Bandari v. QED Connect, Inc.

United States District Court for the Southern District of New York

August 29, 2025, Decided; August 29, 2025, Filed

24 Civ. 2967 (JHR) (GS)

Reporter
2025 U.S. Dist. LEXIS 169570 *; 2025 LX 386975

JALANDHER BANDARI, Plaintiff, - against - QED CONNECT, INC., NANNY KATHARINA BAHNSEN, and DAVID RUMBOLD, Defendants.

Counsel: [*1] Jalandher Bandari, Plaintiff, Pro se, Houston, TX USA.

Judges: Honorable GARY STEIN, United States Magistrate Judge.

Opinion by: GARY STEIN

Opinion

REPORT & RECOMMENDATION

GARY STEIN, United States Magistrate Judge:

Plaintiff Jalandher Bandari ("Plaintiff" or "Bandari"), who is proceeding in this action *pro se*, has moved for entry of a default judgment against Defendants QED Connect, Inc. ("QED"), Nanny Katharina Bahnsen ("Bahnsen"), and David Rumbold ("Rumbold"). (Dkt. No. 41). For the reasons set forth below, the undersigned respectfully recommends that Plaintiff's motion be **GRANTED IN PART** and **DENIED IN PART** and that a default judgment be entered as to Defendants QED and Bahnsen but not as to Defendant Rumbold, and as to certain of Plaintiff's claims but not as to others.

BACKGROUND

A. Plaintiff's Allegations

This action arises from Bandari's purchase of shares in QED, whose stock is traded in the OTC pink sheets under the symbol "QEDN." (Verified Complaint, Dkt. No. 1 ("Complaint" or "Compl."), ¶¶ 1, 4). According to the Complaint, in October 2022, Bahnsen, who is QED's CEO, asked Bandari if he was interested in buying a block of QEDN shares held by Rumbold, a QED note holder residing in Wyoming, Illinois. (*Id.* ¶¶ [*2] 6, 13). Bahnsen told Bandari that Rumbold, who held a Convertible Promissory Note from QED that had an outstanding principal balance, was selling his interest in QED's shares at a 25% discounted price. (*Id.* ¶¶ 13-14 & Ex. B at 1).

Following negotiations, the parties signed an agreement on October 24, 2022 providing for Bandari to acquire 170 million shares of QEDN shares at a discounted price of $0.0007 per share, totaling $119,000. (*Id.* ¶¶ 13, 15). At Rumbold's request, Bandari wired $10,000 to an account in Colombia to "hold the deal." (*Id.* ¶ 15). This money was apparently sent to a QED account, as the Complaint describes it as "their company's account in Colombia." (*Id.*). Bahnsen confirmed receipt of the funds and asked Bandari to send the balance of the purchase price. (*Id.*). Shortly thereafter, after selling other stocks and taking money from his savings, Bandari wired the remaining balance of $109,000. (*Id.*). Again, Bahnsen confirmed receipt. (*Id.*).

Subsequently, Bahnsen told Bandari that, although she had thought the company had 170 million shares available, in fact it only had a little over 156 million. (*Id.*). In the meantime, while Bandari was waiting for his shares, the price [*3] of QEDN was dropping. (*Id.* ¶ 16). As a result, the parties renegotiated the deal and entered into a revised written agreement dated December 19, 2022 (the "Agreement" or "Agmt."). (*Id.* ¶¶ 16-17). A copy of the Agreement, denominated an "Assignment Agreement," is attached to the Complaint. (*Id.* Ex. B).

Under the Agreement, to which Bandari, Rumbold, and QED are all parties, Bandari agreed to purchase part of the balance QED owed on Rumbold's note for a total of $151,421.15. (Agmt. at 1). In exchange, the note would be restated and Bandari would receive a total of 550 million QEDN shares: approximately 278.4 million shares at a price of $0.0003 and approximately 271.6 million shares at a price of $0.00025. (*Id.*; *see* Compl. ¶ 17). Recognizing that Bandari had already paid

$119,000, the Agreement provided for Bandari to pay the additional sum of $32,421.15 by December 19, 2022. (Agmt. at 2). Bandari wired this amount and

Bahnsen again confirmed receipt. (Compl. ¶ 17). Bandari never received any of the QEDN shares he was promised. (*Id.* ¶ 48). Over the next three months, Bandari was met with a series of excuses from Bahnsen as to why QED could not deliver the shares to him. At first, Bahnsen [*4] told him New York State needed to increase the company's authorized shares for her to issue shares to him, but "due to the holidays no one was responding." (*Id.* ¶ 18). When Bandari checked in after the holidays, Bahnsen said New York State needed "some changes in the paperwork." (*Id.*). In February 2023, after the authorized shares were increased, Banhsen told Bandari that she needed "to work with an attorney," and subsequently that she needed "a legal opinion from a transfer agent," because his shares would exceed 10% of the company's total authorized shares, creating a risk he would be deemed a control person. (*Id.* ¶¶ 19, 20). While Bandari was still waiting for his shares, Bahnsen issued 200 million shares to another person and also issued large blocks of shares to herself as compensation. (*Id.* ¶ 19).

In early March 2023, as the stock price continued to drop, Bandari demanded that Bahnsen either renegotiate the price of the shares or return his money. (*Id.* ¶ 22). Unwilling to renegotiate the price, Bahnsen said she would return Bandari's money in 24 to 48 hours. (*Id.*). She then reported that she "had already given [Bandari's] money to Rumbold and Rumbold was not willing to give [Bandari's] [*5] money back." (*Id.* ¶ 23). She asked for time to find someone to buy Bandari's interest. (*Id.*). Weeks passed with Bahnsen saying only that she was "working with a possible buyer." (*Id.* ¶¶ 24-26). Bahnsen stopped taking Bandari's calls and communicated only, and rarely, via WhatsApp text messages. (*Id.* ¶ 24).

At this point, Bandari created a new email address and, using an assumed name, inquired of Bahnsen about discounted shares. (*Id.* ¶ 27). Bahnsen offered to sell him 500 million shares at a lower price than provided for in the Agreement. (*Id.*). She sent a proposed agreement and asked Bandari's alias to transfer a $15,000 deposit to her Chase account. (*Id.*). Bandari then revealed himself and confronted Bahnsen, asking why "she was committing fraud" by giving him neither shares nor his money back, but only "excuses." (*Id.* ¶ 28).

Nonetheless, hoping to avoid a legal process, Bandari allowed Bahnsen more time to find someone who could resolve the problem. (*Id.* ¶ 29). Bahnson falsely claimed that she was "working with Nestle to do a joint venture" and assured Bandari that if she was unable to give Bandari his money back by April 17, 2023, she would issue him shares. (*Id.*). She did not do [*6] either and "has completely ignored" Bandari since April 19, 2023. (*Id.*). In a company filing on May 31, 2023, QED and Bahnsen falsely reported that the money Bandari sent Bahnsen for the purchase of stock was a "loan with a minimum interest rate." (*Id.* ¶ 30).

The Complaint alleges that Bahnsen operates QED "as her own personal wallet" and "does not create a legitimate product." (*Id.* ¶ 31). Instead, Bahnsen "sells shares and pays off one person with another person's purchase similar to a Ponzi scheme" in order to fund her extravagant lifestyle. (*Id.*).

B. Procedural History

Bandari filed his Complaint on April 17, 2024. (Dkt. No. 1). He submitted affidavits of service for all three Defendants on May 22, 2024. (Dkt. Nos. 12-14). According to the affidavits, QED's registered agent and Rumbold were both served within the United States via hand delivery (*see* Dkt. Nos. 12 & 14), while the Complaint and summons were sent to Bahnsen at her address in Colombia via UPS mail. (Dkt. No. 13). To date, none of the Defendants have appeared in this action or answered the Complaint.

