

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
Civil No. 25-1625-BLS1JACKSON LAUGHLIN,
Plaintiff

vs.

BINSTAR, INC. (DELAWARE), & others¹
Defendants

MEMORANDUM AND ORDER
ON MOTION TO DISMISS AND FOR SANCTIONS
BY ALPACA, PAGANO, AND FREEDMAN

Plaintiff Jackson Laughlin brings this action against defendants BinStar, Inc., a Delaware corporation (“BinStar DE”); BinStar, Inc., a Massachusetts corporation (“BinStar MA”);² BinStar’s D&O insurance carrier; and alleged investors or directors in BinStar, including Alpaca Ventures (“Alpaca”),³ Aubrie Pagano (“Pagano”), Jason Harrow (“Harrow”), and Ryan Freedman (“Freedman”), alleging a pattern of betrayals and self-dealing that led to BinStar’s dissolution and that harmed plaintiff.

Under to Mass. R. Civ. P. 12(b)(6) and 12(b)(1), Alpaca, and two individual defendants, Pagano and Freedman, move to dismiss the claims that the amended complaint (Docket #4) asserts against them, specifically, Counts IV-VII and XVI against Alpaca, and Counts II-IV, VI-

¹ BinStar, Inc. (Massachusetts), Philadelphia Indemnity Insurance Company, Alpaca Ventures, Aubrie Pagano, Jason Harrow, and Ryan Freedman.

² Consistent with the way plaintiff groups BinStar DE and BinStar MA, I refer to these two entities together as “BinStar.” Plaintiff also lumps the individual defendants together, largely without differentiating their individual actions. This type of group pleading without factual justification is disfavored by this court. See, e.g., Schlumberger Technology Corp. v. ARE-MA Region No. 103, LLC, 2024 WL 2091831 at ** 1-2 (Mass. Super. Apr. 8, 2024).

³ Defendants assert that the true name of this defendant is Alpaca VC Fund III LP.

VIII, and X-XV against Pagano and Freedman. Plaintiff agrees to dismiss Counts VI, VII, and X-XV.⁴ Those claims shall be dismissed without prejudice. Of the remaining counts (Counts II-V, VIII, and XVI), the motion is allowed, but the court declines to award sanctions.

BACKGROUND

A. Relevant Factual Allegations

The allegations in the amended complaint (“Compl.”)⁵ may be summarized as follows:

1. The Parties

BinStar DE was incorporated in October 2022 and operated discount retail stores in Boston, Saugus, and Avon, Massachusetts. BinStar MA was incorporated in Massachusetts as the “alter ego” for BinStar DE’s operations. Compl. ¶ 6. Plaintiff, a Massachusetts resident, co-founded BinStar and served as its President and CEO.⁶ He also personally guaranteed \$500,000 in business credit lines to keep BinStar “afloat.” *Id.* ¶ 16. Alpaca, a New York entity, was an investor in BinStar. Pagano and Freedman, both affiliates of Alpaca, served on the BinStar’s board to represent Alpaca’s interests.

2. Difficulties at BinStar

During the summer of 2023, BinStar needed capital. Alpaca exploited this opportunity to restructure BinStar, gaining significant corporate advantages, including acquiring veto power

⁴ See Opposition to Motion to Dismiss at 8 (Docket #31). Given the ambiguities in the Rule 9C certification, I cannot determine which party was responsible for the parties’ failure to agree to the dismissal of these counts before the legal issue with those counts was briefed by the moving parties. Given that the motion and supporting memorandum is dated November 14, 2025, it appears likely that the issues affecting these counts had already been substantially researched and briefed by the time the Rule 9C conference was held on November 13, 2025.

⁵ The amended complaint is not denominated as “amended.” See Docket #4.

⁶ In this regard, and others, plaintiff does not distinguish between BinStar DE and BinStar MA. See, e.g., Compl. ¶¶ 2, 4, 16.

over BinStar's budgets, debt, equity, mergers, and plaintiff's role as CEO. The restructuring also eliminated a liquidation preference for early investors, including plaintiff's family.

