

Link Motion Inc. v DLA Piper LLP (US)

2025 NY Slip Op 30568(U)

February 14, 2025

Supreme Court, New York County

Docket Number: Index No. 653322/2022

Judge: Andrew Borrok

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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LINK MOTION INC.,

Plaintiff,

- v -

DLA PIPER LLP (US), CARYN G. SCHECHTMAN

Defendant.

INDEX NO. 653322/2022

MOTION DATE 10/07/2024,
10/07/2024,
10/27/2024

MOTION SEQ. NO. 003 004 005

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 63, 73, 74, 75, 93, 97, 99

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 94, 98, 100

were read on this motion to/for SANCTIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 65, 66, 67, 68, 69, 70, 71, 72, 91, 92, 95, 96

were read on this motion to/for STAY.

Upon the foregoing documents as discussed on the record (*trs.* 2.6.25, 2.14.25) and for the reasons set forth below, the question is not whether DLA Piper LLP (US) and Caryn G. Schechtman (collectively, **DLA**)’s motion (Mtn. Seq. No. 003) to dismiss the Amended Complaint (the **AC**; NYSCEF Doc. No. 29) should be GRANTED. There is no question that under New York law, it must be. The crucial issue is only whether the branch of DLA’s motion (Mtn. Seq. No. 004) seeking sanctions against Link Motion Inc. (**Link Motion**) under Rule 130-1.1 should be granted. Two federal jurists have answered this question affirmatively under Rule 11. Upon further review after oral argument and following the additional questions asked of

Link Motion (*tr.* 2.14.25), this Court is compelled to grant the branch of the motion seeking reasonable attorney's fees and costs in having to defend this litigation. Simply put, it would be an improvident exercise of discretion not to award sanctions under the circumstances (*see Ray v Ray*, 232 AD3d 497, 499 [1st Dept 2024]).

For the avoidance of doubt, DLA's motion (Mtn. Seq. No. 005) to stay discovery is DENIED as moot.

THE RELEVANT FACTS AND CIRCUMSTANCES

This is an alleged legal malpractice case where two federal courts, in looking at the allegations, found them to be not only without merit, but also worthy of sanctions.

In a Report and Recommendation, dated July 28, 2023, United States Magistrate Judge for the Southern District of New York, the Hon. Valerie Figueredo, recommended that sanctions be granted against China AI Capital Limited (**China AI**) for filing a frivolous legal malpractice claim against DLA on behalf of Link Motion relating to DLA's representation of Link Motion in a related shareholder derivative action, *Baliga v Link Motion Inc., et al.*, No. 1:18-cv-11642 (SDNY) (the **Baliga Action**):

BACKGROUND

A. Factual Background

Plaintiff filed this legal-malpractice, shareholder-derivative complaint, on behalf of Link Motion Inc. ("Link Motion"), on December 20, 2021. *See* ECF No. 1 ("Compl.") ¶¶ 1-2. The legal-malpractice allegations in the Complaint relate to conduct by Defendants that occurred in a separate lawsuit filed by Wayne Baliga against Link Motion and several of its officers and directors, including Dr. Vincent Wenyong Shi ("Shi"). *See* ECF No. 1 ¶¶ 1-2, No. 18-CV-11642. Baliga commenced his suit on December 13, 2018, alleging that Shi and others were looting the company of its most valuable assets and seeking the appointment

of an independent receiver to prevent further dissipation of the company's assets. Id. ¶¶ 15-22, 31, 37. That same day, Baliga notified Schechtman and DLA Piper via e-mail of the filing of the complaint and of Baliga's intent to file an Order to Show Cause (“OSC”) the next day, seeking a Temporary Restraining Order (“TRO”). See ECF No. 37-1; Compl. ¶ 50. On December 13, Schechtman forwarded the e-mail from Baliga's counsel to Shi and another Link Motion director, asking them to “[p]lease instruct DLA if you would like us to respond.” ECF No. 37-1 at 2. Schechtman also stated that they “should have a call immediately to discuss—as action will be taking place tomorrow,” and she added that “DLA has still not received a retainer so we would need to receive that as well.” Id. Later that same day, Schechtman followed up, asking Shi, “[d]id you see the lawsuit that was filed. They are going into court in 12 hours to get a restraining order against the company.” ECF No. 37-2 at 5. The next day, December 14, Schechtman asked Dr. Shi, “Do you want me to send an associate?” Id. at 4. Shi responded, “OK, thanks.” Id. Schechtman subsequently told Shi in an e-mail that DLA Piper would “send an associate to Court in 12 hours to advise the Court that we have received no instruction from the Company due to the time difference and language barriers. It is possible that the Court will grant the application anyway.” See ECF No. 37-3 at 2. Schechtman added, “How would you like us to handle?” Id.

On December 14, Baliga filed an OSC, seeking a TRO. See ECF No. 7, No. 18-CV-11642; see also Compl. ¶ 48. Defendants appeared on behalf of Link Motion at the hearing before the Court. Compl. ¶¶ 52, 58. On December 14, the Court entered a TRO, restraining and enjoining Link Motion, Dr. Shi, and the other defendants, from liquidating, transferring, or dissipating any assets of the company. ECF No. 7, No. 18-CV-11642.

On December 17, Schechtman reached out to Shi in a text message stating, “Vincent we need to discuss how the company wants us to handle the derivative action”—referring to the Baliga action. See ECF No. 37-2 at 5. The next day, December 18, Schechtman again contacted Shi via text message stating, “We have to discuss the derivative action. We need to enter a scheduling order on Friday US.” Id. On December 20, Schechtman pressed Shi via text message to “bring us current on invoices”—presumably referring to fees owed for work previously performed by DLA Piper for Link Motion. Id. at 4.

On December 21, 2018, the parties in the Baliga action filed a joint letter, notifying the Court of Link Motion's agreement to extend the TRO and requesting a deadline of January 21, 2019, to respond to Baliga's motion for a preliminary injunction. See ECF No. 20, No. 18-CV-11642. Schechtman signed the joint letter as “Counsel for Defendant, Link Motion Inc.” Id. at 2.

On December 28, 2018, Schechtman sent Shi a text message explaining that DLA Piper could not “open up a litigation matter” without “payment on outstanding invoices.” See ECF No. 37-2 at 3. On January 6, 2019, Schechtman warned Shi

via text message, “[W]e won't be able to draft the briefs that are due on [t]he 21st”—referencing the brief that needed to be filed on behalf of Link Motion if the company wanted to oppose Baliga's motion for a preliminary injunction. Id. Schechtman explained that “we can't open the matter as we have not received the retainer and we are not up to date on payment.” Id. The next day, January 7, Schechtman sent Shi a text message, asking when they could “speak” and explaining to Shi that “the insurance policy has a 2.5 million dollar retention which means it won't kick in until the company has paid 2.5 million toward legal fees on the claim.” Id. Later on January 7, Schechtman again asked Shi, “Can we speak?” Id. On January 8 and January 10, Schechtman again followed up with Shi in text messages, both times asking for an opportunity to speak to Shi. Id. On January 14, 2019, Schechtman asked Shi, “When can we speak.” Id. Schechtman informed Shi that she “need[ed] to let the other side and the court know what we are doing. We have to start drafting today. It's one week out”—referring again to the need to file briefing in opposition to Baliga's preliminary injunction motion. Id.

On January 14, 2019, DLA Piper sent an e-mail to Shi and the Link Motion Board, written in English and Mandarin, stating that the opposition to Baliga's motion for a preliminary injunction and appointment of a receiver was due on January 21, 2019. See ECF No. 37-4 at 3. The e-mail explained, “If we do nothing, the motion may be granted, which may include such relief as appointing a receiver over the company and a preliminary injunction restricting the Company from transferring assets.” Id. at 3. The e-mail further explained, “We have repeatedly asked for instruction on how to proceed but have not received any guidance from the Company or the individual defendants and advised that if we do not receive payment for legal services, we cannot take on this litigation matter.” Id. at 4.

The next day, January 15, Schechtman sent another text message to Shi stating, “If I do not hear from you in 24 hours I will need to alert the Court that we have not been engaged to proceed further on the Company's behalf.” See ECF No. 37-2 at 3. On January 17, Schechtman again contacted Shi via text message stating, “I have not heard from you. We have not prepared briefs and will not be in a position to represent the company in the derivative action.” Id. Later that same day, Schechtman told Shi, “Can you give me a quick call. I want to avoid withdrawing as Counsel on the derivative action because it will look bad for the company. Instead I would prefer for the company to agree that it isn't submitting papers on Jan 21.” Id. A few hours later, Schechtman again reached out to Shi via text message stating, “We must speak. When can you talk?,” adding, “I need you to confirm that we can tell the court you aren't responding.” Id. at 2.

On January 18, 2019, DLA Piper followed-up on its e-mail from January 14, forwarding the prior email in its new communication with the company. See ECF No. 37-4. In an e-mail to Shi and the Link Motion Board, written in both English

and Mandarin, DLA Piper indicated that it had “not heard back from [the company]” regarding the January 14th e-mail. Id. at 2. The email continued:

[I]f we do not hear back from you within 24 hours, DLA will assume that we have Link Motion's consent not to oppose the motion [for a preliminary injunction]. As explained below [(referencing the January 14 e-mail)], we reiterate that if Link Motion does not respond, the motion may be granted, which may include such relief as appointing a receiver over the company and a preliminary injunction restricting the Company from transferring assets, attorneys' fees and cost, and other such relief that the Court may deem appropriate. It may also include relief as to Plaintiff's request for an order requiring the Defendants to restore all assets transferred to third parties within the past ninety days. It may include other relief as well. Further, if we do not hear back from you within 24 hours, we will also assume that we have Link Motion's consent to withdraw from representation.

Id. The e-mail further stated that if the company did not respond, DLA Piper would notify the Court that the company would not be submitting an opposition to Baliga's motion for a preliminary injunction and appointment of a temporary receiver. Id.

On January 19, 2019, Schechtman sent a text message to Shi, asking him to call her and stating that they “need[ed] to speak.” See ECF No. 37-2 at 2. Separately, Schechtman contacted Crystal Zhanglu, a Senior Legal Manager at Link Motion, via text message and said: “Crystal it is important that I speak with you and Vincent as soon as possible. When can we speak.” Id. at 5. On January 20, Schechtman continued her efforts to speak with Shi, asking Shi via text message: “[Y]ou owe me the courtesy of a call. Please call me.” Id. at 2. Later on January 20, Schechtman asked Shi: “Do you want us to do the answer. We will need some payment. Otherwise I'm not sure what to recommend. You don't want a default judgment entered. Answers are not that expensive.” Id. About an hour later, Schechtman sent another text message asking Shi, “I would like your consent for us to withdraw as your counsel from the litigation if you determine not to pay us to go forward.” Id. Schechtman then told Shi, “I am trying to do what is best for the company but we cannot work for no payment.” Id. On January 21, 2019, Schechtman asked Shi via text message to please “respond” and stated that “[t]he other option is we also withdraw as Counsel now.” Id. Shi responded to Schechtman in a text message stating that he “fully respect[ed] and appreciate[d] [her] excellent work.” Id. Shi explained that, “at this moment, it's very hard to make any further payment arrangement, even employees' payrolls were impacted. I'm very sorry about this situation and also bear huge pressure from many parties.” Id.

On January 21, 2019, Baliga and Link Motion filed a joint stipulation, whereby Link Motion agreed not to oppose the entry of a preliminary injunction and

obtained an extension of time to answer or otherwise respond to the complaint. See ECF No. 22, No. 18-CV-11642. In the stipulation, DLA Piper represented that it was acting as “Counsel for Defendant Link Motion Inc.” Id. at 3. On February 1, 2019, the Court entered an order granting Baliga's motion for a preliminary injunction and appointing a Receiver. See ECF No. 26, No. 18-CV-11642.

On March 1, 2019, Defendants moved for leave to withdraw as counsel for Link Motion. See ECF No. 28, No. 18-CV-11642. In a letter to the Court, Schechtman explained that DLA Piper sought to withdraw as counsel, because Link Motion “has been unable to pay DLA's legal fees and has represented that it cannot do so at this time,” and “has not cooperated in its representation by failing to respond to inquiries.” Id. at 1. Schechtman elaborated that Link Motion “had failed to pay outstanding and overdue legal fees owed to DLA despite repeated requests to pay.” Id. at 3. Schechtman explained that the firm had “appeared in this action after [Baliga] filed [his] Complaint and [Order to Show Cause] in order to protect Link Motion's immediate interest in the emergency filing and to allow Link Motion the opportunity to determine whether to contest the matter.” Id. Schechtman added that “Link Motion ha[d] failed to cooperate in the representation by failing to respond to inquiries, thus making the representation unreasonably difficult for DLA to carry out its representation effectively.” Id. The Court granted Defendants’ request to withdraw on March 1. See id. at 4; see also Compl. ¶ 82.

Following DLA Piper's withdrawal as counsel on March 1, 2019, Shi retained new counsel, and counsel filed a motion to dismiss and to discharge the Receiver on March 27, 2019. See ECF Nos. 35-37, No. 18-CV-11642. On March 29, 2019, the Court held a conference, at which counsel for Shi was present, and where counsel for Baliga indicated that Baliga was not a registered shareholder because he held Link Motion American Depository shares (“ADS”). See ECF No. 41 at 19, No. 18-CV-11642. In Shi's motion to dismiss, his new counsel did not argue that Baliga lacked standing to bring his claims because he was a holder of ADS. See ECF No. 37 at 12-21, No. 18-CV-11642.

On March 19, 2020, the Receiver notified the Court that he had obtained a copy of an arbitration award, which was issued relating to an arbitration filed by Tongfang Investment Fund Series SPC (“Tongfang”) in April 2019 against Link Motion (the “Tongfang Arbitration Award”). See ECF No. 269 at 1, No. 18-CV-11642. According to that award, Tongfang obtained damages of 2.52 billion RMB (approximately \$400 million) against Link Motion. Id. The award indicated that Link Motion was not “legally represented in this arbitration.” Id. Instead, the company “opted not to submit any document” and “did not file any Statement of Defence [sic].” Id. at 2. Further, the award noted that Shi, in an e-mail from May 5, 2019, “confirmed to [the arbitration tribunal] that he was acting on behalf of [the company].” Id. at 1-2.

B. Procedural Background

1. China AI's derivative legal-malpractice suit against Defendants

Plaintiff commenced this derivative, legal-malpractice action on behalf of Link Motion on December 20, 2021. See Compl. ¶¶ 1-2. In its complaint, Plaintiff alleges that Defendants acted as counsel for Link Motion in the Baliga action. See, e.g., id. ¶¶ 4, 58-59. According to Plaintiff, Baliga lacked standing to bring a derivative claim on behalf of Link Motion under the laws of the Cayman Islands, because he was a holder of ADS and thus not a “registered owner[] of shares.” Id. ¶¶ 41, 44-46. Plaintiff alleges that Defendants, at the time of the TRO hearing on December 14, “knew or should have known that Baliga was not a registered shareholder and, therefore, lacked standing ... to bring the derivative action.” Id. ¶ 53. And because Baliga lacked standing, Plaintiff contends that Defendants should have known that the Court lacked jurisdiction to grant any provisional equitable relief. Id. ¶ 54.

Plaintiff avers that it did not receive advice from Defendants concerning Link Motion's “defense based on Baliga's lack of standing.” Id. ¶¶ 69-71, 77-80. According to Plaintiff, Defendants’ “failure to recognize Baliga's fundamental lack of standing and to assert that lack of standing as a defense to the Baliga Action” amounted to professional malpractice which was the but-for cause of Link Motion's damages. See id. ¶¶ 7, 55, 83, 85-94. Those purported damages flow, in part, from an arbitration involving Link Motion and Tongfang, which, according to Plaintiff, ultimately resulted in Link Motion losing one of its “most valuable assets at the time.” See, e.g., id. ¶¶ 8, 65, 81, 85-91, 113.