On June 21, 2024, the Clerk issued certificates of default as to QED and Rumbold. (Dkt. Nos. 24 & 27). The Clerk initially [*7] declined to issue a certificate of default as to Bahnsen because of questions regarding the propriety of service, causing Bandari to file a motion for alternative service. (Dkt. No. 30). On October 2, 2024, this Court issued an Order clarifying that service on Bahnsen had been properly effected by mail in accordance with Federal Rule of Civil Procedure 4(f)(1). (Dkt. No. 31 at 2-3). Accordingly, the Court denied Bandari's motion for alternative service as moot and directed the Clerk to issue a certificate of default as to Bahnsen. (*Id.* at 4). The Clerk issued the certificate of default on October 3, 2024. (Dkt. No. 32).

On December 18, 2024, Bandari filed a motion for entry of a default judgment against all three Defendants (Dkt. No. 41), along with a supporting Affidavit (Dkt. No. 42)

and memorandum of law (Dkt. No. 43 ("Pl. Br.")).[1] The docket reflects that the default judgment papers were served on all three Defendants. (Dkt. Nos. 38-40). On May 30, 2025, the Court scheduled an inquest for July 11, 2025 on the issue of damages, while noting that the inquest would be cancelled and the issue of damages decided on the papers if no party requested an inquest. (Dkt. No. 45). At the Court's direction, Bandari served a copy of [*8] the Court's May 30 Order on the Defendants as well. (Dkt. Nos. 51, 54, 55). On June 16, 2025, Bandari filed two additional letters relating to the relief he is seeking. (Dkt. Nos. 49 & 50).

LEGAL STANDARD

A party seeking a default judgment must follow the two-step procedure set forth in Federal Rule of Civil Procedure 55. *Burns v. Scott*, 635 F. Supp. 3d 258, 271 (S.D.N.Y. 2022). First, the Clerk of the Court must enter a Certificate of Default under Rule 55(a). *Id.* Second, if the defaulting party still fails to appear or move to set aside the default, the Court may enter a default judgment under Rule 55(b). *Id.* "Whether to enter a default judgment lies in the 'sound discretion' of the trial court." *Id.* (quoting *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 95 (2d Cir. 1993)).

"On a motion for default judgment after default has entered, a court is required to accept all of the plaintiff's factual allegations as true and draw all reasonable inferences in the plaintiff's favor, but it is also required to determine whether the plaintiff's allegations establish the defendant's liability as a matter of law." *Mirlis v. Greer*, 80 F.4th 377, 383 (2d Cir. 2023) (cleaned up). While a defaulting party admits the well-pleaded factual allegations contained in the complaint, "it does not admit conclusory allegations or legal conclusions," *E.A. Sween Co. v. A & M Deli Express Inc.*, 787 F. App'x 780, 782 (2d Cir. 2019), and the court "need not agree that the alleged facts constitute a valid [*9] cause of action." *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 137 (2d Cir. 2011) (citation omitted).

Thus, "[a] default only establishes a defendant's liability if [the complaint's] allegations are sufficient to state a cause of action against the defendant[]." *Gesualdi v. Quadrozzi Equip. Leasing Corp.*, 629 F. App'x 111, 113 (2d Cir. 2015). The legal sufficiency of those allegations "is analyzed under the familiar plausibility standard enunciated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), aided by the additional step of drawing inferences in the [non-defaulting party's] favor." *WowWee Grp. v. Meirly*, No. 18 Civ. 706 (AJN), 2019 WL 1375470, at *5 (S.D.N.Y. Mar. 27, 2019).

DISCUSSION

Bandari's Complaint asserts eight causes of action against all three Defendants for: (1) federal securities fraud, in violation of Section 10(b) of the Securities Exchange Act of 1934; (2) sale of unregistered securities, in violation of the Securities Act of 1933; (3) common law fraud; (4) violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"); (5) unfair and deceptive practices in violation of Section 349 of the New York General Business Law; (6) willful misconduct; (7) breach of contract, in the alternative; and (8) intentional infliction of emotional distress. (Compl. ¶¶ 32-99). The Complaint seeks an award of damages of $151,421.15 (the amount Bandari paid for the shares he never received) or, alternatively, specific performance in the form of the issuance of shares to him at the price of $0.0001 per share; punitive damages, treble damages, and statutory damages; [*10] pre-judgment and post-judgment interest; and attorney's fees. (*Id.* at 20).

Bandari's motion for default judgment appears to seek a judgment in his favor on all eight causes of action. (*See* Dkt. No. 41). However, the relief requested in Bandari's motion papers focuses on his alternative request for specific performance, contending that the issuance to him of 1.514 billion QEDN shares (equating, at a price of $0.0001 per share, to the $151,421.12 he paid) is "the appropriate legal relief to be accorded to the Plaintiff." (Pl. Br. ¶ 15; *see also* Dkt. No. 49 (emphasizing that the share issuance is the "main relief" Bandari seeks)). Bandari also seeks pre-judgment interest, attorney's fees, punitive damages, and injunctive relief in the form of an injunction barring Defendants from issuing more QEDN shares until his shares are issued. (Pl. Br. ¶¶ 17-19; *see also* Dkt. No. 50 (submitting invoices from Upwork, an online platform offering the services of freelance attorneys, in support of Bandari's application for attorney's fees)).

A. Personal Jurisdiction

[1] The Honorable Jennifer H. Rearden referred the present action to the undersigned on April 30, 2024 for, *inter alia*, dispositive motions requiring a report and recommendation, including the instant motion.

As an initial matter, the Court considers whether it has personal jurisdiction over Defendants. In this Circuit, when defendants fail to appear [*11] in civil suits, district courts may *sua sponte* review their jurisdiction over non-appearing defendants. *See Sinoying Logistics Pte Ltd. v. Yi Dan Xin Trading Corp.*, 619 F.3d 207, 213 (2d Cir. 2010) ("[B]efore a court grants a motion for default judgment, it may first assure itself that is has personal jurisdiction over the defendant[.]").

In its Jurisdiction and Venue allegations, the Complaint, *inter alia*, invokes Section 5.6 of the Agreement, which provides, in pertinent part:

> Each party hereto submits to the exclusive jurisdiction of any state or federal court sitting in New York City, New York in any proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the proceeding may be heard and determined in any such court and hereby expressly submits to the exclusive personal jurisdiction and venue of such court for the purposes hereof and expressly waives any claim of improper venue and any claim that such courts are an inconvenient forum.

(Agmt. § 5.6; *see* Compl. ¶ 10).

It is well settled that "[p]arties can consent to personal jurisdiction through forum-selection clauses in contractual agreements." *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 103 (2d Cir. 2006). This is the case even where the party otherwise lacks minimum contacts with the forum state. *Gen. Elec. Int'l, Inc. v. Thorco Shipping Am., Inc.*, No. 21 Civ. 6154 (JPC), 2022 WL 1748410, at *5 (S.D.N.Y. May 31, 2022). "Thus, '[w]here an agreement contains a [*12] valid and enforceable forum selection clause, . . . it is not necessary to analyze jurisdiction under New York's long-arm statute or federal constitutional requirements of due process.'" *Id.* (quoting *Export-Import Bank of U.S. v. Hi-Films S.A. de C.V.*, No. 09 Civ. 3573 (PGG), 2010 WL 3743826, at *4 (S.D.N.Y. Sept. 24, 2010)) (alteration in original).

