SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

GUANG HUANG, individually, and derivatively on behalf of BBSHARES CAPITAL MANAGEMENT LIMITED, Plaintiff, -against- JINGJING ZHOU and HONGTAO (JASON) QIAO, BBMATRIX HOLDINGS PTE. LTD, Defendants, and BBSHARES CAPITAL MANAGEMENT LIMITED, Nominal Defendant.	Index No. 61185/2022 (Jamieson, J.S.C.)

INDIVIDUAL DEFENDANTS JINGJING ZHOU AND HONGTAO (JASON) QIAO'S REPLY MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS UNDER CPLR 3211(a)(7)

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INTRODUCTION

Plaintiff brought this case years after an unremarkable falling out and, in his bitterness, tarred the Individual Defendants with baseless claims of fraud and corporate mismanagement. The Court has never tested the sufficiency of those allegations; Plaintiff mooted two prior motions to dismiss by successively amending his Complaint. Now it can, and it should dismiss the Second Amended Complaint ("SAC"), which fails to state any claims for all the reasons in Individual Defendants' motion ("Mot."). Plaintiff's opposition ("Opp.")—which haphazardly swaps between New York and Cayman law and ignores both binding precedent and Individual Defendants' arguments—confirms that he has no legally sufficient claims.

First, directors of Cayman Island companies owe fiduciary duties to the company itself, not the shareholders, even if a shareholder is alleged to be their friend. Only rare "special circumstances" impose additional obligations; situations involving specific reposes of trust for distinct purposes. Although Plaintiff claims to have been close with Mr. Qiao, he does not allege how that relationship was so "special" as to create extra duties owed to him as a BBShares shareholder. For instance, he does not allege entrusting Individual Defendants with any property or money, or otherwise acting on his behalf as a fiduciary. Instead, he takes the unsupportable position that, with nothing more, "friends are fiduciaries." That is, of course, wrong. All claims arising from supposed duties owed to Plaintiff necessarily fail.

Second, as a matter of fact and law, Plaintiff has no fraud claims. He concedes that Individual Defendants made no "misrepresentations"; he admits they did what they said they would do, just not well enough for his liking. But disappointment is not fraud. Nor are Individual Defendants' supposed "omissions," since they never owed him special duties. Even if Plaintiff could identify some potentially actionable misstatement or omission, his failure to plead with

necessary particularly forestalls his fraud claims. Moreover, his fraud claims simply rehash the fiduciary duty claims, and accordingly, they should be dismissed as duplicative.

Third, Plaintiff lacks standing to assert any derivative claim on behalf of BBShares. He misreads binding Cayman law which undermines the whole basis for his fiduciary duty claims and his derivative allegations. He also cannot skirt his failure to allege facts supporting that the supposed wrongdoers, the Individual Defendants, controlled the board when Plaintiff amended his complaint to add derivative claims.

For these reasons, the Court should dismiss Plaintiff's direct and derivative claims—the entire SAC—against the Individual Defendants with prejudice.

ARGUMENT

I. New York Law Applies To Plaintiff's Alleged Tort Claims While Cayman Law Applies To His Fiduciary Duty Claims.

Plaintiff misunderstands the law governing his various claims, bouncing between New York or Cayman law (or both) as it suits him. (Opp. 19–23.) The Court need not indulge that confusion because this question has a simple answer.

New York "applies the internal affairs doctrine in litigation implicating internal corporate rights and relationships." *Ezrasons, Inc.* v. *Rudd*, ___ N.Y.3d ___, 2025 WL 1436000, at *1–2 (N.Y. May 20, 2025) (recognizing that "[f]ew principles are more firmly entrenched"). Alleged breaches of fiduciary duties and related claims are internal matters, meaning that Cayman law applies to Plaintiff's fiduciary-related claims. *See O'Donnell* v. *Ferro*, 303 A.D.2d 567, 568 (2d Dep't 2003) (applying law of the state of incorporation in shareholder's derivative suit alleging fiduciary duty claims). And although normal "issues of corporate governance" implicate the internal affairs doctrine and thus the laws of the incorporating jurisdiction, *Lerner* v. *Prince*, 119 A.D.3d 122, 128 (1st Dep't 2014), "liability of the directors and officers" for "the commission of

