IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GREGORY A. STEVENSON, as a shareholder of CREDIT SUISSE GROUP AG on behalf of CREDIT SUISSE GROUP AG shareholders, Plaintiff, vs. RICHARD E. THORNBURGH, *et al*., Defendants.	Case No. 23 Civ. 4458 CM (SLC) Class Action
NICOLE LAWTONE-BOWLES, as a shareholder of CREDIT SUISSE GROUP AG on behalf of CREDIT SUISSE GROUP AG shareholders, Plaintiff, vs. RICHARD E. THORNBURGH, *et al*., Defendants.	Case No. 23 Civ. 4813 CM (SLC) Class Action

MEMORANDUM OF LAW IN SUPPORT OF
THE CREDIT SUISSE DEFENDANTS' MOTION TO DISMISS

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The Credit Suisse-affiliated entity and individual defendants identified in the notice of motion (the "Credit Suisse Defendants") hereby submit this memorandum of law in support of their motion to dismiss Plaintiff's Amended Complaint (ECF No. 60).[1]

PRELIMINARY STATEMENT

Plaintiff is a former holder of Credit Suisse Group AG securities, who claims to have lost money on his investment because the bank was allegedly mismanaged by its officers and directors—aided and abetted by its auditors at KPMG—for more than a decade. To try to recover for his investment loss, Plaintiff brings direct claims against 45 Defendants for (i) breach of fiduciary duty under Swiss law and (ii) violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). But the Complaint's most fundamental flaw (among many) is that there is no such thing as a direct shareholder claim for mismanagement or waste—whether under Swiss law, RICO, or otherwise—when the alleged harm is (as here) a decrease in security price.

Securities holders claiming a decrease in value as a result of corporate actors' alleged bad acts have two choices. First, they can bring a ***derivative*** claim based on the theory that the alleged bad actors are liable to the corporation for their mismanagement. And if they prevail, the corporation recovers and the shareholders benefit indirectly from that recovery. In fact, the very same counsel who represent Plaintiff in this case already filed that precise case on behalf of a different plaintiff in the Commercial Division. Of course, counsel only filed this direct case after

[1] In this brief, emphasis is added and internal citations and quotations are omitted unless otherwise noted. Per the Court's September 21, 2023 order (ECF No. 66), we understand ECF No. 60 is the operative Complaint. However, it remains our position that Exhibit A to ECF No. 60 is substantively different from the chart included in the Amended Complaint filed at ECF No. 33 (*see* September 20, 2023 Letter at ECF No. 61), making ECF No. 60 a Second Amended Complaint.

that earlier-filed derivative case was dismissed on *forum non conveniens* grounds. *See Cattan* v. *Rohner*, 2023 WL 2868337 (N.Y. Sup. Ct. Apr. 10, 2023).

Second, securities holders can bring a direct claim for ***securities fraud***, alleging that the supposed mismanagement was misrepresented or concealed, and that they purchased (or, in some states outside New York and as alleged here, held) securities in reliance on the misinformation, and suffered damages when the truth was revealed and the stock price dropped. That case has already been filed, too—and is pending before this Court as a consolidated putative securities class action. *See* Complaint, *Linhares* v. *Credit Suisse Group AG*, No. 23-cv-06039-CM (S.D.N.Y. Apr. 21, 2023), ECF No. 1.

There is no third choice, and so it is not surprising that Plaintiff's attempt to sue directly under Swiss law and RICO has almost as many pleading deficiencies as his Complaint has pages. The Complaint should be dismissed for several independent reasons.

First, as discussed in Section I, the RICO claims (Counts II and III) fail. To begin, under Second Circuit law, shareholders lack standing to sue directly under RICO for harms to the corporation; such claims must be brought derivatively. Plaintiff's RICO claim is also barred because it is a (barely) disguised claim for securities fraud. The "RICO Amendment" of the Private Securities Litigation Reform Act ("PSLRA") prohibits conduct involving securities fraud from being bootstrapped into a RICO claim. But that is precisely what Plaintiff attempts here. Moreover, even if Plaintiff had standing, and the PSLRA did not bar his claim, the Complaint still fails because it does not adequately plead the required elements of a RICO enterprise, operation or management of that enterprise by Defendants, or a pattern of racketeering activity. And without adequately alleging a RICO claim—and no pleaded facts to show an agreement—Plaintiff's RICO conspiracy claim also fails. Finally, both RICO claims are time-barred.

Second, as discussed in Section II, Plaintiff's Swiss law claim (Count I) fares no better, and should also be dismissed. As an initial matter, Plaintiff's Swiss law claim should be heard in Switzerland, where Credit Suisse Group AG was headquartered and governed and where key evidence is located. As noted above, ***Justice Masley of the Commercial Division dismissed a Swiss law securities holder's derivative complaint brought by Plaintiff's counsel on essentially the same facts earlier this year for these precise reasons***. Plaintiff's attempt to bring the same case in a different forum in order to get a different answer from a different judge should be rejected. And even if the Court did reach the merits, Plaintiff's Swiss law claim should still be dismissed because—as with RICO—a shareholder lacks standing to assert it directly. The claim also fails based on other clear principles of Swiss law: (i) Plaintiff lacks standing for the independent reason that he is not a registered shareholder; (ii) there is no such thing as a claim against entities for the Swiss law violations Plaintiff asserts; (iii) Plaintiff's claim against the individuals impermissibly relies on group pleading; and (iv) the claim is time-barred.

Third, as discussed in Section III, at least some of Plaintiff's claims should be dismissed because they are barred by shareholder discharge votes and a release from a class action settlement.

Finally, as discussed in Section IV, even if any of Plaintiff's claims were viable, the Complaint must be dismissed for lack of personal jurisdiction as to several individuals.

THE COMPLAINT'S ALLEGATIONS

To avoid duplication, most of the Complaint's allegations are discussed only once—in the Argument section, where they are applied to the law. This section provides a high-level overview.

Plaintiff is a former holder of Credit Suisse Group AG securities, who claims to have lost money on his investment. AC ¶ 79. He seeks to represent a class of "all Credit Suisse shareholders who held Credit Suisse common stock, including ordinary shares and A[merican] D[epositary]

S[hares] between October 22, 2013 and March 17, 2023, and suffered loss/damage . . . by continuing to hold or disposing of their shares." *Id.* ¶ 8. Defendants fall into four buckets:

- ***Credit Suisse Individual Defendants.*** Plaintiff names 29 individual Officers and Directors (primarily members of Credit Suisse Group AG's Boards). *Id.* ¶¶ 85–116. The Complaint pleads no facts as to nearly all of them.

- ***Credit Suisse Entity Defendants.*** Plaintiff names four Credit Suisse Group AG New York-based subsidiaries: Credit Suisse Holdings (USA) Inc.; Credit Suisse Securities (USA) LLC; Credit Suisse Capital LLC; and Credit Suisse Management LLC. *Id.* ¶ 1(a). Plaintiff does not name Credit Suisse Group AG, the entity in which he claims to have held securities, which is based in Switzerland. Instead, obviously for jurisdictional reasons, he just sued the U.S. subsidiaries, even though, as with the individuals, he alleges almost no facts about any of these entities.

- ***KPMG Individual Defendants.*** Plaintiff names 11 individuals (one who never even worked for KPMG), who are alleged to be partners and employees of KPMG LLP "who [allegedly] acted as Credit Suisse [Group AG's] statutory external auditors, accountants, consultants and advisors." *Id.* ¶¶ 1(c), 124–32.

- ***KPMG Entity Defendant.*** Plaintiff names KPMG LLP, which allegedly was Credit Suisse Group AG's statutory auditor. *Id.* ¶¶ 1(c), 6. As KPMG explains in its brief, however, Plaintiff has sued the wrong KPMG entity, because KPMG LLP never was Credit Suisse Group AG's auditor.

Plaintiff asserts claims: (i) for violation of Swiss law against all Defendants (Count I); (ii) for violation of RICO under 18 U.S.C. § 1962(c) against the Credit Suisse Entity and Individual Defendants, the KPMG Entity Defendant, and certain KPMG Individual Defendants; and (iii) for RICO conspiracy under 18 U.S.C. § 1962(d) against the Defendants named in the RICO claim.

ARGUMENT

I. THE COURT SHOULD DISMISS THE RICO CLAIMS

"Congress enacted [RICO] . . . to combat the infiltration into and corruption of America's legitimate business community by organized crime." *Procter & Gamble Co.* v. *Big Apple Indus. Bldgs., Inc.*, 879 F.2d 10, 14 (2d Cir. 1989); *see also U.S. Fire Ins. Co.* v. *United Limousine Serv., Inc.*, 303 F. Supp. 2d 432, 443 (S.D.N.Y. 2004) (McMahon, J.) ("Courts evaluating RICO claims

must attempt to be consistent with Congress's goal of protecting legitimate businesses from infiltration by organized crime."). This is not a RICO case, and the Court should dismiss the RICO claims (Counts II and III) for several independent reasons.

A. The RICO Claims Fail as a Matter of Law.

Plaintiff claims that he suffered harm when the value of the Credit Suisse Group AG securities he held decreased because of Defendants' alleged mismanagement. But there is no such thing as a direct claim by a shareholder for mismanagement based on a decrease in stock price. If these are really RICO claims (they are not), then they must be brought derivatively. And if they are really securities fraud claims (they are), then the PSLRA's RICO Amendment precludes them.

