

**A Participations Ltd. v Infinity Q Capital Mgmt. LLC**

2026 NY Slip Op 30042(U)

January 9, 2026

Supreme Court, New York County

Docket Number: Index No. 652720/2023

Judge: Melissa A. Crane

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60M

-----X

A PARTICIPATIONS LTD. AMITELL MASTER FUND, AQUIS CAPITAL AG, AUGESCO HOLDINGS, CARL FRIEDRICH MARINO GUMPERT, CRESCENDO CAPITAL SA, DAIWA HOUSE INDUSTRY PENSION FUND, FRANCOIS DEKKER, GIOVE S.R.L., JAMES T. SHERWIN, JAPAN MEDICAL SUPPORT CO., LTD, KATSUSHI NAKAYAMA, KIYOKAZU KANNO, KEIKO KANNO, LIGHTVC, LTD., MAXYM ENTIN, MONTSOL ANSTALT, MUFG ALTERNATIVE FUND SERVICES (CAYMAN) LIMITED REF EQUATOR INVESTMENTS LIMITED, OPUS CHARTERED ISSUANCE S.A. COMPARTMENT 127, REINBERGER FOUNDATION, SHADOWBOLTS LIMITED, STEINFREUND57 S.A., SICAV-RAIF - GLOBAL HEDGEFUNDS, TEXAS TECH UNIVERSITY SYSTEM, TOTUS HOLDINGS, 2010 REVOCABLE GST GARY L. PILGRIM, ABRAHAM JOSHUA HESCHEL SCHOOL, AEJ CAPITAL, LLC, ANDREW SCHWERIN, BONNIE SCHWERIN, ATLAS GLOBAL FUND, BELMONTI FAMILY REVOCABLE TRUST & MARGARET M. BELMONTI REVOCABLE TRUST HELD AS TENANTS IN COMMON, BRIAN N. KAUFMAN REVOCABLE TRUST U/T/A 02/13/13, BRITTON FUND, BYRON S. KRANTZ REVOCABLE TRUST, CAROL A. BUEKER REVOCABLE TRUST U/A 12/12/95, MELDRUM FAMILY, LLC, COBALT ABSOLUTE, LLC, DAVID A. COHEN DECLARATION OF TRUST, DAVID A. HORN TR UW FBO CAROLYN, DAVID A. HORN TR UW FBO HELEN, DAVID N. SCAIFE 2020 REVOCABLE TRUST, DRAKE LEONARD II LLC, DJI 2006 FUND, EARL H. DEVANNY, III REVOCABLE TRUST U/A DTD 4/2/2001, ELLIOT SIGAL, RUTH SIGAL, FFI 2011 FUND, FLINT HILLS DIVERSIFIED STRATEGIES, LP, FRANK C. SULLIVAN II DECLARATION OF TRUST, FRANK H. PORTER JR. DECLARATION OF TRUST, GARY L. PILGRIM 2010 IRREVOCABLE TRUST, GARY L. PILGRIM 2013 DELAWARE TRUST, GARY L. PILGRIM GST TR U/D 6/4/98, GO4G BEST IDEAS, LLC, GOHEELS, LLC, GREENLEAF TRUST, HARVEY L. KAPLAN TRUST, HUMMEL PARTNERS LP, IRENE B. NEWMAN REVOCABLE TRUST, IRIS ABSOLUTE, LLC, JASON M. KUHN REVOCABLE TRUST, JEFFREY BELMONTI REVOCABLE TRUST, JOHN D. STARR REVOCABLE TRUST U/A DTD 11/10/93, JOHN R. GRISSINGER LIVING TRUST U/A 4/7/11, KAPLAN 2020 FUND, KENDOR II LLC, KEVIN M. ANDERSON 2017 UPN IRREVOCABLE TRUST U/A DTD 3/21/2017, LAUREN N. RAINEN, LIBERTY SPECIAL STRATEGIES FUND LLC, MARIE GENSHAFT, MARGARET J. ANDERSON REVOCABLE TRUST U/A DTD 7/22/1999, MARK DAVID 1994 PERSONAL IRREVOCABLE TRUST,

INDEX NO. 652720/2023

MOTION DATE 03/03/2025

MOTION SEQ. NO. 030

**DECISION + ORDER ON  
 MOTION**

652720/2023 A PARTICIPATIONS LTD. ET AL vs. INFINITY Q CAPITAL MANAGEMENT LLC ET AL

Page 1 of 30

Motion No. 030

MARK H SONNENBERG, SUSAN L SONNENBERG, MATTHEW N. KRISER REVOCABLE TRUST, MCSR MASTER FUND, L.P., MICHAEL J. HAGAN, MICHAEL J. RAINEN REVOCABLE TRUST U/A/ DTD 5/4/1990, MICHAEL J. SELVERIAN, NEIL GENSHAFT REVOCABLE TRUST, PAUL L. GOLDBERG DECLARATION OF TRUST, PFLP INVESTMENTS, LLC, RICHARD B. KLEIN REVOCABLE TRUST U/A/DTD 6/8/1993, REVOCABLE TRUSTY AGREEMENT OF JULIETTE B. FREEMAN, REGE S. EISAMAN, ROBERT A. BERNSTEIN REVOCABLE TRUST U/A DTD 7/8/1997, AS AMENDED, RUTH E. PILGRIM REV. GST TR 9/22/10, SECOND AMENDED AND RESTATED AGREEMENT OF TRUST FOR LAWRENCE S. CONNOR DATED MAY 2, 2016, SECULAR GROWTH INVESTORS, LP, SIGAL FAMILY INVESTMENTS, LLC, SIMBA INVESTMENTS, LLC, SNYDER RESOURCE MANAGEMENT L.P., STATE TEACHERS RETIREMENT SYSTEM OF OHIO, STEVEN B. SHAFFER TRUST U/A 8/25/2003, THE 2009 JOHN N. MCCONNELL III GIFT TRUST, THE 2020 MARK FISHMAN TRUST PREVIOUSLY THE 2009 MARK FISHMAN TRUST, THE LEONARD G. HERRING FAMILY FOUNDATION, INC., THOMAS E. LAUERMAN REVOCABLE TRUST U/A DTD 10/30/2000, AS AMENDED, TUTERA GROUP, INC., VIOLET A. CARSON RESTATED 2004 REVOCABLE TRUST, VERGER CAPITAL FUND, LLC, WA ABSOLUTE RETURN HEDGE FUND LLC, and WALLIS ANNENBERG LIVING TRUST, WEINERG FAMILY LP,

Plaintiffs,

- v -

INFINITY Q CAPITAL MANAGEMENT LLC, JAMES VELISSARIS, SCOTT LINDELL, LEONARD POTTER, INFINITY Q MANAGEMENT EQUITY, LLC, WILDCAT PARTNER HOLDINGS, LP f/k/a BONDERMAN FAMILY LIMITED PARTNERSHIP, LP, WILDCAT CAPITAL MANAGEMENT, LLC, EISNERAMPER LLP, EISNERAMPER US (CAYMAN) LTD., U.S. BANCORP FUND SERVICES LLC, and U.S. BANCORP FUND SERVICES, LTD.,

Defendants.

-----X

HON. MELISSA A. CRANE:

The following e-filed documents, listed by NYSCEF document number (Motion 030) 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 494, 502, 541

were read on this motion to/for

DISMISS

In motion sequence no. 030, defendants Leonard Potter (Potter), Wildcat Partner Holdings, LP f/k/a Bonderman Family Limited Partnership, LP (BFLP) and Wildcat Capital Management, LLC (Wildcat) (collectively, the Wildcat Defendants) move, pursuant to CPLR 3211 (a) (1), (3), (7) and (8) and 3016 (b), to dismiss plaintiffs' second amended complaint (the SAC). For the reasons set forth below, the motion is granted, and the SAC against the Wildcat Defendants is dismissed.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

The court discussed the facts underlying this action in prior decisions and orders, with which familiarity is presumed. Additional facts are drawn from the SAC unless noted otherwise and are assumed to be true for purposes of this motion.

