UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM, *et al.*, Plaintiffs, v. BANK OF AMERICA CORPORATION, *et al.*, Defendants.	No. 17-cv-6221 (KPF)

PLAINTIFFS' OPPOSITION TO THE MOTION TO DISMISS OF DEFENDANTS EQUILEND EUROPE LIMITED, EQUILEND HOLDINGS LLC, AND EQUILEND LLC

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INTRODUCTION

The crux of EquiLend's separate memorandum of law is its assertion that the Complaint contains no allegations connecting any EquiLend entity to the Prime Broker Defendants' conspiracy to block new entrants in the stock lending market. But even a cursory review of the Complaint gives the lie to this assertion.

Defendants' *own words* are direct evidence that all three EquiLend entities agreed to be used as a vehicle for the Prime Broker Defendants to boycott (and thereby destroy) AQS, Data Explorers, and SL-x in order to stifle innovation and output in the stock lending market. The Prime Broker Defendants, who controlled EquiLend as majority owners, instructed EquiLend CEO Brian Lamb not to "break rank," and await their direction before taking any steps to support market evolution. ¶16.[1] The Prime Broker Defendants compared their participation in EquiLend to "the mafia run by five crime families," and repeatedly stated that there was a "general agreement" among EquiLend's directors that industry advances would be achieved only through EquiLend—meaning none would be achieved at all. ¶¶125, 239.

Pursuant to this "general agreement," EquiLend agreed not to release valuable bid-side pricing data, helped the Prime Broker Defendants give SL-x the runaround while they bled it dry, and delivered knockout blows to both AQS and SL-x to ensure no one could capitalize on their advanced platforms. *See* ¶¶10, 12, 16, 122-24, 239, 310-13. These anticompetitive actions are more than sufficient to establish EquiLend's participation in a *per se* illegal conspiracy. EquiLend's straw-man assertion (EL 3)[2] that the Complaint merely alleges four benign actions

[1] Paragraph citations ("¶") are to Plaintiffs' Amended Class Action Complaint (Dkt. No. 73, the "Complaint").

[2] "EL" refers to the EquiLend Defendants' supplemental memorandum in support of their motion to dismiss (Dkt. No. 107).

on EquiLend's part that are equally in line with "a wide swath of rational and competitive business strategy" as an anticompetitive strategy does nothing to change this fact.

EquiLend's remaining arguments are rehashes of arguments advanced by the Prime Broker Defendants, and fail for the same reasons. EquiLend asserts that the rule of reason applies to its conduct because EquiLend is vertically related to the Prime Broker Defendants, but this runs contrary to black-letter law. EquiLend cherry-picks allegations and argues that, standing alone, they are insufficient to ground an antitrust claim. But such a compartmentalized approach is legally inappropriate, and, when properly viewed in context, the allegations isolated by EquiLend are part of a broader anticompetitive scheme. EquiLend also improperly veers outside the pleadings in its attempt to justify its conduct in ways that both defy credibility and give way in the face of the Complaint's specific, well-pled allegations.

Finally, EquiLend Europe is subject to jurisdiction under three well-established doctrines: the "effects" test, the "conspiracy theory" of jurisdiction, and the "alter ego" doctrine.

I. THE COMPLAINT PLAUSIBLY ALLEGES EQUILEND'S PARTICIPATION IN A *PER SE* ILLEGAL CONSPIRACY

A. The Complaint Plausibly Alleges EquiLend's Participation in the Conspiracy

The Complaint alleges a *per se* illegal group boycott of platforms and products in the stock loan market. *See* Pls.' Opp. 31-38. To link EquiLend to this conspiracy, Plaintiffs do not need to identify the specific time or place that EquiLend "agreed to a boycott." EL 2. All that is required are allegations showing EquiLend's "conscious commitment to a common scheme designed to achieve an unlawful objective." *See United States v. Apple, Inc.*, 791 F.3d 290, 315 (2d Cir. 2015) (quoting *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764 (1984)).

