Leinhardt v Socure, Inc.

2025 NY Slip Op 33670(U)

September 26, 2025

Supreme Court, New York County

Docket Number: Index No. 655433/2024

Judge: Anar R. Patel

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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BRADLEY LEINHARDT,

Plaintiff,

- v -

SOCURE, INC., SUNIL MADHU, JOHNNY AYERS, GREGORY O'CONNOR

Defendants.

INDEX NO. 655433/2024

MOTION DATES 12/30/2024, 02/05/2025

MOTION SEQ. NOS. 001 002

DECISION + ORDER ON MOTIONS

----------X

HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8–14, 16, 18, 30, 32, 35, 36, 41, 42, 46 were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19–28, 31, 33, 37–39, 43, 44, 47–55 were read on this motion to/for DISMISS.

In this action, Plaintiff Bradley Leinhardt ("Plaintiff") seeks rescission of a 2018 Settlement Agreement ("2018 Agreement") on grounds of duress and fraud. In Motion Sequence 001, Defendant Gregory O'Connor ("O'Connor") seeks an order pursuant to CPLR §§ 3211(a)(5) and (7) dismissing the Complaint as against him. Plaintiff opposes the Motion. For the reasons set forth below, this Motion is granted in its entirety.

In Motion Sequence 002, Defendants Socure Inc. ("Socure" or the "Company"), Sunil Madhu ("Madhu"), and Johnny Ayers ("Ayers") (collectively, the "Socure Defendants") seek an order (i) pursuant to CPLR §§ 3211(a)(5), (7), and 3016 dismissing the Complaint against them, and (ii) pursuant to Section 15 of the 2018 Agreement and Section 7.3 of the Stock Repurchase Agreement ("Repurchase Agreement") for an award of attorney's fees. Plaintiff opposes the Motion. For the reasons set forth below, this Motion is granted in part and denied in part.

Relevant Factual Background

The following allegations are taken from the Verified Complaint and are presumed true for purposes of resolving the instant motions. *See Leon v. Martinez*, 84 N.Y.2d 83, 87 (1994). Plaintiff founded Socure, an identity verification company, in or about February 2011. NYSCEF Doc. No. 10, Compl. ¶ 8. He served as the CEO of Socure and recruited Defendants Madhu, Ayers, and O'Connor to serve on the Socure board of directors. *Id.* Plaintiff resigned as CEO on June 21, 2013, allegedly "after a malicious campaign of disinformation engineered by Defendants Madhu and Ayers." *Id.* He remained as a member of Socure's board of directors until he was removed

on or about November 14, 2013. *Id.* He remained as a shareholder of Socure until February 27, 2018, when he signed the 2018 Settlement Agreement and Repurchase Agreement, allegedly under duress, and without the benefit of the Company's Capitalization Table ("Cap Table"). *Id.*

Plaintiff recruited Madhu to Socure in 2012. *Id.* ¶ 10. Madhu served as CEO of Socure from 2013 until February 2019. *Id.* Plaintiff alleges that Madhu actively hid the Cap Table from him to conceal the dilution of his 1.2 million shares of common stock, which should have been 12% of the company's overall common stock. *Id.*

Plaintiff recruited Ayers to Socure in 2012, and Ayers served in various management roles in the Company, including during the time Plaintiff's shares were diluted and the negotiation of the 2018 Agreement. *Id.* ¶ 11. Ayers allegedly hid the Cap Table from Plaintiff, and since 2020, has served as the CEO of Socure. *Id.*

Plaintiff recruited O'Connor to Socure in 2012 and served as chief technology officer for approximately six months before being terminated by the board of directors. *Id.* ¶ 12. Defendant Madhu terminated him on or about October 4, 2012, without consulting Plaintiff. *Id.* ¶ 34. O'Connor then sent a letter to the Company, threatening to sue the Company for stock allegedly promised to him. *Id.* ¶ 36.

