UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MITCHELL WAX, Individually and on Behalf of All Other Similarly Situated, Plaintiff, v. CROSS RIVER BANK, Defendant.	Case No. 2:24-cv-09510 (BRM) (JRA) Document Electronically Filed Motion Day: July 7, 2025 Oral Argument Requested

BRIEF IN SUPPORT OF MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM BY DEFENDANT CROSS RIVER BANK

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Cross River Bank ("CRB"), the only defendant in this action, respectfully submits this brief in support of its motion to dismiss the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

PRELIMINARY STATEMENT

This is a securities action in which the plaintiff asserts a single claim, under section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, on behalf of a putative class of purchasers of stock issued by Sunlight Financial Holdings, Inc. His claim has not been asserted against Sunlight – or any director or officer of Sunlight. Instead, the only defendant is CRB, a New Jersey bank that has no publicly registered securities. The complaint does not allege that CRB made any actionable statement. *See* Compl. ¶ 91. The only challenged statements were made by ***Sunlight***, and plaintiff does not allege that CRB played any role in making them.

Instead, plaintiff's claim against CRB is predicated on the entirely conclusory assertion that CRB was a participant in a "scheme" with Sunlight purportedly intended to deceive Sunlight investors. Compl. ¶¶ 1, 7, 9-10, 73, 75. That is no more than a claim for "aiding and abetting liability," for which there is no private right of action under Rule 10b-5. *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 185, 191 (1994). Given the dispositive holding in *Central Bank*, plaintiff strains to suggest he is asserting some claim other than one for "aiding and abetting" liability. But a plaintiff cannot avoid the "prohibitive bar" articulated in *Central Bank* through semantics or the use of "synonyms." *Copland v. Grumet*, 88 F. Supp. 2d 326, 334 (D.N.J. 1999). It is undisputed that CRB was not a "maker" of any alleged challenged statement, and that means CRB cannot be liable under Rule 10b-5 as a "primary violator." *Janus Cap. Grp., Inc. v. First Deriv. Traders*, 564 U.S. 135, 143-44 (2011).

Nor can a securities plaintiff avoid limitations on misstatement claims under Rule 10b-5(b) by portraying his claim as one for "scheme liability" under Rules 10b-5(a) or 10b-5(c). That is another tactic the Supreme Court has considered and prohibited. Allegations of undisclosed conduct by an issuer's business partners cannot be a basis for "scheme liability" because the conduct "is too remote" from any investor's decision to purchase or sell securities "to satisfy the requirement of reliance." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta*, 552 U.S. 148, 161 (2008). The holdings in *Central Bank*, *Stoneridge*, and *Janus* prohibit plaintiff's claims against CRB here, and that alone is sufficient to require dismissal of the complaint with prejudice.

But even if those Supreme Court decisions were not dispositive, the complaint does not plausibly allege an actionable "scheme liability" claim. For one thing, plaintiff has not alleged any coherent theory of scienter, much less facts that could give rise to the required "strong inference" that CRB acted with fraudulent intent. Plaintiff's allegations that CRB made financial concessions and loaned additional money to Sunlight as Sunlight faced financial headwinds due to rising interest rates demonstrate that CRB was acting with the opposite of fraudulent intent. *See* Compl. ¶¶ 49-70. Under plaintiffs' theory that CRB knew that Sunlight was inevitably going to fail, CRB would have been knowingly throwing good money after bad in making those accommodations to Sunlight. One can only speculate what plaintiff would have claimed if CRB had not done so – undoubtedly leading to its bankruptcy even earlier.

The complaint also fails to allege that CRB engaged in any inherently deceptive conduct, the *sine qua non* of a fraudulent "scheme." To the contrary, plaintiff alleges that CRB was a Sunlight counterparty in arm's-length, legitimate business transactions having no plausible connection to the purchase or sale of Sunlight securities by plaintiff or anyone else. There is no allegation of market manipulation, "pumping and dumping," or similar types of misconduct in the securities markets. Separately, all of plaintiff's alleged purchases of Sunlight stock occurred before CRB even engaged in any of the alleged conduct that the complaint asserts was part of a "scheme," which means plaintiff would have no standing to assert his claim for a securities violation even if he had one. Nor does the complaint plausibly allege that conduct by CRB was the cause of his claimed loss.

In addition to its many incurable pleading defects, plaintiff's securities claim against CRB also violates an injunction in the bankruptcy court order approving Sunlight's chapter 11 plan of reorganization. The injunction bars any suit that affects the assets of reorganized Sunlight, whether "directly or indirectly," and this action plainly does. CRB has broad indemnification rights under its agreements with Sunlight, including for the claims asserted here, meaning that plaintiff's claims directly implicate the assets of reorganized Sunlight. Separately, plaintiff's claim was released in the settlement of an earlier securities class action against Sunlight, which was approved in December 2024 by a judge in the Southern District of New York – ***over plaintiff's objection***. Even if plaintiff had pleaded a securities claim against CRB – and he has not done so – these additional issues also would require his claim to be dismissed.

BACKGROUND[1]

A. The Parties

Plaintiff alleges he purchased shares of Sunlight common stock between January 2021 and September 2022 and "suffered damages." Compl. ¶ 27 & Exh. A at Sched. A. Sunlight is not a party. Compl. ¶ 29.[2] Formed in 2020, Sunlight was a "technology-enabled point-of-sale financing platform" for residential solar installations. *Id.*¶¶ 29-30. Sunlight allegedly financed residential solar installations through loans that "were funded by Sunlight's capital providers," *id.* ¶ 29, one of which was CRB, *id.* ¶ 35. Sunlight's common stock began trading on the New York Stock Exchange in July 2021. *Id.*¶¶ 31-32. The NYSE delisted Sunlight's stock on September 25, 2023, and Sunlight filed for bankruptcy around a month later. *Id.* ¶¶ 69-70.

CRB is a privately held, New Jersey-chartered bank, *id.* ¶ 28, that does not have registered securities and does not make periodic filings with the U.S. Securities and Exchange Commission ("SEC"). The complaint alleges that Sunlight's SEC filings referred to CRB as Sunlight's "Bank Partner." *Id.* ¶ 1. CRB allegedly provided funding for Sunlight "Indirect Channel Loans" beginning in 2018. *Id.* ¶¶ 34, 46.