The Complaint passes this bar. The Complaint contains direct allegations that EquiLend agreed to be used by the Prime Broker Defendants to further their anticompetitive goals of

suppressing innovation and output. *See* ¶¶10, 12, 122-24, 310-13. Brian Lamb, the CEO for all three EquiLend entities, was "instructed" by the Prime Broker Defendants "not to 'break rank' and not to take independent actions in the marketplace until the 'EquiLend banks' determined as a group whether they would support any of the new platforms." ¶16.

EquiLend knew its own offering was archaic and limited. ¶¶230, 247-48. That it took no actions to upgrade its own product or support SL-x or any of the other market entrants is contrary to EquiLend's stated purpose of "optimiz[ing] efficiency" in the stock lending market and evidence it agreed to Defendants' conspiracy. ¶305. Absent a conspiracy, these actions would not be in EquiLend's economic self-interest since they would show a failure to compete. The Complaint's allegations, taken as a whole, show EquiLend was acting at the behest of the Prime Broker Defendants to support the boycott, including landing the final death blows on AQS and SL-x. The Complaint alleges EquiLend did nothing to make the market more efficient, competitive, or transparent, as would have been in its economic self-interest absent the conspiracy.

EquiLend was, in the words of a Prime Broker Defendant, like "the mafia run by five crime families," an organizational tool and enforcer for Defendants' conspiracy. ¶¶14, 240-41, 246; *see also* ¶¶246-48. This meant "nothing would happen in the market" regarding platforms like SL-x unless EquiLend and the Prime Broker Defendants "allowed it to happen." *Id.* And, pursuant to the "general agreement," nothing was allowed to happen, meaning EquiLend's "archaic" platform persists to this day, while AQS, Data Explorers, and SL-x have all failed, despite providing innovative platforms well-received by the marketplace. Pls.' Opp. 4-7.

EquiLend is not immunized from antitrust scrutiny merely because it positions itself as a joint venture. A joint venture or trade association that carries out the business of the conspiracy

at the behest of its members is liable as a co-conspirator. *See, e.g.*, *Ariz. v. Maricopa Cty. Med. Soc.*, 457 U.S. 332, 348-57 (1982) (finding intermediary entity's role in horizontal conspiracy *per se* unlawful); *United States v. Topco Assocs., Inc.*, 405 U.S. 596, 608-12 (1972) (same); *N.Y. ex rel. Spitzer v. Saint Francis Hosp.*, 94 F. Supp. 2d 399, 416-17 (S.D.N.Y. 2000) (same).

Thus, as the tool that the Prime Broker Defendants used to implement their conspiracy, EquiLend is liable for that conspiracy. *See* Phillip Areeda and Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* (4th ed. 2017) ("Areeda") ¶1475a (where joint venture's members "remain as separate, significant economic actors in the marketplace" the venture's decisions "are treated as concerted decisions by the members"). It does not matter whether EquiLend may have been pressured, because "acquiescence in an illegal scheme is as much a violation of the Sherman Act as the creation and promotion of one." *See Evergreen Partnering Grp., Inc. v. Pactiv Corp.*, 720 F.3d 33, 49 n.4 (1st Cir. 2013); *see also* Areeda ¶1910 ("not all the participants in naked restraints are involved willingly").

The Complaint, however, alleges much more than the coerced acquiescence of EquiLend. It details specific anticompetitive actions EquiLend took in furtherance of the conspiracy. EquiLend coordinated and carried out efforts by the Prime Broker Defendants to restrict price data and prevent Data Explorers from bringing broader price transparency; maintained DataLend as a subpar product that would preserve the Prime Broker Defendants' dominance; and purchased patents from AQS and SL-x to mothball them, frustrating efforts to bring price transparency to the stock lending market. ¶¶311-19. In each instance, EquiLend acted pursuant to the anticompetitive plans formulated by the Prime Broker Defendants. *See, e.g.*, ¶¶255, 257-65, 270-72, 293-303. These allegations plausibly establish EquiLend's participation in the conspiracy. *See Precision Assocs, Inc. v. Panalpina World Transp., (Holding) Ltd., et al.*, Civ.