At the time Baliga commenced his derivative lawsuit, Link Motion was a party to a Share Purchase Agreement (“SPA”) with Tongfang. Id. ¶¶ 61-62. Pursuant to that SPA, Link Motion was required to transfer shares of FL Mobile, one of Link Motion's legacy businesses, to Tongfang. Id. ¶ 62. According to the Complaint, the “SPA was executory: Tongfang SPC had already conveyed to [Link Motion] consideration for the transaction,” but Link Motion's obligation to transfer the FL Mobile shares to Tongfang had not yet been triggered. Id. ¶¶ 63-64. However, because of the TRO, Plaintiff contends that Link Motion was “restrained from performing its obligations to cause the transfer of FL Mobile shares [to Tongfang] in accordance with the SPA.” Id. ¶¶ 65, 85. Plaintiff alleges that because Link Motion failed to transfer the FL Mobile shares, Tongfang commenced an arbitration proceeding against Link Motion and the arbitration resulted in the Tongfang Arbitration Award of approximately \$396,000,000 against Link Motion. Id. ¶¶ 87-88. Further, Plaintiff claims that Link Motion's “inability to complete the transfer of FL Mobile” also resulted in the company losing the value it had ascribed to the Tongfang Transaction—a “deferred net gain” of \$180,400,000. See id. ¶¶ 90, 113.

On September 6, 2022, Plaintiff filed a notice of voluntary dismissal without prejudice under Federal Rules of Civil Procedure 41(a)(1)(A) and 23.1. See ECF No. 22. Because Rule 23.1(c) requires that notice of a voluntary dismissal of a

derivative action be given to other shareholders, the Court required Plaintiff to file a proposed notice, for the Court's review and approval. See ECF No. 28. On September 19, 2022, Plaintiff submitted its proposed notice. See ECF No. 30. On September 26, 2022, Defendants raised several objections to the proposed notice submitted by Plaintiff. See ECF No. 34. On September 26, 2022, Defendants filed the instant motion for sanctions under Rule 11. See ECF No. 35. On October 3, 2022, the motion for sanctions and approval of the notice to shareholders was referred to the undersigned for issuance of a Report and Recommendation. See ECF No. 38.

2. Link Motion's direct legal-malpractice suit against Defendants

On September 12, 2022, Link Motion commenced an action in the Supreme Court of New York against Defendants, asserting a legal-malpractice claim arising out of Defendants' conduct in the Baliga action that was "the mirror-image" of the malpractice suit brought by Plaintiff here. See No. 22-CV-8313 (ECF No. 1 at ¶¶ 1-2; ECF No. 1-1 at ¶¶ 1-2, 4, 30-31; ECF No. 24 at 20). Defendants removed that action to this Court on September 29, 2022. See ECF No. 1, No. 22-CV-8313. On May 26, 2023, the Honorable Victor Marrero issued an order holding that Link Motion's legal-malpractice claim was time barred and granting Defendants' motion to dismiss the complaint with prejudice. See ECF No. 30, No. 22-CV-8313.

On May 30, 2023, Plaintiff submitted a letter, seeking to adjourn a conference in the instant case, which was scheduled to address the pending motion for approval of Plaintiff's proposed notice to shareholders. See ECF No. 47. Counsel for Plaintiff contended that, given the dismissal of Link Motion's direct legal-malpractice action by Judge Marrero, Plaintiff now had the right to withdraw its notice of voluntary dismissal in this action and seek leave to amend the complaint. Id. at 1. Counsel requested an adjournment of the conference in order to discuss with Plaintiff its options going forward. Id. at 2. At the conference, which proceeded as scheduled on June 1, Defendants argued that the derivative action must be dismissed, because Link Motion had directly asserted its legal-malpractice claim and the claim was dismissed on the merits. See ECF No. 51 ("Tr.") at 4-6, 8-10.

Following the conference, Defendants submitted a letter brief, again arguing that Plaintiff's derivative action must be dismissed because Link Motion asserted its claim directly and dismissal of that claim on the merits barred Plaintiff's derivative action. See ECF No. 50 at 1-2. Plaintiff also submitted a letter, contending that a stay of the instant action was appropriate while Link Motion awaited a decision by Judge Marrero on its pending motion for reconsideration of the May 26 order. See ECF No. 49 at 2. Alternatively, Plaintiff argued that it should be allowed to withdraw its notice of voluntary dismissal and be permitted to amend its complaint. Id. at 2-3. Lastly, Plaintiff contended that claim preclusion typically applied to bar a later filed case, whereas Plaintiff filed its claim first, before Link Motion. Id. at 1.

DISCUSSION

. . . .

B. Rule 11 Sanctions Are Warranted

Defendants advance three grounds in support of their request for sanctions against Plaintiff and its counsel. See ECF No. 36. First, Defendants contend that Plaintiff and its counsel violated Rule 11(b)(3), because they knowingly made false allegations in the Complaint. *Id.* at 20-23. More specifically, Defendants argue that Link Motion's public statements indicated that the Tongfang Transaction closed in December 2017, a year before Baliga filed his complaint in December 2018, and therefore the shares in FL Mobile were transferred to Tongfang long before the appointment of the Receiver. *Id.* at 21-22. ***In other words, Defendants aver that the appointment of the Receiver could not (and did not) prevent the transfer of FL Mobile shares from Link Motion to Tongfang, notwithstanding Plaintiff's allegations to the contrary in the Complaint.*** See, e.g., Compl. ¶¶ 62-65, 85-87, 91.

Second, Defendants argue that Plaintiff and its counsel also violated Rule 11(b)(2), because the legal-malpractice claim is frivolous. ECF No. 36 at 25-30. Defendants contend that Plaintiff will be unable to establish multiple elements of its claim, including that Defendants actions or inactions were the but-for cause of Link Motion's damages. *Id.* at 26-27. Additionally, Defendants aver that Shi's retention of counsel after DLA Piper withdrew from the Baliga action was an intervening event that defeats causation as a matter of law. *Id.* at 28. Finally, Defendants claim that Plaintiff itself lacks standing to assert this derivative legal-malpractice claim on behalf of Link Motion. *Id.* at 28-29. For all of these reasons, Defendants argue that Plaintiff and its counsel filed a claim that has no chance of success.

Lastly, Defendants contend that Plaintiff and its counsel violated Rule 11(b)(1), because Plaintiff filed the Complaint for an improper purpose. *Id.* at 30. Defendants argue that the only reasonable inference from Plaintiff's decision to continue with its “patently deficient” claim is to harass Defendants and threaten significant reputational harm on the law firm and one of its lawyers. *Id.*

Defendants are correct that sanctions under Rule 11 are appropriate here. In commencing the instant action, neither Plaintiff nor its counsel could have reasonably believed that the allegations in the Complaint—concerning Link Motion's purported inability to transfer the FL Mobile shares because of the appointment of the Receiver—had evidentiary support. Likewise, Plaintiff's legal-malpractice claims suffers from multiple deficiencies that viewed collectively should have led counsel to conclude that the claim had no chance of success. Finally, Defendants raised all of these grounds in a letter to Plaintiff's counsel on March 7, 2022. See ECF No. 16. Plaintiff nevertheless declined to

voluntarily withdraw the action until six months later, in September 2022, see ECF No. 22, but only after Plaintiff's counsel filed a similar lawsuit, this time on behalf of Link Motion, against Defendants in state court. See ECF No. 1, No. 22-CV-8313. Then, after the direct legal-malpractice claim by Link Motion was dismissed with prejudice by Judge Marrero, Plaintiff baselessly argued that it should be permitted to withdraw its voluntary dismissal of this action and amend the Complaint. Simply put, Plaintiff's decision to continue pursuing this legal-malpractice claim against Defendants is objectively unreasonable and can only be viewed as an attempt to harass Defendants and cause reputational harm.

1. Plaintiff made false allegations in its complaint in violation of Rule 11(b)(3). The Complaint alleges that prior to the entry of the TRO, “[w]hat remained to be performed under the SPA was [Link Motion's] obligation to cause the transfer of FL Mobile shares in accordance with the SPA.” Compl. ¶¶ 62-64. ***The Complaint further alleges that the TRO and preliminary injunction “prevented [Link Motion] from satisfying its obligation to non-party Tongfang SPC (causing the transfer of the Company's legacy business, FL Mobile) after Tongfang SPC had already paid [Link Motion] consideration as required by the SPA.” Id. ¶ 85. At the time Plaintiff filed its Complaint, neither Plaintiff nor its counsel could have reasonably believed that those allegations had or were likely to have evidentiary support. See G-I Holdings, Inc. v. Baron & Budd, No. 01-CV-216 (RWS), 2002 WL 1934004, at *13 (S.D.N.Y. 2002). Instead, numerous public filings by Link Motion—made by the company with the SEC—indicate that Link Motion transferred its shares in FL Mobile to Tongfang before Baliga filed his suit in December 2018. And these public filings would have been available to Plaintiff and its counsel before it commenced this action, after a reasonable inquiry into the evidentiary support for the factual allegations in the Complaint.***

For instance, in March 2017, Link Motion announced, in a Form 6-K filing with the SEC, that it had entered into a “definitive agreement[]” to sell its interests in FL Mobile, and another business, to Tongfang. See ECF No. 37-6 at 5; see also ECF No. 37-7 at 4. The SPA, which was entered into on March 30, 2017, provided that the shares in FL Mobile would be transferred to Tongfang upon Tongfang completing its payment obligations. See ECF No. 228-4 at 7, No. 18-CV-11642 (Share Purchase Agreement). In a Form 20-F filed with the SEC for the 2016 fiscal year, Link Motion represented that it had “transferred [its] equity interests in FL Mobile and Showsself (Beijing), while the purchasers still have certain period to complete their payment obligations.” ECF No. 37-7 at 4; see also id. (describing the transfer as a “divestment[]” and discussing the financial “impact of these divestments” to Link Motion). Alongside the SPA, Tongfang and Link Motion executed a Supplemental Agreement on March 31, 2017. See ECF No. 42, ¶¶ 30-31; see also ECF No. 42-10 (Supplemental Agreement). That Supplemental Agreement provided for the ***FL Mobile shares to be held in trust***

by Shi until the “closing” of the SPA—that is, until Tongfang fulfilled its payment obligation. Id. ¶¶ 31-34.

Tongfang completed its payment obligation pursuant to the SPA in December 2017. In December 2017, Link Motion announced a “significant event[],” in a Form 6-K filed with the SEC—namely, the “completion of the FL Mobile Divestment.” ECF No. 37-8 at 6. As is relevant here, the company's filing with the SEC stated:

The Company announced in a press release on December 14, 2017 that it had *completed the divestment of FL Mobile* and sale of Showself's Live Social Video Business. The Company received in aggregate a total of approximately RMB 3,320 million, consisting of approximately RMB 1,550 million in cash and RMB 1,770 million in a senior note, which together *totals 100% of the agreed upon price* pursuant to the definitive agreements with Tongfang Investment Fund Series SPC.

ECF No. 37-8 at 6 (emphasis added). *The filing confirms that Tongfang completed its payment obligations by paying for the shares with cash and a senior note issued to Link Motion for RMB 1,770 million* (the “Tongfang Note”). *Id.*; see also ECF No. 37-9 (Letter to shareholders from Shi explaining that Link Motion received as “total consideration” for the transaction, “RMB 3.32 billion in cash and senior note from Tongfang”). *The Tongfang Note was due to be paid in December 2018. ECF No. 37-8 at 7 (indicating that it was a “one-year senior note” that could be extended “by another 12 months at [Link Motion's] option”). As the company's statement with the SEC makes clear, however, Link Motion received “100% of the agreed upon price pursuant” to the SPA in December 2017, and consequently, Link Motion announced that it had reclassified FL Mobile as “discontinued operations.” Id.* at 5-6.

Consistent with the SEC filing, *Shi subsequently represented to Link Motion's shareholders that the Tongfang Transaction had been completed. Shi, as Chairman of Link Motion, told Link Motion's shareholders in a letter that was publicly filed on February 9, 2018, that the transaction with Tongfang was “completed on December 14, 2017.”* ECF No. 37-9 at 5. And on April 11, 2018, Link Motion, in a Form 6-K filed with the SEC, again reported that it had “[c]ompleted the FL Mobile Divestment,” explaining that the company “recognized \$161.5 million of gain in the fourth quarter and booked \$180.4 million as deferred gain from the disposal of discontinued operations to be recognized when the receivables from the purchasers are collected in future periods.” ECF No. 37-10 at 5. All of these public statements consistently represented to investors and the public that the Tongfang Transaction was complete and that therefore Link Motion had fulfilled its obligation under the SPA to transfer its shares in FL Mobile to Tongfang.

That conclusion is bolstered by the existence of the Equity Pledge Agreement. Tongfang and Link Motion executed an “Equity Pledge Agreement” when Tongfang issued the Tongfang Note. See ECF No. 37-11. That Equity Pledge Agreement gave Link Motion the right to retake ownership of the FL Mobile shares if Tongfang failed to pay the Tongfang Note. Id. at 2-3. In a Form 6-K filed with the SEC on September 10, 2018, Link Motion explained that “[i]n connection with the sale of FL Mobile shares” to Tongfang, “the agreements signed with Tongfang” gives Link Motion “the ability to recover the shares it has sold to Tongfang if Tongfang fails to pay its RMB 1.77 billion senior note delivered in payment for those shares.” ECF No. 37-12 at 6 (emphasis added). And, tellingly, the Equity Pledge Agreement itself states that the “Target Assets”—defined as “63% equity of FL Mobile”—“are held by Party B,” and Party B is defined in the agreement as “Tongfang Investment Fund Series SPC.” See ECF No. 37-11 at 2. In other words, at the time of the Equity Pledge Agreement, the FL Mobile shares were “held by” Tongfang, not Link Motion. Id.

All of these public representations by Link Motion indicate that the transaction with Tongfang was completed in December 2017, and that as a result of that transaction, Link Motion received payment from Tongfang and transferred its shares in FL Mobile to Tongfang. Moreover, there would have been no reason for the Equity Pledge Agreement—allowing Link Motion to recover ownership in FL Mobile shares from Tongfang—if Link Motion had not transferred those shares to Tongfang. That agreement gave Link Motion a security interest in the shares precisely because the shares were held by Tongfang. None of Link Motion's public representations about the FL Mobile shares can be squared with the allegations in the Complaint that Link Motion's “obligation to cause the transfer of FL Mobile shares” had not occurred before the appointment of the Receiver in February 2019. See, e.g., Compl. ¶¶ 64, 86.

In defense of its allegations in the Complaint, Plaintiff argues that the transfer of FL Mobile shares could not occur until the Tongfang Note was paid, which was to occur at “the end of December 2018,” and did not actually occur because the appointment of the Receiver prevented Link Motion from fulfilling its obligation to transfer the FL Mobile shares. ECF No. 41 at 16-17. As an initial matter, the principal on the Tongfang Note was due on December 14, 2018, the day the Court issued the TRO in the Baliga action, and interest in arrears on the Note was due on December 12, 2018, the day before the Baliga action was commenced. See ECF No. 42-13 at 11 (clauses 1.3 and 3.1). The Tongfang Note was thus due in full prior to the appointment of the Receiver, in February 2019.

In any case, Plaintiff's argument that the issuance of the TRO somehow interfered with Tongfang's repayment of the Tongfang Note is nonsensical. ECF No. 41 at 17. The TRO merely prohibited Link Motion from “transferring, liquidating, dissipating, assigning, and/or granting a lien or security interest or other interest in, any assets” belonging to the company. See ECF No. 7 at 1, No.

18-CV-11642. *Nothing in the language of the TRO prevented Link Motion from enforcing the Tongfang Note, receiving payment under the Note, or foreclosing on its security interest in the FL Mobile shares if Tongfang failed to repay the Note. What's more, it is evident from the Tongfang Arbitration Award that the arbitrator found that Tongfang had completed its payment obligations in December 2017, and that Link Motion was obligated to transfer the Link Motion shares in December 2017—a year before Baliga filed his complaint. See ECF No. 42-17 at 8-10 (specifically, ¶¶ 21-22).*

Plaintiff also argues that the word “completion” as used in the various press releases from the company referred only to “deconsolidation of financial results, not legal completion of Tongfang's obligations to Link Motion under the Note.” ECF No. 41 at 17. That argument falls flat given the public statements by Link Motion and Shi that unambiguously announced completion of the transaction and receipt of full payment from Tongfang for the FL Mobile shares. *See, e.g.*, ECF No. 37-8 at 6-7 (Link Motion announcing in December 2017 that it had “received ... 100% of the agreed upon price” and “completed the FL Mobile Divestment”); ECF No. 37-9 at 5 (Shi informing shareholders that “the transaction completed on December 14, 2017” and that “the total consideration received by [Link Motion] as of December 14, 2017 amounted to” cash and a senior note from Tongfang).