There is no allegation that CRB made any challenged public statement or participated in any way in the preparation or dissemination of any of Sunlight's public disclosures. The complaint does not allege that CRB purchased or sold Sunlight securities at any relevant time.

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[1] Well-pleaded factual allegations are assumed to be true solely for the purpose of this motion to dismiss under Rule 12(b)(6). *Sprauve v. W. Indian Co.*, 799 F.3d 226, 227 (3d Cir. 2015). In considering the motion, the Court also may consider "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Winer Family Tr. v. Queen*, 503 F.3d 319, 327 (3d Cir. 2007) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)). Citations to "Exh. __" refer to exhibits to the accompanying Declaration of Steven M. Rosato dated April 9, 2025.

[2] At the time of its initial public offering, Sunlight was known as Spartan Acquisition Corp. II, a special purpose acquisition company. *Id.* ¶¶ 30-32.

B. Sunlight's Description of Its Business

Sunlight's disclosures described its business as a financing platform through which residential solar and home improvement contractors could provide "point-of-sale (POS) financing to customers[.]" *Id.* ¶ 33. Sunlight allegedly "differentiated itself" from others "by offering generous cash advances to contractors[.]" *Id.*

Plaintiff alleges Sunlight facilitated the origination of loans through "third-party lenders in two distinct ways." First, through "Direct Channel Loans," which were originated by third-party lenders "directly using their own credit criteria[,]" with funds remitted to Sunlight, who would then pay the contractors and retain the balance after those payments. Compl. ¶ 34. Second, through "Indirect Channel Loans," which were funded by an "intermediary bank partner[]" and later "sold to indirect channel capital providers that [could not], or [did] not wish to, directly originate solar loans." *Id.* ¶¶ 34, 36.[3]

For indirect channel loans, Sunlight allegedly would pay its "bank partner" a fee for originating the loans, which would remain on the balance of sheet of the bank partner until sold to third-party capital providers. Compl. ¶¶ 34, 36-37, 40-41. If Sunlight sold the loans at a price higher than the bank's cost basis, Sunlight would retain the difference. *Id.* ¶ 41. Sunlight also generated revenue from loan portfolio and management services after the loans were sold. *Id.* ¶ 36. Sunlight warned investors that it could incur losses if the indirect loans were sold at a price lower than the bank's cost basis. *Id.* ¶¶ 39, 41. Sunlight also warned that its agreements with its "bank partner" required Sunlight to sell indirect loans within a certain period and, upon expiration

[3] The disclosures alleged in paragraphs 33-44 of the complaint were included in an amended quarterly report dated November 19, 2021 filed by Sunlight on Form 10-Q/A. Compl. ¶ 34 n.1; *see* Exh. 1 (copy of Form 10Q/A).

of that period, the bank partner could require Sunlight to purchase the loans and hold them directly on Sunlight's balance sheet. *Id.*

Plaintiff alleges that ***Sunlight*** did not accurately disclose the accounting method it employed to record the value of certain loans. *Id.* ¶ 44. According to plaintiff, that "meant that any fair value changes in" those loans "would go unaccounted for on Sunlight's financial statements and concealed from Sunlight's stockholders." *Id.* The complaint does not allege that CRB had any role in either the preparation of Sunlight's financial statements or decision-making with respect to Sunlight accounting methods. CRB is not specifically identified in Sunlight's amended quarterly report filed on November 19, 2021, which is the apparent basis for these allegations. *See* Exh. 1.

C. The Alleged "Scheme to Deceive Sunlight Investors"

In four conclusory paragraphs, the complaint describes an alleged "scheme" from January 2021 until October 2023 by which CRB allegedly undertook "to deceive Sunlight investors which artificially inflated the price of Sunlight stock . . . ." Compl. ¶¶ 45-48. Plaintiff alleges "CRB knowingly facilitated loans to disreputable solar contractors of dubious credit quality" and made "Indirect Channel Loans" that were retained "on CRB's balance sheet but for which Sunlight retained the risk of loss[,]" *id.* ¶ 45, just as Sunlight explained in its periodic filings, *id.* ¶¶ 36-37. The complaint describes investigations and lawsuits involving two allegedly "disreputable solar contractors," *id.* ¶¶ 46-47, but there are no allegations connecting CRB to any investigation or lawsuit concerning them. The complaint asserts that "CRB, as Sunlight's Bank Partner, knowingly granted ever-increasing amounts of credit to Sunlight and its contractors . . . , repeatedly lifted its loan caps, and waived defaults under its agreements with Sunlight, all with knowledge that such defaults and Sunlight's unsustainable debt load were being concealed from Sunlight's investors." *Id.* ¶ 48.

D. Sunlight's Financial Condition Deteriorates

The remainder of the complaint's substantive allegations comprise a summary of disclosures made by Sunlight about its worsening condition between September 28, 2022, and October 31, 2023. *See* Compl. ¶¶ 49-70. On September 28, 2022, Sunlight filed a current report on SEC Form 8-K disclosing "that it was taking a non-cash advance receivable impairment" due to "liquidity issues" involving one solar installation contractor. *Id.* ¶ 49. The Form 8-K did not mention CRB. *See* Exh. 2.

In a quarterly report on Form 10-Q filed on November 14, 2022, Sunlight warned that, due to a "rapid and significant increase in interest rates," "Sunlight expect[ed] to incur significant losses relating to its current portfolio of Indirect Channel Loans . . . ." *Id.* ¶¶ 50-51. Sunlight further disclosed that it was "currently considering a range of strategic alternatives that may be available to Sunlight to maximize stakeholder value, including but not limited to financings, strategic alliances, or a possible business combination or sale of the business." *Id.* ¶ 52.

