

**Moroney v Cardinale**

2024 NY Slip Op 32073(U)

June 13, 2024

Supreme Court, New York County

Docket Number: Index No. 653999/2023

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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WILLIAM J. MORONEY, AS TRUSTEE FOR THE  
WJM TRUST, GEORGE CAMBOURIS, WILLIAM  
RABETZ, DONALD LEGER, DAVID KNOX, STEVEN  
CHARLES, MICHAEL BRANCHFLOWER, DAVID  
SACRA, ROBERT MOSACK, FARROKH JHABVALA,  
WILLIAM BERRY, JOSEPH CAVEGN, and MARK  
BISHOP,

INDEX NO. 653999/2023  
  
12/15/2023,  
11/01/2023,  
MOTION DATE 02/05/2024  
  
MOTION SEQ. NO. 004, 005, 006

Plaintiffs,

**DECISION + ORDER ON  
MOTION**

- v -

RICHARD CARDINALE, ROBERT L. GIARDINA,  
L3 CAPITAL INCOME FUND, LLC, L3 CAPITAL  
MANAGEMENT LLC, and L3 CAPITAL ADVISORS,  
LLC,

Defendants.

-----X

HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (MS004) 78, 79, 80, 81, 82, 83, 90, 92, 96, 97, 98, 104, 107, 111

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (MS005) 86, 87, 93, 94, 95, 105, 108

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (MS006) 84, 85, 88, 109, 112, 113, 114, 115

were read on this motion to/for DISMISSAL

Plaintiffs William J. Moroney, as Trustee for the WJM Trust, George Cambouris, William Rabetz, Donald Leger, David Knox, Steven Charles, Michael Branchflower, David Sacra, Robert Mosack, Farrokh Jhabvala, William Berry, Joseph Cavegn, and Mark Bishop (collectively, plaintiffs) bring this action, as amended, against defendants Richard Cardinale (Cardinale), L3 Capital Management LLC (L3 Management), and L3 Capital Advisors, LLC (L3 Advisors, and collectively with Cardinale and L3 Management, the Cardinale Defendants), Robert L. Giardina (Giardina), L3 Capital Income Fund, LLC (L3 Fund, together with the Cardinale Defendants and Giardina, defendants), asserting claims for common law fraud, breach of contract, breach of fiduciary duty, negligence,

accounting, constructive trust, conversion, and unjust enrichment (NYSCEF # 30 – FAC). Now before the court are three motions to dismiss pursuant to CPLR 3211(a)(1) and 3211(a)(7) (*see* NYSCEF #s 78, 86, 88). MS004 is brought by the Cardinale Defendants. MS005 is brought by Giardina. And MS006 is brought by the L3 Fund. For the following reasons, the Cardinale Defendants’ motion is granted in part and denied in part, the L3 Fund’s motion is granted in part and denied in part, and Giardina’s motion is granted in its entirety.

### **Background**

The following facts are drawn from the FAC and accompanying exhibits to the parties’ submissions. They are assumed true solely for purposes of resolving defendants’ motions.

#### *The L3 Fund and the Operating Agreement*

The L3 Fund is a private hedge fund launched in or about 2019 and purportedly managed (through L3 Management) by Cardinale (*see* FAC ¶¶ 38, 41-42, 48). Plaintiffs are investors who have collectively invested least \$7,715,000.91 in the L3 Fund (*id.* ¶¶ 3-5, 24-37).

The Limited Liability Company Operating Agreement of the L3 Fund (the Operating Agreement) governs various aspects of the L3 Fund’s organization, management, and operations (NYSCEF # 49 – OA). For example, Section 2.4 of the Operating Agreement describes the L3 Fund’s purpose as “acquiring, holding and disposing of, directly or indirectly, through partially or wholly-owned subsidiaries (including Investment Vehicles) or other arrangements, Investments that focus on income producing companies in the alternative financial services industry or such other industries as determined by the Manager in its sole discretion” (*id.* § 2.4). Section 2.4 further provides that the L3 Fund would “engag[e] in such activities as the Manager determines are necessary, advisable, incidental or ancillary thereto” (*id.*). As alleged, the “Manager” was originally L3 Advisors under the terms of the Operating Agreement, but it is now L3 Management (*see id.* at Art. I; FAC ¶ 75). Cardinale allegedly has an ownership interest in both L3 Advisors and L3 Management, and Giardina is an owner of L3 Advisors (*see* FAC ¶¶ 43-45, 75).

Article V of the Operating Agreement sets forth various rights and duties of the Manager. Regarding the management of the L3 Fund, Section 5.1 provides that the Manager is “vested with the full, exclusive and complete right, power and discretion to operate, manage and control the affairs and business of the [L3 Fund] and to make all decisions affecting the [L3 Fund’s] affairs and business, as deemed proper, convenient or advisable by the Manager to carry on the business of the [L3 Fund]” (OA § 5.1.1). This includes a broad set of delineated powers and rights to which “all of the Members [] specifically agree[d] and [c]onsent[ed]” (*see id.* § 5.1.1[a]-[iii]). Section 5.2, in turn, sets forth the Manager’s “Duties and Obligations,”

including, among other things, (1) using “reasonable efforts, and act[ing] in good faith to find opportunities for investment[s],” (2) “tak[ing] all action that may be necessary or appropriate for the continuation of the [L3 Fund’s] valid existence and authority to do business,” and (3) as it relates to the “Manager and/or its Affiliates,” “perform[ing] asset management services with respect to Investments, which services may include monitoring the financial condition and other relevant operating data of Investments” (*id.* §§ 5.2.1-5.2.3, 5.5.2; *see also* FAC ¶¶ 76, 81).

Article V also sets forth various terms concerning “Conflicts of Interest” (*see* OA § 5.12). For example, Section 5.12.2 provides that “[t]he Manager, a Placement Agent or their respective Affiliates may make direct investments as well as advise, sponsor, form or act as a manager at any time to one or more new pooled investment funds that have an investment program that overlaps entirely or is substantially the same as that of the Company” (*id.* § 5.12.2). On that point,

[e]ach Member acknowledge[d] and agree[d] that neither the Manager, a Placement Agent nor their respective Affiliates will (x) be or be deemed to be in breach of this Agreement, or of any duty owed by the Manager, a Placement Agent or such Affiliate to the Company or to any Member with respect to any actual or potential conflict of interests, or (y) have or be deemed to have any liability to the Company or any Member in respect of any act or omission to act specifically authorized by this Agreement

(*id.*). Section 5.12.5, in turn, states that (1) the L3 Fund “may enter into (A) contracts and transactions with any of the Manager, a Placement Agent and its Affiliates authorized or contemplated by this Agreement and (B) any such contracts not authorized or contemplated by this Agreement,” and (2) “the Manager, a Placement Agent and its Affiliates may enter into (A) contracts and transactions with the Company and with any Investment Vehicle authorized or contemplated by this Agreement and (B) any such contracts not authorized or contemplated by this Agreement” (*id.* § 5.12.5). And, pursuant to Section 5.12.6, Members acknowledged that “there may be situations in which the interests of the Company, in a Portfolio Investment or otherwise, may conflict with the interests of the Company, the Manager a Placement Agent or their respective Affiliate” (*id.* § 5.12.6).