08-42 (JG), 2013 WL 6481195, at *22 (E.D.N.Y. Sept. 20, 2013) (denying motion to dismiss by individual defendants because complaint plausibly alleged a conspiracy).

EquiLend's arguments as to why the Complaint does not plausibly allege its involvement in a conspiracy fail. Far from improper "group pleading," the Complaint contains allegations regarding specific meetings and EquiLend personnel, which is more than sufficient to put each EquiLend entity on notice. ¶¶14, 16, 17, 221-24, 226-27, 229. That is particularly true because *EquiLend itself* does not meaningfully distinguish between the three EquiLend entities: All three EquiLend entities share the same CEO (Brian Lamb), a common website, and there is substantial overlap in their operations and management, rendering prolonged entity-level distinctions pointless. *See* Section II *infra*. *See also* http://www.equilend.com/about (last visited Mar. 2, 2018) (listing facts about "EquiLend"). In any event, courts routinely refuse to require entity-level allegations among related corporate antitrust defendants. *See, e.g.*, *In re Packaged Seafood Prods. Antitrust Litig.*, 242 F. Supp. 3d 1033, 1059 (S.D. Cal. 2017) ("some level of group pleading is permissible, especially where, as here, the Court is able to discern that these groups, and their actions, include" the entire corporate family). *See also* Pls.' Opp. 29-30.

EquiLend's assertion that Plaintiffs' allegations are "like the parallel conduct in *Twombly*," EL 3, is also false. Unlike *Twombly*, the Complaint directly alleges that Defendants met and conspired, and provides a factual chronology of how and why the conspiracy happened, when and where meetings occurred, who was involved, what Defendants agreed to do, and the specific actions taken. Pls.' Opp. 11-29. *See SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 433 (4th Cir. 2015) ("[Plaintiff's] complaint alleges an actual agreement to boycott in detail and does not rely, as in *Twombly*, on parallel conduct alone."). As explained in Section I.C *infra*, EquiLend seeks to ignore all this context and improperly focus on four discrete sets of

allegations: EquiLend's (1) purchase of AQS, (2) purchase of LS-x patents, (3) creation of DataLend, (4) board meetings. But even when individually assessed those allegations wholly support, not undermine the plausibility of the conspiracy.

B. EquiLend's Actions Should Be Evaluated Under the *Per Se* Rule

EquiLend tries to muddy the water by asserting that because it is "vertically" related to the other Defendants, either it is not liable at all, or its actions should be judged under the "rule of reason." EL 9. But it is often the case that a group of horizontal competitors involved in a *per se* unlawful conspiracy enlist the help of those engaged in a vertical arrangement.[3] "Each court that has addressed the anticompetitive nature of these group boycotts was aware of the vertical components of the conspiracy and still applied per se liability to each member of the conspiracy." *MM Steel, L.P. v. JSW Steel (USA) Inc.*, 806 F.3d 835, 849 (5th Cir. 2015). Indeed, the Supreme Court case establishing the *per se* rule against boycotts concerned an entity that was vertically related to the horizontal competitors that agreed to the boycott. *See Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1959).

Nothing about EquiLend's "vertical" relationship with the Prime Broker Defendants changes the basic antitrust analysis. Defendants' conspiracy is a group boycott among horizontal competitors that is *per se* unlawful under settled law. *Anderson News*, 680 F.3d at 183 ("[c]oncerted refusals to deal or group boycotts are so likely to restrict competition without any offsetting efficiency gains that they should be condemned as per se violations") (quoting *Nw. Wholesale Stationers, Inc. v. Pac. Stationery & Printing Co.*, 472 U.S. 284, 290 (1985)). The

[3] *See Anderson News, LLC. v. Am. Media, Inc.*, 680 F.3d 162, 189 (2d Cir. 2012) (finding boycott *per se* illegal even though it resulted "from a lattice-work of horizontal and vertical agreements"); *Starr v. Sony BMG Music Entm't*, 592 F.3d 314, 326 (2d Cir. 2010) (conspiracy *per se* unlawful even where joint ventures were used "as a means to implement [defendants'] anticompetitive agreements").

