A Participations Ltd. v Velissaris
2026 NY Slip Op 31497(U)
April 9, 2026
Supreme Court, New York County
Docket Number: Index No. 652720/2023
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA A. CRANE** *Justice* **PART** **60M**

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INDEX NO. 652720/2023

MOTION DATE N/A

MOTION SEQ. NO. 026

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

DECISION + ORDER ON MOTION

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,WALLIS ANNENBERG LIVING TRUST, WEINERG FAMILY LP,

Plaintiff,

- v -

JAMES VELISSARIS, INFINITY Q CAPITAL MANAGEMENT LLC,SCOTT LINDELL, LEONARD POTTER, INFINITY Q MANAGEMENT EQUITY, LLC,WILDCAT PARTNER HOLDINGS, LP, WILDCAT CAPITAL MANAGEMENT, LLC,EISNERAMPER LLP, EISNERAMPER US (CAYMAN) LTD., U.S. BANCORP FUND SERVICES LLC,U.S. BANCORP FUND SERVICES, LTD.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 026) 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 466, 498, 535

were read on this motion to/for DISMISS.

In MS# 026, co-defendants U.S. Bancorp Fund Services LLC and U.S. Bancorp Fund Services, Ltd. (together, the USB defendants) move, pursuant to CPLR 3211 (a) (3) & (7) 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 as against the USB defendants.

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, in particular the decision and order for motion 29, 30 and 31, with which the court presumes familiarity. 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 Wildcat Partner Holdings, LP f/k/a Bonderman Family Limited Partnership, LP (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). The USB defendants 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 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 n3). Velissaris pleaded guilty to securities fraud and was sentenced to 15 years in prison (*id.*, ¶¶ 188 and 190; *United States v Velissaris*, 2023 WL2875487, *1 and 11, 2023 US Dist LEXIS 62740, *1 and 30 [SDNY, Apr. 10, 2023, No. 22crl05 (DLC)], *affd* 2024 WL4502201, 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 n11).

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 the USB defendants, the SAC pleads: 1) fraud/fraudulent inducement (first cause of action); 2) aiding and abetting fraud (second cause of action); 3) aiding and abetting breach of fiduciary duty (third cause of action); and 4) negligent misrepresentation (fourth cause of action) (*id.*, ¶¶ 512-549).

The USB defendants now move to dismiss the SAC (MS#026). 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

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[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.

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]).

A. Standing - Direct vs. Derivative

The USB defendants move to dismiss the SAC on the ground that plaintiffs lack standing to sue because their claims are derivative (*see* NYSCEF Doc No. 376 at 9-12). 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]). The court has already considered and rejected this argument in the decision that disposed of the motion brought by BFLP, Wildcat and Potter (*see* NYSCEF Doc No. 567, Decision and Order resolving MS #030, same index number). Because plaintiffs' fraudulent inducement claim is direct by nature, rather than derivative, the court denies so much of the USB defendants' motion to dismiss the four causes of action in the SAC against them for lack of standing (*see* NYSCEF Doc No. 567, Decision and Order resolving MS #030, same index number).

B. Fraud/Fraudulent Inducement (First Cause of Action)

The USB defendants argue that, under CPLR 3211 (a) (7), plaintiff's first cause of action fails to state a claim for fraud/fraudulent inducement (NYSCEF Doc No. 376 at 12-16). The proponent of such a claim must 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 NY3d817, 827 [2016] [internal quotation marks and citations omitted]; *Underwood v Urban Homesteading Assistance (U-HAB), Inc.*, 191 AD3d550, 551 [1st Dept 2021] [discussing fraudulent

inducement]). Because a cause of action for fraud must be pleaded 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 AD3d513, 514 [1st Dept 2024]; *Orange Orch. Props. LLC v Gentry Unlimited, Inc.*, 191 AD3d609, 609 [1st Dept 2021] [same]; *Hamrick v Schain Leifer Guralnick*, 146 AD3d606, 607 [1st Dept 2017] [same]). Statements made upon information and belief are insufficient (*see Facebook, Inc. v DLA Piper LLP (US)*, 134 AD3d610, 615 [1st Dept 2015], *lv denied* 28 NY3d 903 [2016]). That said, a 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 NY3d486, 492 [2008]).