Next, the complaint summarizes a series of Sunlight disclosures between December 2022 and September 2023. Id. ¶¶ 54-69. On December 13, 2022, Sunlight disclosed that CRB had agreed to "more than doubl[e]" its loan capacity to enable Sunlight to continue originating loans through the indirect channel. *Id.* ¶¶ 54-55; *see* Exh. 3. Sunlight also disclosed, however, that it was seeking "to sell a material portion of" so-called "Backbook Loans" – unsold loans that CRB had funded – by the second quarter of 2023. *Id.* ¶ 56. Sunlight warned that sales of "Backbook Loans" could negatively impact Sunlight's financial position, including by "significantly reduc[ing]" its cash balance and resulting in a "losses of platform fee revenue . . . ." *Id.*

Consistent with those disclosures, on March 17, 2023, Sunlight reported that "in order to comply with agreements with its bank partner, the Company sold a portion of the Backbook Loans and recorded losses as negative platform fees." *Id.* ¶ 59. That Form 8-K also disclosed that "as a result of the sale of Backbook Loans, the Company expect[ed] to report losses on loan sales that significantly exceed such losses for the year ended December 31, 2021." *Id.* By the time of that disclosure, plaintiff alleges, the price of Sunlight's common stock had fallen to $0.30 per share. *Id.* ¶ 60.

Then, on April 3, 2023, Sunlight reported that it had entered into an agreement with CRB under which CRB would further increase its loan capacity, agreed to "grant[] Sunlight certain grace periods," and "extended Sunlight a $100 million loan facility to be used to repay Sunlight's borrowings from" another lender. Compl. ¶ 61. In connection with these arrangements, CRB received "Warrants from Sunlight representing 19.9% of the shares outstanding." *Id.*

Sunlight announced its first quarter earnings the next month, *id.* ¶¶ 63-65, which included disclosures that in April 2023 Sunlight had sold a substantial portion of indirect channel loans and that CRB's agreement to increase its loan capacity and extend the maturity of the loans "enable[d] Sunlight to continue originating loans in the Indirect Channel." *Id.* ¶ 64. Sunlight's chief executive officer expressed optimism that Sunlight's new agreements with CRB "position us to resolve our challenges from last year by strengthening our liquidity and enabling us to resume Indirect Channel loan sales . . . ." *Id.*¶ 65.

Nevertheless, plaintiff alleges, "Sunlight's financial picture rapidly spiraled downward[,]" with the price of its common stock declining to $0.23 per share by August 10, 2023. *Id.* ¶ 66. Sunlight announced a 1-for-20 reverse stock split on August 23, 2023. *Id.* ¶ 67. Then, on September 13, 2023, Sunlight disclosed that:

> CRB waived certain provisions of its prior loan agreements including certain cash payments due on October 31, 2023, waived certain repurchase obligations, waived certain consequences of a Sunlight default of the agreements, revised requirements of certain loan sales, and revised the

> provisions that required Sunlight to maintain certain cash balances in its accounts with CRB.

Id. ¶ 68. Two weeks later, Sunlight announced that the NYSE had suspended trading in and delisted its common stock. *Id.* ¶ 69.

E. Sunlight's Bankruptcy and Settlement of Its Securities Class Action

On October 31, 2023, Sunlight announced that it had filed a petition under chapter 11 petition of the Bankruptcy Code. Compl. ¶ 70. The complaint asserts that Sunlight's announcement of its bankruptcy filing was the disclosure that revealed "CRB's fraudulent scheme to artificially inflate the price of Sunlight's shares to its own economic aggrandizement." *Id.* The complaint alleges CRB agreed to "provide exit financing" in the bankruptcy case "in return for 12.5% of the New Equity in the reorganized company[,]" *id.* ¶ 70, but plaintiff does not mention whether CRB suffered losses as the result of pre-petition loans originated for Sunlight.

Sunlight's chapter 11 filing led to a reorganization plan that was approved by the bankruptcy court in an order entered on December 5, 2023. *Id.* ¶ 22; *see* Exh. 4 (Sunlight plan). Under the plan, CRB was recognized to hold allowed claims against the Sunlight bankruptcy estate of more than $114 million. Sunlight Plan § 4.3(b)(i). Those claims were deemed "impaired," meaning that CRB's rights (including the right to full repayment) were adversely affected. *Id.* § 4.3(d); *see* 11 U.S.C. § 1124. Under the plan, CRB received equity in reorganized Sunlight and a cash payment in exchange for the full and final release of its allowed claims. Sunlight Plan § 4.3(c)(i). CRB also agreed to continue to do business with reorganized Sunlight under amended lending program agreements. *Id.* § 4.3(c)(i)-(ii); *see id.* §§ 1.7, 1.8, 1.12, 1.81, 1.82, 5.12.

The bankruptcy court order confirming the plan included an injunction that broadly prohibited any person who previously held an interest in Sunlight from pursuing any claim "affecting, directly or indirectly" the assets of reorganized Sunlight. Sunlight Plan § 10.6. Under its agreements with reorganized Sunlight (and prior iterations of them in effect prior to Sunlight's bankruptcy), CRB is entitled to indemnification for any losses arising out of the parties' contractual relationship. *See* Exh. 5, Loan Program Agmt. § 10.1; Exh. 6, Loan & Sec. Agmt. § 11.3.

Separately, months before the bankruptcy case, Sunlight was sued for securities fraud based on substantially similar allegations to those asserted here. *See Fung v. Sunlight Financial Holdings Inc.*, No. 1:22-cv-10658 (S.D.N.Y.). The operative complaint in that action asserted claims under sections 10(b), 14(a), and 20(a) of the Exchange Act on behalf of a putative class. Exh. 6, Sunlight Compl. ¶ 1. On December 16, 2024, ***over plaintiff's objection*** because he was concerned that the release would apply to his claims in this action, the court approved a settlement that included a release of all claims arising out of, based upon, or in any way related to the purchase and sale of Sunlight common stock from January 25, 2021 through and including September 28, 2022 against releasees that included Sunlight's "shareholders" and "partners." Exh. 7, Sunlight Settlement ¶¶ 1.6, 1.27, 1.28, 1.35, 5.1.

F. Procedural History

Plaintiff filed his complaint on September 27, 2024 asserting a single claim against CRB on behalf of a putative class of purchasers of "Sunlight stock" between January 25, 2021 and October 31, 2023, inclusive, under section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R.. § 240.10b-5. Compl. ¶¶ 81, 87-95. Plaintiff purports to assert the claim "solely and exclusively under the provisions of Rule 10b-5(a) and (c)" and does not allege that CRB "made any misrepresentations or omissions of material fact for which it may also be liable under Rule 10b-5(b) . . . ." *Id.* ¶ 88.