Complaint alleges a naked restraint subject to *per se* review because the conspiracy's sole purpose and effect were to limit Defendants' competition in *the same market* in which they were supposed to be competing as individual, independent actors. *See* Areeda ¶2131 ("A restraint on members' nonventure output is naked if it contributes nothing to the venture and serves only to permit the venturers to limit marketwide output and thus increase their price.").

EquiLend tries to recast a horizontal agreement among direct competitors into an unconnected set of vertical "exclusive dealing" arrangements. EquiLend thus cites cases analyzing vertical arrangements under the "rule of reason." EL 9-11.[4] But this case is about the agreement among horizontal competitors to boycott market entrants, and their enlistment of a joint venture controlled for conspiratorial purposes.

The leading antitrust treatise expressly distinguishes "purely vertical" exclusive dealing agreements—which involve "a *single* rival of the plaintiff and a *single* vertically related firm"—from "the sort of 'concerted' refusal to deal to which the per se rule appropriately applies." Areeda ¶2204c. The case law draws the same distinction. *See Apple*, 791 F.3d at 314 ("[T]he Supreme Court and our Sister Circuits have held all participants in 'hub-and-spoke' conspiracies liable when the objective of the conspiracy was a *per se* unreasonable restraint of trade."). *See also* Areeda ¶1402c (when horizontal competitors "agree[] on anticompetitive terms . . . we have a traditional horizontal conspiracy").[5]

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[4] For the same reasons provided in Plaintiffs' opposition to the Prime Broker Defendants' motion to dismiss, *see* Pls.' Opp., Section IV.C, EquiLend's assertion that Plaintiffs fail to plead the elements of a rule of reason claim also lacks merit.

[5] None of the authority EquiLend cites suggests otherwise. Both *Food Services* and *Electric Communications* alleged conspiracies between a single vertical buyer/seller pair against the plaintiff. *See Food Servs., Inc. v. Pontifical Catholic Univ. Servs. Ass'n*, 357 F.3d 1, 2-3 (1st Cir. 2004); *Elec. Commc'ns Corp. v. Toshiba Am. Consumer Prods., Inc.*, 129 F.3d 240, 241-42 (2d Cir. 1997). *United States v. American Express*, 838 F.3d 179, 195 (2d Cir. 2016), did not involve a boycott, or any *per se* violations. And the Justice Department's Orbitz investigation

C. The Specific Actions That EquiLend Isolates Were Anticompetitive and Not Ancillary to Legitimate Joint Venture Conduct

EquiLend argues that Plaintiffs' allegations are consistent with "competitive business strategy" and "suggest competition at least as plausibly as they suggest anticompetitive conspiracy." EL 3. But when Plaintiffs' allegations are read in the context of the entire Complaint—including the Prime Broker Defendants' sustained joint boycott of AQS and SL-x, ¶¶171, 212-18, 225-30, 236-46; the threat to the Prime Broker Defendants' supracompetitive profits from Data Explorers, ¶¶185-94; the Prime Broker Defendants' threats to all three firms' customers and service providers, ¶¶191, 213-18, 237, 243, 251-53; the Prime Broker Defendants' control over EquiLend, ¶¶122, 309; and their use of EquiLend as a forum for collusion, ¶¶122-25, 199, 223, 312—the most plausible inference is EquiLend's actions were designed to advance the conspiracy. This is all the more true because EquiLend's actions were contrary to its independent business interests, ¶¶260-64, 272, 301-03, 311, 315, 317, and any question of whether a particular decision was in EquiLend's interest must be resolved in Plaintiffs' favor. *See Starr*, 592 F.3d at 327 (complaint stated claim in part because plaintiffs "alleged behavior that would plausibly contravene each defendant's self-interest").

