SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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RICHARD D. SEGAL,

Plaintiff,

v.

RETHINK CAPITAL PARTNERS, INC., DOUGLAS F. RAY, JONATHAN L. WINER, MICHAEL WALDEN, SHAK CHOWDHURY, and ANDERSON TAX, LLC,

Defendants.

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Index No.: 74512/2024

Motion Seq. No. 1

DEFENDANT ANDERSEN TAX LLC'S
REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF ITS
MOTION TO DISMISS PLAINTIFF'S COMPLAINT

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Andersen Tax LLC ("Andersen") respectfully submits this reply memorandum of law in further support of its motion to dismiss the Complaint pursuant to CPLR 3211(a)(1) and (a)(7) (NYSCEF Doc. No. 46) (the "Motion").[1]

PRELIMINARY STATEMENT

As discussed in the Moving Brief, Plaintiff's claims against Andersen – a third party dragged into an intra-partnership dispute as to the valuation of Plaintiff's partnership interest – must be dismissed for failure to state a cause of action and because they are barred by documentary evidence. Specifically, Plaintiff's third-party beneficiary claim is foreclosed by the express language of the Engagement Agreement, his aiding and abetting and conspiracy claims fail to allege numerous required elements, and his declaratory judgment claim should be dismissed because he does not identify any justiciable controversy as to Andersen and has an adequate remedy (if proven) at law. Alternatively, if the Engagement Agreement is somehow interpreted as permitting Plaintiff to assert rights thereunder, all of Plaintiff's claims must be dismissed pursuant to that agreement's forum selection clause, which requires that they be brought in Delaware.

Plaintiff's attempt to rehabilitate his claims in the Opposition fails for the reasons set forth herein and in the Moving Brief, and the Court should dismiss the claims with prejudice.

First, notwithstanding that the Complaint invokes the Engagement Agreement to assert Plaintiff's supposed third-party rights *under that agreement*, the Opposition begins with the remarkable (and utterly meritless) assertion that the Court may not consider the language of that

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to them in Andersen's Memorandum of Law in Support of Motion to Dismiss Plaintiff's Complaint (NYSCEF Doc. No. 47) ("Moving Brief"). Plaintiff's Memorandum of Law in Opposition (NYSCEF Doc. No. 52) is referred to herein as "Opposition or "Opp."

agreement because it is "not integral" to the Complaint. Plaintiff then attempts to salvage his nonviable third-party beneficiary claim based on a tortured reading of the Engagement Agreement that overlooks the express language precluding his claim.

Second, Plaintiff's claim for aiding and abetting the RCP Defendants' alleged breaches of fiduciary duty fails, because Plaintiff cannot identify any non-conclusory allegations to demonstrate Andersen's actual knowledge of, and substantial assistance in, those alleged breaches.

Third, as to his civil conspiracy claim, Plaintiff abandons the theory in his Complaint based on a conspiracy to commit fraud, instead shifting to a theory that Andersen conspired with the RCP Defendants to engage in breaches of fiduciary duty. As set forth below, however, that claim is foreclosed as a matter of law because Andersen does not owe (and is not alleged to have owed) a fiduciary duty to Plaintiff, and so cannot be liable for a conspiracy to breach fiduciary duties.

Fourth, the Opposition does not articulate any colorable basis for a declaratory judgment claim against Andersen, because Plaintiff has no legal right to require Andersen to do anything, and he has an adequate remedy at law (if he can establish viable claims) in the form of money damages.

Finally, in arguing that his claims should not be dismissed based on the forum selection clause in the Engagement Agreement, Plaintiff blatantly ignores the express language therein requiring that any claims *relating to* the agreement or *the work performed by Andersen thereunder* be brought in Delaware.

ARGUMENT

I. THE ENGAGEMENT AGREEMENT IS PROPERLY CONSIDERED ON THIS MOTION.

Faced with the express language of the Engagement Agreement precluding his third-party beneficiary claim, Plaintiff tries to get around that dispositive obstacle by arguing that the Court

may not consider the Engagement Agreement on a motion to dismiss. (Opp. at 4-5.) That argument is patently incorrect and contrary to black letter law. As discussed in the Moving Brief, "documentary proof . . . and any other papers or proof having an evidentiary impact in the particular situation may generally be considered on any CPLR 3211 motion regardless of its ground." Siegel, N.Y. Prac. § 257 (6th ed.); *see also 7 Mansion, LLC v. Calvano*, 226 A.D.3d 730, 732 (2d Dep't 2024) (contracts may be documentary evidence warranting dismissal under CPLR 3211(a)(1)).[2] In the context of third-party beneficiary claims, as one would expect, courts regularly consider the underlying contract to determine whether the plaintiff may assert third-party beneficiary rights (*see* Moving Br. at 11-12)—cases not addressed by Plaintiff in the Opposition. That is because a plaintiff cannot escape the plain language of a contract he seeks to invoke simply by not attaching it to his complaint, as Plaintiff seeks to do here.[3]

