25-2246-cv

United States Court of Appeals

for the

Second Circuit

MATTHEW TESLA,

Plaintiff-Appellant,

– v. –

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

Defendants-Appellees.

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

BRIEF FOR DEFENDANTS-APPELLEES

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes & Other Cited Authorities

PRELIMINARY STATEMENT

Plaintiff-Appellant Matthew Tesla ("Tesla") seeks to revive a meritless action that the District Court correctly dismissed for failure to state a claim under Rule 12(b)(6). The Second Amended Complaint ("SAC") (A-114-137)[1] rests entirely on the unfounded assertion that the parties formed an oral partnership entitling Tesla to share in the gains of Defendant-Appellee Doug Pelinkovic's ("Pelinkovic") personal cryptocurrency investments. But the allegations, even if accepted as true, fail to plausibly allege the existence of any partnership—oral or otherwise—under New York law. It is dispositive of the issue before this Court that Tesla admitted that Pelinkovic purchased all the cryptocurrency with his own money, in his own name, and Tesla himself made zero capital contribution as New York law is clear that a party that has never made a capital contribution to a business, strongly suggests that no partnership existed.

Boiled down to its essence, Plaintiff-Appellant's theory is that he is entitled to 50% of the gains for investments made personally by Pelinkovic with Pelinkovic's own money, and in Pelinkovic's own name, for providing preliminary rudimentary advise about cryptocurrency. Not only is Plaintiff-Appellant's claim implausible, but it does not come close to alleging the elements of an oral partnership. In this regard, the District Court meticulously reviewed and dissected each allegation and

[1] References to the Appendix are designated "A-___."

demonstrated that the SAC is devoid of allegations to set forth a meeting of the minds, mutual assent to share in profits and losses, and joint control of any business venture. At most, Tesla describes a personal relationship accompanied by incidental help and informal conversations, which are legally insufficient to establish a partnership. Because Tesla has not alleged facts showing any partnership, fiduciary relationship, or contractual entitlement to Pelinkovic's investment returns, the District Court properly concluded that Tesla has no legal claim to profits that Pelinkovic may realize through cryptocurrency transactions conducted solely with Pelinkovic's own funds. Speculative expectations or subjective beliefs cannot substitute for actual facts.

In his Brief (Dkt. No. 20), Tesla simply regurgitates the same deficient allegations already rejected by the District Court, while taking liberties with the facts alleged in the Complaint in the Brief in an attempt to fabricate a plausible claim. Tesla seems to hope that this Court might somehow find a reason to reverse the dismissal and revive his meritless claims against Pelinkovic—likely in the hopes of using this litigation to extract some form of compensation. The Brief's emphasis on Tesla's offer to absorb losses—or as Tesla alleges and elaborates for the first time, to "backstop" partnership losses of up to $5,000,000—was illusory given that it was Pelinkovic's money that funded all of the cryptocurrency. Tesla's repeated references to the unrelated purported 8 ENERGY BARS venture in an attempt to bolster his

specious and unfounded cryptocurrency claim only harms his position, as that purported venture involved both parties contributing capital.

Tesla's theory is incompatible with settled principles of partnership formation and would, if accepted, expose ordinary personal interactions to unwarranted legal obligations. Further, given that Tesla had already been afforded an opportunity to amend, and given the District Court's finding that further amendment would be futile as many of the factual allegations contained in the SAC undermined, rather than enhanced, Tesla's claims, the District Court properly denied leave to amend. Accordingly, the District Court correctly dismissed the case with prejudice, and its Opinion & Order should be affirmed.

STATEMENT OF JURISDICTION

The basis for subject matter jurisdiction over this action in the District Court is 28 U.S.C. § 1332. The basis for the jurisdiction of this appeal is 28 U.S.C. § 1291, as this appeal is made from a final judgment of a District Court, entered by the District Court Clerk on August 26, 2025.

STATEMENT OF THE ISSUES

1. Whether the District Court properly dismissed Plaintiff-Appellant's claims under Rule 12(b)(6) of the Federal Rules of Civil Procedure?
2. Whether Plaintiff-Appellant's request for leave to amend his pleadings should be denied?

COUNTER-STATEMENT OF THE CASE

As alleged in the SAC (A-114-137), Tesla and Pelinkovic are familiar with each other from their involvement in martial arts circles and trained together in mixed martial arts. (SAC at ¶ 23) The SAC further alleges that Tesla helped Pelinkovic at a gym Pelinkovic owned with martial arts students, gave Pelinkovic advice on a serious medical issue that Pelinkovic's son was facing, and in one instance traveled to support Pelinkovic in a competition held in Poland, wherein Pelinkovic paid for Tesla's ticket and accommodations. (*Id.* at ¶¶ 25–29)

The SAC does not allege that Tesla has any licenses issued by the SEC or as a Commodities or Securities Investment Advisor or Broker, but Tesla alleges that he is a long-time investor in cryptocurrency and has relied on income that he derived from his own investments in cryptocurrency. (*Id.* § C) According to the SAC, Tesla alleges that during the period of December 2020 through February 2021, Tesla on "one or more telephone calls" made an offer to commence a partnership to invest in cryptocurrency for profit, pursuant to which Pelinkovic would contribute all of the capital (in other words, buy all the cryptocurrency) and Tesla would not contribute any money, but provide his "leveraged years of learning and experience." (*Id.* ¶¶ 54, 56) The alleged proposal also consisted of the sharing of profits and losses, the sharing of management and control, and otherwise acting as partner/joint venturers. (*Id.* ¶ 56) The "one or more telephone calls" took place when Tesla was in Sweden

and Pelinkovic was in New York. (*Id.*) Tesla alleges Pelinkovic accepted that offer. (*Id.* ¶ 57)[2]