"Courts uphold contractual clauses consenting to jurisdiction if they were reasonably communicated to the [defendant], they were not obtained through fraud or overreaching, and their enforcement would not be unreasonable and unjust." *Platina Bulk Carriers Pte Ltd. v. Praxis Energy Agents DMCC*, No. 20 Civ. 4892 (NRB), 2021 WL 4137528, at *3 (S.D.N.Y. Sept. 10, 2021) (citing *D.H. Blair & Co.*, 462 F.3d at 103); *see also AKF, Inc. v. Arnold Bros. Forest Prods., Inc.*, No. 20 Civ. 7708 (GBD) (BCM), 2023 WL 5310243, at *3 (S.D.N.Y. Apr. 28, 2023) ("Forum selection clauses are 'prima facie valid and should be enforced unless enforcement is shown by the resisting party to be unreasonable under the circumstances.'" (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972))).

In considering whether the presumption of enforceability applies to a forum selection clause, courts consider, *inter alia*, whether "the claims and parties to the dispute are subject to the clause." *Fasano v. Yu Yu*, 921 F.3d 333, 335 (2d Cir. 2019). Here, the language of the clause is broad, extending to all claims "arising out of or relating to this Agreement." (Agmt. § 5.6). This language encompasses the federal securities claims, RICO claim, and state law claims asserted in the Complaint, all of which arise out of or relate to the transaction that is the subject of the Agreement. [*13] *See, e.g., Fasano v. Li*, 47 F.4th 91, 101-02 (2d Cir. 2022) (federal securities claims asserted by minority shareholders fell within scope of forum selection clause in deposit agreement governing issuance of American depositary shares that covered claims "arising out of or relating to" shares); *Miller-Rich v. Altum Pharms., Inc.*, No. 22 Civ. 3473 (JLR), 2023 WL 8187875, at *10 (S.D.N.Y. Nov. 27, 2023) ("'When "arising out of," "relating to," or similar words appear in a forum selection clause, such language is regularly construed to encompass securities, antitrust, and tort claims associated with the underlying contract.'" (quoting *Credit Suisse Sec. (USA) LLC v. Hilliard*, 469 F. Supp. 2d 103, 107 (S.D.N.Y. 2007))).

Because QED and Rumbold are parties to the Agreement, they are plainly subject to the forum selection clause. So is Bahnsen, even though she is not a party. "[A] party to a contract with a forum-selection clause may invoke that clause to establish personal jurisdiction over a defendant that is not party to the contract but that is closely aligned with a party, or closely related to the contract dispute itself," such as "corporate executive officers." *Saidnia v. Nimbus Mining LLC*, No. 21 Civ. 7792 (VSB), 2023 WL 7005037, at *6 (S.D.N.Y. Oct. 24, 2023) (cleaned up). As the CEO of QED and the individual who negotiated the transaction with Bandari and signed the Agreement on behalf of QED, Bahnsen is "closely related" to both a party to the Agreement and to the dispute. Thus, she is also bound by the forum [*14] selection clause. *Id.* at *6-7 (finding that CEO and founders of company were bound by forum selection clause in contract to which company was a party and, therefore, "personal jurisdiction exists over the Individual Defendants").

Because Defendants have not appeared, they have not raised any objection to the validity or enforceability of the forum selection clause in the Agreement. Nor does the Court perceive any basis for such an objection. The clause is clearly set forth in the Agreement, a relatively short seven-page document. Nothing suggests it would be unjust or unreasonable for Bandari to enforce the clause against Defendants.

Accordingly, this Court finds that personal jurisdiction over Defendants exists by virtue of the consent-to-jurisdiction clause in Section 5.6 of the Agreement. *See, e.g., JVM Holdgs. LLC v. iAERO Grp. HoldCo 3 LLC*, No. 22 Civ. 6098 (VSB) (RWL), 2023 WL 1809369, at *1 (S.D.N.Y. Jan. 26, 2023) ("The Court has personal jurisdiction over [the defaulting defendant] because, under the Redemption Agreement, [defendant] agreed to submit to jurisdiction of the Southern District of New York.").

B. QED and Bahnsen's Liability

The Court begins by analyzing the liability of QED and Bahnsen for the claims pleaded in the Complaint. The Court finds that the factual allegations of the Complaint, coupled [*15] with QED and Bahnsen's admission of those allegations by virtue of their default, establish their liability for securities fraud and common law fraud. The Court further finds that QED, but not Bahnsen, is liable on Bandari's breach of contract claim. However, as a matter of law, neither QED nor Bahnsen can be held liable on Bandari's remaining causes of action.

1. Securities Fraud

"'In order to state a claim under Rule 10b-5 for material misrepresentations, plaintiffs must allege that [each of the Defaulting Defendants] (1) made misstatements or omissions of material fact; (2) with scienter; (3) in connection with the purchase or sale of securities; (4) upon which plaintiffs relied; and (5) that plaintiffs' reliance was the proximate cause of their injury.'" *Camofi Master Ltd. v. Riptide Worldwide Inc.*, No. 10 Civ. 4020 (CM) (JLC), 2012 WL 6766767, at *8 (S.D.N.Y. Dec. 17, 2012) (quoting *In re Take-Two Interactive Sec. Litig.*, 551 F. Supp. 2d 247, 260 (S.D.N.Y. 2008) (cleaned up)).

Here, the allegations of Bandari's Complaint, taken as true, satisfy each of the elements of a federal securities fraud claim under Section 10(b) and Rule 10b-5. Bahnsen, on behalf of QED, promised in the Agreement to deliver shares to Bandari in exchange for his purchase of Rumbold's interest. (*See* Agmt.). A contractual breach may constitute fraud "where the breaching party never intended to perform its material obligations under the contract." [*16] *Cap. Mgmt. Select Fund Ltd. v. Bennett*, 680 F.3d 214, 226 (2d Cir. 2012); *see also United States ex rel. O'Donnell v. Countrywide Home Loans, Inc.*, 822 F.3d 650, 658 (2d Cir. 2016) ("[W]here allegedly fraudulent misrepresentations are promises made in a contract, a party claiming fraud must prove fraudulent intent at the time of contract execution; evidence of a subsequent, willful breach cannot sustain the claim."). That is precisely what the Complaint alleges here: that Defendants "deceived [Bandari] into entering into an agreement for the purchase of shares when [Defendants] had no intention of providing shares to [Bandari]." (Compl. ¶ 34).

Based on the Complaint's allegations—including Bahnsen first raising a purported issue as to whether QED had enough shares to issue to Bandari only after he paid his money (*id.* ¶ 15); Bahnsen's then making one excuse after another for months as to why the shares could not be delivered (*id.* ¶¶ 18-26); Bahnsen's protestations of inability to perform at the same time she was issuing and offering to issue large blocks of shares to others (*id.* ¶ 20); Bahnsen's refusal to return Bandari's money despite QED's inability to perform (*id.* ¶ 23); and Bahnsen's finally cutting off communications with Bahnsen altogether (*id.* ¶ 29)—the inference that Bahnsen in fact never intended to issue Bandari his shares is more than plausible. [*17] The elements of a materially false representation, made with scienter, are thus satisfied.

The requirement that the misrepresentation be made "in connection with the purchase or sale of securities" is also satisfied. The transaction involved Bandari's purchase of Rumbold's interest in a Convertible Promissory Note. (Agmt. at 1). The Note was convertible into QEDN shares and it is plain from the Complaint that Bandari was making the purchase for investment purposes with the intent to exercise his right of conversion. (*See, e.g.*, Compl. ¶¶ 13, 15, 20). Convertible promissory notes have been held to be a "security" within the meaning of the federal securities laws under such circumstances. *See, e.g., S.E.C. v. LG Cap. Fund., LLC*, 702 F. Supp. 3d 61, 72-75 (E.D.N.Y. 2023) (applying test set forth in *Reves v. Ernst & Young*, 494 U.S. 56 (1990), for determining whether a note is a security and finding that "convertible redeemable notes" are "securities consistent with the Supreme Court's

analysis"); *Leemon v. Burns*, 175 F. Supp. 2d 551, 559 (S.D.N.Y. 2001) ("The fact that the Note's original principal could be converted into AMDL common stock is a strong factor for holding that the Note is a security."). The Agreement also gave Bandari the right to purchase up to 350 million more QEDN shares at a discount (Agmt. § 5.9), and in this respect as well the fraud [*18] may be said to be in connection with the purchase and sale of securities.