Briefly, this action arises out of the collapse of Infinity Q Volatility Alpha Fund (the Hedge Fund), which was comprised of Infinity Q Volatility Alpha Fund, L.P., a master fund organized as a Delaware limited partnership, and Infinity Q Volatility Alpha Offshore Fund, Ltd., a feeder fund organized as a Cayman Islands exempt company (NY St Cts Elec Filing [NYSCEF] Doc No. 368, SAC at 1 n 1; NYSCEF Doc No. 438, Murphy affirmation, exhibit A at 1).

Defendants James Velissaris (Velissaris) and Potter co-founded defendant Infinity Q Capital Management, LLC (IQCM), the Hedge Fund's general partner and investment advisor responsible for its day-to-day management (SAC, ¶¶ 130 and 134-135). Defendants Infinity Q Management Equity, LLC (IQME) and BFLP, nonparty David Bonderman's (Bonderman) family partnership, own 60% and 40%, respectively, of IQCM (*id.*, ¶¶ 131-132 and 142). Velissaris and defendant Scott Lindell (Lindell), own 85% and 15%, respectively, of IQME (*id.*, ¶ 131). Velissaris served as IQCM's Chief Investment Officer (CIO) and had been employed by Wildcat as a portfolio manager from "2012 through at least 2018" (*id.*, ¶¶ 134 and 140). Lindell acted as

IQCM's Chief Risk Officer, Chief Compliance Officer, and Head of Portfolio Services while simultaneously serving as Wildcat's Head of Risk Management (*id.*, ¶ 136). Potter acted as IQCM's Chief Executive Officer while simultaneously serving as Wildcat's President and CIO (*id.*, ¶¶ 13 and 135). Defendants U.S. Bancorp Fund Services, Ltd. and U.S. Bancorp Fund Services LLC (together, USB) served as the Hedge Fund's administrator charged with calculating the Hedge Fund's net asset value (NAV) and preparing monthly account statements for investors (*id.*, ¶¶ 7, 138 and 214). Defendants EisnerAmper, LLP and EisnerAmper US (Cayman) Ltd. (together, EisnerAmper) acted as the Hedge Fund's auditor and issued Form K-1 tax statements to investors (*id.*, ¶¶ 9 and 137).

The Hedge Fund, launched in February 2017, invested in the same over-the-counter<sup>1</sup> (OTC Derivatives) strategies managed by Wildcat as the Infinity Q Diversified Alpha Fund<sup>2</sup> (the Mutual Fund), a pooled investment fund that IQCM had launched three years earlier (*id.*, ¶¶ 143, 146 and 151). IQCM categorized the majority of the Hedge Fund's OTC Derivatives as Level 3 assets (*id.*, ¶ 151). "Level 3 assets have no observable inputs (e.g., market prices or models), may require some measure of estimation based on management assumptions, and are valued based on the best available information" (*id.*). The Hedge Fund valued its Level 3 OTC Derivatives using pricing information obtained from independent third-party sources, like brokers, pricing services and counterparties, that IQCM's valuation committee (the Valuation Committee) would use to determine "fair values" (*id.*, ¶¶ 153-154 and 157 [internal quotation marks and emphasis removed]).

---

<sup>1</sup> OTC Derivatives are private contracts negotiated between counterparties where returns are based on volatility, or price movement (SAC, ¶¶ 2, 146, 148-150).

<sup>2</sup> USB served as the Mutual Fund's administrator (SAC at 4 n 2). EisnerAmper first began working for the Mutual Fund as a valuation consultant in 2017 (*id.*, ¶ 10) and later replaced nonparty BBD, LLP as the Mutual Fund's outside auditor (*id.*, ¶¶ 10 and 204).

After conducting pre-investment due diligence, plaintiffs signed subscription agreements with the Hedge Fund and collectively invested more than \$380 million dollars between July 2018 and February 2021 (*id.*, ¶¶ 1, 14 and 30-129; NYSCEF Doc No. 438, Murphy affirmation, exhibit B).

Despite reporting a 19.57% rate of return from its inception, the Hedge Fund was “teetering on the brink of collapse” by March 2020, having lost money from its trading strategies (SAC, ¶¶ 161 and 163). The onset of the COVID-19 pandemic allegedly exacerbated this liquidity crisis and caused IQCM to seek a \$100 million loan from Wildcat to satisfy margin calls from swap counterparties (*id.*, ¶ 164). Velissaris and Lindell secured \$10 million loans from BFLP and Wildcat that had been arranged through Potter (*id.*, ¶ 165). BFLP and IQME also attempted to sell their ownership interests in IQCM and disseminated financial projections that estimated IQCM’s value at \$57 per share to potential buyers, including several of the plaintiffs (*id.*, ¶ 166). When IQCM failed to secure the \$100 million loan and BFLP and IQME failed to sell their interests, IQCM “began an aggressive marketing push,” that resulted in new investor subscriptions, with several plaintiffs investing more than \$80 million in the Hedge Fund between April 1 and December 31, 2020 (*id.*, ¶ 167).

The Hedge Fund collapsed in February 2021 after the Securities and Exchange Commission (SEC) discovered that “[f]rom at least February 2017 ..., Velissaris ... [had] actively manipulated the valuation models available from” Bloomberg Valuation Services (BVAL) and “altered inputs to mask the poor performance of the mutual fund and hedge fund” (*id.*, ¶¶ 4-5, 177 and 184). These “pricing manipulations” resulted in the “material overvaluation of the Hedge Fund and Mutual Fund OTC Derivatives ..., which lead to inflated NAV calculations” (*id.*, ¶ 186[a]). Velissaris pled guilty to securities fraud and was sentenced to 15 years in prison (*id.*, ¶¶

188 and 190; *United States v Velissaris*, 2023 WL 2875487, \*1 and 11, 2023 US Dist LEXIS 62740, \*1 and 30 [SD NY, Apr. 10, 2023, No. 22cr105 (DLC)], *affd* 2024 WL 4502201, 2024 US App LEXIS 26034 [2d Cir, Oct. 16, 2024]). IQCM, BFLP, and Lindell entered into separate consent judgments with the SEC (SAC, ¶¶ 191-192). Three class actions related to IQCM's collapse brought in Supreme Court, New York County, and the United States District Court for the Southern District of New York have settled<sup>3</sup> (*id.* at 44 n 11). BFLP paid \$15.65 million into a class action settlement fund to satisfy an order directing it to disgorge \$18.05 million<sup>4</sup> (*id.*, ¶ 191).

Plaintiffs commenced this action in June 2023 against IQCM, Velissaris, Lindell, IQME, BFLP, Wildcat, EisnerAmper LLP and U.S. Bancorp Fund Services, LLC (NYSCEF Doc No. 2). Plaintiffs later served a supplemental summons and amended complaint, adding EisnerAmper US (Cayman) Ltd. and U.S. Bancorp Fund Services, Ltd. as defendants (NYSCEF Doc Nos. 96-98 and 101-103). The amended complaint pled 14 causes of action for fraud, aiding and abetting fraud, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligence, gross negligence, and unjust enrichment (NYSCEF Doc No. 97). All defendants moved for dismissal, arguing, in part, that plaintiffs lacked standing to sue because their claims were derivative claims that belonged to the Hedge Fund. This court granted the first set of motions to dismiss that USB, EisnerAmper, IQCM, Lindell and the Wildcat Defendants brought primarily on that basis. (NYSCEF Doc Nos. 253, 257, 268-271 and 280-283).

Plaintiffs subsequently moved for leave to amend the amended complaint. Now, as against the Wildcat Defendants, the proposed SAC pleads: aiding and abetting fraud and aiding and abetting breach of fiduciary duty against Wildcat (eighth and ninth causes of action); aiding and

---

<sup>3</sup> Plaintiffs opted out of the class action settlement reached in *Matter of Infinity Q Diversified Alpha Fund Sec. Litig.*, Sup Ct, NY County, index No. 651295/2021.

<sup>4</sup> BFLP “disgorge[d] those gains as ... a ‘relief defendant’ ... in SEC terms” (NYSCEF Doc No. 565, oral argument tr at 190).

abetting fraud and aiding and abetting breach of fiduciary duty against Potter (thirteenth and fourteenth causes of action); and aiding and abetting fraud and aiding and abetting breach of fiduciary duty against BFLP (fifteenth and sixteenth causes of action) (SAC, ¶¶ 583-597 and 621-649). As for their damages, “[p]laintiffs seek to recover the difference between the amount that each Plaintiff overpaid for their limited partnership interests in the Hedge Fund as of the date of their investments due to IQCM’s overvaluations, as well as damages for payment of taxes on illusory income” (*id.*, ¶ 14). This court granted the motion and instructed that defendants had 30 days to move for dismissal<sup>5</sup> (NYSCEF Doc No. 365).