Plaintiff further argues that the Court may not consider the Engagement Agreement without considering other materials outside the Complaint and converting the motion to one for summary judgment, and that such a motion would need to be denied as premature. (Opp. at 5-6.) As discussed *supra* and in the Moving Brief, however, that argument is simply wrong: it is appropriate for the Court to rule on Plaintiff's third-party beneficiary rights (or lack thereof) based on the express language of the Engagement Agreement at this stage of the proceedings.

Plaintiff's argument is also irrelevant because none of the other external materials submitted by him (*see* Opp. at 5) even remotely suggests that he is an intended third-party beneficiary of the Engagement Agreement. Indeed, the only piece of evidence Plaintiff relies upon

[2] Unless otherwise indicated, internal alterations, citations, and quotation marks are omitted from case citations.

[3] Plaintiff's argument that the Engagement Agreement does not "conclusively prove" he was not an intended third-party beneficiary (Opp. at 4) is similarly incorrect, as addressed *infra*, Section II.

to support his third-party beneficiary claim is an email from Plaintiff's son to an Andersen principal, which Plaintiff claims "proves Andersen knew Plaintiff was the intended beneficiary of the appraisal." (*Id.* (citing Schub Decl., Ex. 4).)[4] But even a cursory look at the email, which does not even mention Plaintiff, confirms it does no such thing. At most, it stands for the undisputed but irrelevant fact that the Valuation Report was valuing Plaintiff's interest in Rethink. Nothing in the email overrides the express (and ubiquitous) language of the Engagement Agreement making clear that the Valuation Report was being prepared for *Rethink* (not Plaintiff) for its business planning purposes, and that the agreement created no third-party rights.

Accordingly, the Court may (and should) consider the Engagement Agreement in ruling on Plaintiff's supposed rights thereunder, and may do so without converting the Motion to a summary judgment motion under CPLR 3211(d).[5]

II. PLAINTIFF'S BREACH OF CONTRACT CLAIM MUST BE DISMISSED.

Upon review of the Engagement Agreement, in turn, Plaintiff's breach of contract claim must be dismissed because the unambiguous language of the agreement forecloses his claim that he is an intended third-party beneficiary. (*See* Moving Br. at 10-12.) In the Opposition, Plaintiff argues that the Engagement Agreement shows an intent to benefit Plaintiff, but none of the provisions cited by Plaintiff makes such a showing. (*See* Opp. at 17-18.) To the contrary, the provisions reinforce that the Valuation Report was prepared for *Rethink* for its business planning

[4] The three other exhibits cited by Plaintiff address the proposition that Andersen purportedly committed oversights in its Valuation Report. (*See* Opp. at 5 (citing Schub Decl., Exs. 1-3).) None relates to whether Plaintiff is an intended third-party beneficiary of the Engagement Agreement.

[5] Plaintiff also argues that the Court may not consider the transcript of the January 6, 2025 conference submitted by Andersen in connection with the Motion. (Opp. at 4.) Andersen does not submit the transcript as evidence to support dismissal of Plaintiff's claims. Rather, the transcript merely illustrates the true nature of this dispute, in Plaintiff's counsel's own words, as "just com[ing] down to a valuation dispute between the partners."

purposes. And, more fundamentally, the mere fact that Plaintiff's partnership interest was being valued does not mean that the Engagement Agreement was intended to confer upon him the rights of a third-party beneficiary: the Engagement Agreement is crystal clear that it does not, but was instead entered into only to generate a report that would "allow *management* to make an informed decision." (EA, p.3 (emphasis added).)[6]

Contrary to Plaintiff's suggestion, the disclaimers in the Engagement Agreement are not "boilerplate." They are specific and numerous, leaving no doubt that no third-party rights were created. (See Moving Br. at 11-12 (citing EA, Engagement Terms, p.3, "No Third Party Rights"; *id.*, p.3, "Affiliates"; EA, p.3, "Deliverable"; EA, p.7, ¶ 5.) Nor is there any basis to override those provisions given that there is not, as Plaintiff suggests (Opp. at 18), "more specific language" in the Engagement Agreement demonstrating an intent to benefit him.[7]

