSCEF No. 27.) The investor agreement imposes clear, specific time requirements for defendants' notice for a key-man event and plaintiff's notice for exercising his right, and provides that these notices will have significant consequences. In these circumstances, defendants have not provided sufficient justification to deviate from the contract's express provisions governing notice.

Defendants' motion to dismiss plaintiff's Claim III is denied.

III. Whether Plaintiff's Unjust Enrichment Claims Fail to State Causes of Action

CPLR 3211 (a) (7) provides that a party may move to dismiss a cause of action on the ground that the pleading fails to state a cause of action. In determining whether to grant the motion under CPLR 3211 (a) (7), a court will afford the pleading a liberal construction, assume the truth of the allegations, and draw reasonable inference in favor of the plaintiff to see if all taken together can manifest any cause of action cognizable at law. (*See Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141-42 [2017].)

To state a claim for unjust enrichment under New York law, a plaintiff must allege that "(1) defendant was enriched, (2) at plaintiff's expense, and (3) equity and good conscience militate against permitting defendant to retain what plaintiff is seeking to recover." (*Briarpatch Ltd., L.P v Phoenix Pictures, Inc.*, 373 F3d 296, 306 [2d Cir 2004].) Given that unjust enrichment is a "benefit-based" liability, a plaintiff must show that a defendant received a benefit

and such benefit must be "specific" and "direct." (*Legurnic v Ciccone*, 63 F Supp 3d 241, 248 [ED NY 2014].) A plaintiff cannot recover under an unjust enrichment theory where the plaintiff "did not pay the fees (or confer the benefit) in question." (*See IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 141-42 [2009].)

Furthermore, "an unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim." (*Corsello v Verizon New York, Inc.,* 18 NY3d 777, 790 [2012].) However, courts may allow plaintiffs to plead unjust enrichment in the alternative when the validity or scope of the contract is in dispute and difficult to determine. (*See Joseph Sternberg, Inc. v Walber 36th St. Assoc.*, 187 AD2d 225, 228 [1st Dept 1993].)

The court's discussion of plaintiff's unjust enrichment causes of action in Claims IV, V, and VI will be broken out by defendant.

i. Unjust Enrichment Against Iterative OTC (Claim IV)

Plaintiff asserts both a breach of contract claim against Iterative OTC for default in repayment under the note, and a claim that "Iterative OTC has been enriched by receiving the fruits of Plaintiff's three million dollars, but has failed to return any such sums or the interest accrued thereon." (NYSCEF No. 13 at 10.) Defendants argue that plaintiff fails to plead every element of unjust enrichment, especially as to why it would be "unjust" for Iterative OTC to retain the three million dollars. Defendants also argue that such an unjust enrichment claim duplicates the same subject matter as the contract claim under the note.

However, defendants themselves have challenged the validity of the note. (NYSCEF No. 13 at 5.) Given that dispute, plaintiff may plead in the alternative both contract and unjust enrichment claims. In this regard, plaintiff's allegation that he has given three million dollars and gotten nothing in return states an unjust enrichment claim.

Defendants' motion to dismiss plaintiff's Claim IV against Iterative OTC is denied.

ii. Unjust Enrichment Against Iterative Management (Claims IV and VI)

Plaintiff raises three unjust enrichment claims against Iterative Management. *First*, Iterative Management, as a managing member of Iterative OTC, "receives a direct management fee from [Iterative OTC], and thus "[i]t has, accordingly, directly benefited from [Iterative OTC]'s unjust windfall of Plaintiff's three million dollars." (NYSCEF No. 13 at 11.) *Second*, Iterative Management, as the guarantor for Iterative OTC, "has represented on the face of the Guaranty that the execution of same was a direct benefit to [it], and has been further enriched by incurring those benefits without incurring any of the repayment obligations it explicitly promised." (NYSCEF No. 13 at 11.) *Third*, Iterative Management "wrongfully retained Plaintiff's investment by failing to adhere to the [investor agreement]'s mandatory buyback terms," and thus "[has] been enriched" "at [plaintiff]'s expense" "without justification." (NYSCEF No. 13 at 12-13.) In response, defendants argue that all three unjust enrichment claims duplicate the same subject matter as the contract claims under the note, the guaranty and the investor agreement.

With respect to plaintiff's first unjust enrichment claim against Iterative Management, plaintiff fails to plead the elements of unjust enrichment. While the investor agreement explicitly provides that Iterative Management is entitled to a management fee for managing the invested company in which plaintiff invested the three million dollars, such fee is not "directly" paid by plaintiff, as required to state an unjust enrichment cause of action. Thus, in *IDT Corp.*, the plaintiff, IDT Corporation, sought to recover investment banking fees that Morgan Stanley obtained from other companies in connection with the disputed project. The court rejected IDT's unjust enrichment claim for "[it] did not pay the alleged fees." (*IDT Corp.*, 12 NY3d at 142.) So too here.[1]

With respect to plaintiff's second unjust enrichment claim against Iterative Management, plaintiff also fails to plead the elements of the cause of action. Plaintiff provides only one paragraph containing vague language and conclusory statements that Iterative Management receives "a direct benefit" and has been "further enriched." (*See* NYSCEF No. 13 at 11.) Those statements, even considered liberally, do not allege that Iterative Management received a direct benefit from plaintiff.