Plaintiff was the only putative class member who filed an application to be appointed lead plaintiff under the Private Securities Litigation Reform Act of 1995 ("PSLRA"). [ECF No. 9]. In an order entered on January 8, 2025, the Court appointed plaintiff the lead plaintiff. [ECF No. 16].

On February 6, 2025, plaintiff designated his original complaint to be the operative complaint instead of amending that pleading. [ECF No. 19].

LEGAL STANDARD

To avoid dismissal under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A facially plausible claim is one that enables the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* The plaintiff must "allege facts showing 'more than a sheer possibility that a defendant has acted unlawfully.'" *In re BioLineRx Ltd. Sec. Litig.*, 2024 WL 3409800, at *5 (D.N.J. July 15, 2024) (Martinotti, J.) (quoting *Iqbal*, 556 U.S. at 678). "Conclusory or 'bare-bones' allegations" are insufficient; instead, to avoid dismissal, the complaint "must set out 'sufficient factual matter' to show that the claim is facially plausible[.]" *Henry v. Futu Holdings Ltd.*, 2024 WL 4285129, at *10 (D.N.J. Sept. 25, 2024) (Martinotti, J.) (quoting *Iqbal*, 556 U.S. at 678). Dismissal is required "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." *Id.* (cleaned up) (quoting *Iqbal*, 556 U.S. at 679).

In addition, "because this is a securities fraud case, plaintiff[] must satisfy the heightened pleading rules codified in the [PSLRA]" and the heightened pleading requirements in Rule 9(b). *BioLineRx*, 2024 WL 3409800, at *6 (citing *Institutional Inv'rs Grp. v. Avaya, Inc.*, 564 F.3d 242, 252 (3d Cir. 2009)). The PSLRA requires a securities fraud complaint to "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind" – scienter, 15 U.S.C. § 78u-4(b)(2), which requires allegations supporting an inference of fraudulent intent that is "cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *In re Hertz Glob. Holdings Inc.*, 905 F.3d 106, 114 (3d Cir. 2018) (quoting

Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 324 (2007)). Under Rule 9(b), the complaint also must "state with particularity the circumstances constituting fraud or mistake," *i.e.*, "the who, what, when, where and how of the events at issue." *Henry*, 2024 WL 4285129, at *11-12 (cleaned up); *see* Fed. R. Civ. P. 9(b).

ARGUMENT

I. THE COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

A. The Complaint Impermissibly Asserts a Claim for Aiding and Abetting Securities Fraud.

Plaintiff is not attempting to hold CRB *primarily* liable under the federal securities laws but instead seeks to hold CRB *secondarily* liable for securities violations allegedly committed by *Sunlight*. The complaint alleges CRB "enabled," "helped," or "allowed" Sunlight to mislead investors through its lending program with Sunlight, which plaintiff asserts (mistakenly) that Sunlight did not disclose. Compl. ¶¶ 1, 7, 9-10, 23, 72; *see also id.* ¶ 73 (alleging that CRB "*participated* in a scheme to defraud") (emphasis added). That is just another way of alleging that CRB aided and abetted allegedly misleading public statements by Sunlight, and private plaintiffs are barred from asserting such "aiding and abetting" claims under Rule 10b-5. *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 185, 191 (1994).

The complaint admits CRB did not make any "public statements" to Sunlight's investors. Only Sunlight did. Compl. ¶ 91; *see id.* ¶ 73 (alleging that "CRB had actual knowledge of the misleading nature of the statements made by Sunlight"). In wholly conclusory terms, plaintiff alleges that CRB "furnish[ed]" unspecified "false and misleading statements that were used" by Sunlight in its public disclosures. *Id.* ¶ 91. But even if plaintiff had offered any factual basis for that allegation (which he has not done), CRB still cannot be liable on a misstatement theory under Rule 10b-5 because there is no dispute that CRB was not the "maker" of any statement, meaning "the entity with authority over the content of the statement and whether and how to communicate it." *Janus Cap. Grp., Inc. v. First Deriv. Traders*, 564 U.S. 135, 144 (2011). Under *Janus*, even a person "contribut[ing] 'substantial assistance' to the making of a statement" cannot be held liable in a private action under Rule 10b-5 if they do not make the statement themselves. *Id.* at 143.

The *Janus* limitation on permissible claims under Rule 10b-5 is a logical corollary to the holding in *Central Bank* "that Rule 10b-5's private right of action does not include suits against aiders and abettors." *Id.* (citing *Central Bank*, 511 U.S. at 180). As the Court observed in *Central Bank*, if a private plaintiff could proceed under Rule 10b-5 on an aiding-and-abetting theory, "the defendant could be liable without any showing that the plaintiff relied upon the aider and abettor's statements or actions[,]" thereby skipping over an essential requirement for any Rule 10b-5 claim. *Central Bank*, 511 U.S. at 180.

The *Janus* Court expressly meant its narrow interpretation of who can be a "maker" to provide support for the earlier, categorical bar against private claims for aiding-and-abetting liability under Rule 10b-5 in *Central Bank*. *Janus*, 564 U.S. at 142-43. As the *Janus* Court noted, "[i]f persons or entities without control over the content of a statement could be considered primary violators who 'made' the statement, then aiders and abettors would be almost nonexistent." *Id.* at 143; *see also id.* at 143 n.6. Without some meaningful limitation on the persons who can be a "maker," the line between primary violators and purported "aiders and abettors" would be blurred, "substantially undermin[ing] *Central Bank*." *Id.* at 143.

Even before *Janus*, courts were clear that "a defendant must actually make a false or misleading statement in order to be held liable under [s]ection 10(b). Anything short of such conduct is merely aiding and abetting, and no matter how substantial that aid may be, it is not enough to trigger liability under [s]ection 10(b)." *Wright v. Ernst & Young LLP*, 152 F.3d 169, 175 (2d Cir. 1998); *see United States v. Schiff*, 602 F.3d 152, 167 (3d Cir. 2010) (citing *Wright* with approval).