Thereafter, Madhu and Ayers allegedly persuaded the board to remove Plaintiff as CEO in 2013. *Id.* ¶ 39. Plaintiff agreed to step down as CEO provided that he could remain on the board. *Id.* ¶ 40. As part of his resignation as CEO, Plaintiff signed a settlement agreement in 2013, wherein he sold 1.2 million of his unvested shares of common stock back to Socure, while retaining ownership of a remaining 1.2 million shares of common stock as fully vested, which was represented as 12% ownership of Socure. *Id.* ¶¶ 41–42.

On November 13, 2013, after Plaintiff resigned from his position as CEO, Madhu and Ayers scheduled a telephonic meeting with the board and did not invite him. *Id.* ¶¶ 43–45. On November 14, 2013, Plaintiff was removed from the board. *Id.* ¶ 46. Madhu and Ayers justified Plaintiff's removal by claiming that he had improperly influenced Alexander Yampolskiy, a prominent technology investor and expert, who had been recruited by Socure in 2013, to decline an offer of employment from Socure. *Id.* ¶ 48. Plaintiff denied this assertion as false and stated Yampolskiy declined the offer due to concerns about Madhu's conduct and because he was pursuing his own venture. *Id.* ¶ 49. Thereafter, Plaintiff alleges that Madhu and Ayers unlawfully diluted Plaintiffs restricted shares, while protecting other restricted shareholders from such dilution, to force Plaintiff to sell the shares back to Socure at a deflated cost and therefore remove Plaintiff as a shareholder. *Id.* ¶ 50. Plaintiff's shares were diluted from approximately 1.2 million shares of common stock to virtually zero shares. *Id.* ¶ 51.

On July 21, 2016, Socure issued a press release on its website, in which Madhu and Ayers claimed they founded Socure. *Id.* ¶ 55. On December 16, 2016, in an interview published by "Alley Watch", Madhu reiterated the same. *Id.* ¶ 56. Plaintiff retained legal counsel to potentially pursue legal action against the Socure Defendants for the alleged fraudulent dilution of his vested common stock. *Id.* ¶ 58. On June 15, 2017, Plaintiff's counsel circulated a draft complaint containing defamation and fraud claims to the Socure Defendants' counsel. *Id.* ¶ 60. In the course of settlement negotiations in 2017, Plaintiff's counsel repeatedly asked for Socure's Cap Table

and a corporate valuation to properly value Plaintiff's 1.2 million vested shares. *Id.* ¶ 61. The Socure Defendants allegedly refused to provide this and further concealed the extent of the dilution of shares and accurate corporate valuation. *Id.* ¶ 62.

On January 30, 2018, O'Connor's counsel sent a letter demanding access to Socure's books and records. *Id.* ¶ 67. Plaintiff alleges that O'Connor made claims in the letter that on October 4, 2012, Plaintiff threatened him in an effort to re-trade the equity interests Socure had conferred upon him. *Id.* ¶ 68. O'Connor claimed that Plaintiff was "standing over Mr. O'Connor with a bamboo pole, holding that pole as if ready to strike him, and used the bamboo pole in order to 'beat his employees.'" *Id.* ¶ 69. He further claimed that a video footage of this alleged encounter was in his possession and would be released to damage Plaintiff. *Id.* ¶ 70. Plaintiff was never shown any video footage of this alleged encounter and denies the claims. *Id.* ¶¶ 72–74. Counsel for Socure allegedly leveraged the false claims in the letter and threatened a lawsuit to defame Plaintiff's professional reputation. *Id.* ¶ 76. Plaintiff alleges that Socure and O'Connor colluded to manufacture the false allegations to cause duress and force him to sign the 2018 Agreement less than four weeks later along with the Repurchase Agreement, which valued his vested stock, representing a 12% ownership interest, at a depressed price of $132,000—at approximately 11 cents per share. *Id.* ¶¶ 79–80. Under the 2018 Agreement, Plaintiff was forced to waive any and all claims against Defendants regarding his 2013 resignation, the 2013 settlement, his unlawful removal from the board, the unlawful dilution of his vested shares, defamation by Defendants, and any other known or unknown claims he may have had. *Id.* ¶ 83. The 2018 Agreement included a covenant requiring Plaintiff to assist Socure in its defense with regard to any possible claims O'Connor might bring against Socure at any time, including serving as a witness for Socure against O'Connor. *Id.* ¶ 84. O'Connor did not commence any lawsuit against the Socure Defendants. *Id.* ¶ 85.