1. Plaintiff Lacks Standing to Bring RICO Claims Directly.

Plaintiff's theory of harm is clear—he claims from the outset that Defendants' alleged mismanagement caused the price of Credit Suisse Group AG securities to decline:

> Over the past decade, Credit Suisse's repeated scandals, criminal misconduct and the billions in accumulated fines and penalties caused . . . [a] los[s] [of] trust in Credit Suisse and ***its stock price to erode***. . . . ***The price of Credit Suisse common stock had already fallen from its October 22, 2013 high of $33.84 per share to single digits***. In mid-March 2023 . . . Credit Suisse reported ***a massive $8 billion loss in 2022 alone***, pushing the cumulative total losses and penalties to over ***$30 billion***. . . . This confirmation of the longstanding mismanagement of Credit Suisse ***drove the price of Credit Suisse common stock even lower***. . . The ***common stock fell to $2.01 per share*** on March 17, 2023 . . . .

AC ¶ 3. Plaintiff then includes two graphs within the Complaint's first 10 pages showing the decline in security price, *see id.* ¶¶ 4, 10, and the rest of the Complaint is littered with references to "damage" to "shareholders" based on the price drop. *See, e.g.*, *id.* ¶ 4 (alleging that misconduct caused $30 billion in losses to CS, "***damaging its shareholders as its stock declined to $2 per share***"); *id.* ¶ 39 (alleging "damag[e]" to "shareholders ***when the stock price declined***"); *id.* ¶ 323 ("Credit Suisse has been damaged here in terms of the loan losses suffered and the expenses

incurred in dealing with a catastrophe that never should have occurred, causing ***its stock price to decline and causing damage to Credit Suisse shareholders***."). Thus, the alleged harm was to the ***corporation***, and the alleged harm to shareholders was merely derivative.

But Second Circuit law could not be any clearer that "[a] shareholder generally does ***not*** have standing to bring an individual action under RICO to redress injuries to the corporation in which he owns stock. . . . Since the shareholder's injury, like that of the creditor, generally is derivative of the injury to the corporation, the shareholder's injury is not related directly to the defendant's injurious conduct." *Manson* v. *Stacescu*, 11 F.3d 1127, 1131 (2d Cir. 1993) (citing *Rand* v. *Anaconda-Ericsson, Inc.*, 794 F.2d 843, 844, 849 (2d Cir. 1986)).

Indeed, courts in this Circuit routinely dismiss for lack of standing direct RICO claims just like those here. *See, e.g.*, *Manson*, 11 F.3d at 1129–31 (dismissing direct claim alleging that defendants had "looted the Company to the point of bankruptcy in order to enrich themselves" because "[a] shareholder generally does not have standing to bring an individual action under RICO to redress injuries to the corporation in which he owns stock"); *Rand*, 794 F.2d at 844–849 (dismissing direct RICO claim brought by "shareholders who allege that the company's collapse was caused by actions of the several defendants" because "[t]he legal injury, if any, was to the firm" since "[a]ny decrease in value of plaintiffs' shares merely reflects the decrease in value of the firm as a result of the alleged illegal conduct"); *Palatkevich* v. *Choupak*, 152 F. Supp. 3d 201, 215–17 (S.D.N.Y. 2016) (McMahon, J.) (granting summary judgment on direct RICO claim filed by shareholder based on defendant's diversion of company funds because "[h]arms that are derivative—in that the injurious act merely causes a diminution in the value of a shareholders' stock—do not meet the proximate cause standard for standing required under RICO"); *Prichard* v. *164 Ludlow Corp.*, 390 F. Supp. 2d 408, 410–11 (S.D.N.Y. 2005) (citing *Rand* and dismissing

direct RICO claims based on the "devaluation of [plaintiffs'] shares" because "these injuries were suffered, if at all, while plaintiffs were shareholders . . . and, thus, are derivative in nature").

Plaintiff tries to plead around his lack of direct standing with the sole conclusory allegation that the shareholders' injury was "separate from and disproportionate to" the harm to Credit Suisse. AC ¶ 369. But because Plaintiff does not allege a single fact to either support or explain this boilerplate allegation—which merely parrots the legal standard—it is insufficient. *See Elsevier Inc.* v. *W.H.P.R., Inc.*, 692 F. Supp. 2d 297, 304 (S.D.N.Y. 2010) (McMahon, J.) ("[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.").

In any event, Plaintiff's conclusory assertion is wrong as a matter of law. While the Second Circuit does recognize an exception to *Rand*'s no-direct-standing rule when a shareholder suffers harm that is "separate and distinct from the injury sustained by the corporation," the exception applies only where (i) the defendant breached a duty that was "distinguishable from the duty owed to the corporation" or (ii) the plaintiff shareholder suffered a harm that was "separate and distinct from that sustained by other shareholders." *Manson*, 11 F.3d at 1131. But here, (i) the fiduciary duty allegedly owed to both the shareholders and to the corporation is one and the same, and (ii) Plaintiff affirmatively alleges that all shareholders suffered the same exact injury. *See* AC ¶ 207 (alleging typicality because "all members of the Class are similarly affected by Defendants' actionable conduct"). Second Circuit courts decline to apply the exception under circumstances just like those here. *See Manson*, 11 F.3d at 1131 (rejecting exception because both of the company's only two shareholders "have sustained the same injury with respect to the value of their shares and both would be made whole by a derivative action"); *see also Nordberg* v. *Lord, Day &*

Lord, 107 F.R.D. 692, 698 (S.D.N.Y. 1985) (dismissing claims by minority shareholders because their injury was not peculiar to them alone but instead "fell alike" on all shareholders).

2. The PSLRA Bars Plaintiff's "RICO" Claim.

Through the PSLRA's RICO Amendment, Congress "eliminated securities fraud as a basis for a civil RICO claim . . . by providing that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962." *D'Addario* v. *D'Addario*, 75 F.4th 86, 93 (2d Cir. 2023) (quoting 18 U.S.C. § 1964(c)). The idea was to "prevent litigants from using artful pleading to boot-strap securities fraud cases into RICO cases, with their threat of treble damages." *Id.* (quoting *MLSMK Inv. Co.* v. *JP Morgan Chase & Co.*, 651 F.3d 268, 274 (2d Cir. 2011)). This is a textbook example of the type of "securities-fraud-lawsuit-in-disguise" that the PSLRA was intended to prevent.

The Complaint, at its core, alleges securities fraud. Plaintiff claims that the price of his stock declined as a result of undisclosed mismanagement. *See* AC ¶ 150. In other words, Plaintiff is essentially claiming that he would have sold his stock if he had known the "truth" about the extent of the alleged misconduct or the purported deficiencies in Credit Suisse's internal controls, but that such information was misrepresented or withheld from him. The Complaint alleges just that—repeatedly:

- "Without adequate internal controls and risk management procedures, Credit Suisse could not be properly managed. ***Had such deficiencies been discovered and made public*** by the PCAOB, ***their discovery would have disrupted the ongoing conspiracy and ameliorated the damage to be suffered by the Credit Suisse shareholders***." *Id.* ¶ 5.

- "Credit Suisse's internal controls were defective and deficient for over 20 years. ***KPMG knew this when certifying Credit Suisse's financial statements as accurate and the controls and risk management processes as adequate and effective in years of Annual Reports to shareholders.***" *Id.* ¶ 7.

- "This mispricing of subprime mortgage securities by billions of dollars ***allowed Credit Suisse's Investment Banking officials to create 'fictional profits***,' enabling those officials to pocket hundreds of millions of dollars . . . ." *Id.* ¶ 49.

- "KPMG was the external auditor for Credit Suisse for over 15 years, ***consistently certifying its financial statements, the legitimacy of its reported profits, and the adequacy of its internal controls*** while pocketing millions and millions . . . ." *Id.* ¶ 119.

- "Credit Suisse . . . had ***also been falsifying the books to cover up the extent of the outflow of assets under management*** . . ." *Id.* ¶ 302.

Not only that, but Plaintiff even concedes that some Defendants have been sued for securities fraud ***based on the same events which will be litigated here***:

> Credit Suisse and top executives ***have been sued in federal court*** in the United States in several suits ***under the anti-fraud provisions of the United States securities laws arising out of recent events that will be litigated here***.

Id. ¶ 157. The Court knows this, because it is presiding over those securities fraud cases—in which the plaintiffs have also alleged (just like Plaintiff here, as described above) that Credit Suisse failed to disclose weaknesses in its internal controls and misrepresented its financials. *See, e.g.*, Complaint ¶¶ 8, 15, 51, *Linhares* v. *Credit Suisse Group AG*, No. 23-cv-06039-CM (S.D.N.Y. Apr. 21, 2023), ECF No. 1 (alleging "fail[ure] to disclose that . . . [Credit Suisse] maintained deficient internal disclosure controls and procedures" and "had overstated [its] financial position . . . ."). Thus, Plaintiff's claims—which "necessarily allege, necessarily involve, or necessarily rest on the purchase or sale of securities"—meet the Second Circuit standard for the RICO Amendment. *D'Addario*, 75 F.4th at 96.

To try to evade the PSLRA, Plaintiff insists that this is not a securities fraud claim:

> ***This action is not based on fraud or false or misleading statements . . . in connection with the purchase or sale of securities, but rather on [Defendants'] conduct including breaches of their statutory duties and acts of mismanagement.*** The claims are for holders, not purchasers, of Credit Suisse common shares who

> suffered damages or losses due to the negligence[2] of the [Defendants], by continuing to hold or upon disposing of those securities.

AC ¶ 150 (emphasis in original). Yet he is engaged in the same type of "artful pleading" that Congress intended to prevent. The claim necessarily alleges, involves, or rests on the purchase or sale of securities because (i) most if not all of the putative class members would not even be members if they had not ***purchased*** securities; and (ii) Plaintiff concedes that his claims ***do*** allege, involve, or rest on the ***sale*** of securities. *See id.* ¶ 202 (alleging class definition of holders who "suffered loss/damage . . . by continuing to hold ***or disposing of their shares***).