By the spring of 2024, BinStar "began facing financial distress" and "faced insolvency," *id.* ¶¶ 15, 17, due to rapid expansion and rising overhead. BinStar was carrying over \$1.3 million in debts, including claims by a former employee, and by Timberline Construction and LAZ PR, LLC. On July 17, 2024, plaintiff emailed the Board and existing investors with a signed term sheet for a \$4 million bridge investment from "a Boston-based multibillionaire eCommerce entrepreneur," but defendants "rejected this lifeline." *Id.* ¶ 17. Pagano and Freedman opposed the \$4 million loan, delayed talks from August 5-18, 2024, and proposed an alternative \$1 million bridge deal on September 10, 2024 with an Alpaca limited partner. *Id.* ¶ 19. The \$1 million deal included "inferior terms," including lower valuation terms, super-voting rights, arbitration and ESG mandates. *Id.* On September 19, 2024, Pagano rejected the \$4 million offer despite plaintiff's "objections and shock." *Id.*

3. Plaintiff Takes Leave

These actions "precipitated the collapse" of plaintiff's "physical and mental health."⁷ *Id.* From mid-October 2024 through the end of February 2025, plaintiff took a leave of absence under the Massachusetts Paid Family and Medical Leave Act ("PFML"), G.L. c. 175M, § 1, *et seq.* *Id.* ¶¶ 16, 19. During his PFML leave, plaintiff remained CEO of BinStar. No successor CEO was appointed. While plaintiff was on FMLA leave, defendants sent over 65 messages demanding "CEO-level duties" from plaintiff, including signing dissolution consents, removing a former employee as director, and giving administrative access to a 401(k) account. *Id.* ¶ 20.

⁷ Plaintiff alleges that he needed "over 100 days of partial-hospitalization psychiatric treatment" [sic] due to "[t]he relentless stress from Defendants' illegal and improper actions – including financial mismanagement and coercive demands." Compl. ¶ 16.

4. Dissolution and Related Fallout

On November 22, 2024, BinStar DE filed for dissolution. *Id.* ¶¶ 5, 15. On the same date, Freedman disclosed the details of the plaintiff's PFML leave to a former employee and his counsel as "a retaliatory act" to undermine the plaintiff's credibility. *Id.* ¶ 22.

After dissolution, several financial and legal obligations of BinStar went unaddressed, including failing to pay sales taxes despite a notice from the Massachusetts Department of Revenue, failing to notify more than 100 401(k) participants of a transfer of plan assets while plaintiff was on PFML leave, allowing a default judgment to enter for the benefit of Timberline Construction, withholding plaintiff's wages, and incurring unauthorized business credit card charges. Based on these events, among others, plaintiff seeks damages.

B. Procedural History

On June 11, 2025, plaintiff filed the case and included a legal malpractice claim against Cooley LLP ("Cooley"). Three weeks later, plaintiff filed an amended complaint as of right under Mass. R. Civ. P. 15(a), removing his claim against Cooley.

As is relevant to the disputed portion of the present motion, the amended complaint asserts claims for violating the PFML statute (Count II against Pagano and Freedman), breach of fiduciary duties (Count III against Pagano and Freedman), securities law violations (Count IV against Alpaca, Pagano and Freedman), aiding and abetting a breach of fiduciary duty (Count V against Alpaca), insurance fraud (Count VIII against Pagano and Freedman), and violation of G.L. c. 93A, § 11 (Count XVI against Alpaca).⁸ The moving defendants now seek dismissal of these counts. After addressing the applicable standard, I discuss each of these counts in turn.

⁸ In addition these counts, and the dismissed counts, there remain counts against the BinStar defendants (Counts I, II, and VIII), Philadelphia Indemnity Insurance Company (Count IX), and Jason Harrow (Counts II, III, IV and VIII). Plaintiff stated at argument that he does not plan to pursue his claims against BinStar.