To save its allegations, Plaintiff conflates completion of the bargained-for exchange under the SPA with payment by Tongfang of the Tongfang Note. As Link Motion indicated in public filings, it received “100% of the agreed upon price” for the FL Mobile shares, and it accepted as payment for those shares a combination of cash and a note. See ECF No. 37-8 at 6-7. Acceptance of that payment, in exchange for the transfer of the FL Mobile shares, consummated the Tongfang Transaction in December 2017. Whether Tongfang subsequently repaid the Tongfang Note is distinct from whether the transaction was completed. And, this distinction is borne out by the company's own public filings which unambiguously stated that the transaction was completed. Those public statements did not link completion of the transaction with payment in full of the Tongfang Note.

Moreover, even if the word “completion” in the company's public filings could be construed as referring merely to the company removing the FL Mobile business from its balance sheet (as Plaintiff now argues), that still does not explain the language in the Equity Pledge Agreement. That agreement describes the FL Mobile shares as being “held by” Tongfang. See ECF No 37-11 at 2. And in another public filing with the SEC filed on September 10, 2018, the company, consistent with the Equity Pledge Agreement, represented that it had “the ability to recover the shares it has sold to Tongfang if Tongfang fails to pay its RMB 1.77 billion senior note delivered in payment for those shares.” See ECF No. 37-12 at 6 (emphasis added). The use of the word “recover” by Link Motion in reference to the FL Mobile shares further demonstrates that it no longer had possession of those shares.

In short, a reasonable inquiry by Plaintiff and its counsel would have revealed Link Motion's public statements about the Tongfang Transaction. And ***given those public statements, Plaintiff and its counsel could not have reasonably concluded that the factual allegations in the Complaint would have evidentiary support.***

2. Plaintiff's legal-malpractice claim is frivolous in violation of Rule 11(b)(2). Defendants also seek sanctions on the basis that Plaintiff's legal-malpractice claim is frivolous, in violation of Rule 11(b)(2). ECF No. 36 at 25-30. Even if the allegations in the Complaint concerning the inability to transfer the FL Mobile shares because of the Receiver's appointment had evidentiary support, Plaintiff's claim would still suffer from multiple deficiencies. When these obvious deficiencies are viewed collectively, the only plausible conclusion is that it was objectively unreasonable for Plaintiff to have commenced this action against Defendants.

To begin, ***the parties dispute whether Link Motion retained Defendants to represent the company in the Baliga action, thereby creating the existence of an attorney-client relationship. Compare ECF No. 36 at 23-25 with ECF No. 41 at 15-16, 21-22; see also Compl. ¶¶ 58-59. Plaintiff contends that DLA Piper represented Link Motion in the Baliga action and Defendants failed to provide any substantive advice or assert any defenses on behalf of the company. See ECF No. 41 at 15-18; Compl. ¶¶ 58-60. Defendants dispute that they were retained to substantively defend Link Motion, arguing that the company declined to respond to numerous communications from Defendants concerning how to handle the action. ECF No. 36 at 9-12, 23-25, 27.***

There is no dispute, however, that Defendants appeared in the Baliga action on behalf of Link Motion, in December 2018 after the TRO was filed, and subsequently sought leave to withdraw as counsel on March 1, 2019. See ECF Nos. 20, 28, No. 18-CV-11642. I need not decide whether Plaintiff's allegations that Defendants were formally retained by Link Motion have evidentiary support, because ***the communications between Defendants and Shi after the filing of the Baliga action demonstrate that it would have been exceedingly difficult (if not impossible) for Plaintiff to prove that Defendants breached a duty to Link Motion to act with the "skill, prudence, and diligence as other members of [the legal] profession commonly exercise."*** See *Schweizer v. Mulvehill*, 93 F. Supp. 2d 376, 393 (S.D.N.Y. 2000) (explaining elements of legal malpractice claim).

In that regard, ***it is apparent from the many communications by Schechtman to either Link Motion, Shi, or both that Link Motion and Shi refused to engage with Defendants in a discussion about how to respond to the TRO and preliminary injunction motions. See supra pp. 2-3. Those e-mails and text messages—including e-mails in English and Mandarin sent to the entire Link Motion Board of Directors—indicate that Schechtman diligently attempted, on***

numerous occasions, to discuss with Shi Baliga's complaint. Her communications went unanswered, the company refused to discuss the case (or even confirm that it wished to retain DLA Piper to defend the action), and Defendants were left with no guidance as to how to proceed. Against that backdrop of unanswered communications and nearly complete radio silence from Shi, Plaintiff's counsel could not have in good faith believed that it would be able to show that Defendants breached a duty to Link Motion by failing to raise a standing defense.

Turning to causation, *Plaintiff and its counsel could not have reasonably believed that Defendants' actions were the but-for cause of Link Motion's alleged damages.* See *Schutz v. Kagan Lubic Lepper Finkelstein & Gold, LLP*, No. 12-CV-9459 (PAE), 2013 WL 3357921, at *4 (S.D.N.Y. July 2, 2013) (explaining that legal-malpractice claim under New York law requires evidence that defendant's conduct was “the proximate cause of a loss” and “actual damages”). According to Plaintiff, Defendant's failure to advise the company about Baliga's lack of standing resulted in the entry of the TRO and the appointment of the Receiver; those acts prevented Link Motion “from satisfying its obligation” to transfer the FL Mobile shares to Tongfang pursuant to the SPA; and in response to Link Motion's failure, Tongfang commenced an arbitration proceeding that resulted in an award of \$396,000,000 against Link Motion. See Compl. ¶¶ 63-65, 67, 73, 76-78, 85-88, 91. *As already discussed, however, Link Motion transferred the FL Mobile shares to Tongfang before Baliga commenced his suit.*

Moreover, *it appears that Link Motion did not defend against Tongfang's claims in the arbitration, and Shi did not notify the Receiver of the arbitration. The arbitration was initiated in April 2019, two months after the appointment of the Receiver in February 2019.* See ECF No. 269 at 1, No. 18-CV-11642; ECF No. 26, No. 18-CV-11642 (appointing receiver). The Court's order appointing the Receiver instructed Shi and Link Motion to “ensure that litigation or arbitration matters [be] directed and controlled by the Company's lawyers, the appointed Receiver, and/or the non-conflicted board members as directed by the Receiver.” ECF No. 26 at 3, No. 18-CV-11642. *Despite that clear instruction, Shi did not disclose to the Receiver the existence of the Tongfang Arbitration. See ECF No. 269 at 1 (letter from Receiver to the Court stating, “I had no knowledge of the Tongfang Arbitration or the Award.”). Instead, Shi represented to the arbitrator during the arbitration that he alone “was acting on behalf” of Link Motion. Id. at 1-2. And even worse, neither Shi nor Link Motion mounted a defense to Tongfang's claims in the arbitration. Id. Given the utter failure of Link Motion to defend itself against the claims in the arbitration, it is speculative, at best, for Plaintiff to claim that Defendant's purported failure to “competently advise” Link Motion about a standing defense (see ECF No. 41 at 24-25) proximately caused the company to lose the arbitration, resulting in the issuance of the Tongfang Arbitration Award.*

Plaintiff now contends that the e-mail communications between the arbitrator and Shi (where Shi purported to act on behalf of Link Motion) were in fact with someone other than Shi who was posing as Shi and using Shi's corporate e-mail account without authorization. See ECF No. 42 at ¶¶ 75-80. ***Putting aside the plausibility of that explanation, what is significant here is that an adequate investigation by counsel of the factual basis for Plaintiff's legal-malpractice claim should have uncovered that Link Motion was not represented by counsel in the arbitration, that it mounted no defense to Tongfang's claims, and that someone acting without authority was claiming to be Shi and representing the company in the arbitration, without the Receiver's knowledge. All of those facts should have led counsel to deeply question the viability of a legal-malpractice claim against Defendants, where the issuance of the Tongfang Arbitration Award is one of the alleged harms purportedly suffered by Plaintiff as a result of Defendants' alleged malpractice.*** See Compl. ¶¶ 8, 87-91.

Second, ***even if Defendants, in response to the TRO or preliminary injunction motions, had argued that Baliga lacked standing to bring his claims, the outcome would have remained the same, because, as the Court later concluded, it had jurisdiction to appoint the Receiver.*** See *Flutie Bros. v. Hayes*, 2006 WL 1379594, at *5 (S.D.N.Y. May 18, 2006) (“In order to plead causation adequately in a legal malpractice claim, the plaintiff must show that but for the attorney's negligence, ‘what would have been a favorable outcome was an unfavorable outcome.’”) (citation omitted). In June 2021, Shi moved to vacate the preliminary injunction and discharge the receiver in the Baliga action. See ECF No. 227, No. 18-CV-11642. ***As part of that motion, the Court considered Shi's argument as to whether “at the commencement of this action, the Court lacked subject-matter jurisdiction over the action,” because Baliga did not have standing under Cayman Islands law to bring derivative claims on behalf of Link Motion.*** See ECF No. 275 at 18, 20. Ultimately, in a Report and Recommendation that was adopted by Judge Marrero (see ECF No. 331 at 2, No. 18-CV-11642), Magistrate Judge Freeman concluded that although Baliga lacked standing to assert his derivative state-law claims for breach of fiduciary duty and unjust enrichment, he had standing to assert his derivative federal securities-law claims. See ECF No. 227 at 21-30, No. 18-CV-11642. Judge Freeman thus concluded that the Court had subject-matter jurisdiction over the case and the power to issue the preliminary injunction and receivership order. *Id.* at 30.

Plaintiff now argues that its legal-malpractice claim is not precluded by the Court's prior finding of standing because Judge Freeman considered whether to vacate the receivership order and that issue was “legally distinct” from whether Plaintiff has a viable claim of legal malpractice. ECF No. 41 at 23-24. But whether Judge Freeman was assessing Baliga's standing for purposes of determining the Court's jurisdiction to appoint a receiver or for some other reason is of no consequence. ***The critical point is that the Court already determined that Baliga had standing to bring his derivative federal-securities claims in December 2018. Consequently, and contrary to Plaintiff's argument (see ECF***

No. 41 at 23), the Court's jurisdiction to issue the preliminary injunction would not have been "a substantial issue in controversy" even if an argument had been raised by Defendants about Baliga's lack of standing. This, too, goes to whether counsel could have reasonably believed, at the time it filed this action, that Plaintiff would be able to make a colorable argument that Defendants' actions were the but-for cause of Plaintiff's alleged damages.

And, tellingly, Shi's new counsel following Defendants' withdrawal did not raise an argument that Baliga lacked standing because he held ADS shares. Shi retained new counsel in March 2019, before the commencement of the Tongfang Arbitration and shortly after the appointment of the Receiver in February 2019. See ECF No. 35, No. 18-CV-11642 (new counsel filing motion to dismiss for lack of jurisdiction). Counsel for Shi thus had time to challenge Baliga's purported lack of standing to bring his claims. And, Shi did file a motion to dismiss on March 27, 2019, where counsel argued that Baliga's claims should be dismissed, that the Receiver should be discharged, and that the Court lacked jurisdiction over Link Motion. See ECF No. 37 at 12-21, No. 18-CV-11642. Shi's counsel, however, did not raise a challenge to Baliga's standing based on Baliga not being a registered shareholder. See ECF Nos. 37, 62, No. 18-CV-11642. Of course, Shi's counsel was not acting as counsel for Link Motion. See ECF No. 41 at 26-27. But Shi's counsel raised numerous arguments for dismissal of Baliga's claims and yet he did not raise Baliga's lack of standing based on his ownership of ADS.

....

A reasonable inquiry by Plaintiff's counsel would have uncovered the apparent legal and factual deficiencies in Plaintiff's legal-malpractice claim. Further, Defendants alerted Plaintiff that they intended to seek sanctions if Plaintiff did not voluntarily withdraw its claim, and Defendants raised all of these deficiencies in their letter. See ECF No. 16. Even if one could conclude that Plaintiff and its counsel had a good-faith basis for initially filing suit, they certainly had no good-faith basis for continuing to pursue this claim after Defendants pointed out the numerous deficiencies in the claim. Yet, Plaintiff ignored Defendants' letter and instead persisted with this suit for six months before filing a voluntary notice of dismissal. See ECF No. 23.

Viewing all of the deficiencies in Plaintiff's claim collectively, the only plausible conclusion to be drawn from pursuit of this litigation is that it was done to harass Defendants. That conclusion is reinforced by Plaintiff's most recent course of action. See ECF No. 49. Following Judge Marrero's dismissal of Link Motion's direct legal-malpractice claim on May 26 (see ECF No. 30, No. 22-CV-8313), Plaintiff sought to unnecessarily prolong this case even more, raising the possibility that it could withdraw its prior notice of voluntary dismissal and amend the complaint here. See ECF No. 49. But as Defendants point out (see ECF No. 50), any argument that Plaintiff can continue to pursue

this legal-malpractice claim derivatively on behalf of Link Motion, given the dismissal on the merits of Link Motion's direct legal-malpractice claim, is patently meritless. As is well established, a derivative claim on behalf of a corporation is “unnecessary and duplicative, and should be dismissed” if the corporation “subsequently sues to assert claims on its own behalf.” Ross v. Patrusky, Mintz & Semel, No. 90-CV-1356 (SWK), 1997 WL 214957, at *10 (S.D.N.Y. Apr. 29, 1997). Additionally, *under New York law, a dismissal on statute of limitations grounds, as Judge Marrero concluded was appropriate in Link Motion's suit against Defendants* (see ECF No. 30 at 9, No. 22-CV-8313), *is deemed a dismissal on the merits.* See Sun v. City of New York, 803 Fed. App'x 469, 471 n.3 (2d Cir. 2020). There thus is no derivative claim remaining for Plaintiff to pursue here. Plaintiff nevertheless argued for a stay of this case, seemingly suggesting that it should be permitted to withdraw its voluntary dismissal and amend the complaint.

(*China AI Capital Ltd. on behalf of Link Motion Inc. v DLA Piper LLP (US)*, No. 21-CV-10911, 2023 WL 5016492 [SDNY July 28, 2023] [emphasis added]).

Pursuant to a Decision and Order, dated March 6, 2024, United States District Court Judge for the Southern District of New York, the Hon. Victor Marrero, adopted Judge Figueredo's Report and Recommendation, granting DLA's motion for sanctions against China AI:

I. BACKGROUND

This matter entails a legal malpractice action arising out of DLA Piper's brief involvement in another case pending before this Court: Baliga v. Link Motion Inc., No. 18 Civ. 11642. Link Motion Inc. (“Link Motion”) is a Chinese company organized under the laws of the Cayman Islands. (See Dkt. No. 1 [hereinafter the “Complaint” or “Compl.”] ¶ 18.) Link Motion was founded by, among others, Vincent Wenyong Shi (“Shi”). (See id.)

A. LINK MOTION'S SALE OF FL MOBILE

In March 2017, Link Motion entered into a Share Purchase Agreement (the “SPA”) with Tongfang Investment Fund Series SPC (“Tongfang”). (See Objs. at 5–6.) Under the SPA, Tongfang agreed to purchase Link Motion's 63 percent equity interest in FL Mobile, a Chinese technology company. (See id.) The purchase price was RMB 2,520 million – an amount approximately equivalent to USD \$400 million. (See id. at 6; R&R at 8.)

Tongfang completed its payment obligation pursuant to the SPA in December 2017. (See R&R at 17.) Tongfang paid with a combination of cash and a note (the

“Tongfang Note”) issued to Link Motion for RMB 1,770 million and due in December 2018. (See *id.* at 18.)

On the same day in December 2017 that the Tongfang Note was issued, Tongfang and Link Motion entered an “Equity Pledge Agreement” under which Tongfang granted to Link Motion a security interest in the FL Mobile equity. (See Objs. at 8.) The Equity Pledge Agreement allowed Link Motion to “retake ownership of the FL Mobile shares if Tongfang failed to pay the Tongfang Note.” (R&R at 19.)