The SAC alleges that the partnership was formed sometime between December 2020 and February 2021, but does not state what Tesla did for the alleged venture other than his travel to New York (with no dates or event durations alleged) to meet with Pelinkovic, at which time he rented an Airbnb to continue to execute the purported cryptocurrency venture, including setting up "cold storage" of the assets. (*Id.* ¶¶ 58–59) Tesla further alleges that he had meals with Pelinkovic and Pelinkovic's family members, and that they each paid for one of the meals. (*Id.* ¶¶ 67–68)

The SAC is thereafter devoid of facts as to the partnership between 2021 until September 2024, wherein Tesla alleges that he and Pelinkovic spoke again on the phone some 3.5 years later and Tesla stated that he intended to terminate the purported cryptocurrency partnership and requested an accounting and a share of the profits. (*Id.* ¶ 69) When Pelinkovic refused, Tesla then commenced this action

[2] The SAC further references a "first" purported investment in 8 ENERGY BARS, with Tesla claiming the cryptocurrency venture was the "second" venture. (*Id.* § B). There, Tesla alleges that the parties both contributed capital to the purported energy bar investment, where Pelinkovic made a cash investment, and when the venture failed, both Tesla and Pelinkovic divided the business losses. (*Id.* ¶¶ 35–37). The SAC makes it clear that the energy bar investment was separate and distinct from the alleged cryptocurrency "venture".

seeking to dissolve and obtain profits of the purported partnership, an accounting, and other claims derived from the alleged oral partnership. (*Id.* ¶¶ 70–73)

Tesla first filed a Summons and Complaint in the New York Supreme Court, Bronx County. (A-11-26) Thereafter, Pelinkovic removed this litigation to the United States District Court, Southern District of New York on the basis of diversity jurisdiction. (A-7-9) On January 17, 2025, Pelinkovic filed a Motion to Dismiss the Complaint. (A-3) On February 7, 2025, Tesla filed a First Amended Complaint asserting nine claims; the first six against Pelinkovic for: (i) partnership property; (ii) an accounting; (iii) breach of a partnership/joint venture agreement; (iv) breach of fiduciary duty; (v) promissory estoppel; and (vi) unjust enrichment, and the remaining four against all Defendants, for (vii and viii) voidable transfers; and (ix) conversion and aiding and abetting. (A-27-84)

In light of Tesla's filing of the First Amended Complaint, on February 10, 2025, the District Court denied Pelinkovic's Motion to Dismiss as moot. (A-17) In response to the First Amended Complaint, Pelinkovic, again, filed a second Motion to Dismiss on February 13, 2025. (A-4)[3] On March 13, 2025, Tesla filed his

[3] In his Brief, Tesla seems to suggest that Pelinkovic's Motion to Dismiss was insufficient due to the lack of declaration or supplemental documentation. However, as is standard with Rule 12(b)(6) motions, the Court's evaluation is based solely on the allegations in the pleadings, and Courts generally do not consider extrinsic documents or evidence when assessing whether the pleadings state a claim upon which relief can be granted.

opposition to the second Motion to Dismiss. (A-5) A reply memorandum of law was filed on March 27, 2025, whereupon the Motion to Dismiss was fully briefed before the District Court. (A-6)

On March 14, 2025, the District Court entered an Order directing Tesla to file the SAC to incorporate allegations, for jurisdictional purposes, regarding the identity and citizenship of the newly added Defendant Crotona Avenue Builders, LLC. (A-164) The District Court further advised that Pelinkovic's second Motion to Dismiss would be construed as a Motion to Dismiss the SAC absent Pelinkovic's objection to the contrary. (*Id.*) Thereafter, Tesla filed the SAC. (A-114-137)

On August 26, 2025, the District Court issued its sound, 11-page Opinion and Order granting Pelinkovic's Motion to Dismiss, dismissing the case with prejudice, and denying Tesla leave to amend as Tesla already had multiple opportunities to amend and further amendment would be futile. (A-165–175) The District Court dismissed Tesla's First to Third Causes of Action as Tesla failed to plausibly allege the existence of a partnership or joint venture between Tesla and Pelinkovic, noting, *inter alia*, Tesla did not allege that he contributed "*any capital at all*" (emphasis in original), failed to describe any conversations between himself and Pelinkovic in which they discussed (in non-conclusory terms) the details of their collaboration, and failed to establish that Tesla and Pelinkovic exercised joint management and control over Pelinkovic's investments. (A-167-171) In dismissing Tesla's Fourth

Cause of Action, the District Court found no fiduciary duty existed, and to the extent a relationship existed, the SAC "suggest[ed] that it would be *Plaintiff* who owed a fiduciary duty to *Pelinkovic*, not vice versa." (emphasis in original). (A-172-173) As to Tesla's Fifth Cause of Action for promissory estoppel, the District Court found that Tesla failed to establish a "clear and unambiguous promise." (A-173-174) In dismissing Tesla's Sixth Cause of Action for unjust enrichment, the District Court found that the claim could not survive where a plaintiff fails to explain how the claim is not duplicative of the other causes of action, and that Tesla made "no effort to provide any basis for his [claim] . . . independent from the basis for his joint venture/partnership claims." (A-174) The District Court, having dismissed the first six causes of action, found no creditor-debtor relationship between Tesla and Pelinkovic and dismissed the Seventh to Ninth Causes of Action against all Defendants. (A-174-175) The Court then denied Tesla's request for leave to amend, finding that Tesla already amended his Complaint once, and "because many of the factual allegations already contained in the SAC *undermine*, rather than enhance, Plaintiff's claims . . . further amendment would be futile." (emphasis in original) (A-175)