On February 27, 2018, three weeks after the 2018 Agreement was executed, the Socure Defendants allegedly raised approximately $50,000,000 in Series BC Funding. *Id.* ¶ 88. Approximately one year later, the Socure Defendants raised $100,000,000 in an additional round of funding from top tier investors at a valuation of $1.3 billion dollars, which Plaintiff alleges is incongruent with the $132,000 paid to Plaintiff for 12% of the Company's vested common stock. *Id.* ¶ 90.

On January 3, 2022, Madhu commenced a lawsuit against Socure ("Madhu Litigation") that arose from two grants of options to purchase Socure common stock in 2014 and 2018. *Id.* ¶¶ 94–95. The complaint alleged that Madhu attempted to exercise his options on the roughly 10 million shares from the two grants, but Socure had taken fraudulent steps to prevent him from doing so. *Id.* ¶ 100. In 2024, the parties in the Madhu Litigation settled on terms that involved a lucrative monetary payment to Madhu. *Id.* ¶ 103. The valuations of the shares Madhu attempted to exercise ranged from $19,000,000 to $87,000,000, which were inconsistent with the valuation of Plaintiff's shares. *Id.* ¶ 104. Plaintiff alleges that an Omnibus Incentive Plan effective on January 15, 2013, was filed on the docket in the Madhu Litigation, but was not signed by the board in January 2013, or provided to Plaintiff who was on the board at the time. *Id.* ¶¶ 109, 113–14. Plaintiff alleges that the Omnibus Incentive Plan was intentionally and fraudulently concealed from him throughout the negotiations leading up to the settlement. *Id.* ¶ 130. Plaintiff allegedly first suspected a likelihood of fraud by Socure in its representations to him and his attorney during the 2018 settlement negotiations and in September 2023, while following investigations into the

crypto company Voyager Digital Ltd., due to an overlap in leadership on its board of directors with Socure. *Id.* ¶¶ 137–140. Plaintiff claims he was informed by a Philip Eytan, a founding board member of Socure and Voyager, that Plaintiff's shares may have been unlawfully diluted by Defendants. *Id.* ¶ 141. He reviewed the filings of Voyager in September 2023, and discovered information that was previously not made available to him or his counsel in 2018, and further alleges that the Socure Defendants actively misrepresented the valuation of his shares of vested common stock in 2018. *Id.* ¶ 142. Additionally, he discovered that the Socure Defendants engaged in a pattern or practice of deception and fraud starting in 2013 and continuing through 2018. *Id.* ¶ 144. Plaintiff alleges that the Socure Defendants used O'Connor's false accusations to place him under duress so he would settle his claims. *Id.*

Accordingly, Plaintiff filed the Complaint on October 14, 2024, and asserts the following six causes of action: (1) fraud; (2) fraudulent inducement; (3) fraudulent misrepresentation; (4) fraudulent concealment; (5) duress; and (6) defamation. *Id.* ¶¶ 149–243. Each of these claims arise from the 2018 Agreement, which states, in relevant part:

> The parties hereby enter the agreement to fully and finally settle and resolve certain disputes and claims between the parties, including, but not limited to, all claims and allegations set forth in the December 21, 2016 letter from Leinhardt's attorneys, on his behalf, to the Company' Senior Vice President of Operations (the "December 2016 Letter") and the draft complaint captioned *Bradley Leinhardt v Socure Inc. et al.* (Sup. Ct. N.Y. Cty.), circulated as an attachment to a June 15, 2017 email from Leinhardt's attorneys, but never filed (the "Draft Complaint")….