And courts within the Third Circuit regularly have dismissed Rule 10b-5 claims against defendants that only were alleged to have "assisted" an alleged fraud. *In re RenovaCare, Inc. Sec. Litig.*, 2024 WL 2815034, at *27 (D.N.J. June 3, 2024) (Martinotti, J.) (dismissing claims against defendants that allegedly received "ill-gotten funds" based on "theory that they are secondarily liable"); *Sbarra v. Horizontal Expl., LLC*, 2015 WL 1201329, at *8-9 (W.D. Pa. Mar. 16, 2015) (dismissing claims where complaint did not allege that defendants "participated in the communication of any material misrepresentations"); *Copland*, 88 F. Supp. 2d at 332-34 (alleged "participation in" preparation of statements insufficient). Plaintiff has not alleged anything beyond inactionable "assistance" by CRB here. According to the complaint, CRB violated the federal securities laws solely by participating in a supposed "scheme" with Sunlight to "conceal" information from Sunlight's own investors; the alleged "scheme" was effectuated through public statements that were "made by Sunlight" and by Sunlight alone. Compl. ¶ 91.

To be sure, the complaint studiously avoids the words "aiding and abetting" in portraying CRB's alleged role. Instead, plaintiff invokes obviously synonymous phrases, alleging that CRB "participated in," "enabled," "help[ed]," or "allowed" Sunlight to make its alleged misrepresentations. Compl. ¶¶ 1, 7, 9-10, 73, 75. But such semantic gamesmanship cannot provide plaintiff a way around the "prohibitive bar of *Central Bank*" against aiding and abetting claims. *Shapiro v. Cantor*, 123 F.3d 717, 720 (2d Cir. 1997); *see Copland*, 88 F. Supp. 2d at 334 (same).

The complaint asserts transparent claims against CRB for secondary liability based on statements made by Sunlight. Because plaintiff "cannot pursue [his] claims against [CRB] under a theory that [it is] secondarily liable[,]" *RenovaCare*, 2024 WL 2815034, at *27, the complaint should be dismissed in its entirety and with prejudice.

B. Plaintiff Cannot Avoid Dismissal by Relying on a "Scheme Liability" Theory Under Rules 10b-5(a) and (c).

To avoid the dispositive holding in *Central Bank*, plaintiff styles his claim as one for "scheme" liability "under Rule 10b-5(a) and (c)." Compl. ¶ 88; *see Stichting Pensioenfonds ABP v. Merck & Co.*, 2012 WL 3235783, at *7 (D.N.J. Aug. 1, 2012) (claims under subparts (a) and (c) commonly referred to as 'scheme liability' claims"). But that approach does not cure the fatal defects in his claim.

To state a claim under Rule 10b-5(a) or (c), "a plaintiff must allege that the defendant (1) committed a manipulative or deceptive act, (2) in furtherance of [an] alleged scheme to defraud, (3) scienter, (4) and reliance." *Trustcash Holdings, Inc. v. Moss*, 668 F. Supp. 2d 650, 661 (D.N.J. 2009). Scheme claims are "subject to the PSLRA, and thus scienter must be pled with particularity under 15 U.S.C. § 78u-4(b)(2)." *Stichting*, 2012 WL 3235783, at *7. And because the claims sound in fraud, they also "must comply with the heightened pleading requirements of" Rule 9(b), requiring a plaintiff to allege "what manipulative acts were performed, which defendants performed them, when the manipulative acts were performed and what effect the scheme had on the securities at issue." *Id.* (internal quotations omitted).

There are at least six separate legal flaws that require plaintiff's "scheme" claim to be dismissed.

1. Plaintiff Cannot Plead Reliance as a Matter of Law.

The Supreme Court resoundingly has rejected "scheme" claims based on supposedly undisclosed "deceptive acts" by a third-party business partner of a securities issuer, because allegations about such undisclosed third-party conduct "are too remote to satisfy the requirement of reliance." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 161 (2008)

The plaintiff in *Stoneridge* asserted section 10(b) claims against two "suppliers, and later customers, of Charter[,]" a publicly traded cable television company that allegedly "issue[d] a misleading financial statement affecting [its own] stock price." 552 U.S. at 152-53. In common with plaintiff's allegations here, the complaint in *Stoneridge* alleged that the supplier defendants "agreed to arrangements that allowed" Charter to issue the misleading financial statement. *Id.* These business arrangements allegedly "had no economic substance" but instead were intended to "enable Charter to fool its auditor into approving a financial statement showing it met projected revenue and operating cashflow numbers." *Id.* at 154; *see also id.* at 155. Just as with CRB here, the supplier defendants were not alleged to have had any "role in preparing or disseminating Charter's financial statements." *Id.* at 155. The plaintiff nonetheless asserted "scheme" claims on the theory that the suppliers knew Charter would falsely inflate revenues based on the transactions with the suppliers and also allegedly knew that investors would rely on the financial statements. *Id.*; *see id.* at 159-60.

Rule 10b-5 did not permit such a claim, the *Stoneridge* Court held, because the plaintiff could not allege that it "in fact rel[ied] upon [defendants'] own deceptive conduct." *Id.* at 160. The plaintiff's theory rested on the premise that "investors rely not only upon the public statements relating to a security but also upon the transactions those statements reflect." *Id.* If that "concept of reliance were to be adopted," the Court reasoned, the implied private right of action under section 10(b) "would reach the whole marketplace in which the issuing company does business; and there is no authority for this rule." *Id.* The allegedly undisclosed "deceptive acts" were "too remote to satisfy the requirement of reliance." *Id.* at 161. After all, "[i]t was Charter, not [defendants], that misled its auditor and filed fraudulent financial statements; nothing [defendants] did made it necessary or inevitable for Charter to record the transactions as it did." *Id.*

The reasoning in *Stoneridge* squarely applies here. Just as in *Stoneridge*, plaintiff alleges that CRB, through its business dealings with Sunlight, "***enabled*** Sunlight to originate and conceal from its investors a large pool of loans" by structuring loans so that they "were not reflected on Sunlight's balance sheet." Compl. ¶ 1 (emphasis added); *see id.* ¶¶ 9, 12, 23; *compare Stoneridge*, 552 U.S. at 152-53 (suppliers allegedly "agreed to arrangements that allowed" misstatements). Similarly, just as in *Stoneridge*, the plaintiff here alleges that Sunlight's arrangements with CRB served "no legitimate purpose." Compl. ¶¶ 23, 48, 75; *see Stoneridge*, 552 U.S. at 154 (transactions allegedly had "no economic substance").