The Wildcat Defendants now move to dismiss the SAC. Plaintiffs oppose.

### DISCUSSION

“On a motion to dismiss for failure to state a claim under CPLR 3211 (a) (7), the Court affords the pleading ‘a liberal construction’ and must ‘accept the facts as alleged ... as true, accord [the nonmoving party] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory’” (*Taxi Tours Inc. v Go N.Y. Tours, Inc.*, 41 NY3d 991, 993 [2024] [internal citation omitted]; *see also Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977] [“the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law”]).

“Dismissal under CPLR 3211 (a) (1) is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (*Burrow v 75-25 153rd St., LLC*, — NY3d —, 2025 Slip Op 01669, \*2 [2025] [internal quotation marks and citation omitted]).

---

<sup>5</sup> The motion brought by Velissaris and IQME to dismiss the amended complaint had been denied without prejudice to a new motion to dismiss the SAC (NYSCEF Doc No. 450).

On a pre-answer motion to dismiss brought under CPLR 3211 (a) (3), the defendant bears the burden of demonstrating that the plaintiff lacks standing to sue (*Homelink Intl., Inc. v Law Offs. of Sanjay Chaubey*, — AD3d —, 2025 NY Slip Op 05460, \*1 [1st Dept 2025]).

A. Standing – Derivative vs. Direct

The Wildcat Defendants argue the SAC must be dismissed for plaintiffs' lack of standing. They join and incorporate by reference the arguments IQCM raised in its motion to dismiss the SAC. On this issue, IQCM concedes that "there is a direct claim for fraud [in the] inducement" (NYSCEF Doc No. 565 at 83). Nevertheless, IQCM maintains that the core theory of harm – the failure to prevent Velissaris from manipulating the Hedge Fund's OTC Derivatives values, that caused the Hedge Fund to issue, or failed to prevent it from issuing, false statements about IQCM's valuation process – remains unchanged from the amended complaint, and that the SAC alleges the same injury, namely the diminution in value of plaintiffs' interests. Because the Hedge Fund suffered the same injury as plaintiffs and can pursue the same claims against all defendants, IQCM asserts that plaintiffs' claims are derivative claims, that must be dismissed.

Even if plaintiffs suffered a direct harm, IQCM argues that their claims, at a minimum, are dual-natured, that only the Hedge Fund can assert. Significantly, plaintiffs have not sued the Hedge Fund, the Hedge Fund has not sued any defendant, and plaintiffs have not requested the Hedge Fund to do so.<sup>6</sup> Thus, there is a risk plaintiffs will recover twice for the same injury. Insofar as plaintiffs invoke the special facts doctrine, IQCM submits that the doctrine concerns a duty of disclosure and not a fiduciary duty. Last, the lack of a causal connection between these defendants and plaintiffs' injuries warrant dismissal.

---

<sup>6</sup> According to the SAC, the monitor appointed to wind down the Hedge Fund lacks authority to commence litigation on behalf of investors (SAC, ¶ 191).

As on the prior motions to dismiss, the parties do not dispute that Delaware law governs whether plaintiffs' claims are direct or derivative (NYSCEF Doc No. 253 at 7; *see also Ezrasons, Inc. v Rudd*, 217 AD3d 406, 406 [1st Dept 2023], *affd* — NY3d —, 2025 Slip Op 03008 [2025]). “In determining whether claims are direct or derivative, the court must look beyond the labels used to describe the claim, evaluating instead the nature of the wrong alleged” (*Glean Tech Fund II LP v McIntosh*, 2025 WL 2505049, \*8, 2025 Del Ch LEXIS 223, \*21 [Del Ch, Sept. 2, 2025, C.A. No. 2024-0032-PAF] [internal quotation marks and citation omitted]; *see also San Diego County Employees Retirement Assn. v Maounis*, 749 F Supp 2d 104, 126 [SD NY 2010], quoting *Dieterich v Harrer*, 857 A2d 1017, 1027 [Del Ch 2004] “[t]he court must not rely on a plaintiff’s characterization of [its] claims in the complaint, but rather, ‘must look to all the facts of the complaint and determine for itself whether a direct claim exists’”).

In *Tooley v Donaldson, Lufkin & Jenrette, Inc.* (845 A2d 1031, 1033 [Del 2004]), the Delaware Supreme Court articulated the following two-part test to determine whether a claim is direct or derivative: “(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually).” The Court explained that it must “look to the nature of the wrong and to whom the relief should go” (*id.* at 1039). For a direct claim, the stockholder’s “injury must be independent of any alleged injury to the corporation,” meaning the stockholder must show that it can “prevail without showing an injury to the corporation” (*id.*)<sup>7</sup>. “Where all of a corporation’s stockholders are harmed and would recover *pro rata* in proportion with their ownership of the corporation’s stock solely because they are stockholders, then the claim is derivative in nature” (*Feldman v Cutaita*, 951 A2d 727, 733 [Del 2008]). The Delaware Supreme

---

<sup>7</sup> New York law is substantially the same. (see *Yudell v. Gilbert*, 99 A.D.3d 108, 114 [1st Dep’t 2012])

Court had observed previously that “some claims can be dual-natured – that is, both direct and derivative” (*El Paso Pipeline GP Co., L.L.C. v Brinckerhoff*, 152 A3d 1248, 1262 [Del 2016]), but has since “rejected the concept of ‘dual-natured’ claims” (*Glean Tech Fund II LP*, 2025 WL 2505049, \*10, 2025 Del Ch LEXIS 223, \*26 n 66, citing *Brookfield Asst Mgt. v Rosson*, 261 A3d 1251, 1277 [2021]; accord *Siegel v Cantor Fitzgerald, L.P.*, 2025 WL 1074604, \*10, 2025 Del Ch LEXIS 91, \*20 [Del Ch, Apr. 10, 2025, C.A. No. 2024-0146-LWW]). The analysis in *Tooley* applies to limited partnerships (see *El Paso Pipeline GP Co., L.L.C.*, 152 A3d at 1260).

The Delaware Supreme Court has also instructed that before engaging in a *Tooley* analysis, “a more important initial question has to be answered: does the plaintiff seek to bring a claim belonging to [the plaintiff] personally or one belonging to the corporation itself” (*Citigroup Inc. v AHW Inv. Partnership*, 140 A3d 1125, 1127 [Del 2016], quoting *NAF Holdings, LLC v Li & Fung (Trading) Ltd.*, 118 A3d 175, 180 [Del 2015]; see also *Urdan v WR Capital Partners, LLC*, 244 A3d 668, 678-679 [Del 2020] [“whether a claim is personal depends on whether the claim is properly viewed as a property right inherent in the stock as opposed to a wrong that belongs personally to the ... stockholder”]). A personal claim “is not a property right carried by the shares, nor does it arise out of the relationship between the stockholder and the corporation” (*In re Activision Blizzard, Inc. Stockholder Litig.*, 124 A3d 1025, 1056 [Del Ch 2015]). “Quintessential examples of personal claims would include ... a tort claim for fraud in connection with the purchase and sale of shares” (*Citigroup Inc.*, 140 A3d at 1140 n 76 [internal quotation marks and citation omitted]). If a claim belongs to the plaintiff personally, a *Tooley* analysis is unnecessary, as *Tooley* applies to claims “for breach of fiduciary duty or otherwise to enforce the corporation’s own rights” (*id.* at 1127).