NYSCEF Doc. No. 25, Ex. 5 to Affirmation of Aric H. Wu. The 2018 Agreement also provides:

> [L]einhardt agrees not to file the Draft Complaint or any version of the Draft Complaint asserting claims against the Company, Mr. Madhu, or any other officer or affiliate of the Company in the Supreme Court of the State of New York or any other forum, including the claims released below.

Id. ¶ 3. In pertinent part, the release provides:

> [L]einhardt … releases … the Company, as well as its current and former directors, officers, employees … from any and all claims, causes of action, suits, charges, complaints, controversies, liabilities, damages, actions, costs, losses, debts, accounts … whether known or unknown, direct or derivative, suspected or unsuspected … including, but not limited to, those that were asserted or that could have been asserted in the December 2016 Letter and/or the Draft Complaint, any statements made by the Company….

Id. ¶ 4. The unknown claims section provides:

> Leinhardt acknowledges that he has been advised to consult with legal counsel and that he is familiar with the principle that a general release does not extend to claims that the releaser does not know or suspect to exist in its

> favor at the time executing the release, which if known by it, must have materially affected its settlement with the release. Leinhardt, being aware of said principle, agrees to expressly waive any rights he may have to that effect….

Id. ¶ 5.

Defendant O'Connor's Motion to Dismiss (Mot. 001)

Defendant O'Connor contends that the defamation claim against him is precluded because any claims allegedly made in the January 30, 2018, letter are time barred as of January 30, 2019, and the duress and fraud claims are time-barred as the 2018 Agreement was signed in February 2018, thereby barring the claim as of February 2024. NYSCEF Doc. No. 14, Def. O'Connor Mem. of Law at 6–7. Lastly, he argues that Plaintiff failed to allege any fraud-based causes of action against him and only added his name onto the final paragraphs of each cause of action. *Id.* at 10.

Plaintiff rebuts that the Motion should be denied because he sufficiently states allegations of fraud and duress in the procurement of the release, which were further supported by his affidavit.[1] NYSCEF Doc. No. 35, Pl. Mem. of Law at 3. Regarding the duress claim, Plaintiff contends that O'Connor was referred to in the 2018 Agreement, and his letter directly caused Plaintiff to sign the agreement. *Id.* at 18. He further argues that the Socure Defendants colluded with O'Connor to place Plaintiff under duress with false claims of assault, and to induce him to release his claims and consent to repurchase of his shares for a fraction of their worth. *Id.* at 17–18. Plaintiff argues that the fraud claims are not time-barred because he did not suspect the fraud until September 2023, when he began following the Voyager investigations and learned of Defendants' fraud after reviewing the Madhu Litigation. *Id.* at 20.

In reply, O'Connor argues that Plaintiff acknowledged he was aware of the alleged defamation and duress when they occurred in 2018, and admitted that he was aware that he was defrauded in early 2017 and no later than 2018. NYSCEF Doc. No. 46, Def. O'Connor Reply Mem. of Law at 2–4. Furthermore, he argues that Plaintiff failed to respond to his arguments regarding the duress claim, and thus, they must be deemed as abandoned. *Id.* at 6–7. Lastly, he argues that Plaintiff failed to address any fraud claims specifically to him pursuant to CPLR § 3016(b). *Id.* at 7–8.

Socure Defendants' Motion to Dismiss (Mot. 002)

The Socure Defendants contend that the 2018 Agreement bars Plaintiff's fraud and duress claims because they are subject to the release. NYSCEF Doc. No. 28, Socure Defs. Mem. of Law at 9. They further argue that Plaintiff did not plead a fraud separate from the subject of the release. *Id.* at 12. Even if a separate fraud was alleged, they contend that Plaintiff agreed he was not relying on any extra-contractual representations. *Id.* Additionally, they argue that Plaintiff is barred from claiming duress because he accepted the payments received under the 2018 Agreement for a period of six years. *Id.* at 13. The Socure Defendants further argue that the duress and fraud claims are time-barred because Plaintiff's June 2017 draft complaint alleged the same fraud-based theories thereby creating a duty of inquiry no later than 2017. *Id.* at 15. Further, the defamation claims are