Unable to confront the sufficiency of the allegations when "read as a whole, rather than piecemeal," *Anderson News*, 680 F.3d at 190, EquiLend isolates certain facts, ignores surrounding context, and proffers creative excuses for the dismembered allegations, often based not on the pleadings but on random tidbits pulled from the Internet. EquiLend's counter-

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found the competitor collaboration posed a sufficient risk of anticompetitive harm to warrant "extensive investigation," and ended its inquiry only after discovery showed that the arrangement (which did *not* entail a collective refusal to deal) had not reduced competition. *See* Press Release, DOJ Antitrust Division, *Statement By Assistant Attorney General R. Hewitt Pate Regarding the Closing of Its Orbitz Investigation*, (Jul. 31, 2003), https://www.justice.gov/archive/atr/public/press_releases/2003/201208.pdf.

explanations and spin are improper at the Rule 12 stage. *See id.* at 184 (the choice between alternative explanations "is one for the factfinder"). They are also irrelevant, because EquiLend participated in a *per se* antitrust violation. *See Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 885 (2007) (application of "the *per se* rule render[s] irrelevant any procompetitive justifications"). In any event, as shown below, EquiLend's effort to portray mischaracterized allegations as "lawful business activities" fails.

***AQS*:** Ignoring most of the Complaint's allegations regarding AQS, EquiLend argues against the straw man that "acquiring another company, even a competing company, is not evidence of joining a conspiracy." EL 4. But the Complaint alleges EquiLend purchased AQS not for any legitimate business purpose, but to remove it from the market because it threatened the Prime Broker Defendants' supracompetitive profits. ¶¶22-23, 294-98, 307, 312. Although EquiLend claims that AQS is alive and well, EL 5, this improper factual assertion ignores the allegation that EquiLend acquired AQS for the express purpose of removing its all-to-all platform from the market. ¶¶290, 298, 300-03. That AQS still operates in some limited, non-threatening capacity says nothing about the plausibility of EquiLend's assent to the conspiracy to remove competitive threats from the market. ¶¶21, 272, 294-99. *Cf.* Areeda ¶2220b3 ("product exclusion is anticompetitive when its purpose or effect is to exclude from the market a product or process that consumers would prefer . . . but whose introduction would threaten" rivals' profits).

***SL-x*:** EquiLend asserts nothing about declining to partner with SL-x or later acquiring its patents supports an inference of a conspiracy. EL 6. This is wrong. The Complaint alleges that the Prime Broker Defendants each refused to support SL-x, even though doing so was in the individual economic self-interest of many of them. *See* ¶¶219-27. Nothing in the Complaint suggests that "SL-x's patents had the potential to be used against EquiLend," EL 7, or that

EquiLend purchased them to guard against patent trolls. *See* ¶¶306-07. To the contrary, EquiLend purchased patents from SL-x only to shelve them, to prevent other firms from bringing price transparency and advanced trading protocols to the stock-lending market. ¶¶311-19.

***Coordinated Exclusion of Data Explorers*:** Contrary to EquiLend's brief, Plaintiffs do not allege that "introducing a new product and marketing it vigorously" (EL 7) supports an inference of conspiracy. The Complaint alleges that EquiLend-owned DataLend was used to create *identical* agreements with the Prime Broker Defendants that prohibited disclosure of any prime broker data to customers. ¶¶257-58. These parallel restrictions were designed by the Prime Broker Defendants to offer "just enough trading data to undermine Data Explorers, but to withhold from the market the real-time and wholesale data they knew would lead to pricing compression (and a reduction in their fees) if it ever got out." ¶258.