III. PLAINTIFF'S AIDING AND ABETTING CLAIM MUST BE DISMISSED.

Plaintiff's claim against Andersen for allegedly aiding and abetting breaches of fiduciary duty by the RCP Defendants must be dismissed because the Complaint lacks any non-conclusory

[6] The Opposition ignores Andersen's arguments that, (a) to the extent New York law governs, the Engagement Agreement created no duty to compensate Plaintiff if the benefit of the contract was lost, and (b) to the extent Delaware law governs, Plaintiff does not (and cannot) allege that the Engagement Agreement was intended as a gift or in satisfaction of a pre-existing obligation. (*See* Moving Br. at 11 n.8.) Having waived his opposition to those arguments, Plaintiff's breach of contract claim should be dismissed on these independent grounds, as well.

[7] For these reasons, Plaintiff's reliance on *Crispo v. Musk*, 304 A.3d 567 (Del. Ch. 2023), is unavailing. Moreover, Plaintiff's argument that *Bromwich v. Hanby*, 2010 WL 8250796 (Del. Super. Ct. July 1, 2010)—which Andersen cited in the Moving Brief—somehow supports his position is meritless. While it is correct that *Hanby* noted a third-party beneficiary need not necessarily be named in the contract, the court went on to hold the plaintiffs had no third-party rights because the contract at issue "not only does not specifically mention [p]laintiffs," it also "contains no language indicating any intent to confer a benefit upon anyone other than" the contractual parties. *Hanby*, 2010 WL 8250796, at *2. So, too, is the case here.

allegations supporting Andersen's (i) actual knowledge of, or (ii) substantial assistance in, any alleged breach. (Moving Br. at 13-16.) The Opposition's arguments to the contrary fall short.

First, the Opposition seeks to establish actual knowledge through the same conclusory assertions as Plaintiff's Complaint. (*See* Opp. at 6.) But none of the factual allegations upon which the Opposition relies demonstrates Andersen's actual knowledge of any breach. Plaintiff seeks to bolster the conclusory allegation of actual knowledge in the Complaint's aiding and abetting cause of action by arguing that the cause of action incorporates by reference the Complaint's prior allegations. (Opp. at 7.) That argument is unavailing, because regardless of where in the Complaint one looks, Plaintiff's conclusory allegations do not demonstrate Andersen's actual knowledge of any alleged breach of fiduciary duty.

Plaintiff also attempts to refute Andersen's argument (Moving Br. at 14) that the Complaint alleges only constructive knowledge, which is insufficient to state an aiding and abetting claim. However, the very allegation upon which Plaintiff relies is a classic example of constructive knowledge. (*See* Opp. at 7 n.3 (citing Compl. ¶ 127 ("any appraiser would have known the projections were misleading and that the valuation was being done under the wrong valuation standard and wrong valuation date")).)

Second, the Opposition does not cure the Complaint's failure to allege facts showing Andersen substantially assisted in any alleged breach. In response to the case law holding that the performance of routine professional services on behalf of a client does not constitute substantial assistance (*see* Moving Br. at 15-16), Plaintiff points to cases purportedly holding that a third party may aid and abet a breach of fiduciary duty by "participating in an unreasonable valuation process" (Opp. at 7). But in each of those cases (Opp. at 7-9), the professional advisor was alleged to have had either a self-serving interest in the subject transaction or longstanding familiarity and

knowledge of the companies' financials to alert them to the fiduciaries' breaches. The Complaint does not allege either of those circumstances here.

IV. PLAINTIFF'S CIVIL CONSPIRACY CLAIM MUST BE DISMISSED.

As discussed in the Moving Brief, Plaintiff's claim for civil conspiracy based on an alleged conspiracy between Andersen and the RCP Defendants to defraud Plaintiff must be dismissed because the Complaint does not allege facts supporting an underlying tort of fraud, nor does it allege the additional elements showing a conspiracy. (Moving Br. at 16-18.) Recognizing that he is unable to plead an underlying fraud, Plaintiff now pivots from the fraud theory asserted in his Complaint to a theory that Andersen conspired with the RCP Defendants to "aid[] and abet[] a breach of fiduciary duty." (Opp. at 10.) Plaintiff's attempt to rehabilitate his conspiracy claim is unavailing.