[1] This Court declines to consider Plaintiff's unsworn affidavit.

time-barred because the statements were alleged to be made six to eight years ago. *Id.* at 16. They further argue that Plaintiff failed to plead the fraud claims with particularity and the parties entered in an arm's length transaction. *Id.* at 17. Regarding the duress claim, they argue it is not a cognizable affirmative claim and was not adequately pleaded. *Id.* at 18. The Socure Defendants further claim that Plaintiff did not adequately plead a defamation claim. *Id.* at 18–22. Lastly, the Socure Defendants demand an award for attorneys' fees based on the 2018 Agreement and Repurchase Agreement. *Id.* at 22.

In opposition, Plaintiff argues that the 2018 Agreement does not resolve all issues due to Plaintiff's discovery of the secret Omnibus Incentive Program in 2024, and the recent discovery of the amendments to the certificate of incorporation, which diluted the value of Plaintiff's equity interest. NYSCEF Doc. No. 43, Pl. Mem of Law at 12. Plaintiff argues that the fraud that led to the commencement of this action is separate from the subject material of the 2018 Agreement because matters were concealed, and Plaintiff had no opportunity to uncover the fraud as an outsider to a closely held corporation. *Id.*; *see also id.* at 13–15. Plaintiff asserts that the Defendants colluded to place him under duress with false claims of assault and induce him to sign the 2018 Agreement. *Id.* at 17–19.

In reply, the Socure Defendants contend that Plaintiff failed to address the provisions of the 2018 Agreement which bar Plaintiff's lawsuit, failed to address any case law cited, and attempts to contrive a factual issue by proffering an unsworn affidavit. NYSCEF Doc. No. 47, Socure Defs. Reply Mem. of Law at 1–3. They further argue that Plaintiff cannot evade dismissal by arguing that the 2018 Agreement did not address Plaintiff's discovery of Socure's Option Plan as Socure's board members, including Plaintiff, executed a unanimous written consent in January 2013 adopting the Option Plan. *Id.* at 6; *see also* NYSCEF Doc. No. 49, Ex. 8 to Reply Affirmation of Aric H. Wu.

Legal Discussion

When reviewing a pre-answer motion to dismiss pursuant to CPLR § 3211(a)(7), the pleading is afforded a liberal construction and the Court must accept as true the facts alleged in the complaint, accord the pleading the benefit of every reasonable inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory. *Sokoloff v. Harriman Ests. Dev. Corp.*, 96 N.Y.2d 409, 414 (2001). In assessing the sufficiency of the Complaint, this Court must also consider the allegations made in both the Complaint and the accompanying affidavit, "submitted in opposition to the motion, as true and resolve all inferences which reasonably flow therefrom in favor of the [Plaintiffs]." *Joel v. Weber*, 166 A.D.2d 130, 135–36 (1st Dept. 1991) (internal quotation marks and citations omitted). However, vague, and conclusory allegations cannot survive a motion to dismiss. *Kaplan v. Conway & Conway*, 173 A.D.3d 452, 452–53 (1st Dept. 2019).

"A party may move for judgment dismissing one or more causes of action asserted against him [or her] on the ground that … the cause of action may not be maintained because of … [a] release [and] statute of limitations." CPLR § 3211(a)(5). A party moving under CPLR § 3211(a)(5) to dismiss a claim as time-barred "bears the initial burden of establishing, prima facie, that the time in which to sue has expired." *Norddeutsche Landesbank Girozentrale v. Tilton*, 149 A.D.3d 152, 158 (1st Dept. 2017) (citations omitted).