Finally, under Section 7.5.1, the L3 Fund’s members agreed that any “Withdrawal Requests” (as defined in the Operating Agreement) would be “honored by the Company on a Withdrawal Date only to the extent of the Available Cash on hand, as determined by the Manager in its sole discretion” (OA § 7.5.1).<sup>1</sup> And regarding the L3 Fund’s Records and Accounting, Section 12.2 provides that

<sup>1</sup> Withdrawal Requests were required to be processed on a “first in, first out” basis, with the “oldest outstanding Withdrawal Requests . . . tak[ing] priority over Withdrawal Requests with later stated Withdrawal Dates” (OA § 7.5.1).

[a]s soon as reasonably practicable and in all events within one hundred twenty (120) calendar days after the end of each Fiscal Year, the Company shall prepare and mail to each Member financial statements of the Company . . . [and] [t]he Manager shall cause the Company or other Persons to prepare and send to each Member quarterly updates within sixty (60) days of the end of each of the first three quarters of each Fiscal Year

(OA § 12.2).

The PPM

The L3 Fund solicited investors (including plaintiffs) through an Amended and Restated Confidential Private Placement Memorandum (PPM) containing various disclosures and representations about the L3 Fund (FAC ¶¶ 6, 39; NYSCEF # 37 – PPM at 21-27). As is relevant here, the PPM explains that the L3 Fund would “provide qualified investors . . . with access to investments in the alternative financial services industry . . . or such other industries where the Manager believes the Fund will achieve its investment objectives” (PPM at 6, 21). The PPM further discloses that the Manager (defined as L3 Management) would “sponsor[], operat[e], and manag[e] the Fund” and provided certain representations about L3 Management’s managing member, Cardinale, and his experiences (*see* PPM at 9, 26). According to the PPM, the L3 Fund was targeting an “annual return of between twelve (12%) to fifteen (15%) percent” (PPM at 5, 21; *see also* FAC ¶ 40).

The PPM also discloses various details about the Manager’s broad discretion in operating and managing the L3 Fund. For example, “[a]ll decisions regarding management of the Fund including, including, but not limited to, any investment made by the Fund, will be made by and in the sole discretion of the Manager” (PPM at 27). Similarly, the “determination to make” any distribution, including its timing and form, was to be made by the Manager in its “sole discretion” (*see id.* at 12, 27). And, as further provided by the PPM, the Manager is permitted, “in its sole discretion, to provide co-investment opportunities to one or more Members and/or third persons (in each case on terms to be determined by the Manager in its sole discretion)” (*id.* at 35). For these reasons, the PPM warned that “no party should make any investment in the Fund unless such party [was] willing to entrust all aspects of the Fund’s management to the Manager” (*id.* at 27).

Finally, the PPM outlines various potential conflicts of interest, conflicted fee arrangements, and risks factors that may underlie the L3 Fund’s investments and investment strategies. For example, the PPM makes clear that the “Manager and its affiliates will be subject to various conflicts of interest in their relationships with the” L3 Fund and that the agreements and arrangements between the L3 Fund and the Manager will not be “the result of arm’s-length negotiations” (PPM at 30). Further, the PPM details that the L3 Fund may co-invest “through joint ventures

with third parties and/or certain Members” and this may “involve certain risks relating to the investment” (*id.* at 33). The PPM separately discloses that officers, directors, managers, and/or members of a potential investment “may receive fees for services” or serve as a paid advisor, while the manager of a potential “Investment” and its members and affiliates “may receive directors’ fees, breakup fees, consulting fees, monitoring fees and other fees in connection with the provision of consulting services and other services to an Investment” (*id.* at 6-7, 18). And as also outlined by the PPM, the “principal of the Manager or his affiliates may, directly or indirectly, be an investor in and/or an officer, director, manager or member of any Investment which the Fund may invest in” and be entitled to compensation fees in that same capacity (*id.* at 17, 36).

*Feingold and Dazzo’s Involvement with the L3 Fund and Its Investments*

According to the FAC, the Cardinale Defendants were not the only ones involved with the L3 Fund (*see* FAC ¶¶ 3, 48-49). Rather, Cardinale’s former business partners David Feingold and Michael Dazzo were also instrumental in structuring the L3 Fund, identifying investment opportunities, and co-managing investments for the L3 Fund (*see id.* ¶¶ 48-50).

According to the FAC, Feingold and Dazzo designed the L3 Fund to act as a vehicle to raise capital that would be used to invest in specific companies through a series of six entities controlled by Feingold, Dazzo, and Cardinale: (1) Alternative Global One LLC, (2) Alternative Global Two LLC, (3) Alternative Global Three LLC, (4) Alternative Global Four LLC, (5) Alternative Global Five LLC, and (6) Alternative Global Six LLC (the Alternative Global Companies)<sup>2</sup> (FAC ¶¶ 50[b], [d]). Feingold and Dazzo would then identify investment opportunities with various companies and present them to the Alternative Global Companies (*id.* ¶¶ 50[f], [g]). From that point, Feingold and Dazzo allocated and disbursed funds from the Alternative Global Companies to their investments, approved payments of fees and expenses of the Alternative Global Companies, and managed receipts and payments from the investment opportunities to the Alternative Global Companies (*id.* ¶ 50[g]). Feingold and Dazzo also maintained books and records for the Alternative Global Companies’ investments and provided quarterly reports for investors of the L3 Fund (*id.*). For his part, Cardinale reviewed information regarding the Alternative Global Companies’ activities (*id.* ¶ 50[h]). Eventually proceeds from the companies in which the Alternative Global Companies invested were used to pay back the L3 Fund (*see id.* ¶¶ 59, 63).