DISCUSSION

I. Relevant Standard

Under Mass. R. Civ. P. 12(b)(6), I must accept as true the complaint's factual allegations and draw "all reasonable inferences" therefrom in plaintiff's favor. Dunn v. Genzyme Corp., 486 Mass. 713, 717 (2021). Plaintiff's alleged facts must show a basis for him to succeed with "more than labels and conclusions." They must "raise a right to relief above the speculative level[,] . . . plausibly suggesting . . . an entitlement to relief." Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

II. Counts at Issue

A. Family and Medical Leave (Count II v. Pagano and Freedman)

Count II alleges that BinStar and the individual defendants violated the requirements of the PFML statute while plaintiff was on PFML leave by sending him more than "65 messages," which "demand[ed] duties like signing dissolution consents . . . , removing [a former employee] from the board . . . , and handling 401(k) tasks . . . , despite his incapacity and without approval." Compl. ¶ 33. Plaintiff alleges that these actions violated G.L. c. 175M, § 9, and caused him injury for which he seeks damages.⁹

In relevant part, the PFML statute authorizes any covered individual to take a medical leave of up to 20 weeks in a benefit year if the person has "a serious health condition that makes the covered individual unable to perform the functions of the covered individual's position." G.L. c. 175M, §§ 2(a)(2), (c)(1). The statute defines a "[s]erious health condition" to include a "physical or mental condition that involves (i) inpatient care . . . ; or (ii) continuing treatment by

⁹ I express no view on whether Count II states a valid claim against BinStar or Harrow, neither of whom is before the court on this motion to dismiss.

a health care provider.” G.L. c. 175M, § 1. The statute makes it “unlawful for any employer to retaliate by discharging, firing, suspending, expelling, disciplining . . . , threatening or in any other manner discriminating against an employee for” taking a proper PFML leave, G.L. c. 175M, § 9(a) (emphasis added), and provides an aggrieved employee a private right of action to seek damages for such a violation. G.L. c. 175M, § 9(d).

The PFML statute incorporates the definitions of “employer” and “employee” set out in G.L. c. 151A, § 1. See G.L. c. 175M, § 1. Section 1 of Chapter 151A defines an “employer” as “any employing unit,” that is, “any individual or type of organization . . . who or which has or . . . had one or more individuals performing services for him or it” in Massachusetts. G.L. c. 151A, §§ 1(i), 1(j). Unlike the Wage Act, which was at issue in Segal v. Genitrix, LLC, 478 Mass. 551, 552-553, 558-566 (2017), the PFML statute does not extend liability to a corporate employer’s officers or agents. Compare G.L. c. 149, § 148, para. 6 (“The president and treasurer of a corporation and any officers or agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation within the meaning of this section.”). Because no such language is used in Chapter 151A or the PMFL statute, I decline to import it. The statutory requirement to provide PFML leave in appropriate cases, and the statutory prohibition of discrimination against an employee who exercises his rights under the PFML statute, rest on the employer. They may not be enforced against investors or board members.

Alternatively, plaintiff argues that he should be allowed to amend to assert a claim for aiding and abetting a PFML violation. I disagree. A corporation may only act through its employees, agents, officers or directors, see, e.g., Commonwealth v. Angelo Todesca Corp., 446 Mass. 128, 135 (2006), but, in contrast to the Wage Act, the PFML statute does not impose

liability on those individual actors. Cases cited by the plaintiff concern age or sexual discrimination claims arising under G.L. c. 151B, which expressly provides for aiding and abetting liability. Compare G.L. c. 151B, § 4(5) (“It shall be an unlawful practice . . . [f]or any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so.”). The absence of similar language in G.L. c. 175M indicates the legislature did not intend to provide liability for aiding and abetting a violation of the PFML statute. Accordingly, Count II must be dismissed against Pagano and Freedman.

B. Fiduciary Duty Claims

Count III asserts a claim against the individual defendants for breach of fiduciary duty, while Count V alleges that Alpaca aided and abetted that breach.

1. Breach of Fiduciary Duty (Count III v. Pagano and Freedman)

The Supreme Judicial Court has long held that “the law of the State of incorporation governs claims concerning the internal affairs of a corporation, including the treatment of alleged breaches of fiduciary duty.” Harrison v. NetCentric Corp., 433 Mass. 465, 472 (2001). Here plaintiff’s claim is governed by Delaware Law; and, after an opportunity to further review the issue, plaintiff conceded as much.¹⁰

Under Delaware law, to state a claim for breach of fiduciary duty plaintiff must allege “(1) that a fiduciary duty existed and (2) that the defendant breached that duty.” Jacobs v. Akademos, Inc., 326 A.3d 711, 751 (Del. Ch. 2024), aff’d, 342 A.3d 1165 (Del. 2025). Pagano and Freedman argue Count III fails to allege either element adequately. I agree.