B. THE BALIGA ACTION

On December 13, 2018, Wayne Baliga (“Baliga”) filed the Baliga action, a derivative suit brought on behalf of Link Motion against, among other defendants, Shi. (See No. 18 Civ. 11642, Dkt. No. 1.) Baliga alleged that Shi and others were mismanaging Link Motion, engaging in self-dealing, stealing the company's assets, and stripping Link Motion of its value. (See *id.* ¶¶ 2–3.) The same day, Baliga (through counsel) emailed DLA Piper and Schechtman, who is an attorney associated with DLA Piper, to notify them of the lawsuit and of Baliga's intent to seek a temporary restraining order the next day. (See R&R at 2.) ***Baliga contacted DLA Piper and Schechtman because Link Motion had retained DLA Piper in 2018 to represent it in connection with a corporate transaction. (See *id.* at 2 n.2.) Later on December 13, Schechtman forwarded Baliga's email to Shi and a Link Motion director, asking them to “instruct DLA if you would like us to respond” and asking for a retainer. (Id. at 2–3 (quoting Dkt. No 37-1 at 1).) Schechtman followed up again hours later. (See *id.* at 3; Dkt. No. 37-2 at 4.)***

The next day, Schechtman asked Shi, “Do you want me to send an associate?”; Shi responded, “OK, thanks.” (R&R at 3 (quoting Dkt. No. 37-2 at 3).) Schechtman told Shi that DLA Piper would send an associate to court to advise that DLA Piper “had received no instruction from [Link Motion] due to the time difference and language barriers.” (Id. (quoting Dkt. No. 37-3 at 1).) Schechtman added, “How would you like us to handle?” (Id. (quoting Dkt. No. 37-3 at 1).)

On December 14, Baliga filed an order to show cause and sought a temporary restraining order, and Defendants appeared on behalf of Link Motion at a hearing before this Court. (See *id.*) The Court signed and entered the temporary restraining order (the “TRO”) the same day. (Id.) ***The TRO prohibited the Baliga defendants, including Link Motion and Shi, from “transferring, liquidating, dissipating, assigning, and/or granting a lien or security interest or other interest in, any assets belonging to Link Motion.” (No. 18 Civ. 11642, Dkt. No. 7 at 1.)***

On December 21, 2018, the Baliga parties filed a joint letter, notifying the Court of Link Motion's agreement to extend the TRO and requesting a deadline of January 21, 2019 to respond to a motion, filed by Baliga, for a preliminary

injunction and appointment of a temporary receiver. (See R&R at 4, 6.) Schechtman signed the joint letter as “Counsel for Defendant, Link Motion Inc.” (Id. (quoting No. 18 Civ. 11642, Dkt. No. 20 at 2).)

Over the next month, Defendants repeatedly attempted, via text message and by emails written in both English and Mandarin, to contact Shi and Link Motion, seeking direction and seeking payment on outstanding invoices. (See R&R at 4–7.) *In a January 18, 2019 email to Shi and Link Motion written in both English and Mandarin, DLA Piper advised that absent a response from the company within 24 hours, DLA Piper would assume that it had Link Motion's consent not to oppose the motion for a preliminary injunction and appointment of a temporary receiver and that it had consent to withdraw from representing the company.* (See id. at 6.) *Shi finally responded on January 21, 2019, writing, “I fully respect and appreciate your excellent work. But at this moment, it's very hard to make any further payment arrangement”* (Dkt. No. 37-2 at 1.)

On January 21, 2019, Baliga and DLA Piper (the latter purporting to be acting as counsel for Link Motion) filed a joint stipulation stating that Link Motion agreed not to oppose the entry of a preliminary injunction and that Link Motion would receive an extension of time to answer or otherwise respond to the complaint. (See R&R at 7; No. 18 Civ. 11642, Dkt. No. 22.) *The stipulation further stated that Link Motion “has preserved and is not waiving and h[as] not waived any objections, defenses or responses to” Baliga's complaint.* (No. 18 Civ. 11642, Dkt. No. 22 at 3.) The Court approved the joint stipulation on January 22, 2019. (See No. 18 Civ. 11642, Dkt. No. 23.)

On February 1, 2019, the Court granted the motion for a preliminary injunction and appointed a receiver. (See No. 18 Civ. 11642, Dkt. No. 26.) The preliminary injunction restrained the Baliga defendants, including Shi and Link Motion, from “transferring, liquidating, dissipating, assigning, and/or granting a lien or security interest or other interest in, any assets belonging to Link Motion.” (Id. at 2.)

The Court appointed as temporary receiver Baliga's counsel, Robert Seiden (the “Receiver”), and directed that the Receiver “shall assume full control” of Link Motion. (Id. at 3.) The Court also directed that the Receiver “shall have the power to commence, continue, join in, and/or control any action, suit, arbitration or proceeding of any kind or nature, in the name of [Link Motion] or otherwise, ... wherever such proceeding is located.” (Id. at 4.) The Court further directed the Baliga defendants, including Link Motion and Shi, to “ensure that litigation or arbitration matters are directed and controlled by [Link Motion's] lawyers, the appointed Receiver, and/or the non-conflicted board members as directed by the Receiver.” (Id. at 3.)

On March 1, 2019, Defendants formally withdrew as counsel for Link Motion. (See R&R at 7–8.) Later that month, attorneys Rosanne E. Felicello (“Felicello”) and Michael James Maloney (“Maloney”) appeared in the Baliga action on behalf

of Shi. (See No. 18 Civ. 11642, Dkt. Nos. 35, 38, 125, 176.) On March 27, 2019, Maloney filed a motion to dismiss the underlying action and to discharge the Receiver. (See No. 18 Civ. 11642, Dkt. No. 36.)

On March 29, 2019, the Court held a conference at which Maloney was present and during which counsel for Baliga indicated that Baliga was not a registered shareholder of Link Motion because he merely held American depository shares – a fact relevant to whether Baliga had standing to bring certain claims on behalf of Link Motion. (See R&R at 8.) ***Yet Maloney made no mention of this fact in the reply brief he filed in May 2019 on behalf of Shi on the motion to dismiss.*** (See No. 18 Civ. 11642, Dkt. No. 62.) Maloney did raise the issue in a memorandum of law on a subsequent motion (the “June 2021 Motion”) to dissolve the preliminary injunction and discharge the Receiver, filed in June 2021. (See No. 18 Civ. 11642, Dkt. Nos. 227, 230.)

C. THE TONGFANG ARBITRATION

On April 23, 2019, Tongfang commenced arbitration proceedings against Link Motion. (See Dkt. No. 42-17 ¶ 3.) Despite the preliminary injunction's direction that Link Motion and Shi ensure that litigation or arbitration matters be directed by the Receiver, the Receiver was not notified about the Tongfang arbitration. (See No. 18 Civ. 11642, Dkt. No. 269 at 1.) Link Motion was not represented by counsel in the arbitration. (See Dkt. No. 42-17 ¶ 9.) ***The arbitrator's understanding was that Shi was acting on behalf of Link Motion in the arbitration.*** (See id.)

Link Motion did not submit any evidence in the arbitration and mounted no defense. (See id. ¶¶ 9–18.) The arbitrator ruled in a March 19, 2020 decision (the “Tongfang Award”) that Link Motion owed Tongfang in the amount of RMB 2,520 million due to Link Motion's alleged failure to deliver FL Mobile shares to Tongfang. (See id. ¶ 21.) ***The Receiver later said in a court filing that he had no knowledge of these arbitration proceedings or of the Tongfang Award until February 2022.*** (See No. 18 Civ. 11642, Dkt. No. 269 at 1.)³

D. THE INSTANT LITIGATION

On December 20, 2021, China AI commenced this shareholder lawsuit derivatively on behalf of Link Motion. (See Compl. at 1.) China AI is represented by Felicello and Maloney. (See id. at 25.) ***The Complaint alleges that DLA Piper and Schechtman committed legal malpractice by failing to argue in the Baliga action that Baliga lacked standing to bring a derivative suit and by failing to obtain Link Motion's informed consent to the appointment of the Receiver, resulting in entry of the TRO and preliminary injunction and the appointment of the Receiver.*** (See id. ¶¶ 108–114.) The Complaint also alleges that because of the TRO and preliminary injunction, Link Motion could not transfer the FL Mobile shares to Tongfang, which in turn resulted in the Tongfang Award. (See id. ¶¶ 85–88.)

DLA Piper and Schechtman initiated sanctions proceedings under Federal Rule of Civil Procedure 11 (“Rule 11”) in March 2022. Rule 11(c)(2) provides that a sanctions motion “must not ... be presented to the court if the challenged paper ... is withdrawn or appropriately corrected within 21 days after service” of the motion on the party or attorney against whom sanctions are sought. Accordingly, DLA Piper and Schechtman served papers complying with this safe harbor requirement on March 8, 2022. (See R&R at 14; Dkt. No. 37-14; Dkt. No. 37-15.) ***In those papers, Defendants warned China AI that its claim was frivolous in part because the causation element of the claim was premised on a supposed failure to raise a “novel” standing argument in Baliga that had “never previously been tested in a New York court.”*** (Dkt. No. 37-14 at 13.) China AI did not respond (see R&R at 14) and instead decided in a letter filed March 14, 2022 (see Dkt. No. 17) to oppose a motion to dismiss proposed by Defendants.

Meanwhile, in Baliga, Magistrate Judge Debra Freeman on March 9, 2022 issued an opinion on the June 2021 Motion, concluding that ***although Baliga lacked standing to assert his derivative state law claims for breach of fiduciary duty and unjust enrichment, he had standing to assert his derivative federal securities law claims.*** (See R&R at 26; No. 18 Civ. 11642, Dkt. No. 275.) ***Judge Freeman thus concluded that the Court had subject matter jurisdiction over the Baliga case and the power to issue the preliminary injunction and receivership order.*** (See R&R at 27.) The Court adopted Judge Freeman's conclusions on August 25, 2022. (See 18 Civ. 11642, Dkt. No. 331.)

Back in the instant litigation, China AI filed a proposed notice of voluntary dismissal on September 6, 2022. (See Dkt. No. 22.) Federal Rule of Civil Procedure 23.1(c) provides that voluntary dismissals in derivative actions may occur “only with the court's approval” and that a court may direct that notice of a proposed voluntary dismissal “be given to shareholders or members in the manner that the court orders.” Accordingly, the Court on September 13, 2022 ordered China AI to file a proposed notice to Link Motion shareholders. (See Dkt. No. 28.) China AI did so (see Dkt. No. 30), and Defendants objected to the proposed notice (see Dkt. No. 34).

Also on September 13, 2022, DLA Piper and Schechtman advised the Court that Felicello and Maloney on the previous day had filed a direct legal malpractice action on behalf of Link Motion against DLA Piper and Schechtman in New York state court. (See Dkt. No. 27 at 1.) DLA Piper and Schechtman removed the state court action – whose allegations against Defendants were similar to the allegations in the instant case – to this Court on September 29, 2022. (See No. 22 Civ. 8313, Dkt. No. 1.)

On September 26, 2022, DLA Piper and Schechtman filed their sanctions motion in the instant litigation. (See Dkt. No. 35.) During October and November 2022, the parties fully briefed the sanctions motion and submitted evidence in support of their positions. (See Dkt. Nos. 36–37, 41–45.)

On May 26, 2023, the Court held in the direct malpractice action – i.e., the action removed from state court – that Link Motion's claim was time-barred. (See R&R at 11.) The Court granted Defendants' motion to dismiss the direct malpractice suit with prejudice. (See *id.*) Then, on May 30, 2023, China AI in the instant derivative litigation submitted a letter arguing that this action should be stayed pending reconsideration of the Court's decision in the direct malpractice action and, alternatively, that China AI should be allowed to withdraw its proposed voluntary dismissal and seek leave to amend the Complaint. (See *id.*) Judge Figueredo issued the R&R on the Rule 11 sanctions motion in July 2023. Judge Figueredo recommended that the sanctions motion be granted and that China AI and its counsel be ordered to pay the reasonable costs and fees incurred by Defendants in defending this action. (See R&R at 1.)

....

IV. DISCUSSION

The R&R rests on two express conclusions and one conclusion that was somewhat more implicit. ***First, Judge Figueredo expressly found that China AI and its counsel made false allegations in the Complaint in violation of Rule 11(b)(3).*** (See R&R at 16–22.) ***Second, Judge Figueredo expressly concluded that China AI's counsel brought a frivolous legal malpractice claim in violation of Rule 11(b)(2).*** (See *id.* at 22–30.) ***Third, the R&R appears to have concluded that this litigation has been carried on for an improper purpose in violation of Rule 11(b)(1).*** (See *id.* at 31–32.) Judge Figueredo recommends that the Court remedy these violations by ordering that China AI and its counsel pay the reasonable costs and fees incurred by DLA Piper and Schechtman in defending this action. (See *id.* at 1, 32.)

A. OBJECTIONS TO THE RULE 11(b)(3) CONCLUSION

Judge Figueredo concluded that China AI and its counsel violated Rule 11(b)(3) by making two false allegations in the Complaint. First, Judge Figueredo found that the Complaint falsely alleged that “prior to the entry of the TRO, [w]hat remained to be performed under the SPA was [Link Motion's] obligation to cause the transfer of FL Mobile shares in accordance with the SPA.” (R&R at 16 (alterations in original) (quoting Compl. ¶¶ 64).) ***Second, Judge Figueredo found that the Complaint falsely alleged that the TRO and preliminary injunction prevented Link Motion from satisfying its obligation to Tongfang (i.e., causing the transfer of FL Mobile) after Tongfang “had already paid [Link Motion] consideration as required by the SPA.”*** (*Id.* (alteration in original) (quoting Compl. ¶ 85).) ***China AI and its counsel object to both findings.***

1. Whether Link Motion Transferred FL Mobile Shares to Tongfang Prior to the Entry of the TRO

Judge Figueredo made the following findings on the basis of publicly available Securities and Exchange Commission (“SEC”) filings: (1) that Link Motion transferred the FL Mobile shares to Tongfang before Baliga filed suit in December 2018, and (2) that China AI’s allegation that the shares had not been transferred pursuant to the SPA prior to entry of the TRO was therefore false. (See R&R at 17.) Judge Figueredo further found that the public filings “would have been available to [China AI] and its counsel before it commenced this action, after a reasonable inquiry into the evidentiary support for the factual allegations in the Complaint.” (Id.)

China AI objects, arguing that Judge Figueredo misread the Tongfang Award. (See Objs. at 16–18.) China AI contends that in issuing the Tongfang Award, the arbitrator found (1) that delivery of the FL Mobile shares to Tongfang “was contingent upon payment of the [Tongfang] Note in full” and (2) that Tongfang had not satisfied its obligations under the Tongfang Note and thus “had paid only part of the total consideration owed under the SPA.” (Objs. at 17.)

Judge Figueredo did not misread the Tongfang Award. The arbitrator clearly found that Tongfang had, in part by issuing the Tongfang Note, completed its payment obligations under the SPA as of December 14, 2017 and that the FL Mobile shares were due at that time. (See Dkt. No. 42-17 ¶¶ 19–22.)⁴ This is exactly how Judge Figueredo read the Tongfang Award. (See R&R at 20–21.) And in fact, the arbitrator found that Tongfang did not owe Link Motion anything under the Tongfang Note because Link Motion had pledged the Tongfang Note elsewhere. (See Dkt. No. 42-17 ¶ 20 (stating that Tongfang would not be unjustly enriched by repayment of the value of the Tongfang Note).)

China AI further argues that since Link Motion retained control (if not legal title) over the FL Mobile shares pursuant to the Equity Pledge Agreement, it had not yet satisfied its legal obligation to Tongfang by transferring control over the shares to Tongfang. (See Objs. at 18–22.) Thus, according to China AI, the R&R was wrong to conclude that Link Motion had already transferred the FL Mobile shares to Tongfang, the SEC filings notwithstanding.

China AI’s argument is unavailing. ***The Complaint alleges that Link Motion had, as of the date of the TRO, yet to transfer the FL Mobile shares to Tongfang under the SPA. (See Compl. ¶¶ 63–64.) Judge Figueredo concluded that this allegation was false because, as SEC filings clearly show, Link Motion transferred the FL Mobile shares to Tongfang as of December 2017 – a year before the Complaint was filed — and therefore satisfied its obligations under the SPA as of that date. (See R&R at 17–19; see also id. at 19–20 (stating that there “would have been no reason for the Equity Pledge agreement – allowing Link Motion to recover ownership in FL Mobile shares from Tongfang – if Link Motion had not already transferred those shares to Tongfang”).*** The question of who controlled the shares under the subsequent Equity Pledge Agreement is irrelevant.