As an initial matter, the Complaint does not allege that Andersen conspired with the RCP Defendants to commit a breach of fiduciary duty (*see* Compl. ¶ 132), and Plaintiff cannot amend his Complaint through the Opposition. *See MediaXposure Ltd. (Cayman) v. Omnireliant Holdings, Inc.*, 918 N.Y.S.2d 398 (Sup. Ct. N.Y. Cnty. 2010) ("[P]laintiff seeks to amend the complaint through an opposition brief, which is not permissible.").

Even if the Court is willing to consider Plaintiff's revised theory, his claim fails because, as discussed in the Moving Brief, a party that does not owe fiduciary duties to a plaintiff cannot be liable for conspiracy to commit a breach of fiduciary duty. (*See* Moving Br. at 16 n.13 (citing *Nat. Organics, Inc. v. Smith*, 824 N.Y.S.2d 764 (Sup. Ct. Nassau Cnty. 2006) (defendant "does not have a fiduciary duty to plaintiff and thus cannot commit conspiracy to breach same")); *see also Sands Bros. Venture Cap. II, LLC v. Metro. Paper Recycling, Inc.*, 127 N.Y.S.3d 258 (Sup. Ct. N.Y. Cnty. 2020), *aff'd*, 201 A.D.3d 421 (1st Dep't 2022) ("Plaintiffs' claim for conspiracy to breach a fiduciary duty must be dismissed because to sustain a claim of conspiracy, each defendant

must independently owe a fiduciary duty to the plaintiffs and there is no independent fiduciary duty owed by [defendant] to the Plaintiffs.").) Plaintiff does not even attempt to address this well-established law, and he does not cite a single case recognizing his new theory.

Finally, as set forth in the Moving Brief, even if Plaintiff could pursue a conspiracy claim against Andersen based on an alleged breach of fiduciary duty by the RCP Defendants, Plaintiff fails to allege facts showing that Andersen conspired with the RCP Defendants to commit such a breach. (*See* Moving Br. at 17-18.) Nothing in the Opposition alters that conclusion.

V. PLAINTIFF'S DECLARATORY JUDGMENT CLAIM MUST BE DISMISSED.

Plaintiff's declaratory judgment claim must be dismissed as against Andersen because (a) it does not involve a justiciable controversy for which a declaration could have any practical effect, and (b) money damages (if established) would provide Plaintiff with an adequate remedy. (*See* Moving Br. at 18-19.)

In the Opposition, Plaintiff argues that an "actual, adversarial controversy exists between Plaintiff, Andersen, and the Rethink Defendants" as to whether the Valuation Report satisfied Plaintiff's "right to a fair valuation by an independent expert under the Operating Agreement." (Opp. at 14.) But the Opposition, in fact, confirms that no justiciable controversy exists as to Andersen. While Plaintiff describes various purported flaws in the Valuation Report (*see id.* at 14-16), he does not explain how a declaratory judgment could affect Plaintiff's legal rights viz-a-viz *Andersen*. To the contrary, Plaintiff acknowledges that the declaratory judgment he seeks—that "Andersen's valuation of the Company is invalid" (Compl. ¶ 155)—would not have any effect on Andersen because he cannot compel Andersen to issue a new valuation. (*See* Opp. at 13 n.6.) And while Plaintiff is correct that the Operating Agreement provides for an independent valuation expert to value an outgoing member's interest, and he could potentially enforce that contractual

obligation against the RCP Defendants, Plaintiff has no ability to enforce it against Andersen, which is not a party to the Operating Agreement.

Plaintiff attempts to avoid this fatal flaw by asserting that "it is the Court, not Andersen, that will decide what relief is appropriate" (*id.* at 16), but Plaintiff overlooks that he has no legal basis for the very relief he seeks in his Complaint.[8] And the fact that Andersen "defend[s] its conduct generally and the Valuation Report specifically" (*id.*) does not mean a justiciable controversy exists, in the absence of any ability for the requested declaratory relief to change the legal relationship between the parties. Here, a declaration that the Valuation Report is "invalid" would not give Plaintiff any legal rights against Andersen.[9]