When the court last addressed plaintiffs' fraud claim against the USB defendants in MS#10, it found that the first amended complaint failed to plead that cause of action with the specificity required by CPLR 3016 (b) (NYSCEF doc nos. 253/254; 2024 WL 2135743 [NY Sup 2024]). Although plaintiffs made significant revisions to their pleadings in the SAC, the first cause of action still fails for lack of specificity. The SAC states that:

> "USB Vice President [Scott] Syracuse and Assistant Vice President [Joseph] Balzano told Plaintiffs, among other things, that: (a) USB 'has to make sure the valuation policy of the [Hedge] Fund is executed properly'; (b) USB obtains 'third party valuations' for the Hedge Fund's OTC Derivatives; (c) IQCM does not value any positions; and (d) USB was 'not aware' of any disagreement between IQCM and counterparty valuations or management overrides"

and that:

> "USB knew: (a) it did not ensure that the Hedge Fund's Valuation Policy was being executed properly or that the Hedge Fund Valuation Committee was meeting monthly (as required by the PPM); (b) there was no independent third-party valuing IQCM's OTC Derivatives; (c) IQCM was valuing the OTC Derivatives because Velissaris controlled BVAL; and (d) about 'significant' valuation disagreements between IQCM and counterparty valuations, as well as disagreements between IQCM and its prior auditor BBD."

(NYSCEF doc no 406, ¶¶ 515, 517).

However, the second set of statements are flatly contradicted by the portion of the SAC (discussed *infra*) that pleads that the USB defendants' fellow Mutual Fund Valuation Committee member, BBD, LLP, raised concerns about the validity of IQCM's valuation calculations to the Mutual Fund Board. The board in turn contacted Velissaris, who thereafter retained a new valuation auditor (i.e., Bloomberg Valuation Services [BVAL]) to address those concerns by providing its own calculations (SAC, ¶¶ 96-211). BVAL's hiring establishes that there *was* an "independent third-party valuation" calculator on whose data the UBS defendants (and others) could rely while preparing the monthly reports that they sent to plaintiffs. Plaintiffs' ensuing accusations that the USB defendants knew that "Velissaris controlled BVAL," and that "[t]he representations USB made in the monthly Account Statements were false," are conclusory statements rather than sufficiently specific pleadings (SAC ¶¶ 517, 519). The statute (CPLR 3016 [b]) places the burden on plaintiffs to plead sufficiently specific facts to support those statements. The SAC fails to do so.

In the decision disposing of MS#029 in this action, the court found that "the SAC [does not] plead facts tending to show that [IQCM compliance officer Scott] Lindell knew the statements he made regarding the alleged independence of BVAL were false or that he made those statements with the intent to deceive" (NYSCEF doc no 570, at 12). Here, the court makes the same findings with respect to the statements referenced in the SAC by the USB defendants' officers (discussed *infra*) regarding the officers' decision to rely on BVAL's valuation data rather than IQCM's data, and the court reaches the same conclusion. That is, because plaintiffs' pleadings supporting the "scienter" element for their fraud claim are insufficient under CPLR 3016 (b), the fraud claim fails, as a matter of law, under CPLR 3211 (a) (7).

C. Aiding and Abetting Fraud (Second Cause of Action)

Preliminarily, on February 24, 2026, the court dismissed the fraud claim against IQCM (Doc 573 at 6-12 [Decision + Order, MS 31]). Consequently, the aiding and abetting fraud claim is dismissed against the USB defendants. Even if the operative fraud claim had not been dismissed, the court would still find that this aiding and abetting fraud cause of action fails to state a claim.

The proponent of an aiding and abetting fraud claim must plead "the existence of the underlying fraud, actual knowledge, and substantial assistance" (*Oster v Kirschner*, 77 AD3d51, 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]).

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). 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]). However, mere allegations of "constructive knowledge" are not sufficient to overcome a dismissal motion (*see Gaughan v Russo*, 214 AD3d 592, 592 [1st Dept 2023]; *McBride v KPMG Intl.*, 135 AD3d 576 [1st Dept 2016]; *Gregor v Rossi*, 120 AD3d 447, 448-449 [1st Dept 2014]).

The court agrees with defendants that the SAC fails to plead facts that would support a reasonable inference that the USB defendants had actual knowledge of IQCM's alleged "years-long fraud" in 1) "inflating and intentionally overstating the value and returns of the Hedge Fund's investment in Level 3 OTC Derivatives"; and 2) "misrepresenting the Hedge Fund's investment processes, policies, and procedures" (SAC, ¶ 526). The SAC initially pleads that the USB defendants "served as fund administrator to all IQCM investment funds, including the Hedge Fund and Infinity Q Diversified Alpha Fund [i.e., the 'Mutual Fund']" (SAC, ¶ 7, n2). Later the SAC pleads that "USB did *not* provide portfolio valuation services to the Hedge Fund", but that it had "served on the Mutual Fund's Board and Valuation Committee" in which capacity they *did* exercise portfolio valuation oversight for the Mutual Fund (SAC, ¶¶ 2, 195, 224).

The SAC further alleges that the Mutual Fund Valuation Board's oversight led "USB executives [to learn] of multiple instances over the years . . . where there were disagreements between IQCM, counterparty, and BBD valuations of IQCM's OTC Derivatives" (SAC, ¶¶ 2, 224). Without much detail, the SAC alleges that those "instances" took place between 2014 and 2021, when the Hedge Fund collapsed (SAC, ¶¶ 195-196). Significantly, however, the SAC pleads that in 2015, BBD, LLP (not the USB defendants) took certain valuation concerns to the Mutual Fund Board, and the board contacted Velissaris, who thereafter retained a new valuation auditor (i.e., BVAL) to address the IQCM concerns by providing its own valuation analysis and calculations (SAC, ¶¶ 96-211).

The SAC then pleads that the USB defendants became the Hedge Fund's "independent administrator" in 2017 and assumed a role "as a 'gatekeeper,' responsible for," *inter alia*: 1) "independently calculating the Hedge Fund's NAV in accordance with policies and procedures set forth in the Hedge Fund's governing documents"; 2) "generating accurate personalized

monthly Account Statements" for investors; and 3) "obtaining prices directly from a third party pricing source approved by IQCM (i.e., BVAL) and applying those prices to the Hedge Fund's portfolio positions on a periodic basis" (SAC, ¶¶ 213-214, 526). The SAC finally pleads that IQCM manipulated BVAL's security price calculations by feeding it inflated figures to use in its "Level 3 Valuation" formula, and that the USB defendants had actual knowledge of this fraudulent behavior (SAC, ¶¶ 225-255).

In connection with that latter allegation, the SAC specifically identifies a conversation that USB vice president Michelle Sanville-Seebold had with IQCM compliance officer Scott Lindell on April 24, 2018 during which she stated that "[f]rom [USB's] perspective, anything that is not downloaded directly from BVAL is adviser priced even if you use models on Bloomberg to complete the valuations. This is due to [IQCM] still having the ability to change inputs or calibrate any of the models" (SAC, ¶ 253). The SAC then concludes that "Sanville-Seebold's response made clear that USB knew that any representation that BVAL independently supplied valuations for Hedge Fund and Mutual Fund OTC Derivatives was false . . ." (*id.*).

The USB defendants' motion argues that "[a]t best, Plaintiffs' allegations amount to an inference of merely constructive knowledge of potential issues with the Hedge Funds," but that "[t]his is a far cry from actual knowledge that IQCM was not using [BVAL as] a[n independent] third-party agent" for generating valuation reports (NYSCEF Doc No. 376 at 17 [22]). The court agrees. Under even the most generous reading to plaintiffs, Sanville-Sebold's statement that the USB defendants would accept valuation reports directly from BVAL but not from IQCM using BVAL formulae is merely an expression of confidence in BVAL's valuation calculations over IQCM's. Nothing in Sanville-Seebold's statement suggests that the USB defendants "actually knew" that ICQM was using BVAL to disseminate false valuation information that the USB

defendants then fraudulently passed on to investors in their monthly reports. The content of the statement does not justify the attenuated inference plaintiffs made in the SAC. The most that can be reasonably inferred from the statement is that the USB defendants had some measure of "constructive knowledge" relating to IQSM's problematic valuation calculations.

The court finds that the SAC does not sufficiently allege the "actual knowledge" element of plaintiffs' aiding and abetting fraud claim against the USB defendants, and therefore concludes that that claim fails as a matter of law (*Gaughan v Russo*, 214 AD3d at 592; *McBride v KPMG Intl.*, 135 AD3d 576; *Gregor v Rossi*, 120 AD3d at 448-449).

D. Aiding and Abetting Breach of Fiduciary Duty (Third Cause of Action)

Plaintiffs do not assert a breach of fiduciary duty claim against IQCM in the SAC (*see generally* Doc 368 [including one claim only against IQCM (fraud/fraudulent inducement)]). Plaintiffs conceded in their memorandum opposing MS 31 that they do not plead breach of fiduciary duty against IQCM (Doc 467 at 22 ["Plaintiffs do not assert a breach of fiduciary duty claim against IQCM; they assert a fraud claim."]). Therefore, plaintiffs' aiding and abetting breach of fiduciary duty claim has no primary fiduciary duty claim in the SAC to which to attach. This claim must also be dismissed. Even so, plaintiffs fail to plead that the USB defendants had actual knowledge. Again, as discussed above, plaintiffs' allegations support, at most, an inference that the USB defendants had constructive knowledge of IQCM's purported fiduciary duty breaches.

E. Negligent Misrepresentation (Fourth Cause of Action)

> "To properly assert a claim on a theory of negligent misrepresentation, a plaintiff must plead: '(1) that the existence of a special or privity-like relationship imposed a duty on the defendant to impart correct information to the plaintiff; (2) that the imparted information was actually incorrect; and (3) that the plaintiff reasonably relied on the information'"

(*North Star Contr. Corp. v MTA Capital Constr. Co.*, 120 AD3d 1066, 1069 [1st Dept 2014], quoting *Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 180 [2011], quoting *J.A.O. Acquisition Corp. v Stavitsky*, 8 NY3d 144, 148 [2007]).

The law is clear that a plaintiff may not rely solely on a defendant's alleged "unique and special expertise" or "specialized knowledge" to plead the "special relationship" element of a negligent misrepresentation claim in instances where "the parties engaged in arm's-length transactions pursuant to contracts between sophisticated business entities" (*see e.g.*, *GSCP VI EdgeMarc Holdings, L.L.C. v ETC Northeast Pipeline, LLC*, 192 AD3d 454, 456 [1st Dept 2021], quoting *Sebastian Holdings, Inc. v Deutsche Bank AG*, 78 AD3d 446, 447 [1st Dept 2010]). Here, however, the SAC alleges only that the USB defendants are "highly skilled independent fund administrator[s]" with "much more knowledge than Plaintiffs about the Hedge Fund's Level 3 Valuation Procedures and NAV calculations" and that "Plaintiffs relied on USB's unique and special expertise and experience and depended on USB for accurate and truthful information" (SAC, ¶¶ 544-545).

Pursuant to the above caselaw, these are exactly the sort of conclusory, unsubstantiated allegations that do not describe the "special relationship" element needed for a negligent misrepresentation claim. Therefore, the court grants so much of the USB defendants' motion as requests dismissal of the fourth cause of action in the SAC pursuant to CPLR 3211 (a) (7).

CONCLUSION

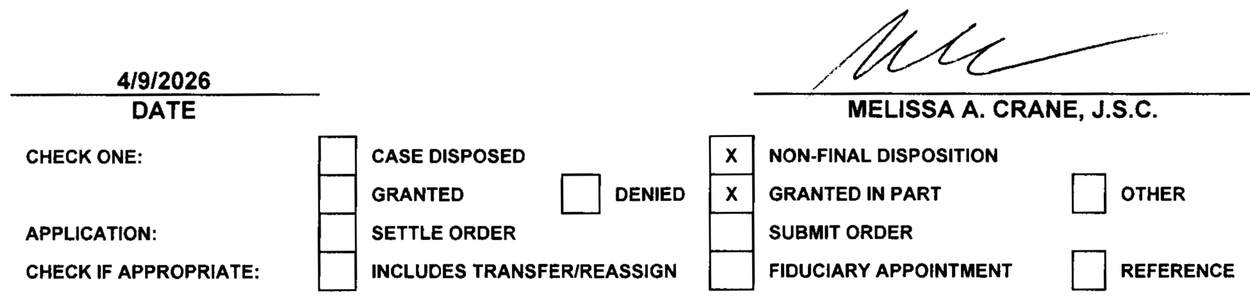
The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that the motion, pursuant to CPLR 3211 and 3016 (b), brought by co-defendants U.S. Bancorp Fund Services LLC and U.S. Bancorp Fund Services, Ltd. to dismiss

the second amended complaint (motion sequence no. 026) is granted in part, as set forth in this decision, 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 said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants.



4/9/2026
DATE

MELISSA A. CRANE, J.S.C.

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