These restrictions made no economic sense for EquiLend, which had tried to launch a product similar to Data Explorers but been shut down by Goldman Sachs and the other Prime Broker Defendants. ¶¶24, 27, 255-56, 258. In the stock loan market, borrowers and lenders had no access to real-time pricing data on other stock loan transactions, making it impossible for them to engage in price discovery. ¶¶136, 193. Borrowers and lenders were hungry for any product that provided the kind of price transparency that would allow them to compare prices, driving price competition and narrowing spreads. ¶¶187-91. But instead of providing the price transparency consumers needed, EquiLend actively worked to *suppress* it.

EquiLend's role in the suppression of price transparency, against its own economic self-interest, is not an example of "compet[ing] aggressively." EL 7. To the contrary, the purpose

and effect of EquiLend's conduct were to *reduce* price competition, by perpetuating the opacity of the stock loan market and, ultimately, destroying one source of output (Data Explorers).[6]

In any event, because EquiLend's participation in the alleged group boycott is *per se* unlawful, no procompetitive justifications are permitted. *See* Areeda ¶1910. And even assuming the law recognized a procompetitive justification for EquiLend's behavior, it would be premature to accept it at the pleading stage.

***EquiLend Board Meetings*:** Contrary to EquiLend's suggestion, EquiLend's antitrust liability does not hinge on allegations that its board meetings served as a forum for collusion, but on the specific anticompetitive actions it took. It is true that EquiLend served as a forum for collusion, ¶312, and that fact is a "plus factor" suggestive of conspiracy, as well as a well-recognized danger posed by joint ventures. *See* Areeda ¶2103 (joint ventures "reduce the costs of collusion by giving members an opportunity to communicate . . . or do other things that make collusion less costly."). But it is hardly the only thing connecting EquiLend to Defendants' conspiracy. In addition, the Court should reject EquiLend's contention that its Board meetings could not be inculpatory because it "has shareholders and Board members who are aligned with the putative class." EL 4; Pl's Opp. 27-28. That contention is conclusory and improperly relies on a disputed fact: Plaintiffs do not allege that agent lenders are aligned with the class, but rather allege and believe they share interests with the Prime Broker Defendants. *See* Pls.' Opp. 27-28.

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[6] *See Full Draw Prods. v. Easton Sports, Inc.*, 182 F.3d 745, 755 (10th Cir. 1999) (error to regard the introduction of a second trade show as an increase in competition where participants in the second show agreed to boycott the first because "[t]he effect . . . was not to increase competition . . . but rather to distort and ultimately reduce competition by destroying one source of output"). *See also Primetime 24 Joint Venture v. NBC*, 219 F.3d 92 (2d Cir. 2000) (while a firm acting unilaterally may refuse to license a program, rival firms may not conspire to do so); *Intellective, Inc. v. Mass. Mutual Life Ins. Co.*, 190 F. Supp. 2d 600 (S.D.N.Y. 2002) (plaintiff consultant sufficiently alleged that defendant insurers and rival consultants boycotted plaintiff with joint venture "working group" that refused to share information).

II. SPECIFIC PERSONAL JURISDICTION OVER EQUILEND EUROPE

EquiLend Europe argues it is not subject to specific personal jurisdiction. Despite direct allegations that its board members told SL-x representatives they had a "general agreement" not to allow "industry advances" outside of EquiLend, EquiLend Europe claims these statements did not implicate it. ¶¶241, 246. EquiLend assumes that its board members were not making those statements "as agents of EquiLend Europe," EL 12, and reasons from that flawed premise that it is not subject to personal jurisdiction. However, the Complaint attributes these and other bad acts to EquiLend Europe—even if they *also* were acting on behalf of someone else.