The Opposition also fails to circumvent the fact that there is no basis for a declaratory judgment where an adequate remedy at law exists (should Plaintiff be able to establish a cognizable legal claim). (*See* Moving Br. at 19.) Plaintiff's argument that he may plead his declaratory judgment claim as an alternative to money damages, and that dismissing the declaratory judgment claim would be inappropriate where the defendants deny any breach of contract (Opp. at 16-17), ignores well-established law upholding dismissal of declaratory judgment claims even where the breach of contract claim is dismissed. *See, e.g.*, *Watson v. Sony Music Ent., Inc.*, 282 A.D.2d 222, 223 (1st Dep't 2001) ("[W]e reject plaintiff's argument that [a] motion [seeking dismissal of a contract claim] undermines defendant's position that the breach of contract cause of action

[8] Plaintiff cites *Staver Co. v. Skrobisch*, 144 A.D.2d 449, 450 (2d Dep't 1988), for the proposition that a motion to dismiss does not present "the question of whether the plaintiff is entitled to a favorable declaration." (Opp. at 16.) But, as set forth in *Staver*, the proper question is whether Plaintiff has a cognizable legal claim for declaratory relief, which he does not here.

[9] Plaintiff's reliance on *Skyway Container Corp. v. Castagna*, 27 A.D.2d 542 (2d Dep't 1966), is misplaced. There, the court held that a landlord was a proper party to a declaratory judgment action between a lessee and sublessee "as it is one who would be affected by the judgment." *Id.* at 542. As discussed *supra*, that is not the case with Andersen here.

provides an adequate remedy. Whether there is merit to the cause of action for breach of contract is distinct from whether it adequately addresses plaintiff's claim for prospective relief."); *Idahosa v. MFM Contracting Corp.*, 2023 WL 2989631, at *6 (Sup. Ct. N.Y. Cnty. Apr. 14, 2023) ("[Plaintiff's] [declaratory judgment] cause of action is unnecessary and inappropriate because it has an adequate, alternative remedy in a cause of action for breach of contract. This is so even though the court has found its breach of contract claim to be insufficient.").

VI. ALTERNATIVELY, PLAINTIFF'S CLAIMS MUST BE BROUGHT IN DELAWARE.

As discussed in the Moving Brief, if Plaintiff is permitted to assert third-party beneficiary rights under the Engagement Agreement, all of his claims against Andersen must be dismissed because the forum selection clause in the Engagement Agreement requires any suit relating to the Engagement Agreement and the services Andersen performed thereunder to be brought in Delaware. (*See* Moving Br. at 19-21.)

In the Opposition, Plaintiff argues that if the forum selection clause is enforced, it should be limited to the breach of contract claim "because the other claims do not 'arise out of or relat[e] to' the Engagement [Agreement]." (Opp. at 20.) As an initial matter, Plaintiff's argument that his other claims do not "relate to" the Engagement Agreement is plainly incorrect. Courts routinely hold that such language covers tort claims related to the contract (*see* Moving Br. at 20-21), and Plaintiff does not address—much less attempt to distinguish—those cases. In any event, Plaintiff deliberately ignores the full language of the forum selection clause, which covers claims "arising from or relating to th[e] Agreement, a JAL *or the Work*." (EA, Engagement Terms, p.3 (emphasis added).) "Work", in turn, is defined as "any advice, information, work, services and/or deliverables" under the Engagement Agreement. (EA, Engagement Terms, p.1.) All of Plaintiff's claims plainly relate to (and indeed, arise from) the Work performed by Andersen, requiring the

claims to be brought in Delaware. In light of this express language, Plaintiff's desperate argument that the forum selection clause does not apply to claims based on alleged misconduct "after the Engagement Letter was signed" (Opp. at 20) is obviously incorrect.

Plaintiff next argues that enforcement of the forum selection clause would be "unreasonable" (Opp. at 20), but none of Plaintiff's contentions provides a basis for overriding the clause.

First, Plaintiff argues that he was not a signatory to the Engagement Agreement and therefore did not have an opportunity to negotiate the selection of Delaware as the forum for litigation. (Opp. at 20-21.) This is simply another example of Plaintiff trying "to cherry-pick certain provisions of a contract which it finds advantageous in making [his] claim, while simultaneously discarding corresponding contractual obligations which [he] finds distasteful"—a tactic routinely rejected by the courts. *NAMA Hldgs., LLC v. Related World Mkt. Ctr., LLC*, 922 A.2d 417, 431 (Del. Ch. 2007). Moreover, Plaintiff does not address the New York and Delaware cases making clear that a non-signatory seeking to enforce a contract as a third-party beneficiary is bound by any forum selection clause therein. (*See* Moving Br. at 19-20.)