#### *1. Application to the Aiding and Abetting Fraud Claims*

As stated, IQCM conceded the claim that plaintiffs were fraudulently induced into investing in the Hedge Fund is a direct claim (*see also Continental Cas. Co. v PricewaterhouseCoopers, LLP*, 15 NY3d 264, 270-271 [2010] [“an individual investor may have a direct claim [for fraud in the inducement] for an investment made in reliance on a fraud”]; *see also In re With Purpose, Inc.*, 654 BR 715, 723 [Bankr Ct, ND Tex 2023] [misrepresentations made before the plaintiffs’ investments were direct claims under Delaware law]; *Alpvex, Inc. v John Swan Ltd.*, 2019 WL 6330274, \*5, 2019 US Dist LEXIS 205063, \*14 [ND NY, Nov. 26, 2019, No. 1:17-CV-388] [fraud in the inducement claim was a direct claim under Delaware law because “[p]laintiff’s right not to be defrauded is its own and does not come because of its relationship to [the LLC]”]; *Sehoy Energy LP v Haven Real Estate Group, LLC*, 2017 WL 1380619, \*11, 2017 Del Ch LEXIS 58, \*27 [Del Ch, April 17, 2017, C.A. No. 12387-VCG] [plaintiffs had a personal claim for fraud where the defendant’s false statements induced them into investing in a partnership]; *Stephenson v Citco Group Ltd.*, 700 F Supp 2d 599, 610 [SD NY 2010], *affd on other grounds sub nom. Stephenson v PricewaterhouseCoopers, LLP*, 482 Fed Appx 618 [2d Cir 2012] [stating that under Delaware law, “[s]ome claims, such as those alleging individual inducement to invest and violations of duties owed to [the plaintiff] individually and separately from the partnership, may be direct”]).

According to the SAC, IQCM made “affirmative material misrepresentations ... directly to Plaintiffs to induce them to invest, make additional investments, and maintain their investments in the Hedge Fund” (SAC, ¶ 666). Plaintiffs or the investment advisors acting as their agents communicated with IQCM personnel, including Potter, Velissaris and Lindell, when plaintiffs conducted their pre-investment due diligence (*id.*, ¶¶ 395 and 667). In these communications, that included telephone calls, in-person meetings and written correspondence, “IQCM made material

misrepresentations about the Hedge Fund’s performance, governance, connection with Wildcat, assets, and Level 3 Valuation Procedures” (*id.*, ¶ 667). Plaintiffs particularly focused on IQCM’s valuation policies and procedures.

IQCM purportedly confirmed that its procedures conformed to the procedures outlined in the Hedge Fund’s private placement memoranda (PPM) and marketing materials (*id.*, ¶¶ 401 and 667[a]). These representations, though, were false because IQCM was not following its procedures; the Valuation Committee was not meeting or valuing assets; Velissaris had personally manipulated the models, parameters and coding used to value OTC Derivatives; no independent third-party had been valuing the OTC Derivatives; there were valuation discrepancies and disagreements with swap counterparties; and the Hedge Fund concealed that it was experiencing a liquidity crisis caused by the inflated valuations and the COVID-19 pandemic (*id.*, ¶¶ 668-669). IQCM allegedly knew that plaintiffs would rely on these material misrepresentations, that it made with the intent to defraud (*id.*, ¶¶ 670-671).

The SAC further alleges that “[p]laintiffs would not have invested if they had known that the Hedge Fund’s values and returns were grossly overstated” (*id.*, ¶ 395). The Wildcat Defendants purportedly rendered substantial assistance to IQCM in furthering this fraudulent scheme (*id.*, ¶¶ 586, 624 and 638). In view of these allegations, the aiding and abetting fraud claims do not arise out of plaintiffs’ relationship to the Hedge Fund as the claims are not a “property right inherent in the stock” (*Urdan*, 244 A3d at 678-679), and plaintiffs claim they detrimentally relied on these misrepresentations in deciding to invest (*see Sehoj Energy LP, LLC*, 2017 WL 1380619, \*11, 2017 Del Ch LEXIS 58, \*28-29). Likewise, a *Tooley* analysis is not required to determine whether plaintiffs’ “holder claims” are direct or derivative. “Holder [c]laims

are direct claims because they belong to the holders and are ones that only the holders can assert, not claims that could plausibly belong to the issuer corporation” (*Citigroup, Inc.*, 140 A3d at 1138).

IQCM posits that plaintiffs’ damages are inextricably intertwined with the damages sustained by the Hedge Fund, and therefore, their claims can only be asserted derivatively (*see Big Lots Stores, Inc. v Bain Capital Fund VII, LLC*, 922 A2d 1169, 1176-1177 [Del Ch 2006] [stating that “fraudulent inducement claims where the only alleged injury is inextricably linked to a corporate injury are derivative claims”]). IQCM, however, ignores the caselaw that dictates a *Tooley* analysis is unnecessary where the plaintiff seeks to enforce a personal claim (*see Citigroup Inc.*, 140 A3d at 1127). The damages plaintiffs may potentially recover are distinct from the damages sustained by the Hedge Fund.

On this point, *Continental Cas. Co.* is instructive. The investor plaintiffs owned limited partnership interests in a private hedge fund that was dissolved after the fund’s general partner and manager discovered that its portfolio manager used improper valuation methods and “materially overstat[ed] the value of the holdings” in its portfolio (15 NY3d at 267-268). A trustee commenced litigation against the fund’s former managers and others, including the fund’s auditor PricewaterhouseCoopers, LLP (PwC), who were alleged to have been responsible for the fund’s collapse (*id.* at 268).

The plaintiffs brought suit against PwC for, *inter alia*, aiding and abetting fraud (*id.*). The trial court declined to dismiss the action against PwC, because the plaintiffs had asserted direct claims for fraud in the inducement related to their initial investment (*id.*, quoting *Jones v PricewaterhouseCoopers LLP*, 6 Misc 3d 1014[A], 2004 NY Slip Op 51789[U], \*4 [Sup Ct, NY County 2004]). The trial court later granted PwC’s motion for summary judgment, “finding that

plaintiffs failed to present evidence of a direct injury, noting that plaintiffs had shown only derivative injuries” (*id.* at 270).

The Court of Appeals framed the issue on appeal as “whether plaintiffs came forward with proof to refute PwC’s showing that all the damages claimed under that cause of action were plaintiffs’ share of partnership losses and thus derivative in nature” (*id.* at 271). The Court observed that “the actual loss sustained as a direct result of fraud that induces an investment is the ‘difference between the value of the bargain which a plaintiff was induced by fraud to make and the amount or value of the consideration exacted as the price of the bargain’” (*id.* at 271 [citation omitted]). Therefore, it was incumbent upon plaintiffs to “come forward with portfolio valuations showing the amount of the claimed overvaluation of the portfolio on the day of their respective investments” (*id.*). The plaintiffs failed to do so (*id.* at 271-272).

While the procedural posture in *Continental Cas. Co.* and the present action differ, each plaintiff has set forth the dates and amounts of their investments in the Hedge Fund and the actual value of the Hedge Fund on those corresponding dates (SAC, ¶¶ 29-129). These allegations are sufficient to plead plaintiffs’ out-of-pocket damages (*see Orchard Hotel LLC v D.A.B. Group LLC*, 172 AD3d 530, 533 [1st Dept 2019]). The Wildcat Defendants’ contention that plaintiffs’ losses are speculative is also unpersuasive in view of the specific allegations on damages, above. At the pleading stage, the court is constrained to deny that part of the Wildcat Defendants’ motion to dismiss the aiding and abetting fraud claims at least for plaintiffs’ lack of standing.

## 2. Application to the Aiding and Abetting Breach of Fiduciary Duty Claims

The court reaches a different result on the ninth, fourteenth and sixteenth causes of action for aiding and abetting breach of fiduciary duty against the Wildcat Defendants.

To begin, a *Tooley* analysis is necessary because “*Tooley* and its progeny deal with the narrow issue of whether a claim for breach of fiduciary duty or otherwise to enforce the corporation’s own rights must be asserted derivatively or directly” (*Citigroup Inc.*, 140 A3d at 1127). A cause of action for aiding and abetting a breach of fiduciary duty “requires a prima facie showing of a fiduciary duty owed to plaintiff ... a breach of that duty, and defendant’s substantial assistance ... in effecting the breach, together with resulting damages” (*Yuko Ito v Suzuki*, 57 AD3d 205, 208 [1st Dept 2008] [internal quotation marks and citation omitted]).

