To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF NEW YORK
COUNTY OF WESTCHESTER: COMMERCIAL DIVISION

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IBT MEDIA INC.,

Plaintiff,

- against -

DEV PRAGAD, ALVARO PALACIOS, DAYAN CANDAPPA, LEIANN KAYTMAZ, AMIT SHAH, and NANCY COOPER,

Defendants.

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Index No. 62346/2025
Motion Seq. No. 2
Motion Date: 09/19/2025

DECISION & ORDER

WALSH, J.

The following e-filed documents, listed in NYSCEF by document numbers 24-50, were read on this motion by Defendants Dev Pragad ("Pragad"), Dayan Candappa ("Candappa"), Leiann Kaytmaz ("Kaytmaz"), and Nancy Cooper ("Cooper") (together, "Moving Defendants") pursuant to CPLR 3211(a)(1), (a)(4), (a)(5), (a)(7), and (a)(8), for an order dismissing the Amended Complaint of Plaintiff IBT Media Inc. ("IBT") ("Amended Complaint") as against Moving Defendants, or alternatively, seeking a transfer of venue to New York County pursuant to CPLR 510. Plaintiff opposes this motion.

Upon the foregoing documents and for the reasons stated herein, Moving Defendants' motion shall be granted.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff commenced this action by filing its Summons and Complaint on April 30, 2025, which named as Defendants Pragad, Alvaro Palacios ("Palacios"), Candappa, Kaytmaz, Amit Shah ("Shah"), and Cooper (together, "Defendants") (NYSCEF Doc. No. 1). On May 23, 2025, Moving Defendants filed a motion to dismiss (Motion Seq. No. 1). This Court held a Preliminary Conference on June 9, 2025 and granted Plaintiff leave to file an Amended Complaint in response to Moving Defendants' motion to dismiss. Plaintiff filed its Amended Complaint, together with various exhibits, on August 5, 2025 (NYSCEF Doc. No. 24-37) and, as such, Moving Defendants' motion to dismiss was denied without prejudice as moot (NYSCEF Doc. No. 47). The Court granted Moving Defendants leave to move to dismiss Plaintiff's Amended Complaint, which

occurred on August 25, 2025. At the conference, the Court advised counsel that it would be staying discovery pending its determination of Moving Defendants' motion to dismiss Plaintiff's Amended Complaint.

THE AMENDED COMPLAINT'S ALLEGATIONS

The Amended Complaint alleges that IBT is a New York corporation with its principal place of business in New York County, and that it is a modern digital business publication founded in 2006 and headquartered on Wall Street (Amended Complaint at ¶ 51). IBT's mission is detailed as seeking out truth and promoting freedom through editorial coverage focused on the global economy and its drivers (*id.*). The Amended Complaint further asserts that, inter alia, IBT acquired Newsweek, another news media organization, in 2013 from the Daily Beast, which was later spun off into a separate entity (*id.* at ¶ 1). Plaintiff alleges Defendants were high-ranking executives of IBT (*id.* at ¶¶ 52-57, 64, 73). Pragad is alleged to be the former Chief Executive Officer ("CEO") of IBT, domiciled in Westchester County, New York, a citizen and resident of New York, and is the current Publisher of Newsweek (*id.* at ¶¶ 40-41, 52). Palacios is alleged to be the former Chief Operating Officer ("COO") of IBT, domiciled in Broward County, Florida, a citizen and resident of Florida, and is the current COO and Chief Financial Officer ("CFO") of Newsweek (*id.* at ¶ 35, 53). Candappa is alleged to be the former Chief Content Officer ("CCO") and "de facto" Editor-in-Chief of IBT, domiciled in Morris County, New Jersey, and is the current CCO and Chief Strategy Officer ("CSO") of Newsweek (*id.* at ¶¶ 37, 54). Kaytmaz is alleged to be the former Vice President of Human Resources at IBT, domiciled in Suffolk County, New York, a citizen and resident of New York, and is the current Senior Vice President of Human Resources at Newsweek (*id.* at ¶ 36, 55). It alleges Shah is the former Global Chief Financial Officer of IBT, the former CFO of Newsweek, a citizen of the United Kingdom, and is the current Executive Vice President ("EVP") of Newsweek International (*id.* at ¶¶ 38, 56). Cooper is alleged to be the former Editor-in-Chief of IBT, domiciled in New York, a resident of New York County, New York, and is the current Global Editor-in-Chief Emeritus and Advisor of Newsweek (*id.* at ¶¶ 39, 57).