At some point, Cardinale’s relationship with Feingold and Dazzo deteriorated (*see generally* FAC ¶¶ 10-15, 51-52, 57). As a result, Feingold and Dazzo resigned from the Alternative Global Companies, and the parties have since engaged in

<sup>2</sup> The Alternative Global Companies were managed by Alternative Global Management, LLC (FAC ¶¶ 58-59).

litigation across several jurisdictions, including New York and Florida<sup>3</sup> (*see id.* ¶¶ 10, 48, 52, 57, 82). Since that time, the FAC alleges, entities in which the Alternative Global Companies invested have stopped paying money, resulting in the Alternative Global Companies being unable to pay their debts to the L3 Fund and the L3 Fund dramatically reducing its distributions (*id.* ¶¶ 52, 54). Cardinale has also allegedly lost control of various records held by the Alternative Global Companies (*see id.* ¶¶ 18, 52, 70, 77).

With litigation impacting the L3 Fund, Broadstreet Global Management LLC (Broadstreet), an entity controlled by Feingold and Dazzo, has purportedly submitted offers to the L3 Fund's investors that would, as plaintiffs allege, purportedly make them whole (FAC ¶¶ 10-14). Broadstreet has conditioned such payments on Cardinale resigning from his position with the L3 Fund and appointing Broadstreet as the new Manager (*see* FAC ¶ 13; NYSCEF # 31 ["If Mr. Cardinale immediately resigns from all of his L3 related entities and appoints BSGM as sole Manager then BSGM will guarantee with cash/cash collateral"]; NYSCEF # 32 ["We simply want to get away from having any past, present or future relationship with Mr. Cardinale and the best way to do that is simply have him resign and appoint BSGM"]). Cardinale, in turn, has rejected both offers and only notified investors of the first offer letter (FAC ¶¶ 11-12).

Cardinale's dispute with Feingold and Dazzo, and the resulting impact on the L3 Fund, has resulted in various lawsuits commenced by the L3 Fund's investors against Cardinale and the L3 Fund (*see* FAC ¶ 21). This lawsuit is one such action.

*Alleged Misstatements and Omissions in the Operating Agreement and PPM, as well as by Cardinale*

Although the FAC is, in many instances, inartful and scattershot in nature, it appears that plaintiffs' claims center around various purported misrepresentations and omissions in the Operating Agreement and PPM, as well as purported misrepresentations by Cardinale (FAC ¶¶ 6-7).

The first set of alleged misrepresentations and omissions in the PPM and Operating Agreement that can be discerned from the FAC relate to Feingold and Dazzo's involvement with the L3 Fund, the full extent of L3 Fund's investment structure and strategies carried out by Feingold and Dazzo, and the existence of the Alternative Global Companies (the Feingold/Dazzo Omissions) (*see* FAC ¶¶ 49-52, 55, 58-59). Among other purported omissions, plaintiffs contend that the PPM and Operating Agreement failed to disclose Feingold and Dazzo's management of the L3 Fund's monies, Feingold, Dazzo, and Cardinale's ownership interests in the Alternative Global Companies, the relationship between the Alternative Global

<sup>3</sup> Two such lawsuits are pending before this court, captioned (1) *Broadstreet New York Inc. v L3 Capital Income Fund, LLC et al.*, Index No. 650218/2023, and (2) *Alternative Global Six, LLC v Durham Homes LLC*, Index No. 653837/2022.

Entities and the L3 Fund, and, finally, the research, analysis, management, and bookkeeping Feingold and Dazzo undertook in connection with the Alternative Global Companies' investments (including through Alternative Global Management) (*see id.* ¶¶ 50, 58-59). Plaintiffs further allege in connection with this category of omissions that the PPM and Operating Agreement failed to disclose that the L3 Fund would fund real estate investments (*see id.* ¶ 63).

The second set of alleged misrepresentations and omissions pertain to the PPM and/or Operating Agreement's failure to disclose Cardinale's purported conflict of interests (the Conflict Omissions) (FAC ¶¶ 64-65). Specifically, plaintiffs contend that Cardinale failed to disclose that he was involved as a manager and owner of the L3 Fund, a manager of the Alternative Global Companies, a paid advisor to the L3 Fund through L3 Advisors, the sole manager L3 Management, and the recipient of fees from the entities in which the L3 Fund invested and the L3 Fund itself (*see id.* ¶ 65).

The final set of alleged misrepresentations relate to Cardinale's expertise and experience (the Cardinale Misrepresentations) (*see* FAC ¶ 67). The alleged representations included purportedly false claims that Cardinale (1) was a successful real estate developer (*see id.* ¶¶ 67[a]-[d], [n]-[o]); (2) had successfully taken funds and companies public that, in turn, generated returns in investments (*see id.* ¶¶ 67[e]-[f], [h]-[i]); (3) successfully produced motion pictures (*id.* ¶ 67[g]); (4) had successfully operated various business, including sports bars, coffee shops, tattoo parlors, and scrap metal operations (*id.* ¶¶ 67[j]-[m]); and (5) had an investment track record of generating investment returns between 12% to 15% (*id.* ¶ 67[p]). Plaintiffs broadly aver that these misrepresentations were made "in the PPM, Operating Agreement and/or in person" without any further supporting details or context (*see generally id.* ¶ 67).

#### Other Alleged Misconduct by Cardinale

In addition to the misrepresentations and omissions, the FAC also alleges, in largely scattershot fashion, other purported misconduct by defendants in connection with the management and operation of the L3 Fund (*see* FAC ¶¶ 3, 13, 16-20, 70-84). For example, plaintiffs allege, upon information and belief, that the L3 Fund has paid out redemption requests to certain members of the L3 Fund but not others (*see id.* ¶ 73). Plaintiffs then baldly state that the L3 Fund has paid fees to the Cardinale Defendants that were improper (*see id.* ¶¶ 74, 77-81). Plaintiffs further aver that Cardinale is improperly using the L3 Fund's monies to pay for litigation expenses and has also improperly rejected Broadstreet's offer to pay L3 Fund's investors (*see id.* ¶¶ 13-14, 82-83).

Plaintiffs separately claim, somewhat confusingly, that Cardinale has "falsely" claimed that he cannot account for \$73 million in funds for the L3 Fund, yet they separately allege that they are aware that Cardinale has admitted that

\$50,000,000 of this purportedly missing amount is in an “MCA” account managed by Cardinale (*see id.* ¶¶ 16, 19, 101). Plaintiffs also speculate that an additional \$25 million of the L3 Fund’s monies is “either missing or ha[s] been lost . . . or worse . . . misappropriated” (*id.* ¶ 2). Yet they later seemingly allege that this \$25 million was apparently invested in the Alternative Global Companies (*see* FAC ¶ 53).