Even if some putative class members did not purchase or sell during the alleged class period (but instead held for the entire decade of the purported class period) or did not purchase on a U.S. exchange—and thus, could not bring a claim under the federal securities laws—that would not matter. "[T]he PSLRA bars civil RICO claims alleging predicate acts of securities fraud, even where a plaintiff cannot itself pursue a securities fraud action against the defendant." *MLSMK*, 651 F.3d at 277. Indeed, in *MLSMK*, the court found that the PSLRA barred an individual from asserting a RICO claim based on aiding and abetting securities fraud, even though the plaintiff (unlike the SEC) would not have been able to bring the underlying claim for lack of private right of action. *Id.* at 280 (discussing cases similarly barring RICO claims in "other circumstances in which—for various reasons—the plaintiff could not make out a private [federal] securities claim against the defendant"). The result should be the same here.

Even if Plaintiff's theory was not entirely grounded in securities fraud (it is), the RICO claim would still fail because the PSLRA "bars a plaintiff from asserting a civil RICO claim

[2] RICO predicate acts are defined to include felonies and other indictable offenses—not claims based on negligence. *See* 18 U.S.C. § 1961(1)(A)–(G).

premised upon ***predicate acts*** of securities fraud." *Id.* And here, Plaintiff lists among the alleged predicate acts "[i]llegal conduct involving mortgage backed 'toxic' securities," AC ¶ 438(e), which is undeniably "premised upon" securities fraud. *See id.* ¶ 49 (alleging that "Credit Suisse officials . . . '***misrepresented delinquency data***,' . . . '***kept investors in the dark***' and '***deprived investors of essential information***'"); *id.* ¶ 254 (alleging Credit Suisse fined for "***misrepresentations*** related to subprime securitizations" and that Credit Suisse "***depriv[ed] investors of information essential*** to assessing the profitability of mortgage-backed investments"); *id.* ¶ 298 ("Credit Suisse ***made false and misleading representations to prospective investors*** about the characteristics of the mortgage loans it securitized." (quoting DOJ press release)); *see also* ¶¶ 265–66, 438(a) (identifying tax evasion as predicate act and quoting SEC's assertion that Credit Suisse had settled the SEC's charges of "violating the ***federal securities laws***").

B. Plaintiff Fails to State a RICO Claim.

The discussion above should end the RICO analysis. But even if the Court reaches the sufficiency of the pleading, it should still dismiss Counts II and III. First, Plaintiff fails to state a substantive RICO claim (Count II) because the Complaint does not adequately allege the required elements of a RICO enterprise, the operation or management of that (not-adequately-pleaded) enterprise, or a pattern of racketeering activity. Second, Plaintiff fails to adequately allege a claim for RICO conspiracy (Count III) because there is no underlying violation, and because the Complaint pleads no facts to even suggest the requisite agreement among conspirators. Third, Plaintiff's RICO claims are time-barred.

1. The Complaint Fails to State a Substantive RICO Claim.

i. The Complaint Fails to Adequately Allege a RICO Enterprise.

To state a RICO claim, a "plaintiff must allege facts showing the existence of an enterprise." *Elsevier Inc.*, 692 F. Supp. 2d at 305. Plaintiff tries to allege an "association-in-fact" enterprise consisting of four Credit Suisse Group AG "New-York based subsidiaries and New York-based KPMG LLP." RICO Stmt. ¶ 5.a; *see also* AC ¶ 442. Because an entity cannot form an enterprise with its affiliates or employees, *see U1it4less, Inc.* v. *Fedex Corp.*, 871 F.3d 199, 206 (2d Cir. 2017), Plaintiff just glues KPMG onto the four Credit Suisse Entity Defendants and names the grouping the "Credit Suisse Enterprise." AC ¶¶ 6, 442. This pleading gimmick fails.

First, Plaintiff does not adequately plead the requisite "interpersonal relationships" among the enterprise's members. *Elsevier*, 692 F. Supp. 2d at 306–07; *see also Boyle* v. *United States*, 556 U.S. 938, 946 (2009). Instead, the Complaint includes only the scattershot and conclusory allegations that "the KPMG Defendants" (defined to include alleged enterprise member KPMG LLP and several individuals who are not alleged to be in the enterprise, *see* AC ¶ 1(c)) were "closely associated with Credit Suisse" because "KPMG [LLP] was Credit Suisse's statutory auditor and accountant," was "paid nearly a billion dollars" for its work over 20 years, and advised "on many matters relating to the operation and management of Credit Suisse." *Id.* ¶ 6.

But even though Plaintiff premises the so-called "enterprise" on the relationship between a company and its auditor, neither the company nor its auditor are even alleged to be in the supposed enterprise. Credit Suisse Group AG (which was the audited company) ***is not a defendant and is not alleged to be a member of the enterprise***. And as KPMG demonstrated in its brief, KPMG LLP (the only KPMG-related entity named in the Complaint) ***was not the entity that acted as auditor of Credit Suisse Group AG.*** Moreover, Plaintiff does not allege ***any*** relationship

between KPMG LLP and ***any*** of the four Credit Suisse Entity Defendants that ***are*** alleged to be in the enterprise (all subsidiaries of the supposed audit client, Credit Suisse Group AG), let alone any fact to tie ***anyone*** at KPMG LLP to ***anyone*** who worked for any of those four Credit Suisse entities.

Instead of pleading the requisite facts, Plaintiff relies on the speculative and conclusory allegations that Credit Suisse's and KPMG's offices were "physically close by" and "KPMG's personnel were constantly inside Credit Suisse's" offices, *id.* ¶ 122, and that "joint action" was "necessary for the enterprise to exist" because "Credit Suisse could not operate without audited, certified financial statements," and so the members must have all "[w]ork[ed] together," *id.* ¶ 442. But Plaintiff does not explain how or why the supposed ***enterprise members*** worked together and, in fact, the Complaint suggests parallel conduct. Plaintiff alleges that KPMG reworked the audit papers for seven clients "in an effort to minimize the risk that the [regulator] would find deficiencies in those [KPMG] audits." *Id.* ¶ 133. In other words, Plaintiff alleges that KPMG acted in its own independent self-interest in giving Credit Suisse and others clean bills of financial health.

These pleading failures require dismissal. *See Elsevier*, 692 F. Supp. 2d at 307 (dismissing RICO claim where complaint failed to explain how members "came to an agreement to act together" or even "*that* they [knew] each other," and explaining that "[i]n this post-*Twombly* era . . . a plaintiff must allege something more than the fact that individuals were all engaged in the same type of illicit conduct during the same time period," and that "parallel conduct by separate actors" does not suffice); *see also Gucci America, Inc.* v. *Alibaba Grp. Holding Ltd.*, 2016 WL 6110565, at *7 (S.D.N.Y. Aug. 4, 2016) ("Parallel conduct does not demonstrate that individuals acted in a coordinated manner, or that they associated together for a common purpose . . . .").

Second, Plaintiff compounds his pleading defects on the enterprise element by making irreconcilably inconsistent allegations. In the RICO Statement, for example, Plaintiff alleges that

(i) "[d]efendants . . . are employed by or associated with the enterprise," RICO Stmt. ¶ 5.e, but also that (ii) "[t]he association in fact enterprise has no employees," *id.* ¶ 10.a. "Contradictory factual allegations of this sort are indicative of a failure to plead a plausible claim." *Jones-Cruz* v. *Rivera*, 2022 WL 20437017, at *10 (S.D.N.Y. Oct. 28, 2022); *see also Alexander* v. *Bd. of Educ. of the City of N.Y.*, 648 F. App'x 118, 121 (2d Cir. 2016) (affirming dismissal where "attenuated allegations" were "contradicted . . . by more specific allegations"); *In re Columbia Tuition Refund Action*, 523 F. Supp. 3d 414, 424 n.1 (S.D.N.Y. 2021) ("[W]here a plaintiff's own pleadings are internally inconsistent, a court is neither obligated to reconcile nor accept the contradictory allegations in the pleadings as true in deciding a motion to dismiss.").

Third, Plaintiff does not adequately allege that the supposed enterprise members had a "common purpose" or "a common interest." *Boyle*, 556 U.S. at 946. To begin, Plaintiff never even articulates what the purpose supposedly was. In response to Question 5.b of the RICO Statement, which asks for the enterprise's alleged "purpose," Plaintiff references his answer to 5.a, which does not in fact identify any purpose, but merely parrots the legal standard and alleges in conclusory fashion that the "racketeering acts had the same or similar purposes, results, participants, victims or methods of commission." RICO Stmt. ¶ 5.a. The closest Plaintiff gets to articulating a purpose is the generalized allegation that there was a "continuing course of conduct, as part of Defendants' mismanagement and plundering of Credit Suisse and efforts to cover up, conceal and continue that misconduct for their own personal profit." AC ¶ 446.

But courts in this Circuit routinely reject such vague and generalized "purpose" allegations at the pleading stage. *See, e.g.*, *Zamora* v. *FIT Int'l Grp.*, 834 F. App'x 622, 625 (2d Cir. 2020) (affirming dismissal where complaint alleged only that plaintiff "shared in the . . . common purpose to defraud investors and convert funds and property for personal gain"); *Cruz* v. *FXDirectDealer,*

LLC, 720 F.3d 115, 121 (2d Cir. 2013) (affirming dismissal of alleged enterprise members for lack of common purpose based on failure to plead "specific . . . allegation[s] about the[ir] intent"); *Jordan* v. *Tilzer*, 2022 WL 16544335, at *2 (S.D.N.Y. Oct. 31, 2022) (common purpose allegations "too conclusory to plausibly allege the existence of an association-in-fact enterprise" where plaintiff alleged that defendants had "joined in purpose of conspiring to commit honest election fraud" and "were organized in a consensual decision-making manner").