The Complaint alleges individuals who sat on EquiLend Europe's board—and who did *not* sit on the board of the U.S. EquiLend parent entity—invoked their involvement with EquiLend as part of the conspiracy's collective policing strategy. *See, e.g.*, ¶242 (board member James Buckland boasting of "benefit of being 'inside the club' of EquiLend" as he told SL-x that their offering "would need to come from inside EquiLend"); ¶243 (board member Edward McAleer "inform[ing] SL-x that it would only be pursuing cleared solutions through EquiLend"); ¶241 (board member Karl Bishti telling SL-x that any transition toward SL-x would require "cooperation" of EquiLend, and likening EquiLend to "the mafia"); ¶¶17, 239, 246, 309, 210 (board member John Shellard telling SL-x that there was a "general agreement among [the] Directors" of EquiLend "that industry advances should be achieved from within EquiLend"). The most reasonable inference is that these statements encompassed EquiLend Europe, and that EquiLend Europe was part of a broader agreement that EquiLend and its owners would not support any new trading platforms and maintain the status quo through EquiLend.[7] *See, e.g.*,

[7] *In re Processed Egg Products Antitrust Litigation*, 821 F. Supp. 2d 709, 753 (E.D. Pa. 2011) is inapplicable, as it dealt with whether a trade association could be held liable based on the actions of its agents, not board members of a for-profit entity making express statements about that entity. Nor is it relevant that the mere presence of corporate officers in the United

Porina v. Marward Shipping Co., 521 F.3d 122, 126 (2d Cir. 2008) (the Court must "construe the pleadings [] in the light most favorable to plaintiffs, resolving all doubts in their favor").

EquiLend Europe's cursory "jurisdictional" motion is a restatement of its belief it was not a conspiracy member. EquiLend Europe does not appear to dispute that, if it is a conspiracy member, then it is subject to personal jurisdiction under a number of well-settled theories.

First, acts taking place as part of a conspiracy to boycott platforms based in the United States, in order to derive profits from class members here, meet the "effects" test wherever those acts took place. *See, e.g.*, *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 674 (2d Cir. 2013). EquiLend Europe conspired to prevent SL-x's entry into the United States stock lending market, causing harm to United States investors. *E.g.*, ¶¶241, 249. Courts routinely find the "effects" test met in similar cases.[8]

Second, being part of a conspiracy in large part carried out in the United States makes EquiLend Europe subject to personal jurisdiction because the Court can consider the domestic acts of EquiLend Europe's co-conspirators. *See Charles Schwab Corp. v. Bank of Am. Corp.*, 2018 WL 1022541, at *9 (2d Cir. Feb. 23, 2018) ("Jurisdiction under the conspiracy theory is proper where: "(1) a conspiracy existed; (2) the defendant participated in the conspiracy; and (3) a co-conspirator's overt acts in furtherance of the conspiracy had sufficient contacts with a

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States did not establish jurisdiction in *In re Aluminum Warehousing Antitrust Litigation*, 90 F. Supp. 3d 219, 238-39 (S.D.N.Y. 2015). Plaintiffs here are relying on the officers' participation in the conspiracy to establish specific jurisdiction.

[8] *See In re Aluminum Warehousing Antitrust Litig.*, No. 13-md-2481 (KBF), 2015 WL 6472656, at *12-13 (S.D.N.Y. Oct. 23, 2015) (defendant subject to personal jurisdiction for devising plan that had "significant effects" in the United States); *In re Vitamin C Antitrust Litig*., No. 06-md-1738 (BMC), 2012 WL 12355046, at *12 (E.D.N.Y. Aug. 8, 2012) (jurisdiction proper where defendant "contributed to a cartel with the express purpose of inflicting supracompetitive prices on . . . the United States"). *See also In re Magnetic Audiotape Antitrust Litig.*, 334 F.3d 204, 208 (2d Cir. 2003) (suggesting foreign defendant's attendance at price-fixing meeting would satisfy "effects" test).

state to subject that co-conspirator to jurisdiction[.]"). Here, the conspiracy is well-pled. And it is undeniable that many acts of co-conspirators—many of whom are domestic entities—took place here. *E.g.*, ¶294 (describing dinners in New York). Imputing those contacts to EquiLend Europe, as a co-conspirator, provides another basis for exercising jurisdiction. *See, e.g.*, *id.*; *In re Satyam Comput. Servs. Ltd. Secs. Litig.*, 915 F. Supp. 2d 450 (S.D.N.Y. 2013); *Allstate Life Ins. Co. v. Linter Grp. Ltd.*, 782 F. Supp. 215, 221 (S.D.N.Y. 1992) (collecting cases).