Finally, plaintiffs contend that defendants, in breach of the Operating Agreement, have failed to provide financial statements and reports despite explicit requests, and, upon information and belief, have failed to file state or local tax returns (*see id.* ¶¶ 70-72, 76-77, 81).

### Legal Standard

CPLR 3211(a) provides for various grounds under which a party may move for judgment dismissing one or more causes of action, including when a pleading “fails to state a cause of action” (CPLR 3211 [a] [7]) or “a defense is founded upon documentary evidence” (CPLR 3211 [a] [1]). On a motion to dismiss pursuant to CPLR 3211(a)(7), the court “must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord plaintiff[] the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory” (*Whitebox Concentrated Convertible Arbitrage Partners, L.P. v Superior Well Servs., Inc.*, 20 NY3d 59, 63 [2012]). Whether a plaintiff can ultimately establish its allegations is not considered when determining a motion to dismiss (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]). However, the court need not accept “conclusory allegations of fact or law not supported by allegations of specific fact” (*Wilson v Tully*, 243 AD2d 229, 234 [1st Dept 1998]).

Dismissal based on documentary evidence is warranted “only where ‘it has been shown that a material fact as claimed by the pleader is not a fact at all and no significant dispute exists regarding it’” (*Acquista v N.Y. Life Ins. Co.*, 285 AD2d 73, 76 [1st Dept 2001], quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977] [alterations omitted]). But “[i]n those circumstances where the legal conclusions and factual allegations are flatly contradicted by documentary evidence, they are not presumed to be true or accorded every favorable inference” (*Morgenthau & Latham v Bank of N.Y. Co.*, 305 AD2d 74, 78 [1st Dept 2003] [internal quotation omitted]).

### Discussion

Defendants, through three separate motions, seek dismissal of the FAC in its entirety. The first motion before the court is by the Cardinale Defendants (NYSCEF # 83 – Cardinale Defts MOL; NYSCEF # 111 – Cardinale Defts Reply). The Cardinale Defendants start by contending that plaintiffs failed to plead their fraud claim with particularity under CPLR 3016(b) because they (1) fail to identify when, where, or to whom the Cardinale Misrepresentations were made, (2) allege no facts

demonstrating how any of the plaintiffs relied on the purported misrepresentations and omissions; and (3) improperly rely on group pleading for their fraud claims (Cardinale Defts MOL at 11-12; Cardinale Defts Reply at 6-8). The Cardinale Defendants further aver that plaintiffs cannot plausibly allege reliance on the Feingold/Dazzo Omissions because (a) they want the Fund to accept Broadstreet's offer, (b) the claims related to the Conflict Omissions are expressly precluded by the clear disclaimers set forth in both the PPM and Operating Agreement, and (c) the Cardinale Misrepresentations amount to nothing more than non-actionable puffery and opinion (Cardinale Defts MOL at 13-15; Cardinale Defts Reply at 5-6).

The Cardinale Defendants then shift focus to plaintiffs' remaining causes of action (Cardinale Defts MOL at 16-18; Cardinale Defts Reply at 9-10). As a threshold matter, they argue that the breach of contract claims against Cardinale and L3 Advisors must be dismissed because neither is a party to the PPM or Operating Agreement (Cardinale Defts MOL at 16). The Cardinale Defendants then contend that any contractual claim against L3 Management must be dismissed because (1) insofar as plaintiffs aver that the L3 Fund failed to provide redemptions, the PPM and/or Operating Agreement confers broad discretion to the L3 Fund's Manager to honor such requests, (2) the FAC's allegations of purported mismanagement and misappropriation of funds are conclusory and contradictory, and (3) for purposes of plaintiffs' claim that L3 Management has failed to provide audited 2022 financial statements and quarterly updates, plaintiffs have conceded that those materials are under the control of Feingold and Dazzo at the moment and cannot be provided (*see id.* at 17-18; Cardinale Defts Reply at 9-10). Finally, the Cardinale Defendants contend that the remaining claims alleged in the FAC are all duplicative of plaintiffs' fraud and/or breach of contract claims (Cardinale Defts MOL at 18-22).

The other movants are the L3 Fund and Giardina, respectively. The L3 Fund largely joins the arguments set forth in the Cardinale Defendants' moving papers, although it further argues that plaintiffs' fraud claims are precluded by the Operating Agreement's integration clause (NYSCEF # 85 at 3-12; NYSCEF # 109 at 2-7). Meanwhile, Giardina argues that plaintiffs have utterly failed to set forth any non-conclusory allegations of his participation in the FAC's claims (NYSCEF # 87).

Plaintiffs oppose defendants' motions through a single opposition (NYSCEF # 98). *First*, plaintiffs argue that they have pleaded fraud with sufficient detail. In so arguing, plaintiffs explain that Cardinale (but not the other defendants) had superior knowledge and a duty to speak with regard to plaintiffs' omission claims, and they aver that the facts and circumstances alleged are stated in enough detail to inform defendants of the alleged incidents (*id.* at 9-11). *Second*, plaintiffs contend that their breach of fiduciary duty claim is based on self-dealing and conflicts of interest and is stated in sufficient detail, although they do not directly address the contention that the claim is duplicative of their fraud and breach of contract claims (*see id.* at 12-14). *Third*, plaintiffs aver that their breach of contract claim is stated

with sufficient detail – based on distinct facts such as failure to manage and keep proper records – and properly alleged against L3 Advisors, who was the original Manager of the L3 Fund and thus party to the PPM and Operating Agreement (*id.* at 15-16). *Finally*, plaintiffs argue that their other causes of action are properly stated and not duplicative (*id.* at 17-19).<sup>4</sup>

As a threshold matter, plaintiffs fail to establish any basis to maintain their claims against Giardina. Giardina appears in only a handful of allegations in the FAC. Specifically, plaintiffs allege that Giardina was (1) a purportedly undisclosed owner of L3 Advisors, (2) the subject of a recent Federal Trade Commission settlement, (3) the subject of a lawsuit brought by the New York State Attorney General in which he allegedly invoked the Fifth Amendment, and (4) found liable under a civil RICO statute (*see* FAC ¶¶ 45, 60-62). But beyond a stray, conclusory assertion that he was “unjustly enriched” through remunerations, funds, and fees (*see id.* ¶ 144), the FAC is devoid of any allegations indicating how, if at all, Giardina was involved in the underlying misconduct forming the basis of *any* of plaintiffs’ causes of action. In the absence of any non-conclusory allegations giving notice of the transactions and occurrences involving Giardina that are tied to the material elements of plaintiffs’ causes of action, dismissal of this action against Giardina is warranted (*see Travelers Ins. Co. v Ferco, Inc.*, 122 AD2d 718, 719 [1st Dept 1986] [“Pleadings which are so devoid of factual substance require dismissal pursuant to CPLR 3211(a)(7)”]; *Trans-Cont. Credit & Collection Corp. v Foti*, 270 AD2d 250, 251 [2d Dept 2000] [affirming dismissal of claim where “allegations were not sufficiently particular to give notice of the transactions and occurrences intended to be proved and the material elements of the cause of action”]).