Moreover, China AI's characterization of the Equity Pledge Agreement as part of an arrangement under which Link Motion “had failed to transfer the FL Mobile shares to Tongfang” (Objs. at 9) is backward. Link Motion was not obligated to transfer the FL Mobile shares to Tongfang under the Equity Pledge Agreement. Rather, the Equity Pledge Agreement provided Link Motion security for Tongfang's obligation to honor the Tongfang Note, upon whose satisfaction Link Motion's security interest in the shares would be extinguished. (See R&R at 21 (stating that China AI “conflates completion of the bargained-for exchange under the SPA with payment by Tongfang of the Tongfang Note”).) This objection is thus overruled.

2. Whether the TRO or the Preliminary Injunction Prevented Link Motion from Transferring FL Mobile

Judge Figueredo's second conclusion followed from her first: Since Link Motion transferred the FL Mobile shares to Tongfang before Baliga filed suit, *neither the TRO nor the preliminary injunction could have prevented Link Motion from doing so.* (See R&R at 17.) China AI's objection to this conclusion depends, in turn, on the viability of its previous objection. (See Objs. at 22–26.)

Accordingly, the Court overrules the objection. Indeed, this objection makes even clearer that China AI's characterization of the Equity Pledge Agreement is backward. *The TRO and preliminary injunction prevented the Baliga defendants from dissipating Link Motion's assets, not from receiving assets on behalf of the company.* And as the R&R concluded, “[n]othing in the language of the TRO [or preliminary injunction] prevented Link Motion from enforcing the Tongfang Note, receiving payment under the Note, or foreclosing on its security interest in the FL Mobile shares if Tongfang failed to repay the Note.” (R&R at 20.)

In short, *the Court upholds Judge Figueredo's conclusion that China AI and its counsel violated Rule 11(b)(3) by making false allegations in the Complaint.*

B. OBJECTIONS TO THE RULE 11(b)(2) CONCLUSION

Judge Figueredo concluded that China AI's counsel violated Rule 11(b)(2) by bringing a frivolous claim for legal malpractice. (See R&R at 22.) *“An argument constitutes a frivolous legal position for purposes of Rule 11 sanctions if, under an objective standard of reasonableness, it is clear ... that there is no chance of success and no reasonable argument to extend, modify or reverse the law as it stands.”* Morley v. Ciba–Geigy Corp., 66 F.3d 21, 25 (2d Cir. 1995) (ellipsis in original) (quoting Caisse Nationale de Crédit Agricole v. Valcorp, Inc., 28 F.3d 259, 264 (2d Cir. 1994)); see also Star Mark Mgmt., Inc. v. Koon Chun Hing Kee Soy & Sauce Factory, Ltd., 682 F.3d 170, 177 (2d Cir. 2012) (per curiam) (stating that standard under Rule 11 “is objective unreasonableness and is not based on the subjective beliefs of the person making the statement” (quoting Storey, 347 F.3d at 387)).

Judge Figueredo's Rule 11(b)(2) recommendation rests on several independent grounds. First, the R&R concluded that “a reasonable inquiry into the legal basis for the claim should have uncovered that [China AI] lacked standing to assert its ... claim derivatively on behalf of Link Motion.” (Id. at 28–29.) Second, ***Judge Figueredo found that counsel could not have reasonably believed that DLA Piper and Schechtman breached a duty to Link Motion.*** (See id. at 24.) And third, ***the R&R concluded that counsel could not have reasonably believed that DLA Piper's and Schechtman's actions caused Link Motion's alleged damages.*** (See id.) China AI and its counsel raise five objections to Judge Figueredo's Rule 11(b)(2) conclusions. (See Objs. at 26–40.)

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2. Whether the R&R Reached a Conclusion with Respect to an Attorney-Client Relationship

China AI argues that the R&R erred in “conclud[ing] that [China AI's] claim that an attorney-client relationship arose when Defendants appeared in the [Baliga] action on behalf of Link Motion had no chance of success.” (Objs. at 28.) Judge Figueredo reached no such conclusion. Indeed, she wrote that she “need not decide whether [*China AI's*] *allegations that Defendants were formally retained by Link Motion have evidentiary support.*” (R&R at 23.) *She rested her holding instead on the frivolousness of other independent elements of China AI's malpractice claim.* (See R&R at 24.) Thus, this objection is overruled.

3. Whether China AI's Counsel Could Have Reasonably Believed China AI Could Prove Malpractice

China AI's next objection pertains to Judge Figueredo's conclusion that its counsel could not have reasonably believed that China AI could prove malpractice, i.e., that DLA Piper and Schechtman breached the duty attorneys in New York owe to their clients. (See Objs. at 28–34.) ***Judge Figueredo based this conclusion on Link Motion's and Shi's “refus[al] to engage with Defendants in a discussion about how to respond to the TRO and preliminary injunction motions” despite Schechtman's “diligent[] attempt[s], on numerous occasions, to discuss ... Baliga's complaint.”*** (R&R at 23–24.) China AI argues that the R&R's conclusion must be reversed because the question of whether Defendants breached a duty to China AI is a jury question that cannot be resolved on a pre-discovery motion and without expert testimony. (See Objs. at 29–30.) China AI further argues that it should be entitled to discovery in light of China AI's lack of “opportunity to review communications in the files of Shi or Link Motion, or to cross-examine Schechtman about other communications that occurred between the parties.” (Id. at 30.)

The Court is not persuaded. China AI's counsel represented Shi and, in the direct malpractice action, purported to represent Link Motion, as well, during the relevant period (see generally Nos. 18 Civ. 11642 and 22 Civ. 8313), so the

Court doubts that there was no opportunity to examine Shi's and Link Motion's files. In any case, China AI had the chance to – and did – submit evidence on the Rule 11 motion before Judge Figueredo, and that evidence included nothing indicating that the communications on which Judge Figueredo relied told less than the full story. (See generally Dkt. No. 42.) Further, courts routinely resolve Rule 11 motions before discovery. See, e.g., *An v. Despina*, No. 22 Civ. 10062, 2023 WL 4931832, at *1 (S.D.N.Y. Aug. 2, 2023); *Bletas v. Deluca*, No. 11 Civ. 1777, 2011 WL 13130879, at *10 (S.D.N.Y. Nov. 15, 2011) (stating that while Rule 11 permits parties to identify contentions that will likely have evidentiary support after discovery, “this allowance cannot be understood to give parties free reign to fire shots into the proverbial dark because a reasonable inquiry must still support the likelihood of the inference drawn”); see also *Stonewell Corp. v. Conestoga Title Ins. Co.*, 678 F. Supp. 2d 203, 209 (S.D.N.Y. 2010) (stating that expert testimony is not always required to establish standard of care in legal profession “[w]here it is apparent that the attorney exercised reasonable judgment as to how to proceed”).

China AI's next argument is also unpersuasive. It contends that Judge Figueredo was wrong on the merits – i.e., that the R&R was incorrect to conclude that counsel could not have reasonably believed that China AI could prove malpractice. But China AI's theory of malpractice – that Defendants failed to defeat the TRO and preliminary injunction by raising a standing defense against Baliga and failed to obtain Link Motion's informed consent to the appointment of the Receiver – was presented to (see Dkt. No. 41 at 15–18) and rejected by Judge Figueredo. And ***the Court cannot say the R&R's conclusion constitutes clear error considering the “unanswered communications and nearly complete radio silence from Shi” on which Judge Figueredo relied.*** (R&R at 24.) This objection is accordingly overruled.

4. Whether the R&R Erred with Respect to Causation

Judge Figueredo also concluded that China AI's counsel could not have reasonably believed that China AI could prove causation – i.e., that any malpractice by DLA Piper or Schechtman caused China AI's alleged damages. (See R&R at 24–28.) The element of causation is, of course, intertwined with the separate element of damages. On the latter element, ***the R&R concluded that the only damages alleged by China AI in connection with its malpractice claim are the Tongfang Award and the cost to Link Motion of the receivership*** (see R&R at 26 n.5.), ***and China AI has not specifically objected to this conclusion.***

China AI's theory of causation is that Defendants' malpractice caused the entry of the TRO and preliminary injunction and the appointment of the Receiver, which in turn prevented Link Motion from transferring FL Mobile shares to Tongfang and accordingly resulted in the imposition of the Tongfang Award. (See Compl. ¶¶ 83–91.) China AI and its counsel object to the R&R's conclusions on the causation issue for several reasons. (See Objs. at 34–38.) These reasons can

be grouped into two categories: (a) reasons relating to the Tongfang Award and (b) reasons relating to the outcome of the June 2021 Motion.

a. Reasons relating to the Tongfang Award

China AI's first reason for objecting to the R&R's conclusion on the causation issue can be easily dismissed. Judge Figueredo's finding that China AI's causation theory is frivolous was grounded in part on her conclusion with respect to the Rule 11(b)(3) violations: *since Link Motion had already transferred the FL Mobile shares to Tongfang before Baliga commenced his lawsuit (the findings of the Tongfang Award arbitrator notwithstanding), any malpractice arising from the Baliga case could not have prohibited that transfer from happening.* (See R&R at 24.) To the extent China AI objects to the R&R's causation analysis on the ground that the R&R's Rule 11(b)(3) findings were wrong (see Objs. at 34), the Court overrules the objection for the reasons discussed above.

Judge Figueredo's second reason for finding the causation theory frivolous – grounded on Shi's apparent decision not to submit evidence or mount a defense in the arbitration proceeding against Tongfang, and on Shi's failure to contemporaneously alert the Receiver to the pendency of the arbitration proceeding – was also sound. Judge Figueredo wrote, “Given the utter failure of Link Motion to defend itself against the claims in the arbitration, it is speculative, at best, for [China AI] to claim that [Defendants'] purported failure to ‘competently advise’ Link Motion about a standing defense proximately caused the company to lose the arbitration.” (R&R at 25 (citation omitted).) China AI argues against this conclusion by raising contentions about the Tongfang Award already overruled above (see Objs. at 34–36); those arguments are accordingly rejected.

China AI fares no better by arguing (see *id.* at 35) that the R&R improperly weighed the credibility of Shi's explanation for Link Motion's lack of defense in the arbitration. Shi's explanation was that the “communications between the arbitrator and Shi (where Shi purported to act on behalf of Link Motion) were in fact with someone other than Shi who was posing as Shi and using Shi's corporate e-mail account without authorization.” (R&R at 25.) In fact, Judge Figueredo expressly did not base her conclusion on the credibility (or lack thereof) of Shi's story. *The R&R “[p]ut[] aside the plausibility” of Shi's story and concluded that even if it was true, “an adequate investigation by counsel ... should have uncovered that Link Motion was not represented by counsel in the arbitration, [and] that it mounted no defense to Tongfang's claims.”* (R&R at 25.) *Judge Figueredo concluded that those facts “should have led counsel to deeply question the viability of a legal-malpractice claim against Defendants.”* (*Id.*) The Court thus overrules this objection to the extent it is premised on an argument that the R&R's conclusion improperly depended on a credibility determination.

b. Reasons relating to the June 2021 Motion

The R&R's third reason for finding the causation theory frivolous was that even if DLA Piper and Schechtman had, in the Baliga case, argued in response to the TRO and preliminary injunction motions that Baliga lacked standing, the “outcome would have remained the same, because, as the Court later concluded, it had jurisdiction to appoint the Receiver.” (R&R at 26.) This conclusion was based on the Court's adoption in August 2022 of Magistrate Judge Freeman's findings on the June 2021 Motion. (See *id.* at 26–27.) ***Judge Figueredo concluded that since, as Judge Freeman found, Baliga did have standing to bring his federal securities claims in December 2018, the Court's jurisdiction to enter the preliminary injunction and appoint the Receiver would not have been a substantial issue in controversy even if Defendants had raised the standing argument.*** (See *id.* at 27.)

China AI raises two arguments against the R&R's conclusion on this point. First, China AI contends that Judge Freeman's opinion, which was not issued until March 2022 and was not adopted by the Court until August 2022, cannot serve as the basis for a ruling that the Complaint – filed earlier, on December 20, 2021 – was frivolous in violation of Rule 11(b)(2). (See *Objs.* at 36–37.)

On the surface, this argument has some intuitive appeal, so the Court pauses here to more closely review the timeline. Papers complying with Rule 11's safe harbor requirement were served upon China AI on March 8, 2022. (See R&R at 14; *Dkt. No.* 37-14; *Dkt. No.* 37-15.) In those papers, Defendants put China AI on notice that its malpractice claim was potentially frivolous in part because the claim's causation element was premised on Defendants' alleged failure to raise a “novel” standing argument in Baliga that had “never previously been tested in a New York court.” (See *Dkt. No.* 37-14 at 13.) The next day, Judge Freeman issued her opinion – which, despite considering the standing argument, concluded that the Court had jurisdiction to enter the preliminary injunction and appoint the Receiver – and the Court adopted Judge Freeman's opinion on August 25, 2022. (See *No.* 18 Civ. 11642, *Dkt. Nos.* 275, 331.)

The issuance and adoption of Judge Freeman's opinion distinguishes this case from the typical malpractice action in which, like DLA Piper and Schechtman here, the defendant attorney stands accused of “failing to make a particular argument.” *Gunn v. Minton*, 568 U.S. 251, 259 (2013). Usually, in such a lawsuit, “the causation element requires a ‘case within a case’ analysis of whether, had the argument been made, the outcome of the earlier litigation would have been different.” *Id.* And “[b]ecause of the backward-looking nature of a legal malpractice claim,” the “case within a case” question “is posed in a merely hypothetical sense: *If* [the] lawyers had raised a timely ... argument, would the result ... have been different?” *Id.* at 261. ***Here, though, the “case within a case” question is not hypothetical. Shi did eventually make the standing argument that China AI accuses Defendants of forfeiting, and the Court considered it on its merits and nevertheless concluded (by adopting Judge Freeman's opinion)***

that it had jurisdiction to enter the preliminary injunction and appoint the Receiver.

China AI thus was – after having been warned pursuant to Rule 11(c)(2) in March 2022 that its causation theory was potentially untenable – on notice as of August 25, 2022 that the theory was definitely untenable. ***The “case within a case” question had an answer, and not merely a hypothetical one: If Defendants had raised the standing argument that, allegedly, they negligently forfeited, the result would not have been different, and therefore China AI cannot prove causation.***

Further, Defendants had not yet filed their Rule 11 motion, so there was still time for China AI and its counsel to avoid sanctions. More than 21 days, see Fed. R. Civ. P. 11(c)(2), passed after the Court's adoption of Judge Freeman's opinion foreclosing China AI's causation theory. ***Yet instead of using that period to “withdraw[] or appropriately correct[]” the Complaint, id., China AI's counsel filed the direct legal malpractice action in state court on September 12, 2022, lodging against the same Defendants allegations similar to those in the instant case.*** (See Dkt. No. 27 at 1.) It was not until September 26, 2022 that Defendants filed their Rule 11 sanctions motion with the Court. (See Dkt. No. 35.)

The Court thus rejects China AI's argument that Judge Freeman's opinion cannot serve as the basis for sanctions under these circumstances. See Bletas, 2011 WL 13130879, at *11 (stating that it was not necessary to decide “whether plaintiffs' failure to ascertain that all of these claims are foreclosed ... was objectively unreasonable at the time they first brought suit because after receiving notice that ... defendants intended to seek sanctions unless plaintiffs withdrew these claims, plaintiffs chose to double down on their allegations”).

China AI's final argument on the causation issue is similarly unavailing. ***China AI contends that even if the Court had authority (as Judge Freeman found) to enter the preliminary injunction and appoint the Receiver, the Court would not have necessarily done so if DLA Piper and Schechtman had argued that Baliga made “false allegations” in his complaint and that Baliga's securities law claims were “facially defective.” (Objs. at 37.) The “false allegations” argument would have necessarily been raised as part of the standing argument discussed above because the allegedly “false” allegation was that Baliga was a registered Link Motion shareholder rather than merely a holder of American depository shares (i.e., rather than someone without standing). (See Compl. ¶¶ 38–41.) And with respect to the “facially defective” argument, China AI points to nothing in the Complaint that could be construed to allege that Defendants committed malpractice by failing to raise such an argument, and it is the causation theory alleged in the Complaint, after all, that the R&R found frivolous.*** This objection is accordingly overruled.

....