a tort" do not. *Tyco Int'l, Ltd.* v. *Kozlowski*, 756 F. Supp. 2d 553, 560 (S.D.N.Y. 2010). Rather, "[t]he law of the place of the tort"—which, according to Plaintiff, is New York—"almost invariably" controls because it "has the greatest interest in regulating behavior within its borders." *Shaw* v. *Carolina Coach*, 82 A.D.3d 98, 101 (2d Dep't 2011).

II. The Claims Against Individual Defendants Still Fail.

A. Plaintiff Does Not State Any Claims For Breach of Fiduciary Duties.

Individual Defendants never personally owed Plaintiff fiduciary duties as a shareholder, even when they were BBShares directors. (*See* Mot. 4–5.) Plaintiff concedes that such duties only arise rarely—be it under New York law (which does not apply), or Cayman Law, which does. (Opp. 9.) He can state no claim under either.

1. Plaintiff's Alleged Personal Relationship with Mr. Qiao Does Not Create Duties They Owed Him as a Shareholder Under Cayman Law.

The Individual Defendants did not "cut in half" the "special circumstances" that create duties directly to shareholders (Opp. 10), but rather explained why no such circumstances occurred. Plaintiff's opposition does not *ex post* manufacture duties that never existed.

First, Plaintiff does not, and cannot, deny that Individual Defendants did not "undertake[] responsibility to act on behalf of" Plaintiff or for his "benefit" in operating BBShares. (SAC ¶¶ 175; *see* Opp. 10.) According to him, Plaintiff ran the show at BBShares from its inception until he was alleged "kick[ed] out" of the company in July 2019. (*See* SAC ¶¶ 12, 97.) Those are not allegations of the Individual Defendants "acting on" Plaintiff's behalf. Rather, Plaintiff alleges that *he* controlled the company until his ostensible dispute with Individual Defendants began.

Second¸ Plaintiff's prior "personal relationship" with Mr. Qiao does not create a fiduciary duty, and Plaintiff misunderstands how special duties to shareholders could plausibly arise. Fiduciary duties are about one person "reposing trust and confidence" in another. *Sharp* v. *Blank*

[2015] EWHC 3220 (Ch) [2017] BCC 187 ¶ 10(2).[1] They do not exist in any "relationship" (close or not), but rather only apply in the narrow situation where there is "a relationship of trust and confidence" and there are particular "circumstances which [allegedly] give rise" to both the relationship itself *and* the events giving rise to the claim. *Id.* ¶ 13.

Even Mr. Lowe (Plaintiff's purported Cayman law expert) does not endorse Plaintiff's expansive view of fiduciary duties. (Lowe Decl. ¶ 47.) Nowhere does *Sharp*, any case it cites, or any other authority on which Mr. Lowe relies, purport to impose fiduciary duties on directors merely through some personal relationship with a shareholder. The "distinguishing" factor is an "obligation of loyalty," when one "agree[s] to act in the interests of another" and must then "put the interests of that other first." *Sharp* ¶ 13. Like when "[d]irectors who have a close family or other personal relationship with shareholders and *are entering into transactions with them*" and on their behalf. *Sharp* ¶ 13. Or when directors transact directly with shareholders, who are "depend[ent] upon information or advice" of those directors. *Sharp* ¶ 10(2). Perhaps also when "directors acquire[] shares from shareholders in order to sell them to a third party." *Id.* ¶ 10(1).

That did not happen here, and Plaintiff alleges no such "unusual" facts in his relationship as a shareholder to Individual Defendants as directors. He merely alleges that they were friends and former colleagues, that he played a role in the Individual Defendants' wedding, and that they all had shares in one company, BBShares. There are no allegations that Individual Defendants caused Plaintiff to dispense with or surrender property (or shares) to Individual Defendants' custody due to their friendship, or that Individual Defendants "agreed to act in [his] interests." He thus states no claim for breaches of fiduciary duty against either Individual Defendant under

[1] Although Mr. Lowe's declaration cites *Sharp* v. *Blank* [2017] BCC 187, it is missing from his supporting exhibits. (NYSCEF No. 71.) A copy of the decision is attached to the declaration accompanying this Reply.