Plaintiff alleges that while Newsweek was under the ownership of IBT, Defendants were IBT's high-ranking executives who conspired to transfer, inter alia, human resources, proprietary content management systems, advertising technology and established corporate relationships, to Newsweek, with an eye towards misleading the board of directors (the "Board") to spin-off the Newsweek entity from IBT and to later take advantage of those resources in newly-acquired leadership positions under the standalone Newsweek entity (*id.* at ¶¶ 1-2, 34-43, 64, 68-71, 75, 78-80, 84, 92-94). The Amended Complaint contends that Pragad orchestrated a scheme with the other Defendants to fraudulently move productive assets, such as core software and staff, to Newsweek (*id.* at ¶ 64). Plaintiff alleges that part of this scheme involved Defendants convincing the members of the Board and their Chairman, Etienne Uzac ("Uzac"), that it was in IBT's best interest to spin-off Newsweek to a new holding company, NW Media Holdings, Corp. ("NW Media"), which was owned by Pragad (*id.* at ¶¶ 12, 67). In furtherance of this scheme, Plaintiff alleges that Pragad misrepresented to Uzac (IBT's Chairman) a conversation Pragad had with the Manhattan District Attorney's Office (the "Manhattan DA") in 2018, in which Pragad contended that the Manhattan DA wanted Pragad to become the new owner of Newsweek and that it was in IBT's best interest

to spin the assets off to Pragad (*id.* at ¶ 12; *see also* NYSCEF Doc. No. 26 [email from counsel during spin off stating that "[i]t would also be helpful to know that the DA's office is comfortable with the recited consideration for this transaction"]). Plaintiff contends that following Pragad's advice and the other Defendants' suggestions, Newsweek was spun off to Pragad's new holding company pursuant to a Membership Interest Purchasing Agreement ("MIPA"), which resulted in IBT taking on the debts of the Newsweek entity and many of its assets being transferred to Newsweek, thereby greatly diminishing the value of IBT and causing Plaintiff to suffer substantial monetary damages in the amount of no less than $200,000,000 (*id.* at ¶¶ 67-71, 75, 88, 100; *see* NYSCEF Doc. No. 40 ["MIPA"]). In particular, Plaintiff alleges that

> [t]he top officers at IBT went along with Pragad's vision for a pillaged IBT, and a bolstered new Newsweek using IBT's resources, readily plundering IBT of its proprietary technology, advertising relationships, partnerships, transferring substantially all of these to Pragad's new Newsweek entity (*id.* at ¶ 70).

Plaintiff contends that it only discovered Pragad's misrepresentation that the Manhattan DA's Office wanted Pragad to become the new owner of Newsweek and that it was in IBT's best interests to spin the assets off to Pragad in November 2024 "when IBT's Chairman heard from a former Manhattan DA lead investigator that no such interaction had ever taken place between Pragad and the Manhattan DA's office with respect to the Manhattan DA seeking in any way to have Pragad installed as the owner of a new holding company that would control spun-off Newsweek assets" (*id.* at ¶ 67).

Based on the foregoing allegations, Plaintiff asserts three causes of action against all Defendants: (1) a First Cause of Action for breach of fiduciary duty against all Defendants ("First Cause of Action"); (2) a Second Cause of Action for fraudulent misrepresentation against all Defendants ("Second Cause of Action"); and (3) a Third Cause of Action for negligent misrepresentation against all Defendants ("Third Cause of Action") (Amended Complaint at ¶¶ 72-100).

In its First Cause of Action for breach of fiduciary duty, Plaintiff alleges that Defendants had fiduciary duties to IBT Media as its high-level managerial executives and that Defendants breached their fiduciary duty "by plundering nearly all of IBT's most important resources, including human resources, and relocating those resources to Newsweek, where IBT would no longer benefit, but the defendants would. In doing so, the defendants usurped the Newsweek opportunity to the deep detriment of IBT Media" (*id.* at ¶ 74).

In support of its fraud cause of action, Plaintiff repeats the allegations regarding Pragad's alleged misrepresentations concerning what the Manhattan DA's office said in terms of the spin off (*id.* at ¶ 78). Plaintiff further alleges that Defendants

> misrepresented their present and future intentions with regard to their management of both IBT and Newsweek for the benefit of both corporations – instead, Pragad and the defendants plundered IBT, sucking nearly all of its resources into Newsweek . . . The defendants' representations that they would manage IBT well even after the transfer of its assets and resources into Newsweek was materially

> false and misleading, because the defendants did not intend to remain loyal to IBT, and thus the defendants misled IBT into transferring its resources to Newsweek based on utter falsehoods (*id.*).

Plaintiff alleges that "[t]he defendants made the misrepresentations to deceive IBT Media into believing that IBT Media would be better off by the new corporate structure that involved the spin-off from IBT of the Newsweek Assets and most of IBT's critical operational resources. The defendants deliberately misrepresented their intentions and plans to induce IBT Media to agree with and approve of their plans" (*id.* at ¶ 80). Plaintiff alleges that it relied on Defendants' "misrepresentations by spinning off of Newsweek as well as its valuable resources into a separate brand" (*id.* at ¶ 81). According to Plaintiff, its reliance was "reasonable and justifiable because Pragad was the CEO of IBT, and the other defendants were high level executives at IBT, and this was their agreed-upon course of action for IBT" (*id.* at ¶ 82). Plaintiff contends that Defendants "concealed the falsity of the representations by pretending to work for both companies, while effectively usurping all corporate opportunities that IBT Media could have had instead for the benefit of Newsweek" and that Plaintiff sustained damages by losing hundreds of millions of dollars in growth and value (*id.* at ¶¶ 84-85).

In support of Plaintiff's claim of negligent misrepresentation, Plaintiff repeats its assertion of a fiduciary relationship between IBT and Defendants. Plaintiff contends that as officers and fiduciaries, they had an obligation to "impart complete and correct information," and instead, Defendants "misrepresented the impact that their diversion of resources to Newsweek would have on IBT" by claiming that IBT "would benefit from a Newsweek spinoff" (*id.* at ¶¶ 91-92). Plaintiff alleges that Defendants "failed to disclose the disastrous effect the shifting of substantially all of IBT's resources to Newsweek would have on IBT" (*id.*). According to Plaintiff, these misrepresentations were materially false and inaccurate because "after pillaging IBT for all it was worth, the executives intended to completely jump ship to Newsweek, leaving IBT in complete wreckage" (*id.* at ¶ 94). Plaintiff alleges that Defendants knew or should have known that IBT would rely on Defendants' misrepresentations given their status as trusted high level IBT officers and for this same reason, IBT's reliance was reasonable and justifiable (*id.* at ¶¶ 95, 97). Plaintiff alleges that as a result of its reliance, it approved "the transfer of substantial amounts of IBT resources to Newsweek, spinning off Newsweek" (*id.* at ¶ 96). Plaintiff asserts the same damages asserted in the fraud cause of action.

THE PARTIES' CONTENTIONS

A. Moving Defendants' Contentions in Support of Their Motion

In support of Moving Defendants' motion to dismiss, Moving Defendants submit: (1) an affirmation of their counsel, Shireen A. Barday, Esq. dated August 25, 2025, along with its attached exhibits (NYSCEF Doc. Nos. 39-42); and (2) a memorandum of law (NYSCEF Doc. No. 43).

In their memorandum, Moving Defendants assert that: Plaintiff's claims are barred by res judicata based on the 2022 Action; the claims are time-barred by all relevant statutes of limitations; the Court lacks personal jurisdiction as to all out-of-state Defendants; and Plaintiff's Amended

Complaint must be dismissed for failure to state a cause of action pursuant to CPLR 3211(a)(1), (a)(7) and CPLR 3016 (NYSCEF Doc. No. 43 at 9-21).

First, Moving Defendants argue that Plaintiff's claims have already been or could have been argued in the 2022 Action and are thus precluded under a theory of res judicata (*id.* at 10-13). Moving Defendants contend "there can be no dispute that the claims asserted in this case were at issue, or, at a minimum, could have been, in the 2022 Action that dismissed IBT's claims with prejudice" (*id.* at 11). Moving Defendants maintain that "[t]here simply is no reasonable basis to find that this case concerns a different transaction than the 2022 Action, which considered the MIPA, Mr. Pragad's purchase of Newsweek and control over assets of that publication" (*id.* at n 5). Moving Defendants compare the fraudulent inducement claim in the 2022 Action to Plaintiff's claims in this action and argue that "[m]ost identical to this action, the 2022 Action involved allegations that IBT was fraudulently induced into the MIPA" (*id.* at 11). Moving Defendants further argue that the 2022 Action involved similar allegations that Pragad had made false statements about the Manhattan DA's investigation (*id.*). For these reasons, and because the final judgment in the 2022 Action determined the MIPA was enforceable, Moving Defendants assert that Plaintiff's fraudulent inducement claim should be dismissed as barred by res judicata (*id.* at 12).

Regarding the other two causes of action, Moving Defendants contend that they too could have been brought in the 2022 Action and, because they were not, they should also be dismissed based on res judicata (*id.*). Moving Defendants assert that because IBT was provided with an opportunity in the 2022 Action to amend its complaint, "[w]here a plaintiff is provided leave to amend, fails to do so, and later attempts to replead similar claims with facts known at the time of the original action, the new claim is barred by res judicata" (*id.*). Moving Defendants argue that IBT's misrepresentation and fiduciary duty claims are premised on "the alleged misappropriation of IBT trade secrets, business strategy and personnel, which . . . was known to IBT by 2022, if not years earlier" (*id.*). Since the facts underlying IBT's claims in this action were also known to IBT when the 2022 Action was being litigated, Moving Defendants argue that those claims should be dismissed (*id.* at 12-13).

As their second argument, Moving Defendants contend that IBT's claims are barred by the relevant statutes of limitations (*id.* at 13). Regarding IBT's negligent misrepresentation claim, Moving Defendants contend that a three-year statute of limitations applies, which runs from the date of the alleged misrepresentation (*id.*). Moving Defendants assert that "[a]ll of the alleged 'misrepresentations,'. . . occurred more than three years ago and predate the MIPA in 2018" and, therefore, Plaintiff's negligent misrepresentation claim must be dismissed (*id.*). As for the breach of fiduciary duty claim, Moving Defendants argue that since this claim only seeks money damages, it is also subject to the three-year statute of limitations (*id.*). Moving Defendants point out that "[t]he alleged breaches of fiduciary duty also occurred in connection with the negotiation and execution of the MIPA, and IBT admits that the alleged 'misappropriation' of assets began no later than 2018" and, as such, "the limitations period for [the breach of fiduciary duty] claim also has expired–in 2022–and the claim . . . must be dismissed" (*id.* at 13-14). Further, Moving Defendants note that Plaintiff may not rely on the continuing wrong doctrine to toll the limitations period

because where "a plaintiff asserts tort claims in connection with performance of contracts," the continuing wrong doctrine requires separate "'formal, complete agreements that have legal effect' or other indicia of distinct contractual breaches and not action pursuant to a single contract" (*id.* at n 6, *quoting Ganzi v Ganzi*, 183 AD3d 433, 434 [1st Dept 2020]). Here, Moving Defendants assert that Plaintiff's claims regarding the misappropriation of assets are related to a single contract, the MIPA and, therefore, the continuing wrong doctrine does not apply (NYSCEF Doc. No. 43 at n 6). In support of the dismissal of Plaintiff's fraud claim, Moving Defendants argue that "[c]laims for fraud must be brought within 'six years from the alleged fraud . . . or two years from when the adverse party discovered the fraud or should have discovered the fraud with the exercise of due diligence'" (*id.* at 14, *quoting Roco G.C. Corp. v Bridge View Tower, LLC*, 166 AD3d 1031, 1033 [2d Dept 2018]). According to Moving Defendants, the allegedly fraudulent statements "were made to induce the signing of the MIPA in 2018" and "at the latest, the six-year period ran in 2024" (NYSCEF Doc. No. 43 at 14). Moving Defendants further reject that IBT "could not have discovered the alleged falsity of the alleged statements before 2023" (*id.*). In support, Moving Defendants point out that "IBT would have the Court believe that it sold its most high-profile assets on the basis of a single hearsay statement about the [Manhattan DA]" (*id.*). Thus, "[i]t strains credulity that IBT could not have determined that the alleged misrepresentation . . . was false then" (*id.*).

In support of the dismissal of this action as against the out-of-state Defendants, Moving Defendants argue that because Plaintiff has engaged in group pleading by failing to "specify any particular action that any one Defendant actually took . . . IBT has not alleged that any of the out-of-state Defendants are subject to the jurisdiction under New York's long arm statute" (*id.* at 15). Furthermore, Moving Defendants contend that Plaintiff's "'only broadly worded and vague allegations about a defendant's participation'" should result in dismissal of the claims made against out-of-state Defendants for lack of personal jurisdiction (*id.*, *quoting Karabu Corp. v Gitner*, 16 F Supp 2d 319, 324 [SDNY 1998]).

Finally, Moving Defendants maintain that Plaintiff has failed to plead its claims with sufficient particularity (*id.*). Moving Defendants argue that "[a] claim for breach of a fiduciary duty requires IBT to allege with particularity 'the existence of a fiduciary relationship, misconduct by the other party, and damages directly caused by that party's misconduct'" (NYSCEF Doc. No. 43 at 16, *quoting Castellotti v Free*, 138 AD3d 198, 209 [1st Dept 2016]). Based on these pleading requirements, Moving Defendants first contend that "IBT's fiduciary duty claim is foreclosed by the existence of a written contract regarding . . . the MIPA" (NYSCEF Doc. No. 43 at 16). Moving Defendants assert that "IBT has the burden to establish that fiduciary obligations owed by Defendants exist separate and apart from the MIPA, which governs Defendants' purchase, spinoff, and operation of Newsweek" (*id.*).

Alternatively, Moving Defendants contend that if IBT's claim is unrelated to assets flowing to the Newsweek entity and "is instead about individual employees' breaches of their terms of employment, IBT still has the burden to explain why a fiduciary obligation exists rather than a contract claim" (*id.*). According to Moving Defendants, the MIPA controls, not tort law, and that for any breaches that occurred before the creation of the MIPA, those actions "were specifically

ratified by the IBT Board of Directors in connection with approving the MIPA" and as the MIPA "controls IBT's relationship with the Defendants, . . . it entirely forecloses IBT's claims" (*id.* at 17).