Also in common with *Stoneridge*, plaintiff in this case does not contend that CRB made any "public statement." *Stoneridge*, 552 U.S. at 160; *see* Compl. ¶ 91. Indeed, the complaint does not allege CRB had any role "in preparing or disseminating" the public statements alleged to be misleading. *Stoneridge*, 552 U.S. at 155. That similarity is not altered by plaintiff's conclusory allegation that CRB knew Sunlight was concealing the true state of its financial condition, Compl. ¶ 48, because plaintiff does not allege that Sunlight investors relied on any alleged conduct by CRB, *Stoneridge*, 552 U.S. at 160-61. The premise of plaintiff's claim is that CRB's alleged conduct was ***unknown to Sunlight investors***. Compl. ¶¶ 3, 93.

Even if plaintiff's claim could be characterized as something other than an impermissible aiding-and-abetting claim (and it cannot be), *Stoneridge* makes clear that plaintiff cannot plausibly allege the required element of reliance. That is a separate and independent reason why the complaint should be dismissed with prejudice. *See Pac. Inv. Mgmt. Co. v. Mayer Brown LLP*, 603 F.3d 144, 159-60 (2d Cir. 2010) (affirming dismissal of scheme claim where plaintiffs alleged only that "ultimate result of" law firm's alleged "deceptive course of conduct [was] communicated to" public through financial statements of the issuer); *In re Turquoise Hill Res. Ltd. Sec. Litig.*, 625 F. Supp. 3d 164, 254 (S.D.N.Y. 2022) (dismissing scheme claims).

2. The Alleged Purpose of the "Scheme" Was to Make Public Misrepresentations or Omissions.

A "scheme" claim is inactionable when, as here, "the primary purpose and effect" of the alleged "scheme [was] to make a public misrepresentation or omission[.]" *Takata v. Riot Blockchain, Inc.*, 2023 WL 7133219, at *11 (D.N.J. Aug. 25, 2023) (quoting *In re Mindbody, Inc. Sec. Litig.*, 489 F. Supp. 3d 188, 216 (S.D.N.Y. 2020)). That rule applies because plaintiff alleges the goal of the purported "scheme" in this case was to enable Sunlight to "conceal[]" information from Sunlight's stockholders and make misleading disclosures about the condition of Sunlight's business, in order to "cause[] Sunlight stock to trade at artificially inflated levels . . . ." Compl. ¶¶ 1, 9-10, 23, 44-45, 48, 60, 73, 75, 91.

"[C]ourts have routinely rejected" attempts, such as plaintiff's claim here, "to bypass the elements necessary to impose 'misstatement' liability under subsection (b) [of Rule 10b-5] by labeling the alleged misconduct a 'scheme' rather than a 'misstatement.'" *Takata*, 2023 WL 7133219, at *11; *see, e.g.*, *In re Alstom SA*, 406 F. Supp. 2d 433, 475 (S.D.N.Y. 2005) (same). Courts have reached that conclusion to ensure "scheme liability" claims are not "used as a back door into liability for those who help others make a false statement or omission in violation of subsection (b) of Rule 10b-5." *Mindbody*, 489 F. Supp. 3d at 216 (quoting *SEC v. Kelly*, 817 F. Supp. 2d 340, 343 (S.D.N.Y. 2011)); *see Stichting*, 2012 WL 3235783, at *9 (same).

The complaint alleges the "scheme" here was designed to "***conceal*** from [Sunlight's] investors that Sunlight's capital was rapidly eroding and the liabilities warehouse on the CRB Backbook were skyrocketing." Compl. ¶ 9 (emphasis added). Therefore, according to plaintiff, "Sunlight consistently ***omitted*** the size of the Backbook from its public filings until it was too late." *Id.* (emphasis added); *see also id.* ¶¶ 1, 10, 44-45, 48. But a "scheme to withhold the truth about" an issuer's financial condition is just another type of omission claim, and therefore "falls under the purview of Rule 10b-5(b)." *Stichting*, 2012 WL 3235783, at *10. As the *Stichting* court explained, in such a case "the complained-of fraud on investors" "stems not from the performance of the [acts] themselves . . . but rather from [the issuer's] ultimate communication of materially misleading information . . . to the public." *Id.* Plaintiff cannot reframe his allegations using words designed to "reviv[e] aiding and abetting liability in private actions." *S.E.C. v. Lucent Techs., Inc.*, 610 F. Supp. 2d 342, 359 (D.N.J. 2009) (internal quotations omitted).

3. Plaintiff Does Not Allege Facts Supporting a "Strong Inference" of Scienter.

Even if those issues were not alone fatal (and they are), the complaint also should be dismissed because it does not allege facts giving rise to a "strong inference" of scienter, 15 U.S.C. § 78u-4(b)(2)(A), meaning "the defendant's intention 'to deceive, manipulate, or defraud.'" *Rahman v. Kid Brands, Inc.*, 736 F.3d 237, 241-42 (3d Cir. 2013) (quoting *Tellabs*, 551 U.S. at 313). To meet the statutory "strong inference" standard, plaintiff was required to plead facts supporting an inference of fraudulent intent that is "cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *Hertz*, 905 F.3d at 114. While scienter allegations are analyzed "holistically," *id.*, courts typically consider whether the defendant allegedly had "motive and opportunity" to commit securities fraud and whether there are facts supporting an inference that the defendant engaged in "conscious misbehavior or recklessness."

In re Amarin Corp. PLC., 2015 WL 3954190, at *10 (D.N.J. June 29, 2015); *see Avaya*, 564 F.3d at 268. Neither has been alleged here.[4]

There are no "motive and opportunity" allegations as to CRB. "[C]atch-all allegations that defendants stood to benefit from wrongdoing and had the opportunity to implement a fraudulent scheme are [not] sufficient[.]" *GSC Partners CDO Fund v. Washington*, 368 F.3d 228, 237 (3d Cir. 2004) (internal quotations omitted). The "assertion that one has the motivation to make profits is not sufficiently concrete to infer scienter." *Fulton Fin. Advisors, Nat'l Ass'n v. NatCity Invs., Inc.*, 2013 WL 5635977, at *11 (E.D. Pa. Oct. 15, 2013) (citing *Kalnit v. Eichler*, 246 F.3d 131, 140 (2d Cir. 2001)); *see, e.g., Nat'l Junior Baseball League v. Pharmanet Dev. Grp. Inc.*, 720 F. Supp. 2d 517, 552 (D.N.J. 2010) (no scienter based on "legitimate business motives").