Finally, the Complaint's allegations also establish that Bandari relied on QED and Bahnsen's misrepresentations in entering the Agreement and paying the purchase price, and that such reliance was the proximate cause of Bandari's loss. (*See* Compl. ¶¶ 15, 17, 36-27).

Even in the context of a default judgment, complaints in private securities actions must comply with the heightened pleading requirements of the Private Securities Litigation Reform Act ("PSLRA") and Federal Rule of Civil Procedure 9(b). *See Camofi Master Ltd.*, 2012 WL 6766767, at *7-8; *Abanda v. OurBloc LLC*, Civil No. 23-1071-BAH, 2024 WL 3995139, at *12 (D. Md. Aug. 29, 2024). Those requirements are also satisfied. The Complaint specifies the misrepresentations at issue, *i.e.*, QED's promises in the Agreement to deliver shares to Bandari, and the reasons why the statements are false. *See* 15 U.S.C. § 78u-4(b)(1)(A); Fed. R. Civ. P. 9(b). The Complaint also alleges facts giving rise to an inference of scienter on the part of QED and Bahnsen that is "more than merely plausible," but is "cogent and at least as compelling as any opposing inference of nonfraudulent intent." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 314 (2007).

For these reasons, the Court finds that entry of default against QED and Bahnsen is warranted as to Plaintiff's first cause of action for securities fraud. *See, e.g., Camofi Master Ltd.*, 2012 WL 6766767, at *8-10 (entering default judgment as [*19] to certain defendants on plaintiffs' securities fraud claim); *McEssy v. Gray*, No. 15 Civ. 1462, 2019 WL 6829053, at *8-9 (N.D.N.Y. Dec. 13, 2019) (same).

2. Sale of Unregistered Securities

Plaintiff's second cause of action also arises under the federal securities laws, and alleges that Defendants engaged in the sale of unregistered securities in violation of Section 5 of the Securities Act of 1933, 15 U.S.C § 77e.[2] (*See* Compl. ¶¶ 41-45). Section 5 of the Securities Act "prohibits any person from selling unregistered securities using any means of interstate commerce unless the securities are exempt from registration." *Ash v. Maglan Cap. Holdings LLC*, No. 19 Civ. 5650 (PAE), 2021 WL 1140892, at *1 (S.D.N.Y. Mar. 24, 2021). Further, Section 12(a)(1) of the Securities Act "creates a private right of action for the purchaser against the seller in any transaction that violates Section 5," which includes the right to sue for damages or recission. *Id.*

However, many companies whose stock is quoted in the so-called "pink sheets" or other OTC market qualify for an exemption from registration. *See, e.g.*, James Chen, *OTC Pink: Definition, Company Types, Investment Risks*, Investopedia, Nov. 30, 2023, https://www.investopedia.com/terms/o/otc-pink.asp#:~:text=No%2C%20Pink%20Markets%20are%20not,risk%20in%20this%20speculative%20market (last accessed Aug. 28, 2025) ("Companies in this [Pink market] tier are not mandated to register their stock with the SEC."); Ulf Brüggemann, et al., *The Twilight Zone: OTC [*20] Regulatory Regimes and Market Quality* 1, 11 (ECGI, Working Paper No. 224/2013, 2013) (noting that issuers "can avoid registering securities with the SEC by issuing securities under one of several exemptions for limitation circulation offerings" and finding that over 4,500 of the over 8,000 stocks traded in the OTC markets in 2010 were not registered with the SEC).

Although claiming that Defendants unlawfully "sold unregistered securities without any prospectus" in violation of Section 5 (Compl. ¶ 43), the Complaint pleads no facts supporting its premise that QED was required to register its shares with the SEC and was not exempt from registration, as are many companies traded in the OTC "pink sheets." Nor does Bandari's brief in support of his motion for a default judgment explain why QED was required to register. In the absence of supporting factual allegations, the Complaint's mere assertion that QED unlawfully sold unregistered securities in violation of Section 5 is a legal conclusion that is insufficient to meet Bandari's pleading burden. *See Taizhou Zhongneng Import & Export Co. v. Koutsobinas*, 509 F. App'x 54, 57 (2d Cir. 2019) ("legal conclusions, with no specific factual allegations," are

[2] Plaintiff erroneously refers to this provision as "Section 11," but correctly identifies the United States Code citation as 15 U.S.C § 77e. (*See* Compl. at 11 (heading)).

insufficient to support a default judgment).

Thus, the Court finds that entry of default against [*21] QED and Bahnsen is unwarranted as to Plaintiff's second cause of action for sale of unregistered securities.

3. Common Law Fraud

Bandari's theory of fraud liability for his common law fraud claim mirrors that for his federal securities fraud claim, namely, that Defendants "misrepresented that they were selling a block of shares to the plaintiff knowing that he would never receive such shares." (Comp. ¶ 47). To decide whether this theory properly supports Bandari's common law fraud claim, the Court must first decide what state's law to apply.

As an initial matter, a conflict of laws analysis may not be necessary if the parties' Agreement fixes the applicable state law. The Agreement includes a choice-of-law provision which states: "All issues and questions concerning the construction, validity, enforceability and interpretation of this Agreement . . . shall be governed by . . . the laws of the state of Nevada without giving effect to any choice of law or conflict of law rules . . . that would cause the application of the laws of any jurisdiction other than the State of Nevada[.]" (Agmt. § 5.5). Bandari's common law fraud claim, however, does not turn on or concern any issue of interpretation [*22] or construction of the Agreement. Nor does it challenge or concern the validity or enforceability of the Agreement. Rather, it is a tort claim that concerns whether the promise made in the Agreement to deliver QEDN shares to Bandari was fraudulent.

As such, Plaintiff's common law fraud claim is not governed by the Agreement's choice-of-law provision. *See, e.g., Fin. One Pub. Co. v. Lehman Bros. Special Fin.*, 414 F.3d 325, 335 (2d Cir. 2005) (under New York law, "tort claims are outside the scope of contractual choice-of-law provisions that specify what law governs the construction of the terms of the contract"); *J&R Multifamily Grp., Ltd. v. U.S. Bank Nat'l Ass'n as Tr. for Registered Holders of UBS-Barclays Com. Mortg. Tr. 2012-C4, Com. Mortg. Pass-Through Certificates, Series 2012-C4*, No. 19 Civ. 1878 (PKC), 2019 WL 6619329, at *4 (S.D.N.Y. Dec. 5, 2019) (holding that choice-oflaw provision that encompassed "matters of construction, validity, and performance" of agreement was "insufficiently broad to bring a tort claim within the scope of the choice-of-law provision").[3]

"'A federal court sitting in diversity or adjudicating state law claims that are pendent to a federal claim must apply the choice of law rules of the forum state.'" *Elliott v. Cartagena*, 84 F.4th 481, 496 n.14 (2d Cir. 2023) (quoting *Rogers v. Grimaldi*, 875 F.2d 994, 1002 (2d Cir. 1989)). "In New York, the forum state in this case, the first question to resolve in determining whether to undertake a choice of law analysis is whether there is an actual conflict of laws." *Curley v. AMR Corp.*, 153 F.3d 5, 12 (2d Cir. 1998). "Where the applicable law from each jurisdiction provides different substantive [*23] rules, a conflict of laws analysis is required." *Id.*

In the instant case, Plaintiff is a resident of Texas. (Compl. ¶ 3). Defendant QED is a New York corporation and Defendant Bahnsen is a New York resident. (*Id.* ¶¶ 4, 6). Defendant Rumbold is an Illinois resident. (*Id.* ¶ 8). The Court thus considers the substantive common law of fraud in Texas, New York, and Illinois.