Although the SAC does not plead a cause of action for breach of fiduciary duty against IQCM, the SAC alleges that the PPM and IQCM’s compliance manual identified IQCM as a “fiduciary” (SAC, ¶¶ 591, 628 and 643). It is further alleged that “IQCM owed fiduciary duties to Plaintiffs, including a duty of care and loyalty ... [and] a fiduciary duty to accurately value the Hedge Fund’s investments” (*id.*, ¶¶ 590, 627 and 642). IQCM, with the Wildcat Defendants’ knowing assistance, allegedly breached this duty by providing plaintiffs with false information about the Hedge Fund’s financial condition and the value of their investments and by failing to comply with its valuation procedures (*id.*, ¶¶ 594, 596, 631, 663, 646 and 648).

The Wildcat Defendants’ first argument that IQCM did not owe plaintiffs a fiduciary duty lacks merit. Once plaintiffs invested in the Hedge Fund and became limited partners, IQCM, as the Hedge Fund’s general partner, owed plaintiffs and the Hedge Fund a fiduciary duty (*see Wallace ex rel. Cencom Cable Income Partners II, L.P. v Wood*, 752 A2d 1175, 1180 [Del Ch 1999] [stating that “the general partner of a limited partnership owes direct fiduciary duties to the partnership and to its limited partners”]). *Goldstein v SEC* (451 F3d 873, 881 [DC Cir 2006]), cited by IQCM for the proposition that an “adviser owes fiduciary duties only to the fund, not to

the fund's investors," is inapposite as that proceeding involved a petition to vacate a rule the SEC promulgated that required hedge fund advisers to register with the SEC (*id.* at 877).

Applying *Tooley*, IQCM's alleged breach of its fiduciary duty and the aiding and abetting breach of fiduciary duty claims against the Wildcat Defendants are derivative in nature. First, plaintiffs' claims arise out of their limited partnership interests (*see Elendow Fund, LLC v Rye Inv. Mgt.*, 588 Fed Appx 27, 28 [2d Cir 2014], citing *Feldman*, 951 AD2d at 733), as the SAC fails to plead any facts showing that IQCM and plaintiffs enjoyed a fiduciary relationship prior to plaintiffs making their initial investments<sup>8</sup> (*see e.g. Castellotti v Free*, 138 AD3d 198, 209-210 [1st Dept 2016] [complaint failed to plead the existence of a fiduciary relationship]).

Claims that corporate mismanagement caused a decrease in a company's stock value are derivative claims (*see Kramer v Western Pacific Indus., Inc.*, 546 A2d 348, 353 [Del 1988]). Here, plaintiffs' allegations essentially center on IQCM's failure to manage the Hedge Fund properly from its inception. As such, the harm plaintiffs suffered "is entirely contingent on harm suffered by [the Hedge Fund] as a whole as a result of alleged mismanagement" (*Metro Comms. Corp. BVI v Adv. Mobilecomm Tech., Inc.*, 854 A2d 121, 168 [Del Ch 2004]; *see also Newman v Family Mgt. Corp.*, 530 Fed Appx 21, 27 [2d Cir 2013] [same]; *Saltz v First Frontier, LP*, 782 F Supp 2d 61, 79 [SD NY 2010], *affd* 485 Fed Appx 461 [2d Cir 2012] [same]). Even if plaintiffs could assert a direct claim, the Hedge Fund can maintain the same cause of action against IQCM, but as explained

---

<sup>8</sup> Plaintiffs allege their damages on the aiding and abetting breach of fiduciary duty claim include, but are not limited to, "the amount that each Plaintiff overpaid for their interests in the Hedge Fund as of the date of their investments and payment of taxes on illusory income" (SAC, ¶¶ 597, 634 and 649). Plaintiffs, though, cannot recover for any alleged pre-investment failures to disclose where a fiduciary relationship did not exist. The SAC alleges that "[d]efendants occupied a superior position of knowledge than Plaintiffs" (SAC, ¶ 511), but this allegation is insufficient, particularly where investment advisors counseled and represented several plaintiffs on their investments (*see RNK Capital LLC v Natsource LLC*, 76 AD3d 840, 842 [1st Dept 2010] [subjective belief of reliance on the defendants' knowledge in an arms-length transaction insufficient to support a breach and aiding and abetting breach of fiduciary duty claims]).

above, dual-natured claims are impermissible under Delaware law (*see Brookfield Asset Mgt.*, 261 A3d at 1277). Accordingly, the court dismisses the ninth, fourteenth and sixteenth causes of action for aiding and abetting breach of fiduciary duty, as pled against the Wildcat Defendants, for lack of standing.

#### B. The Aiding and Abetting Fraud Causes of Action Against the Wildcat Defendants

The eighth, thirteenth and fifteenth causes of action assert claims for aiding and abetting fraud against the Wildcat Defendants. In the SAC, plaintiffs contend that, IQCM, through Velissaris, engaged in a years-long fraudulent scheme that “included, among other things, inflating and intentionally overstating the value and returns of the Hedge Fund’s investment in Level 3 OTC Derivatives and misrepresenting the Hedge Fund’s investment processes, policies, and procedures,” and that the Wildcat Defendants knowingly assisted IQCM in this scheme (SAC, ¶¶ 584-588, 622-625 and 636-640).

A cause of action for aiding and abetting fraud requires the plaintiff to plead “the existence of the underlying fraud, actual knowledge, and substantial assistance” (*Oster v Kirschner*, 77 AD3d 51, 55 [1st Dept 2010]). The claim “is not made out simply by allegations which would be sufficient to state a claim against the principal participants in the fraud” (*National Westminster Bank USA v Wechsel*, 124 AD2d 144, 149 [1st Dept 1987], *lv denied* 70 NY2d 604 [1987]). Additionally, “where the actual assistance allegedly given the fraud is not clearly substantial, the allegations of scienter must be all the more detailed” (*id.* at 150). An aiding and abetting fraud claim must be pled with particularity under CPLR 3016 (b) (*see Latimore v Fuller*, 127 AD3d 521, 522 [1st Dept 2015]). As to the first element, the Wildcat Defendants on their motion have not expressly challenged the sufficiency of the fraud cause of action asserted against IQCM.

On the element of actual knowledge, “[t]he nexus between the aider and abettor and the primary fraud is made out by allegations as to the proposed aider’s knowledge of the fraud, and what [the aider and abettor], therefore, can be said to have done with the intention of advancing the fraud’s commission” (*National Westminster Bank USA*, 124 AD2d at 149). “[A]ctual knowledge need only be pleaded generally, ... particularly at the prediscovery stage” (*Oster*, 77 AD3d at 55), and knowledge may be inferred from the surrounding circumstances (*see Bankers Conseco Life Ins. Co. v Egan-Jones Ratings Co.*, 193 AD3d 539, 540 [1st Dept 2021]; *AIG Fin. Prods. Corp. v ICP Asset Mgt., LLC*, 108 AD3d 444, 446 [1st Dept 2013]). Constructive knowledge will not suffice (*see Gaughan v Russo*, 214 AD3d 592, 592 [1st Dept 2023]).

As applied here, the allegations in the SAC are sufficient to infer that Wildcat had actual knowledge of the underlying fraud. The SAC alleges that Wildcat had acquired actual knowledge because IQCM was an “outgrowth of Wildcat ... [and] shared the same offices, employees, trading strategies, and executives” (SAC, ¶ 142). IQCM had been formed in 2014 and was “backed by Bonderman’s personal capital, to manage investment funds that offered retail and institutional investors access to the same investment strategies Wildcat used to manage a significant portion of Bonderman’s liquid assets” (*id.*, ¶ 140).

IQCM marketed the Hedge Fund “as an opportunity to access Wildcat’s exotic trading strategies and was run by ‘Wildcat employees’” (*id.*, ¶ 147). Wildcat managed the Hedge Fund’s investment strategies (*id.*, ¶ 13). “IQCM operated through Wildcat’s infrastructure and officers ... and was identified in the Hedge Fund’s marketing materials and PPM” (*id.*, ¶ 133), in which they were referred to interchangeably (*id.*, ¶ 147). IQCM provided advisory services for and was a “relying adviser” of Wildcat, Wildcat was a “filing adviser” to IQCM, and according to IQCM’s Form ADV, “Wildcat exerted ‘control’ over IQCM” (*id.*, ¶¶ 130, 133 and 142). This substantial

overlap suffices to infer actual knowledge at the pleading stage (*see Deutsche Zentral-Genossenschaftsbank AG v UBS AG*, 2014 NY Slip Op 31019[U], \*6 [Sup Ct, NY County 2014], citing *HSH Nordbank AG v Barclays Bank PLC*, 42 Misc 3d 1231[A], 2014 NY Slip Op 50290[U], \*24 [Sup Ct, NY County 2014] [knowledge of the underlying fraud may be “drawn from the reasonable inferences arising from the various corporate defendants’ shared high level personnel and their responsibilities, and from the interrelationship of the corporations”]; *but see Tese-Milner v Bon Seung Kim (In re Level 8 Apparel, LLC)*, 2021 WL 279620, \*19, 2021 Bankr LEXIS 182, \*56 [Bankr Ct, SD NY, Jan. 26, 2021, No. 16-13164 (JLG)] [overlap in employees, alone, insufficient to plead knowledge since the plaintiff “does not allege that the overlap itself was fraudulent”]).