Thereafter, on September 16, 2025, Tesla filed a Notice of Appeal. (A-177-179)[4]

SUMMARY OF THE ARGUMENT

Tesla's appeal should be denied because the District Court correctly dismissed his claims under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Tesla's allegations, even when viewed in the light most favorable to him, are conclusory, speculative, and unsupported by sufficient factual detail to meet the pleading standards required by *Twombly* and *Iqbal*.

Tesla failed to establish the existence of a partnership or any actionable breach by Pelinkovic. As the District Court correctly concluded, the SAC: (i) fails to allege facts from which one can plausibly infer the intent to form a partnership or joint venture; and (ii) fails to establish the exercise of joint management and control over

[4] Defendant-Appellees would like to respectfully note that Plaintiff-Appellant takes significant liberties with the facts in his Brief, frequently asserting details that are not supported by the allegations in the SAC. For instance, on page 7, Tesla alleges for the first time that he agreed to backstop any losses that "may occur up to $5,000,000," and that Tesla "would face the risk of loss." On page 8, Tesla asserts, without prior mention, that he was "responsible for the security of the cryptocurrency holdings." On page 9, Tesla further alleges, without support, that "Tesla did not want to risk massive losses that he was concerned may have ensued in the wake of a given outcome." Additionally, on page 10, Tesla claims, again without support, that "Pelinkovic took a series of steps to avoid the debt he knew was owed to Tesla" and that "[c]ryptocurrency value had skyrocketed in those three weeks—liquidation events occur when cryptocurrency value falls." These are merely a few examples of the liberties taken on the facts, all of which further undermine the credibility of Tesla's claims.

Pelinkovic's investments. Tesla's repeated efforts to introduce unsupported factual assertions in his Brief—such as elaborations as to the "backstop" arrangement and his responsibility as to the security of the cryptocurrency holdings—are contradicted by the facts as pled in the SAC and amount to nothing more than legal conclusions.

Further, the SAC fails to establish that a "close personal relationship" gave rise to a fiduciary duty on the part of Pelinkovic to Tesla. In fact, given Tesla's allegations regarding his extensive knowledge, experience, and success, and role as alleged "advisor" in the purported cryptocurrency venture, the District Court properly concluded that to the extent a close personal relationship existed between the parties giving rise to a fiduciary duty, the SAC suggested that it would be Tesla who owed the duty to Pelinkovic.

Regarding Tesla's promissory estoppel claims, the District Court correctly concluded that Tesla failed to establish a "clear and unambiguous promise." An oral promise will not be enforced on promissory estoppel grounds unless it is unconscionable to deny it, and as the District Court correctly concluded, the SAC fails to even hint—let alone made a clear and unambiguous promise—to enter into a business relationship pursuant to which they would share in profits and losses. Tesla's allegations and his arguments in his Brief regarding his unjust enrichment claim fare no better, where the District Court saw no reason for Tesla to be entitled to 50% of the profits Pelinkovic earned by investing his own money, and Tesla

wholly fails to address how his claim is not duplicative of the other causes of action. The remaining causes of action fail given Tesla's failure to establish a creditor-debtor relationship between himself and Pelinkovic.

Finally, Tesla's appeal for leave to amend is without merit. The District Court did not abuse its discretion in finding that any further amendment would be futile. Tesla had already been given an opportunity to amend and was on notice of Appellee's precise arguments in, not one, but two motions to dismiss. The District Court's denial of leave to amend was thus entirely appropriate and in accordance with established case law.

For these reasons, the dismissal with prejudice was warranted, and this Court should affirm the District Court's judgment.

STANDARD OF REVIEW

Defendant-Appellees do not dispute that this Court's review of the District Court's dismissal of the SAC pursuant to Fed. R. Civ. P. Rule 12(b)(6) is in the nature of a *de novo* review. *Giunta v. Dingman*, 893 F.3d 73, 78-79 (2nd Cir. 2018). However, in its Brief, Appellant has failed to adequately explain, beyond a cursory mention, the standards governing such review. These standards are set forth below.

When deciding a motion to dismiss the court must accept all well-pled allegations in the complaint as true and draw all inferences in favor of the non-moving party. *LaFaro v. N.Y. Cardiothoracic Group, PLLC*, 570 F.3d 471, 475 (2nd

Cir. 2009). However, a claim will survive a Rule 12(b)(6) motion only if the plaintiff alleges facts sufficient "to state a claim for relief that is plausible on its face." See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To state a plausible claim, plaintiff must adduce "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged" - a standard that requires "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). However, the court need not credit "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). A plaintiff cannot rely on mere "labels and conclusions" to support a claim. *Twombly*, 550 U.S. at 555. If the plaintiff's pleadings "have not nudged [his or her] claims across the line from conceivable to plausible, [the] complaint must be dismissed." *Id*. at 570; *see also Iqbal*, 556 U.S. at 679; Fed. R. Civ. P. 8(a)(2).