Cayman Law on his own behalf, and his claims for aiding and abetting breaches of duty and for an accounting necessarily fail as well.

2. New York Law Does Not Apply To Plaintiff's Fiduciary Duty Claims, But Plaintiff Does Not State A Claim Even If It Did.

Plaintiff's fiduciary claims under New York law similarly fail, since New York law does not apply. *Ezrasons*, 2025 WL 1436000, at *1–2; (*see supra* at Section I.) But Plaintiff's claims would fail regardless because under New York law, friends do not owe fiduciary duties to each other. There must be "trust or confidence reposed" by one party to another, where "influence has been acquired and abused." *AHA Sales, Inc.* v. *Creative Bath Prods., Inc.*, 58 A.D.3d 6, 21 (2d Dep't 2008) (duty arose between two companies even without a contract, given their decades-long business relationship and continued mutual assurances of teamwork). As with Cayman law, there must be "special circumstances," before someone assumes a fiduciary duty, and mere friendship or some periodic dealings do not suffice. *E.g., D'Arezzo* v. *Appel*, 753 F. Supp. 3d 294, 311 (S.D.N.Y. 2024) (finding not only "evidence of a longstanding, close relationship" between the parties, but that one "relied upon" the other's "advice in matters relating" to a creative project on which they "worked closely together" for "well over a decade").

Because New York law does not apply and Plaintiff has not set forth necessary facts even if it did, Count VI must be dismissed.

B. Plaintiff Fails To State A Claim For Fraud Against The Individual Defendants.

1. Plaintiff Concedes He Has No Fraudulent Misrepresentation Claim Against Ms. Zhou.

Individual Defendants' motion explained that Plaintiff's fraud claims were invalid, in part, because they lacked required specificity and Plaintiff failed to indicate *who* said any of the purported misrepresentations. (Mot. 8.) In opposition, Plaintiff concedes that Ms. Zhou did not make any misrepresentations comprising fraud claims: "The gravamen of Plaintiff's fraud claim

. . . is that Qiao *persuaded* . . . [;] Qiao *promised* . . . [; and] "Zhou (but really Qiao) took a 25 percent interest in BBShares based on *Qiao's promise*." (Opp. 12.)[2] Mr. Qiao, of course, did not misrepresent anything to Plaintiff either. (*Infra* Section II.B.2.) But Plaintiff's concession negates his claims as to Ms. Zhou. She should be dismissed as a defendant as to Count VII.

2. Plaintiff Still Has Not Asserted Any Actionable Misrepresentations.

Plaintiff's opposition now limits his fraud claims in Count VII to the following alleged misrepresentations:

(1) "Qiao promised Plaintiff that he and Zhou would leave their employment"

(2) "Qiao's promise to . . . devote significant time and effort to marketing the company"

(Opp. 12.) Plaintiff concedes that these are not statements of fact, but rather, of future intent and that he must plead that these statements were intentionally false and misleading *when made*. (Opp. 12, 15.) But Plaintiff ignores his other key obligation here: Plaintiff must allege "***facts***" raising "a reasonable inference that [Mr. Qiao] knew the misrepresentations were false or misleading at the time they were made"—*i.e.*, bald conclusions are not enough. *Lapin* v. *Verner*, 238 A.D.3d 1128, 1130 (2d Dep't 2025) (emphasis added). Plaintiff has far from "put to rest" his obligation to plead actionable misrepresentations—falsehoods that were known to be false when made. Reciting the elements of fraud based on conclusory allegations will not do, especially here, since those conclusory allegations are belied by his other factual assertions, as explained below. (Opp. 15.)