Even if Plaintiff had articulated some purpose, he has not adequately alleged that it was "common." Just the opposite. Plaintiff alleges that the Credit Suisse Individual Defendants, along with KPMG, profited by "plundering" and "destroying" what he calls "Credit Suisse" and taking its corporate assets for themselves:

> It took 20 years of continuous mismanagement by the Credit Suisse Defendants – with the active complicity of KPMG, as external auditor – ***to destroy this financial giant***. [T]he Credit Suisse ***insiders***, ***with the help and acquiescence of the KPMG Defendants, plundered Credit Suisse***, and ***personally profited*** from their misconduct to the tune of many billions of dollars, including secret illegal bonus pools by which the top insiders 'skimmed' 'sure thing' deals for themselves. The top Credit Suisse ***Directors and Officers pocketed over $10 billion in pay/bonuses***, options and benefits, and ***KPMG took some $1 billion in fees*** – generating large profits for their New York partners . . . .These payments and benefits constitute a loss, ***waste, mis-transfer, and/or misuse of corporate assets*** expended to ***protect and benefit the Credit Suisse insiders*** . . . ***not for the benefit of Credit Suisse's common shareholders***.

AC ¶ 11; *see also id.* ¶¶ 381, 457 (alleging that individual Defendants "defrauded the bank"). But Plaintiff offers no explanation for why the four Credit Suisse Group AG subsidiaries alleged to be in the enterprise would want to "plunder" or "destroy" their own parent company. Worse yet, the Complaint defines "Credit Suisse" to include its "consolidated subsidiaries," AC ¶ 1 n.3, meaning that Plaintiff is alleging that the four subsidiaries (the alleged enterprise members) wanted to "plunder" and "destroy" ***themselves***. These illogical and contradictory allegations do not come

close to adequately alleging that enterprise members "share[d] a common purpose to engage in a particular fraudulent course of conduct and work[ed] together to achieve such purposes." *Cruz*, 720 F.3d at 120; *see also Jones-Cruz*, 2022 WL 20437017, at *10 ("Contradictory factual allegations of this sort are indicative of a failure to plead a plausible claim.").

ii. The Complaint Fails to Adequately Allege "Operation or Management."

Plaintiff's RICO claim also fails because he does not allege that any Defendant "participated in the operation or management of the enterprise itself." *Reves* v. *Ernst & Young*, 507 U.S. 170, 183 (1993). Instead of pleading operation or management of the ***enterprise***, Plaintiff merely alleges that the Credit Suisse entities and individuals operated and managed ***Credit Suisse***, and that the KPMG entity and some individuals operated and managed ***KPMG***:

- ***Credit Suisse Individual Defendants***. Plaintiff just lists the individuals' dates of affiliation with Credit Suisse entities and their board/committee memberships. *See* AC ¶¶ 87–116.
- ***Credit Suisse Entity Defendants***. Plaintiff alleges only that they "manage Credit Suisse's operations in the United States." *Id.* ¶ 84.
- ***KPMG Individual Defendants***. Plaintiff alleges only generically that some of these individuals "worked on the Credit Suisse account" and "audit[s]" and "participat[ed] in the management of Credit Suisse." AC ¶ 125.
- ***KPMG Entity Defendant***. Plaintiff merely alleges that KPMG served as "accountant, auditor, consultant and advisor on many matters relating to the operation and management of Credit Suisse." *Id.* ¶¶ 6, 121; *see also* ¶ 411 (alleging same).

None of these allegations come close to alleging operation or management of the ***enterprise*** (whatever that is). That pleading failure is fatal. *Reves*, 507 U.S. at 183 (requiring allegations that defendant "participated in the operation or management of ***the enterprise itself***").

iii. The Complaint Fails to Adequately Allege a Pattern of Racketeering Activity.

The Complaint should be dismissed as to the Credit Suisse Entity and Individual Defendants for the independent reason that it fails to allege that any of them engaged in a pattern

of racketeering activity—*i.e.*, two predicate acts. *See Highmore Financing Co. I, LLC* v. *Greig Cos.*, 2023 WL 4865722, at *5 (S.D.N.Y. July 31, 2023) ("Where a plaintiff asserts a claim against multiple defendants, '[t]he elements of [§] 1962(c) must be established ***as to each individual defendant***.'" (alterations in original) (quoting *U.S. Fire Ins. Co.* v. *United Limousine Serv., Inc.*, 303 F. Supp. 2d 432, 451 (S.D.N.Y. 2004))). Plaintiff identifies eight supposed predicate acts in the Complaint, *see* AC ¶ 438(a)–(h), and those same eight in the RICO Statement, *see* RICO Stmt. ¶ 4(a). And in the RICO Statement, he further alleges that "[t]he RICO predicate acts are pleaded in paragraphs 449 through 480 of the Complaint." *Id.* Plaintiff's problem, however, is that ***not a single Credit Suisse Defendant is even identified by name in a single one of those 32 paragraphs***. Thus, the Complaint falls far short of satisfying Rule 9(b)'s particularity standard. *See West 79th Street Corp.* v. *Congregation Kahl Minchas Chinuch*, 2004 WL 2187069, at *7 (S.D.N.Y. Sept. 29, 2004) ("[W]here more than one defendant is charged with fraud, the plaintiff must 'particularize and prove ***each defendant's participation in the fraud*** and ***each defendant's enactment of the two necessary predicate acts***.'" (quoting *USA Certified Merchants, LLC* v. *Koebel,* 262 F. Supp. 2d 319, 332 (S.D.N.Y. 2003))).

2. Plaintiff Fails to State a RICO Conspiracy Claim.

Plaintiff's failure to state a RICO claim under § 1962(c) dooms his RICO conspiracy claim under § 1962(d). *See Williams* v. *Affinion Grp., LLC*, 889 F.3d 116, 126 (2d Cir. 2018) (dismissing RICO conspiracy claims for failure to adequately plead underlying RICO violations). But even if Plaintiff stated a RICO claim, he still could not state a RICO conspiracy claim because the Complaint does not allege an agreement. *See Crawford* v. *Franklin Credit Mgmt. Corp.*, 758 F.3d 473, 487 (2d Cir. 2014) ("To establish a violation of § 1962(d), a plaintiff must show that the defendant agreed with at least one other entity to commit a substantive RICO offense."). As

discussed above, the Complaint includes only conclusory and illogical allegations of a common purpose and no facts showing an agreement. That pleading failure requires dismissal. *See R.C.M. Executive Gallery Corp.* v. *Rols Cap. Co.*, 901 F. Supp. 630, 643 (S.D.N.Y. 1995) (allegations that defendants "conspired to defraud the plaintiffs," "assent[ed] to the fraudulent activities," or were "aware of [the fraud]" insufficient to allege agreement).

3. Plaintiff's RICO Claims Are Time-Barred.

Civil RICO claims are subject to a four-year limitations period, *see Cohen* v. *S.A.C. Trading Corp.*, 711 F.3d 353, 361 (2d Cir. 2013), which begins when Plaintiff "discovers or reasonably should have discovered the RICO injury," *Kerik* v. *Tacopina*, 64 F. Supp. 3d 542, 557 (S.D.N.Y. 2014). But as the Complaint concedes, all the alleged predicate acts, *see* AC ¶ 438(a)–(h), were made public more than four years before this action was filed (*i.e.*, before May 28, 2019):

- Plea agreements that were announced ***in December 2009***. *See* AC ¶¶ 450–52; RICO Stmt. pp. 1–2 ("Monetary Transfers Violating Terrorist Sanctions Prohibition Scandal").

- A ***January 2017*** settlement agreement with the DOJ, announced the same month, which followed two guilty pleas entered by two former Credit Suisse employees ***in 2013***. *See* AC ¶¶ 453–58; RICO Stmt. pp. 2–4 ("Toxic Securities Scandal").

- A publicly-announced ***November 2017*** regulatory fine relating to the foreign exchange business. *See* AC ¶¶ 459–60; RICO Stmt. p. 4 ("Forex Trading Scandal").

- Guilty pleas announced ***in 2014 and 2016***, and a civil penalty imposed ***in 2014***. *See* AC ¶¶ 461–65; RICO Stmt. pp. 4–7 ("United States Tax Evasion Scandal").

- A criminal plea and penalty announced ***in July 2018***. *See* AC ¶ 466; RICO Stmt. pp. 7–8 ("Princelings 'Pay Off' Scandal").

- A criminal indictment announced ***in January 2019***. *See* AC ¶¶ 315, 467–472; RICO Stmt. pp. 8–9 ("Tuna Boats / Bonds Scandal").

- Charges against former senior KPMG officials announced by the SEC ***in 2018***. *See* AC ¶¶ 416, 479–481, RICO Stmt. p. 9 (the PCAOB inspection matter).[3]

Thus, Plaintiff's claims are untimely. *See Marshall* v. *Milberg LLP*, 2009 WL 5177975, at *4 (S.D.N.Y. Dec. 23, 2009) ("Even a single news article can place a plaintiff on inquiry notice.").

Plaintiff tries to plead around the statute of limitations with the conclusory allegation that these events are "part of a continuing course of conduct." *See, e.g.*, AC ¶¶ 19, 20(e). But these events are disconnected on their face, and the Complaint lacks any facts to suggest otherwise. In any event, the "continuing course" doctrine is inapplicable; rather, RICO claims are subject to a rule of separate accrual whereby "each time plaintiff discovers or should have discovered an injury caused by defendant's [same] violation . . . a new cause of action arises as to that injury, regardless of when the actual violation occurred." *Bankers Tr. Co*. v. *Rhoades*, 859 F.2d 1096, 1105 (2d Cir. 1988). Accordingly, even if Plaintiff had alleged a predicate act within the limitations period (and he has not), he "cannot use an independent, new predicate act as a bootstrap to recover for injuries caused by other earlier predicate acts that took place outside the limitations period." *Klehr* v. *A.O. Smith Corp*., 521 U.S. 179, 190 (1997).