The Fraud Claims

To state a claim for fraud, a plaintiff must allege misrepresentation or concealment of a material fact, falsity, scienter, justifiable reliance, and injury. *Basis Yield Alpha Fund (Master) v. Goldman Sachs Grp., Inc.*, 115 A.D.3d 128, 135 (1st Dept. 2014). For claims of fraudulent inducement, an essential element is detrimental reliance. *Meyercord v. Curry*, 38 A.D.3d 315, 316 (1st Dept. 2007). For claims of fraudulent concealment, a plaintiff must allege all the foregoing elements of fraud as well as a duty on the part of the defendant to disclose the allegedly material information and failure to do so. *Mitschele v. Schultz*, 36 A.D.3d 249, 254–55 (1st Dept. 2006).

The central issue presented in this case is whether Plaintiff's claim for fraud falls outside the scope of the release executed in the 2018 Agreement. "Generally, a valid release constitutes a complete bar to an action on a claim which is the subject of the release." *Centro Empresarial Cempresa S.A. v. América Móvil, S.A.B de C.V.*, 17 N.Y.3d 269, 276 (2011) (internal quotation marks and citations omitted). In fact, a "release may encompass unknown claims, including unknown fraud claims, if the parties so intend and the agreement is fairly and knowingly made." *Id.* (internal quotation marks and citations omitted). However, if the release was obtained under duress, through illegality, fraud or mutual mistake, it may be invalidated, a burden which is borne by the party seeking to set aside the release. *Id.* And the party seeking to set aside the release may challenge that release as fraudulently induced only if it can identify a separate fraud from the subject of the release. *Id.* To allow anything less would undermine a party's ability to settle a fraud claim with finality. *Id.*

Here, the broad terms of the release encompass fraud claims, both known and unknown, suspected and unsuspected. Plaintiff alleges that the Socure Defendants "denied all normal and necessary documents or financial data to reference" when he signed the 2018 Agreement. Compl. ¶ 153. Plaintiff further alleges that he justifiability relied on the false information provided by the Socure Defendants, who controlled the books and records of the Company and was denied access to them. *Id.* ¶ 154. These allegations arise out of, relate to, and are connected to the claims that Plaintiff explicitly released when he signed the 2018 Agreement. Thus, the fraud described by Plaintiff "falls squarely within the scope of the release" and is an attempt to convert the release into a starting point for litigation, which is impermissible. *Centro*, 17 N.Y.3d at 277.

"When the party to whom a misrepresentation is made has hints of its falsity, a heightened degree of diligence is required of it. It cannot reasonably rely on such representations without making additional inquiry to determine their accuracy." *Id.* at 279 (internal quotation marks and citations omitted). "When a party fails to make further inquiry or insert appropriate language in the agreement for its protection, it has willingly assumed the business risk that the facts may not be represented." *LMM Cap. Partners, LLC v. Mill Point Cap., LLC*, 224 A.D.3d 504, 507–08 (1st Dept. 2024) (citation omitted). Plaintiff "should have sought to condition the settlement on the truth of the representations made by [the Socure Defendants] that induced [him] to enter the settlement." *Id.* at 508.

However, at this early juncture of the case, the special facts doctrine saves Plaintiff's claim. *Cf. Silver Point Cap. Fund, L.P. v. Riviera Res. Inc.*, 198 A.D.3d 432, 433 (1st Dept. 2021) (holding that the special facts doctrine did not apply because the plaintiffs were sophisticated parties who were aware that they were not provided with full information but regardless agreed to

proceed with a transaction without demanding access to the omitted information). Absent a fiduciary duty between the parties, a duty to disclose arises only under the special facts doctrine. *See Greenman-Pedersen, Inc. v. Berryman & Henigar, Inc.*, 130 A.D.3d 514, 516 (1st Dept. 2015). In such case, a duty to disclose arises where "[o]ne party's superior knowledge of essential facts renders a transaction without disclosure inherently unfair." *Id.* (citations omitted). That "doctrine requires satisfaction of a two-prong test: that the material fact was information peculiarly within the knowledge of one party and that the information was not such that could have been discovered by the other party through the exercise of ordinary intelligence." *Id.* (citations omitted). In other words, if the other party has the means available to him of knowing he must make use of those means, or he will not be heard to complain that he was induced to enter into the transaction by misrepresentation. *ACA Fin. Guar. Corp v. Goldman, Sachs & Co.*, 25 N.Y.3d 1043, 1044 (2015). At a minimum, a party has a duty to inquire. *Jana L. v. W. 129th St. Realty Corp.*, 22 A.D.3d 274, 278 (1st Dept. 2005).