In New York, "a fraud claim cannot derive wholly from a counter-party's false statement of an intent to perform under a contract. Rather, to say that a contracting party intends when he enters into an agreement not to be bound by it is not to state 'fraud' in an actionable area, but to state a willingness to risk paying damages for breach of contract." *Ronis v. Carmine's Broadway Feast, Inc.*, No. 10 Civ. 3355 (TPG), 2012 WL 3929818, at *7 (S.D.N.Y. Sept. 7, 2012) (cleaned up). Thus, under New York law, "[a] claim for fraudulent inducement of contract can be predicated upon an insincere promise of future performance only where the alleged false promise is *collateral* to the contract the parties executed; if the promise concerned the performance of the contract itself, the fraud claim is subject to dismissal as duplicative of the claim for breach of contract." *HSH Nordbank AG v. UBS AG*, 95 A.D.3d 185, 206, 941 N.Y.S.2d 59 (1st Dep't 2012) (emphasis in original); *see also Rowe Plastic Surgery of New Jersey, L.L.C. v. Aetna Life Ins. Co.*, No. 22 Civ. 8713 (JLR) (OTW),

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[3] The question of whether the choice-of-law provision in the Agreement is broad enough to encompass tort claims is itself governed by New York law, regardless of the substantive law selected by the provision. *See Fin. One Pub. Co.*, 414 F.3d at 333 ("The district court in this case, sitting in diversity, was bound to apply New York law to determine the scope of the contractual choice-of-law clause. New York courts decide the scope of such clauses under New York law, not under the law selected by the clause. . . .").

2025 WL 1603920, at *7 (S.D.N.Y. June 6, 2025) ("[T]he material misrepresentation must [*24] be collateral to the contract it induced.") (citations omitted).

Likewise, "under Illinois law there is no action for promissory fraud; meaning that the alleged misrepresentations must be statements of present or preexisting facts, and not statements of future intent or conduct." *Ault v. C.C. Servs., Inc.*, 232 Ill. App. 3d 269, 271, 597 N.E.2d 720, 722 (1992); *see Stamatakis Indus., Inc. v. King*, 165 Ill. App. 3d 879, 882, 520 N.E.2d 770, 772 (1987) ("The promissory fraud alleged here is a promise to perform a contract with an intention not to perform. Illinois courts have held that this is not actionable.").

By contrast, the Texas Supreme Court has recognized that under Texas law, "a fraud claim can be based on a promise made with no intention of performing, irrespective of whether the promise is later subsumed within a contract." *Formosa Plastics Corp. USA v. Presidio Eng'rs & Contractors, Inc.*, 960 S.W.2d 41,46 (Tex. 1998); *see also Ibe v. Jones*, 836 F.3d 516, 533 (5th Cir. 2016) (under Texas law, "a breach of contract is . . . actionable as fraudulent inducement if it is 'coupled with a showing that the promisor never intended to perform under the contract.'" (quoting *Kevin M. Ehringer Enters., Inc. v. McData Servs. Corp.*, 646 F.3d 321, 325 (5th Cir. 2011))). There is no requirement, as there is under New York law, that the misrepresentation be "collateral" to the contract. As such, there is an actual conflict in the laws of the relevant jurisdictions, and so the Court must proceed to a conflict of law analysis.

Generally, "New York law employs an 'interest analysis' in [*25] choice of law analysis of tort claims, under which courts apply 'the law of the jurisdiction having the greatest interest in the litigation.'" *Cromer Fin. Ltd. v. Berger*, 158 F. Supp. 2d 347, 357 (S.D.N.Y. 2001) (quoting *Curley*, 153 F.3d at 12). Under New York's "interest analysis" approach, "courts seek 'to effect the law of the jurisdiction having the greatest interest in resolving the particular issue,' which in the typical case will be either the jurisdiction where the tort occurred or the domicile of one or more of the parties." *Mashreqbank PSC v. Ahmed Hamad Al Gosaibi & Bros. Co.*, 23 N.Y.3d 129, 138, 989 N.Y.S.2d 458, 12 N.E.3d 456 (2014) (quoting *Cooney v. Osgood Mach.*, 81 N.Y.2d 66, 72, 595 N.Y.S.2d 919, 612 N.E.2d 277 (1993)).

"According to this principle, 'fraud claims are governed by the laws of the jurisdiction where the injury is deemed to have occurred—which usually is where the plaintiff is located.'" *PPI Enters. (U.S.), Inc. v. Del Monte Foods Co.*, No. 99 Civ. 3794 (BSJ), 2003 WL 22118977, at *17 (S.D.N.Y. Sept. 11, 2003) (quoting *Pinnacle Oil Co. v. Triumph Oklahoma, L.P.*, No. 93 Civ. 3434, 1997 WL 362224, at *1 (S.D.N.Y. Jun. 27, 1997)). In other words, "[f]or claims based on fraud, the locus of the fraud is the place where the injury was inflicted, as opposed to the place where the fraudulent act originated." *San Diego Cnty. Emps. Ret. Ass'n v. Maounis*, 749 F. Supp. 2d 104, 124 (S.D.N.Y. 2010) (citation omitted); *see also City Calibration Ctrs. Inc. v. Heath Consultants Inc.*, 727 F. Supp. 3d 332, 361 (E.D.N.Y. 2024) ("New York courts consider the locus of a fraud to be the place where the injury was inflicted and not the place where the fraudulent act originated." (citation omitted)); *BHC Interim Funding, L.P. v. Finantra Cap., Inc.*, 283 F. Supp. 2d 968, 990 (S.D.N.Y. 2003) ("In fraudulent representation cases, the 'locus of the tort' is the place where the injury occurred, not the place where the fraud originated." (citation omitted)). [*26]

While New York has an interest in the instant action because it is the domicile of Defendants QED and Bahnsen, who engaged in the allegedly fraudulent conduct, Plaintiff Bandari is a resident of Texas, giving Texas the greater interest. *See, e.g., City Calibration Ctrs.*, 727 F. Supp. 3d at 332 (applying New York law to fraudulent inducement claim because "New York is the locus of Plaintiffs' injury"). Accordingly, Plaintiff's common law fraud claim is properly governed by the law of Texas under New York choice of law rules.

Under Texas law, "[c]ommon law fraud requires (1) that a material representation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or it was made recklessly, without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury." *Nooner Holdings, Ltd. v. Abilene Vill., LLC*, 668 S.W.3d 956, 963 (Tex. App. 2023), *review denied* (Oct. 6, 2023). These elements largely track the elements of a claim for securities fraud under Section 10(b). *See Meyers v. Moody*, 693 F.2d 1196, 1214 (5th Cir. 1982).

As set forth above in the analysis of Bandari's Section 10(b) claim, Bandari has adequately alleged that a material misrepresentation [*27] was knowingly made by Bahnsen and QED with the intent that Bandari rely

on this misrepresentation, Bandari in fact relied on the misrepresentation, and Bandari suffered injury as a result. Hence, the allegations of Bandari's Complaint satisfy each of the elements of common law fraud under Texas state law. Together with Defendants' default, these allegations establish QED and Bahnsen's liability as a matter of law. As such, the Court finds that entry of default against QED and Bahnsen is warranted as to Plaintiff's third cause of action for common law fraud.