II. PLAINTIFF'S SWISS CODE OF OBLIGATIONS CLAIM SHOULD BE DISMISSED

Plaintiff's claim under the Swiss Code of Obligations ("CO") (Count I) should not proceed in this Court, and in any event, is deficient as a matter of law. The claim is enabled by and defined under Swiss law, and the underlying allegations challenge the governance and management of a

[3] *See* AC ¶ 438(a)–(h). Plaintiff alleges one more "predicate act," but it is exceedingly vague. *See* AC ¶ 438(f) (alleging "[b]ank and financial institution fraud" by all of the "Credit Suisse Individual Defendants" without specifying the individuals involved, the acts, or the time frame). Thus, it cannot serve as the basis for a RICO claim. *See D. Penguin Bros. Ltd.* v. *City Nat'l Bank*, 587 F. App'x 663, 666 (2d Cir. 2014) (applying Rule 9(b)'s particularity standard to predicate acts).

Swiss corporation by its officials in Switzerland. All of the relevant factors suggest that this claim should be brought in Switzerland, not New York. This was the precise conclusion that Justice Masley of the Commercial Division reached earlier this year in dismissing on *forum non conveniens* grounds a complaint brought by ***these same Plaintiff's lawyers***. *Cattan*, 2023 WL 2868337, at *8 (N.Y. Sup. Ct. Apr. 10, 2023).

Within weeks of that dismissal, rather than pursuing litigation in Switzerland as Justice Masley suggested, Plaintiff's counsel appeared in this Court to see if a different judge would reach a different conclusion. Plaintiff's counsel brought essentially the same claim, but with a new named plaintiff and a new theory of direct (instead of derivative) standing. Much of the Complaint itself, however, is not new at all: more than 100 paragraphs are taken verbatim or nearly verbatim from the *Cattan* complaint, both cases challenge conduct spanning more than a decade, both cases assert violations of the same Swiss statute, and 23 of the 29 Credit Suisse Individual Defendants in this case were also named as defendants in *Cattan*.

Even if Plaintiff were to somehow convince this Court to disagree with Justice Masley, the claim is fatally flawed and must be dismissed under Swiss law for multiple reasons: Plaintiff lacks standing, the named Credit Suisse entities are not proper Defendants, the bulk of Plaintiff's claim is barred by the Swiss statute of limitations, and the Complaint relies on group pleading.

A. Plaintiff's Swiss Law Claim Should Be Dismissed for *Forum Non Conveniens*.

Plaintiff asserts a Swiss law claim against directors, officers, and senior executives of a Swiss bank, challenging their corporate oversight. At every turn, as Justice Masley has already found, Plaintiff's claim will require analysis of Swiss law and examination of Swiss-based evidence, such as corporate records and Board materials. Fairness to the Defendants, procedural

efficiencies, and the interest of Swiss courts in overseeing claims relating to management of Swiss institutions all dictate that this action should be heard in Switzerland, not in New York.

Under the doctrine of *forum non conveniens*, "a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute" when an alternate forum is more appropriate. *Fasano* v. *Li*, 47 F.4th 91, 100 (2d Cir. 2022). Courts in this Circuit use a three-step framework for assessing the proper forum: "(1) determining the degree of deference to be afforded to the petitioner's choice of forum; (2) examining whether an adequate alternative forum exists; and (3) balancing the private and public factors enumerated by the Supreme Court in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 . . . (1947)." *Olin Holdings Ltd.* v. *State*, 73 F.4th 92, 109–10 (2d Cir. 2023). These considerations all point to Switzerland.

1. Plaintiff's Choice of Forum Should Be Given no Deference.

Plaintiff alleges no connection to New York. He is a resident of Indiana. AC ¶ 79. Every aspect of his claim arises from the management and governance of Credit Suisse in Switzerland. And the Individual Defendants reside in Switzerland and around the globe. Plaintiff attempts to manufacture a New York nexus by naming four New York-based Credit Suisse Group AG subsidiaries, but as to three of the four, he alleges no connection at all to the alleged wrongdoing. As to the fourth, Credit Suisse Securities (USA) LLC, the Complaint alleges a handful of connections to some underlying conduct, but these are overwhelmed by allegations of the management of the company from Switzerland and the actions of non-Defendant Swiss-based entities.

Plaintiff's counsel has already tried and failed to bring similar claims, also under the Swiss CO for breach of fiduciary duty, against many of these same Individual Defendants in New York

state court. And Justice Masley dismissed that case for *forum non conveniens* because it was connected to Switzerland—not New York. The court's opinion was well-reasoned and clear:

- "Every significant aspect of this case -- which is based on board-level and executive level decisions of a Swiss corporation -- boils down to Switzerland: the party in interest, the location of the alleged wrongdoing, the applicable law, and the majority of witnesses and documents." *Cattan*, 2023 WL 2868337, at *8.

- "This case bears no meaningful connection to New York. In the amended complaint, Plaintiff alleges that the individual defendants breached a statutory duty under Swiss law . . . by failing to adequately supervise the operations and subsidiaries of a Swiss bank. . . . Accordingly, the proper forum for plaintiff's claims is Switzerland, where CS is organized and maintains its principal place of business." *Id*. at *3.

- "As CS's place of incorporation, Switzerland has an interest superior to that of all other States in deciding issues concerning directors' conduct of the internal affairs' of the corporation." *Id*. at *4.

- "[I]f this action were to proceed in New York, this court would be required to resolve complex issues of substantive Swiss law, including, *inter alia*, the merits of allegations concerning a breach of fiduciary duty under the Swiss [CO]. Consideration of these issues would likely entail extensive expert submissions, as evidenced by the Swiss expert affirmations already filed, as well as the interpretation and translation of foreign legal statutes, texts, and treatises." *Id*. at *6.

What is really happening here is obvious: after the New York state court rejected Plaintiff's counsel's attempt to bring fiduciary duty claims involving Credit Suisse, recognizing that such claims belong in Switzerland, Plaintiff's counsel filed essentially the same case in New York federal court, hoping for a different outcome. The Second Circuit has advised courts to "consider a plaintiff's likely motivations in light of all the relevant indications," as "the Supreme Court's teachings on the deference due to plaintiff's forum choice [instructs] that we give greater deference to a plaintiff's forum choice to the extent that it was motivated by legitimate reasons . . . and diminishing deference to a plaintiff's forum choice to the extent that it was motivated by tactical advantage." *Iragorri* v. *United Techs. Corp*., 274 F.3d 65, 73 (2d Cir. 2001); *see also Wechsler* v.

Four Seasons Hotels Ltd., 2014 WL 2604109, at *1 (S.D.N.Y. June 10, 2014) (same). In these circumstances, Plaintiff's choice of forum is entitled to no deference.

2. Switzerland Is an Adequate Alternative Forum.

Courts in this Circuit routinely find that Switzerland is an adequate alternative forum, and that the Swiss justice system is robust and sophisticated. *See, e.g.*, *Erausquin* v. *Notz, Stucki Mgmt. (Bermuda) Ltd*., 806 F. Supp. 2d 712, 715, 726 (S.D.N.Y. 2011) (finding Switzerland to be adequate forum for fiduciary duty claims); *In re Optimal U.S. Litig*., 837 F. Supp. 2d 244, 257 (S.D.N.Y. 2011) (same); *Do Rosario Veiga* v. *World Meteorological Organisation*, 486 F. Supp. 2d 297, 304 (S.D.N.Y. 2007) ("[C]ourts in this Circuit have repeatedly found that Switzerland is an adequate forum for adjudication of civil disputes involving . . . contract and tort principles . . . ."); *Fustok* v. *Banque Populaire Suisse*, 546 F. Supp. 506, 515 n.32 (S.D.N.Y. 1982) ("The Second Circuit . . . has already recognized the adequacy of Swiss courts as alternative fora in the context of *forum non conveniens* motions.") (citing *Schertenlieb* v. *Traum*, 589 F.2d 1156 (2d Cir. 1978)).

Plaintiff offers a handful of flimsy arguments against a Swiss forum. First, Plaintiff alleges that Switzerland has "no class action procedure." AC ¶ 168. Not so. Switzerland has its own mechanism for seeking group-wide relief. *See* Grolimund Decl. ¶ 58. While it does not mirror Rule 23 precisely, this does not render Switzerland an unsuitable alternative forum. *See In re Optimal U.S. Litig.*, 886 F. Supp. 2d 298, 308 n.55 (S.D.N.Y. 2012) ("[T]he unavailability of the class action mechanism in Switzerland does not render it an inadequate forum."); *In re Alcon S'holder Litig.*, 719 F. Supp. 2d 263, 273 (S.D.N.Y. 2010) ("Plaintiffs' inadequacy arguments based on the unavailability of class action or contingent fee arrangements in Swiss civil litigation are equally unavailing."). Next, Plaintiff alleges that litigating in Switzerland would be

prohibitively expensive. AC ¶¶ 192–193, 195. But Plaintiff severely exaggerates the financial burden. *See* Grolimund Decl. ¶¶ 53–57.