Here, Plaintiff alleged that during the negotiations in 2017, his counsel repeatedly asked for Socure's Cap Table and corporate valuation, which the Socure Defendants refused to provide (*see* Compl., ¶¶ 61–62), and, as an "outsider of the company from 2013 to 2018," he had no basis to value his stock, and he was "kept in the dark." *Id.* ¶¶ 63–64 (internal quotations omitted). Plaintiff has sufficiently alleged that the Socure Defendants refused to provide Plaintiff with Socure's Cap Table, and Socure's books and records, despite Plaintiff and his counsel demanding such, and denied Plaintiff access to all corporate books and records. *Id.* ¶¶ 150, 154. Thereby, dismissal of the fraud claims against the Socure Defendants is not warranted pursuant to CPLR § 3211(a)(5) at this stage.

Additionally, the Socure Defendants' argument that the fraud claims are time-barred pursuant to CPLR § 3211(a)(5) also fail. In a cause of action for fraud, "the time within which the action must be commenced shall be the greater of six years from the date the cause of action accrued or two years from the time the plaintiff or the person under whom the plaintiff claims discovered the fraud, or could with reasonable diligence have discovered it." CPLR § 213(8). Whether a plaintiff could have discovered the fraud with reasonable diligence turns upon whether the plaintiff possessed knowledge of facts from which he could reasonably have inferred the fraud. *Norddeutsche Landeskbank Girozentrale*, 149 A.D.3d at 159. Mere suspicion of fraud is not a sufficient substitute. *Id.*

Here, the Socure Defendants failed to make a *prima facie* showing that the six-year statutory period has expired. Plaintiff alleged that he timely commenced the action within two years of his alleged discovery of the fraud in 2023. *See* NYSCEF Doc. No. 35, Pl. Mem. of Law at 20. The Socure Defendants failed to meet their burden of coming forth with evidence establishing that Plaintiff knew or could with reasonable diligence, discovered the fraud in 2017, when he circulated the draft complaint. Plaintiff sufficiently alleged he was cut off from records that may have revealed the fraud, and did not discover the Omnibus Inventive Program until the Madhu Litigation in 2023.

This Court declines to consider the Socure Defendants' arguments and documents related to the discovery of the Omnibus Incentive Program raised for the first time in their reply to support its *prima facie* showing of the fraud or discovery of fraud. *See* NYSCEF Doc. Nos. 49–50; *see also Lumbermens Mut. Cas. Co. v. Morse Shoe Co.*, 218 A.D.2d 624, 625–26 (1st Dept. 1995)

(rejecting defendant's reply papers that included two new documents to support a new assertion not previously made in the initial motion). There also appears to be a question of the veracity of the documents, and they do not conclusively dismiss Plaintiff's claims. *See* CPLR § 3211(a)(1). Therefore, dismissal of Plaintiff's fraud and related causes of action is not warranted. *Berman v. Holland & Knight, LLP*, 156 A.D.3d 429, 430 (1st Dept. 2017) ["[W]here it does not conclusively appear that a Plaintiff had knowledge of facts from which the alleged fraud might be reasonably inferred, the cause of action should not be disposed of summarily on statute of limitations grounds."].