But that is all plaintiff offers here. *See* Compl. ¶ 73 (alleging CRB "was earning substantial profits" and "benefitted financially" from Sunlight relationship); *id.* ¶ 2 ("CRB had every incentive to engage in the fraudulent scheme" because it "earned substantial profits" and "substantial fees"). There also is no allegation of any sale of Sunlight stock by CRB, and "[t]he absence of stock sales" is itself "inconsistent with an intent to defraud." *Lewakowski v. Aquestive Therapeutics, Inc.*, 2023 WL 2496504, at *12 (D.N.J. Mar. 14, 2023) (quoting *In re N. Telecom Sec. Litig.*, 116 F. Supp. 2d 446, 462 (S.D.N.Y. 2000)).

As for conscious misbehavior or recklessness, the complaint contains only the conclusory allegation that "CRB had actual knowledge of the misleading nature of the statements made by Sunlight or acted in reckless disregard of the true information known to them at the time." Compl. ¶ 73; *see id.* ¶¶ 48, 75. But the complaint does not provide a single allegation of fact to

[4] The Third Circuit has held that "'motive and opportunity' may no longer serve as an independent route to scienter," *Avaya*, 564 F.3d at 277, but plaintiff pleads no cognizable motive or opportunity in any event.

suggest that CRB was even aware of the challenged Sunlight statements. Plaintiff's threadbare allegations of knowledge fall short of the *Iqbal* plausibility standard, much less the PSLRA's heightened requirement that a complaint "state with particularity . . . the facts evidencing scienter[.]" *Henry*, 2024 WL 4285129, at *11; *see In re Bio-Technology Gen. Corp. Sec. Litig.*, 380 F. Supp. 2d 574, 595 (D.N.J. 2005) ("Conclusory allegations that the defendants 'knew' or 'must have known' that their statements were false do not create a strong inference of scienter as a matter of law.")

In addition, any possible inference of scienter that might be divined from the scanty allegations in the complaint still would need to be weighed against "any opposing inference of nonfraudulent intent." *Rahman*, 736 F.3d at 242 (quoting *Tellabs*, 551 U.S. at 314). The most plausible inference available from the allegations here is that CRB, as one of Sunlight's capital providers, did its best to work with Sunlight as it confronted an increasingly difficult financial environment due to rising interest rates.

Plaintiff alleges CRB waived defaults by Sunlight and worked with Sunlight to amend their agreements to allow Sunlight to continue doing business despite significant headwinds caused by rising interest rates. *See* Compl. ¶¶ 8, 20, 48, 50, 54, 68, 75. But if CRB believed Sunlight was destined for failure, which appears to be plaintiff's premise, then CRB would have been throwing good money after bad in making those concessions. That "defies economic reason." *ECA, Loc. 134 IBEW Joint Pension Tr. of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187, 203 (2d Cir. 2009). The "inference of nonfraudulent intent" is the only reasonable one that can be drawn from the allegations here. *Rahman*, 736 F.3d at 242.

4. The Complaint Does Not Plead Any "Inherently Deceptive" Conduct.

Plaintiff also fails to plead a "scheme" claim because he has not alleged CRB engaged in any "inherently deceptive conduct" specifically "employed to deceive investors" in Sunlight common stock. *Trustcash Holdings*, 668 F. Supp. 2d at 662. "Inherently deceptive" conduct includes "sham agreements, sham transactions, sham companies," and the like. *Turquoise Hill*, 625 F. Supp. 3d at 253; *see RenovaCare*, 2024 WL 2815034, at *23 ("pump-and-dump scheme"). There is no "sham" alleged here. The loans CRB originated, and its agreements with Sunlight, "were legitimate business transactions[.]" *Lucent*, 610 F. Supp. 2d at 360. "The alleged deception in this case" goes no farther than Sunlight's alleged "failure to disclose the real terms of the deal." *Id.* at 361 (internal quotations omitted). That does not amount to a "scheme" for purposes of the federal securities laws.

5. The Complaint Also Should Be Dismissed for Lack of Standing and Loss Causation.

Plaintiff also lacks "standing to pursue" his claim because it depends on alleged conduct occurring after his last alleged purchase of Sunlight stock on September 29, 2022. *Winer Family Tr. v. Queen*, 503 F.3d 319, 325-26 (3d Cir. 2007); *see* Compl., Sched. A. The complaint alleges that CRB did not begin to "grant[] ever-increasing amounts of credit to Sunlight and its contractors," "lift[] loan caps," and "waive[] defaults under its agreement" until December 2022. Compl. ¶ 54; *see* Exh. 3. That disconnection requires dismissal. *See, e.g.*, *In re Dr. Reddy's Lab. Ltd. Sec. Litig.*, 2019 WL 1299673, at *13 (D.N.J. Mar. 21, 2019) (dismissing claims to the extent "based on fraudulent conduct that occurred after the purchase of shares").

Plaintiff also has not pleaded loss causation, 15 U.S.C. § 78u-4(b)(4), which requires a "causal link between the alleged misconduct and the economic harm ultimately suffered by the plaintiff." *Lentell v. Merrill, Lynch & Co.*, 396 F.3d 161, 172 (2d Cir. 2005); *see McCabe v. Ernst & Young, LLP*, 494 F.3d 418, 425 (3d Cir. 2007) (loss causation requires allegations "that the fraudulent misrepresentation or omission actually caused the economic loss suffered"). That requires plausible allegations of a "corrective disclosure," *Born v. Quad/Graphics, Inc.*, 521 F. Supp. 3d 469, 494 (S.D.N.Y. 2021), meaning one that "adequately demonstrate[s] a market correction of the artificial inflation caused by" prior "misrepresentations," *Nat'l Junior Baseball League*, 720 F. Supp. 2d at 561; *see id.* at 562. "In the absence of any allegation of a causal link between the 'corrective disclosure' . . . and an economic loss," loss causation is missing. *Takata v. Riot Blockchain, Inc.*, 2020 WL 2079375, at *17 (D.N.J. Apr. 30, 2020).