It is well-settled that procedural differences between Swiss and U.S. federal courts do not render Switzerland an inadequate forum. *See Alcon*, 719 F. Supp. 2d at 273 ("Courts in this District have also specifically and repeatedly held that the availability of contingency fees, class actions, or federal-style discovery is not dispositive of the adequacy of an alternative forum."); *Fustok*, 546 F. Supp. at 515 n.32 ("Procedures in foreign courts need not be identical to U.S. procedures as long as the alternative forum is not wholly devoid of due process."); *Panama Processes, S.A.* v. *Cities Service Co.*, 500 F. Supp. 787, 800 (S.D.N.Y. 1980) (suit dismissed on *forum non conveniens* grounds despite alternative Brazilian court not permitting pretrial discovery), *aff'd*, 650 F.2d 408 (2d Cir. 1981).

Additionally, even if any of Plaintiff's claims were viable, any judgment this Court might enter would only be enforceable against some of the Defendants. Because the U.S. and Switzerland have no treaty providing for reciprocal recognition and enforcement of judgments, Swiss law provides that a U.S. judgment would only be enforceable if, *inter alia,* the U.S. court had jurisdiction to adjudicate the matter from a *Swiss perspective. See* Grolimund Decl. ¶¶ 59–60. This condition has not been met because, as to many of the Individual Defendants, New York is neither the place where their employer has a registered office nor is it their place of domicile. *See id.* ¶ 61. For purposes of the *forum non conveniens* analysis, the superiority of the Swiss forum is further underscored by the fact that "[p]laintiffs would have less difficulty enforcing a Swiss judgment in Switzerland." *Alcon,* 719 F. Supp. 2d at 277.

In sum, Plaintiff has not presented—and cannot present—any legitimate reason why a claim about governance of a Swiss bank under a Swiss statute should not be heard in Switzerland.

3. The *Gulf Oil* Private Factors Favor Switzerland.

The relevant private factors are: (1) the relative ease of access to sources of proof; (2) the convenience of willing witnesses; (3) the availability of compulsory process for attaining the attendance of unwilling witnesses; and (4) the other practical problems that make trial easy, expeditious, and inexpensive. *Gulf Oil*, 330 U.S. at 508. On balance, these favor Switzerland.

First, vital documentary evidence is located only in Switzerland, including records related to Board of Directors meetings, Executive Board meetings, Annual General Meetings of Shareholders, Board compensation, and the Bank's finances. *See* Belzer Decl. ¶ 7; *see also Erausquin*, 806 F. Supp. 2d at 724 ("In deciding a *forum non conveniens* challenge, a court may rely on evidence outside the pleadings, including affidavits."); *Cattan*, 2023 WL 2868337, at *5 ("The bulk of relevant documentary evidence is also located in Switzerland, including records related to Board of Directors meetings, Executive Board meetings, Annual General Meetings of Shareholders, Board compensation, and the Bank's finances . . . This also weighs in favor of dismissal."). Obtaining such evidence for use in a New York proceeding would require navigating the Hague Convention on the Taking of Evidence Abroad and its interplay with Swiss statutory restrictions. *See* Grolimund Decl. ¶¶ 66–71 (describing burdens of producing Swiss evidence for use in a New York litigation, including compliance with Swiss criminal procedures). Additionally, because of the scope of Plaintiff's allegations and because Credit Suisse operated globally, relevant documents may be located in offices across the globe. In *Alcon,* a shareholder class action was dismissed on the basis of *forum non conveniens,* in part, due to the difficulty of obtaining and translating evidence in Switzerland. 719 F. Supp. 2d at 276 ("[G]iven that Alcon, Nestlé, and Novartis are all Swiss-based and Swiss-incorporated, the burden of obtaining documentary evidence would likely be substantially reduced in Switzerland. Further tipping the balance in favor

of dismissal, a significant portion of the evidence . . . would likely have to be translated for any effective use in proceedings in this Court.").

Moreover, because many likely witnesses are located in Switzerland or elsewhere outside New York, litigating here would impose substantial burdens on Defendants and non-party witnesses. In addition, this Court will inevitably lack subpoena power over many foreign witnesses. *See Alcon*, 719 F. Supp. 2d at 276 (citing "substantial risk that other key third-party witnesses" in Switzerland and Europe "would not be within this Court's subpoena power"). New York courts routinely dismiss actions where, as here, key fact witnesses are non-residents. *See, e.g.*, *LaSala* v. *UBS, AG*, 510 F. Supp. 2d 213, 228 (S.D.N.Y. 2007) (fact that two key witnesses reside in Switzerland "weighs in favor of the Swiss forum"); *Schertenleib*, 589 F.2d at 1165 (obtaining testimony of Swiss witnesses through letters rogatory would be a "very serious handicap" favoring dismissal for *forum non conveniens*).

4. The *Gulf Oil* Public Factors Favor Switzerland.

The relevant public interest factors are: (1) court congestion; (2) avoiding difficult problems in conflict of laws and the application of foreign law; (3) the unfairness of imposing jury duty on a community with no relation to the case; and (4) the interest of communities in having local disputes decided at home. *Gulf Oil*, 330 U.S. at 508–09. The most salient here—the burden on New York courts of applying foreign law—weighs heavily in favor of dismissal.

If this case were to proceed, this Court undoubtedly would need to decide Swiss law issues. The Complaint highlights several—for example, the contours of duties of officers and directors of a Swiss corporation, and the existence and application of a Swiss law "business judgment rule." AC ¶ 351. Even this initial motion raises Swiss law issues, which will likely be debated by competing experts. This would continue throughout the case. Second Circuit courts routinely

dismiss actions that require interpretation of foreign law, or that would invite protracted disagreements about foreign law. *See, e.g.*, *Schertenleib,* 589 F.2d at 1165 (application of Swiss law "necessitates the introduction of inevitably conflicting expert evidence on numerous questions of Swiss law, and it creates the uncertain and time-consuming task of resolving such questions by an American judge unversed in civil law tradition"); *Acosta* v. *JPMorgan Chase*, 2006 WL 229196, at *8 (S.D.N.Y. Jan. 30, 2006) (dismissing on *forum non conveniens* grounds where case would have "require[d] extensive applications of both Uruguayan and Argentine law," "[b]oth parties have submitted affidavits with conflicting interpretations of the . . . laws, and . . . it would be necessary to 'untangle' these problems if the case proceeded here."), *aff'd*, 2007 WL 689529 (2d Cir. Mar. 6, 2007); *Fustok*, 546 F. Supp. at 513 ("With Swiss legal experts in such sharp dispute as to Swiss law and the holding of Swiss high court rulings, the matter is best left to knowledgeable Swiss jurists."); *Panama Processes S.A.*, 500 F. Supp. at 798 (possibility of having to "parse significant substantive and procedural questions of [foreign] law" weighs in favor of dismissal).

The other *Gulf Oil* public factors also favor Switzerland—for example, New York's minimal interest in resolving a Swiss law claim and the relative stress on this Court's busy docket. *See Gulf Oil*, 330 U.S. at 508–09 (court congestion among public factors favoring dismissal for *forum non conveniens*). As Credit Suisse Group AG's place of incorporation, Switzerland has a far superior interest in deciding issues concerning the internal affairs of a Swiss corporation. *See e.g.*, *LaSala*, 510 F. Supp. 2d at 229 (dismissing on *forum non conveniens* grounds in part because "Switzerland possesses a strong interest in regulating the conduct of banks within its borders"); *see also Alcon,* 719 F. Supp. 2d at 279 (dismissing case on *forum non conveniens* grounds and finding that claims "would be more appropriately litigated in Swiss court" despite potential injury to U.S. plaintiffs where transaction involved Swiss corporations and was governed by Swiss law).

Swiss authority is in agreement, providing that disputes regarding companies incorporated in Switzerland should primarily be brought before Swiss courts. *See* Grolimund Decl. ¶ 44. This is especially true in cases alleging liability of multiple directors and officers, because allegations of systemic failure of company management are best served by having courts at the statutory seat of the company handle the action, in part to prevent contradictory judgments. *See id.* ¶ 45. By contrast, the interest of New York courts in the internal affairs of foreign corporations is minimal. *See Hanwha Life Ins*. v. *UBS AG*, 8 N.Y.S.3d 180, 181 (App. Div. 1st Dep't 2015) ("[T]he alleged injury to plaintiff was suffered in Korea, and that jurisdiction has an interest in adjudicating a matter involving harm to a Korean corporation; New York has no such interest.").

B. Substantive Swiss Law Requires Dismissal of Plaintiff's Claim with Prejudice.

Plaintiff asserts that all Defendants violated various provisions of Swiss law. AC ¶ 431 (alleging violations of Swiss Code of Obligations Arts. 716(a), 754, 755 and 759, as well as Arts. 41, 42, 50 and 55). But Plaintiff fundamentally misunderstands the CO provisions he claims were violated. His Swiss law claims fail as a matter of law for several reasons.

1. Plaintiff Lacks Standing to Sue Directly Under Applicable Swiss Law.

Plaintiff asserts a direct claim pursuant to the CO, AC ¶¶ 427–31, and expressly disclaims that he is suing derivatively. *See* AC ¶ 2. However, no such direct claim exists. Swiss law is clear that claims pursuant to the CO Articles under which Plaintiff sues must be brought derivatively. *See* Grolimund Decl. ¶¶ 14–22 (explaining that a claim under Article 754 lies with the corporation, and while Article 756 permits a shareholder to bring suit, the action is derivative in nature). "A shareholder does not have standing to sue on his own behalf if his shares decline in value due to an alleged breach of the directors' fiduciary duties or duties of care." *Id.* ¶ 16.