C. OTHER OBJECTIONS

China AI and its counsel raise three further objections. First, they object to the R&R's recommendation that sanctions be imposed in the amount of the reasonable fees and costs incurred by Defendants in defending this action. (See Objs. at 44–46.) Second, they argue (for the first time) that Defendants' Rule 11 motion was untimely. (See Objs. at 46–49.) Third, they object to Judge Figueredo's “implicit finding” that China AI filed the Complaint for an improper purpose in violation of Rule 11(b)(1). (Objs. at 41.)

....

3. Whether the R&R Erred with Respect to Rule 11(b)(1)

Finally, China AI and its counsel object to the R&R's “implicit finding” (Objs. at 41) that China AI filed the Complaint for an improper purpose in violation of Rule 11(b)(1). The Court agrees that the R&R made a finding that China AI and its counsel violated Rule 11(b)(1). Indeed, Judge Figueredo wrote that upon viewing “all of the deficiencies in [China AI's] claim collectively, the only plausible conclusion to be drawn from pursuit of this litigation is that it was done to harass Defendants.” (R&R at 31.) There is no way to read that statement as anything other than a finding that Rule 11(b)(1) was violated.

*The Court upholds the R&R's conclusion. China AI objects on the ground that the R&R “ignores that [China AI] had filed a notice of voluntary dismissal.” (Objs. at 41.) But, as discussed above, China AI's reliance on its attempt to voluntarily dismiss the Complaint is suspect in light of its counsel's subsequent filing of a direct malpractice action in state court and its later attempt to withdraw the proposed dismissal. China AI further objects (see *id.*) to Judge Figueredo's purported reliance on China AI's May 2023 request – made after the instant sanctions motion was fully briefed – for a stay of this action pending potential reconsideration of the Court's dismissal of the direct malpractice action, but it is clear that the facts surrounding the requested stay merely “reinforced” a conclusion that the R&R already reached: that China AI and its counsel violated Rule 11(b)(1). (R&R at 31.)*

China AI further objects that the R&R's Rule 11(b)(1) analysis turned wholly – and thus improperly – on its previous analysis of the Rule 11(b)(3) and 11(b)(2) violations. (See Objs. at 42–43.) In *Simon DeBartolo Group, L.P. v. Richard E. Jacobs Group, Inc.*, the Second Circuit held that it was an abuse of discretion to sanction a client and its lawyers “for violating Rule 11(b)(1) on the ground that [the] lawyers had violated Rule 11(b)(2).” 186 F.3d 157, 176–77 (2d Cir. 1999). The court observed that permitting a Rule 11(b)(1) violation to turn “entirely” on a Rule 11(b)(2) violation would “render a client responsible for the frivolous [legal] claims asserted by its attorneys, contrary to [the] explicit prohibition” in Rule 11(c)(5)(A). *Id.* at 177.

The Court is not persuaded that Simon DeBartolo Group applies here. *The Second Circuit's concern about holding clients who would otherwise not be sanctioned responsible for Rule 11(b)(2) violations is not implicated by cases such as this one, where the client has independently been found to have violated Rule 11(b)(3) by making false factual contentions. And in any case, Judge Figueredo conducted an independent Rule 11(b)(1) analysis.* The R&R states,

Defendants alerted [China AI] that they intended to seek sanctions if [China AI] did not voluntarily withdraw its claim, and Defendants raised all of these [legal and factual] deficiencies in their letter. Even if one could conclude that [China AI] and its counsel had a good-faith basis for initially filing suit, they certainly had no good-faith basis for continuing to pursue this claim after Defendants pointed out the numerous deficiencies in the claim. Yet, [China AI] ignored Defendants' letter and instead persisted with this suit for six months before filing a voluntary notice of dismissal.

(R&R at 31 (citation omitted).) This final objection is therefore, like the others, overruled.

(*id.* 2024 WL 964596 [SDNY Mar 6, 2024] [emphasis added], together with 2023 WL 5016492, collectively, the **China AI Action**).

To be sure, this amounts to dicta because, on June 10, 2024, the Second Circuit subsequently found that the federal court lacked jurisdiction:

II. Subject Matter Jurisdiction

. . . .

A. Federal Issue “Necessarily Raised”

The parties here agree that LKM's malpractice action implicates the federal law question of whether Baliga had standing to pursue his federal securities claims. LKM nevertheless contends that this issue is not “necessarily raised” within the meaning of Gunn because it “relates to [a] defense,” not an element of its malpractice claim. Appellant's Reply Br. at 4; *see Caterpillar Inc. v. Williams*, 482 U.S. 386, 393, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987) (“[I]t is now settled law that a case may *not* be removed to federal court on the basis of a federal defense[.]” (emphasis in original)). We are not persuaded.

Although LKM characterizes the federal law standing issue as a “defense,” its own complaint, on its face, demonstrates that the issue is integral to its malpractice claim. LKM there alleges that DLA Piper “breache[d] ... the duty of care owed to the Company” by, *inter alia*, “failing to advise the Company that Baliga lacked standing.” LKM Compl. ¶ 78, J. App'x at 37–38. Thus, to prove malpractice, particularly the causation element of that claim, LKM must show that it would have prevailed on a federal law standing challenge in the *Baliga* action. *See Rudolf v. Shayne, Dachs, Stanisci, Corker & Sauer*, 8 N.Y.3d 438, 442, 835 N.Y.S.2d 534, 867 N.E.2d 385 (2007) (holding that to establish causation in legal malpractice action, “plaintiff must show that he or she would have prevailed in the underlying action or would not have incurred any damages, but for the lawyer's negligence”); *see also Gunn v. Minton*, 568 U.S. at 259, 133 S.Ct. 1059 (“In cases like this one, in which the attorney's alleged error came in failing to make a particular argument, the causation element requires a ‘case within a case’ analysis of whether, had the argument been made, the outcome of the earlier litigation would have been different.”). Standing to pursue a federal securities claim necessarily raises a federal law issue. *See Drachman v. Harvey*, 453 F.2d 722, 727 (2d Cir. 1971) (“Federal law must be consulted to decide whether there is standing to sue under the Exchange Act[.]”); *accord CILP Assocs., L.P. v. PriceWaterhouse Coopers LLP*, 735 F.3d 114, 122 (2d Cir. 2013).

B. Federal Issue “Actually Disputed”

Because the federal law standing issue is critical to the causation element of LKM's malpractice claim, it qualifies as a “central point of dispute” in that state action, satisfying the second requirement for the exercise of federal jurisdiction in this case. *Gunn v. Minton*, 568 U.S. at 259, 133 S.Ct. 1059. It may well be that the district court's ruling in the *Baliga* action—that, as a matter of federal law, the plaintiff had standing to pursue his securities claims—will prevent LKM from succeeding on this point. The weakness of its position, however, does not alter the fact that the dispute, grounded in federal law, is central to its malpractice claim.

Nevertheless, as the Supreme Court has cautioned, “the mere presence of a [disputed] federal issue in a state cause of action does not automatically confer federal-question jurisdiction.” *Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 813, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986). To avoid remand, DLA Piper also must satisfy Gunn’s third and fourth factors. This it cannot do.

C. Substantiality

The federal issue raised and disputed in a state action must be “substantial” to support the exercise of federal jurisdiction. To satisfy this third Gunn requirement “it is not enough that the federal issue be significant to the particular parties in the immediate suit”; rather, “[t]he substantiality inquiry ... looks instead to the importance of the issue to the federal system as a whole.” *Gunn v. Minton*, 568 U.S. at 260, 133 S.Ct. 1059. The law draws this distinction to ensure “a serious federal interest in claiming the advantages thought to be inherent in a federal forum.” *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. at

313, 125 S.Ct. 2363. Upon “careful, case-specific consideration, most federal law questions raised in connection with state law claims will not be deemed substantial.” *NASDAQ OMX Grp., Inc. v. UBS Sec., LLC*, 770 F.3d at 1029. That is the case here. The federal law standing issue embedded in LKM's state malpractice claim, however important to DLA Piper in this particular action, lacks the sort of significance *to the federal system as a whole* warranting the exercise of federal jurisdiction.

To explain, we discuss *Gunn* in more detail. The Supreme Court there considered whether a state law claim of legal malpractice in the handling of a patent case had to be brought in federal court because Congress had vested “exclusive jurisdiction” over patent disputes in the federal courts. *Gunn v. Minton*, 568 U.S. at 253, 133 S.Ct. 1059. The Court concluded that it did not because the malpractice claim did not itself arise under federal law. *See id.* at 258, 133 S.Ct. 1059. The Court further explained that “[b]ecause of the backward-looking nature of a legal malpractice claim, the [federal] question is posed in a merely hypothetical sense.” *Id.* at 261, 133 S.Ct. 1059. As such, “[n]o matter how the state courts resolve[d] that hypothetical ‘case within a case,’ it [would] not change the real-world result of the prior federal patent litigation.” *Id.* Accordingly, the Court ruled that “something more, demonstrating that the [federal] question is significant to the federal system as a whole, is needed” to warrant exercising federal jurisdiction over such a state law claim. *Id.* at 264, 133 S.Ct. 1059.

DLA Piper argues that the “something more,” missing in *Gunn* but present here, is the district court's August 25, 2022 order deciding the federal law issue embedded in LKM's instant malpractice action, *i.e.*, Baliga's standing to pursue federal securities law claims against LKM. *See supra* at 910. DLA Piper submits that as a result of this ruling—adverse to LKM—the malpractice action does not require the sort of retrospective, hypothetical analysis that the Supreme Court determined was, by nature, unlikely to hold significance for the federal system as a whole. *See Gunn v. Minton*, 568 U.S. at 259, 133 S.Ct. 1059. Rather, it characterizes this action as a “collateral attack” on the August 2022 order that asks the state court “effectively to overrule [a] decision[] that the district court actually rendered.” Appellee's Br. at 25, 32. DLA Piper argues that “the possibility that a state court might render a contrary decision on an issue already decided—without any opportunity for correction by the federal courts—threatens to undermine the finality of federal decisions and the development of a uniform body of federal law.” *Id.* at 32 (internal quotation marks omitted). The argument fails to persuade.

In the unlikely event that the state court were to misapply federal law on remand, the error would not necessarily be federally unreviewable. Rather, review would be to the Supreme Court. *See* 28 U.S.C. § 1257. While such review is not automatic, its availability mitigates any risk to uniformity of federal law from possible state error. *See Merrell Dow Pharm. v. Thompson*, 478 U.S. at 816, 106 S.Ct. 3229 (stating that “concern about the uniformity of interpretation ... is

considerably mitigated by the fact that, even if there is no original district court jurisdiction ... this Court retains power to review the decision of a federal issue in a state cause of action”); *see also* *Liana Carrier Ltd. v. Pure Biofuels Corp.*, 672 F. App'x 85, 92 (2d Cir. 2016) (concluding no federal jurisdiction over state claim, in part, because state court's “resolution of any embedded federal issue, if decisive to the case, would ultimately be subject to possible Supreme Court review”).

Even absent federal review, substantiality is not shown by the mere possibility of a state court ruling at odds with federal law. *See Gunn v. Minton*, 568 U.S. at 263, 133 S.Ct. 1059 (explaining that possibility “that a state court will incorrectly resolve a state claim is not, by itself, enough to trigger” federal jurisdiction, “even if the potential error finds its root in a misunderstanding of” federal law). Such a ruling would not alter the district court's federal law standing decision in the *Baliga* action itself. Nor would it control in any future federal securities cases. *See Fracasse v. People's United Bank*, 747 F.3d 141, 145 (2d Cir. 2014) (observing that “question that will control many other cases is more likely to be a substantial federal question”). It also would be unlikely to bear on other state malpractice cases, which, like this case, tend to arise under unique circumstances. *Compare* *Gunn v. Minton*, 568 U.S. at 262, 133 S.Ct. 1059 (identifying no substantial issue in state legal malpractice claim based on federal patent litigation because state court decision would not “be controlling in numerous other cases” (internal quotation marks omitted)), *with* *Tantaros v. Fox News Network*, 12 F.4th 135, 142, 146 (2d Cir. 2021) (concluding that where New York law prohibits mandatory arbitration clauses “except where inconsistent with federal law,” substantial federal issue arises that “will inform all future claims brought” under state statute). At most, a ruling favorable to LKM would shift certain costs in the *Baliga* action from client to attorney. But that is the same relief sought in every legal malpractice action, including the one at issue in *Gunn*.

Old Dominion Electric Cooperative v. PJM Interconnection, LLC, 24 F.4th 271 (4th Cir. 2022), cited by DLA Piper, is not to the contrary. The state contract claims there at issue were “inextricably intertwined with federal law” such that they would “alter the terms” of the parties’ federally regulated relationship. *Id.* at 286–87. Here, the parties’ attorney-client relationship is regulated by state, not federal, law. *See infra* at 916-17.

In any event, we do not readily assume that state courts will cast aside applicable federal precedent. As the Supreme Court recognizes, a state court “is competent to apply federal law, to the extent it is relevant” to resolution of a state claim. *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 701, 126 S.Ct. 2121, 165 L.Ed.2d 131 (2006). Thus, in declining to exercise federal jurisdiction over the state malpractice claim in *Gunn v. Minton*, the Court instructed federal courts to trust their state counterparts to “hew closely to the pertinent federal precedents” in deciding federal issues embedded in state malpractice actions as “[i]t is those precedents, after all, that would have applied”

had counsel made the argument allegedly omitted negligently. 568 U.S. at 262, 133 S.Ct. 1059.

That conclusion applies with particular force here where the federal law standing issue allegedly neglected by DLA Piper was eventually raised and decided adversely to LKM in written decisions by both the magistrate judge and district judge in the *Baliga* action. *See supra* at 910. On return of this case to the New York Supreme Court, that court will have the benefit of these decisions, and we have no reason to doubt that it will give them careful review and appropriate weight in deciding LKM's claim of legal malpractice based on DLA Piper's alleged failure to raise a federal law standing challenge in the *Baliga* action.

In sum, DLA Piper has not adduced the “something more” required by *Gunn v. Minton* to view the federal law standing issue in LKM's state malpractice claim as anything other than backward-looking and hypothetical. 568 U.S. at 264, 133 S.Ct. 1059. The claim looks backward to ask whether the district court would have denied Baliga's motions for a TRO, preliminary injunction, and appointment of a receiver if, hypothetically, DLA Piper had timely challenged Baliga's standing under federal securities law. Thus, because the federal issue raised by LKM's state malpractice claim “is not substantial in the relevant sense,” *id.* at 260, 133 S.Ct. 1059, the district court was without jurisdiction to hear the claim.

D. Federal-State Balance

The fourth *Gunn* factor requires little discussion because, as the Supreme Court has stated, in the absence of a substantial federal issue, “[i]t follows” that exercise of federal jurisdiction over a state claim would disrupt the “appropriate balance of federal and state judicial responsibilities.” *Id.* at 264, 133 S.Ct. 1059 (internal quotation marks omitted).

The balance inquiry requires sensitivity in recognizing claims of the “sort ordinarily resolved in state courts.” *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. at 683, 126 S.Ct. 2121; *see New York ex rel. Jacobson v. Wells Fargo Nat'l Bank, N.A.*, 824 F.3d 308, 316 (2d Cir. 2016) (explaining that balance analysis properly focuses on “the nature of the claim, the traditional forum for such a claim, and the volume of cases that would be affected,” as well as any “special state interest in a category of litigation”). But, as the Supreme Court has repeatedly recognized, legal malpractice actions and attorney disciplinary proceedings plainly present the sort of claims ordinarily resolved in state courts. *See Gunn v. Minton*, 568 U.S. at 264, 133 S.Ct. 1059 (identifying states’ “special responsibility for maintaining [professional] standards” and emphasizing states’ “especially great” interest in regulating lawyers as professionals “essential to the primary governmental function of administering justice” (internal quotation marks omitted)); *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 434, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982) (identifying state's “extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses” and reversing

federal court's decision not to abstain from deciding challenge to state disciplinary rules, concluding that such disciplinary “proceedings are of a character to warrant federal-court deference”); *see also* *Leis v. Flynt*, 439 U.S. 438, 442, 99 S.Ct. 698, 58 L.Ed.2d 717 (1979) (“Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions.”). DLA Piper cites no authority suggesting “congressional[] approv[al]” for relocating legal malpractice claims away from their traditional state fora to federal courts. *Grable & Sons Metal Prods., Inc., v. Darue Eng'g & Mfg.*, 545 U.S. at 314, 125 S.Ct. 2363; *see Gunn v. Minton*, 568 U.S. at 264, 133 S.Ct. 1059 (noting absence of such authority).