The SAC, however, fails to adequately plead Potter’s actual knowledge of the mismarking and overvaluation scheme Velissaris perpetrated (*see RKA Film Fin., LLC v Kavanaugh*, 162 AD3d 418, 419 [1st Dept 2018], citing *High Tides, LLC v DeMichele*, 88 AD3d 954, 959 [2d Dept 2011] [that the board of directors, of which the individual defendant was a member, was involved in the corporation’s daily operations was insufficient to infer the defendant’s participation in or knowledge of the fraud]; *but see DDJ Mgt., LLC v Rhone Group L.L.C.*, 78 AD3d 442, 444 [1st Dept 2010] [concluding that the individual defendants’ corporate titles, positions and responsibilities were sufficient to infer knowledge]).

The SAC alleges that Potter is IQCM’s co-founder and CEO, was primarily responsible for its day-to-day management, and served on the Valuation Committee that was responsible for determining the fair value of the Hedge Funds’ assets (SAC, ¶¶ 135 and 155). However, the SAC does not contain facts sufficient to infer that Potter had actual knowledge that Velissaris had been manipulating the valuations models and inputs in BVAL. For instance, the SAC does not allege

that Potter was responsible for tracking the Hedge Fund's performance (*see Balance Return Fund Ltd. v Royal Bank of Canada*, 83 AD3d 429, 431 [1st Dept 2011] ["allegations that defendants had the authority to track fund performance, which allowed them to know that the net asset value of the fund was overstated, sufficiently plead 'actual knowledge of the fraud as discerned from the surrounding circumstances'"]). The failure of the Valuation Committee to meet and IQCM's request for loans from Wildcat establishes only Potter's constructive knowledge that he "*should* have known something was amiss" (*Rosner v Bank of China*, 349 Fed Appx 637, 639 [2d Cir 2009]), not that he had actual knowledge of Velissaris' actions. Constructive knowledge is insufficient (*see Gaughan*, 214 AD3d at 592; *Lumens at White Plains, LLC v Stern*, 135 AD3d 600, 600 [1st Dept 2016]).

The SAC also fails to plead adequately BFLP's actual knowledge of IQCM's fraud. Nor do the surrounding circumstances permit the reasonable inference that BFLP had actual knowledge (*see Weinstein v Levitin*, 208 AD3d 531, 532-533 [2d Dept 2022]). The assertion that BFLP exercised control over IQCM's operations (SAC, ¶ 132) is conclusory and is not supported by any particularized facts. The SAC pleads that BFLP extended a \$10 million loan to IQCM and sought to sell its interest in IQCM<sup>9</sup> (*id.*, ¶¶ 165-166 and 637). These allegations, at most, suggest that BFLP "*should* have known that something was amiss" (*Rosner*, 349 Fed Appx at 639) but constructive knowledge is insufficient (*see Gaughan*, 214 AD3d at 592; *Lumens at White Plains, LLC*, 135 AD3d at 600). Plaintiffs also complain that BFLP received over \$18 million from IQCM (SAC, ¶ 132), but even knowing acceptance of those funds is inadequate to plead actual knowledge when the receipt of such payments were "routine" in view of BFLP's status as a co-owner of IQCM and an investor in the Hedge Fund (*CRT Invs., Ltd. v BDO Seidman, LLP*, 85 AD3d 470, 472 [1st

---

<sup>9</sup> The SAC does not allege that any plaintiff reviewed and relied on these financial projections in deciding to invest or maintain their investments in the Hedge Fund.

Dept 2011]). Moreover, the correspondence between Potter and Velissaris from September and October 2020 seemingly contradicts plaintiffs' assertions that BFLP had actual knowledge, as the emails reveal that BFLP sought to purchase 9.9% of IQME's 60% ownership interest in IQCM at a time when IQCM was experiencing a liquidity crisis and when BFLP sought to offload its shares in IQCM (NYSCEF Doc No. 439, Murphy affirmation, exhibit C at 1).

Plaintiffs' reliance on the doctrine of respondeat superior to support their contention that Potter's knowledge is imputed to BFLP<sup>10</sup> (NYSCEF Doc No. 565 at 199 ["Potter's knowledge transfers through and can form the basis for [a] [r]espondeat [s]uperior claim to hold BFLP and Wildcat"]) is unpersuasive (*see VFP Invs. I LLC v Foot Locker, Inc.*, 147 AD3d 491, 492-493 [1st Dept 2017], *lv denied* 29 NY3d 910 [2017] [rejecting respondeat superior theory to hold a corporation liable on an aiding and abetting claim for a fraud perpetrated by its employees]). It is well settled that "[a] legal entity ... functions through human actors – its officers, agents and employees – whose knowledge and conduct may be imputed to the entity under the doctrine of respondeat superior" (*Prudential-Bache Sec. v Citibank, N.A.*, 73 NY2d 263, 276 [1989]).

Although Potter serves as an investment advisor to BFLP (NYSCEF Doc No. 443, Potter affirmation, ¶ 1), the SAC does not allege that BFLP employed Potter or that Potter otherwise acted as BFLP's agent with respect to BFLP's ownership of IQCM (*compare Weinberg v Mendelow*, 113 AD3d 485, 486 [1st Dept 2014] [reasoning that the doctrine of respondeat superior applied where the corporation employed the individual defendant]). The SAC fails to plead any other facts to infer that BFLP knew of the alleged fraud (*see VFP Invs. I LLC.*, 147 AD3d at 493 [no facts from which it may be inferred that the corporation had actual knowledge]; *see also Heinert v Bank of Am., N.A.*, 835 Fed Appx 627, 631 [2d Cir 2020] [no allegation that the banks

---

<sup>10</sup> Plaintiffs did not raise a respondeat superior argument in their opposition to the Wildcat Defendants' motion.

or their employees knew of the fraudulent scheme]). Significantly, plaintiffs have not alleged that Wildcat owns an interest in BFLP, have not pled any allegations to support an alter ego theory of liability, and as expressed during oral argument, are not seeking to pierce IQCM's corporate veil to reach BFLP (NYSCEF Doc No. 565 at 199).

As to the element of substantial assistance, “[s]ubstantial assistance exists ‘where (1) a defendant affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables the fraud to proceed, and (2) the actions of the aider/abettor proximately caused the harm on which the primary liability is predicated’” (*Stanfield Offshore Leveraged Assets, Ltd. v Metropolitan Life Ins. Co.*, 64 AD3d 472, 476 [1st Dept 2009], *lv denied* 13 NY3d 709 [2009] [citation omitted]; *see also Pension Comm. of the Univ. of Montreal Pension Plan v Banc of Am. Sec., LLC*, 446 F Supp 2d 163, 201-202 [SD NY 2006] [“‘[b]ut-for’ causation is insufficient; aider and abettor liability requires the injury to be a direct or reasonably foreseeable result of the conduct”]). The aider and abettor’s actions must have “made a substantial contribution to the perpetration of the fraud” (*JP Morgan Chase Bank v Winnick*, 406 F Supp 2d 247, 257 [SD NY 2005]). That said, “[t]he ‘substantial assistance’ prong need not be very great and can be met by as little as ‘implor[ing]’ the active tortfeasor to effect the fraud” (*U.S. Tsubaki Holdings, Inc. v Estes*, 194 AD3d 590, 591 [1st Dept 2021]).