As set forth more fully above, because Plaintiff alleges that Defendants' supposed mismanagement caused Credit Suisse's stock price to decline, any harm to Plaintiff or other shareholders was entirely derivative of the harm to the company. *See supra* Section I.A.1; *see also* AC ¶ 3. Swiss law does not permit a direct shareholder claim in such circumstances. *See* Grolimund Decl. ¶ 17 (a shareholder can only bring a direct claim "if his individual membership rights as a shareholder have been violated in a manner separately from the company's own rights" for example "because the right to subscribe to new shares of the company was unlawfully withdrawn from him"). And as discussed in Section I.A.1, *supra*, Plaintiff's allegation that he suffered harm distinct from the alleged harm to Credit Suisse is conclusory and inconsistent with the Complaint's own allegations. Thus, Plaintiff's "direct" Swiss law claim is not viable.

2. Plaintiff Cannot State a Swiss Law Claim Against Entities.

Plaintiff brings his CO claim against the Credit Suisse Individual Defendants and the four Credit Suisse Entity Defendants. AC ¶¶ 1, 430. But the relevant provisions of the CO speak to duties owed by individual directors and officers only—*i.e.*, duties owed by natural persons. AC ¶ 22 ("Art. 716a[:] The ***board of directors*** has the following non-transferrable . . . duties . . . ."); ("Art. 717 Duty of Care and Loyalty[:] The ***members of the board of directors*** . . . must perform their duties . . . ."); ("Art. 754 ***Liability of the Directors and Officers[:] The members of the board of directors and all persons*** engaged in the management . . . of the corporation are liable . . . for the damage caused by [a] . . . negligent violation of ***their*** duties."); *see also* Grolimund Decl. ¶ 33 ("Art.754 CO provides for a claim only against those persons who are formally entrusted with management by a respective registration in the commercial registry (i.e., the company's board members or officers) or who factually act as directors or governing officers (*de facto* position)[.]"). Thus, there is no basis to hold the Credit Suisse Entity Defendants liable.

Plaintiff attempts to sidestep this issue by alleging, in conclusory and illogical fashion, that the Credit Suisse Entity Defendants "managed" their corporate parent. AC ¶ 84. This allegation is not only the opposite of what one would expect—that the parent manages the subsidiaries, rather than the other way around—but is also unsupported by ***any*** factual allegations. *See Ashcroft* v. *Iqbal*, 556 U.S. 662, 681 (2009) ("[T]he conclusory nature of . . . allegations disentitles them to the presumption of truth.").

3. Plaintiff Lacks Standing Because He Is Not a "Registered" Shareholder.

The CO authorizes only "registered" shareholders—*i.e.*, those who take necessary steps to be listed in a Swiss company's shareholder register—to bring suit to enforce its terms. Under Swiss law, persons or entities who own unregistered shares (or American Depositary Shares ("ADSs")) are not registered shareholders and thus lack standing to sue. *See* Grolimund Decl. ¶¶ 27–32. Plaintiff does not and could not allege that he is now or ever was a registered Credit Suisse shareholder. Per company records, Plaintiff has never been a registered Credit Suisse shareholder during the relevant period. *See* Belzer Decl. ¶ 10. Thus, Plaintiff lacks standing.

4. Plaintiff Has Not Adequately Alleged a Claim Against Any Individual.

The Court should dismiss the claim against all of the Credit Suisse Individual Defendants because Plaintiff fails to sufficiently allege facts tying any of them to the alleged misconduct.

The elements of a breach of fiduciary duty claim under the CO are: (i) the company suffered loss, (ii) breach of duty by the director or officer, (iii) an adequate causal connection between the breach of duty and the loss, and (iv) the director or officer must have acted with fault. CO art. 754, para. 1; *see* Grolimund Decl. ¶ 23. Under Swiss law, each of these is a necessary condition of liability that must be "examined separately for each defendant." *See id.* ¶ 24.

The fundamental problem here, however, is that the Complaint relies entirely on group pleading and does not specify for any Individual Defendant: (i) which actions or decisions are being challenged, (ii) whether the challenged action or inaction was the responsibility of that individual, or (iii) how the action or inaction of that Individual Defendant caused harm to Plaintiff. Nor does the Complaint allege facts sufficient to determine whether many of the named Individual Defendants even owed fiduciary obligations to Credit Suisse Group AG. Instead, each individual is mentioned only briefly, in a paragraph stating the individual's name and title and in a chart specifying the positions each supposedly held. AC ¶¶ 87–116.

Thus, the Complaint gives the Court no ability to determine how or even whether each individual is alleged to have committed a violation. This falls well short of even the liberal notice pleading standard of Rule 8(a). *See Iqbal,* 556 U.S. at 678 (complaint must plead facts sufficient to give rise to a reasonable inference of liability for each defendant); *Salahuddin* v. *Cuomo*, 861 F.2d 40, 41–42 (2d Cir. 1988) ("The principal function of pleadings under the Federal Rules is to give the adverse party fair notice of the claims asserted.").

5. The Majority of Plaintiff's Swiss Law Claim Is Time-Barred.

Plaintiff's claim under the CO is governed by the limitations period provided for in that Swiss statute. *See Casey* v. *Merck & Co.*, 653 F.3d 95, 100 (2d Cir. 2011) (applying foreign statute of limitations to foreign claims). Under Swiss law, the relevant statute of limitations is three years, running from the time that a plaintiff acquires "sufficient knowledge" of the alleged wrong and injury. *See* Grolimund Decl. ¶ 51. Plaintiff's attempt to bundle disparate and independent events as one continuing course of conduct is equally unavailing for his CO claim as it is for his RICO claims. Swiss law makes clear that each separate alleged "wrong" must be viewed separately for purposes of the limitations analysis. *See id.* ¶ 52. Accordingly, any publicly-disclosed "scandal,"

fine, penalty, or other event occurring prior to May 28, 2020 (*i.e.*, three years prior to the filing of Plaintiff's initial Complaint) cannot give rise to a CO claim.

III. PLAINTIFF'S CLAIMS HAVE BEEN RELEASED

A. Claims Based on Pre-2020 Events Have Been Discharged by Shareholder Votes.

Plaintiff bases his Complaint on events between 2007 and 2023. But in each year from 2007 to 2020, at the company's Annual General Meetings, Credit Suisse Group AG shareholders voted on and approved binding resolutions to discharge all claims against directors and officers based on conduct in the prior year. *Id.* ¶ 41. As a consequence, the Swiss doctrine of discharge requires dismissal of all claims against Credit Suisse director and officer Defendants relating to events that occurred before 2020. *Id.* ¶¶ 37–38, 43.

Pursuant to Article 698 of the CO, shareholders of a Swiss corporation are permitted, by shareholder vote, to discharge or release directors and officers from personal liability for actions undertaken in the previous year. *Id.* ¶ 36. Even if Plaintiff had voted against the discharge, he would have had only six months from the relevant vote to initiate litigation. *Id.* ¶ 39. Accordingly, by the time Plaintiff brought this action in May 2023, the six-month limitations period had long passed for all of the discharge resolutions approved for 2006–2019. *See id.* ¶¶ 41–42. Thus, those claims are extinguished.

Plaintiff concedes that these discharge votes occurred, AC ¶ 383, but argues in conclusory fashion that such votes were not "effective or valid," *id.* That, however, is a mere legal conclusion that the Court need not credit on this motion. *See Clemmons* v. *Upfield US Inc.*, 2023 WL 2752454, at *2 (S.D.N.Y. Mar. 31, 2023) ("In assessing the sufficiency of a pleading, a court must disregard legal conclusions, which are not entitled to the presumption of truth."). In any event, Professor Grolimund's declaration makes clear that Plaintiff is wrong.

B. Claims Based on Later Events Have Also Been Discharged by a Binding Release.

Plaintiff's claims based on events in 2020 or later are also substantially limited by a binding release. As to this later period, the Complaint focuses extensively on allegations relating to losses resulting from the collapse of two of Credit Suisse's counterparties, Archegos Capital Management and Greensill Capital. *See* AC ¶¶ 57–63. But the Complaint fails to mention that Credit Suisse shareholders previously brought securities fraud claims seeking to recover losses associated with those matters, naming many of the same individuals named in this case, and that shareholders entered into a settlement (that has been granted final approval by Judge Buchwald) releasing "all claims" "arising out of, based upon, or in any way relating to both" (i) anything "alleged or referred to . . . or which could have been alleged" in that prior litigation and (ii) "the purchase, acquisition, ***holding***, sale, or disposition of any Credit Suisse ADRs or ordinary shares" during the relevant class period (October 29, 2020 to March 31, 2021). Stipulation of Settlement ¶ 1.23, *City of St. Clair Shores Police and Fire Ret. Sys.* v. *Credit Suisse Grp. AG*, No. 21-cv-03385 (NRB) (S.D.N.Y. May 11, 2023), ECF No. 67. The settlement releases all Credit Suisse "Related Parties," including "present and former parents, subsidiaries" and "present and former employees"—so it covers Defendants in this action. *Id.* ¶ 1.22.

Plaintiff and other class members who purchased, sold, or held Credit Suisse Group AG securities during the *St. Clair Shores* class period have released all claims based on the Archegos and Greensill matters. *See Wal-Mart Stores, Inc.* v. *Visa U.S.A., Inc.*, 396 F.3d 96, 106–07 (2d Cir. 2005) (class action release bars subsequent claims that share an "identical factual predicate" and the prior class had adequate representation); *In re Lehman Bros. Sec. & ERISA Litig.*, 2012 WL 2478483, *6 (S.D.N.Y. June 29, 2012) ("[I]n deciding whether the release covers [subsequent] claims, we ignore the legal theories alleged . . . and instead focus on the factual predicate.").

The shareholder discharge votes and class action settlement described above bar claims based on most or all of the key factual allegations underlying Plaintiff's Complaint.