In addition, this Court generally reviews a district court's denial of leave to amend for abuse of discretion, but it reviews determinations of futility *de novo*. *Balintulo v. Ford Motor Co.*, 796 F.3d 160, 164 (2d Cir. 2015). If the proposed amendments would not cure the deficiencies in the complaint, or if the claims would still fail to meet the plausibility standard, leave to amend should be properly denied.

ARGUMENT

I. The District Court Properly Dismissed the Second Amended Complaint.

A. Tesla Failed to Plead the Existence of a Partnership or Joint Venture.

The First to Third Causes of Action of the SAC are premised upon a "partnership" between Tesla and Pelinkovic as to the purported cryptocurrency venture. However, the SAC fails to plausibly allege any specific facts respecting or concerning the existence of a partnership or joint venture between Tesla and Pelinkovic.

Under New York law, joint ventures are governed by the same legal rules as partnerships. *Scholastic, Inc. v. Harris*, 259 F.3d 73, 84 (2d Cir. 2001). In determining whether a relationship constitutes a legal partnership, New York courts require a plaintiff to allege facts to satisfy the following elements: (i) the parties' intent, whether express or implied; (ii) whether there was joint control and management of the business; (iii) whether the parties shared both profits and losses; and (iv) whether the parties combined their property, skill, or knowledge." *Hammond v. Smith*, 151 A.D.3d 1896, 1897 (4th Dep't 2017); *see also Mikhlyn v. Bove*, No. 08-cv-3367 (CPS)(RER), 2008 WL 4610304 (E.D.N.Y. Oct. 15, 2008) (finding the court may also consider contributions of capital and ownership of partnership assets when determining the existence of a partnership). As the District Court correctly noted, failure to plead any one element is fatal to a claim that there

was a partnership or joint venture, and the SAC fails to plausibly allege each element. *Zeising v. Kelly*, 152 F. Supp. 2d 335, 347–48 (S.D.N.Y. 2001).[5]

Further, it is well-settled that a plaintiff's failure to make a "capital contribution to [a] business [,] strongly suggest[s] that no partnership existed." *Kyle v. Ford*, 184 A.D.2d 1036 (4th Dep't 1992); *see also Oppedisano v. Zur*, No. 20-cv-5395 (VB), 2024 WL 967260, at *7 (S.D.N.Y. Mar. 5, 2024) citing *Hammond v. Smith*, 151 A.D.3d 1896, 1899 (4th Dep't 2017) ("Where there is undisputed evidence that a party never made a capital contribution to the business, such evidence strongly suggests that no partnership existed."). Given Tesla admitted he made zero capital contributions to the purported partnership (and all investments were Pelinkovic's own, paid by Pelinkovic for his own account), there was, and is, a strong presumption that no partnership existed. The conclusory allegations that are contained in the SAC do not come close to overcoming that strong presumption.

[5] Plaintiff-Appellant notes that *Zeising* is not the state of the law and aside from an agreement to share in losses, the remainder of the factors are considered as a balancing test and no factor is dispositive, yet failed to cite to a singly authority contradicting the District Court's finding or the ruling in *Zeising*. Regardless, the District Court thoroughly addressed each of the factors including the lack of intent, failure to show joint management and control, and the absence of the parties combining their property, skill, or knowledge, in dismissing Tesla's causes of action attributable to the purported partnership.

1. The SAC Does Not Plausibly Allege Intent to Form a Partnership.

"[T]he creation of a joint venture [or partnership] imposes significant duties and obligations on the parties involved," and therefore "the parties must be clear that they intend to form" such a fiduciary relationship. *Learning Annex Holdings, LLC v. Whitney Educ. Grp., Inc.*, 765 F. Supp. 2d 403, 412 (S.D.N.Y. 2011). The ultimate inquiry is whether the parties "have so joined their property, interests, skills, and risks" that their contributions became mutual 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*, 152 F. Supp. 2d at 348.

Here, the SAC alleges no facts demonstrative of such an intent. There is nothing in the SAC plausibly suggesting that there was a joinder of property, skills, and risks to establish a partnership. The SAC confirms that Tesla contributed zero capital to Pelinkovic's investments, a far cry from Tesla and Pelinkovic commingling their property and interests. Tesla identifies only "one or more" telephone calls and attributes to Pelinkovic the statement "I'm in! I'm in!" without alleging any negotiations, defined terms, or objective indicia of a partnership agreement. Pelinkovic put up all the capital, and at best, Tesla would provide his expertise and knowledge, but even that is questionable as Tesla claims that the sole purpose of the alleged venture was to "buy and hold" the cryptocurrency. Even assuming the truth

of the allegations, as absurd as they are, a partnership is not created even if two individuals decided to work together and form an alliance, particularly when one of them purchased all the assets. As Courts have stated, "[m]any persons and business work together seek and reach agreements to implement such cooperation, but most of these agreements do not create joint ventures [or partnerships]." *U.S. Airways Grp., Inc. v. Brit. Airways PLC*, 989 F. Supp. 482, 493 (S.D.N.Y. 1997); *see also N. Am. Knitting Mills, Inc.*, No. 99 Civ. 4643 (LAP), 2000 WL 1290608, at *5 (S.D.N.Y. Sept. 12, 2000) (same).