¹⁰ See Notice of Withdrawal of Assertion of Massachusetts Law Choice for Fiduciary Duty Claim (Jan. 30, 2026) (Docket #36).

Under Delaware law, “corporate directors . . . owe fiduciary duties to the entity and to the stockholders as a whole,” not “to individual stockholders,” Klaassen v. Allegro Dev. Corp., 2013 WL 5967028 at * 11 (Del. Ch. Nov. 7, 2013), *aff’d*, 106 A.3d 1035 (Del. 2014); Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 955 (Del.1985), and not to other directors, employees, or creditors. Foley v. Session Corp., 345 A.3d 537, 558 & n.95 (Del. Ch. 2025); Oberly v. Kirby, 592 A.2d 445, 463 (Del. 1991). Here, Pagano and Freedman at most¹¹ owed fiduciary duties to BinStar and stockholders as a whole, but not to plaintiff individually. Nonetheless, plaintiff seeks only individual relief.¹² Count III cannot stand against Pagano and Freedman.

2. Aiding and Abetting (Count V v. Alpaca)

Under Delaware law, “a claim for aiding and abetting a breach of fiduciary duty cannot survive if the underlying fiduciary duty claims do not.” In re Hennessy Capital Acquisition Corp. IV Stockholder Litig., 318 A.3d 306, 329 (Del. Ch.) (quoting City of Miami Gen. Emps. v. Comstock, 2016 WL 4464156 at * 23 (Del. Ch. Aug. 24, 2016)), *aff’d*, 337 A.3d 1215 (2024). Because the breach of fiduciary duty claim in Count III fails as against Pagano and Freedman, see, *supra*, at 7-8, Count V also fails to the extent it is predicated on alleged breaches of fiduciary duties by Pagano and Freedman.

¹¹ Freedman argues that, although he was a general partner of Alpaca, he was not involved with BinStar and did not serve as a director on the BinStar DE board. Plaintiff does not explicitly allege Freedman was a director. Instead, he alleges that Freedman is “a[n] Alpaca affiliate . . . representing Alpaca on BinStar’s board.” Compl. ¶ 11. Compare *Id.* ¶ 10 (“Harrow . . . , a BinStar director”).

¹² The amended complaint cannot be fairly construed to assert a derivative claim. See Tooley v. Donaldson, Lufkin & Jenrette, Inc., 845 A.2d 1031, 1036 (Del. 2004). Plaintiff has not alleged that a heightened fiduciary duty for close corporations should apply here, see Nixon v. Blackwell, 626 A.2d 1366, 1379 (Del. 1993); 8 Del. C. § 342, or that he suffered any direct injury independent of an injury to the corporation. Tooley, 845 A.2d at 1036, 1039.

C. Securities Law Violation (Count IV v. Alpaca, Pagano, and Freedman)

Count IV alleges that the actions of Alpaca and the individual defendants violated various securities laws, including SEC Rule 10b-5 and 8 Del. C. § 144. Compl. ¶ 47. I address these claims separately.

1. SEC Rule 10b-5

This court lacks subject matter jurisdiction to decide a claim based on a violation of SEC Rule 10b-5. Section 27 of the Securities Exchange Act of 1934 grants “exclusive jurisdiction” to federal courts to hear claims arising from violations of that statute “or the rules and regulations thereunder.” 15 U.S.C. § 78aa(a). See Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning, 578 U.S. 374, 376-77 (2016). SEC Rule 10b-5 derives its authority from 15 U.S.C. § 78j. See 17 C.F.R. § 240.10b-5. Therefore, so much of plaintiff’s claim as relies on SEC Rule 10b-5 must be dismissed without prejudice. Mass. R. Civ. P. 12(b)(1); Abate v. Fremont Inv. & Loan, 470 Mass. 821, 836 (2015) (courts generally do not adjudicate merits when lacking subject matter jurisdiction, so dismissal “ordinarily without prejudice”).