4. RICO

In order to state a claim under the RICO statute, "a plaintiff must allege '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" *Kerik v. Tacopina*, 64 F. Supp. 3d 542, 553 (S.D.N.Y. 2014) (quoting *DeFalco v. Bernas*, 244 F.3d 286, 306 (2d Cir. 2001)). "Racketeering activity" encompasses, among other things, mail fraud and wire fraud in violation of 18 U.S.C. § 1341 and § 1343. 18 U.S.C. § 1961(1)(B). A "pattern of racketeering activity" consists of, *inter alia*, "at least two acts of racketeering activity," 18 U.S.C. § 1961(5), and "in order to prove such a 'pattern,' a civil RICO plaintiff also 'must show that the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity[.]'" *Crawford v. Franklin Credit Mgmt. Corp.*, 758 F.3d 473, 487 (2d Cir. 2014 (quoting *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989) (emphasis in original)). [*28] "The requisite continuity may be found in 'either an "openended" pattern of racketeering activity (*i.e.*, past criminal conduct coupled with a threat of future criminal conduct) or a "closed-ended" pattern of racketeering activity (*i.e.*, past criminal conduct extending over a substantial period of time[.]'" *Id.* at 487-88 (quoting *GICC Cap. Corp. v. Tech. Fin. Grp., Inc.*, 67 F.3d 463, 466 (2d Cir. 1995)).

Bandari's RICO claim is defective as a matter of law because it fails to sufficiently plead the required continuity. The Complaint relies on predicate acts of mail and wire fraud, referencing Bandari's wire transfers of the payment price as well as emails and text communications between Bandari and Bahnsen. (Compl. ¶¶ 60-65). But, as alleged, these multiple wire transfers and communications were all part of Defendants' single "scheme to . . . defraud the plaintiff into paying." (*Id.* ¶ 66). This is insufficient to allege a "pattern" of racketeering activity: "'multiple acts of mail fraud in furtherance of a single episode of fraud involving one victim and relating to one basic transaction cannot constitute the necessary pattern[.]'" *Crawford*, 758 F.3d at 489 (quoting *Tellis v. United States Fed. & Guar. Co.*, 826 F.2d 477, 478 (7th Cir. 1986)); *see also, e.g., Grace Int'l Assembly of God v. Festa*, 797 F. App'x 603, 606 (2d Cir. 2019) ("While [plaintiff] attempts to magnify the racketeering scheme by expanding the number of victims and predicate [*29] acts, in reality this is one scheme with one clear victim. That is clearly insufficient to establish a pattern for the purposes of RICO."); *Red Rock Sourcing LLC v. JGX LLC*, No. 21 Civ. 1054 (JBC), 2024 WL 1243325, at *17 (S.D.N.Y. Mar. 22, 2024) ("[A] mere multiplicity of wire or mail communications does not automatically satisfy the requisite continuity to establish a pattern of racketeering activity.").

The Complaint's allegations of the fraud on Bandari are not adequately augmented with additional allegations that would show either open-ended or close-ended continuity. As for closed-ended continuity, the Complaint alleges that the purported racketeering enterprise "operated from at least 2022" (Compl. ¶ 58), an apparent reference to the October 2022 email when Bahnsen first advised Bandari that Rumbold was looking to sell his block of shares at a discounted price (*see id.* ¶ 13). Bandari had wired all his funds by December 2022 (*see id.* ¶ 17), and his dealings with Defendants were over as of April 2023 (*see id.* ¶ 30), a mere four months after Bahnsen's initial solicitation. This is too abbreviated a time frame to establish closed-ended continuity. "[T]he Second Circuit 'generally requires that the crimes extend over at least two years,' having never found a closed-ended pattern for racketeering [*30] activity spanning a shorter period.'" *Red Rock Sourcing*, 2024 WL 1243325, at *17 (quoting *Reich v. Lopez*, 858 F.3d 55, 60 (2d Cir. 2017)).

As for open-ended continuity, "the plaintiff need not show that the predicates extended over a substantial period of time but must show that there was a threat of continuing criminal activity beyond the period during which the predicate acts were performed." *Cofacrèdit, S.A. v. Windsor Plumbing Supply Co.*, 187 F.3d 229, 242 (2d Cir. 1999). "Such a threat generally arises from the commission of predicate acts that are themselves inherently unlawful." *Red Rock Sourcing*, 2024 WL 1243325, at *19. "Otherwise, 'there must be some evidence from which it may be inferred that the predicate acts were the regular way of operating that business, or that the nature of the predicate acts themselves implies a threat of continued criminal activity.'" *Id.* (quoting *Cofacrèdit*, 187 F.3d at 243).

While mail and wire fraud are serious offenses, "it is well

established that offenses of fraud are not considered inherently unlawful acts that by their nature categorically carry the risk of recurrence." *Id.* And while Bandari alleges that Defendants engaged in fraudulent acts with the goal of defrauding "not only the plaintiff into providing funds to pay off other investors and finance the Bahnsen lifestyle" (Compl. ¶ 67), and that Bahnsen "does not create a legitimate product" and operates QED "similar to [*31] a Ponzi scheme" (*id.* ¶ 31), these are conclusory allegations unsupported by any pleaded facts showing that anyone other than Bandari has been victimized by Defendants or is at risk of being victimized by Defendants in the future. Such allegations are not sufficient to plead the threat of future criminal conduct required to allege open-ended continuity. *See, e.g., Kumaran v. Vision Fin. Markets, LLC*, No. 20 Civ. 3871 (GHS) (SDA), 2022 WL 18774949, at *9 (S.D.N.Y. Aug. 4, 2022) (finding conclusory allegations that defendants defrauded other customers and that mail and wire fraud were defendants' regular way of doing business to be insufficient to plead open-ended continuity), *R&R adopted*, 2022 WL 17540669 (S.D.N.Y. Dec. 6, 2022).

Accordingly, the Court recommends that Bandari's RICO claim be dismissed.

5. General Business Law § 349

Bandari's cause of action for unfair and deceptive practices under New York General Business Law ("GBL") § 349 also fails as a matter of law. GBL § 349 declares unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service[.]" GBL § 349(a). "'The elements of a cause of action under [GBL § 349] are that: (1) the challenged transaction was consumer-oriented; (2) defendant engaged in deceptive or materially misleading acts or practices; and (3) plaintiff was injured by reason of defendant's deceptive or misleading conduct. Thus, a plaintiff claiming [*32] the benefit of these statutes must allege conduct that is consumer oriented.'" *Sandoval v. Uphold HQ Inc.*, No. 21 Civ. 7579 (VSB), 2024 WL 1313826, at *6 (S.D.N.Y. Mar. 27, 2024) (quoting *Denenberg v. Rosen*, 897 N.Y.S.2d 391, 395-96 (1st Dep't 2010)).

The gravamen of Bandari's GBL § 349 claim is that Defendants repeatedly "lie[d] about their shares" and deceived him "about the shares of QEDN." (Compl. ¶¶ 79-80). But numerous decisions hold that "GBL § 349 'is inapplicable to claims involving securities transactions' because those cases involve 'investors . . . seeking income . . . not consumers . . . purchasing traditional goods or services.'" *Sandoval*, 2024 WL 1313826, at *7 (quoting *In re Evergreen Mut. Funds Fee Litig.*, 423 F. Supp. 2d 249, 264-65 (S.D.N.Y. 2006)); *see also People ex rel. Cuomo v. Charles Schwab & Co.*, 109 A.D.3d 445, 971 N.Y.S.2d 267, 270 (1st Dep't 2013) ("[T]he fourth cause of action is not maintainable inasmuch as General Business Law § 349 does not apply to securities transactions[.]"); *DeAngelis v. Corzine*, 17 F. Supp. 3d 270, 284 (S.D.N.Y. 2014) (dismissing GBL § 349 claim where plaintiff alleged that he "invested funds with [Defendants] as investments, not as a purchase of traditional consumer goods").