Tesla's conclusory allegations are a stark contrast to *Jobanputra v. Kim*, highlighted by the District Court (A-170-171), where the intent requirement was adequately pled in light of the many specific factual allegations indicating a conscious choice to form a partnership where the parties in *Jobanputra* engaged in negotiations, discussed profit split, required mutual agreement before making investments, and created documents with language reflecting their joint ownership of the cryptocurrency investments. No. 21 CIV. 7071 (ER), 2022 WL 4538201, at *1–2 (S.D.N.Y. Sept. 28, 2022). Here, Tesla has failed to indicate anything more than "one or more telephone calls," and has not even relayed a single text or statement other than Pelinkovic's alleged statement that he was "in." As the District Court noted, there is nothing in the SAC describing conversations between Tesla and

Pelinkovic in which they discussed, in non-conclusory terms, the details of their collaboration. (A-169)

Significantly, while Tesla admits Pelinkovic bought all the cryptocurrency personally with his own money, there is no allegation whatsoever as to what Tesla offered other than assistance with "cold storage" and providing some general advice about cryptocurrency assets. (SAC ¶¶ 53–54) It is dispositive that Tesla did not personally purchase any of the cryptocurrency with his own funds. In this regard, "a person [] who has no proprietary interest in a partnership except to share profits as compensation for services is not a partner. . ." *Impastato v. Di Giralomo*, 117 Misc.2d 789 (Sup. Ct. Kings Cnty. 1976); *Allen Chase & Co. v. White, Weld & Co.*, 311 F. Supp. 1253, 1259 (S.D.N.Y. 1970); *Moscatelli v. Nordstrom,* 40 A.D.2d 903, 337 N.Y.S.2d 575 (1972). Tesla's offer to "backstop" losses is illusory, and as the District Court noted, did not constitute anything more than a conclusory assertion that Tesla and Pelinkovic had an unmaterialized agreement to share losses (or as Tesla now alleges for the first time in his Brief to absorb losses up to $5,000,000). *See Selective Beauty SAS v. Liz Claiborne, Inc.*, No. 09-CV-9764, 2010 WL 11685041, at *7–*8 (S.D.N.Y. May 27, 2010).

Further, while Tesla alleges he monitored developments and changes in the technology as well as for the macro environment, he wholly fails to allege a single conversation between himself and Pelinkovic regarding developments, changes in

the technology, election cycles, or otherwise that may have impacted cryptocurrency throughout the approximately 4 years that the purported partnership was active (not that this would have been sufficient given the remaining allegations and the lack of capital invested).

If the allegations in the SAC were to be accepted as true, this would demonstrate that Tesla was acting as an investment advisor as defined in 15 U.S.C. § 80b-2, as he was engaged in the business of advising Pelinkovic as to the advisability of investing in securities for compensation. However, the SAC does not allege that Tesla was licensed with the SEC, and indeed, no record of a license can be found on the Investment Advisor Public Disclosure database. If a licensed investment advisor or broker-dealer attempted to obtain as much as 50% of the gains from a client, the SEC would commence enforcement proceedings against the advisor or broker, particularly in a case like this when Tesla provided no written disclosures to Pelinkovic. At most, stock and cryptocurrency advisors typically receive either a fixed fee or a very small percentage as a form of compensation (between 0.5 to 2%). Yet, Tesla, who has not alleged any of the qualifications of an investment advisor or broker dealer (not even a degree in finance or related college degree), insists on an equal share of the gains on Pelinkovic's cryptocurrency investments, despite Pelinkovic taking all of the risk. No reasonable investor would agree to relinquish as much as 50% of the gains from the appreciation of his own

assets, particularly when they could hire a licensed advisor for a *de minimis* fixed fee.

As the District Court correctly noted, the SAC contains no allegations suggesting an intent to commingle property, contributions, or fate—an omission that is fatal under governing law. (A-168-169) Tesla's offer to "backstop" losses did not rise to the indicia of the parties' intent to join their property, interests, skills, and risks, but as Tesla described in his SAC served to allay Pelinkovic's fears that he would lose money by investing in cryptocurrency. *See Hanson v. Hanson*, No. 18-CV-695, 2019 WL 935127, at *8 (S.D.N.Y. Feb. 26, 2019) ("a plaintiff must allege facts "that suggest[] either an express or an implied intent to . . . comingle property, contributions, and fate"). Further clarification of Tesla's offer to "backstop" losses in any new amended pleading, would not cure this deficiency.

Tesla relies on the parties' "first" investment involving 8 ENERGY BARS and their prior course of dealings as evidence of an intent to form a partnership. That reliance is misplaced. The "first" investment is unrelated to this action, and the alleged facts undermine—rather than support—Tesla's claims. According to the SAC, in that "first" investment, Pelinkovic made an actual cash investment into the 8 ENERGY BARS business, and when the investment later failed, the parties shared the resulting losses. By contrast, Tesla cannot point to a single cash contribution that he made in connection with the purported cryptocurrency partnership.

Tesla references Pelinkovic's participation in a 2019 competition in Poland, during which Pelinkovic allegedly paid for Tesla's flight and accommodations, as evidence of a practice whereby Pelinkovic covered Tesla's travel expenses and he assisted him as a friend. However, the SAC itself acknowledges that Tesla accompanied Pelinkovic to Poland not merely for support, but also "to train" for the competition, suggesting that Tesla participated as part of Pelinkovic's team in preparation for the event. Further, the SAC alleged that Tesla frequently provided Pelinkovic with free advice, including assisting with Pelinkovic's gym, and training with Pelinkovic's employees and students—activities that fell squarely within the realm of friendship—none of which have anything to do with the alleged cryptocurrency partnership and are offered, rather disrespectfully, to simply distract the court's attention.