2. 8 Del. C. § 144

Section 144 provides a safe harbor for certain qualifying interested director transactions. 8 Del. C. § 144. It does not create a private cause of action or impose liability for failing to satisfy the qualifications for that safe harbor. See generally Cede & Co. v. Technicolor, Inc., 634 A.2d 345, 365 (Del. 1993). Rather, 8 Del. C. § 144 is typically invoked as a defense to a challenge to the interestedness of a director. Id. at 366 n.34. Absent a private cause of action, plaintiff’s claim under 8 Del. C. § 144 fails. See Loffredo v. Ctr. for Addictive Behaviors., 426 Mass. 541, 543 (1998) (“clear legislative intent is necessary to infer a private cause of action”).

3. G.L. c. 110A

Plaintiff also cites the Massachusetts Uniform Securities Act (“MUSA”), G.L. c. 110A, §§ 101-417, in the title of Count IV, but he fails to cite any particular section of MUSA in his factual allegations, nor has he expressly tied any action by Alpaca, Pagano or Freedman to any particular MUSA violation. Such a filing does not meet even the minimum standard for notice pleading; it is insufficient to put defendants on notice of how, if at all, plaintiff alleges defendants violated MUSA. See generally Mass. R. Civ. P. 8(a) (complaint must “contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief”). For this reason, Count IV against Alpaca, Pagano and Freedman must be dismissed.

Alternatively, if such a filing were sufficient to state a MUSA claim if paired with adequate factual allegations, Count IV is still insufficient to the extent it seeks civil liability under G.L. c. 110A § 410. Defendants correctly argue that the plaintiff lacks standing to bring a claim under § 410, which imposes liability on any person who offers or sells a security in violation of MUSA, *id.* § 410(a), or on another who aid in a securities law violation, but only “jointly and severally with and to the same extent as the seller.” *Id.* § 410(b) Thus, to state a claim for civil liabilities under MUSA, plaintiff must be able to allege that he was offered or bought the security in question. See, e.g., Cambridge Place Inv. Mgmt., Inc. v. Morgan Stanley & Co., 30 Mass. L. Rptr. 594, 2012 WL 5351233 at ** 22-23 (Mass. Super. Sept. 28, 2012) (Billings, J.). Count IV fails to allege that defendants offered or sold plaintiff a security. To the extent based on MUSA, plaintiff’s claim must be dismissed.

D. Insurance Fraud (Count VIII v. Pagano and Freedman)

Although the allegations in Count VIII are ambiguous, it appears that plaintiff is alleging that BinStar and the individual defendants cancelled certain insurance policies on December 20,

2024, which resulted in a default in pending litigation that exposed plaintiff to potential “\$250,000+ liabilities.” Compl. ¶¶ 69, 70. Based on these allegations, plaintiff asserts a claim for insurance fraud.

In moving to dismiss this count, Pagano and Freedman argue that the complaint fails to allege a misrepresentation sufficient to support a claim of fraud. In Massachusetts, a fraud claim “requires showing that (1) the defendant made a false representation of a material fact with knowledge of its falsity for the purpose of inducing [the plaintiff] to act thereon; (2) the plaintiff relied upon the representation as true and acted upon it to his . . . detriment; and (3) such reliance was reasonable under the circumstances.” H1 Lincoln, Inc. v. South Washington St., LLC, 489 Mass. 1, 18-19 (2022) (internal quotations and citations omitted). The claim must be “stated with particularity,” Mass. R. Civ. P. 9(b), meaning that the plaintiff “must particularize the identity of the person(s) making the representation, the contents of the misrepresentation, and where and when it took place” and “should specify the materiality of the misrepresentation, its reliance thereon, and resulting harm.” Equip. & Sys. for Indus., Inc. v. Northmeadows Constr. Co., 59 Mass. App. Ct. 931, 931-932 (2003). Count VIII contains no allegations of a false representation of a material fact made by either Pagano or Freedman, that plaintiff reasonably relied thereon, or that he was harmed by doing so. Thus, the common law claim of fraud fails.¹³

¹³ To the extent plaintiff relies on “unfair methods of competition” or “unfair or deceptive acts or practices” required for a claim under G.L. c. 93A to save Count VIII, he has failed to make such allegations. The complaint does not allege “unfair methods of competition” and “unfair or deceptive acts” in connection with the cancelation of any insurance policies. At argument, plaintiff claimed that Pagano’s agreement to use the absence of insurance coverage as a bargaining chip in litigation was a deceptive act. Compl. ¶ 69. Absent additional facts (and there are none in the complaint), this argument falls short. Plaintiff has not pleaded facts sufficient to establish a plausible theory of fraud.