Thus, because the established federal-state balance expects for legal malpractice actions to be heard in state court, this final Gunn factor also weighs against the exercise of federal jurisdiction in this case and in favor of the return of LKM's malpractice action to the New York Supreme Court.

III. Supplemental Jurisdiction

With little discussion, DLA Piper argues that the district court had supplemental jurisdiction over LKM's state malpractice action due to its factual overlap with the federal *Baliga* action. In fact, this argument is foreclosed by the federal removal statute, which confers federal jurisdiction only over removed civil actions “of which the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a); *see Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 34, 123 S.Ct. 366, 154 L.Ed.2d 368 (2002) (“Ancillary jurisdiction ... cannot provide the original jurisdiction that petitioners must show in order to qualify for removal under § 1441.”); *Fracasse v. People's United Bank*, 747 F.3d at 143 (holding no supplemental jurisdiction over removed state case “as the removed action was not part of the separately filed, albeit related, federal case”). The district court had no original federal jurisdiction over LKM's state malpractice action. DLA Piper's reliance on *Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328 (2d Cir. 2006), is misplaced as that case did not involve the removal of an action from state court. *See* 28 U.S.C. § 1367(a) (distinguishing “civil action[s] of which the district courts have original jurisdiction” from “other claims” over which they may exercise “supplemental jurisdiction”).

(*Link Motion Inc. v DLA Piper LLP*, 103 F.4th 905, 912-917 [2d Cir 2024]).

Subsequently, on June 12, 2024, DLA cautioned Link Motion to not reassert its frivolous malpractice claims in this Court indicating that were they to do so, DLA would again seek sanctions:

Dear Mr. Maloney and Ms. Felicello:

As you are aware, we represent DLA Piper LLP (US) (“DLA Piper”) and Caryn Schechtman (collectively “DLA” or “Defendants”) in the above-referenced lawsuit. Following Monday’s decision by the Second Circuit, you recklessly made public statements regarding Plaintiff’s intent to move forward with this frivolous action despite clear findings by two separate federal judges that your claims are sanctionable. Should you and/or Plaintiff make the mistake of taking the slightest action in furtherance of these claims that already have been adjudicated as frivolous, DLA will pursue sanctions against you and Plaintiff under NYCRR §130.1. In addition, you will be exposing yourselves to affirmative claims, including for malicious prosecution, seeking full joint and several damages.

The malpractice claim in this case is virtually identical to, and just as frivolous as, the one you previously filed in the Southern District on behalf of one of Link Motion’s shareholders. *See China AI Capital Limited v. DLA Piper LLP (US) et al.*, No. 1:21-cv-10911 (S.D.N.Y.) (the “China AI Action”). That action has now been dismissed with prejudice, and, as noted, two separate federal judges have determined that sanctions against you and your client are warranted for filing an action premised on demonstrably false allegations and meritless legal arguments and for the improper purpose of harassing DLA. *See China AI Action*, ECF 65 at 17–21, 23–36; *id.* at 43–44 (upholding the conclusion that “the only plausible conclusion from [Plaintiff’s] pursuit of this litigation is that it was done to harass Defendants”).

As stated in the Rule 11 letter we sent to you and Link Motion nearly a year and a half ago, this copycat action—which Plaintiff filed in a blatant attempt at forum-shopping and in direct violation of a federal court order, *see Link Motion Inc., v. DLA Piper LLP (US), et al.*, 1:22-cv-08313 (S.D.N.Y.), ECF 24 at 8–91—suffers from all of the infirmities of the China AI Action (and more), and is clearly sanctionable for the same reasons.

First, the Complaint is replete with the same factual allegations that are—and have been confirmed by two federal judges to be—demonstrably false. *See* NYCRRR §130-1.1 (“Conduct is frivolous,” and thus sanctionable, if “it asserts material factual statements that are false.”). Specifically, Plaintiff’s core causation and damages allegations—that the “interrupt[ion of] the Company’s divestment of its legacy business segment” supposedly cost Plaintiff an “ascertainable gain” of \$180 million, Compl. ¶ 69—are refuted by its own public filings. The federal court thus concluded that you “could [not] have reasonably believed that those allegations had or were likely to have evidentiary support” when the Complaint was filed, and that your efforts to justify those allegations after-the-fact were “nonsensical.” *China AI Action*, ECF 53 at 16-22; *see id.*, ECF 65 (adopting R&R in its entirety and affirming that “China AI and its counsel...[made] false allegations in the Complaint”).

Second, Plaintiff’s legal malpractice claim is “frivolous” and “it was objectively unreasonable” to have pursued it. China AI Action, ECF 53 at 15-16, 22; *see id.*, ECF 65. Given that “Link Motion and Shi refused to engage with Defendants” despite repeated and strenuous efforts by DLA, or “even confirm that [they] wished to retain DLA Piper to defend” the underlying Baliga Action, it will be “impossible” for Plaintiff “to prove that Defendants breached a duty to Link Motion.” China AI Action, ECF 53 at 23; *see id.*, ECF 65.

Third, Plaintiff cannot establish but-for causation, not only because its damages allegations are demonstrably false (see above), but also because Link Motion’s theory that the Receiver would not (or could not) have been appointed “but for” DLA’s alleged conduct already has been rejected by the very court that appointed the Receiver in the first place. *See Baliga v. Link Motion Inc. et al.*, 1:18-cv-11642 (the “Baliga Action”), ECF 275 at 18 (Baliga “had standing to bring the [federal] securities-law claims ... [which] afforded the Court subject matter jurisdiction to issue the challenged [Receivership] Order”); *id.* ECF 331 at 12, 17–18 (adopting R&R and finding that “Baliga had standing to bring his derivative securities claims” and “the Receiver was duly appointed”). That same court also denied the motion to dismiss Baliga’s federal securities claims you filed on behalf of your other client, Dr. Shi, finding that Baliga had adequately alleged violations of the securities laws. Baliga Action, ECF at 22–50 (R&R); *id.*, ECF 372 at 41–42 (adopting R&R in relevant part). *See* China AI Action, ECF 65 at 22, 29-37 (affirming that “counsel could not have reasonably believed that DLA Piper’s and Schechtman’s actions caused Link Motion’s alleged damages” and noting that Link Motion’s decision to nevertheless file this action justified sanctions); NYCRR §130-1.1 (“Conduct is frivolous,” and thus sanctionable, if “it is completely without merit in law”).

Fourth, the same malpractice claim asserted in the Complaint has already been found by the federal court to be time-barred and was dismissed with prejudice on that basis. *See* China AI Action, ECF 30. The federal court’s analysis will be equally applicable and persuasive in any state court proceeding. As a result, any decision to prolong this vexatious and untimely litigation by seeking a second bite at the same rotten apple before a different court would not only be frivolous, but it would also confirm that your only goal is to harass Defendants. *See* NYCRR §130-1.1 (“Conduct is frivolous,” and thus sanctionable, if “it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another”).

Any one of the foregoing independent reasons dooms your claims against Defendants. If you and/or Plaintiff pursue such claims—despite *repeated* warnings from Defendants and findings by two federal judges that they are frivolous under all three subsections of Rule 11—you will be guilty of intentional misconduct plainly intended to impose economic and reputational harm on Defendants.

Enough is enough. Let us be very clear: if you continue to pursue this frivolous litigation, you will expose yourself to significant legal and professional consequences across a number of forums. We urge you to consider very carefully these consequences before seeking the required order to show cause, *see* NYSCEF No. 5, and then to drop this case. We also demand that you (1) put your insurance carrier on notice, to the extent that you have not done so already; (2) provide your client with a copy of this letter; (3) retract your statement that you intend to move forward with this action; and (4) issue a written apology to DLA for filing multiple frivolous complaints containing wholly false allegations.

Defendants reserve all rights and waive none.

Sincerely,

Nancy Hart

(NYSCEF Doc. No. 58).

Undeterred, pursuant to the AC, which Link Motion filed on September 6, 2024 (three months after receiving Ms. Holt's stern caution and approximately six months after Judge Marrero's decision sanctioning them), Link Motion asserted the same claims in this Court predicated on the same demonstrably false assertions. For brevity, the Court sets forth four.

The First False Assertion

45. The only advice that Defendants gave to the Company was to pay a substantial amount of money to DLA.

(NYSCEF Doc. No. 29 ¶ 45). As an initial matter, the Court notes that this was no shakedown. DLA was merely requesting payment for prior invoices *before* a new litigation matter could be opened (NYSCEF Doc. No. 39 ¶¶ 1-5; *see also* NYSCEF Doc. No. 47). More importantly, DLA did give advice:

12/13/2018

Did you see the lawsuit that was filed. They are going into court in 12 hours to get a restraining order against the company

I saw it, Can we have call around 12:00 bj time? One hour later

12/14/2018

Do you want me to send an associate?

OK, thanks

Any update about TRO?

Yes. It was entered in a modified form. Jason should be emailing it to you. I will send it to you now

Plaintiffs counsel also sent it to you.

Let me know if you don't have it

The company can make payroll and pay lawyers and accountants and engage in other everyday expenses but it cannot transfer or provide security interests in other assets

12/16/2018

Did you speak with the board

still keep discussing

Okay. Does everyone understand the order?

Yes

(NYSCEF Doc. No. 47; *see also* NYSCEF Doc. No. 36).

From: Chang, Jason

Sent: January 14, 2019, 9:36 PM

To: litwxd@sina.com; vincent@lkmotion.com; ljanjia8123@sina.com; 842460194@qq.com; ly@hh-medic.com; zzlangk@icloud.com; wuxichun@zhsr-capital.com; gm2lingyun@_n_q.com

Subject: Link Motion: Opposition to OSC

Dear Vincent Shi and Board of Directors:

On December 14, 2018, Plaintiff Wayne Baliga filed an Order to Show Cause for Temporary Restraints, for a Preliminary Injunction, and for the appointment of a Temporary Receiver against Defendant Link Motion, Inc., Vincent Wenyong Shi, Jia Lian, and Xiao Yu ("Defendants"). Plaintiff claims that relief is required because Defendants have allegedly: (1) failed to take steps to prevent Link Motion's involuntary delisting from NYSE; (2) directed or allowed Link Motion to abandon certain business lines, including ceasing communications with a subsidiary in Finland and Texas, and operating entities in China; and, (3) wrongfully transferred ownership interests of Link Motion's assets in Showself, SyberOS and Rideshare businesses to unknown third parties, without the consent or knowledge of the Board or shareholders.

On December 14, 2018, the Court entered an order to temporarily restrain and enjoin Defendants from "transferring, liquidating, dissipating, assigning, and/or granting a lien or security interest or other interest in, any assets belonging to Link Motion" (the "TRO"). Following the issuance of the TRO, the parties agreed to extend the TRO pending the Court's determination of the Plaintiff's motion for preliminary injunction and a temporary receiver.

Defendants opposition to Plaintiff's motion is due next Monday, January 21, 2019. To oppose the motion, we should get an affidavit or other evidence from Defendants that explains the business or financial reasons for the transfers and abandonment of business. Also, we need to understand what is going on with NYSE delisting, and whether the Company will be getting relisted, or the Company's reasons for not filing forms on time.

If we do nothing, the motion may be granted, which may include such relief as appointing a receiver over the company and a preliminary injunction restricting the Company from transferring assets. It may also include relief as to Plaintiff's request for an order requiring the Defendants restore all assets transferred to third parties within the past ninety days.

We have repeatedly asked for instruction on how to proceed but have not received any guidance from the Company or the individual defendants and advised that if we do not receive payment for legal services, we cannot take on this litigation matter. Attached is the Plaintiff's motion and complaint, and the TRO for reference.

Thank you.

From: Chang, Jason

Sent: January 19, 2019, 6:03 PM

To: litwxd@sina.com; vincent@lkmotion.com; ljanjia8123@sina.com; 842460194@qq.com; ly@hh-medic.com; zzlangk@icloud.com; wuxichun@zhsr-capital.com; gm2lingyun@_n_q.com
Subject: Link Motion: Opposition to OSC

Dear Vincent Shi and Board of Directors:

We have not heard back from you on the below. As a result, if we do not hear back from you within 24 hours, DLA will assume that we have Link Motion's consent not to oppose the motion. As explained below, we reiterate that if Link Motion does not respond, the motion may be granted, which may include such relief as appointing a receiver over the company and a preliminary injunction restricting the Company from transferring assets, attorneys' fees and costs, and other such relief that the Court may deem appropriate. It may also include relief as to Plaintiff's request for an order requiring the Defendants restore all assets transferred to third parties within the past ninety days. It may include other relief as well.

Further, if we do not hear back from you within 24 hours, we will also assume that we have Link Motion's consent to withdraw from representation. In that event, we will file a letter with the Court that states:

Dear Hon. Marrero:

We write to inform you that Defendant Link Motion Inc. ("Link Motion") will not submit an opposition to Plaintiff Wayne Baliga's motion for a preliminary injunction and appointment of a temporary receiver. Additionally, if the Court requires, DLA Piper will be seeking leave to withdraw from this matter.

Thank you,

If you disagree with any of the above, please respond within 24 hours. If you do not, we will assume we have your consent to not oppose the motion and to withdraw from representation if the Court requires.

(*id.*).

The Second False Assertion:

35. By promising to appear and actually appearing at the TRO hearing on behalf of the Company, Defendants undertook a new attorney-client relationship with the

Company to act as legal counsel for the Company with respect to the Derivative Action and Baliga's motion for Provisional Equitable Relief.

....

122. Defendants undertook to represent and defend the Company in the Derivative Action by, inter alia, appearing in and making submissions to the Court on behalf of the Company.

(NYSCEF Doc. No. 29 ¶¶ 35, 122). As discussed by the federal court, this simply is not so. DLA never agreed to "represent and defend" Link Motion in the derivative action. In fact, although the parties dispute whether an attorney/client relationship was ever formed for this new matter, the documentary evidence lays to rest any possible allegation that Link Motion could be under any such misconception that DLA agreed to defend Link Motion in the derivative action. With Link Motion's authorization, they "sent down an associate" to the court but otherwise made clear that they could not open a new matter without direction and without being paid on certain open invoices. Indeed, DLA only made a limited (and not general) appearance for the purpose of obtaining an extension of time to respond to the complaint and they otherwise preserved all objections and defenses to the complaint:

3. By entering into this stipulation, Link Motion contends that it is making only a limited, and not general appearance, for the sole purpose of obtaining an extension of time to answer, move or otherwise respond to the Complaint. Link Motion has preserved and is not waiving and have not waived any objections, defenses or responses to the Complaint.

(NYSCEF Doc. No. 37 ¶ 3).

12/28/2018

I need payment on outstanding invoices to be able to open up a litigation matter

01/06/2019

Vincent we won't be able to draft the briefs that are due on The 21st

Because we can't open the matter as we have not received the retainer and we are not up to date on payment

01/14/2019

When can we speak. I need to let the other side and the court know what we are doing. We have to start drafting today. It's one week out...

01/15/2019

Please advise. If I do not hear from you in 24 hours I will need to alert the Court that we have not been engaged to proceed further on the Company's behalf.

01/17/2019

Vincent - I have not heard from you. We have not prepared briefs and will not be in a position to represent the company in the derivative action

Can you give me a quick call. I want to avoid withdrawing as Counsel on the derivative action because it will look bad for the company. Instead I would prefer for the company to agree that it isn't submitting papers on Jan 21

But we need to discuss.

We must speak. When can you talk?

I need you to confirm that we can tell the court you aren't responding

01/20/2019

Vincent - you owe me the courtesy of a call. Please call me

Will call you soon

Thank you.

Vincent it looks like the company was served with the co on December 20. Did you get a copy of the service. Your answer was due on Dec

With the complaint

Answer due on January 10. We will try and get the client

Get the company more time to answer

Do you want us to do the answer. We will need some payment. Otherwise I'm not sure what to recommend. You don't want a default judgment entered. Answers are not that expensive

Vincent - I would like your consent for us to withdraw as your counsel from the litigation if you determine not to pay us to go forward

We can do that after we put in this response today so that it does not have to be done in a “noisy” way

I am trying to do what is best for the company but we cannot work for no payment

01/21/2019

Vincent pls respond. The other option is we also withdraw as Counsel now

Thanks Caryn, I fully respect and appreciate your excellent work. But at this moment, it's very hard to make any further payment arrangement, even employees' payrolls were impacted. I'm very sorry about this situation and also bear huge pressure from many parties. I still try my best to solve issues or at least to maintain the company. But it is very hard to predict the timeframe and the results.