Third, jurisdiction is proper under the "alter ego" doctrine. *E.g.*, *Transfield ER Cape Ltd. v. Indus. Carriers, Inc.*, 571 F.3d 221, 224 (2d Cir. 2009). EquiLend Europe appears to have no separate website, CEO, or "C-suite" officers of its own. Brian P. Lamb is "responsible for *all global operations for EquiLend, [and] its affiliates*." *See* EquiLend: Brian P. Lamb (emphasis added), http://www.equilend.com/brian-p-lamb/ (last visited Mar. 2, 2018). And Laurence J. Marshall, EquiLend's Chief Operating Officer, is also EquiLend Europe's "Managing Director" and is described on the undifferentiated EquiLend website as being "responsible for the company's operations and development in Europe." EquiLend: Laurence J. Marshall, http://www.equilend.com/laurence-j-marshall/ (last visited Mar. 2, 2018). Courts pierce the corporate veil for jurisdictional purposes in similar situations.[9]

Any of the above theories are straightforward ways of finding the sufficient minimum contacts necessary to support specific jurisdiction. That leaves only the question of whether the exercise of jurisdiction would offend traditional notions of fair play and substantial justice. This is a heavy burden that EquiLend Europe bears, and it does not even attempt to meet the relevant

[9] *See, e.g.*, *S. New England Tel. Co. v. Glob. NAPs Inc.*, 624 F.3d 123, 138-39 (2d Cir. 2010) ("*SNET*") (jurisdiction existed where plaintiffs alleged that affiliates were controlled by domestic parent and operated together); *D. Klein & Son, Inc. v. Good Decision, Inc.*, 147 F. App'x 195, 198 (2d Cir. 2005) (finding entities were alter egos of one another where same people controlled both entities and the entities were used interchangeably).

factors. *See Eades v. Kennedy, PC Law Offices*, 799 F.3d 161, 169 (2d. Cir. 2015) (when minimum contacts exist, burden is on the moving Defendants to "present a compelling case that the presence of some other considerations would render jurisdiction unreasonable"). Nor could it. Exercising jurisdiction would impose a minimal burden, as EquiLend Europe's parent company is headquartered in the United States; New York has a manifest interest in providing its residents with a convenient forum for redressing injuries; Class members' interest in obtaining efficient relief is best served by adjudicating this case in the United States; and exercising jurisdiction would pose no threat to international rapport.

In the event the Court disagrees, the Court should allow limited jurisdictional discovery regarding the allegations in the Complaint about EquiLend Europe's board members. *See Leon v. Shmukler*, 992 F. Supp. 2d 179, 195 (E.D.N.Y. 2014) (jurisdictional discovery proper even absent a prima facie showing of jurisdiction if there is a "colorable basis" for jurisdiction). That would allow Plaintiffs to confirm, for example, whether Defendants' representatives were *also* acting on behalf of EquiLend Europe when they furthered the conspiracy.[10]

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny the EquiLend Defendants' motion to dismiss.

[10] *See In re Magnetic Audiotape Antitrust Litig.*, 334 F.3d at 208 (district court "improperly denied plaintiffs the opportunity to engage in limited discovery" where complaint alleged that foreign defendant attended conspiratorial meetings); *see also Texas Int'l Magnetics, Inc. v. BASF Aktiengesellschaft*, 31 F. App'x 738, 739 (2d Cir. 2002) (despite failing to show jurisdiction existed, antitrust plaintiffs "entitled to jurisdictional discovery in order to develop the factual record requisite for such a showing").

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