The complaint alleges that the most significant drop in Sunlight's stock during the relevant period occurred on September 28, 2022, allegedly in connection with SEC disclosures by Sunlight that ***had nothing to do with CRB*** but instead related to "liquidity issues by one installer[.]" Compl. ¶ 49. As for the other corrective disclosures, plaintiff fails to tie any of them to any alleged prior misrepresentation relating to CRB. Compl. ¶¶ 50-70; *see Nat'l Junior Baseball League*, 720 F. Supp. 2d at 561. Plaintiff instead alleges only a series of accurate disclosures providing updates on Sunlight's deteriorating financial condition and "concomitant market dissatisfaction to allege loss causation. That is simply not enough." *Born*, 521 F. Supp. 3d at 494.

6. Plaintiff Has Not Alleged Fraud with Particularity.

Finally, the complaint does not plead fraud with the particularity required under Rule 9(b). *See Henry*, 2024 WL 4285129, at *11 (quoting *United States ex rel. Moore & Co, P.A. v. Majestic Blue Fisheries, LLC*, 812 F.3d 294, 307 (3d Cir. 2016)). That requires "enough particularity to place defendants on notice of the precise misconduct with which they are charged." *BioLineRx Ltd. Sec. Litig.*, 2024 WL 3409800, at *6 (cleaned up).

The complaint's four-paragraph description of an alleged "scheme to deceive Sunlight investors" – over a period of nearly ***three years*** – does not satisfy this standard. Compl. ¶¶ 45-48. There are no specifics provided concerning who at CRB allegedly was involved in this "scheme," what they allegedly did to further the "scheme," when they allegedly took such an action, or how any such action furthered the purported scheme. The complaint speaks only in generalities about allegedly unlawful conduct by "two of Sunlight's primary vendors" disconnected from CRB. *Id.* ¶¶ 46-47. There is no factual allegation offered in support of plaintiff's conclusory allegation that CRB allowed modifications to its agreements with Sunlight "all with knowledge that such defaults and Sunlight's unsustainable debt load were being concealed from Sunlight's investors." *Id.* ¶ 48. The complaint therefore fails to put CRB "on notice of the precise misconduct with which [it is] charged." *BioLineRx Ltd. Sec. Litig.*, 2024 WL 3409800, at *6.

II. THE COMPLAINT IS BARRED BY THE SUNLIGHT BANKRUPTCY PLAN INJUNCTION AND SECURITIES CLASS ACTION RELEASE.

In addition to these pleading defects, the complaint also violates the broad plan injunction that results from the confirmed Sunlight bankruptcy plan and is barred in substantial part by the class-wide release in the settlement reached in the prior Sunlight securities class action.

A. The Sunlight Bankruptcy Plan Injunction Bars Plaintiff's Claims.

As the complaint acknowledges, Sunlight filed a bankruptcy petition in October 2023. Compl. ¶¶ 22, 70. Sunlight's plan of reorganization, confirmed by the bankruptcy court on December 5, 2023, broadly enjoins any person who previously held an interest in Sunlight from pursuing any claim "affecting, directly or indirectly," the assets of the reorganized Sunlight. Exh. 4, Sunlight Plan § 10.6.

CRB continues to serve as one of Sunlight's capital providers, *see id.* § 5.12, and reorganized Sunlight owes CRB broad indemnity obligations. *See* Exh. 5, Loan Program Agmt. § 10.1; Exh. 6, Loan & Sec. Agmt. § 11.3. CRB is entitled to indemnity from Sunlight for this matter and similar claims, as the reorganized Sunlight acknowledged in a response to plaintiff's objection to the settlement and release in the *Fung* securities action that is discussed in the next section. *See* Exh. 9 at 1, 10. This action therefore "violate[s] the terms of the [Sunlight] plan and confirmation order." *In re Essar Steel Minnesota, LLC*, 652 B.R. 709, 720 (Bankr. D. Del. 2023).

B. The Class-Wide Release in the Sunlight Securities Class Action Effectively Bars Plaintiff's Claim.

Plaintiff's claim also is barred under the class-wide release approved by the U.S. District Court for the Southern District of New York in the settlement of an earlier securities action against Sunlight that appears to be the source of many of plaintiff's Sunlight allegations. *See generally* Exh. 7 (Sunlight complaint). In that earlier case, the lead plaintiff alleged a class period running from January 25, 2021 through September 28, 2022. *Id.* ¶ 1. In this case, plaintiff alleges a class period from January 25, 2021 through October 31, 2023, but the largest alleged stock drop during that class period occurred on September 28, 2022. Compl. ¶¶ 49, 81. The class period in the Sunlight securities case therefore covers approximately 60 percent of the class period here, as well as the most significant stock drop.

Even though the alleged class periods are slightly different, plaintiff's claim was released in its entirety in the settlement approved by the New York court, which applies to claims against Sunlight's "shareholders" and "partners," among others, that arise out of, are based upon, or in any way relate to the purchase and sale of Sunlight common stock from January 25, 2021 through and including September 28, 2022. Exh. 8, Sunlight Settlement ¶¶ 1.6, 1.27, 1.28, 1.35, 5.1. The complaint alleges that CRB is both a "shareholder" and a "partner" of Sunlight. *See, e.g.*, Compl. ¶¶ 6, 35, 61, 71.

Plaintiff's claims "fall within the release's terms. So the release bars them." *In re Nanthealth, Inc. Stockholder Deriv. Litig.*, 2021 WL 1909885, at *2 (D. Del. May 12, 2021) (Bibas, J.) (citing *In re Prudential Ins. Co. of Am. Sales. Prac. Litig.*, 261 F.3d 355, 366-67 (3d Cir. 2001)).

CONCLUSION

For the foregoing reasons, the complaint should be dismissed in its entirety and with prejudice.

Dated: New York, New York
April 9, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2025, I caused the foregoing document to be served on all counsel of record by electronic filing through the Court's ECF system.

Dated: New York, New York
April 9, 2025

/s/ Steven M. Rosato
Steven M. Rosato