IV. THIS COURT LACKS PERSONAL JURISDICTION OVER CERTAIN DEFENDANTS

The claims asserted against Individual Defendants Bianchi, Bohnet, Dougan, Macia, Mathers, Nargowala, Ribeiro, Schwan, Tiner, and Warner should be dismissed for lack of personal jurisdiction (the "Personal Jurisdiction Movants").[4] The Personal Jurisdiction Movants are not adequately alleged to have any relevant connections to New York. Most of these individuals are foreign citizens who reside abroad. Each is sued here based on his or her role as a member of the Board or Executive Board of Credit Suisse Group AG (AC ¶ 116), a non-Defendant company that was incorporated and headquartered in Switzerland (Belzer Decl. ¶ 2). The Belzer Declaration sets out each relevant individual's principal place of residence as reflected in company records. The Complaint incorrectly alleges that Bianchi, Dougan, Macia, Mathers, and Warner are domiciled in New York, but they are domiciled in Switzerland, North Carolina, Florida, the U.K. and Virginia respectively, and contrary to the Complaint, were domiciled outside of New York during their tenures. *See id.* ¶ 8. And there are no allegations in the Complaint that any of these individuals participated in any specific alleged misconduct in New York.

Both New York's long-arm statute and due process must support the exercise of personal jurisdiction. *See Chloe* v. *Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 163–64 (2d Cir. 2010). Due process requires that a non-domiciliary have "certain minimum contacts with [the forum] such

[4] While only the Personal Jurisdiction Movants listed above join this motion, the Court may also lack personal jurisdiction as to Mr. Rohner and Mr. Cerutti, who have not been served and have not joined this motion.

that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945). "[I]t is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction . . . ." *Walden* v. *Fiore,* 571 U.S. 277, 285 (2014). Jurisdiction must be based on "[e]ach defendant's contacts with the forum State," and such contacts "must be assessed individually." *Keeton* v. *Hustler Magazine, Inc.,* 465 U.S. 770, 781 n.13 (1984). The relationship between the defendant and the forum state must arise out of defendant's own contacts with the forum and not "contacts between the plaintiff (or third parties) and the forum State." *Walden*, 571 U.S. at 284.

A. There Is No General Jurisdiction Over the Personal Jurisdiction Movants.

"The constitutional limit of general jurisdiction was settled three quarters of a century ago, in *International Shoe Co. v. Washington*, where the Supreme Court announced that general jurisdiction exists in a state only when an entity's contacts with that state are so continuous and systematic as to render [it] essentially at home in the forum State." *Meyer* v. *Bd. of Regents of Univ. of Oklahoma*, 2014 WL 2039654, at *2 (S.D.N.Y. May 14, 2014) (McMahon, J.). "An individual is at home in the state of his domicile . . . ." *Id.*

None of the Personal Jurisdiction Movants are domiciled in New York. Each maintains his or her primary residence outside of New York (Belzer Decl. ¶ 8), and none were based in Credit Suisse's New York offices during his or her tenure on the Board of Directors or Executive Board (*id.* ¶ 9).

The Complaint nonetheless alleges (without supporting factual allegations) that certain of the Personal Jurisdiction Movants "resided" in New York because they supposedly spent "countless nights [in New York], staying in accommodations of [sic] owned by themselves or

provided by Credit Suisse in New York." AC ¶ 147. The only Individual Defendant specifically alleged to have owned property in New York, however, is Macia who allegedly "owned a property . . . for years and sold it in 2020." AC ¶ 89. It is well-established that neither frequent travel to a state, nor ownership of in-state property, makes an out-of-state defendant "at home" in the state. *See, e.g.*, *Chen* v. *Guo Liang Lu*, 4 N.Y.S.3d 517, 520 (2d Dep't 2016) (holding that evidence of defendant's ownership of a New York residence was "insufficient to confer personal jurisdiction over [a foreign defendant] absent evidence of his intent to make the [residence] his fixed and permanent home"); *Sparrow Fund Mgmt. LP* v. *MiMedx Grp., Inc.*, 2019 WL 1434719, *12 (S.D.N.Y. Mar. 31, 2019) (allegations that CEO "transacted business in or regularly traveled to New York are not sufficient to plead general personal jurisdiction"); *Reich* v. *Lopez*, 38 F. Supp. 3d 436, 456 (S.D.N.Y. 2014) ("If anything, Plaintiffs' allegations that [the foreign defendants] are on record as flying to New York nearly 200 times during a 3-year period may suggest that there is some other location at which they are more aptly at home . . . .").

B. There Is No Specific Jurisdiction Over the Personal Jurisdiction Movants.

Plaintiff similarly fails to plead specific jurisdiction over the Personal Jurisdiction Movants. New York's long-arm statute, Civil Practice Law and Rules (C.P.L.R.) § 302(a), allows for specific jurisdiction over non-residents where (i) the non-resident defendant engaged in certain categories of contacts with the state enumerated at § 302(a)(1)–(4), and (ii) the alleged causes of action "aris[e] from" that conduct. "If either prong of the statute is not met, jurisdiction cannot be conferred . . . ." *Johnson* v. *Ward*, 4 N.Y.3d 516, 519 (2005).

The Complaint fails to identify which, if any, of the statutory requirements for long-arm jurisdiction might apply to these Defendants. In any event, there are no allegations that any of these Defendants engaged in ***any*** specific act or conduct in New York, let alone conduct giving

rise to the claims in this case as required by *Johnson*. Plaintiff's only attempt to connect any of these Defendants to alleged wrongdoing in New York is the overbroad allegation against Defendant Dougan based on the inaccurate premise that he was "living in New York City." *See* AC ¶ 362 (claiming that Dougan "presid[ed] over [a] horrific management and governance disaster" because he allegedly lived in and operated out of New York). In fact, where these Defendants are mentioned in the Complaint at all, it is in the context of their roles as members of the Executive Board or Board of Directors at Credit Suisse Group AG (*see, e.g.*, AC ¶ 116), a company that was incorporated and headquartered in Switzerland (Belzer Decl. ¶ 2).

To try to fix this problem, Plaintiff alleges that "conduct of the Credit Suisse Defendants ***that took place in Switzerland*** was targeted at United States/New York residents, investors and customers as New York and the United States were among the most important markets in the world to Credit Suisse" and that Credit Suisse's "Directors and Officers have purposefully availed themselves of the privilege of accessing New York's commercial and financial markets for their business purposes and their personal economic gain, selling products and services to thousands of New York residents." AC ¶¶ 161–62. But these speculative and conclusory allegations are insufficient to plead specific jurisdiction over any of the Personal Jurisdiction Movants and, at best, support only the uncontroversial and irrelevant fact that certain Credit Suisse affiliates did business in New York. Plaintiff does not and could not explain (i) how Credit Suisse's general contacts with New York "as one of the most important markets in the world," or the sales of "products and services to thousands of New York residents," can be attributed to any of the Personal Jurisdiction Movants; or (ii) how the alleged connections give rise to the claims asserted here. Moreover, intermittent business contacts with New York cannot confer jurisdiction. *McKee Elec. Co.* v. *Rauland-Borg Corp.*, 20 N.Y.2d 377, 382 (1967) (finding no personal jurisdiction

because contacts with New York were "infinitesimal" where foreign defendant made multiple trips into the state, and cautioning that it would be improper to exercise jurisdiction over "every corporation whose officers or sales personnel happen to pass the time of day with a New York customer in New York").

Nor can plaintiff establish specific jurisdiction over certain Defendants by virtue of their mere membership on a board of a company operating in New York. *See, e.g.*, AC ¶¶ 94, 103 (Tiner and Warner's alleged membership on boards of Credit Suisse Group AG subsidiary entities including Credit Suisse Holdings (USA), Inc., and Credit Suisse Securities (USA) LLC). In *In re SSA Bonds Antitrust Litigation*, 420 F. Supp. 3d 219, 232 (S.D.N.Y. 2019), the Court held that having an office in New York is an example of transacting business under the long-arm statute, but "the inquiry does not end there, as plaintiffs must then show that the underlying lawsuit arose from the transacted business. *See also Best Van Lines, Inc.* v. *Walker*, 490 F.3d 239, 246 (2d Cir. 2007) (finding that to support jurisdiction under C.P.L.R. § 302, there must be an articulable nexus, or a substantial relationship, between the claim asserted and the actions that occurred in New York).

Finally, while the Court "need not conduct a due process analysis" here given Plaintiff's failure to meet the long-arm-statute requirements, *see Fagan* v. *Republic of Austria*, 2011 WL 1197677, at *12 (S.D.N.Y. Mar. 25, 2011), the complete absence of suit-related New York-based conduct by these Defendants also runs afoul of due process. "For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State," and this relationship must arise out of contacts that the "defendant himself" creates with the forum. *Walden,* 571 U.S. at 284.

Forcing the Personal Jurisdiction Movants to litigate in New York absent any suit-related conduct in New York would be inconsistent with traditional notions of fair play and substantial justice. *See Daimler, AG* v. *Bauman*, 571 U.S. 117, 126 (2014); *Metro Life Ins. Co.* v. *Robertson-Ceco Corp.*, 84 F.3d 560, 575 (2d Cir. 1996) (imposing such a burden absent adequate suit-related conduct in the forum would not be "merely be inconvenient," it "would violate our basic sense of fair play and substantial justice—and deprive the defendants of the due process guaranteed by the Constitution"); *Asahi Metal Indus. Co.* v. *Superior Ct. of California, Solano Cnty.*, 480 U.S. 102, 114 (1987) ("The unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders.").

CONCLUSION

The Complaint should be dismissed with prejudice.

Dated: September 22, 2023

Respectfully submitted,

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