E. Unfair and Deceptive Practices (Count XVI v. Alpaca)

Plaintiff claims that Alpaca engaged in unfair and deceptive acts in trade or commerce in violation of G.L. c. 93A, § 11. However, internal corporate disputes, including transactions and disputes between parties to a joint venture and between fellow shareholders, fall outside the conduct of “trade or commerce” for purposes of G.L. c. 93A. First Enterprises, Ltd. v. Cooper, 425 Mass. 344, 347 (1997); Linkage Corp. v. Trustees of Boston Univ., 425 Mass. 1, 23 n.33, cert. denied, 522 U.S. 1015 (1997). Chapter 93A is “intended to apply only to dealings between legally separate ‘persons’ engaged in arm’s-length transactions, and not to dealings between members of a single legal entity.” Newton v. Moffie, 13 Mass. App. Ct. 462, 467 (1982).

Here, plaintiff’s claims arise out of intra-corporate affairs. Alpaca’s involvement with BinStar’s restructuring, veto powers, and acceptance of one investment offer and rejection of another all concern the internal governance and management of BinStar. For these reasons, Count XVI fails to state a claim against Alpaca under Chapter 93A.

III. Sanctions

Under Massachusetts law, “[t]he signature of any attorney to a pleading constitutes a certificate . . . that to the best of the attorney’s knowledge, information, and belief there is a good ground to support it; and that it is not interposed for delay.” Mass. R. Civ. P. 11(a)(1). “‘Good ground’ requires that the pleading be based on reasonable inquiry and an absence of bad faith.” Doe v. Nutter, McClennan & Fish, 41 Mass. App. Ct. 137, 142 (1996). Accord Psy-Ed Corp. v. Klein, 62 Mass. App. Ct. 110, 113 (2004) (Rule 11 requires “some level of reasonable inquiry”).

Defendants move for sanctions, citing their counsel’s letter to plaintiff’s California counsel dated June 10, 2025, the day before plaintiff filed this action. Sanctions are appropriate for violation of Rule 11, but they require a judicial finding that the “attorney engaged in a ‘wilful

violation” of Rule 11. Id., quoting Van Christo Advertising, Inc. v. M/A-COM/LCS, 426 Mass. 410, 412 (1998). Under Massachusetts law, this is not an objective standard; negligence is not enough.

On the existing record, I cannot say that plaintiff’s counsel willfully violated Rule 11. I cannot determine when defense counsel’s letter was received or reviewed or what inquiry plaintiff’s counsel made prior to filing either the complaint or the amended complaint. It is notable that some of the legal arguments that I have found persuasive in granting the motion to dismiss were not fleshed out, and in some instances were not even mentioned, in the June 10, 2025 letter. I also cannot determine what positions the parties took during their conference pursuant to Superior Court Rule 9C. See, supra, at 2 n.4. To the extent plaintiff seeks leave to amend as part of opposing the motion to dismiss, that request is denied on the existing record in light of the fact that the parties have been discussing these issues since May 2025.

ORDER

The Motion of Defendants Alpaca VC Fund III LP, Aubrie Pagano, and Ryan Freedman to Dismiss the Complaint with Prejudice and for Monetary Sanctions (Docket #28) is **ALLOWED** insofar as Counts II, III, V, VIII, and XVI, and so much of Count IV as is based on G.L. c. 110A and 8 Del. C. § 144, are **DISMISSED with prejudice**; and Counts VI, VII, and X-XV, and so much of Count IV as is based on SEC Rule 10b-5, are **DISMISSED without prejudice**. The motion is otherwise **DENIED** and plaintiff’s cross-request to amend is also **DENIED** on the existing record.

Dated: February 26, 2026


Peter B. Krupp
Justice of the Superior Court