Leaving Employment. Plaintiff alleged that Individual Defendants *did* quit their jobs. (Mot. 9.) Plaintiff's only attempt to counter this in his opposition is a tongue-in-cheek attempt to

[2] At most, Plaintiff explains that Individual Defendants "repeatedly *made excuses*" and that they "purposefully withheld from Plaintiff "their involvement with Youbi Capital. (*Id.*) Vague "excuses" are not misrepresentations. (*Infra* Section II.B.3.) Plaintiff's allegations of omissions are addressed below. (*Infra* Section II.B.5.)

dismiss this critical fact as tantamount to Defendants saying, "no harm, no foul." (Opp. 15.) But the fact that Individual Defendants did leave their prior employment to work for BBShares completely obliterates any claim of fraud. Plaintiff has alleged that Individual Defendants said they would do something (SAC ¶ 213) and then that they did it (*id.* ¶ 64). Plaintiff's conclusory argument that Individual Defendants lied because they did not intend to leave their jobs (but did it anyway) is nonsensical and self-defeating.

Efforts for BBShares. Individual Defendants' motion explained how the second misrepresentation alleged in the SAC—that Individual Defendants did not "leverage their networks to raise investment"—was an improper statement of future expectation, and additionally, shown not to be a false statement by other allegations in the SAC. (Mot. 9.) Plaintiff now attempts to restyle this purported misrepresentation as follows: "Qiao promise[d] to . . . devote significant time and effort *to marketing the company*." (Opp. 12.) This, too, is insufficient for stating fraud.

First, the SAC explains that this "marketing" referred to "specifically raising capital investment." (SAC ¶ 40.) Therefore, Individual Defendants' prior arguments—which Plaintiff has not addressed—still apply. A promise predicting what others might do in the future (*i.e.*, investors giving capital) is not an actionable misrepresentation. (Mot. 9.) Further, the SAC alleges that Mr. Qiao *did* endeavor to secure investors. (*Id.*) As with the alleged misrepresentation concerning Individual Defendants' employment, the SAC includes no facts supporting Plaintiff's conclusions that Individual Defendants' alleged statements about their planned efforts for the company were false when made. In fact, the SAC provides factual support to show that Individual Defendants did, in fact, intend to (and did) raise capital. (*Id.*)

Second, a promise to "devote significant time and effort to marketing" is too vague to constitute an actionable misrepresentation. *Reva Cap. Markets LLC v. Northend Energy Ltd.*, 49

Misc. 3d 1219(A) (N.Y. Sup. Ct. 2015); *Watson v. Consol. Edison of New York*, 645 F. Supp. 2d 291, 296 (S.D.N.Y. 2009) (noting plaintiffs' assumptions about vague statements are not misrepresentations). There is no metric to determine what constitutes "significant time and effort to marketing" and when success would be achieved. Plaintiff's fraud claim, therefore, is apparently predicated on Plaintiff's own subjective and undefined assumptions about the effort, manner, and time commitment required to satisfy the Individual Defendants' alleged promise. This cannot be the basis to allege an actionable intentional misrepresentation.

3. Plaintiff Has Not Pled His Fraud Claims With Particularity.

Instead of rebutting the legal authority concerning CPLR 3016(b)'s particularity requirement, Plaintiff tries to salvage his deficient pleading by arguing that particularity is not fully required when "details of the fraud may be peculiarly within defendants' knowledge at the pleading stage." (Opp. 11.) This is a frivolous argument. The who, what, when, and where of purported misrepresentation(s) allegedly told ***to Plaintiff*** is precisely the information that is within Plaintiff's knowledge. (Mot. 6–8.) This narrow exception to the particularity rule does not apply here.

Next, Plaintiff's vaguely defined period of nearly a year ("late 2017 through mid-2018") wherein the Individual Defendants purportedly "represented to Huang that they were going to quit their jobs to work full-time for BBShares" also lacks particularity. (Opp. 14.) But ill-defined months-long periods (never mind a year) do not suffice to plead fraud. *Chimos* v. *Mercy Coll.*, 2020 N.Y. Misc. LEXIS 50396, at *13 (Sup. Ct. Aug. 19, 2020) (failing to "specify the time and place of any alleged fraudulent inducement" negated "any claims for fraud and fraudulent inducement"). The facts here compound the problem: Huang claims he relied upon this purported misrepresentation by leaving his prior employment to work at BBShares. (Opp. 18.) Huang pled that BBShares was formed in January 2018. (SAC ¶ 65.) If this representation post-dates January 2018, then he could not have relied on it. This shows why pleading with particularity is necessary.

Plaintiff also did not explain the mode of these communications. He merely alleged that he and "Qiao and Zhou" ***communicated*** using "WeChat, phone calls, and other text platforms." He is vague about which, if any, purported misrepresentations occurred via these avenues. (SAC ¶ 45.) But worse, "WeChat, phone calls, and ***other text platforms***" (*e.g.*, email, text, social media) is a listing of nearly ***every*** form of common human communication available. Listing common communication forms in the aggregate is not "particular" in any sense.

4. Plaintiff Has Not Pled Any Actionable Omission.

Plaintiff's failure to plead actionable omissions is multifaceted, including a failure to allege of reliance, and the fact that, contrary to Plaintiff's claims, that the Individual Defendants "did not share a 'confidential or fiduciary relationship' with Plaintiff." (Opp. 17.)[3]

Friendship does not establish the "heightened or fiduciary duty" required for fraud by omission. (*Compare* Mot. 10 *with* Opp. 16–17.) Rather than address the cases cited in the Motion on this point, Plaintiff cites a case from 1976 that stands for the unremarkable proposition that when someone entrusts *money* to a friend for him to hold in trust for a project, a fiduciary relationship can exist. *See Penato* v. *George*, 52 A.D.2d 939, 939–40, 942 (2d Dep't 1976).

Plaintiff stretches the notion in *Penato* that "in appropriate circumstances," a special duty could arise "between close friends" to absurd ends. *See id.* at 942. *Penato* relied upon *Cody* v. *Gallow*, 28 Misc.2d 373 (Sup. Ct. 1961). But *Cody* says just the same: A relationship of confidence is created "where a party ***accepts property*** knowing it is [e]ntrusted to him because of the confidence which another places in him." *Id.* A friendship, no matter how close, does not alone

[3] Plaintiff claims that Individual Defendants "do not seem to contest that they failed to inform Plaintiff" about Youbi Capital, "***nor could they***." (Opp. 16.) Given Plaintiff's counsel's recent appearance, this falsehood should be excused on his part but cannot go unanswered. There is documentary evidence of Plaintiff's knowledge of Individual Defendants' involvement in Youbi (including attendance at a conference moderated, in part, by Mr. Qiao in his role as Youbi Capital's Chief Visionary Officer). Individual Defendants did not cite such evidence in their motion as CPLR 3211(a)(7) limited their arguments to Plaintiff's (frivolous and misleading) SAC.

render a fiduciary or confidential relationship. These cases show that it is when a party entrusts property to another party based on such a relationship, future actions with that property *could be* subject to that duty. Plaintiff has not alleged that he entrusted a single dollar to ***any*** Defendant, never mind Individual Defendants. He has not pled a confidential relationship and thus has stated no foundation to allege fraud by omission.

5. Plaintiff Has Not Pled Reasonable Reliance.

Plaintiff's concessions to Individual Defendants' motion continue. He abandons any notion that supposed misrepresentations influenced his decision choice to purchase or maintain shares in BBShares, along with other vagaries. (Opp. 18; SAC ¶¶ 216–17.) Plaintiff's alleged reliance on supposed misrepresentations has now been reduced to just (a) leaving his prior job and (b) staying to work at BBShares for over two years. (Opp. 18.) This pivot too is fatal.

Plaintiff cannot "claim damages for leaving his prior position" when he "cannot show reasonable reliance on a promise of continued employment with the new employer." *O'Connor* v. *Harbrew Imports, Ltd.*, 4 Misc. 3d 1016(A) (Sup. Ct. 2004) (citing *Demov, Morris, Levin & Shein* v. *Glantz*, 53 N.Y.2d 553, 557–58 (1981)). He has not alleged any contractual term or agreement to the duration of his employment. (*See* SAC.) Therefore, under Plaintiff's new theory, the work he did for BBShares was at-will and his revised reliance allegations fail a matter of law. *Bower* v. *Atlis Sys., Inc.*, 182 A.D.2d 951, 953 (3d Dep't 1992) ("[T]hat an at-will employee may be terminated without cause at any time negates plaintiff's claim of reasonable reliance."); *see also Bartenbach v. Bd. of Trs. of Nassau Libr. Sys.*, 239 A.D.2d 372, 373 (2d Dep't 1997) (no "detrimental reliance" for at-will employment). Plaintiff had no guarantee of continued work at BBShares when he purportedly left his prior work. This is also true of his continuing choice to work at BBShares. Also, Plaintiff could have quit working for BBShares at any time if his expectations were not met. He did not.

6. Plaintiff's Fraud Claim Is Impermissibly Duplicative Of His Breach Of Fiduciary Duty Claims.

Binding Second Department precedent negates Plaintiff's fraud claim, because his allegations of fraud are "duplicative of [his] cause of action to recover damages for breach of fiduciary duty." *Stein* v. *McDowell*, 74 A.D.3d 1323, 1326 (2d Dep't 2010). Individual Defendants already explained that Plaintiff's fraud allegations are clones of his fiduciary duty claims—themselves just a bad faith retelling soured business relationship. (Mot. 10–11.) That alone requires dismissal of Plaintiff's fraud claims. And were that not enough, Plaintiff's opposition ignored Individual Defendants' arguments and controlling law. (Opp. 11–19.) Plaintiff has thus conceded dismissal. *Deutsche Bank Nat'l Tr. Co.* v. *Logan*, 183 A.D.3d 660, 663 (2d Dep't 2020) (party that "did not raise" arguments opposing a motion "has waived" those arguments).

C. Plaintiff Does Not Plead Conspiracy Against Individual Defendants.

In the Cayman Islands, an allegedly "unlawful" civil conspiracy arises under *tort law*, not corporate governance principles. *E.g.*, *OBG* v. *Allen*, [2007] UKHL 21, ¶¶ 13–14. Plaintiff concedes this point. (Opp. 19–20 (citing Lowe Decl. ¶ 48).) He does not and cannot deny that generally "the law of the place of the tort applies" to tortious conduct. *Rose* v. *Arthur J. Gallagher & Co.*, 87 A.D.3d 733, 734 (2011); (*Supra* Section I.) Instead, Plaintiff argues that the "crux" of his meritless conspiracy claim concerns "abuse[]" of a Cayman company. (Opp. 19.) But this argument does not change the *facts* and law which are: (i) the alleged actions animating his claims occurred in New York, not the Cayman Islands, and (ii) the internal affairs doctrine does not suspend that normal rule governing "liability of the directors and officers" for "the commission of a tort." *Tyco*, 756 F. Supp. 2d at 560. New York law thus governs any "conspiracy" claim, and it

fails. (Mot. 18–19.) And because his other claims also fail, Plaintiff cannot plead a conspiracy against Individual Defendants, no matter which law applies.

III. Plaintiff Lacks Standing To Bring Derivative Claims.

Plaintiff admits that "Cayman Islands law 'generally' prohibits derivative claims" and his arguments to invoke the narrow "fraud on the minority" exception to the rule fail. (Opp. 3.)

A. Plaintiff Does Not Allege "Fraud" On Minority Investors.

Plaintiff concedes that (i) two independent directors controlled the company when he filed his case, (ii) two independent directors controlled the company when he amended his complaints, and (iii) the independent directors did not commit any fraud on the minority. (Opp. 6–8.) Given these facts, Plaintiff invites the Court to ignore the law and disregard the directors and focus only on the company's shareholder composition. (Opp. 6–7.) That is neither the rule nor does it make sense. As *Tianrui*, [2024] UKPC 36 explains, the standard is whether the wrongdoers have "control of the company." (Mot. 12–13.) That question is about who is making the "litigation judgment"—as in, who is calling the shots. *Tyco Int'l, Ltd.*, 340 F. Supp. 2d 94 (D.N.H. 2004).

Per Plaintiff's allegations (and as evidence corroborates), the independent directors of BBShares had control at the relevant times. Despite what Plaintiff may want to believe, as a matter of law, shareholders do not control an entity's litigation decisions and Plaintiff admits that the shareholders did not control the independent board. *Ipso facto*, the wrongdoers were not "in control." That the shareholders could have, hypothetically, voted the independent directors out at some undetermined point is immaterial as that did not happen. Plaintiff urges an interpretation of the law that would render independent directors meaningless. In his view, every time majority shareholders are accused of wrongdoing there would be fraud on the minority. That renders this exception to the rule no exception at all.

Likewise, Plaintiff appears to misunderstand the importance of the relevant period, devoting a page to his allegations of ownership and control from 2018 through 2020 (Opp. 5–6), which have nothing to do with standing for his derivative claims. (Mot. 13.) Because he failed to make a demand on the independent board members, he lacks standing to bring derivative claims.

B. Plaintiff Misinterprets *Tianrui*.

Tianrui articulates that the harm for a dilution claim runs between the company and a claimant. (Mot. 1, 4–5.) Plaintiff attempts to save his derivative breach of fiduciary duty claim by declaring that "*Tianrui* says the opposite." (Opp. 8.) But Plaintiff misreads the case and glaringly omits a key portion of the *Tianrui* opinion from his argument.

Plaintiff mischaracterizes *Tianrui* in writing that "[t]he Privy Council was clear" that a "direct cause of action 'by no means excludes' Plaintiff from also pursuing a derivative action." (Opp. 8.) There, the Privy Council explained that a direct action "may coexist with an action *by the company*" against the directors—*i.e.*, the ***company*** is "by no means exclude[d]" from attempting to recover against its directors, if appropriate. *Tianrui* does ***not*** say a derivate action (or an individual action against the directors) is "by no means exclude[d]." The theory espoused in *Tianrui* is that the injury runs between Plaintiff and the company, not from the Plaintiff through the company to the directors, as Plaintiff argues.

Lacking standing to assert a derivative claim on behalf of the company, Plaintiff's fiduciary duty claim at Count I must be dismissed, and *Tianrui* does not hold otherwise.

CONCLUSION

Individual Defendants respectfully request that the Court dismiss all claims against Individual Defendants in the SAC, with prejudice.

Dated: New York, NY
September 19, 2025

Respectfully submitted,

By: /s/ *Sandra L. Musumeci*
Sandra L. Musumeci
Aaron J. Gold
Edwin A. Herod
KELLEY DRYE & WARREN LLP
3 World Trade Center
175 Greenwich Street
New York, NY 10007
Tel: (212) 808-7788
smusumeci@kelleydrye.com
agold@kelleydrye.com
therod@kelleydrye.com

Counsel for Individual Defendants
Jingjing Zhou and Hongtao (Jason) Qiao

ATTORNEY CERTIFICATION UNDER COMMERCIAL DIVISION RULE 17

I, Sandra L. Musumeci, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this Memorandum of Law in Support of Motion to Dismiss Counterclaims complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)), because it contains 4,192 words, excluding the parts of the Response exempted by Rule 17. In preparing this certification, I have relied on the word count function of the word-processing system (Microsoft Word) that was used to prepare this Response.

Dated: New York, NY
September 19, 2025

Respectfully submitted,

By: /s/ *Sandra L. Musumeci*

Sandra L. Musumeci
Aaron J. Gold
Edwin A. Herod
KELLEY DRYE & WARREN LLP
3 World Trade Center
175 Greenwich Street
New York, NY 10007
Tel: (212) 808-7788
smusumeci@kelleydrye.com
agold@kelleydrye.com
therod@kelleydrye.com

Counsel for Individual Defendants Jingjing Zhou and Hongtao (Jason) Qiao