In this case, the SAC fails to plead particularized facts that each Wildcat Defendant rendered substantial assistance to IQCM (*see Gaughan*, 214 AD3d at 592). The SAC alleges that Potter met with, conversed or corresponded with only seven of the 104 plaintiffs or their investment advisors prior to their investing in the Hedge Fund; misrepresented that IQCM had been complying with its valuation procedures; and misrepresented that the Valuation Committee met to value the Hedge Fund’s assets (SAC, ¶¶ 409, 424, 451-452, 466, 478, 481, 486 and 624).

However, the SAC does not set forth with particularity the specific misrepresentations Potter made about the Hedge Fund's valuation procedures to anyone or when they were made (*compare MP Cool Invs. Ltd. v Forkosh*, 142 AD3d 286, 291 [1st Dept 2016], *lv denied* 28 NY3d 91 [2016] [dismissing fraud claim where the complaint failed to attribute a misrepresentation or omission to the individual defendants] and *JP Morgan Chase Bank*, 406 F Supp 2d at 258 [“[m]ere presence, and passive receipt of email, cannot, by definition, constitute affirmative assistance”] with *Tahari v Narkis*, 216 AD3d 557, 560 [1st Dept 2023] [aider and abettor made false representations to the plaintiff]; *ABN AMRO Capital USA LLC v AMERRA Capital Mgt., LLC*, 211 AD3d 566, 567 [1st Dept 2022] [aider and abettor “help[ed] to devise and execute transactions for the purpose of secretly inflating ... financials”]; *Hoffman v RSM US LLP*, 169 AD3d 522, 524 [1st Dept 2019] [aider and abettor offered specific advice to a nonparty who then looted a partnership's assets for personal benefit]).

As the Wildcat Defendants have pointed out, group pleading in fraud cases is impermissible (*see Principia Partners LLC v Swap Fin. Group, LLC*, 194 AD3d 584, 584 [1st Dept 2021] [failure to distinguish between defendants is improper group pleading]). Plaintiffs' attempt to hold Potter individually liable for alleged misrepresentations made to plaintiffs by others is improper (*see RKA Film Fin., LLC v Kavanaugh*, 171 AD3d 678, 678 [1st Dept 2019] [fraud and fraudulent inducement causes of action dismissed where the complaint “did not attribute specific misrepresentations or wrongdoing to most defendants ... [and] impermissibly lumped those defendants together with the others against whom specific acts had been pleaded”]).

The SAC alleges that Wildcat and BFLP substantially assisted IQCM's fraud by lending their names and credibility to IQCM for use in Hedge Fund marketing materials (SAC, ¶¶ 586[a] and 638[a]). An allegation that “plaintiffs would not have entered into transactions ... if defendant

had not lent it credibility” may be sufficient to plead substantial assistance, provided the aider and abettor engaged in other conduct that enabled the fraud to proceed (*see Bankers Conseco Life Ins. Co. v KPMG LLP*, 189 AD3d 402, 402-403 [1st Dept 2020]). Here, Wildcat purportedly shared its infrastructure, including offices and employees with IQCM, allowed IQCM to use an “@wildcatcap.com” email address to correspond with plaintiffs, and loaned money to IQCM to “prop up the Hedge Fund” during a liquidity crisis (SAC, ¶¶ 163, ¶ 586[b], [c] and 624[a]). The SAC, though, describes the fraud as a “years-long ... scheme” where “Velissaris ... fraudulently manipulat[ed] asset values,” of which a “central component ... was to claim that IQCM played no role in the valuation of the Hedge Fund’s exotic OTC Derivatives,” that resulted in a more than \$1 billion overvaluation of the Mutual Fund and Hedge Fund (*id.*, ¶¶ 4 and 183-184). The actions attributed to Wildcat and BFLP do not constitute the type of affirmative assistance that “formed an essential part of [the fraud]” (*Talipot ESG Invs. LLC v Bulltick Fin. Advisory Services, LLC*, 85 Misc 3d 1234[A], 2025 NY Slip Op 50349[U], \*14 [Sup Ct, NY County 2025]; *Elango Med. PLLC v Trump Palace Condo.*, 2024 WL 2960377, \*4, 2024 NY Misc LEXIS 13801, \*11-12 [Sup Ct, NY County, June 12, 2024, Index No. 150019/2019] [passive actions insufficient to support an aiding and abetting claim]) or that these actions proximately caused plaintiffs’ damages (*see Stanfield Offshore Leveraged Assets, Ltd.*, 64 AD3d at 476).

First, as alleged in the SAC, the loans Potter arranged from BFLP and Wildcat were meant to satisfy margin calls from swap counterparties at the onset of the COVID-19 pandemic (SAC, ¶¶ 164-165 and 624[a]), not to further Velissaris’s scheme to manipulate BVAL (*see SPV OSUS, Ltd. v UBS AG*, 882 F3d 333, 346 [2d Cir 2018] [that the defendant provided support, financing and assistance to an investment fund that later collapsed was “too attenuated to constitute proximate cause” because then any entity that injected money into the fund would have been liable]).

Allowing IQCM to share office space and use an @wildcatcap.com email address (SAC, ¶¶ 586[a], [b]) may have “made it easier for [Velissaris] to effectuate the scheme, ... [but they] were not the proximate cause of Plaintiff’s damages” (*In re Agape Litig. v Cosmo*, 773 F Supp 2d 298, 325 [ED NY 2011]; *see also Cromer Fin. Ltd. v Berger*, 137 F Supp 2d 452, 472 [SD NY 2001] “[w]hile the Ponzi scheme may only have been possible because of Bear Stearns’ actions, or inaction, Bear Stearns’ conduct was not a proximate cause of the Ponzi scheme”). The SAC does not allege that the authors of the emails originating from the @wildcatcap.com address represented that they were communicating on behalf of Wildcat, as opposed to IQCM (SAC, ¶¶ 409, 417, 424, 428, 440, 444 and 510). Wildcat is also alleged to have assisted IQCM in furnishing false information to the SEC during a 2018 examination into the Hedge Fund’s Valuation Committee (SAC, ¶ 586[d]). More specifically, “Lindell, Velissaris, and [Wildcat CCO] Olson prepared IQCM’s response” to the SEC’s request for meeting minutes (*id.*, ¶¶ 172-173). Then, in May 2020, Lindell helped Velissaris, who was acting for IQCM, remove language from the Hedge Fund’s marketing materials about IQCM’s valuation practices that IQCM then provided to the SEC (*id.*, ¶ 175). These allegations are insufficient to plead substantial assistance as they were made solely upon “upon information and belief” (*see Stanfield Offshore Leveraged Assets, Ltd.*, 64 AD3d at 476). Velissaris created fictitious Valuation Committee minutes in response to a supplemental request from the SEC in June 2020 (SAC, ¶ 176), but Velissaris was acting for IQCM. Notably, plaintiffs have not alleged that Wildcat owns any part of IQCM.

Finally, the assertion that BFLP sent financial projections to unnamed plaintiffs regarding a potential sale of its ownership interest in IQCM (SAC, ¶ 638[b]) does not constitute substantial assistance. The SAC has not alleged that any plaintiff relied on those projections to their detriment or how this assisted Velissaris and IQCM in manipulating the models and inputs in BVAL.

Accordingly, the eighth, thirteenth and fifteenth causes of action are dismissed.

D. Personal Jurisdiction over BFLP

The SAC against BFLP is dismissed for lack of personal jurisdiction. Potter affirms that BFLP is a passive investment vehicle organized and headquartered in Texas, has no employees, and has not maintained an office in New York “at least since [the Hedge Fund] was founded” (NYSCEF Doc No. 443, ¶¶ 2-3; NYSCEF Doc Nos. 441-442, Murphy affirmation, exhibits E-F). Plaintiffs maintain that at a minimum, CPLR 302 (a) (1) confers personal jurisdiction over BFLP because it received more than \$18 million from IQCM.

A plaintiff opposing a motion to dismiss for lack of personal jurisdiction brought under CPLR 3211 (a) (8) motion bears the burden of demonstrating jurisdiction through the submission of sufficient evidence, such as affidavits and relevant documents (*Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d 485, 486 [1st Dept 2017]).

CPLR 302 (a) (1) provides for specific jurisdiction over a foreign domiciliary who “transacts any business within the state.” A single transaction in the state may be sufficient to invoke jurisdiction “so long as the defendant’s activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted” (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]). The exercise of specific jurisdiction under CPLR 302 (a) (1) must comport with federal due process (*State of New York v Vayu, Inc.*, 39 NY3d 330, 346 [2023]).