Even if this rule may not apply "where the plaintiff demonstrates an extensive marketing scheme that has a broader impact on consumers at large," *Sandoval*, 2024 WL 1313826, at *7 (cleaned up); *see also Ramirez v. Wells Fargo Bank, N.A.*, No. 19 Civ. 5074 (CBA), 2021 WL 9564023, at *12 (E.D.N.Y. Mar. 24, 2021) ("The critical question is whether 'the acts or practices have a broad [ ] impact on consumers at large.'" (citation omitted)), the Complaint here does not allege that Defendants' fraudulent conduct was part of an extensive marketing scheme or had a broad impact on consumers. [*33] Hence, Bandari has not pled an adequate claim for relief under GBL § 349. *See Ramirez*, 2021 WL 9564023, at *12 (dismissing GBL § 349 claim where complaint "fails to allege any consumer-oriented conduct").

6. Willful Misconduct

Next, the Complaint pleads a cause of action for "Willful Misconduct." (Compl. at 17 (heading) & ¶ 89). The gravamen of this claim is that Defendants "gave Plaintiff misleading and inaccurate information" and "intentionally misled Plaintiff and enticed him to enter into a new contract with the Defendants, requiring the plaintiff to provide more money to the Defendants knowing they would never issue him shares." (*Id.* ¶¶ 86-87).

It is unclear whether Texas or New York recognizes a standalone cause of action for "willful misconduct." The Court's research did not unearth any controlling Texas decisions, and New York courts appear to have reached conflicting results. *Compare C.H. v. Montclare Children's School*, No. 154519/2023, 2024 WL 5081648, at *2 (Sup. Ct. N.Y. Cnty. Dec. 10, 2024) ("[T]he Court finds that plaintiffs have sufficiently pled a cause of action for willful misconduct and thus dismissal of this

claim is denied."), and *PC-41 Doe v. Poly Prep Country Day Sch.*, 590 F. Supp. 3d 551, 568 (E.D.N.Y. 2021) (finding that plaintiff had plausibly alleged claim for willful misconduct under New York law and citing *Coco Invs., LLC v. Zamir Mgr. River Terrace, LLC*, 26 Misc.3d 1231(A), at *5, 907 N.Y.S.2d 99 (Sup. Ct. N.Y. Cnty. Mar. 3, 2010)), *with Petty v. Wender*, No. 153285/2018, 2020 WL 14033030, at *10 (Sup. Ct. N.Y. Cnty. July 30, 2020) ("Plaintiffs . . . concede that there is no cause of action for 'willful misconduct.'"), [*34] and *Aramid Ent't Fund. Ltd. v. Wimbledon Fin. Master Fund. Ltd.*, No. 651532/2011, 2012 WL 8700417 (Sup. Ct. N.Y. Cnty. Feb. 8, 2012) (finding that "plaintiff's third claim for willful misconduct is not a cause of action under New York law" and distinguishing *Coco Invs*. as a case where liability for willful misconduct was established by contract and defined under Delaware law), *aff'd*, 105 A.D.3d 682, 965 N.Y.S.2d 26 (1st Dep't 2013).

It is unnecessary to decide here whether a claim for willful misconduct exists, for such a claim is duplicative in this case. The Second Circuit has held that "[t]wo claims are duplicative of one another if they 'arise from the same facts and do not allege distinct damages.'" *NetJets Aviation, Inc. v. LHC Commc'ns, LLC*, 537 F.3d 168, 175 (2d Cir. 2008) (quoting *Sitar v. Sitar*, 50 A.D.3d 667, 854 N.Y.S.2d 536, 538 (2d Dep't 2008)); *see also Alan L. Frank Law Assocs. v. OOO RM Inv.*, No. 17 Civ. 1338 (NGG) (ARL), 2020 WL 7022317, at *18 (E.D.N.Y. Nov. 30, 2020) ("'[I]t is not the theory behind a claim that determines whether it is duplicative,' but rather the conduct alleged and the relief sought." (quoting *MIG, Inc. v. Paul, Weiss, Rifkind, Wharton & Garrison, L.L.P.*, 701 F. Supp. 2d 518, 532 (S.D.N.Y. 2010))).

Bandari's willful misconduct claim is duplicative of his other claims, including his claim for common law fraud. As noted above, the acts that Bandari alleges constitute willful misconduct are Defendants' providing him with false information and deceiving him to enter into the Agreement (Compl. ¶¶ 86-87)—the same factual allegations that underlie his fraud claim (*id.* ¶¶ 47, 49). He seeks damages as well as punitive damages for Defendants' willful misconduct (*id.* ¶¶ 88-89)—again, remedies he also [*35] seeks on his fraud claim (*id.* ¶ 51). Accordingly, the Court recommends that Plaintiff's cause of action for willful misconduct be dismissed as duplicative.

7. Breach of Contract

Bandari's breach of contract claim is pled in the alternative. (*See* Compl. at 18 (heading)). Under this claim, Bandari asserts that Defendants breached the Agreement by not providing the QEDN shares, and he seeks "specific performance," *i.e.*, the issuance of $1.541 billion shares to him at the price of $0.0001 per share, "if the defendants cannot pay the damages or damages would be insufficient." (*Id.* ¶¶ 91-94).

As noted above, the Agreement contains a choice-of-law provision selecting Nevada law to govern all issues concerning the construction, validity, enforcement and interpretation of the Agreement. (Agmt. § 5.5). "To prevail on a claim for breach of contract under Nevada law, a plaintiff must show '(1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach.'" *Mendez v. Wright, Findlay & Zak LLP*, 2:16-cv-1077-RJC-NJK, 2017 WL 62516, at *5 (D. Nev. Jan. 4, 2017) (quoting *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-20 (D. Nev. 2006)).

These elements are satisfied here. First, Bandari has provided a copy of the Agreement, fully executed by the three parties (QED, Rumbold, and Bandari), thus establishing the existence of [*36] a valid contract. Second, the allegations of the Complaint, together with Defendants' defaults, establish the element of breach. In Sections 4.3 and 4.4 of the Agreement, QED (the "Debtor" as defined in the Agreement) agreed that "Assignee"—*i.e.*, Bandari—"is entitled to convert the debt" assigned by Rumbold and further agreed "to take any action required to accommodate any of the rights assigned to Assignee in this Agreement." (Agmt. §§ 4.3, 4.4). Such action plainly encompasses the issuance of shares to Bandari. Bandari demanded that the shares be issued, yet QED never issued any shares to him, in violation of its obligations under the Agreement. Third, Bandari was damaged by the breach: he paid $151,411 and received nothing in return.

Thus, Bandari has established QED's liability for breach of contract, and a default judgment on this claim should be entered against QED. However, although Bandari's breach of contract claim is asserted against all three Defendants (Compl. at 18 (heading)), there is no basis for a finding of contract liability as to Bahnsen. Bahnsen is not a party to the Agreement and she signed the Agreement solely on behalf of QED. (*See* Agmt. at 6). It is well established [*37] that a corporate officer who signs a contract on behalf of the corporation cannot be held personally liable for the corporation's breach, absent a showing that the officer was the alter ego of the corporation. *See Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 477 (2006) ("[I]t is fundamental

corporation and agency law—indeed, it can be said to be the whole purpose of corporation and agency law—that the shareholder and contracting officer of a corporation has no rights and is exposed to no liability under the corporation's contracts."); *B&M Linen Corp. v. Kannegiesser, USA, Corp.*, 679 F. Supp. 2d 474, 486 (S.D.N.Y. 2010) (holding that a "corporate officer acting in his official capacity is not personally liable for the corporation's breach of contract"); *Stearns' Props. v. Trans-World Holding Corp.*, 492 F. Supp. 238, 243 (D. Nev. 1980) (after abandoning its alter ego theory of liability against defendant's chairman, plaintiff conceded that "it may recover only against the corporation on the breach of contract claim"). The Complaint does not adequately plead an alter ego theory of liability against Bahnsen. and hence it does not state a viable breach of contract claim against her.