Second, Plaintiff argues that requiring him to pursue his claims against Andersen in Delaware while also pursuing his claims against the RCP Defendants here would be inefficient and create the potential for inconsistent rulings. (Opp. at 21.) The mere fact, though, that Plaintiff would need to pursue his claims against Andersen in a separate action does not provide any legal basis for refusing to enforce the forum selection clause in the very contract he invokes as a basis for relief. And even if concerns regarding efficiency were relevant (which they are not), Plaintiff's assertion is entirely conclusory, and his purported concerns are overblown. Various options are available to minimize inefficiencies or the possibility of inconsistent rulings, including, *inter alia*,

coordinated discovery and/or a stay of any action brought by Plaintiff in Delaware pending resolution of this action.

Third, Plaintiff's argument that requiring him to pursue two different actions would impose a material hardship on him (Opp. at 21) is likewise irrelevant. Andersen is entitled to the benefit of its bargain in the Engagement Agreement. If courts were to decline to enforce a forum selection clause based on the whims of a non-signatory asserting third-party beneficiary status, contractual parties would lose the certainty provided by such clauses, leading to increased costs as non-signatories sought to force litigation in unanticipated forums.

And even if hardship were a relevant consideration—and it is not[10]—Plaintiff has not come close to showing that litigating the case in Delaware would present any overwhelming hardship to override the forum selection clause in the agreement under which he seeks relief. While Plaintiff asserts that he is "elderly" (he is 70 years old, *see* Compl. ¶ 43) and reportedly suffers from a "serious heart condition," that did not prevent him from bringing this lawsuit in New York, and he has provided no reason why either his age or alleged health condition would prevent him from likewise pursuing claims in Delaware, which is undeniably closer to his residence in Florida than New York. (*See* Compl. ¶ 16.)

[10] Plaintiff relies on *Aveta, Inc. v. Colon*, 942 A.2d 603 (Del. Ch. 2008), for the proposition that Delaware courts may decline to enforce a forum selection clause where litigation in that forum would impose a material hardship. (Opp. at 19.) Putting aside that *Aveta* applies Delaware law on *forums non conveniens*, whereas New York law governs that procedural issue here, *Aveta* is plainly inapposite. There, the court noted that the case was "one of those especially rare cases" where a forum selection clause should not be applied because the party opposing dismissal had "made a sufficiently particularized showing of overwhelming hardship[,]" due to another pending action in Puerto Rico. *Id.* at 605. Specifically, *inter alia*: "[l]itigating th[e] dispute [would] require consideration of Puerto Rican precedent—precedent that is recorded in Spanish, that is made in a Civil Law jurisdiction, and that is not always readily available"; "pervasive" language barriers would "present a problem with respect to access to proof" and would require retention of translators; and important questions of Puerto Rico public policy were at issue. *Id.* at 610, 614. Nothing remotely like those considerations is present here.

VII. PLAINTIFF SHOULD NOT BE GRANTED LEAVE TO AMEND.

The Opposition includes a catch-all request seeking permission to amend the Complaint should the Court dismiss Plaintiff's claims. (Opp. at 21-22.) However, Plaintiff has not provided any basis for curing the deficiencies in his claims. Accordingly, leave to amend should be denied. *See Idahosa v. MFM Contracting Corp.*, 2023 WL 2989631, at *6 (Sup. Ct. N.Y. Cnty. Apr. 14, 2023) ("Finally, the court denies MFM's request to replead its causes of action . . . . MFM does not indicate that it is able to cure the present deficiencies." (citing *Seven Seventeen Corp. v. JP Morgan Chase & Co.*, 32 A.D.3d 802, 802 (1st Dep't 2006))).

CONCLUSION

For the foregoing reasons, the Court should grant Andersen's Motion and dismiss Counts IV, V, VII, and VIII of the Complaint as against Andersen, with prejudice.

Dated: February 28, 2025
White Plains, New York

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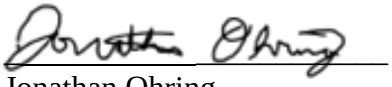
Certification Pursuant to Commercial Division Rule 17

I hereby certify that the foregoing Memorandum of Law complies with the word count limitation of Rule 17 of the Rules of the Commercial Division because it contains 4,198 words, excluding the caption, table of contents, table of authorities and signature block.

Dated: February 28, 2025



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