The court next turns to the motions to dismiss plaintiffs’ claims as against the Cardinale Defendants and the L3 Fund. The court first addresses plaintiffs’ claim for common law fraud and then addresses plaintiffs’ remaining claims, including their claim for breach of contract.

### **I. Common Law Fraud (First Cause of Action)**

To state a claim for common-law fraud, a complaint must allege a representation or omission of a material fact, falsity, scienter, reliance, and injury (*see Albert Apt. Corp. v Corbo Co.*, 182 AD2d 500, 500 (1st Dept 1992). For claims premised on fraudulent concealment or omissions, the complaint must also allege a duty to disclose (*Kaufman v Cohen*, 307 AD2d 113, 119-120 [1st Dept 2003]). This requires a showing of a fiduciary relationship or some other circumstances establishing an affirmative duty to disclose material facts (*see SNS Bank, N.V. v*

<sup>4</sup> Plaintiffs also submit various affidavits in support of their opposition (NYSCEF # 97). Each of these affidavits is nearly identical in nature and largely reiterates the same allegations set forth in the FAC (*see generally id.*).

*Citibank, N.A.*, 7 AD3d 352, 356 [1st Dept 2004 [“an omission does not constitute fraud unless there is a fiduciary relationship between the parties”]).

In all cases, fraud claims must satisfy the “more stringent” pleading requirements of CPLR 3016(b), which requires that “circumstances constituting the wrong shall be stated in detail” (*Swersky v Dreyer and Traub*, 219 AD2d 321, 326 [1st Dept 1996], citing *Ambassador Factors v Kandel & Co.*, 215 AD2d 305, 307-308 [1st Dept 1995]). This requires allegations of “specific facts with respect to the time, place, or manner of th[e] purported misrepresentation” (see *CMB Export Infrastructure Inv. Group 48, LP v Motcomb Estates, Ltd*, 223 AD3d 513, 514 [1st Dept 2024]). Although this pleading requirement should “not be confused with [requiring] unassailable proof of fraud,” the facts alleged still must be “sufficient to permit a reasonable inference of the alleged conduct” (see *Pludeman v N. Leasing Sys., Inc.*, 10 NY3d 486, 492 [2008]).

Here, plaintiffs essentially assert three categories of purported fraud in the FAC: (1) the Cardinale Misrepresentations, (2) the Conflict Omissions, and (3) the Feingold/Dazzo Omissions. The court addresses these categories in turn.

#### **A. Cardinale Misrepresentations**

On the Cardinale Misrepresentations, the crux of plaintiffs’ fraud claims is that Cardinale intentionally misrepresented his accomplishments and experiences in an effort to induce plaintiffs to invest in the L3 Fund (FAC ¶¶ 67, 87-91). The types of purported misrepresentations include, among others, purported claims by Cardinale of his success in real estate development projects, fund raising endeavors, and operating businesses (*id.* ¶ 67). Plaintiffs’ claims related to the Cardinale Misrepresentations, however, fail for two independent reasons.

To start, plaintiffs have failed to plead their claims related the Cardinale Misrepresentations with the requisite particularity required under CPLR 3016(b). Although the FAC sets forth a laundry list of purported misrepresentations by Cardinale, it is utterly devoid of any indication about when, where, or to whom any of the alleged misrepresentations were set forth or stated by Cardinale. To the contrary, all that plaintiffs claim, in cursory fashion, is that the Cardinale Misrepresentations were “in the PPM, Operating Agreement and/or in person” (FAC ¶ 67). Such allegations are plainly insufficient to state a claim for fraud (see *Orange Orch. Props. LLC v Gentry Unlimited, Inc.*, 191 AD3d 609, 609 [1st Dept 2021] [concluding that allegations failed to sufficiently allege fraud with particularity where “plaintiffs failed to allege with specificity who made the representations, when they were made and their substance, and when”]).

*Second*, plaintiffs’ fraud claim premised on the Cardinale Misrepresentation independently fails because none of the purported misrepresentations, as alleged, are actionable. It is well settled that “mere puffery, opinions of value or future

expectations” do not support a cause of action for fraud (*see Sidamonidze v Kay*, 304 AD2d 415, 416 [1st Dept 2003]). This includes “promises of future conduct or events” and “opinion[s] of defendant as to . . . resources and capabilit[ies]” (*see Yablon v Stern*, 161 AD3d 594, 595 [1st Dept 2018]). Here, as currently alleged, many of the Cardinale Misrepresentations constitute statements of his opinions and embellishments of his prior experiences and successes as an investor and businessperson (*see* FAC ¶ 67[a]-[o]). And almost none of them are related to concrete representations about the management or investment goals of the L3 Fund.<sup>5</sup> Accordingly, absent more, plaintiffs fail to state a plausible claim for relief in connection with the Cardinale Misrepresentation. Plaintiffs’ fraud claim related to the Cardinale Misrepresentations is dismissed without prejudice

### **B. Conflict Omissions**

The next set of alleged misrepresentations in the FAC are the Conflict Omissions. By plaintiffs’ account, the PPM and Operating Agreement failed to disclose Cardinale’s purported conflicts of interest between his role in and compensation from the L3 Fund, L3 Management, L3 Advisors, and the Alternative Global Companies (*see* FAC ¶¶ 56, 65). As explained, dismissal of these claims is warranted because both the PPM and Operating Agreement are replete with conflict-of-interest disclosures that plainly account for the alleged “omissions” about which plaintiffs complain.