This Court finds that dismissal of the fraud claims is warranted against Defendant O'Connor. Where a cause of action of fraud is alleged, the circumstances constituting the wrong shall be stated in detail. *See* CPLR § 3016(b). The purpose of the pleading requirement is to inform a defendant with respect to the incidents complained of. *Pludeman v. Northern Leasing Sys., Inc.*, 10 N.Y.3d 486, 491 (2008). Here, no allegations were directed at Defendant O'Connor. Rather, Plaintiff lumps all Defendants together in the conclusion paragraphs, without identifying the discrete fraudulent acts allegedly committed by O'Connor. Accordingly, the fraud claims alleged in the first, second, third, and fourth causes of action are dismissed against Defendant O'Connor.

Duress Claim

A cause of action alleging duress is similarly covered by the six-year statute of limitations. CPLR § 213(1); *see also Pearl-Wick Corp. v. Chase Manhattan Bank*, 125 A.D.2d 249, 251 (1st Dept. 1986). Generally, a plaintiff who seeks to recover under a theory of duress is required to bring a claim promptly or allege facts which excuse its delay. *Beltway 7 Props., Ltd. v. Blackrock Realty Advisers, Inc.*, 167 A.D.3d 100, 108 (1st Dept 2018). "[T]he possibility, or even the fear, of litigation is insufficient to establish duress." *Id.* at 107 (citation omitted). Plaintiff alleges that he was under duress and signed the 2018 Agreement on February 27, 2018, barring any claims for duress as of February 27, 2024. The Complaint further lacks any facts explaining Plaintiff's delay in bringing this action, and the allegations of extreme fear of a civil action or criminal prosecution against him based upon the O'Connor letter are insufficient to establish duress. *See id.* Accordingly, Plaintiff's fifth cause of action for duress is dismissed against all Defendants.

Defamation Claim

Lastly, this Court finds that Plaintiff's defamation claims are time-barred. Defamation claims are subject to a one-year statute of limitations and accrue at the time when a defamatory statement is published. CPLR § 215(3); *Biro v Condé Nast*, 171 A.D.3d 463, 464 (1st Dept. 2019). Plaintiff's claims based on the July 21, 2016, press release and December 16, 2016, article were alleged in the Complaint filed on October 14, 2024, which is outside the one-year limitation period. Similarly, Plaintiff's defamation claim based on the 2018 O'Connor letter is also time-barred. Thus, the sixth cause of action for defamation is barred by the statute of limitations and dismissed against all Defendants.

Attorneys' Fees and Sanctions

In relevant part, Section 7.3 of the Repurchase Agreement states that the prevailing party shall be awarded reasonable fees and expenses. NYSCEF Doc. No. 27, Ex. 7 to Affirmation of Aric H. Wu. Considering the outstanding fraud causes of action, this branch of the Socure Defendants' Motion is denied. *49 E. Owners Corp. v. 825 Broadway Realty, LLC*, 224 A.D.3d 493, 493 (1st Dept 2024) ("[T]he party seeking attorneys' fees must be successful on the central relief sought") (internal quotation marks and citation omitted).

Accordingly, it is hereby

ORDERED that Defendant Gregory O'Connor's Motion to Dismiss the Complaint (Mot. Seq. 001) herein is GRANTED and the Complaint is dismissed in its entirety as against said Defendant, with costs and disbursements to said Defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said Defendant; and it is further

ORDERED that Defendants Socure Inc., Sunil Madhu, and Johnny Ayers' Motion to Dismiss the Complaint (Mot. Seq. 002) herein is GRANTED to the extent that the fourth and fifth causes of action of the Complaint are dismissed against said Defendants; and it is further

ORDERED that the action is severed and continued against the remaining Defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

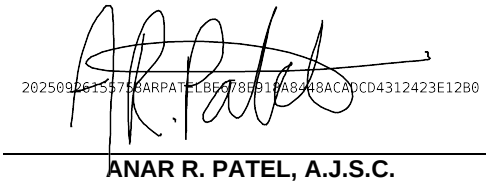
ORDERED that Defendants are directed to serve an answer to the Complaint within twenty (20) days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to file a joint proposed Preliminary Conference Order on NYSCEF on or before October 8, 2025; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

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ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).



9/26/2025
DATE

ANAR R. PATEL, A.J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	X	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**