Tesla also references various out-of-pocket expenses, including airfare from Sweden to New York, the cost of an Airbnb, and meals allegedly paid for during that trip. Notably, however, the SAC fails to allege any specific amounts for these purported expenses, instead referencing them only in vague and conclusory terms. The absence of concrete dollar figures further underscores the speculative nature of Tesla's claims and precludes any inference that these alleged costs reflect a meaningful financial contribution to, or investment in, the purported venture. Tesla's

remaining references to Pelinkovic's "post-lawsuit conduct" and "state of mind" are likewise nothing more than speculative and conclusory allegations.

2. The SAC Failed to Allege a Contribution of Property, Effort, Skill, or Knowledge.

Given the lack of any financial contribution to the alleged venture, which shows there was no oral partnership, Telsa attempts to manufacture some contribution by alleging in summary general terms that he assisted with selecting the cryptocurrency assets and generally offered his skill or knowledge to Pelinkovic. Notably, Tesla did not even identify a single cryptocurrency Pelinkovic purchased, *e.g.*, BitCoin, Dogecoin, Litecoin, Ethereum, Solana. In fact, Tesla fails to even identify how much money was initially invested in the cryptocurrency, only asserting that between $3,000,000 and $5,000,000 were invested. Despite Tesla's portrayal of his contribution of knowledge and role as an advisor, Tesla further failed to cite to a single conversation after Pelinkovic's purchase of the cryptocurrency regarding his supposed monitoring of the cryptocurrency, changes with respect to the "macro environment," or the anticipated impact on cryptocurrency as an asset class as summarily alleged in the SAC. Respectfully, even if there were, offering general advise about cryptocurrency does not automatically make the recipient of that information a "partner" (even assuming he or she took that advice).

In fact, after Pelinkovic's initial purchase of the cryptocurrency, and Tesla's trip to assist with "cold storage," Tesla did not allege a single conversation, email,

or text, between the parties related to the cryptocurrency until September 2024, when Tesla sought to terminate the purported partnership. It strains credulity that, if Tesla's experience and knowledge were central to the alleged partnership in light of Pelinkovic's alleged inexperience, that there was not a single correspondence between the parties regarding the cryptocurrency assets for several years.

3. The SAC Does Not Demonstrate Joint Control and Management.

A plaintiff must also allege facts sufficient to show joint control and management of the business. *Ardis Health, LLC v. Nankivell*, No. 11-cv-5013 (NRB), 2012 WL 5290326, at *5–6 (S.D.N.Y. Oct. 23, 2012). The allegations in the SAC did not contain any specifics about how Tesla had any control over the purported partnership or what each partner was supposed to contribute to same. Absent from the SAC is what Tesla did other than the vague assertions that he was to contribute his knowledge and expertise in cryptocurrency, without any indication as to what cryptocurrencies were purchased or what advice was provided. Critically, the partnership was supposedly formed several years ago, so Tesla would be in a position to state exactly what he did as far as management was concerned, and as noted above, Tesla asserted no more than a single trip to New York to meet with Pelinkovic and the provision of some IT assistance for assets that Pelinkovic had already purchased. These legal conclusions, devoid of facts, are clearly not sufficient under New York law. *Mendelson v. Feinman*, 143 A.D.2d 76 (2d Dep't 1988) (court

held that there was no joint venture when plaintiff "failed to allege that he had any control over the series of joint ventures.").

The District Court was correct in finding that Tesla's assertion that his advice was tantamount to "control" was implausible on its face, and even less plausible given that Pelinkovic did not follow Tesla's advice; particularly, since Pelinkovic entered into an "undisclosed leverage position" without advising Tesla. (A-171) The fact that Pelinkovic would have needed to advise Tesla of any positions, and Tesla could not independently review the investments, indicated that Pelinkovic, alone, held authority over the investments made with his own capital. Tesla's "new" allegations in his Brief that he was responsible for the "security" of the cryptocurrency is equally as confounding, given that Pelinkovic was able to enter into the "undisclosed leverage position" without Tesla's knowledge.

4. The SAC Fails to Allege the Parties Agreed to Share Profits and Losses.

Tesla does not allege, and cannot allege, that he ever received any profits from Pelinkovic's cryptocurrency assets, nor that he ever shared in any losses. The SAC concedes that the cryptocurrency was paid for by Pelinkovic and so those assets are titled in his name, not in a partnership name. Tesla, again, cannot point to more than the single telephone call to show that the parties purportedly agreed to split the profits and divide the losses. Critically, the SAC does not plausibly allege that Tesla ever bore any actual risk of loss. Ownership of the investments, custody of the assets,

and control of any proceeds are alleged to have remained entirely with Pelinkovic. Yet, Tesla now alleges in the Brief, for the first time, that he "took all the risk and bore all the costs" and agreed to backstop losses incurred "up to $5,000,000" to make "Pelinkovic whole," when all the assets were purchased with Pelinkovic's capital. (Dkt. No. 20, Br. pgs. 25, 33) Allegations that a defendant would later remit an undefined "share" of profits, without factual detail or supporting conduct, amount to no more than an unenforceable expectancy.