For example, the PPM states that the “Manager and its affiliates will be subject to various conflicts of interest in their relationships with the” L3 Fund and that the agreements and arrangements between the L3 Fund and the Manager will not be “the result of arm’s-length negotiations” (PPM at 30). The PPM then discloses that officers, directors, managers, and/or members of a potential investment “may receive fees for services” or serve as a paid advisor, while the manager of an Investment and their members and affiliates “may receive directors’ fees, breakup fees, consulting fees, monitoring fees and other fees in connection with the provision of consulting services and other services to an Investment” (*id.* at 36). The PPM also states that the “principal of the Manager or his affiliates may, directly or indirectly, be an investor in and/or an officer, director, manager or member of any Investment which the Fund may invest in” and be entitled to compensation fees in that same capacity (*id.* at 17, 36). Finally, the PPM was clear that L3 Fund may co-invest “through joint ventures with third parties and/or certain Members” and this may “involve certain risks to the investment” (*id.* at 33).

Meanwhile, Article V sets forth various terms concerning “Conflicts of Interest” (*see* OA § 5.12). This includes, among other things, a representation that “[t]he Manager, a Placement Agent or their respective Affiliates may make direct

<sup>5</sup> At most, plaintiffs baldly assert that Cardinale “falsely” represented his previously investment track record without any support (FAC ¶ 67[p]).

investments as well as advise, sponsor, form or act as a manager at any time to one or more new pooled investment funds that have an investment program that overlaps entirely or is substantially the same as that of the Company” (*id.* § 5.12.2).

Each of these disclosures address the various types of roles and compensation that the L3 Fund and the Cardinale Defendants would receive vis-à-vis the L3 Fund’s management and its investments (as well as corresponding risk). And they directly address the types of conflicts highlighted by plaintiffs in the FAC. Consequently, given the facts currently alleged, there is no basis at this time to conclude that the Conflict Omissions support an actionable claim for fraud. Plaintiffs’ fraud claim related to this category of omissions is dismissed without prejudice.<sup>6</sup>

### C. Feingold/Dazzo Omissions

The Feingold/Dazzo Omissions constitute the final category of alleged material misrepresentations in the PPM and Operating Agreement. As an initial matter, there is no indication that the L3 Fund, rather than the Cardinale Defendants, were responsible for the purported omissions set forth in the PPM Operating Agreement. Rather, it appears, after drawing all reasonable inferences and viewing the allegations in a light most favorable to plaintiffs, that the FAC is attributing these purported omissions primarily to the Cardinale Defendants (namely Cardinale). The cause of action therefore cannot, as alleged, be maintained against the L3 Fund.

Nevertheless, accepting allegations in the complaint as true and drawing all reasonable inferences in plaintiffs’ favor, the FAC states plausible claim for relief related to the Feingold/Dazzo Omissions. According to the FAC, Feingold and Dazzo were materially important individuals to the L3 Fund—as particularly evidenced by the impact of their resignation from the Alternative Global Companies on the L3 Fund’s finance, as well as their current possession of the L3 Fund’s corporate books and records (*see* FAC ¶¶ 49-54). And as plaintiffs put it, they would not have invested in the L3 Fund had they known of Feingold and Dazzo’s involvement (*see id.* ¶¶ 69, 93). Given these allegations, the FAC supports a reasonable conclusion and inference that Feingold and Dazzo’s involvement with the L3 Fund was a material fact that was omitted from the PPM or Operating Agreement and that the Cardinale Defendants, based on their knowledge of existing facts and position and control within the L3 Fund, had a duty to disclose Feingold and Dazzo’s extensive involvement (as well as the existence of the Alternative Global Companies) to investors to allow them to make an informed investment decision (*see, e.g., CRT*

<sup>6</sup> Insofar as plaintiffs are claiming that the PPM and Operating Agreement omitted that funds were being raised for real estate investments, the Operating Agreement plainly states that L3 Fund would focus its investment on “income producing companies in the alternative financial services industry or *such other industries as determined by the Manager in its sole discretion*” (*id.* § 2.4 [emphasis added]).

*Invs., Ltd. v Merkin*, 29 Misc3d 1218[A], at \*8 [Sup Ct, NY County, 2010] [holding that complaint adequately alleged omission where defendants purportedly “concealed and failed to disclose” the role of a non-party and misrepresented defendant’s role in the fund management]).

To avoid this conclusion, the Cardinale Defendants contend that plaintiffs failed to sufficiently plead the reliance element because they now want the L3 Fund to accept Broadstreet’s offer to take over management of the L3 Fund (Cardinale Defts MOL at 13). The court disagrees. In general, to show reliance, a party must demonstrate that it was induced to act or refrain from acting to its detriment by virtue of the alleged misrepresentation or omission (*see Shea v Hambros PLC*, 244 AD2d 39, 46-47 [1st Dept 1998]). This issue, however, is often a question of fact that is not amenable to resolution on a motion to dismiss (*see Knight Sec., LP v Fiduciary Trust Co.*, 5 AD3d 172, 173 [1st Dept 2004]). Here, it is true that plaintiffs have alleged that they fault Cardinale for rejecting a proposal by Broadstreet—an entity controlled by Feingold and Dazzo—to take over as Manager of the L3 Fund (*see* FAC ¶¶ 10-15). But this fact at most raises a question of fact as to whether the disclosure/omission of Feingold and Dazzo’s involvement in the L3 Fund would have impacted plaintiffs’ investment decisions. In sum, the motion to dismiss plaintiffs’ common law claims premised on the Feingold/Dazzo Omissions as against the Cardinale Defendants is denied.

\* \* \*

For the foregoing reasons, plaintiffs have failed to sufficiently plead a claim for common law fraud against any of the defendants related to the Cardinale Misrepresentations and Conflict Omissions. However, because the FAC sufficiently alleges a claim for common law fraud related to the Feingold/Dazzo Omissions as against the Cardinale Defendants, dismissal of this claim is not warranted. The Feingold/Dazzo Omissions claim, however, is dismissed as against the L3 Fund, without prejudice. The motions to dismiss plaintiffs’ First Cause of Action are therefore granted in part and denied in part.

## II. Breach of Contract (Second Cause of Action)

Under New York law, to plead a cause of action for breach of contract, a plaintiff must allege that (1) a contract exists, (2) plaintiff performed under the contract, (3) defendant breached its contractual obligations, and (4) defendant’s breach resulted in damages (*34-06-73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]). Here, although it is scattershot in nature, the FAC appears to assert three categories of contractual breaches against defendants: (1) misconduct and mismanagement of the L3 Fund’s assets, including the purported failure to account for \$73 million; (2) failure to honor plaintiff’s redemption requests; and (3) failure to manage, record keep, and disclose financial statements to plaintiffs (FAC ¶¶ 70-84, 99-100).