I completely understand. Let me see what I can do that will make the most sense and I will get right back to you.

(NYSCEF Doc. No. 47).

The Third False Assertion:

80. Based on Defendants' failure to assert the Company's meritorious defenses and arguments, Defendants' failure to request adequate security pursuant to Rule 65(c), and Defendants' false representations that the Company had given informed consent to the relief, the federal court, on February 1, 2019, entered an order in the form requested by Baliga and Mr. Seiden appointing Mr. Seiden as receiver (the “Receiver”) and preliminarily enjoining the Company. See Exhibit 9.

....

106. But for Defendants' failure to provide competent advice and timely legal representation in opposition to Baliga's motion for Provisional Equitable Relief, the preliminary injunction would not have been entered, Mr. Seiden would not have been appointed as Receiver for the Company, the Company would not face liability for the costs and expenses of the receivership, Mr. Seiden would not have been able to seize the Company's cash and receivables, and Mr. Seiden would not

have been able to transfer to Mr. Guo control over the Company's Hong Kong and China-based subsidiaries and assets.

....

131. Had Defendants raised those defenses and arguments with the court, the federal court would not have granted the Provisional Equitable Relief requested by Baliga or the federal court would have ordered Baliga to post security for that relief pursuant to Rule 65(c).

(NYSCEF Doc. No. 29 ¶¶ 80, 106, 131). As discussed above, the federal court in the Baliga Action determined that Mr. Baliga had standing as to some of the claims that he asserted. It is false to suggest otherwise or that the federal court would have got it wrong had DLA provided different advice or made a scurrilous argument when the court considered the Provisional Equitable Relief. This was not unsettled when Link Motion pressed the AC in this Court. It is also false to assert that there was any impact on any other litigation. The stipulation discussed above expressly reserved all of Link Motion's rights and defenses (including the right to raise standing as a defense and as Judge Freeman indicated when the defenses were asserted the TRO and imposition of the temporary receiver was not only proper and should not be void *ab initio* but also it should not be ended then or until the accounting was completed) (NYSCEF Doc. No. 37 ¶ 3).¹

The Fourth False Assertion

¹ “[T]o the extent Shi is arguing in his motion that the Preliminary Injunction and Receivership Order should be vacated *ab initio* because the Court was without power to have issued it, the motion should be denied. . . . [P]rior to his discharge (and by a date certain to be set by the Court), the Receiver [should] be required to provide a full accounting of the activities performed during the period of his appointment and the costs thereof. . . . in light of the fact that the receivership Order was properly authorized in the first instance” (*Baliga*, No. 1:18-cv-11642, 2022 WL 2531535, at *14, 19-20 [SDNY Mar 9, 2022]).

107. As a result, Defendants are liable for all consequential damages caused by the imposition of the Receiver, entry of the preliminary injunction, and the lack of a bond to protect the Company's interests, including the following:

c. The loss of gains and other benefits caused by interruption to the Company's divestment of its legacy business segment. Damages caused by the interruption of this divestment were foreseeable and calculable because the Company had already substantially completed performance of its planned divestment. All that remained was to finally transfer of stock pledged to the Company as security for the balance of payment owed by the purchaser, which would have been completed but for entry of the TRO and preliminary injunction. Had the Company been permitted to release the pledged stock in exchange for final payment, the Company would have realized gains from this transaction, an ascertainable gain of \$180 million, which the Company reasonably expected to realize and had already been calculated; and

....

132. As a result of Defendants' negligence and malpractice, the Company has suffered damages as detailed above, including an inability to effectively conclude an anticipated transfer related to a previously negotiated transaction. The damages are calculable, an amount to be determined at trial, but in no event less than \$500,000.

(NYSCEF Doc. No. 29 ¶¶ 107[c], 132). This too is not true. As the transaction documents indicate, and as the statements made by Vincent Shi unequivocally establish, the Tongfang shares were transferred as of December 2017, *a year before the Baliga Action commenced in December 2018 or the Receiver was appointed in February 2019*. The shares were merely pledged to secure Tongfang's obligation pay money to Link Motion pursuant to the promissory note. Nothing in the TRO prevented the transfer of the Tongfang shares as this had already occurred and the TRO did not prevent payments *to* Link Motion pursuant to the promissory note, but only, prevented only non-customary payments *from* Link Motion:

ORDERED THAT, pending the hearing and determination of Plaintiff's Order to Show Cause, Defendants I shall be temporarily restrained and enjoined from: transferring, liquidating, dissipating, assigning, and/or granting a lien or security interest or other interest in, any assets belonging to Link Motion Inc. (the

"Company") including, among other things, its subsidiaries, businesses, physical assets, and cash reserves. Notwithstanding this Order, the Company shall be allowed to continue to process normal day-to-day operational costs, including but not limited to payroll, attorneys' fees, and auditor fees.

(NYSCEF Doc. No. 33).² Second, as the courts and the arbitrator already held, the Equity Pledge Agreement (the **Agreement**; NYSCEF Doc. No. 88), by and between Tongfang and NG International Limited, only created a security interest in the shares; Tongfang had already received the shares. Link Motion and its attorneys know this too and knew it before they pressed the AC.

Thus, in total, the AC contains a minimum of at least four false statements. As they had warned, DLA now moves to dismiss and to seek sanctions pursuant to 22 NYCRR § 130-1.1.

As discussed on the record (*trs.* 2.6.25, 2.14.25), the dicta set forth in the federal court decisions set forth above is adopted in its entirety.

DISCUSSION

I. DLA's Motion to Dismiss is Granted (Mtn. Seq. No. 003)

On a motion to dismiss pursuant to CPLR § 3211 (a) (7), the court must afford the pleadings a liberal construction and accept the facts alleged in the complaint as true, according the plaintiff the benefit of every favorable inference (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]). The

²To the extent that Link Motion argues that there was ambiguity regarding the agreement (which there is not), there is nothing in the TRO which prevented Link Motion from obtaining payment on the day the TRO was issued when it was due (or afterwards) or returning to the court with or without the Receiver to request a release of the security interest in the pledged collateral (NYSCEF Doc. No. 33) if payment *to* Link Motion was made pursuant to the promissory note.

court's inquiry on a motion to dismiss is whether the facts alleged fit within any cognizable legal theory (*id.*). Bare legal conclusions are not accorded favorable inferences, however, and need not be accepted as true (*Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999]). Dismissal may also be sought the grounds that the action is time-barred by the statute of limitations (CPLR § 3211 [a] [5]).

A. Link Motion's Claim Is Time-Barred

Legal malpractice claims are subject to a three year statute of limitations (CPLR § 214[6]). A legal malpractice claim accrues "when the malpractice was committed" (*Hahn v Dewey & LeBoeuf Liquidation Tr.*, 143 AD3d 547, 547 [1st Dept 2016]). According to the AC, the alleged legal malpractice occurred at the latest on January 21, 2019 when the stipulation was executed (NYSCEF Doc. No. 29 ¶¶ 76-77). Inasmuch as this lawsuit was brought on September 12, 2022, more than seven months after the statute of limitations expired, dismissal is required.

Link Motion is simply not correct that their claim is preserved by (i) the continuous representation doctrine tolls because DLA was not formally granted leave to withdraw until March 1, 2019, (ii) New York's COVID-19 Executive Orders and their effect on tolling between March 20, 2020 and November 3, 2020, (iii) or their argument that Link Motion was entitled to equitable tolling because it was unable to bring this suit until the preliminary injunction in the Baliga Action was vacated on August 25, 2022.

Under New York law, an attorney continuously represents his/her client until "the client is informed or otherwise put on notice of the attorney's withdrawal from representation" (*Shumsky*

v Eisenstein, 96 NY2d 164, 170-71 [2001]). “One of the predicates...of the continuous representation doctrine is continuing trust and confidence” (*Pitelli v Schulman*, 128 AD2d 600, 601 [2d Dept 1987]). Continuous representation requires a “mutual understanding that [the attorney] would continue to represent [the client]” (*Davis v Cohen & Gresser, LLP*, 160 AD3d 484, 486 [1st Dept 2018]).

The documentary evidence adduced by DLA in support of its motion (and discussed by the federal court) indicate that there was a lack of an ongoing relationship of trust and confidence between DLA and Link Motion. There was no understanding that DLA would represent Link Motion in the Baliga Action must less an understanding to “continue to do so” (*see* NYSCEF Doc. No. 47). Indeed, even assuming more than a limited appearance representation where DLA acted to preserve Link Motion’s defenses and secure more time to respond to the Baliga complaint occurred, DLA informed Link Motion that it could not open a new litigation matter without payment for previous work done and on January 19, 2019, DLA informed Link Motion that it was seeking to withdraw (NYSCEF Doc. No. 36). Thus, as of January 21, 2019, Link Motion was already on notice that DLA was withdrawing and the continuing representation doctrine does not serve to preserve Link Motion’s claims beyond such date.

New York’s COVID Executive Orders tolled the time that lawsuits could be filed in New York (*Murphy v Harris*, 210 AD3d 410, 411 [1st Dept 2022]). But, even were the Court to provide Link Motion with 228 days of pandemic tolling, the claim became untimely on September 5, 2022 – a week before Link Motion filed this lawsuit (September 12, 2022). Thus, New York’s COVID Executive Orders too do not make Link Motion’s malpractice claim timely.

Finally, under New York law, a defendant is estopped from pleading a statute of limitations defense if the plaintiff was induced by fraud, misrepresentations or deception to refrain from filing a timely action (*Ross v Louise Wise Services, Inc.*, 8 NY3d 478, 491 [2007]). It is “fundamental to the application of equitable estoppel for plaintiffs to establish that subsequent and specific actions by defendants somehow kept them from timely bringing suit” (*Zumpano v Quinn*, 6 NY3d 666, 674 [2006]). Link Motion fails to allege any fraud, misrepresentation, or deception by DLA such that Link Motion was prevented by DLA’s conduct from timely bringing suit. Thus, equitable tolling does not serve to otherwise make Link Motion’s claims timely.

B. Link Motion Fails to State a Claim for Legal Malpractice

To state a cause of action for legal malpractice, a plaintiff must demonstrate that the attorney failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession and that the attorney’s breach of that duty proximately caused actual and ascertainable damages (*Aur v Manhattan Greenpoint Ltd.*, 132 AD3d 595, 595 [1st Dept [2015]). A legal malpractice action must be dismissed if there is failure to demonstrate proximate cause, regardless of whether the attorney was negligent (*Leder v Spiegel*, 31 AD3d 266, 268 [1st Dept 2006]).

The AC alleges that DLA “failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession” by failing to do any research or offer any defenses and advising Link Motion to waive its rights and consent to the imposition of a preliminary injunction and appointment of a Receiver, which proximately caused Link Motion to

sustain actual and ascertainable damages, including litigation expenses, receivership costs, and the dissipation of its cash and other liquid assets.

As discussed above, even taking the allegations in the AC (many of which are demonstrably false) as true as the Court must at this stage of the litigation (*see Leon*, 84 NY2d at 87–88), there simply is no claim for legal malpractice against DLA for at least three reasons.

As DLA correctly points out, (i) DLA did not breach a duty to Link Motion because Link Motion refused to engage with DLA’s attempts to communicate with Link Motion (including even retaining them) about the Baliga Action, (ii) there is no causation as to any alleged harm because the effect of this hindsight speculative evidence has been addressed by the federal court in a manner which precludes a factual conclusion that the assertion of the standing or other defense would have had impact at all because Baliga had standing and as Judge Freeman indicated in her decision, the provisional relief order was promptly granted and the receiver should not be discharged until after the accounting was completed when all of these arguments were made (*Baliga*, 2022 WL 2531535, at *15-20), and (iii) the AC does not allege a valid basis for damages.

First, DLA did not breach a duty to Link Motion because as Judge Figueredo explained in her Report and Recommendation, “it is apparent from the many communications by Schechtman to either Link Motion, Shi, or both that Link Motion and Shi refused to engage with Defendants in a discussion about how to respond to the TRO and preliminary injunction motions. Those e-mails and text messages—including e-mails in English and Mandarin sent to the entire Link

Motion Board of Directors—indicate that Ms. Schechtman diligently attempted, on numerous occasions, to discuss with Shi Baliga's complaint. Her communications went unanswered, the company refused to discuss the case (or even confirm that it wished to retain DLA Piper to defend the action), and Defendants were left with no guidance as to how to proceed” (*China AI*, 2023 WL 5016492, at *11).

Second, there is no causation as to any alleged harm because the hypothetical effect of this hindsight assertion has, as discussed above, already been addressed by the federal court in a manner which precludes a factual conclusion that the assertion of the standing defense would have had any impact at all because Baliga Action. All defenses (including standing) were preserved at the time of the TRO.

Finally, Link Motion’s alleged damages are entirely speculative. Link Motion claims to have lost an anticipated \$180 million payment on a senior date due to its inability to transfer shares after the preliminary injunction. However, and as discussed above, Link Motion had already transferred the shares before the Baliga Action commenced, Tongfang’s obligation under the Agreement was due prior to the TRO being entered, and nothing in the TRO prevented Link Motion from receiving payment or funds (*id.* at *12). Thus, the AC also must be dismissed because it fails to state a claim upon which relief could be granted.

II. DLA’s Motion for Sanctions is Granted (Mtn. Seq. No. 004)

A court in a civil action is authorized to award the reasonable attorneys' fees and expenses incurred by a party as a result of the opposing party's frivolous conduct (22 NYCRR § 130-1.1

[a]). Conduct is frivolous for the purposes of a motion for sanctions if

- (i) it is completely meritless,
- (ii) it is done to delay or prolong the litigation or to harass or injure another party, or
- (iii) asserts false material statements of fact

(*id.* § 130-1.1 [c]). As discussed above, there are at least four separate statements, each of which could form a predicate for sanctions pursuant to 22 NYCRR § 130-1.1 [a](i), (ii) and (iii).

Indeed, two federal judges have already found that the legal malpractice claim levied against DLA based on its role in the Baliga Action was frivolous and brought solely to harass DLA.

Given the extensive record developed prior to the assertion of the claims in the AC, Link Motion could not have had a good faith basis for pressing these claims in the AC. The record before the Court requires the grant of the branch of the motion seeking sanctions and requiring Link Motion to pay the reasonable attorney's fees and costs incurred in connection with this litigation (*see Ray*, 232 AD3d at 499).

III. DLA's Motion to Stay Discovery is Denied as Moot (Mtn. Seq. No. 005)

DLA's motion to stay discovery pending resolution of its motion to dismiss is denied as moot.

The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that DLA's motions (Mtn. Seq. No. 003) to dismiss the AC and (Mtn. Seq. No. 004) for sanctions against Link Motion for its reasonable attorney's fees are GRANTED; and it is further

ORDERED that DLA shall provide Link Motion with a bill for the actual expenses reasonably incurred by DLA, including reasonable attorneys' fees and costs, any costs incurred in defending this litigation, and any other expenses reasonably incurred as a result of Link Motion's misconduct, on or before February 28, 2025; and it is further

ORDERED that payment of these costs shall be delivered by Link Motion to counsel for DLA within 30 days of receipt of the bill of expenses from DLA and written proof of such payment shall be provided to the Clerk of Part 53 within 7 days of the date on which such payment is made; and it is further

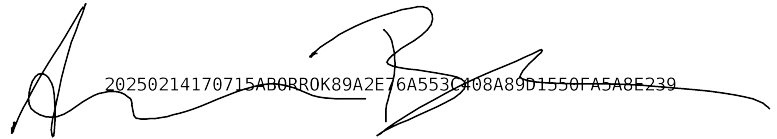
ORDERED that proof of payment shall be provided to the Clerk of the Part and such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that, in the event that timely payment is not made, the Clerk of the Court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment and a copy of the bill of expenses, shall enter a judgment

in favor of DLA and against Link Motion in the amount due according to the bill of expenses; and it is further

ORDERED that, in the event that Link Motion disagrees with the reasonableness of the bill of expenses, Link Motion shall email Part 53 (sfc-part53@nycourts.gov), and the Court will arrange a conference to hold a hearing on the reasonable attorney’s fees and costs; and it is further

ORDERED that DLA’s motion (Mtn. Seq. No. 005) to stay discovery is DENIED as moot.


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2/14/2025
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE