SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

TILLAGE COMMODITIES FUND, L.P.,

Plaintiff,

- against -

SS&C TECHNOLOGIES, INC.,

Defendant.

Index No. 654765/2016

The Hon. Justice Barry Ostrager

MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

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Defendant SS&C Technologies, Inc. ("SS&C") respectfully submits this memorandum of law in support of its motion to dismiss the complaint (the "Complaint") of Tillage Commodities Fund, L.P. ("Tillage" or "Plaintiff") pursuant to CPLR 3211(a)(1) and 3211(a)(7).

PRELIMINARY STATEMENT

In March 2016, unknown third parties using valid signature credentials (presumably stolen directly from Plaintiff or its affiliates[1]) initiated a series of fraudulent wire transfer requests from the First Republic Bank account of Tillage, a sophisticated commodities trading fund run by a former Morgan Stanley Managing Director, Thomas Funk. These requests were processed by Defendant SS&C, a provider of back-office administrative services, in accordance with SS&C's policies and pursuant to its obligations under a client services agreement with Tillage (the "Services Agreement"). Although SS&C ultimately uncovered the fraudulent scheme, alerted authorities, and foiled future fraudulent requests, it was not before those unknown third parties had absconded with approximately $5.9 million of Tillage's funds.

Tillage now comes to this Court demanding that SS&C make Tillage whole for the amounts stolen by those unknown third parties. Specifically, Tillage asks this Court to impose upon SS&C a series of extraordinary duties and obligations found nowhere in New York law or in the Services Agreement—which plainly allocates the risk of this type of loss to Tillage itself. As described more fully below, each of Tillage's claims—for breach of contract, breach of the implied covenant of good faith and fair dealing, and violations of the General Business Law ("GBL")—should be dismissed with prejudice.

[1] SS&C is not aware of any cybersecurity breach of its own systems, and a preliminary investigation of publicly available information indicates that the usernames and passwords used to access file storage services by certain of Tillage's own officers, including Thomas Funk (tfunk@tillagecapital.com) and Oliver Lennox (olennox@tillagecapital.com), were compromised in the course of a 2012 hack. (See Spagnoletti Aff. Exs. 12-15.) Indeed, if this matter were to move beyond this motion to dismiss, SS&C would anticipate impleading as third-party defendants Tillage's managers, including Tillage Commodities Management LLC and its principals, Thomas Funk and Oliver Lennox, for failing to adequately safeguard Tillage's accounts, systems, and information.

First, Tillage's breach of contract claim is barred by the plain language of the Services Agreement, which (i) limits the scope of SS&C's contractual obligations and (ii) makes SS&C liable only to the extent Tillage can prove SS&C was—at a minimum—grossly negligent in the performance of its duties. It is well settled under New York law that gross negligence is different in kind from ordinary negligence and requires a showing that SS&C engaged in conduct that "***smacks of intentional wrongdoing***." Abacus Fed. Sav. Bank v. ADT Sec. Servs., Inc., 18 N.Y.3d 675, 684 (2012) (emphasis added). Plaintiff fails utterly to satisfy this exacting standard. Plaintiff's own allegations and the documents incorporated in the Complaint demonstrate that SS&C processed the wire transfer requests consistent with its wire transfer procedures and its responsibilities under the Services Agreement. The transfer requests were provided with valid credentials, including signatures matching those of Plaintiff's authorized signatories, as well as accurate, confidential information regarding Plaintiff's bank account. Plaintiff makes no credible allegation that SS&C actually knew or suspected the transfer requests were fraudulent at the time, and Plaintiff therefore cannot establish that SS&C was grossly negligent.

In an effort to overcome the express terms of its bargain, Plaintiff advances a prolix of inflammatory attacks and conclusory allegations, claiming that SS&C should have realized the instructions had been forged, that SS&C violated the terms of the Services Agreement as well as its own internal policies and procedures, and that SS&C's policies and procedures were inadequate. Plaintiff's assertions are specious and irrelevant: allegations regarding what SS&C should have realized (but did not), what SS&C's internal procedures should have prevented (but did not), and what those procedures should have required (but did not) cannot establish the kind

of intentional wrongdoing or reckless indifference required to plead gross negligence in New York.[2]

Finally, Plaintiff's claims based on conduct that allegedly occurred after the fraud was discovered and the theft was complete are meritless and fail as a matter of law. Plaintiff's allegations—including those regarding SS&C's reporting of the theft to the authorities and its response to Plaintiff's improper requests for pre-litigation discovery—are conclusively rebutted by the very documents on which Plaintiff relies. Moreover, Plaintiff fails to allege any losses that could possibly have been caused by conduct that occurred after the theft was complete.

Second, Plaintiff's claim that SS&C breached the implied covenant of good faith and fair dealing has no basis under New York law. Plaintiff does not allege—as is required to state a claim for breach of the implied covenant—that SS&C worked in bad faith to deprive Tillage ***of the benefits of the contract***, or that Plaintiff suffered any losses other than those alleged to have been caused by the breach of the contract itself. Instead, Plaintiff impermissibly attempts to shoehorn into the implied covenant, and impose on SS&C, dozens of burdensome affirmative obligations that are inconsistent with, and absent from, the terms of the Services Agreement. Plaintiff's claim must fail because the implied covenant does not include any affirmative obligations beyond those in the contract. Plaintiff's claim fails for the independent reason that it seeks the same recovery, based on the same conduct, as Plaintiff's claim for breach of contract, and is therefore duplicative. Finally, because Plaintiff's implied covenant claim relies on allegations of conduct that occurred after the theft was complete, Plaintiff's claim must be dismissed based on the wholesale failure to allege any damages resulting from such conduct.

[2] To be sure, SS&C also disputes the substance of these allegations and, if this case proceeds to discovery, the evidence will show that SS&C acted reasonably, competently, and in compliance with industry norms. For purposes of the instant motion, however, the Court need only look to the Complaint, the language of the Services Agreement, and New York law to conclude that Tillage has failed to state a claim against SS&C.

Third, Plaintiff's efforts to contort its contractual claims into claims under the deceptive acts and false advertising consumer protection provisions of the GBL (§§ 349 and 350) are without merit. The protections of these laws apply to consumer-oriented conduct, not private contractual disputes. They cannot be used by sophisticated businesses like Plaintiff against other sophisticated entities with which they contract for services. Finally, even if the GBL could be invoked to resolve a private contractual dispute, and even if Plaintiff was a "consumer" subject to protection under the statute, Plaintiff fails to allege any statement that was materially misleading when made, or any injury to Plaintiff as a result of the alleged statements. Plaintiff therefore fails to state multiple essential elements of a claim under GBL §§ 349 and 350.

For these and the additional reasons below, Plaintiff's Complaint must be dismissed.

SUMMARY OF FACTS AND ALLEGATIONS

The Services Agreement

Plaintiff is an investment fund managed by Tillage Commodities Management, LLC (the "fund manager"), the founder and Managing Member of which is Thomas Funk. (Compl. ¶¶ 14, 18.) In 2011, Plaintiff engaged SS&C to provide various back-office record keeping and administrative services on behalf of the fund. (Id. ¶¶ 24-25.) The terms of the engagement were bargained for and negotiated over the course of at least two months and set out in the Services Agreement executed on December 6, 2011, by and between Plaintiff, the fund manager, and SS&C. (Compare id. ¶¶ 24-25 (proposal allegedly exchanged in October 2011) with Spagnoletti Aff. Ex. 1 ("Services Agreement") (execution date of December 6, 2011).)[3]

[3] As set forth in greater detail below (see infra at 10), pursuant to CPLR 3211(a)(1), this Court must dismiss a cause of action when documentary evidence conclusively establishes a defense to the asserted claims. See Beal Sav. Bank v. Sommer, 8 N.Y.3d 318, 324 (2007). It is well settled that a party moving to dismiss under CPLR 3211(a)(1) may submit documentary evidence in any form. See id. at 324-32 (series of contracts); Torrenzano Grp., LLC v. Burnham, 26 A.D.3d 242, 243 (1st Dep't 2006) (correspondence); Morgenthow & Latham v. Bank of N.Y. Co., Inc., 305 A.D.2d 74, 78-80 (1st Dep't 2003) (prior statements of parties in the form of court filings, contracts, or correspondence). SS&C respectfully requests that the Court rely upon the documents contained in the Affidavit

The terms of the Services Agreement clearly defined the parties' respective roles and responsibilities. "[M]anagement and control of the Fund," was "vested exclusively in [the fund manager], subject to the terms and provisions of the governing documents." (Services Agreement at 5.) The fund manager was required to "make all decisions, perform all Management functions relating to the operation of the Fund and authorize all transactions." (Id.) In addition, the fund manager was to "[d]esignate a member of Management to oversee *the record-keeping and administrative services provided by SS&C*," and to "[r]eview and approve all reports, analyses and books and records resulting from the aforementioned services." (Id. (emphasis added).) Plaintiff was "solely responsible for identifying and ensuring that the Fund complie[d] with the laws, regulations and governing documents applicable to its respective activities." (Id. at 4.)

SS&C, in turn, was responsible for performing a discrete set of record keeping and administrative services expressly identified in the Services Agreement. (Id. at 1-2.) Pursuant to these terms, SS&C was to maintain books and records for the fund, deliver month-end and other accounting documentation, perform various calculations, prepare financial and other reporting for the fund, process subscriptions and redemptions by fund investors, conduct certain verifications for new fund subscribers, and "[o]perate [Plaintiff's] bank account as instructed by [the fund manager]." (Id. at 2.)

The Services Agreement also made clear that SS&C did "not have the ability to authorize transactions, . . . perform any management functions or make any management decisions with regard to the operation of the Fund." (Id. at 3.) SS&C would "not be responsible for monitoring a Fund's legal compliance or compliance with its governing documents," and would "not be responsible for monitoring any investment restrictions or compliance with the investment restrictions and therefore [would] not be liable for any breach thereof . . . ." (Id. at 4.)

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of Paul Spagnoletti. (See Spagnoletti Aff.)

Contrary to Plaintiff's allegations, nothing in the Services Agreement required SS&C to become familiar with Plaintiff's "business model or investment strategy" (contra Compl. ¶ 27); to "protect the interests of [Plaintiff's] investors" (contra id. ¶¶ 4, 20); or to "devise particular operational and procedural mandates 'to ensure that all fund activities are subject to appropriate authorization and oversight, and are in compliance with [SS&C's] internal and regulatory guidelines'" (contra id. ¶ 28). The Services Agreement did not incorporate or even mention *any* of SS&C's internal policies or procedures. (Contra id. ¶ 123.)

Plaintiff and the fund manager also agreed to provide the following broad limitation of liability to SS&C in the Services Agreement:

> SS&C shall not be liable to a Fund or Management except for damages resulting from the gross negligence, willful misconduct, fraud, or bad faith of SS&C. SS&C shall not be liable for any indirect, special, incidental, or consequential damages of any kind, including, without limitation, loss of profits, loss of use, business interruption, loss of data, or cost of cover in connection with or arising out of breach of this Agreement or the performance of any services hereunder, whether alleged as breach of contract or tortious conduct even if it has been advised of the possibility of such damages.

(Services Agreement at 5.) This provision reflected the carefully considered allocation of risk between the parties, placing all risk of loss with Tillage and the fund manager, except in cases of gross negligence or intentional wrongdoing on the part of SS&C. Finally, the Services Agreement contained express merger and no-oral modification clauses:

> This Agreement . . . contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect thereto. . . . This Agreement may not be amended or modified except by a writing signed by the parties. . . . No employee or agent of SS&C has authority to bind SS&C to any oral representations or warranty concerning the services. Any oral or written representation or warranty not expressly contained in this

> Agreement (or in any written amendment hereto) will not be enforceable.

(Id. at 10-11.) The Services Agreement had an initial term of one year and was renewed annually without modification. (Id. at 6.)

SS&C Internal Procedures for Processing of Wire Transfer Requests

Plaintiff alleges that under SS&C's internal procedures, wire transfer requests were to be submitted by fund managers on a standard form template "via fax or email by individuals duly authorized to instruct the movement of money on behalf of the Fund." (Compl. ¶ 41.) The information to be provided on the form included confidential details regarding the fund's bank account and information about the intended receiving account. The form had to be signed by one or two authorized signatories selected by the client, whose signatures needed to match those previously provided by the client. As of March 2016, Plaintiff's authorized signatories were Thomas Funk and Brad McKay, who was also one of the fund manager's senior officers. (See Spagnoletti Aff. Ex. 2 ("Plaintiff Signature Card").)

Upon receiving a wire transfer request, Plaintiff alleges that the relevant SS&C associate was to "validate[] the instruction for completeness, authenticate[] the authorization, confirm[] the availability of funds, and obtain[] acknowledgment of the request from the SS&C Accounting contact and inform[] the Fund Manager that the request has been received." (Compl. ¶ 41.) The associate would then forward the request for further processing to SS&C's India-based Treasury services team, where the instructions would be input and subjected to a multi-stage review before release. (Cf. id. ¶ 64.)

Fraudulent Activity Discovered and Reported

On each of March 3, 8, 9, 14, 16, and 21, 2016, SS&C received an email from an individual purporting to represent Plaintiff, requesting a wire transfer from Plaintiff's account for

the purpose of making a capital investment in a Hong Kong technology business. (Id. ¶¶ 43, 47-49, 80-81.) The requests were submitted on the standard form that SS&C provided to Plaintiff, included correct account information for Plaintiff's transferring bank, and bore signatures that exactly matched those on file for Plaintiff's authorized signatories. (See Compl. ¶ 98. Compare Spagnoletti Aff. Ex. 3 ("SS&C Standard Form"), and Spagnoletti Aff. Ex. 4 ("2/23/2016 Wire Transfer Request") (genuine transfer request), with Spagnoletti Aff. Ex. 5 ("3/3/2016 Wire Transfer Request"), and Spagnoletti Aff. Ex. 6 ("3/8/2016-3/21/2016 Wire Transfer Requests").) SS&C processed the requests pursuant to the instructions provided. (Compl. ¶ 71.) The request from March 3 was ultimately rejected due to issues related to the receiving bank. (Id. ¶¶ 80-82.)

On the morning of Thursday, March 24, 2016, soon after SS&C had begun processing an additional transfer request from the same sender, SS&C called Tillage to understand how the prior international transfers were to be recorded for month-end accounting purposes. SS&C then learned that Tillage was not aware of the transactions and had not made the requests. (Id. ¶ 90.) SS&C immediately halted the processing of the request received that day (see Spagnoletti Aff. Ex. 10 ("3/24/2016 Wire Transfer Request")) and began to investigate. Upon reviewing the relevant communications, SS&C observed that the international wire requests had in fact been sent from a spoofed email address "tfunk@tilllagecapital.com," rather than Funk's actual address, "tfunk@tillagecapital.com." (See Compl. ¶ 47.)

SS&C that day filed a fraud report with the Hong Kong Police Force, which stated:

> On each of March 3, 8, 9, 14, 16, 21, and 24 SS&C Technologies, Inc. received emails from known contacts at [Tillage] to wire monies from [Tillage's] bank account. Signed letters of authorization were provided with valid signatures on [SS&C's] standard form. It was subsequently discovered and confirmed with [Tillage] on March 24th that these payment requests were in fact not sent and authorized by [Tillage's] authorized representatives.

(Spagnoletti Aff. Ex. 11 ("Hong Kong Police Report").) SS&C provided documentation concerning the wire transactions to the Hong Kong authorities. (Id.) SS&C also noted that "[t]he proceeds of the March 3rd wire were returned to [SS&C] for unrelated reasons" and "[t]he March 24th wire was not sent" because SS&C "determined, after receipt of the payment request, that the request was fraudulent." (Id.)

In the days that followed the discovery of the fraudulent transfers—despite having conducted no meaningful investigation and with practically no knowledge of the facts—Plaintiff's then-counsel Cravath, Swaine & Moore repeatedly demanded that SS&C make the fund whole, threatening that the fund would collapse by first thing Monday morning, and promising to pursue claims against SS&C in court. SS&C committed to assist in any investigation but declined to make any such payments.

Months later, there is no evidence whatsoever that SS&C had any knowledge of the fraud prior to March 24, 2016, nor that the perpetrators obtained Plaintiff's valid credentials and confidential information through a security breach at SS&C. Plaintiff has nonetheless made baseless allegations to the contrary in court and in the press. Plaintiff now brings contract-based claims and claims under the GBL in an attempt to circumvent the terms of the bargain it entered in 2011 and to impose upon SS&C, without any basis, obligations found nowhere in the Services Agreement or New York law. (Compl. ¶¶ 122-58.)

ARGUMENT

Under CPLR 3211(a)(1) and (7), a party may move for judgment dismissing a claim asserted against it on the grounds that the claim fails to state a cause of action, or that a meritorious defense "is founded upon documentary evidence."

In assessing a motion to dismiss for failure to state a cause of action, a court must determine whether the "plaintiff can succeed upon any *reasonable* view of the facts

stated." Campaign for Fiscal Equity Inc. v. State, 86 N.Y.2d 307, 318 (1995) (emphasis added) (internal quotation marks omitted). Allegations that "consist[] of bare legal conclusions" or are "inherently incredible or flatly contradicted by documentary evidence" are neither "presumed to be true [nor] accorded every favorable inference." Biondi v. Beekman Hill House Apartment Corp., 257 A.D.2d 76, 81 (1st Dep't 1999) (internal quotation marks omitted), aff'd, 94 N.Y.2d 659 (2000). Courts may—and do—grant motions to dismiss where defendants submit evidentiary material that "establish[es] conclusively that plaintiff has no cause of action." Rovello v. Orofino Realty Co., 40 N.Y.2d 633, 636 (1976).

Similarly, where the documentary evidence submitted conclusively establishes a defense to the asserted claims, the complaint should be dismissed. See, e.g., Teitler v. Max J. Pollack & Sons, 288 A.D.2d 302, 302 (2d Dep't 2001). "[T]here is nothing in CPLR 3211(a)(1) which specifies or limits the form or character of the documentary evidence or official record upon which the motion . . . is to be based." 7 Weinstein, Korn & Miller, New York Civil Practice ¶ 3211.06 (2009) (internal quotation marks omitted). Rather, courts focus on the conclusiveness, and not the form, of the evidence. Id.

For the reasons set forth below, the deficiency of Plaintiff's allegations and the conclusive documentary evidence compel dismissal of all of Plaintiff's claims under CPLR 3211(a)(1) and (7).

I. PLAINTIFF'S BREACH OF CONTRACT CLAIM MUST BE DISMISSED BECAUSE PLAINTIFF HAS NOT ALLEGED FACTS SUFFICIENT TO ESTABLISH THAT SS&C WAS GROSSLY NEGLIGENT IN PERFORMING ITS OBLIGATIONS UNDER THE AGREEMENT (COUNT ONE)

Tillage's breach of contract claim is barred by the plain language of the Services Agreement, which states: "SS&C shall not be liable to [Tillage] except for damages resulting from the gross negligence, willful misconduct, fraud, or bad faith of SS&C." (Services

Agreement at 5.) This waiver reflects the carefully considered allocation of risks between the parties and is precisely the kind of bargain that is routinely enforced under New York law. See, e.g., Metro. Life Ins. Co. v. Noble Lowndes Int'l Inc., 84 N.Y.2d 430, 436 (1994) ("[A] limitation on liability provision . . . represents the parties' [a]greement on the allocation of the risk of economic loss," which "courts should honor."); Kalisch-Jarcho, Inc. v. City of N.Y., 461 N.Y.S.2d 746, 749 (1983) (explaining that courts are "especially" inclined to enforce limitations on liability "entered into at arm's length by sophisticated contracting parties"). Because Tillage has not alleged facts sufficient to establish that SS&C was grossly negligent in performing its obligations under the Services Agreement, the breach of contract claim must be dismissed.

To plead gross negligence under New York law, Tillage must allege conduct that "differs in kind, not only degree from [that of] ordinary negligence." Colnaghi U.S.A. Ltd. v. Jewelers Prot. Servs. Ltd., 595 N.Y.S.2d 381, 382-83 (1993). "Gross negligence, when invoked to pierce an agreed-upon limitation of liability in a commercial contract, must smack of intentional wrongdoing." Abacus Fed. Sav. Bank, 18 N.Y.3d at 683 (alterations and internal quotation marks omitted). This standard cannot be satisfied "merely by accumulating a sufficient number of 'garden variety' failures." Tougher Indus., Inc. v. Dormitory Auth. of State, 130 A.D.3d 1393, 1396 (3d Dep't 2015) (dismissing breach of contract claim because "regardless of the number of . . . allegations" the plaintiff failed to "establish that any of defendant's actions went beyond ordinary negligence and satisfied the gross negligence standard" (internal quotation marks omitted)). Rather, the complaint must "set forth actions by defendant evincing a reckless disregard for the rights of plaintiff or smacking of intentional wrongdoing." Retty Fin., Inc. v. Morgan Stanley Dean Witter & Co., 293 A.D.2d 341, 341 (1st Dep't 2002) (alterations and

internal quotation marks omitted).[4] If a complaint fails to allege such gross negligence, the limitations of liability clause must be enforced and any claims based on the contract must be dismissed as a matter of law. See, e g., Digital Broad. Corp. v. Ladenburg Thalmann & Co., 63 A.D.3d 647, 647 (1st Dep't 2009) (affirming dismissal where agreement "provided that defendants shall have no liability except for losses resulting from gross negligence or willful misconduct, neither of which occurred").

Because Plaintiff has not alleged facts sufficient to establish that SS&C acted with reckless indifference to Plaintiff's rights, or otherwise engaged in conduct that smacks of intentional wrongdoing, its breach of contract claim must be dismissed.

A. Plaintiff cannot overcome the contractual limitation of liability based on SS&C's efforts to satisfy its contractual obligations

Plaintiff's allegations demonstrate that SS&C processed the fraudulent transfer requests in an effort to satisfy its contractual obligation to operate the fund pursuant to the fund manager's instructions. Plaintiff makes much of the fact that SS&C's efforts failed. Indeed, Plaintiff's breach of contract claim relies on the allegation that by processing the fraudulent transfer requests, which were purportedly made on behalf of Tillage, SS&C breached its obligation to operate Tillage's bank account as instructed by management.[5] But because Plaintiff fails to allege, as it must, facts showing that SS&C's conduct smacked of intentional wrongdoing or reckless disregard, Plaintiff's allegations cannot establish gross negligence, as a matter of law.

[4] Reckless disregard exists when a defendant "'has *intentionally* done an act of unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow' and has done so with conscious indifference to the outcome." Saarinen v. Kerr, 84 N.Y.2d 494, 501 (1994) (quoting Prosser & Keeton, Torts § 34, at 213 (5th ed.)) (emphasis added).

[5] Plaintiff also quotes from the Services Agreement's requirement that investor subscriptions and redemptions be processed only "upon approval from [Plaintiff]." (Compl. ¶ 127 (quoting Services Agreement at 2).) As explained above, this provision would not have applied, as the perpetrators did not purport to be investors seeking a subscription to or redemption from the fund; rather, the requests were purportedly on behalf of Tillage for the purpose of funding a business enterprise. (See Compl. ¶¶ 49, 51.)

On seven occasions during a three-week period, SS&C received valid wire transfer instructions purportedly on behalf of Tillage. The instructions included confidential information regarding Plaintiff's account at First Republic Bank and bore signatures that exactly matched those of Plaintiff's authorized signatories. (See Spagnoletti Aff. Ex. 16. Compare SS&C Standard Form and 2/23/2016 Wire Transfer Request (genuine transfer request), with 3/3/2016 Wire Transfer Request, and 3/8/2016-3/21/2016 Wire Transfer Requests, and 3/24/2016 Wire Transfer Request.) They were reviewed as per procedures to confirm that the information regarding Plaintiff's account was accurate, that the instruction letter was signed by authorized signatories, that there were adequate funds available to make the transfers, and that the instructions had been correctly entered. (Compl. ¶ 41.) Each request was then subjected to a multi-signatory approval process before release. (Id. ¶ 64.)[6] On one occasion, the transfer did not complete due to an account issue on the part of the receiving bank. (Id. ¶ 80.) Each of the next five transfer requests was completed. On the same day that it received the final transfer request, SS&C discovered the fraud and immediately prevented the release of a pending request. (3/24/2016 Wire Transfer Request.) These actions, which reflect an effort by SS&C to *satisfy* its obligations under the Services Agreement, simply do not "smack of intentional wrongdoing" or reckless indifference to Tillage's rights. See Abacus Fed. Sav. Bank, 18 N.Y.3d at 683.

Plaintiff attempts to sidestep the liability concessions it made to SS&C in the Services Agreement by claiming that SS&C should have detected or prevented the fraud prior to March 24, 2016. (See Compl. ¶¶ 42-78.) Plaintiff alleges that (1) the instructions received were not

[6] Although not necessary to resolve for purposes of this motion, Plaintiff's allegation that SS&C failed to obtain all four signatures before releasing one of the requests is simply false. All four approvals were obtained between the time the wire was sent to SS&C's India-based Treasury services team for processing (10:25 a.m. EST, see Spagnoletti Aff. Ex. 7) and the time the team released the wire and confirmation returned (1:19 p.m. EST, see Spagnoletti Aff. Ex. 9). We assume that Plaintiff's confusion—if genuine—is due to its mistakenly reading the signature times as being in p.m. instead of a.m., after failing to account for any time zone changes. (See Spagnoletti Aff. Ex. 8.)

convincing or adequate forgeries (id. ¶ 98), and (2) the fraudulent nature of the requests should have been clear based on (a) the unique purpose of the transfer requests at issue (id. ¶¶ 57-62) as well as (b) the spelling, grammar, and syntax within the requests (id. ¶¶ 47-55). Plaintiff's claims that SS&C *should have been* suspicious of certain features of the cover emails or transfer requests are without merit, and insufficient to prove gross negligence as a matter of law. Plaintiff fails to allege that anyone at SS&C *did* notice any of the alleged mistakes and inconsistencies, or so much as suspected that the transfer requests were anything other than genuine at the time the requests were authorized.

Plaintiff's claim that the instructions were not convincing forgeries is belied by Plaintiff's own allegations and the documents themselves. The requests were submitted using the form template SS&C provided to Plaintiff and reflected valid confidential information regarding Plaintiff's account.[7] Plaintiff admits that the signatures provided were identical "copies" of those used previously by Plaintiff, but alleges (glaringly without support) that they must have been obtained via a security breach of SS&C's systems. (Id. ¶ 98.) This allegation is baseless, malicious, and irrelevant. SS&C's reliance on ostensibly authentic information—however obtained—cannot be considered evidence of gross negligence.

Nor can Plaintiff claim that SS&C was grossly negligent because the wire transfer requests were for larger amounts and for different purposes than Tillage had previously requested. SS&C does back-office administrative work for Tillage; it is not an auditor nor a compliance monitor, and the fees SS&C charges for its services reflect that reality. SS&C was

[7] Although Plaintiff claims that the form used by the perpetrators was "not used by Tillage or SS&C at any point during the course of the parties' four-year relationship" (Compl. ¶ 98), the very documents cited by Plaintiff in the Complaint conclusively undermine this non-specific claim (Compare 3/8/2016 – 3/21/2016 Wire Transfer Requests") (completed fraudulent transfer requests) with 2/23/2016 Wire Transfer Request (genuine transfer request)). Plaintiff may have identified some nuanced differences between these forms, but Plaintiff has failed to allege any facts supporting the conclusion that it would be *grossly negligent* to overlook any such differences.

"not . . . responsible for monitoring [Plaintiff's] legal compliance or compliance with its governing documents," and was "not . . . responsible for monitoring any investment restrictions or compliance with the investment restrictions . . . ." (Services Agreement at 4.) Thus, Plaintiff's allegation that SS&C had a duty to monitor the fund manager's operation of the fund account (Compl. ¶¶ 57-62) is flatly contradicted by the express terms of the Services Agreement, and should be rejected, see Taussig v. Clipper Grp., L.P., 13 A.D.3d 166, 167 (1st Dep't 2004) ("[Allegations] flatly contradicted by documentary evidence . . . are not presumed to be true, or even accorded favorable inference.").

Tillage cannot salvage its claim by resorting to allegations that SS&C should have identified the fraud sooner based on the grammar, spelling, and syntax of the emails accompanying the fraudulent wire transfer requests. (Compl. ¶¶ 48-49.) As noted above, the wire transfer requests were accompanied by *valid signature credentials in the proper form.* The fact that SS&C may have failed to note bad grammar in a related cover email (which was not itself part of the formal credentials[8]) does not, under any circumstances, "smack of *intentional wrongdoing*" (emphasis added), as would be required to overcome the bargained-for limitation of liability in this case. See, e.g., Lubell v. Samson Moving & Storage, Inc., 307 A.D.2d 215, 217 (1st Dep't 2003) (dismissing claim where there was "no indication that defendant's negligence, if any, differed in kind from acts of ordinary negligence" (internal quotation marks omitted). Moreover, according to the FBI notices cited by Plaintiff, "7,000 U.S. companies . . . have been victimized" in comparable scams since late 2013. (See Compl. ¶ 112 (citing Business Email Compromise, https://www.fbi.gov/news/stories/business-e-mail-compromise and https://www.ic3.gov/media/2015/150122.aspx).) The fact that these schemes are so common guts any reasonable inference that SS&C's failure to detect the fraud sooner was the kind of

[8] Indeed, a wire transfer request may "be submitted *via fax or* email." (Compl. ¶ 41 (emphasis added).)

"outrageous act[] of folly" required to establish gross negligence. Hartford Ins. Co. v. Holmes Protection Grp., 250 A.D.2d 526, 528 (1st Dep't 1998).

B. Plaintiff cannot establish gross negligence based on alleged violations of policies, procedures, and other non-specific standards outside the Services Agreement

Unable to find a basis for its breach of contract claim in the Services Agreement itself, Tillage resorts to the allegations that (1) SS&C violated countless non-specific obligations set out in various materials that, according to Plaintiff, "supplemented" the terms of the Services Agreement, and (2) SS&C "failed to live up to financial services industry standards." (Compl. ¶¶ 11, 123.) Once again, Plaintiff's novel theories of contractual liability must be rejected.

Plaintiff cannot plead breach of a contract based on alleged violations of obligations contained in various materials ***other than*** the contract itself. Although Plaintiff claims these materials "supplement[]" the terms of the Services Agreement, Plaintiff's allegation is conclusively rebutted by the merger and no-oral modification clauses contained in the Services Agreement. (Services Agreement at 10-11). These provisions render any allegations of obligations outside the four corners of the Services Agreement irrelevant as a matter of law. See Cornhusker Farms, Inc. v. Hunts Point Co-op Mkt., Inc., 2 A.D.3d 201, 203-04 (1st Dep't 2003). Nor are any of the materials cited by Plaintiff "referenced in the contractual document[] at all, much less referred to and described therein so as to be identified beyond all reasonable doubt," as would be required for the documents to be considered incorporated by reference. Id. at 204; see also Shark Info. Servs. Corp. v. Crum & Forster Commercial Ins., 222 A.D.2d 251, 252 (1st Dep't 1995) ("document to be incorporated" must be "referred to and described . . . so as to identify the referenced document beyond all reasonable doubt" (internal quotation marks omitted)). Indeed, the extrinsic materials cited by Plaintiff frequently post-date the parties' Services Agreement, and could not possibly have been incorporated by reference.

(See Compl. ¶¶ 29, 32, 33, 34 (article copyrighted in 2016); id. ¶ 31 (article dated July 31, 2015); id. ¶ 110 (2014 annual report); id. ¶ 120 (letter dated July 20, 2015).) As to its allegation regarding industry standards, Plaintiff does not even identify the standards allegedly breached, much less when they were established over the four-and-a-half-years the Services Agreement was in effect.

Moreover, even assuming *arguendo* that consideration or these extra-contractual materials were proper, they would not salvage Plaintiff's claims. A blanket assertion that SS&C failed to follow its own policies and procedures (which were subject to change by SS&C at any time, without notice to, or approval from, Plaintiff), or that its policies and procedures failed to live up to unspecified industry standards—even if true—would at most constitute an allegation of ordinary negligence. See, e.g., David Gutter Furs v. Jewelers Prot. Servs. Ltd., 584 N.Y.S.2d 430, 430 (1992) (dismissing claim pursuant to limitation of liability clause because plaintiff failed to "raise an issue of fact whether defendant performed its duties with reckless indifference to [p]laintiff's rights" despite testimony that services provided fell far below professional standards and customary practice in the industry). Absent allegations of facts sufficient to establish that SS&C's conduct smacked of intentional wrongdoing or reckless disregard, Plaintiff's breach of contract claim must be dismissed.

C. Plaintiff cannot recover for breach of contract based on allegations about events that occurred after the alleged losses

Tillage also purports to base its claims on several categories of actions allegedly taken *after* the final fraudulent request was received and the theft was complete. These allegations also fail as a matter of law. To state a breach of contract claim, a Plaintiff must allege "damages *resulting from* the [alleged] breach." Dee v. Rakower, 112 A.D.3d 204, 208-09 (2d Dep't 2013) (emphasis added); see also Yatter v. William Morris Agency, Inc., 256 A.D.2d 260, 261 (1st

Dep't 1998) (same). Plaintiff's allegations related to conduct after the final successful transfer on March 21 are irrelevant because they could not have caused or contributed to any of Plaintiff's alleged losses. See Fowler v. Am. Lawyer Media, Inc., 306 A.D.2d 113, 113 (1st Dep't 2003) (affirming trial court's motion to dismiss plaintiff's breach of contract claim because the "complaint . . . fail[ed] as it lack[ed] allegations showing any damages"); see also Harmit Realties LLC v. 835 Ave. of the Americas, L.P., 44 Misc. 3d 1226(A), 2014 WL 4376128, at *6 (Sup. Ct. N.Y. Cty. Sept. 3, 2014) (dismissing contract claim where "there [were] no allegations to the effect that defendant[']s actions caused injury to [the plaintiff]").

For instance, Plaintiff claims that SS&C began investigating the fraud on March 22—the day after the final successful fraudulent transfer—but did not notify Plaintiff of the fraud until March 24. (Compl. ¶¶ 88, 90.) Of course, Plaintiff does not allege that SS&C had knowledge of the fraud until March 24, when it immediately notified Plaintiff as well as law enforcement, by which time it was too late to recover the funds. Even assuming that SS&C could have somehow detected the fraud on March 22 after the last executed request, Plaintiff does not allege any concrete, cognizable harm stemming from SS&C's failure to do so. See Rakylar v. Washington Mut. Bank, 51 A.D.3d 995, 995-96 (2d Dep't 2008) (explaining that a plaintiff cannot satisfy requirement to allege damages that are "natural and probable consequence" of breach because "damages alleged by the plaintiff are too speculative to sustain the cause of action").

Plaintiff's allegations regarding SS&C's communications with law enforcement after the discovery of the fraud are irrelevant to its contractual claims. Plaintiff purports to take issue with the precise wording used by SS&C to notify the Hong Kong authorities of the fraud and with other information allegedly provided by SS&C to various investigative entities in the United States. (Compl. ¶¶ 94, 100.) Plaintiff fails, however, to allege that any of SS&C's

communications with law enforcement caused any portion of its alleged losses.[9] Any claims based on such allegations, therefore, must be rejected.

Nor can Plaintiff recover based on allegations that SS&C "refused to provide access to all of its communications with the defrauding third party," in response to requests months after the fraud had occurred. (Id. ¶ 131.) First, to the extent Plaintiff suggests that any such actions constituted an independent breach, the claim must fail. There is no possible interpretation of the Services Agreement that would lead to the conclusion that Plaintiff is contractually entitled to receive "all of [SS&C's] communications with the defrauding third party." (Id. ¶¶ 103, 131.) Second, because Plaintiff fails to assert that its inability to access these communications caused any of its losses, Plaintiff has not properly pled causation. See Fowler, 306 A.D.2d at 113 (breach of contract claim failed where complaint "lack[ed] allegations showing any damages"); Harmit Realties, 2014 WL 4376128, at *6 (same).

II. PLAINTIFF FAILS TO ALLEGE THAT SS&C BREACHED THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (COUNT TWO)

"For a complaint to state a cause of action alleging breach of an implied covenant of good faith and fair dealing, the plaintiff must allege facts which tend to show that the defendant sought to prevent performance of the contract or to withhold its benefits from the plaintiff." Aventine Inv. Mgmt., Inc. v. Canadian Imperial Bank of Commerce, 265 A.D.2d 513, 514 (2d Dep't 1999). "The implied covenant includes any promises which a reasonable promisee would be justified in understanding were included." 1357 Tarrytown Road Auto, LLC v. Granite Props.,

[9] Among the many egregious mischaracterizations in the Complaint, Plaintiff's allegations regarding SS&C's interactions with law enforcement cross the line between zealous advocacy and pure fiction. Plaintiff intentionally omits language from the Hong Kong Police Report that directly contradicts Plaintiff's characterization of the contents of that letter. (Compl. ¶¶ 94-95.) Tillage claims that SS&C "falsely stated" that it received emails from Tillage when "at the time this report was made SS&C indisputably knew the wire transfer requests at issue" were not from Tillage. (Id. ¶ 95.) Yet, in the very next sentence in the Hong Kong Police Report, SS&C reported that "[i]t was subsequently discovered and confirmed with [Tillage] on March 24th that these payment requests were in fact not sent and authorized by the [Tillage]'s authorized representatives." (Hong Kong Police Report.)

LLC, 142 A.D.3d 976, 977 (2d Dep't 2016). Critically, however, the implied covenant of good faith and fair dealing "does not impose any obligation upon a party to the contract beyond what the explicit terms of the contract provide." Silvester v. Time Warner, Inc., 1 Misc. 3d 250, 258 (Sup. Ct. N.Y. Cty. 2003); accord Dalton v. Educ. Testing Serv., 87 N.Y.2d 384, 389 (1995) ("The duty of good faith and fair dealing . . . is not without limits, and no obligation can be implied that would be inconsistent with other terms of the contractual relationship."). Moreover, a claim for breach of the implied covenant of good faith and fair dealing cannot be maintained where "the alleged breach is intrinsically tied to the damages allegedly resulting from a breach of the contract," TADCO Constr. Corp. v. Dormitory Auth. of State, 93 A.D.3d 619, 619 (1st Dep't 2012), and the claim is based on the "same allegation[] . . . as the breach of contract[] . . . claim," Ullmann-Schneider v. Lacher & Lovell-Taylor, P.C., 121 A.D.3d 415, 416 (1st Dep't 2014).

Plaintiff's claim for breach of the implied covenant fails under these standards: (1) Plaintiff does not and cannot allege facts to establish that SS&C attempted to prevent performance of the contract, or withhold its benefits from Plaintiff; (2) Plaintiff's claim either seeks to assign affirmative obligations beyond those in the Services Agreement, or is duplicative of the breach of contract claim; and (3) as above, allegations concerning what SS&C did after the fraud was discovered are irrelevant because there is no allegation they caused any damages.

Plaintiff has not alleged any facts to establish that SS&C worked in bad faith to deprive Tillage of the benefits of the Services Agreement. Because there are no "factual allegations that would tend to show that [SS&C] acted in bad faith or in a willful manner in order to prevent performance of the contract," the implied covenant claim must be dismissed. Rite Aid of N.Y., Inc. v. Chalfonte Realty Corp., 39 Misc. 3d 1230(A), 2012 WL 8144811, at *3 (Sup. Ct. N.Y.

Cty. Aug. 14, 2012). "Where, as here, no party has acted in a way to prevent the performance of or the rights under the contract, the claim must fail." Silvester, 1 Misc. 3d at 258.

Indeed, it appears Plaintiff simply misconstrues the purpose of the implied covenant, attempting to shoehorn into it (and thereby impose on SS&C) dozens of burdensome affirmative obligations that are inconsistent with and absent from the actual terms of the Services Agreement. No such obligations can be implied through the covenant of good faith and fair dealing. See Fesseha v. TD Waterhouse Inv'r Servs., 305 A.D.2d 268, 268 (1st Dep't. 2003) (implied covenant "cannot be construed so broadly as effectively to nullify other express terms of a contract, or to create independent contractual rights"). To the extent Plaintiff's implied covenant claim seeks to enforce new obligations that are not reflected in the Services Agreement, it must be dismissed for failure to state a claim. Id. To the extent it seeks to recover the same damages based on the same facts as Plaintiff's contract claim, it must be dismissed as duplicative. TADCO Constr. Corp., 93 A.D.3d at 619; Ullmann-Schneider, 121 A.D.3d at 416. Simply, "[a] claim for breach of the implied covenant of good faith and fair dealing . . . may not be used as a substitute for a nonviable claim of breach of contract." Smile Train, Inc. v. Ferris Consulting Corp., 117 A.D.3d 629, 630 (1st Dep't 2014) (internal quotation marks omitted).

Finally, as with Plaintiff's claim for breach of contract, Plaintiff's implied covenant claim must fail to the extent it rests on allegations related to conduct that occurred after the theft had been complete. To survive a motion to dismiss, a Plaintiff must allege "actual ascertainable damages arising in connection with" the breach of the implied covenant. Able Energy, Inc. v. Marcum & Kliegman LLP, 69 A.D.3d 443, 444 (1st Dep't 2010) (dismissing implied covenant claim). The only losses alleged by Plaintiff are those that occurred as a result of the fraudulent

transfer requests. Because those losses could not have been caused by events occurring after the thefts were complete, any claim based on subsequent actions must be dismissed.

III. PLAINTIFF FAILS TO STATE A CLAIM UNDER NEW YORK GENERAL BUSINESS LAW § 349 or § 350 (COUNTS THREE AND FOUR)

The GBL is designed to protect the consuming public from fraudulent or deceptive business practices. Tillage's complaint does not identify a dispute under that law. As Plaintiff's allegations and the relationship between the parties make clear, this is a contract dispute between two private, sophisticated businesses to which the GBL does not apply. Accordingly, Plaintiff's claims under the GBL must be dismissed.

To sustain a claim under either GBL § 349 or § 350, a plaintiff must allege that the defendant engaged in culpable "consumer-oriented conduct." Cruz v. NYNEX Info. Res., 263 A.D.2d 285, 290 (1st Dep't 2000). Plaintiff fails to meet this "threshold requirement" under New York law, id., because (a) its GBL claims are merely reframed versions of its contractual claims and (b) Plaintiff does not and cannot allege that any of SS&C's conduct was directed at the class of consumers protected by the GBL.

Plaintiff's claims are based on a private contractual dispute between sophisticated parties, and do not relate to any "consumer-oriented" conduct within the meaning of the GBL. New York courts have made clear that "[p]rivate contract disputes . . . [do] not fall within the ambit of the statute." Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A., 623 N.Y.S.2d 529, 532 (1995). Accordingly, courts routinely dismiss GBL claims like those alleged here where "[t]he only parties truly affected by the alleged misrepresentation[s] in [the] case are the plaintiffs and the defendants." Canario v. Gunn, 300 A.D.2d 332, 333 (2d Dep't 2002) (internal quotation marks omitted).

The GBL, moreover, does not apply to sophisticated businesses that enter into negotiated agreements and are capable of protecting their own interests. See N.Y. Univ. v. Cont'l Ins. Co., 87 N.Y.2d 308, 319-20 (1995) (no "consumer-oriented conduct," where parties "were a major university acting through its director of insurance, and a large national insurance company" and the agreement "was tailored to meet the purchaser's wishes and requirements"); Denenberg v. Rosen, 71 A.D.3d 187, 194-95 (1st Dep't 2010) (dismissing claim brought by "sophisticated entity" with regard to dispute over services for design and implementation of pension plan).

Here, Plaintiff—a sophisticated "investment fund . . . that uses a systematic, model-based strategy to invest in a diversified portfolio of exchange-listed commodities futures contracts" (Compl. ¶ 18)—negotiated at arm's length and entered into a contract for SS&C's services. (See id. ¶¶ 24-25). Plaintiff's allegations in the Complaint at most show a private contract dispute that cannot be transformed into causes of action under the GBL. See Cont'l Cas. Co. v. Nationwide Indem. Co., 16 A.D.3d 353, 354 (1st Dep't 2005) (explaining that the plaintiff's allegations "at best show a private contract dispute over policy coverage and the processing of defendants' claims, not conduct affecting the consuming public at large"); Teller v. Bill Hayes, Ltd., 213 A.D.2d 141, 148 (2d Dep't 1995) (explaining that the GBL "was not intended to supplant an action to recover damages for breach of contract between parties to an arm's length contract"). Plaintiff's conclusory allegations that SS&C's acts and practices are a "concern . . . for the public at large," (Compl. ¶ 105), are "consumer-oriented," (id. ¶¶ 142, 151), or "have a broad impact on the public at large," (id. ¶¶ 144, 153), do not alter that conclusion. See Golub v. Tanenbaum-Harber Co., 88 A.D.3d 622, 623 (1st Dep't 2011).

Plaintiff's allegation that SS&C's conduct was "consumer-oriented" because it targeted members of SS&C's "fund customer base" (Compl. ¶ 107), is equally infirm. SS&C's customer

base—all registered managers of investment funds—are highly sophisticated parties who would have contracted with SS&C for any services they wished to receive. Such businesses do not fall within the universe of consumers protected by the GBL. See Cruz, 263 A.D.2d at 290 ("plaintiffs fail[ed] to show how the complained-of conduct might either directly or potentially affect consumers" where allegations related to commodity "available to businesses only"); cf. Sheth v. N.Y. Life Ins. Co., 273 A.D.2d 72, 73 (1st Dep't 2000) (stating the GBL protects "those who purchase goods and services for personal, family or household use"). Because Plaintiff cannot meet the "threshold requirement" that SS&C's alleged acts and practices are consumer-oriented, the GBL claims must be dismissed.

Finally, Tillage's GBL claims should be dismissed for the independent reason that Tillage has failed to allege, as required, any materially misleading statements, or that it was harmed by any such statements. New York courts employ an objective standard to determine whether the alleged representations are "likely to mislead a reasonable consumer acting reasonably under the circumstances." Oswego Laborers' Local 214 Pension Fund, 647 N.E.2d at 745. Courts may determine whether this objective standard is met as a matter of law. See id. Plaintiff identifies a handful of statements that SS&C allegedly made to "[t]he investing public, and regulators" regarding its own cybersecurity and use of technology. (Compl. ¶¶ 107, 110, 120.) Plaintiff does not, however, explain how these statements, or any others quoted in the Complaint, "literally are false." Austin v. Albany Law Sch. of Union Univ., 38 Misc. 3d 988, 995 (N.Y. Sup. Ct. 2013).[10] Instead, Plaintiff relies on the unsupported assumption that because

[10] Plaintiff's vague and unsubstantiated allegation that SS&C's statement in a letter dated July 20, 2015—well before the fraudulent wire transfer requests occurred—that it "has never experienced a breach of security or privacy," (Compl. ¶ 120) was "knowingly false when made" based on Plaintiff's "information and belief," (id. ¶ 121), is insufficient under New York law. See Kanbar v. Arnow, 260 A.D.2d 182, 182 (1st Dep't 1999) (holding that the plaintiffs' allegations "asserted on information and belief, without disclosure of the sources of information that form the basis of the belief" were insufficient to state a claim).

its funds were lost, SS&C's statements must not have been true. But nowhere in the statements cited does SS&C guarantee that it will prevent the fraud that occurred here. There "simply is nothing in the challenged representations that would lead reasonable consumers acting reasonably to believe" that SS&C could do so. Id.; see also Scott v. Bell Atl. Corp., 282 A.D.2d 180, 184 (1st Dep't 2001) (GBL claims dismissed where plaintiffs merely "misconstrue[d]" the representations made to them).

Plaintiff also fails to allege any plausible harm resulting from any statements by SS&C. "To state a cause of action pursuant to General Business Law §§ 349 and 350, [a] plaintiff[] [is] required to plead and prove that the deceptive act caused actual injury." Canario, 300 A.D. at 333; see also City of N.Y. v. Smokes-Spirits.Com, Inc., 12 N.Y.3d 616, 623 (2009) (plaintiffs must plead "actual injury" caused by alleged violation). Here, Plaintiff does not and cannot plead that it suffered injury as a result of SS&C's statements because Plaintiff did not read or receive even one of the statements at issue prior to engaging SS&C. These statements largely post-date the contract—some by a period of years. (See, e.g., Compl. ¶¶ 29, 32-34 (citing 2015 and 2016 articles); id. ¶ 110 (2014 annual report); id. ¶ 120 (letter dated July 20, 2015).) Because there is no possible way these statements could have caused Plaintiff's alleged injury, Plaintiff cannot plead an essential element of its GBL claims. See Andre Strishak & Assocs., P.C. v. Hewlett Packard Co., 300 A.D.2d 608, 610 (2d Dep't 2002) (GBL § 350 claim dismissed where plaintiffs "failed to show that they relied upon or were aware of" the alleged false statements); McGill v. Gen. Motors Corp., 231 A.D.2d 449, 450 (1st Dep't 1996) (same).

CONCLUSION

For the foregoing reasons, SS&C respectfully requests that the Complaint be dismissed in its entirety.

Dated: New York, New York
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