Plaintiff's third unjust enrichment claim against Iterative Management alleges that Iterative Management wrongfully retained plaintiff's investment which should have been repaid pursuant to the buyback term under the investor agreement. This claim simply duplicates the breach of contract claim under the undisputedly valid investor agreement.

The branch of defendants' motion seeking dismissal of plaintiff's Claims IV and VI as against Iterative Management is granted.

iii. Unjust Enrichment Against Iterative Capital GP (Claims V and VI)

Plaintiff raises two unjust enrichment claims against Iterative Capital GP (Claims V and VI in the complaint). *First*, Iterative Capital GP, as a beneficiary of Iterative OTC's cryptocurrency mining business, "has been enriched by these dividends that were funded through Plaintiff's investment." (NYSCEF No. 13 at 11-12.) *Second*, Iterative Capital GP "wrongfully retained Plaintiff's investment by failing to adhere to the [investor agreement]'s mandatory buyback terms," and thus "[has] been enriched" "at [plaintiff]'s expense" "without justification." (NYSCEF No. 13 at 12-13.) In response, defendants argue that both unjust enrichment claims

[1] This is different from cases where investors invest their money in a company pursuant to an investment agreement, and the agreement entitles the manager a "performance-based fee." In that scenario, the performance-based fee may be considered as a "direct benefit" from the investors' investment. (*See In re Platinum-Beechwood Litig.*, 427 F Supp 3d 395, 474 [SD NY 2019].) By contrast, the management fee here is not directly linked to the investment. (*See* NYSCEF Doc No. 30 at 11.) In any case, even if the management fee was considered as a direct benefit from Plaintiff's investment, an unjust enrichment claim based on a subject matter subsumed in the investor agreement (whose validity or scope is uncontested) would be duplicative and would not survive the motion to dismiss. (*See In re Platinum-Beechwood Litig.*, 427 F Supp 3d at 474.)

duplicate the same subject matter as the contract claims under the note and the investor agreement.

Plaintiff's first unjust enrichment claim against Iterative Capital GP fails to state a cause of action. As with Iterative Management's management fees, plaintiff fails to allege how Iterative Capital GP receives the proceeds of Iterative OTC's cryptocurrency business "directly" from plaintiff. (*See* NYSCEF No. 13 at 11-12.) The mere allegation that Iterative OTC's cryptocurrency business is funded by plaintiff's investment, such that the proceeds generated from the business (and flowing to Iterative Capital GP) are essentially the reallocation of plaintiff's investment, is not enough.

Although plaintiff briefly alleges that Iterative OTC paid dividends to its related entities including Iterative Capital GP, "instead of honoring its contractual obligations [under the note] to [pay] Plaintiff," paying dividends to related entities and repaying the loan to the debtor are two different legal relationships. (*See* NYSCEF No. 13 at 12.) Iterative OTC's choice to pay dividends to Iterative Capital GP rather than repay the loan from plaintiff does not mean that GP has directly received a benefit *from plaintiff*—at least absent additional allegations connecting plaintiff's loan to OTC with the dividends paid by OTC to GP, which plaintiff has not supplied.

Plaintiff's second unjust enrichment claim against Iterative Capital GP simply duplicates the breach of contract claim under the investor agreement. As the validity or the scope of the investor agreement is undisputed in this case, plaintiff's unjust enrichment claim cannot survive the motion to dismiss.

Defendants' motion to dismiss plaintiff's Claims V and VI is granted.

Accordingly, it is

ORDERED that the branch of defendants' motion seeking dismissal of plaintiff's claim against Iterative Instinct is granted; and it is further

ORDERED that the branch of defendants' motion seeking dismissal of plaintiff's Claim III is denied; and it is further

ORDERED that the branch of defendants' motion seeking dismissal of plaintiff's Claim IV as against Iterative OTC is denied; and it is further

ORDERED that the branch of defendants' motion seeking dismissal of plaintiff's Claim IV as against Iterative Management is granted; and it is further

ORDERED that the branches of defendants' motion seeking dismissal of plaintiff's Claims V and VI is granted; and it is further

ORDERED that defendants serve a copy of this order with notice of its entry on all parties; and it is further

ORDERED that the parties shall appear before this court for a telephonic preliminary conference on January 6, 2023.

12/7/2022
DATE

HON. GERALD LEBOVITS
J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE