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

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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. 029

DECISION + ORDER ON MOTION

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.

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HON. MELISSA A. CRANE:

The following e-filed documents, listed by NYSCEF document number (Motion 029) 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 501, 536, 537, 538, 539

were read on this motion to/for DISMISSAL.

In motion sequence no. 029, defendant Scott Lindell (Lindell) moves, pursuant to CPLR 3211 (a) (1), (3) and (7), 3013 and 3016 (b), to dismiss plaintiffs' second amended complaint (the SAC). For the reasons set forth below, the motion is granted and the SAC is dismissed against Lindell.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

For a full recitation of the facts and the relevant procedural history in this action, the court refers to its 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), that 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. 428, Karam affirmation, exhibit E at 1).

Defendants James Velissaris (Velissaris) and Leonard Potter (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). Defendant 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), together, own 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 outside auditor and issued Form K-1 tax statements to investors (*id.*, ¶¶ 9 and 137).

The Hedge Fund invested in the same over-the-counter (OTC Derivatives) strategies as the Infinity Q Diversified Alpha Fund (the Mutual Fund), a pooled investment vehicle that IQCM had launched three years earlier (*id.*, ¶¶ 143 and 146). 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.*). According to IQCM's due diligence questionnaire, "[t]he primary source of pricing information typically will be independent sources, such as brokers or pricing services, but Infinity Q's Valuation Committee is ultimately responsible for determining fair value for investments held by each client" (NYSCEF Doc No. 453, Crossland affirmation, exhibit A at 7; SAC, ¶ 154).

After conducting pre-investment due diligence on the Hedge Fund and IQCM, plaintiffs executed subscription agreements with the Hedge Fund and collectively invested more than $380 million dollars between July 2018 and February 2021 (SAC, ¶¶ 1, 14 and 30-129).

The Hedge Fund collapsed in February 2021 after the Securities and Exchange Commission (SEC) discovered that Velissaris had been manipulating and inflating the value of the Hedge Fund's OTC Derivatives, thereby inflating the Hedge Fund's overall value (*id.*, ¶¶ 4-5, 177

and at 4 n 3). 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[1] (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[2] (*id.* at 44 n 11).

Plaintiffs subsequently commenced this action seeking "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). As against Lindell, the SAC pleads fraud/fraudulent inducement as a tenth cause of action, aiding and abetting fraud as an eleventh cause of action, and aiding and abetting breach of fiduciary duty as a twelfth cause of action.

Lindell now moves 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

[1] The SEC did not allege a mismarking fraud against Lindell, and Lindell made "no admissions in connection with" his settlement with the SEC (NYSCEF Doc No. 565 at 153-156).
[2] 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.

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]).

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 – Direct vs. Derivative

Lindell moves to dismiss the SAC on the ground that plaintiffs lack standing to sue because their claims are derivative, and incorporates by reference the arguments USB, BFLP, Wildcat and Potter raised on their motions to dismiss the SAC (motion sequence nos. 026 and 030). For the reasons set forth in the decision on the motion brought by BFLP, Wildcat and Potter, the court denies that part of Lindell's motion to dismiss the fraud and aiding and abetting fraud causes of action against him for lack of standing, and grants that part of the motion to dismiss the aiding and abetting breach of fiduciary duty cause of action (see Decision and Order resolving MS #30, same index number). Accordingly, the twelfth cause of action against Lindell for aiding and abetting breach of fiduciary duty is dismissed.

B. Fraud/Fraudulent Inducement

The SAC 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 (SAC, ¶¶ 4 and 183-184; NYSCEF Doc No. 451, plaintiffs' mem of law at 17 ["the scheme perpetrated by Lindell involved fraudulently inflated performance of the Hedge Fund"]).

In the tenth cause of action, plaintiffs assert a claim for fraud/fraudulent inducement based on "the affirmative material misrepresentations [Lindell] made directly Plaintiffs to induce them to invest, make additional investments, and maintain their investments in the Hedge Fund" (SAC, ¶ 599). The SAC alleges that "Lindell made material misrepresentations about the Hedge Fund's performance, governance, connection with Wildcat, assets, and Level 3 Valuation Procedures" to plaintiffs or their investment advisors as their agents when they conducted their pre-investment due diligence (*id.*, ¶¶ 1, 395 and 601). Lindell, as IQCM's Chief Risk Officer, Chief Compliance Officer, and Head of Portfolio Services and as a member of the Hedge Fund's Valuation Committee (the Valuation Committee), allegedly knew the statements were false because IQCM had not been following its valuation procedures; the Valuation Committee was not meeting to value assets; no independent third-party had valued the OTC Derivatives; there were significant discrepancies between IQCM's and swap counterparties' valuations; and IQCM faced a liquidity crisis that was exacerbated by the COVID-19 pandemic due to margin calls from swap counterparties (*id.*, ¶ 602).

Lindell argues the SAC fails to state a claim for fraud on three grounds. First, the SAC fails to comply with the heightened pleading standard in CPLR 3016 (b) as it fails to identify a specific misrepresentation Lindell made or specify the time, place, and manner in which Lindell is alleged to have made them. Rather, Lindell contends that plaintiffs engaged in impermissible group pleading. Lindell further contends that any misrepresentations made to plaintiffs' investment advisors are not actionable because the SAC fails to allege that the advisors were

"conduits" who relayed those statements to plaintiffs, who then relied on them. Second, Lindell asserts that plaintiffs failed to plead scienter. Last, Lindell maintains that plaintiffs disclaimed any reliance on such alleged misrepresentations based on language in the subscription agreement.

Plaintiffs in opposition argue that "the law does not require the level of detail and scrutiny demanded by Lindell" as long the allegations are such to infer Lindell's involvement in the fraud (NYSCEF Doc No. 451 at 10). Plaintiffs emphasize that Lindell is aware of what, when, and how he made those misrepresentations. Plaintiffs also insist that they have adequately pled scienter, arguing that Lindell had an economic motive and the opportunity to commit fraud.

Addressing Lindell's last argument first, a general merger clause coupled with a provision specifically disclaiming reliance on extra-contractual representations can defeat a claim sounding in fraud (*see Citibank v Plapinger*, 66 NY2d 90, 94 [1985], *rearg denied* 67 NY2d 647 [1986]). Dismissal is warranted only where "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the seller's knowledge" (*Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 137 [1st Dept 2014]). Section 3.01(v) in the subscription agreement states that "[n]o representations or warranties have been made to the Subscriber by the Fund or Infinity Q, or any of their partners, officers, employees, agents, affiliates or subsidiaries, other than the representations of the Fund in this Agreement and the Partnership Agreement/Articles[3]" (NYSCEF Doc No. 428 at 3.01 (v)). This language is not sufficiently specific to foreclose a fraud claim based on the alleged misrepresentations that IQCM adhered to the valuation policies and procedures the Hedge Fund's offering and marketing materials described

[3] "Agreement" means the subscription agreement (NYSCEF Doc No. 428 at 1). "Partnership Agreement" means the "Agreement of Limited Partnership of the Partnership," and "Articles" means the "Articles of Association of the [Infinity Q Volatility Alpha Offshore Fund, Ltd.]" (*id.*). "Fund" means either Infinity Q Volatility Alpha Fund, L.P. and Infinity Q Volatility Alpha Offshore Fund, Ltd. (*id.* at 2).

(*see Loreley Fin. (Jersey) No. 3 Ltd. v Citigroup Global Mkts. Inc.*, 119 AD3d 136, 144 [1st Dept 2014] [finding that the "disclaimers and disclosures fall well short of tracking the particular misrepresentations and omissions alleged by plaintiffs"]; *Silver Oak Capital L.L.C. v UBS AG*, 82 AD3d 666, 667 [1st Dept 2011] [disclaimer in private placement memorandum not sufficiently specific as to the particular misrepresentation at issue]). Consequently, Lindell's argument that plaintiffs disclaimed any reliance on his pre-investment statements is unpersuasive.

A cause of action for fraud requires the plaintiff to plead "a misrepresentation or a material omission of fact which was false and known to be false by [the] defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury" (*Pasternack v Laboratory Corp. of Am. Holdings*, 27 NY3d 817, 827 [2016] [internal quotation marks and citations omitted]; *Underwood v Urban Homesteading Assistance (U-HAB), Inc.*, 191 AD3d 550, 551 [1st Dept 2021] [discussing fraudulent inducement]). Because a cause of action for fraud must be pled with particularity (CPLR 3016 [b]), the complaint must contain "specific facts with respect to the time, place, or manner of this purported misrepresentation" (*CMB Export Infrastructure Inv. Group 48, LP v Motcomb Estates, Ltd.*, 223 AD3d 513, 514 [1st Dept 2024]; *Orange Orch. Props. LLC v Gentry Unlimited, Inc.*, 191 AD3d 609, 609 [1st Dept 2021] [same]; *Hamrick v Schain Leifer Guralnick*, 146 AD3d 606, 607 [1st Dept 2017] [same]). Statements made upon information and belief are insufficient (*see Facebook, Inc. v DLA Piper LLP (US)*, 134 AD3d 610, 615 [1st Dept 2015], *lv denied* 28 NY3d 903 [2016]). That said, the plaintiff need not present "unassailable proof of fraud" so long as "the facts are sufficient to permit a reasonable inference of the alleged conduct" (*Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 492 [2008]). In addition, "[i]n actions for fraud, corporate officers and directors may be held individually liable if they participated in or had

knowledge of the fraud, even if they did not stand to gain personally" (*Polonetsky v Better Homes Depot, Inc.*, 97 NY2d 46, 55 [2001]).

Applying these principles, plaintiffs have not pled facts implicating Lindell's participation in the fraudulent scheme with the requisite particularity as CPLR 3016 (b) requires. The SAC fails to plead the particular misrepresentations Lindell made about the Hedge Fund's performance, governance, connection with Wildcat, assets, and Level 3 Valuation Procedures. Contrary to plaintiffs' contention, plaintiffs should be in possession of those facts and therefore, they could have included those details in the SAC.

With the exception of two plaintiffs (Mark H. Sonnenberg and Susan L. Sonnenberg), the 102 plaintiffs or their advisors,[4] generally, allege that they held telephone calls, conferences and in-person meetings and had written exchanges with IQCM personnel, including Lindell, Velissaris, Potter, Shawn Rowatt (Rowatt), and Scott Griffith, both IQCM investor relations managers (SAC, ¶¶ 396, 409, 413, 417, 421, 424, 428, 432, 436, 440, 444, 448, 451-452, 456, 460, 462, 466-467, 471, 475, 478, 481, 486, 490-491, 495, 499, 503, 506 and 508). Eighty-six plaintiffs allege that IQCM "represented," "corroborated," "always represented" or "always described" that the marketing materials depicted the Hedge Fund's valuation procedures (*id.*, ¶¶ 409, 413, 417, 424, 436, 440, 444, 451, 456, 460, 466, 471, 475, 481, 486, 490 and 499). Absent from the SAC, however, is a specific misrepresentation attributed to Lindell or any particular details as to when, how and to whom he had made them (*see CMB Export Infrastructure Inv. Group 48, LP*, 223 AD3d at 514 [dismissing fraudulent inducement claim where the "[p]laintiff … did not allege any specific facts with respect to the time, place, or manner of this purported misrepresentation"]; *INTL FCStone Mkts., LLC v Corrib Oil Co. Ltd.*, 172 AD3d 492, 493 [1st Dept 2019] ["[t]he allegations

[4] Several plaintiffs had retained advisors in connection with their investments in the Hedge Fund (SAC, ¶¶ 412, 416, 427, 431, 435, 439, 443, 455, 459, 465, 477, 494, 498 and 502).

supporting the fraud claims also lack particularity, as, with minimal exceptions, they fail to identify who made the misrepresentations, when the misrepresentations were made, and the substance of the misrepresentations"]; *Gregor v Rossi*, 120 AD3d 447, 447 [1st Dept 2014] [dismissing fraud and fraudulent inducement claims where "the words used by defendants and the date of the alleged false representations are not set forth" in the complaint]; *Hamrick*, 146 AD3d at 607, citing *Eastman Kodak Co. v Roopak Enters.*, 202 AD2d 220, 222 [1st Dept 1994] ["[t]he complaint does not allege who made the misrepresentations or when or where they were made"]).

Moreover, group pleading on a fraud claim is impermissible (*see RKA Film Fin., LLC v Kavanaugh*, 171 AD3d 678, 678 [1st Dept 2019] [dismissing fraud claim where plaintiffs "impermissibly lumped those defendants together with the others against whom specific acts had been pleaded"]), and Lindell cannot be held liable for statements made by other "IQCM" personnel to plaintiffs. For instance, nonparty Opax Investments (Opax), an advisor to plaintiffs Simba Investments, LLC and MUFG Alternative Fund Services (Cayman) Limited Ref: Equator Investments (Limited), held a conference call in June 2019 "with Lindell and Rowatt to discuss valuation issues" (SAC, ¶¶ 459 and 462). Lindell was present for the call, but the SAC does not attribute a particulate misrepresentation about IQCM's valuation procedures to him. Instead, the SAC pleads that "Rowatt told Opax that IQCM relied on BVAL for all Level 3 investment valuations, that no assets were valued directly by Velissaris or others at IQCM, and that USB likewise used BVAL to value all of the Hedge Fund's Level 3 securities" (*id.*, ¶ 462).

Nonparty Prairie Capital Management Group (Prairie Capital) represented 16 plaintiffs[5] and conducted its due diligence "over roughly eleven months" (*id.*, ¶ 465). These plaintiffs allege

[5] The 16 plaintiffs are The 2009 John N. McConnell III Gift Trust; Robert A. Bernstein Revocable Trust U/A DTD 7/8/1997, As Amended; Brain N. Kaufman Revocable Trust U/T/A 02/13/13; Carol A. Bueker Revocable Trust U/A 12/12/95; Earl H. Devanny, III Revocable Trust U/A DTD 4/2/2001; Flint Hills Diversified Strategies, LP; John D. Starr Revocable Trust U/A DTD 11/10/93; John R. Grissinger Living

that "Lindell, on multiple occasions, represented to Prairie Capital that Bloomberg independently valued the Hedge Fund's positions monthly, and that USB worked with the Valuation Committee each month to reconcile the Bloomberg valuations with broker and counterparty marks and IQCM's internal marks to ensure the Hedge Fund's valuations were fair and accurate" (*id.*, ¶ 467). The SAC, though, fails to set forth when, where and on what dates Lindell made these representations, the actual language he used, and the manner in which he made the statements (*see CMB Export Infrastructure Inv. Group 48, LP*, 223 AD3d at 514).

Eleven plaintiffs have not alleged that Lindell met or corresponded with them at all (SAC, ¶ 421, 428, 432, 448, 471 and 490). In addition, seven plaintiffs "understood" and two plaintiffs "believed" that the Hedge Fund's valuation procedures were as described in the marketing materials[6] (*id.*, ¶¶ 478, 496, 503, 506 and 508). These plaintiffs have not asserted whether Lindell made a direct misrepresentation to them (*see Ramos v Ramirez*, 31 AD3d 294, 295 [1st Dept 2006] [dismissing fraud claim where the plaintiffs failed to allege that the individual defendant had made a misrepresentation to them]).

Nor does the SAC plead facts tending to show that Lindell knew the statements he made regarding the alleged independence of BVAL were false or that he made those statements with the present intent to deceive (*see Riverbay Corp. v Thyssenkrupp N. El. Corp.*, 116 AD3d 487, 488 [1st Dept 2014]). The SAC cites a May 7, 2018 email in which Lindell wrote that the SEC had requested "all valuation committee minutes and materials during the examination period. We

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Trust U/A 4/7/11; Kevin M. Anderson 2017 UPN Irrevocable Trust U/A DTD 3/21/2017; Lauren N. Rainen; Kevin M. Anderson 2017 UPN Irrevocable Trust U/A DTD 3/21/2017; Michael J. Rainen Revocable Trust U/A/DTD 5/4/1990; Richard B. Klein Revocable Trust U/A/DTD 6/8/1993; Thomas E. Lauerman Revocable Trust U/A DTD 10/30/2020 As Amended; Tutera Group, Inc.; and Steven B. Shaffer Trust U/A 8/25/2003 (SAC at 124 n 25).

[6] The plaintiffs are Steinfreund57 S.A., SICAV-RAIF – Global HedgeFunds; Opus Chartered Issuance S.A., Compartment 127; PFLP Investments, LLC; WA Absolute Return Hedge Fund LLC; Aquis Capital AG; Atlas Global Fund; Montsol Anstalt; Mark H. Sonnenberg; and Susan L. Sonnenberg.

haven't fair valued anything and haven't convened the committee" (SAC, ¶ 173). On March 1, 2017, "Lindell instructed [USB employee] Arhontoulis that USB 'should only rely on BVAL or our supported marks for portfolio valuation'" (*id.*, ¶ 218). Lindell emailed another USB employee on April 24, 2018, that "[IQCM] does not price any security ourselves. Prices are either provided by BVAL directly to [USB] for non-vanilla OTC instruments or we forward Bloomberg values to [USB] for positions not requiring BVAL valuation" (*id.*, ¶¶ 249 and 252 [internal quotation marks omitted]; NYSCEF Doc No. 462, Crossland affirmation, exhibit J at 1). In June 2018, Lindell informed another USB employee that "BVAL is not a manual price, but a third party valuation agent approved by the [B]oard to value OTC [D]erivatives" (SAC, ¶ 255 [internal quotation marks omitted]). The SAC also alleges that a USB employee had been communicating with an Opax employee who asked "how [ ] [USB] value[s] [L]evel 3 assets" (*id.*, ¶ 264). When the USB employee contacted Lindell for clarification, Lindell responded, "[w]e don't provide valuations based on an internal model. You receive valuations from Bloomberg Valuation Services (BVAL), a third-party valuation service. IQ does not value any positions ourselves" (*id.*, ¶ 266 [internal quotation marks omitted]). That Lindell repeatedly emphasized BVAL's independence from IQCM is not sufficient to infer that he was knew those statements were false absent supporting facts (*see MP Cool Invs. Ltd. v Forkosh*, 142 AD3d 286 [1st Dept 2016], *lv denied* 28 NY3d 911 [2016], quoting *Houbigant, Inc. v Deloitte & Touche*, 303 AD2d 92, 98-99 [1st Dept 2003] ["[w]ith respect to the scienter element of its claim, … plaintiff is still required to allege facts 'from which it is possible to infer defendant[s'] knowledge of the falsity of [their] statements' when they were made"]). Lindell's email to Velissaris in which Lindell wrote, "OMG. This would not have been good" (*id.*, ¶ 267 [italics and bold type removed]) is insufficient with respect to Lindell's knowledge of the falsity of his statements to USB.

Plaintiffs, in opposition, submit copies of emails Lindell[7] sent to Prairie Capital, nonparty Mill Creek Capital Advisors[8] (Mill Creek), nonparty Galapagos Advisors[9] (Galapagos) and plaintiffs Montsol Anstalt, Mark H. Sonnenberg, Susan L. Sonnenberg and James T. Sherwin to show that Lindell actively communicated with plaintiffs (NYSCEF Doc Nos. 454-458 and 465, Crossland affirmation, exhibits C-F and M). The submissions fail to cure the pleading deficiencies. The documents reveal that Lindell or Rowatt emailed the Hedge Fund's PPM, confidential offering memorandum, limited partnership agreement, subscription agreement, investor package, and/or annual report to recipients (*id.*). Lindell did not discuss the Hedge Fund's valuation procedures in any of those emails. Similarly, an email thread from May through July 2017 between Lindell and a Galapagos employee about a potential investment does not contain any reference the valuation procedures (NYSCEF Doc No. 463, Crossland affirmation, exhibit K). Galapagos had also scheduled a meeting with Lindell and Velissaris at Wildcat's office, but the note makes no mention of the valuation procedures (NYSCEF Doc No. 464, Crossland affirmation, exhibit L).

Plaintiffs next argue that Lindell knew about the mismarked valuations because he had "entered into a consent judgment with the SEC, that alleged 'Lindell had misrepresented the independence of BVAL and made misrepresentations to the SEC, investors, and others regarding the Funds' valuations'" (SAC, ¶ 192). The SEC, though, had alleged in its complaint that Lindell had "negligently misrepresented to investors and potential investors, representatives of the board of the mutual fund, and others that the Pricing Service was 'independent' from Infinity Q when,

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[7] The court observes that the email address for Lindell is "scott@infinityq.com" and does not end with "@wildcatcap.com" (SAC, ¶¶ 586[b] and 596[b]).

[8] Mill Creek served as an investment advisor to plaintiffs Abraham Joshua Heschel School; AEJ Capital, LLC; MCSR Master Fund, L.P.; Michael J. Hagan; and The 2020 Mark Fishman Trust Previously the 2009 Mark Fishman Trust (SAC at 121 n 23).

[9] Galapagos served as an investment advisor to plaintiffs FFI 2011 Fund, Kaplan 2020 Fund, and DJI 2006 Fund (SAC at 114 n 19).

in fact, Velissaris exercised control over the Pricing Service" (NYSCEF Doc No. 156, Karam affirmation in motion seq. no. 013, exhibit C, ¶ 7). The consent judgment entered in April 2024 does not contain any admission from Lindell as to his particular knowledge of Velissaris' actions (NYSCEF Doc No. 565 at 154-158; *see also* Securities and Exchange Commission, https://www.sec.gov/files/litigation/admin/2024/ia-6591.pdf [last accessed October 16, 2025]).

According to the SEC's complaint against Lindell, "Velissaris was the sole decision-maker at Infinity Q for the valuation of the … [Hedge Fund's] positions" and "Lindell had no day-to-day involvement with Infinity Q's investment decision-making or the valuation of the Infinity Q Funds' positions"(NYSCEF Doc No. 156, Karam affirmation in motion seq. no. 013, exhibit C, ¶¶ 36 and 54; NYSCEF Doc No. 565 at 156-158). The criminal indictment filed against Velissaris also states that Velissaris was the "sole Infinity Q employee with access to input and edit positions and templates in BVAL" (NYSCEF Doc No. 424, Karam affirmation, exhibit A, ¶ 27). Plaintiffs have not alleged that Lindell had access to BVAL, had the ability to track any changes to the models used to value the Level 3 OTC Derivatives in BVAL, or was responsible for tracking the Hedge Fund's performance such that he could have known that his statements on BVAL's independence were false (*compare 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'"]; *William Doyle Galleries, Inc.*, 167 AD3d at 504 [defendant bank could have verified whether an account contained sufficient funds before furnishing a verbal statement and letter to the plaintiff]).

Plaintiffs contend that Lindell was aware of the fraud because in October 2017, the Mutual Fund's former auditor, nonparty BBD, LLC (BBD), had raised concerns about 30 Mutual Fund

positions that differed significantly from its counterparty valuations, and BBD's failure to complete a month-end audit later led to BBD's termination (SAC, ¶¶ 234-236 and 238). Plaintiffs submit that Lindell "lied to the SEC when he claimed that it was the Board … that recommended the firing of BBD" (NYSCEF Doc No. 451 at 5). This argument is without support, as the SAC pleads that USB had contacted Velissaris, not Lindell, about issues with the Mutual Fund positions (SAC, ¶¶ 234 and 237), and there is no allegation in the SAC that Lindell had been made aware of BBD's report. Moreover, it appears that Velissaris, not Lindell, spearheaded the effort to terminate BBD as the Mutual Fund's auditor (*id.*, ¶¶ 236 and 238; NYSCEF Doc No. 459-460, Crossland affirmation, exhibits G-H). As such, these "allegations are facially insufficient 'to raise a right to relief above the speculative level'" (*Newman v Family Mgt. Corp.*, 530 Fed Appx 21, 26 [2d Cir 2013]).

Finally, plaintiffs maintain that they have satisfied the scienter element as they have alleged facts showing that Lindell had both motive and opportunity to commit fraud. "A plaintiff may plead scienter by 'alleging facts (1) showing that the defendants had both motive and opportunity to commit the fraud or (2) constituting strong circumstantial evidence of conscious misbehavior or recklessness'" (*In re Longtop Fin. Tech. Ltd. Sec. Litig.*, 910 F Supp 2d 561, 574 [SD NY 2012] [citations omitted]).[10] "To successfully allege scienter based on motive and opportunity, a plaintiff must plausibly plead that the defendant 'benefitted in some concrete and personal way from the purported fraud'" (*Mangrove Partners Master Fund, Ltd. v Bristol-Myers Squibb Co.*, 2025 WL 1420914, *4 [2d Cir, May 16, 2025] [citation omitted]).

Here, plaintiffs assert that money motivated Lindell because IQME, in which he was a 15% owner, would benefit from the monthly management and annual performance fees IQCM collected

[10] *In re Longtop Fin. Tech. Ltd. Sec. Litig.* concerns a private claim for fraud brought under the Securities Exchange Act of 1934 (910 F Supp 2d at 566).

from the Hedge Fund. However, "an allegation that defendants were motivated by a desire to maintain or increase … compensation is insufficient because such a desire can be imputed to all corporate officers" (*Kalnit v Eichler*, 264 F3d 131, 139 [2d Cir 2001]; *see also Mangrove Partners Master Fund, Ltd.*, 2025 WL 1420914, *4 [desire for corporation to appear profitable not sufficient motive]; *Saraf v Ebix, Inc.*, 2024 WL 1298426, *2, 2024 US App LEXIS 7208 [2d Cir, Mar. 27, 2024] [avoiding bankruptcy not enough to plead motive and opportunity]; *SSR II, LLC v John Hancock Life Ins. Co. (U.S.A.)*, 37 Misc 3d 1204[A], 2012 NY Slip Op 51880[U], *5 [Sup Ct, NY County 2012] [same]). Artificially inflating the price of shares and then selling shares for personal profit can be sufficient to plead motive and opportunity (*see Novak v Kasaks*, 216 F 3d 300, 308 [2d Cir 2000], *cert denied* 531 US 1012 [2000]), but here the SAC alleges that IQME failed to sell its interests in IQCM (SAC, ¶ 167). Thus, plaintiffs have failed to plead that Lindell would have received a concrete and personal benefit (*see Nandkumar v AstraZeneca PLC*, 2023 WL 3477164, *3 [2d Cir 2023]). Accordingly, the tenth cause of action against Lindell for fraud/fraudulent inducement is dismissed.

C. Aiding and Abetting Fraud

The eleventh cause of action against Lindell pleads a claim for aiding and abetting IQCM's years-long fraud of "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" (SAC, ¶ 607). Lindell's substantial assistance consisted of lying to plaintiffs or their agents regarding IQCM's use of BVAL; screening USB's responses to due diligence questions to Opax; misrepresenting BVAL's independence; allowing IQCM to represent falsely that Lindell had a role on the Valuation Committee; and helping Velissaris doctor responses to the SEC (*id.*, ¶ 610).

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 Weksel*, 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]).

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]).

The SAC fails to plead facts to permit the reasonable inference that Lindell had actual knowledge of Velissaris' fraud in altering BVAL models and inputs. The SAC pleads that Lindell was IQCM's Chief Risk Officer, Chief Compliance Officer, and Head of Portfolio Services, served as a member of the Valuation Committee, and was primarily responsible for IQCM's day-to-day management (SAC, ¶¶ 136, 608-609 and 618). Lindell's titles and corporate positions are

insufficient to infer his actual knowledge of Velissaris' years-long scheme to manipulate the valuation models and inputs in BVAL (*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 pleads that on May 7, 2018, Lindell admitted to Velissaris and a Wildcat employee that the Valuation Committee had not "fair[ly] valued anything" and that it had yet to convene a meeting (SAC, ¶¶ 4 and 173). Velissaris allegedly admitted to Lindell in a March 13, 2020 email that IQCM "didn't structure the book optimally for a scenario like this," namely margin calls from swap counterparties (*id.*, ¶ 164). These allegations, at most, suggest that Lindell "*should* have known that something was amiss" (*Rosner v Bank of China*, 349 Fed Appx 637, 639 [2d Cir 2009]), not that he had actual knowledge Velissaris had been manipulating BVAL. Such constructive knowledge is insufficient (*see Gaughan*, 214 AD3d at 592; *Lumens at White Plains, LLC v Stern*, 135 AD3d 600, 600, 600 [1st Dept 2016]). Certain plaintiffs or their advisors communicated with Lindell, but again, the SAC does not attribute a particular misrepresentation to him.

On 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. Securities, 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]).

Here, the SAC fails to plead Lindell's substantial assistance to further the fraudulent scheme to manipulate BVAL and inflate the Hedge Fund's assets. First, plaintiffs have not identified or attributed a particular misrepresentation Lindell made to them concerning IQCM's use of BVAL or BVAL's independence, discussed *supra*. That Lindell was present for meetings and conference calls with certain plaintiffs, without more, is insufficient (*see JP Morgan Chase Bank*, 406 F Supp 2d at 258 ["[m]ere presence, and passive receipt of email, cannot, by definition, constitute affirmative assistance"]).

The SAC pleads that "Lindell assisted Velissaris in removing" language from the Hedge Fund's marketing materials on its valuation policies and procedures in response to an SEC examination in May 2020 (SAC, ¶ 175). In May 2018, "Lindell and Velissaris discussed the fact that the Hedge Fund Valuation Committee was not functioning" and then prepared IQCM's response [to an SEC examination] with the assistance of USB and EisnerAmper" (*id.*, ¶ 173). Lindell also allegedly assisted in preparing the Hedge Fund's PPM and IQCM's compliance manual (*id.*, ¶ 616). Not only are these allegations wholly conclusory, but they were all made

"upon information and belief." This is insufficient (*see Stanfield Offshore Leveraged Assets, Ltd.*, 64 AD3d at 476).

Plaintiffs also claim that, when Opax asked USB how it valued the Hedge Fund's Level 3 OTC Derivatives, Lindell altered USB's answer to Opax to read: "James Velissaris/IQ provides US Bank with access to Bloomberg Valuation Services (BVAL) where we are able to obtain the third-party valuations for Infinity Q's structured derivatives" (*id.*, ¶¶ 264-266 [italics and bold type removed]). These actions 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).

At bottom, plaintiffs complain that had the Valuation Committee, of which Lindell was member, convened, then the fraud could have been discovered earlier. However, "inaction … constitute[s] substantial assistance only if the defendant owes a fiduciary duty directly to the plaintiff" (*Plymouth Capital, LLC v Montage Fin. Group, Inc.*, 230 AD3d 1361, 1364 [2d Dept 2024] [internal quotation marks and citation omitted]; *accord Lumen at White Plains, LLC*, 135 AD3d at 601). Plaintiffs have not pled any facts to suggest that Lindell owed them a fiduciary duty. Assuming the Valuation Committee had met, plaintiffs have not pled any facts to show that the committee members could have determined that the BVAL information had been altered.

Accordingly, it is

ORDERED that the motion brought by defendant Scott Lindell to dismiss the second amended complaint (motion sequence no. 029) is granted, and the second amended complaint is dismissed as against this defendant, with costs and disbursements as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that the amended caption shall reads as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:

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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

Index No. 652720/2023

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, 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.

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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).

01/9/2026
DATE

MELISSA A. CRANE, J.S.C.

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