As the District Court correctly emphasized, this case stands in clear contrast to *Jobanputra v. Kim*, where the complaint alleged a specific profit split, mutual approval of trades, and documentary evidence reflecting shared ownership. (A-170-171) The absence of comparable allegations here confirms that the SAC fails to plausibly allege an agreement to share profits and losses, as required by New York law. No. 21-CV-7071, 2022 WL 4538201, at *4–*5 (S.D.N.Y. Sept. 28, 2022); *see also Artco, Inc. v. Kiddie, Inc.*, No. 88 Civ. 5734 (MJL), 1993 WL 962596, at *10 (S.D.N.Y. Dec. 28, 1993) (If "simply expending efforts to set up a venture were sufficient to satisfy the essential element of sharing of losses, the requirement could nearly always be satisfied . . ."); *Slabakis v. Schik*, 164 A.D.3d 454, 455 (1st Dep't 2018) (it is "fatal to plaintiff's claim that a partnership was created" where "plaintiff fails to indicate the losses he would be jointly and severally liable for" or where prospective losses are paid solely from defendant's share of proceeds); *In re Cohen*,

422 B.R. 350, 377 (E.D.N.Y. 2010) (where a plaintiff "only stands to lose the individual services [he] invested in that business endeavor, [he] is not incurring a shared loss as required by a joint venture agreement.")

As described above, Tesla's reference to the "first" investment and prior course of dealings, which have no bearing on the cryptocurrency "venture," are equally unavailing where Pelinkovic contributed an actual cash investment to 8 ENERGY BARS, signifying an intent to form a partnership, contribution of property, and an agreement to share in profits and losses.

B. Tesla Should Not Be Permitted to Proceed on a Simple Contract Theory.

Tesla should not be permitted to salvage this appeal by recasting his dismissed partnership theory as a "simple contract" claim. The SAC did not adequately plead a standalone contract theory separate from the alleged partnership or joint venture, and Tesla did not raise this alternative in his opposition to the Motion to Dismiss. Tesla may not raise a new legal theory for the first time on appeal to avoid the consequences of his pleading choices below, particularly where the purported contract would suffer from the same fatal defects identified by the District Court: lack of consideration, mutual assent, and intent to be bound. *Greene v. United States*, 13 F.3d 577 (2d Cir. 1994) ("it is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal . . . disregarded when . . . necessary to remedy an obvious injustice"); *Missigman v. USI Northeast,*

Inc., 131 F.Supp.2d 495, 506 (S.D.N.Y. 2001) ("If an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract."). Further, Tesla had an opportunity to amend his Complaint with the benefit of Defendant-Appellee's Motion to Dismiss.

C. Tesla Failed to Adequately Plead a Promissory Estoppel Claim.

Under New York law, a plaintiff seeking a cause of action for promissory estoppel must prove the following elements: (i) a clear and unambiguous promise; (ii) reasonable and foreseeable reliance on that promise; and (iii) injury to the relying party as a result of the reliance." *Kaye v. Grossman*, 202 F.3d 611, 615 (2d Cir. 2000). The District Court correctly concluded that Tesla failed to establish the first element of a clear and unambiguous promise, as the SAC is completely devoid of any allegation that Pelinkovic made a clear and unambiguous promise to enter into a business relationship where he and Tesla would share in the profits or expenses. (A-173)

Further, "[a]n **oral** promise will not be enforced on [promissory estoppel] ground[s] unless it would be unconscionable to deny it." *See Weinstein v. Trump*, No. 17 Civ. 1018 (GBD), 2017 WL 6544635 (S.D.N.Y. Dec. 21, 2017) *quoting Steele v. Delverde S.R.L.*, 662 N.Y.S.2d 30, 31 (1st Dep't 1997). The singular phone call between Tesla and Pelinkovic wherein Pelinkovic noted that he was "in," at best, only evinced a desire to consummate a transaction and was not indicative of a clear

and ambiguous promise. *See Henneberry v. Sumitomo Corp. of Am.*, 415 F. Supp. 2d 423, 444 (S.D.N.Y. 2006) ("[A]bsent a distinct communication to be bound, a statement by one party to another that evinces the speaker's desire to consummate or further a commercial transaction does not generally constitute a clear and unambiguous promise."); *see also Stein v. Gelfand*, 476 F. Supp. 2d. 427 (S.D.N.Y. 2007) (dismissing a promissory estoppel claim where the conversation upon which the purported partnership was based was brief and so many key terms were left for a future date, not to mention the improbability that defendant gave plaintiff an equal role in the management of the business for a 20% investment.) Additionally, Tesla has failed to allege facts—just legal conclusions—that he relied on a promise or how that reliance caused injury.

D. Tesla Failed to Adequately Plead an Unjust Enrichment Claim.

The District Court correctly dismissed Plaintiff-Appellant's unjust-enrichment claim because the claim is derivative of the same failed partnership/joint-venture theory and the SAC contains no factual allegations showing that Pelinkovic was unjustly enriched at Tesla's expense. (A-174) Unjust enrichment under New York law requires both that the defendant received a benefit and that retention of that benefit would be "against equity and good conscience" because it was obtained at the plaintiff's expense. *See Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 179–80, 944 N.E.2d 1104 (2011). The SAC pleads neither element.