8. Intentional Infliction of Emotional Distress

"Under New York law, the tort of intentional infliction of emotional distress has four elements: '(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial [*38] probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress.'" *Zonshayn v. Sackler Sch. of Medicine*, 648 F. Supp. 3d 485, 498 (S.D.N.Y. 2023) (quoting *Howell v. N.Y. Post. Co., Inc.*, 81 N.Y.2d 115, 121, 596 N.Y.S.2d 350, 612 N.E.2d 699 (1993)). "The requirements of the first element—'extreme and outrageous conduct'—are 'rigorous, and difficult to satisfy.'" *Id.* (quoting *Howell*, 81 N.Y.2d at 122). "'Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Id.* (quoting *Chanko v. Am. Broad. Cos. Inc.*, 27 N.Y.3d 46, 56, 49 N.E.3d 1171 (2016)).[4]

The Complaint does not meet this high standard. Perpetrating a financial fraud, while reprehensible, does not, without more, rise to the level of conduct so "outrageous" and "extreme" as to be regarded as "utterly intolerable in a civilized community." *See, e.g., Novak v. Merced Police Dep't*, No. 1:13-cv-1402-BAM, 2016 WL 2984278, at *13 (E.D. Cal. May 23, 2016) ("[F]raudulent misrepresentations, without more, are not sufficiently outrageous to support a cause of action for intentional infliction of emotional distress."); *Haque Travel Agency, Inc. v. Travel Agents Int'l, Inc.*, 808 F. Supp. 569, 573 (E.D. Mich. 1992) ("The courts have held repeatedly that cases alleging garden variety fraud or failure to live up to contractual obligations, without more, are not actions appropriately brought under a theory of intentional infliction [*39] of emotional distress."); *Kintner v. Nidec-Torin Corp.*, 662 F. Supp. 112, 114 (D. Conn. 1987) (alleged fraudulent misrepresentations "do not rise to the level of 'extreme and outrageous conduct' necessary to support a claim for intentional infliction of emotional distress" (citation omitted)).

Bandari alleges that he "suffered a disastrous family medical emergency" and "was unable to take care of his family because of the actions of the defendants." (Compl. ¶ 96). But he does not allege that Defendants intended to cause this effect, or even specifically allege that they were aware of his family medical emergency. Similarly, Bandari alleges that after he informed Bahnsen of his "severe stress," she "became harsher and even threatened him." (*Id.* ¶ 97). But the only threat described in the Complaint is that, after Bandari revealed himself to be the individual communicating with Bahnsen under an assumed name and asked why she was committing fraud, Bahnsen "threatened" him by saying she would talk with the transfer agent and get him shares at a price higher than the market price. (*Id.* ¶ 28). Notwithstanding Bandari's belief that this was an unfair offer, such conduct does not come close to meeting the rigorous standard Bandari must satisfy.

Accordingly, [*40] the Court recommends dismissal of Bandari's claim for intentional infliction of emotional distress.

C. Rumbold's Liability

Notwithstanding Rumbold's default, the Court discerns no basis for the award of a default judgment against Rumbold given the paucity of factual allegations against him in the Complaint. As noted above, a default "only establishes a defendant's liability" if the well-pled factual allegations in the complaint "are sufficient to state a cause of action" against the defendant. *Gesualdi*, 629 F. App'x at 113.

The well-pled factual allegations of the Complaint here do not suffice to state a cause of action against

[4] The standard under Texas law is substantially the same. *See, e.g., Mandawala v. Struga Mgmt.*, No. SA-19-CV-635-JKP, 2020 WL 4905805, at *3 (W.D. Tex. Aug. 20, 2020).

Rumbold for either securities fraud or common law fraud. The *sine qua non* of fraud is the making of a false or misleading statement with intent to deceive. *See, e.g., Neder v. United States*, 527 U.S. 1, 22 (1999) ("well-settled meaning of 'fraud' require[s] a misrepresentation or concealment of material fact") (citation omitted). But the Complaint does not allege that Rumbold made any false or misleading representations to Bandari. Rather, the Complaint's sole factual allegations against Rumbold are that he was a party to the Agreement (and the earlier agreement among the parties); that he asked Bandari for the initial $10,000 payment [*41] to hold the deal; and that (according to Bahnsen) he was unwilling to give Bandari's money back. (Comp. ¶¶ 15, 23; Agmt. at 1, 6).

Indeed, it is Bahnsen and QED, not Rumbold, who are alleged to have made the misrepresentation at the heart of Plaintiff's securities fraud and common law claims: the promise to issue shares to Plaintiff that they had no intention of honoring. (Compl. ¶¶ 34, 47). Similarly, the Complaint alleges that it was Bahnsen, not Rumbold, who solicited Bandari to purchase Rumbold's interest. (*Id.* ¶ 13). Likewise, the deceitful statements and conduct that occurred after the Agreement was entered into are all ascribed to Bahnsen, not Rumbold. (*See id.* ¶¶ 17-29). Absent any allegation that Rumbold made any false or misleading statements, the Complaint does not sufficiently plead a claim for securities fraud or common law fraud against Rumbold. *See, e.g., Jacquemyns v. Spartan Mullen Et Cie, S.A.*, No. 10 Civ. 1586 (CM) (FM), 2011 WL 348452, at *7 (S.D.N.Y. Feb. 1, 2011) (dismissing securities fraud and common law fraud claims against individual defendants where the complaint "does not attribute a single specific misrepresentation to either [individual]").

The Complaint does allege that Rumbold "participated in the scheme because he wanted to profit after losses and falling prey to Bahnsen's [*42] scheme" and "thus he became an agent in Bahnsen's and QEDN's fraudulent scheme." (Compl. ¶ 1). But this allegation does not give rise to a plausible claim against Rumbold, because neither Section 10(b) nor Texas law recognizes an aiding and abetting theory of fraud liability. *See Cent. Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164 (1994) (holding that Section 10(b) does not authorize aiding and abetting liability); *Megatel Homes, LLC v. Moayedi*, 20-cv-0688, 2021 WL 5360509 (N.D. Tex. Nov. 16, 2021) ("[T]here is no cause of action for aiding and abetting fraud under Texas law."); *see also Taya Agricultural Feed Mill Co. v. Byishmo*, Civil Action No. H-21-3088, 2022 WL 103557, at *4 (S.D. Tex. Jan. 11, 2022) ("At best, it is unclear whether Texas courts have recognized a claim for aiding and abetting fraud. As other courts have recognized, a federal court sitting in diversity may not fashion this claim in the absence of Texas law doing so.").

Accordingly, the Complaint fails to state a claim for securities fraud or common law fraud against Rumbold. It also fails to state a claim for breach of contract against Rumbold, as it is QED, not Rumbold, that had the contractual obligation to issue shares to Bandari. Finally, as explained above, Plaintiff's remaining causes of action—both his statutory claims under Section 5 of the Securities Act, RICO, and GBL § 349, and his common law claims for willful misconduct and intentional infliction of emotional distress—fail to state a claim even against QED and Bahnsen. They are [*43] no more tenable insofar as they are pled against Rumbold.

CONCLUSION

For the reasons set forth above, the undersigned respectfully recommends that: (1) judgment be entered against Defendant QED Connect, Inc. on Plaintiff's claims for securities fraud, common law fraud, and breach of contract; (2) judgment be entered against Defendant Nanny Katharina Bahnsen on Plaintiff's claims for securities fraud and common law fraud; (3) the remaining claims against QED and Bahnsen be dismissed; and (4) all claims against Defendant David Rumbold be dismissed.

In light of Plaintiff's request for a hearing with respect to the relief he is seeking (*see* Dkt. No. 49) and the nature of the issues raised by his requested relief, the undersigned defers a ruling on the appropriate relief against Defendants QED and Bahnsen at this time.

DATED: New York, New York

August 29, 2025

/s/ Gary Stein

The Honorable Gary Stein

United States Magistrate Judge