At the outset, although plaintiffs summarily assert that defendants breached the PPM (*see* FAC ¶ 99), there are no non-conclusory allegations in FAC detailing any provisions of the PPM—beyond those already encompassed by the Operating Agreement—that were purportedly breached, nor does the FAC who engaged in the breaching conduct.<sup>7</sup> Thus, to the extent plaintiffs attempt to maintain a breach of contract claim related to the PPM, that claim is dismissed without prejudice.

Meanwhile, neither Cardinale nor L3 Advisors are parties to the Operating Agreement, as Cardinale did not sign in his individual capacity and, as alleged by plaintiffs, L3 Advisors was replaced by L3 Management. Indeed, the only signatories to the Operating Agreement are L3 Management and the L3 Fund's Members (*see* OA at 1, 53). Given these facts, plaintiffs' breach of contract claim is necessarily dismissed as against Cardinale in his individual capacity and L3 Advisors (*see Balk v 125 W. 92nd St. Corp.*, 24 AD3d 193, 193-194 [1st Dept 2005] ["Since the individual defendants are not signatories to the proprietary lease, the only agreement specifically identified by plaintiffs, no cause of action for breach of contract can be asserted against them"]).

Having dispensed with these initial pleading deficiencies, the court turns to the substantive breach of contract allegations against L3 Management and the L3 Fund. The first purported breach is premised on alleged "misconduct and mismanagement of the L3 Fund's assets" (FAC ¶ 100).<sup>8</sup> On this point, plaintiffs mainly focus on Cardinale's apparent failure to account for \$73 million (including the fact that \$25 million is purportedly missing) (*see id.* ¶¶ 54, 101). These contentions, however, are largely conclusory and speculative in nature and are seemingly contradicted, at least in part, by the FAC's allegation that "Cardinale has admitted that \$50,000,000.00 of [these funds] went to an MCA portfolio" and that \$25 million was invested with the Alternative Global Companies (*id.* ¶¶ 16, 53, 101).<sup>9</sup> Plaintiffs separately allege that Cardinale mismanaged the L3 Fund's monies by funding of litigation against Feingold and Dazzo that relates to, in part, conduct impacting the L3 Fund and rejecting Broadstreet's offer to pay the L3 Fund's investors and take over management of the L3 Fund (FAC ¶¶ 10-14, 52, 57, 82-83). But on this particular set of allegations, the FAC fails to offer any non-conclusory

<sup>7</sup> In a single paragraph, plaintiffs contend that Cardinale was overpaid for his services based on the nature of certain representations in the PPM (*see* FAC ¶ 79). But plaintiffs fail to allege, beyond bald conjecture, how, if at all, this breached the PPM was breached or who engaged in the breaching conduct (if any). The other reference to an apparent "breach" of the PPM is premised on its representation that the L3 Fund will provide annual audited financial statements and quarterly reports (*id.* ¶ 71). However, this representation relates to a contractual obligation provided for by the Operating Agreement, not the PPM.

<sup>8</sup> Plaintiffs allege no facts indicating how, if at all, the L3 Fund breached the Operating Agreement with respect to these allegations.

<sup>9</sup> Plaintiffs also claim that the L3 Fund paid management fees for services that were not provided. But the FAC fails to provide any support for this assertion made "upon information and belief" (*see 501 Fifth Ave. Co. LLC v Alvona LLC*, 110 AD3d 494, 494 [1st Dept 2013] [affirming dismissal of claim supported by conclusory allegations even when pleaded "upon information and belief"]).

allegations that establish that Cardinale (through L3 Management) took actions that were contrary to L3 Management's broad discretion "to carry on the business of the [L3 Fund]" (OA § 5.1.1).

It is, of course, certainly possible that plaintiffs could, with more specific and coherent facts, establish a breach of the Operating Agreement stemming from an alleged mismanagement and misappropriation. But the FAC, as currently drafted, is woefully deficient in setting forth such a claim. Because nothing currently alleged in the FAC supports a reasonable conclusion or inference that L3 Management (or any other defendant for that matter) breached the Operating Agreement through "misconduct and mismanagement of the L3 Fund's assets," this claim must be dismissed.

The next breach appears to be based on the fact that plaintiffs have not yet received their redemption requests submitted to the L3 Fund (FAC ¶ 73). But, as defendants note, the Operating Agreement is clear that redemption requests will be "honored by the Company on a Withdrawal Date only to the extent of the Available Cash on hand, as determined by the Manager in its sole discretion" (OA § 7.5.1). To get around this provision, plaintiffs contend that L3 Fund fulfilled redemptions to certain members who made their requests after other members in breach of the Liquidity Queue and Vintage Group provisions of the Operating Agreement (FAC ¶ 73). Yet plaintiffs notably fail to allege when their individual requests were made or when they understood that other redemption requests had been fulfilled. Rather, they baldly assert, upon information and belief but without any other explanation, that they were among the Members who were skipped over by the L3 Fund when providing redemptions to other certain members (*id.* ¶ 103). Such threadbare assertions are plainly insufficient to maintain a breach of contract claim. As nothing in the FAC otherwise sufficiently alleges, or even supports a reasonable inference, that L3 Management abused its discretion in determining how or when to honor plaintiffs' redemption requests, plaintiffs have failed to state a breach of contract claim related to the L3 Fund's failure to fulfill plaintiffs' redemption requests.<sup>10</sup>

The final breach alleged in the FAC relates to L3 Management's failure to "prepare and mail to each Member [audited] financial statements of the Company" and "quarterly updates," both of which are required under Section 12.2 of the Operating Agreement (*see* FAC ¶¶ 70, 72, 75-77, 102). The reason for this failure, the FAC alleges, is that the L3 Fund's books and records are not in Cardinale's possession (*id.* ¶ 77). And this is apparently because, as Cardinale testified, Feingold and Dazzo retained possession these records after resigning from the Alternative Global Companies (*see id.* ¶¶ 17-18; NYSCEF # 35 at tr 68:9-69:21).

<sup>10</sup> Plaintiffs again allege no facts indicating how, if at all, the L3 Fund breached the Operating Agreement with respect to these allegations.