The SAC does not allege that Tesla transferred money, property, cryptocurrency, or any other asset to Pelinkovic. Pelinkovic invested his own funds, held the cryptocurrency in accounts in his own name, and kept any profits. The allegations that Tesla provided advice or informal assistance—without an allegation of a bargained-for transfer, a demanded-and-refused payment, or any transfer of property—do not show that Pelinkovic was enriched by Tesla or that equity requires restitution. New York law rejects unjust-enrichment claims that rest on mere background cooperation or alleged expectations of future reward absent a transfer or other circumstances making the enrichment inequitable. *Cambridge Cap. LLC v. Ruby Has LLC*, 565 F. Supp. 3d 420 (S.D.N.Y. 2021).

The District Court correctly relied on, and Tesla's Brief wholly fails to counter, the principle that an unjust-enrichment claim cannot survive where it is merely duplicative of other causes of action and the SAC fails to explain how it is distinct. *See Campbell v. Whole Foods Mkt. Grp., Inc.*, 516 F. Supp. 3d 370, 394 (S.D.N.Y. 2021); *see also Valcarcel v. Ahold U.S.A., Inc.*, 577 F. Supp. 3d 268 (S.D.N.Y. 2021). Tesla's unjust-enrichment theory is grounded in the same alleged partnership/joint-venture facts that underpin his other failed claims; the SAC contains no independent facts (*e.g.*, a specific transfer, an accounting showing loss to Tesla, or an allegation that Pelinkovic holds property that equity should treat as Tesla's) that would transform the claim into a standalone restitution theory.

E. Tesla Is Not a "Creditor" Under the New York Creditor & Debtor Law.

Because Tesla has not plausibly alleged any enforceable right to payment, he is not a creditor within the meaning of the statute, and his fraudulent conveyance claims necessarily fail. To assert such a claim, Tesla must first establish the existence of an underlying relationship giving rise to a right to payment. That would require Tesla to plausibly allege the formation of a partnership, the existence of a fiduciary duty owed to him by Pelinkovic,[6] a breach of that duty, and resulting damages rendering Tesla a creditor of Pelinkovic. Having failed to adequately plead any of these predicates, Tesla cannot satisfy the statutory requirement that he be a creditor, and his fraudulent conveyance claims fail as a matter of law.

II. Leave to Amend Is Not Warranted.

The District Court acted well within its discretion in dismissing the SAC with prejudice. Tesla should not be permitted leave to amend because he was afforded a full and fair opportunity to plead his claims, and any further amendment would be futile. From the outset, Tesla's claims were governed by well-settled pleading standards requiring specific, nonconclusory factual allegations sufficient to state a

[6] Defendant-Appellees note that Plaintiff-Appellant's Brief wholly fails to address the District Court's dismissal of his breach of fiduciary duty claim. That is significant given that a partnership entails a fiduciary relationship between the parties. In any event, the District Court aptly noted that even if the relationship between the parties gave rise to a fiduciary duty, the SAC suggests that Tesla, who had knowledge, experience, and success in cryptocurrency, would owe the duty to Pelinkovic, a "complete novice." (A-172)

plausible cause of action. When Tesla filed his initial Complaint, he was obligated at that time to plead the factual basis for the alleged partnership and his purported rights. The subsequent removal of this action to the Southern District of New York did not alter that burden. This is, again, another distraction for the Court given that Tesla had the opportunity to, and did in fact, amend his complaint twice in federal court.

Pelinkovic then moved to dismiss the Complaint, raising substantially the same arguments advanced here and placing Tesla squarely on notice of the deficiencies in his claims. That motion set forth in detail the precise factual allegations that were needed to cure the gaping defects in the pleading. Tesla nonetheless amended his pleading and, despite adding numerous new allegations and extraneous detail, failed to remedy the core deficiencies identified by Pelinkovic. Rather than alleging concrete facts concerning the formation, terms, or scope of any partnership, the First Amended Complaint (and then later the SAC) relied largely on conclusory assertions and irrelevant distractions, while still omitting essential allegations necessary to state a viable claim. Given that the events at issue were uniquely within Tesla's knowledge, he had ample opportunity to plead what he purportedly did, what was agreed upon, and how any enforceable rights arose—but

he failed to do so. Where, as here, a plaintiff is on notice of fatal defects and still cannot plead viable claims, further amendment would be futile.[7]

As the District Court properly observed, "many of the factual allegations already contained in the SAC undermine[d], rather than enhance[d], Plaintiff's claims" (A-175) (emphasis in original). The Second Circuit has likewise made clear that "where nothing in the record suggests that another complaint could remedy the legal deficiencies, the district court does not abuse its discretion in denying leave to amend." *In re Liberty Tax, Inc. Sec. Litig.*, 828 F. App'x 747, 754 (2d Cir. 2020); *see also Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (affirming denial of leave to amend on futility grounds where the plaintiff "suggested no new material she wishes to plead" and "[t]he problem... is substantive."). Under these circumstances, permitting yet another amendment would merely prolong litigation without any realistic prospect of stating a viable claim.

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[7] Even at this late stage, Plaintiff-Appellant does not even argue what specifics he could add to a Third Amended Complaint other than generally information about "the common circle in the Brazilian Jiu Jitsu community and the power dynamics that guide relationships in it." Even if he were permitted to try to raise new allegations that he did not present to the District Court, which he cannot, clearly those general statements that may apply to martial arts have no bearing on an alleged cryptocurrency venture or that it would involve a fiduciary duty between the parties (a claim Tesla has apparently now abandoned).

CONCLUSION

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

Dated: New York, New York
December 15, 2025

Respectfully submitted,

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Dated: New York, New York
December 15, 2025

/s/Nicholas Caputo
Nicholas R. Caputo