First, BFLP’s attempt to sell its interests in IQCM is insufficient to confer long-arm jurisdiction, especially where BFLP never completed a sale (*see Wohl v Landmark Capital III, LLC*, 112 AD3d 815, 815 [2d Dept 2013]). Second, the fact that BFLP owns part of IQCM is insufficient (*see American Barrick Resources Corp. v Canarim Inv. Corp.*, 153 AD2d 546, 546 [1st Dept 1989] [“stock ownership and corporate control ... without more, does not provide a

sufficient basis” for jurisdiction under CPLR 302]), and the assertion that BFLP controlled IQCM is conclusory. Nor have plaintiffs demonstrated the requisite nexus between BFLP’s conduct (extending a loan to IQCM and lending its name or credibility) and their claim that IQCM perpetrated a scheme to defraud them. Further, plaintiffs have not furnished any affidavits or documentary evidence in opposition to this branch of the Wildcat Defendants’ motion.

The court has considered plaintiffs’ remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that the motion brought by defendants Leonard Potter, Wildcat Partner Holdings, LP f/k/a Bonderman Family Limited Partnership, LP and Wildcat Capital Management, LLC to dismiss the second amended complaint (MS #030) is granted, and the second amended complaint is dismissed as against these defendants, with costs and disbursements as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of these defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants, and the caption shall be amended to reflect the dismissal and that all future papers filed with the court bear the following amended caption:

-----X  
A PARTICIPATIONS LTD. AMITELL MASTER FUND,  
AQUIS CAPITAL AG, AUGESCO HOLDINGS, CARL  
FRIEDRICH MARINO GUMPERT, CRESCENDO CAPITAL  
SA, DAIWA HOUSE INDUSTRY PENSION FUND,  
FRANCOIS DEKKER, GIOVE S.R.L., JAMES T. SHERWIN,  
JAPAN MEDICAL SUPPORT CO., LTD, KATSUSHI  
NAKAYAMA, KIYOKAZU KANNO, KEIKO KANNO,  
LIGHTVC, LTD., MAXYM ENTIN, MONTSOL ANSTALT,  
MUFG ALTERNATIVE FUND SERVICES (CAYMAN)  
LIMITED REF EQUATOR INVESTMENTS LIMITED,  
OPUS CHARTERED ISSUANCE S.A. COMPARTMENT  
127, REINBERGER FOUNDATION, SHADOWBOLTS  
LIMITED, STEINFREUND57 S.A., SICAV-RAIF - GLOBAL  
HEDGEFUNDS, TEXAS TECH UNIVERSITY SYSTEM,  
TOTUS HOLDINGS, 2010 REVOCABLE GST GARY L.

Index No. 652720/2023

PILGRIM, ABRAHAM JOSHUA HESCHEL SCHOOL, AEJ CAPITAL, LLC, ANDREW SCHWERIN, BONNIE SCHWERIN, ATLAS GLOBAL FUND, BELMONTI FAMILY REVOCABLE TRUST & MARGARET M. BELMONTI REVOCABLE TRUST HELD AS TENANTS IN COMMON, BRIAN N. KAUFMAN REVOCABLE TRUST U/T/A 02/13/13, BRITTON FUND, BYRON S. KRANTZ REVOCABLE TRUST, CAROL A. BUEKER REVOCABLE TRUST U/A 12/12/95, MELDRUM FAMILY, LLC, COBALT ABSOLUTE, LLC, DAVID A. COHEN DECLARATION OF TRUST, DAVID A. HORN TR UW FBO CAROLYN, DAVID A. HORN TR UW FBO HELEN, DAVID N. SCAIFE 2020 REVOCABLE TRUST, DRAKE LEONARD II LLC, DJI 2006 FUND, EARL H. DEVANNY, III REVOCABLE TRUST U/A DTD 4/2/2001, ELLIOT SIGAL, RUTH SIGAL, FFI 2011 FUND, FLINT HILLS DIVERSIFIED STRATEGIES, LP, FRANK C. SULLIVAN II DECLARATION OF TRUST, FRANK H. PORTER JR. DECLARATION OF TRUST, GARY L. PILGRIM 2010 IRREVOCABLE TRUST, GARY L. PILGRIM 2013 DELAWARE TRUST, GARY L. PILGRIM GST TR U/D 6/4/98, GO4G BEST IDEAS, LLC, GOHEELS, LLC, GREENLEAF TRUST, HARVEY L. KAPLAN TRUST, HUMMEL PARTNERS LP, IRENE B. NEWMAN REVOCABLE TRUST, IRIS ABSOLUTE, LLC, JASON M. KUHN REVOCABLE TRUST, JEFFREY BELMONTI REVOCABLE TRUST, JOHN D. STARR REVOCABLE TRUST U/A DTD 11/10/93, JOHN R. GRISSINGER LIVING TRUST U/A 4/7/11, KAPLAN 2020 FUND, KENDOR II LLC, KEVIN M. ANDERSON 2017 UPN IRREVOCABLE TRUST U/A DTD 3/21/2017, LAUREN N. RAINEN, LIBERTY SPECIAL STRATEGIES FUND LLC, MARIE GENSHAFT, MARGARET J. ANDERSON REVOCABLE TRUST U/A DTD 7/22/1999, MARK DAVID 1994 PERSONAL IRREVOCABLE TRUST, MARK H SONNENBERG, SUSAN L SONNENBERG, MATTHEW N. KRISER REVOCABLE TRUST, MCSR MASTER FUND, L.P., MICHAEL J. HAGAN, MICHAEL J. RAINEN REVOCABLE TRUST U/A/ DTD 5/4/1990, MICHAEL J. SELVERIAN, NEIL GENSHAFT REVOCABLE TRUST, PAUL L. GOLDBERG DECLARATION OF TRUST, PFLP INVESTMENTS, LLC, RICHARD B. KLEIN REVOCABLE TRUST U/A/DTD 6/8/1993, REVOCABLE TRUSTY AGREEMENT OF JULIETTE B. FREEMAN, REGE S. EISAMAN, ROBERT A. BERNSTEIN REVOCABLE TRUST U/A DTD 7/8/1997, AS AMENDED, RUTH E. PILGRIM REV. GST TR 9/22/10, SECOND AMENDED AND RESTATED AGREEMENT OF TRUST FOR LAWRENCE S. CONNOR DATED MAY 2, 2016, SECULAR GROWTH INVESTORS, LP, SIGAL FAMILY INVESTMENTS, LLC, SIMBA INVESTMENTS, LLC, SNYDER RESOURCE MANAGEMENT L.P., STATE TEACHERS RETIREMENT

SYSTEM OF OHIO, STEVEN B. SHAFFER TRUST U/A 8/25/2003, THE 2009 JOHN N. MCCONNELL III GIFT TRUST, THE 2020 MARK FISHMAN TRUST PREVIOUSLY THE 2009 MARK FISHMAN TRUST, THE LEONARD G. HERRING FAMILY FOUNDATION, INC., THOMAS E. LAUERMAN REVOCABLE TRUST U/A DTD 10/30/2000, AS AMENDED, TUTERA GROUP, INC., VIOLET A. CARSON RESTATED 2004 REVOCABLE TRUST, VERGER CAPITAL FUND, LLC, WA ABSOLUTE RETURN HEDGE FUND LLC, and WALLIS ANNENBERG LIVING TRUST, WEINERG FAMILY LP,

Plaintiffs,

- against -

INFINITY Q CAPITAL MANAGEMENT LLC, JAMES VELISSARIS, SCOTT LINDELL, INFINITY Q MANAGEMENT EQUITY, LLC, EISNERAMPER LLP, EISNERAMPER US (CAYMAN) LTD., U.S. BANCORP FUND SERVICES LLC, and U.S. BANCORP FUND SERVICES, LTD.,

Defendants.

-----X

And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office 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).

1/9/2026

~~1/9/2025~~

DATE

MELISSA A. CRANE, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED

CASE DISPOSED  
GRANTED

DENIED

DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART

NON-FINAL DISPOSITION  
GRANTED IN PART

OTHER

OTHER