Pointing to these facts, the Cardinale Defendants contend that plaintiffs have failed to state a plausible breach of Section 12.2 by L3 Management because it has an “alleged justification” for its “failure/inability to provide 2022 audited financial statements and quarterly updates” (Cardinale Defts MOL at 18; Cardinale Defts Reply at 6). Section 12.2 does not, however, provide for any conditions to the requirement that financial statements and quarterly reports be provided by the L3 Fund (OA § 12.2). Rather, this section clearly states that these reports shall be provided “[a]s soon as reasonably practicable *and in all events within one hundred twenty (120) calendar days after the end of each Fiscal Year*” (*id.* [emphasis added]). And it imposes this requirement on both the L3 Fund and L3 Management (*see id.* [noting that “the Company shall prepare and mail to each member financial statements” and that “[t]he Manager shall cause the Company . . . to prepare and send to each Member quarterly updates”). Because plaintiffs allege that, to date, they have not received these materials, they have stated a plausible claim that L3 Management and/or the L3 Fund breached Section 12.2 of the Operating Agreement.

\* \* \*

In sum, defendants’ motion to dismiss plaintiffs’ breach of contract claim is granted in part and denied in part. Specifically, plaintiffs’ breach of contract claim is dismissed as against Cardinale and L3 Advisors as neither is a signatory to the PPM or the Operating Agreement. Meanwhile, plaintiffs’ breach of contract claim is dismissed without prejudice against L3 Management and the L3 Fund as it relates to any alleged misconduct or mismanagement, or failure to honor redemption requests. But plaintiffs’ breach of contract claim will proceed against L3 Management and the L3 Fund as to the alleged breach of Section 12.2 of the Operating Agreement.

### **III. Remaining Claims (Third through Eighth Causes of Action)**

Beyond their claims for common law fraud and breach of contract, plaintiffs also assert causes of action for breach of fiduciary duty, negligence, constructive trust, unjust enrichment, and conversion (*see* FAC ¶¶ 107-130, 136-151). A careful review of the allegations underlying these claims makes it clear that they are ultimately based on the same conduct underlying plaintiffs’ common law fraud and/or breach of contract claims and largely seek the same exact damages or nature of remedies (*compare id.* ¶¶ 85-106 *with id.* ¶¶ 107-130, 136-151 & Prayer for Relief). Therefore, each of these claims are dismissed as duplicative (*see Ullmann-Schneider v Lacher & Lovell-Taylor, P.C.*, 121 AD3d 415, 416 [1st Dept 2014] [dismissing claims for breach of fiduciary duty and unjust enrichment as duplicative when based on the same allegations and seeking the same damages as the breach of contract claim]; *Goldin v TAG Virgin Is., Inc.*, 149 AD3d 467, 467-68 [1st Dept 2017] [concluding that breach of fiduciary claim not duplicative of fraud claim where claim was based on “particular acts different from the alleged fraudulent acts”];

*ABL Advisor LLC v Peck*, 147 AD3d 689, 691 [1st Dept 2017] [dismissing conversion claim as duplicative of breach of contract claim]; *Duane Reade v SL Green Operating Partnership, LP*, 30 AD3d 189, 190 [1st Dept 2006] [holding that “a tort cause of action that is based upon the same facts underlying a contract claim will be dismissed as a mere duplication of the contract cause of action”]; *Ashley MRI Mgt. Corp. v Perkes*, 12 Misc 3d 1185[A], at \*3 [Sup Ct, Nassau Cty, 2006] [dismissing constructive trust claim because it was duplicative of breach of contract claim and plaintiff failed to plead a distinct harm giving rise to the claim]; *Unitel Telecard Distrib. Corp. v Nunez*, 90 AD3d 568, 569 [1st Dept 2011] [explaining that “[t]o be entitled to an equitable accounting, a claimant must demonstrate that [it] has no adequate remedy at law”]; *Banks v Correctional Servs. Corp.*, 475 F Supp 2d 189, 202 [ED NY 2007] [“Because Plaintiff has sought money damages in his breach of contract claim, and because discovery as to the measure of damages would be available to him if he were to prevail on that claim, he can obtain all the information he seeks in his existing claim at law. Accordingly, no purpose would be served by treating Plaintiff’s equitable accounting claim as an additional, and duplicative, action at law. Defendants’ motions to dismiss Plaintiff’s claim for an accounting are granted”)].

Plaintiffs’ cause of action for a preliminary and permanent injunction is likewise subject to dismissal (*see* FAC ¶¶ 131-135). Indeed, an injunction “is a remedy for an underlying wrong, not a cause of action” (*Talking Capital LLC v Omanoff*, 169 AD3d 423, 424 [1st Dept 2019]).

### **Conclusion**

For the foregoing reasons, it is hereby,

ORDERED that defendants Richard Cardinale, L3 Capital Management LLC, and L3 Capital Advisors, LLC’s motion to dismiss (MS004) is (1) denied as to (a) plaintiffs’ First Cause of Action for Common Law Fraud regarding the Feingold/Dazzo Omissions and (b) plaintiffs’ Second Cause of Action for Breach of Contract regarding the alleged breach of Section 12.2 of the Operating Agreement and (2) granted insofar as dismissing the remainder of the First and Second Causes of Action and the Third through Eighth Causes of Action; and it is further

ORDERED that defendant Robert L. Giardina’s motion to dismiss (MS005) is granted in its entirety; and it is further

ORDERED that defendant L3 Capital Income Fund, LLC’s motion to dismiss (MS006) is denied as to plaintiffs’ Second Cause of Action for Breach of Contract regarding the alleged breach of Section 12.2 of the Operating Agreement and granted insofar as dismissing the remainder of the Second Cause of Action and the First and Third through Eighth Causes of Action; and it is further

ORDERED that within 30 days of the e-filing of this order, defendants Cardinale, L3 Capital Income Fund, LLC, L3-Capital Management LLC, and L3 Capital Advisors, LLC shall file an answer to plaintiffs' First Amended Complaint; and it is further

ORDERED that a preliminary conference shall be held via Microsoft Teams on July 31, 2024, at 2:30 p.m. or at such other time that the parties shall set with the court's law clerk, provided, however, that the parties shall first meet and confer to determine if there is agreement to stipulate to a preliminary conference order, available at <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/part49-PC-Order-fillable.pdf>.

ORDERED that counsel for plaintiffs shall serve a copy of this decision, along with notice of entry, on the remaining defendants within ten days of this filing

This constitutes the Decision and Order of the court.

06/13/2024  
DATE

  
MARGARET A. CHAN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE