

# 25-2246-CV

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United States Court of Appeals  
*for the*  
Second Circuit

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MATTHEW TESLA,

*Plaintiff-Appellant,*

– v. –

DRGUT PELINKOVIC, AKA Doug Pelinkovic, ELVIRA PELINKOVIC,  
LJUMNI PELINKOVIC, CROTONA AVENUE BUILDERS, LLC,

*Defendants-Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**BRIEF FOR PLAINTIFF-APPELLANT**

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## PRELIMINARY STATEMENT

In 2020, Plaintiff-Appellant Matthew Tesla and defendant-appellee Drgut Pelinkovic, longtime friends and business partners, embarked on a cryptocurrency venture. Pelinkovic agreed to contribute the initial cash to purchase the cryptocurrencies; Tesla agreed to contribute cash to the partnership to cover any losses sustained of the initial capital round, agreeing to backstop up to \$5,000,000 of partnership losses. Tesla's commitment rendered Pelinkovic's initial capital contribution risk free. Tesla's "backstop" obligation was a critical term for the arrangement. Tesla also provided the know-how, both in terms of the mechanics of acquiring, holding and safeguarding the cryptocurrencies, as well as selecting the appropriate technologies to purchase. They agreed to split the profits 50/50.

Tesla did his part under this agreement. Initially, so too did Pelinkovic. The venture was profitable. But once called upon to account for and distribute proceeds, Pelinkovic cut Tesla out. He also took steps to insulate himself from the debt he owed Tesla, including (1) concocting a narrative that the holdings had been lost and (2) transferring real estate out of his name.

Tesla sued Pelinkovic in the New York Supreme Court under New York statutory and common law—Tesla brought no federal claims. Specifically, Tesla sued under the New York Partnership Law, for breach of contract, under quasi-contract theories, and for related claims. Pelinkovic removed this dispute to federal

court on diversity grounds. The District Court dismissed Tesla's claim under Rule 12(b)(6) *with prejudice*, denying Tesla leave to amend. In so holding, the District Court failed to credit Tesla's well-pled facts and drew various inferences in the defendant's favor (as opposed to those inferences being drawn in the plaintiff's favor).

*Twombly* and *Iqbal* require that all well-pled facts be accepted as true. Those cases also entitle Tesla to inferences drawn in his favor. Rule 8 requires a "a short and plain statement of the claim showing that the pleader is entitled to relief." The factual allegations supporting Tesla's state-law claims satisfy this low bar. For these reasons, the dismissal should be reversed.

In the alternative, if the pleadings fall short, Tesla should be permitted to replead. The District Court's Opinion & Order dismissing the case *with prejudice* was the first time any court had considered the pleadings' sufficiency. Tesla should have one opportunity to replead following judicial critique.

### **JURISDICTIONAL STATEMENT**

The District Court had subject matter jurisdiction over this action under 28 U.S.C. §§ 1332. This Court has jurisdiction over this appeal under 28 U.S.C. § 1291 because the District Court entered judgment dismissing the action with prejudice on August 26, 2025, and Plaintiffs-Appellants filed a timely notice of appeal on September 16, 2025.

## STATEMENT OF THE ISSUES

1. Whether the Second Amended Complaint sufficiently alleges claims under New York statutory and common law.
2. In the event that this Court answers the first question in the negative, whether Tesla should be granted leave to amend his pleadings.

## STATEMENT OF THE CASE

Plaintiff-appellant Matthew Tesla initiated this litigation in New York Supreme Court, Bronx County, to obtain his rightful share of profits earned in a cryptocurrency investment venture with defendant-appellee Doug Pelinkovic. A-11 to 26.<sup>1</sup>

Pelinkovic removed this litigation to Federal Court on the basis of diversity jurisdiction. A-7 to 9. On August 26, 2025, the District Court granted Pelinkovic's Motion to Dismiss and denied Tesla's request for leave to amend his pleadings. A-165 to 175. The District Court entered judgment in the Defendants' favor on August 26, 2025. A-176. Tesla filed a timely appeal. A-177 to 179.

### *A. Factual Background*

The facts set forth below are as alleged in the Second Amended Complaint.<sup>2</sup>

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<sup>1</sup> References to the Appendix are designated "A-\_\_."

<sup>2</sup> The Second Amended Complaint, at A-114 to 137, is referenced as "SAC."

1. The Relationship between Tesla and Pelinkovic

Tesla and Pelinkovic know one another from their involvement in Brazilian Jiu Jitsu. SAC ¶ 23. Each is a seasoned participant. *Id.* Pelinkovic owns a gym in the Bronx where he trains students in Brazilian Jiu Jitsu and other mixed martial arts. *Id.* ¶ 27. Through their mutual love of the sport, Tesla and Pelinkovic formed a close personal relationship. *Id.* ¶ 24.

For years, Tesla and Pelinkovic trained together on a weekly basis. *Id.* ¶ 25. Tesla served as Pelinkovic's sparring partner, helping him to develop his technique, choreography and other skills that Pelinkovic needed to compete in the sport. *Id.* Tesla also helped Pelinkovic teach hundreds of students. *Id.*

Tesla and Pelinkovic travelled together in support of Pelinkovic's competition in the international martial arts circuit. *Id.* ¶ 26. For instance, when he fought in Poland in 2019, Pelinkovic bought Tesla a ticket and paid for Tesla's accommodations so that Tesla could train with and support Pelinkovic during the competition. *Id.*

Tesla also taught Pelinkovic's MMA students at Pelinkovic's Bronx gym. *Id.* ¶ 27. Tesla trained Pelinkovic, Pelinkovic's employees, and Pelinkovic's students. *Id.* Tesla videoed Pelinkovic and his students for training purposes. *Id.* ¶ 28. Tesla did all of this, free of charge, in his capacity as Pelinkovic's close personal friend. *Id.* ¶ 30.

2. Tesla's and Pelinkovic's First Business Venture

In addition to favors done for one another under the auspices of their close personal friendship, Tesla and Pelinkovic have partnered in for-profit business ventures together. The first venture was an energy bar company. Starting around 2018, Tesla founded an energy bar brand called 8 ENERGY BARS. *Id.* ¶ 33. After the business was up and running, Tesla invited Pelinkovic to join the venture. *Id.* ¶ 34. Tesla and Pelinkovic had a discussion in which they agreed to contribute capital, time, and resources. *Id.* They discussed controlling different aspects of the business. *Id.* And they orally agreed to share in the business's profits or losses, as the case may be. *Id.*

Pelinkovic then made a cash investment into the 8 ENERGY BARS business after Tesla had gotten the business off the ground. *Id.* ¶ 35. Tesla contributed the going concern business. *Id.* He also leveraged his existing branding and culinary experience. *Id.* Pelinkovic, for his part (and in addition to his cash contribution), committed to make available point-of-sale exposure at the gyms that he owned and operated. *Id.*

The 8 ENERGY BARS venture ultimately failed. *Id.* ¶ 37. Tesla, who has sole control over the venture's funds, returned a portion of the remaining funds on hand such that Tesla and Pelinkovic divided the business's losses. *Id.*

### 3. The Cryptocurrency Partnership

Tesla has been coding since middle school. *Id.* ¶ 38. He codes in, among other languages, IOS SWIFT, JAVAScript, NodeJS, C++, C, Python, BASH, Solidity, and TypeScript. *Id.* In his twenties, Tesla became an early adopter of financial technology now known as cryptocurrency. *Id.* ¶ 39. Tesla was first introduced to cryptocurrency around 2012. *Id.* ¶ 40. At the time, Tesla was living in a loft on Stone Street in lower Manhattan that housed a FinTech startup. *Id.* Those roommates introduced him to cryptocurrency. *Id.* By September 2013, Tesla had opened accounts with various cryptocurrency exchanges on which Tesla began purchasing the technology. *Id.* ¶ 41.

By 2015, Tesla was committing substantial time and energy to learning the ins and outs of the emerging cryptocurrency markets and staying abreast of developments in cryptocurrency technology. *Id.* ¶ 42. He leveraged this knowledge to become a routine winner in those markets. *Id.*

By 2016, Tesla was earning enough through cryptocurrency investing that he was able to leave his day job and focus on cryptocurrency investment full time. *Id.* ¶ 43. Since 2016, Tesla has continued to support himself financially through cryptocurrency. *Id.* ¶ 45.

Around 2018, Pelinkovic became aware of Tesla's extensive knowledge, experience, and success in cryptocurrency markets. *Id.* ¶ 46. Pelinkovic began

asking Tesla about getting involved in a cryptocurrency investment venture. *Id.* ¶ 47. During a phone call, which Tesla took from Sweden, Pelinkovic told Tesla that he was interested in an arrangement in which the two would invest in cryptocurrencies for profit. *Id.* ¶ 48. During that call, Tesla orally offered, and Pelinkovic orally accepted that Pelinkovic would capitalize the partnership with between \$3,000,000 and \$5,000,000; that Tesla would backstop any losses that the partnership sustained during the course of the partnership; and that Tesla would leverage his knowledge and expertise to determine what assets to acquire. *Id.* ¶ 49. On that phone call, Pelinkovic spoke the words, “I’m in! I’m in!” *Id.*

During the call, Pelinkovic stated that he had heard of Bitcoin and that he wanted to invest but that he was concerned about losing his investment. *Id.* ¶ 50. In order to allay Pelinkovic’s fears, Tesla agreed to commit his sizable personal fortune to backstop any losses that may occur up to \$5,000,000. *Id.* ¶ 51. The resulting deal was that though Pelinkovic would provide the initial capital with which crypto assets would be purchased, it would be Tesla that would face the risk of loss. *Id.* Tesla’s agreement to provide this guarantee of Pelinkovic’s capital investment was critical to Pelinkovic’s decision to participate in the venture. *Id.* ¶ 52. Pelinkovic told Tesla as much. *Id.* Tesla, for his part and in addition to guaranteeing any losses that the venture would incur up to \$5,000,000, provided everything from rudimentary trading support (for example, setting up exchange

accounts and facilitating “cold storage” of cryptocurrency assets) to selecting the crypto assets in which the partnership would invest. *Id.* ¶ 53. Tesla leveraged years of learning and experience to select appropriate cryptocurrencies in which to invest, which was critical to ensure that the partnership avoided investing in meme coins, scam coins, and other high risk or fraudulent investments in this unregulated landscape. *Id.* ¶ 54. Tesla would also continue to monitor developments and changes in the technology as well as the macro environment—for example, election cycles—in order to anticipate impact on the holdings. *Id.* ¶ 55. These terms were discussed over the phone, and both Tesla and Pelinkovic stated their acceptance of them. *Id.* ¶¶ 56-57.

Based upon Pelinkovic’s promises and acceptance of his offer, Tesla flew to New York, booked an Airbnb in the Bronx, and travelled to Pelinkovic’s home and office, in furtherance of and for the purposes of advancing the cryptocurrency venture. *Id.* ¶ 58. On that trip, Tesla (among other things) set up “cold storage” of various cryptocurrency assets in which the partnership/joint venture had invested; he was also responsible for the security of those holdings. *Id.* Tesla bore the travel and related expenses in furtherance of the crypto venture, which he would not have done but for Pelinkovic’s promises. *Id.* ¶¶ 59, 60. Tesla considered these costs as contributions to the crypto venture, just as he had contributed startup costs when

getting the 8 ENERGY BARS venture off the ground. *Id.* 62. The for-profit venture proceeded. *Id.* ¶ 63.

4. *Tesla Terminates the Partnership and Demands an Accounting while Pelinkovic Shelters His Assets*

On Monday, September 9, 2024, Tesla called Pelinkovic and advised him that Tesla was terminating his obligation to make Pelinkovic whole on losses of the cryptocurrency investment. *Id.* ¶ 69. Tesla took this action because he was concerned over the upcoming US election cycle and rising global instability generally and, as a result of those concerns, was seeking to cut off the risk and exposure under his agreement to share in the investment losses. *Id.* ¶ 7. In short, Tesla did not want to risk massive losses that he was concerned may have ensued in the wake of a given outcome.

In the phone call, Tesla requested an accounting and his share of the profits. *Id.* Though Pelinkovic ended the call without agreeing to Tesla's demands, during the call, Pelinkovic conceded his involvement in the investment partnership with Tesla. *Id.* ¶¶ 70-71.

Following the September 2024 telephone call, on October 14, 2024, Tesla (through counsel) sent Pelinkovic a letter demanding an accounting and demanding immediate access to the books and records of the cryptocurrency accounts to determine the exact amount of Tesla's shares of the profits. *Id.* ¶ 76. On October

22, 2024, Pelinkovic (through counsel) sent a response letter rejecting all of Tesla's demands. *Id.* ¶ 77.

This suit was initiated in the New York Supreme Court on November 15, 2024. A-10 to 26. In December of 2024, Pelinkovic took a series of steps to avoid the debt he knew was owed to Tesla.

*First*, on December 24, 2024, Pelinkovic sent an email directly to Tesla in which Pelinkovic claimed that on November 26, 2024, the cryptocurrency investment had been “liquidated”—i.e., that he had lost all of the invested cryptocurrency as a result of an undisclosed leverage position that he had taken. *Id.* ¶ 80.<sup>3</sup> Pelinkovic's December 2024 email was the first time that Tesla had ever been advised that the partnership assets were leveraged. *Id.* Tesla found this explanation suspicious because Donald Trump won the Presidential Election just weeks before the claimed liquidation event. *Id.* ¶ 81. Cryptocurrency value had

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<sup>3</sup> “Liquidation” is a term of art in the cryptocurrency context. Per a post on the global cryptocurrency exchange Backpack:

Liquidation is a critical concept in the world of cryptocurrency trading, especially when dealing with leveraged positions. Liquidation involves converting assets into cash to cover obligations or losses. In the context of crypto trading, liquidation occurs when a trader's collateral is automatically sold by the exchange to cover a losing leveraged position.

(available at <https://learn.backpack.exchange/articles/what-is-liquidation-in-crypto-and-how-can-you-avoid-it>) (last visited on November 8, 2025).

skyrocketed in those three weeks—liquidation events occur when cryptocurrency value falls. *Id.* ¶ 82.

*Second*, on December 31, 2024, Pelinkovic recorded a deed conveying his principal residence—a multi-million-dollar single family home in the Bronx’s Pelham Park neighborhood—to his wife for \$10.00. *Id.* ¶¶ 83-89.

*Third*, on December 31, 2024, Pelinkovic recorded a deed conveying title to commercial real estate that he owned into an LLC for \$10.00. *Id.* ¶¶ 90-93.

Based on the flurry of conveyances of real property to insiders, the refusal to provide transaction records, and the claims about being rendered insolvent by the margin call during a historic surge in the value of cryptocurrency, it is reasonable to infer that Pelinkovic secreted the cryptocurrency assets to a trusted family member to avoid paying Tesla. *Id.* ¶ 95.

## ***B. Procedural History***

### ***1. Initiation of the Litigation, Removal to Federal Court, and the Amended Pleadings***

Tesla initiated this litigation by Summons and Complaint filed in the New York Supreme Court, Bronx County. A-11-26. The Complaint asserted state-law claims only and was drafted in accordance with the general practices of that court. *Id.*

Pelinkovic removed this litigation to Federal Court on the basis of diversity jurisdiction. A-7 to 9. Pelinkovic then filed a Motion to Dismiss the First Amended Complaint. *See* Docket Entry 9, A-3 (Docket Report).

On February 7, 2025, understanding that a different set of pleading conventions apply in federal court and wanted to include allegations and claims arising out of events that occurred *after* the litigation was initiated (i.e., Pelinkovic’s efforts to hide assets), Tesla filed his Amended Complaint with Exhibits. A-27 to 109. On February 13, 2025, Pelinkovic filed a Motion to Dismiss the Amended Complaint. A-112 to 113. Pelinkovic’s Motion to Dismiss was accompanied by a Memorandum of Law only—no Declaration or supplemental documentation was submitted alongside it. *See* Docket Entries 24 and 25, at A-4 (Docket Report).

On March 14, 2025, the District Court entered an Order directing Tesla to file “a Second Amended Complaint that [] incorporates allegations about the identity and citizenship of every member of Defendant Crotona Avenue Builders, LLC” and “a redline of the Second Amended Complaint against the Amended Complaint *to confirm that no other changes were made.*” A-164 (emphasis added). The District Court’s Order further advised that Pelinkovic’s February 13 Motion to Dismiss would be construed as a Motion to Dismiss the Second Amended Complaint. *Id.*<sup>4</sup>

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<sup>4</sup> The District Court’s Order allowed Pelinkovic to submit a letter indicating that the Motion to Dismiss the Amended Complaint *should not* be construed as a Motion to Dismiss the Second Amended Complaint. A-24. However, Pelinkovic never submitted a letter to that effect. *See generally*, Docket Report (A-1 to 6). Therefore, the District Court construed Pelinkovic’s Motion to Dismiss the

The next day, Tesla filed his Second Amended Complaint in accordance with the District Court's Order. A-114 to 137. Aside from including allegations about the citizenship of Defendant Crotona Avenue Builders, LLC's members, Tesla made no other amendments to the pleading (also in accordance with the District Court's Order). *See* A-138 to 161. The Second Amended Complaint sets forth the following claims:

- Claims against Pelinkovic for partnership property and an accounting under New York's Partnership Law (First and Second Causes of Action);
- A breach of partnership agreement and breach of fiduciary duty claim against Pelinkovic (Third and Fourth Causes of Action);
- A promissory estoppel and an unjust enrichment claim against Pelinkovic (Fifth and Sixth Causes of Action), which are brought in the alternative to the partnership claims;
- Voidable transfer claims against all defendants under New York's Debtor & Creditor Law (Seventh and Eight Causes of Action); and

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Amended Complaint as a Motion to Dismiss the Second Amended Complaint. A-165 at fn. 2 (Tesla notes that there appears to be a misstatement in the footnote, which indicates that the March 14 Order elicited a letter from Plaintiff as opposed to from the Defendant.)

- Conversion and aiding-and-abetting claims against all defendants (the Ninth Cause of Action).

Thereafter, the District Court considered Pelinkovic's Motion to Dismiss the Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). A-167. Tesla opposed the motion. *Id.*

## 2. The District Court's Dismissal of the Complaint

On August 26, 2025, the District Court issued its Opinion & Order dismissing the case with prejudice. A-175. The August 26 Decision and Order was the first time that *any* court had evaluated the legal sufficiency of Tesla's pleading.

The District Court dismissed the first four causes of action on the grounds that Tesla did not plead a partnership or joint venture, and because Tesla did not plead an independent basis for a fiduciary duty. A-167 to 173. The District Court similarly rejected Tesla's promissory estoppel and unjust enrichment claims. A-173 to 174.

The District Court further held that Tesla's claims under the New York Debtor & Creditor Law must be dismissed because the court had "rejected all of Tesla's theories for why Pelinkovic owes him money." A-174 to 175.

The District Court also denied Tesla's request for leave to amend the complaint, finding that "further amendment would be futile." A-175.

On September 16, 2025, Tesla filed a Notice of Appeal. *See* A-177 to 179.

## SUMMARY OF ARGUMENT

Tesla has adequately pled partnership formation. Tesla and Pelinkovic manifested their intent to form a partnership through their words and conduct. They discussed and agreed on specific terms of the arrangement. They then joined their property, interests, skills, and risks their contributions have become one and their commingled properties and interests have been made subject to each of the others' actions—Pelinkovic acceded to Tesla's acquisition strategy and Tesla risked his personal funds to guarantee up to \$5,000,000 in losses that the partnership would sustain. Tesla then contributed his expertise, efforts, and the obligation to backstop all partnership losses. Each party exercised some control over the venture—for instance, Tesla selected the subject cryptocurrencies while Pelinkovic retained physical custody over the cold storage devices. The parties agreed on the division of profits and losses, with Tesla agreeing to backstop the first tranche of losses.

In the alternative, Tesla has pled a breach of contract claim. The SAC alleges an offer, acceptance, consideration, mutual assent and intent to be bound. It alleges performance by Tesla, breach by Pelinkovic, and damages.

Similarly, Tesla has adequately pled various quasi-contract claims as alternate theories to his contract claims. For his promissory estoppel claim, Tesla identifies specific discussions and promises made upon which he relied. For his unjust enrichment claim, Tesla incurred costs and Pelinkovic realized a profit at

Tesla's expense. Given their past relationship and the reliance by Tesla, it would be unjust for Pelinkovic to retain all of the upside while Tesla took all the risk and bore all the costs.

Finally, because Tesla has viable claims against Pelinkovic, his voidable transfer claims under the New York Debtor & Creditor Law should proceed.

In the alternative, Tesla should be permitted to amend his pleadings. The District Court's Opinion & Order was the first time that a court had reviewed the sufficiency of his pleadings. Tesla should have an opportunity to incorporate the judicial critique of his allegations.

For these reasons, this Court should reverse the District Court's dismissal, or in the alternative, remand and allow Tesla to amend his pleadings.

### **STANDARD OF REVIEW**

This Court reviews de novo the grant of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Gelboim v. Bank of America Corp.*, 823 F.3d 759, 769 (2d Cir. 2016) (internal citations omitted).

At the pleading stage, a reviewing court "accept[s] all factual allegations as true and draw every reasonable inference from those facts in the plaintiff's favor." *Mayor & City Council of Balt. v. Citigroup, Inc.*, 709 F.3d 129, 135 (2d Cir. 2013). The complaint must provide "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has

facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The Second Circuit “review[s] a district court's denial of leave to amend for abuse of discretion, unless the denial was based on an interpretation of law, . . . in which case [the Second Circuit] review[s] the legal conclusion de novo.”

*TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 505 (2d Cir. 2014) (quoting *Panther Partners Inc. v. Ikanos Commc'ns, Inc.*, 681 F.3d 114, 119 (2d Cir. 2012)).

The de novo standard applies when “the denial was based on an interpretation of law, such as futility.” *Gelboim*, 823 F.3d at 769. Here, because the District Court denied leave to amend based on the finding that “further amendment would be futile[,]”<sup>5</sup> this Court should review that denial de novo.

## ARGUMENT

### **I. The District Court Erred in Dismissing the Second Amended Complaint because it contains sufficient factual allegations to state a claim to relief.**

#### ***A. Tesla adequately alleged the formation of a partnership.***

The SAC sufficiently alleges the formation of a partnership and, in the alternative, a joint venture.<sup>6</sup> “A partnership is an association of two or more

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<sup>5</sup> A-175.

<sup>6</sup> “Under New York law joint ventures are governed by the same legal rules as partnerships [] because a joint venture is essentially a partnership for a limited

persons to carry on as co-owners a business for profit and includes for all purposes of the laws of this state, a registered limited liability partnership.” N.Y. P’ship Law § 10 (McKinney). In the absence of a written agreement, a court looks to “conduct, intent, and relationship to determine whether a partnership existed in fact.” 15A *N.Y. Jur. 2d Business Relationships* § 1535 (internal citations omitted). The factors to be considered include (1) the intent of the parties, either express or implied; (2) joint management and control; (3) an agreement to share profits and losses; and (4) whether there is a combination of property, skill, or knowledge. *Id.* (internal citations omitted); *see also, Kidz Cloz, Inc. v. Officially For Kids, Inc.*, 320 F. Supp.2d 164, 171 (S.D.N.Y. 2004) (Chin, J.).

In making this determination, “[n]o single factor is determinative, and a court considers the parties’ relationship as a whole.” N.Y. Pattern Jury Instr.--Civil 4:1 § VII.K (citing *Capizzi v. Brown Chiari LLP*, 194 A.D.3d 1457, 1458 (4th Dep’t 2021)). That said, in an oral partnership, an “essential ingredient” is an agreement

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purpose.” *Scholastic, Inc. v. Harris*, 259 F.3d 73, 84 (2d Cir. 2001) (cleaned up). A joint venture is formed where (1) two or more persons enter into a specific agreement to carry on an enterprise for profit; (2) their agreement evidence their intent to be joint venturers; (3) each makes a contribution of property, financing, skill, knowledge, or effort; (4) each has some degree of joint control over the venture; and (5) there is a provision for the sharing of both profits and losses. *Dinaco, Inc. v. Time Warner, Inc.*, 346 F.3d 64, 67–68 (2d Cir. 2003).

among the principals to share losses as well as profits. N.Y. Pattern Jury Instr.--Civil 4:1§ VII.K (citing *Chanler v. Roberts*, 200 A.D.2d 489, 491, (1st Dep't 1994)).<sup>7</sup>

1. *The SAC alleges facts regarding the parties' intent to form a partnership.*

The intention of the parties is one factor in determining whether a partnership exists. 15A N.Y. Jur. 2d Business Relationships § 1537. The parties' words and conduct must be considered. *Id.* Tesla adequately alleges facts to support Tesla and Pelinkovic's intent to form a partnership.

“[W]here the alleged agreement is oral, parties may demonstrate their intent by combining their property and efforts in a manner such that they are necessarily subject to their joint venturers' corresponding efforts and potential failures. *Napoli v. 243 Glen Cove Ave. Grimaldi, Inc.*, 397 F. Supp. 3d 249, 269 (E.D.N.Y. 2019) (citing *Kidz Cloz, Inc. v. Officially For Kids, Inc.*, 320 F. Supp.2d at 171).

Specifically, the SAC alleges that during a phone call, which Tesla took from Sweden, Pelinkovic expressed to Tesla his interest about an enterprise in which the two would conduct themselves as partners. SAC ¶¶ 48, 49. Tesla and Pelinkovic

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<sup>7</sup> Appellant notes the District Court's statement that a “[f]ailure to plead any one element is fatal to a claim that there was a partnership or joint venture.” A-168 (citing *Zeising v. Kelly*, 152 F. Supp. 2d 335, 347–48 (S.D.N.Y. 2001)). Appellant respectfully submits that this is not the state of the law. Aside from an agreement to share in losses, which is a necessary condition for the formation of an oral partnership, the remainder of the factors are considered as a balancing test. Aside from the agreement to share in losses, no factor is dispositive.

then discussed the terms of that arrangement, including who the venture would be capitalized, who would exercise decision making authority, and how profits and losses would be divided. During this call, Pelinkovic expressed his intent to engage in this business venture when he spoke the words, “I’m in! I’m in!.” This is more than sufficient at the pleading stage.

The District Court noted—and Tesla agrees—that intent can be gleaned when the parties “join[] their property, interests, skills, and risks their contributions have become one and their commingled properties and interests have been made subject to each of the others' actions, on the trust and inducement that each would act for their joint benefit.” *Zeising v. Kelly*, 152 F. Supp. 2d 335, 348 (S.D.N.Y. 2001). That is exactly what happened here. Tesla contributed his expertise; Pelinkovic’s capital was subjected to and risked on that expertise. Tesla, in turn, risked his own capital via the guarantee, subjecting it to Pelinkovic’s faithful execution of the plan. This is a quintessential commingling of properties and interest.

The District Court held that the “obvious inference” was that Pelinkovic never intended to form a partnership but that Tesla did all of this work as a friend. A-169.<sup>8</sup> But this ignores the previous course of dealings—both as friends and

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<sup>8</sup> The District Court also found that this assistance was “costless” notwithstanding the SAC’s allegations that Tesla incurred travel and lodging costs. *See* SAC ¶

business partners—between Tesla and Pelinkovic. When Tesla would travel to help Pelinkovic in their capacity as friends, Pelinkovic would pay Tesla’s freight. *See, e.g.*, SAC ¶ 26 (discussing how Pelinkovic purchased Tesla’s ticket and paid for Tesla’s accommodations when Tesla travelled to Poland for Pelinkovic’s fight, which Tesla did as Pelinkovic’s “close personal friend”). When Tesla and Pelinkovic engaged in a business venture (the 8 ENERGY BARS venture, for instance), each would personally incur business related costs.

With respect to the cryptocurrency venture, each personally incurred costs. When Tesla flew from Sweden to New York to set up the cryptocurrency venture, Tesla incurred those costs, not Pelinkovic. The reasonable inference is that the cryptocurrency venture was more akin to the 8 ENERGY BARS venture, which Tesla and Pelinkovic undisputedly split the losses.

Finally, Pelinkovic’s words and conduct speaks to his intent. Pelinkovic, on the September 2024 phone call with Tesla, conceded his partnership arrangement with Tesla. SAC ¶ 71. Pelinkovic's post-lawsuit conduct is also relevant. Once the litigation commenced, he transferred his multi-million-dollar house to his wife for nominal consideration and claimed that the cryptocurrency was liquidated. SAC ¶¶ 76-95. These words and actions evidence Pelinkovic’s state of mind—he knew he and Tesla had a valid partnership under which he owed Tesla an accounting and half the profits.

2. The SAC alleges that both Tesla and Pelinkovic contributed property, effort, skill, or knowledge to the Partnership.

The SAC alleges that Tesla contributed property, skill, knowledge, and effort to the business venture. *Fetter v. Schink*, 902 F. Supp. 2d 399, 403 (S.D.N.Y. 2012) (“In order to establish a joint venture under New York law, . . . each must make a contribution of property, financing, skill, knowledge, or effort.”); 15A N.Y. Jur. 2d Business Relationships § 1543 (“A partner, however, contributing his or her skill and labor, and another partner contributing all the capital, may agree to the sharing of profits.”).

Tesla provided everything from rudimentary trading support (for example, setting up exchange accounts and facilitating “cold storage” of cryptocurrency assets) to selecting the crypto assets in which the partnership would invest. SAC ¶ 62. In doing this, Tesla leveraged years of learning and experience to select appropriate cryptocurrencies in which to invest, which was critical to ensure that the partnership avoided investing in meme coins, scam coins, and other high risk or fraudulent investments in this unregulated landscape. *Id.* ¶ 54. Tesla’s contribution also included monitor developments and changes with respect to those various currencies in which the partnership was invested. Tesla would also monitor the macro environment and the anticipated impact on cryptocurrency as an asset class. *Id.* ¶ 55. Without Tesla’s important contributions, Pelinkovic would not have tried (let alone succeeded) in the venture.

Most importantly, Tesla's guarantee against investment losses that the partnership may have sustained was a commitment of Tesla own capital. The District Court brushed this off, finding that Tesla contributed "no capital at all." It should be noted that New York Legislature expressly recognized in the New York Revised Limited Partnership Act that a partner's contribution "may be in cash, property, or *services rendered*, or a *promissory note or other obligation to contribute cash or property* or to render services." N.Y. P'ship Law § 121-501 (McKinney).

The District Court also ignored the costs that Tesla incurred in furtherance of setting up the venture and the parties' prior course of dealings. Thereafter, based upon Pelinkovic's promises and acceptance of his offer, Tesla flew to New York, booked an Airbnb in the Bronx, and travelled to Pelinkovic's office and home, in furtherance of and for the purposes of advancing the partnership, including but not limited to setting up "cold storage" of various cryptocurrency assets in which the partnership/joint venture had invested. *Id.* at ¶ 58. Moreover, during these trips, Tesla incurred costs, such as costs for Airbnb stays and Uber trips, for the sole purpose of carrying out the cryptocurrency account partnership. *Id.* at ¶ 59. Tesla incurred these travel costs, and the partnership has not reimbursed him for those costs. Tesla would not have incurred these costs or spent time traveling to the Bronx but for the promises made and agreements entered into. *Id.* at ¶ 60. Tesla incurred

all of these and other costs personally, and he was never reimbursed for them. *Id.* at ¶ 61. Tesla considered these costs as part of his contribution to the partnership. *Id.* On information and belief and based on past courses of conduct between the parties, Pelinkovic also considered Tesla's costs a contribution to the partnership. *Id.* Furthermore, Tesla travelled to Pelinkovic's home in the Bronx, New York to meet with Pelinkovic for the sole purpose of carrying out the cryptocurrency partnership. *Id.* at ¶ 63.

3. *The allegations in Tesla's Second Amended Complaint demonstrate joint control and management of the Partnership.*

The SAC adequately alleges facts to support joint control and management of the business. “[I]t is not required that each joint venturer actually exercise the same degree of management control.” *Richbell Info. Servs., Inc. v. Jupiter Partners, L.P.*, 309 A.D.2d 288, 299 (1st Dep’t 2003).

Here, the SAC alleges that each party exercised control. Tesla decided which cryptocurrencies would be purchased controlled the cryptocurrencies that would be targeted and platforms of acquisition and method of storage while Pelinkovic retained custody and control over the exchanges and wallets. SAC at ¶ 4.

4. *The SAC adequately alleges that the parties agreed to share profits and losses.*

The Tesla adequately alleges facts to support a mutual agreement between Tesla and Pelinkovic to share in both the profits and losses. An “indispensable

essential” element of an oral partnership is a mutual agreement to share profits. *See Kidz Cloz*, 320 F. Supp. at 171 (citing *Steinbeck v. Gerosa*, 4 N.Y.2d 302, 317 (1958)). During a phone call held, Tesla and Pelinkovic agreed to split the profits. SAC ¶ 56. During that same telephone call, they agreed to divide losses.

Specifically, the SAC alleges that Tesla agreed to commit his sizable personal fortune to backstop any losses that the partnership may incur up to \$5,000,000. SAC ¶ 51. That is to say, of the \$3,000,000 and \$5,000,000 that Pelinkovic capitalized the partnership with, Tesla agreed to make Pelinkovic whole on that loss. *Id.* ¶ 49.

Tesla’s commitment to share in losses was critical to Pelinkovic’s decision to commit capital to the partnership—i.e., a material term. *Id.* at ¶ 52. Pelinkovic confirmed that but for Tesla’s commitment to protect the partnership’s downside risk, Pelinkovic would not have put his capital at risk. *Id.* at ¶ 53. This follows on the parties’ agreement with respect to the 8 ENERGY BAR venture, Tesla and Pelinkovic orally agreed to share in whatever profits or losses the partnership realized. *Id.* at ¶ 64. Therefore, Tesla sufficiently alleges, in its First Amended Complaint, an agreement by Tesla and Pelinkovic to share in the profits and losses of the business.

Pelinkovic advances a series of arguments that ask the Court to intuit the reasonableness of the deal struck. This is not appropriate at the pleadings stage.

Even more troubling is that in making this argument, Pelinkovic introduces a number of themes that are not supported by the pleadings, including that the parties were only casual acquaintances. This ignores the well-pled facts regarding the parties' prior business and personal relationship. *See, e.g.*, SAC at ¶¶ 29-37 (discussing the parties' close personal relationship and prior business venture, 8 ENERGY BARS). Also, Pelinkovic disregards a fundamental feature of at-will partnerships, which is that either party can terminate at a moment's notice.

Finally, the agreement as alleged in the SAC does not limit shared losses to those of Pelinkovic's capital. "As with the 8 ENERGY BAR partnership/joint venture, Tesla and Pelinkovic orally *agreed to share in whatever profits and/or losses this Partnership/Joint Venture realized.*" SAC at ¶ 64 (emphasis added).

We note that the District Court indicated that it was unclear as to what "backstopping" the losses meant. A-170. To the extent that there is some ambiguity in the pleadings, Tesla as the plaintiff is entitled to all reasonable inferences under *Twombly* and *Iqbal*. Tesla will also provide further clarification the opportunity to replead. The District Court criticized the offer to backstop losses as an unmaterialized agreement to share in losses. Tesla notes that in order to form a partnership, it is the agreement to share in losses that matters—it is not necessary that the parties actually share those losses. *See Kidz Cloz, Inc. v. Officially For Kids, Inc.*, 320 F. Supp.2d at (S.D.N.Y. 2004) ("The requirement that the parties

*have agreed to share in the profits and losses is ‘an indispensable essential of a contract of partnership or joint venture.’”*) (citing *Steinbeck v. Gerosa*, 4 N.Y.2d at 317) (emphasis supplied).<sup>9</sup>

In any event, Tesla agrees that insofar as it concerns the cryptocurrency venture, no losses were ever incurred, and so Tesla’s obligation was never called. But in the parties’ other business venture, 8 ENERGY BARS, Tesla and Pelinkovic did share in losses.

***B. In the alternative, Tesla should be permitted to proceed on a simple contract theory.***

In the event that Tesla is unsuccessful under either a partnership or joint venture theory, he should be permitted to proceed on a breach-of-contract claim. To plead a breach of contract claim, a plaintiff must allege “(1) the existence of a contract between itself and that defendant; (2) performance of the plaintiff’s obligations under the contract; (3) breach of the contract by that defendant; and (4) damages to the plaintiff caused by that defendant’s breach.” *Diesel Props S.r.l. v. Greystone Bus. Credit II LLC*, 631 F.3d 42, 52 (2d Cir. 2011). The Fourth Cause of Action, which is entitled “Breach of the Partnership/Joint Venture Agreement”, sets

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<sup>9</sup> Under New York law, a partnership may be formed orally, through a writing, or through a course of conduct. *See Czernicki v. Lawniczak*, 74 A.D.3d 1121, 1124 (2d Dept. 2010). In agreements arising out of course of conduct, there must be a sharing of losses to evidence an agreement to share losses. But here, the allegation is that the partnership was formed via oral agreement, which was the basis for the agreement to share losses.

forth each of these elements. *See* SAC ¶¶ 110, 110, 112 and 115. The SAC is replete with facts supporting each of these elements.

To plead a valid contract under New York law, a complaint must allege “an offer, acceptance, consideration, mutual assent and intent to be bound.” *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 427 (2d Cir. 2004) (internal citations omitted). The SAC alleges facts supporting each of these elements.

The SAC plainly alleges offer and acceptance. “As a general matter, courts look to the basic elements of the offer and acceptance to determine if there was an objective meeting of the minds sufficient to create a binding and enforceable contract.” *Fisher v. Aetna Life Ins. Co.*, 32 F.4th 124, 136 (2d Cir. 2022) (citing *Express Indus. & Terminal Corp. v. N.Y. Dep't of Transp.*, 93 N.Y.2d 584, 589 (1999).) Tesla offered and Pelinkovic accepted the material terms of the deal. SAC at ¶ 49.

Tesla tendered consideration, namely, the promise to commit his substantial personal wealth to backstop losses and his efforts and expertise to get the venture off the ground. *Id.* at ¶¶ 3, 49. Consideration “may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.” *Hamer v. Sidway*, 124 N.Y. 538, 545, 27 N.E. 256, 257 (1891).

The SAC also alleges facts from which the Court should find, at the pleading stage, that there was mutual assent.

Under New York law, “[m]utual assent is essential to the formation of a contract and a party cannot be held to have contracted if there was no assent or acceptance.” *See, e.g., Maffea v. Ippolito*, 247 A.D.2d 366, 367, 668 N.Y.S.2d 653, (2d Dep’t 1998) (citing 22 N.Y. Jur 2d, Contracts, § 29). “The manifestation or expression of assent necessary to form a contract may be by word, act, or conduct which *evinces the intention of the parties to contract.*” *Id.* (citing 22 N.Y. Jur 2d, Contracts, § 29) (emphasis added). *See generally* Restatement (Second) of Contracts, § 18 (1981) (“Manifestation of mutual assent to an exchange requires that \*428 each party either make a promise or begin or render a performance.”); *id.* at § 19(2) (The conduct of a party may manifest assent only if “he intends to engage in the conduct and knows or has reason to know that the other party may infer from his conduct that he assents.”); E. Allan Farnsworth, *Farnsworth on Contracts* § 3.1 (2d ed. 2000).

*Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 427–28 (2d Cir. 2004).

The parties manifested their mutual assent and intent to be bound when Tesla made his offer and Pelinkovic responded, “I’m In! I’m in!” SAC at ¶¶ 49, 58-61.

*See Express Indus. & Terminal Corp. v. New York State Dep’t of Transp.*, 93 N.Y.2d 584, 589 (1999) (“[T]here must be a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms.”).

With respect to the intent to be bound, Pelinkovic’s own words speak volumes: “I’m in! I’m in!” There is nothing in the pleading indicating that this intent was *not* manifest. *See 166 Mamaroneck Ave. Corp. v. 151 E. Post Rd. Corp.*,

78 N.Y.2d 88, 92 (1991). So too does their subsequent conduct, which includes carrying out the business. Accordingly, even if the relationship did not arise to a partnership or joint venture, a contract has been sufficiently pled.

The SAC alleges the remaining elements of a breach of contract claim. *As for the second element*, Tesla performed under the agreement by setting up the cryptocurrency business. *As for the third element*, Pelinkovic breached when he refused to distribute the business's proceeds. *As for the fourth element*, Tesla sustained an injury caused by Pelinkovic's breach, specifically, his refusal to distribute proceeds.

***C. Tesla has adequately pled a promissory estoppel claim in the alternative to his partnership claims.***

A claim for “promissory estoppel under New York law requires the plaintiff to prove three elements: 1) a clear and unambiguous promise; 2) reasonable and foreseeable reliance on that promise; and 3) injury to the relying party as a result of the reliance.” *Kaye v. Grossman*, 202 F.3d 611, 615 (2d Cir. 2000) (internal citations omitted). The SAC alleges facts sufficient to support these elements.

The SAC outlines the clear and unambiguous promise between the parties. “[Tesla] orally offered, and [Pelinkovic] orally accepted that [Pelinkovic] would capitalize the partnership with between \$3,000,000 and \$5,000,000; that [Tesla] would backstop any losses of [Pelinkovic's] capital sustained during the course of the partnership; and that [Tesla] would leverage his knowledge and expertise to

determine what crypto assets to invest in. Specifically, during this call, [Pelinkovic] spoke the words, ‘I’m in! I’m in!’” SAC at ¶ 49. The pleadings go on to allege that “[a]s with the 8 ENERGY BAR partnership/joint venture, [Tesla] and [Pelinkovic] orally agreed to share in whatever profits and/or losses this Partnership/Joint Venture realized.” *Id.* ¶ 64.

The SAC further alleges reasonable and foreseeable reliance. “[B]ased upon Pelinkovic’s promises and acceptance of his offer, Tesla flew to New York, booked an Airbnb in the Bronx, and travelled to Pelinkovic’s home, in furtherance of and for the purposes of advancing the Partnership/Joint Venture, including but not limited to setting up ‘cold storage’ of various cryptocurrency assets in which the partnership/joint venture had invested.” *Id.* at ¶ 58.

Finally, the SAC alleges that Tesla sustained injuries as a result. He did not receive his share of the promised profits, and he spent uncompensated time and incurred unreimbursed expenses. SAC at ¶¶ 72-73 (discussing Pelinkovic’s refusal to tender Tesla’s share of the profits); ¶¶ 58-60 (discussing uncompensated time and unreimbursed expenses).

***D. Tesla has adequately pled an unjust enrichment claim in the alternative to his partnership claims.***

Tesla pleads a claim for unjust enrichment in the alternative to his partnership theory, which the Federal Rules of Civil Procedure expressly allow. *See* Fed. R. Civ. P. 8(d)(2). “To recover under a theory of unjust enrichment under

New York law, a litigant must show that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered.” *Rynasko v. New York Univ.*, 63 F.4th 186, 201 (2d Cir. 2023) (cleaned up). In other words, an unjust enrichment claim requires identification of a conferred benefit which unjustly enriched the defendant. *MacDraw, Inc. v. CIT Grp. Equip. Fin., Inc.*, 157 F.3d 956, 963 (2d Cir. 1998) (quoting *Reprosystem, B.V. v. SCM Corp.*, 727 F.2d 257, 263 (2d Cir. 1984)). The SAC adequately allege facts to support these elements.

The Pelinkovic was enriched through Tesla’s knowledge and skills to invest in cryptocurrency and enjoyed the shield of the loss guarantee provided by Tesla’s own capital. SAC ¶¶51-53. Pelinkovic’s gain was at Tesla’s expense, namely, through the expertise, time and expense that Tesla outlaid. For instance, the SAC alleges that “[Tesla] flew to New York, booked an Airbnb in the Bronx, and travelled to [Pelinkovic’s] home.” *Id.* ¶ 58. Tesla expended this time and incurred those costs, and he was not reimbursed for them. *Id.* ¶¶ 59-61.

The District Court saw no reason that this arrangement would be against equity and good conscience. A-174. This element, that enrichment is unjust—i.e., against equity and good conscience—is satisfied where there is a relationship between the parties that could have caused reliance or inducement.” *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 182 (2011). Here, the reliance and

inducement ran both ways. Tesla, in reliance upon Pelinkovic's statements that they would share in the profits, was induced to travel to New York and assist Pelinkovic. And Pelinkovic relied upon Tesla's representation that Tesla would guarantee any losses up to \$5,000,000. It would be unjust for Pelinkovic to retain all of the upside while Tesla took all the risk and bore all the costs.

Also, the District Court wrongly assumed that the measure of damages on the unjust enrichment claim would be limited to "50% of the profits Pelinkovic earned by investing his own money." A-174. The SAC seeks "damages [Tesla] has sustained and will sustain, *as well as* any gains, profits, and advantages obtained by [Pelinkovic]." SAC ¶ 130 (emphasis supplied).

***E. To the extent that Tesla has a claim against Pelinkovic, the post-Complaint transfers are voidable under the New York Debtor & Creditor Law.***

Tesla brings two claims under the New York Debtor & Creditor Law, the first under Section 273 (transfers made to hinder, delay or defraud a creditor) and the second under Section 274 (transfers made to an insider that led to insolvency). SAC at ¶¶ 131-139; ¶¶ 140-147 (A-132 to 134). The District Court dismissed those claims on the grounds that Tesla is not a "creditor" of Pelinkovic. A-174 to 175. However, Tesla is a "creditor" as defined under the operative statute because of, among other reasons, the claims filed in this litigation. To the extent any of the substantive claims against Pelinkovic are revived, so too should the voidable transfer claims.

New York’s Debtor & Creditor Law defines a “creditor” as “a person that has a claim.” N.Y. Debt. & Cred. Law § 270(d) (McKinney). The statute goes on to define a “claim” as “a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.” *Id.* at § 270(c). This can include a “contingent” claim, which is one that has not accrued and is dependent on some future event that may never happen. *See Trafalgar Power, Inc. v. Aetna Life Ins. Co.*, 131 F. Supp. 2d 341, 347 (N.D.N.Y. 2001).

The claims that Tesla brings against Pelinkovic in this litigation are sufficient to make him a creditor under New York’s Debtor & Creditor Law. Importantly, the transfers that Tesla seeks to void were made after this litigation was initiated. *See* SAC at ¶¶ 76-95 (describing the transfers of real estate and cryptocurrency assets that all occurred *after* the November 15, 2024 filing of this litigation and November 21, 2024 removal by Pelinkovic to Federal Court).

Finally, Tesla may bring all claims—that is, the claims under which a defendant becomes a creditor and ensuing voidable transfer claims based on transfers by that defendant/creditor—in the same action. *See Epperson v. Entertainment Express, Inc.*, 242 F.3d 100 (2d Cir. 2001).

**II. In the alternative, Tesla's should be permitted to amend his pleadings.**

To the extent that the pleadings as currently drafted are deficient, the appropriate remedy was a without-prejudice dismissal. As noted above, this case was initially filed in New York Supreme Court, Bronx County. Complaint was, therefore, drafted with an eye towards the pleading conventions that apply in state court, which are of course materially different than those that apply in the District Court. Faced with the removal of his state-law claims to federal court, and based on events that occurred *after* he filed the Complaint in New York Supreme Court, Tesla elected to amend his pleadings for efficiency purposes and so that all of these issues could be addressed in a single motion before the District Court. Accordingly, he filed the First Amended Complaint before any court had reviewed the legal sufficiency of his pleadings. Defendants moved to dismiss the First Amended Complaint. Shortly thereafter, Tesla filed a Second Amended Complaint per the District Court's Order directing the inclusion of facts regarding the citizenship of certain corporate defendants.<sup>10</sup> Also per the directive in the District Court's Order, Tesla made no other amendments to the pleading.

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<sup>10</sup> On March 14, 2025, the District Court entered an Order requiring that: [N]ot later than Wednesday, March 19, 2025, Plaintiff must file a Second Amended Complaint that incorporates allegations about the identity and citizenship of every member of Defendant Crotona Avenue Builders, LLC. [Tesla] must also include a redline of the Second Amended Complaint against the Amended Complaint to

The Federal Rules of Civil Procedure state that courts “should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). There has been no delay here, a fact that sometimes supports denying leave to amend. *See, e.g., Ansam Assocs., Inc. v. Cola Petroleum, Ltd.*, 760 F.2d 442, 446 (2d Cir.1985) (denying leave to amend a complaint made after discovery was complete and a summary judgment motion had been filed). Here, discovery has not even commenced. And no documents or other evidence supports the District Court’s finding that an amendment would be futile. The District Court relied solely on the allegations in the Second Amended Complaint in making what amounts to a determination on the merits.

Tesla is prepared to file a pleading addressing some of the uncertainties flagged in the District Court’s Opinion & Order. For instance, the District Court wrote that “it is unclear what, precisely, Tesla meant when he said he would

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confirm that no other changes were made. Once filed, the Court will construe Defendant Drgut Pelinkovic's motion to dismiss the Amended Complaint (Dkt. 24) as a motion to dismiss the Second Amended Complaint, unless Mr. Pelinkovic indicates via letter (not later than Friday, March 21, 2025) that doing so would be inappropriate.

A-162 to 164. On March 15, 2025, Tesla filed the Second Amended Complaint in accordance with the District Court’s Order, adding only allegations regarding the citizenship of Crotona Avenue Builders, LLC, and making no other changes. Pelinkovic submitted no letter, so the District Court construed Pelinkovic’s Motion to Dismiss the Amended Complaint as a Motion to Dismiss the Second Amended Complaint. *See* Decision & Order at fn. 2, A-165 to 166.

‘backstop’ Pelinkovic’s losses.” To the extent that there was ambiguity around that allegation, again, Tesla was entitled to all reasonable inferences flowing from it. But if those inferences were insufficient, Tesla should have been provided an opportunity to elaborate. If afforded the opportunity, Tesla can provide further detail about every facet of the Complaint, from the common circle in the Brazilian Jiu Jitsu community and the power dynamics that guide relationships in it to the expenses he incurred in standing up the crypto venture to his control role in asset selection process, and so on.

### CONCLUSION

For the foregoing reasons, the judgment of the District Court should be reversed.

November 10, 2025

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B), the word limit of Local Rule 32.1(a)(4) (A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f): this document contains 8,644 words.

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Dated: New York, New York  
November 10, 2025