Next, Moving Defendants address the nature of the duty by asserting that Plaintiff only goes so far as to generally describe the work of Defendants and allege in a conclusory fashion that Defendants owed a fiduciary duty to IBT on these bases (*id.*). Moving Defendants point out that after the MIPA was signed in 2018, none of the Defendants worked for IBT at all (*id.*). Relying on a string of emails attached to the Amended Complaint, Moving Defendants contend that these emails show that Defendants no longer worked for IBT because they show that Candappa, Palacios, and Kaytmaz were using Newsweek emails (*id.* at n 8; NYSCEF Doc. No. 35). Moving Defendants further argue that "[a] non-employee owes no fiduciary duties" and "facts must be pleaded with specificity as to how a former employee defendant has come to owe such duties and how they were breached" (NYSCEF Doc. No. 43 at 17-18). Moving Defendants argue that the transition of Defendants to Newsweek following the MIPA violated no fiduciary duty because "employees are free to change jobs, limited only by the terms of an employment contract" (*id.* at 18).

According to Moving Defendants, the Amended Complaint fails to "allege specifically what breached any Defendant's duty" (*id.*). For example, "IBT provides no examples of the assets allegedly taken, when they were taken, how, or specifically by whom" (*id.*). Moving Defendants argue that Plaintiff further fails to specifically describe each Defendant's role at IBT or how each Defendant allegedly breached their duty (i.e., there is no detail as to the information or business strategies that IBT allegedly lost and the obligations that were breached) (*id.* at 18-19). Moving Defendants contrast the allegations in the Amended Complaint against the allegations in the 2022 Action where IBT's more specific categorizations of misappropriated information were found deficient arguing that "[n]ow, rather than specifying even those broad . . . categories, IBT merely claims that Defendants misappropriated 'proprietary technology, advertising relationships, [and] partnerships'" and "'human resources'", which Moving Defendants assert "[i]f the more descriptive pleading [in the 2022 Action] was deficient . . . the Amended Complaint here obviously is" (*id.*, *quoting* Amended Complaint at ¶¶ 70, 74). Additionally, Moving Defendants argue that IBT's claim for misappropriation of trade secrets must also fail because "IBT can only premise a fiduciary breach on misappropriation of valuable trade secret information where the information is actually secret" (NYSCEF Doc. No. 43 at 19-20).

In support of the dismissal of Plaintiff's fraudulent misrepresentation claim, Moving Defendants argue that this claim likewise fails based on Plaintiff's failure to plead with the requisite particularity (*id.* at 20). Moving Defendants contend that Plaintiff's allegations "falsely represented 'conversations Pragad claimed his lawyers had with the [Manhattan DA's] office, thereby fraudulently inducing IBT Media to enter several devastatingly detrimental contracts'" (*id.*, *quoting* Amended Complaint at ¶ 78). Moving Defendants assert that "IBT continues on that Mr. Pragad, as well as other Defendants 'would manage IBT well even after the transfer of its assets and resources to Newsweek'" (NYSCEF Doc. No. 43 at 20). Since these alleged statements lack more specificity, such as the exact "statements that were made, when they were made, by

whom they were made, or any other hallmarks of [a] particularized pleading," nor do they "allege any facts establishing an intent to defraud or to induce reliance on the fraudulent statements," Moving Defendants argue that the allegations fail to allege fraud with the requisite particularity and, therefore, Plaintiff's fraud claim must be dismissed (*id.*).

In support of the dismissal of Plaintiff's negligent misrepresentation claim, Moving Defendants assert that Plaintiff has failed to plead its claim with particularity because it excludes "the specifics of the misrepresentation, Defendants' intent, and IBT's reliance . . . ." (*id.* at 21).

In the alternative, Moving Defendants move for a transfer of venue to New York County pursuant to CPLR 510 (*id.*). While Moving Defendants admit "IBT's claims arise out of actions Defendants allegedly took to induce IBT to sign the MIPA . . . [the] forum selection clause in the MIPA . . . requires that any action 'arising out of, relating to, or referring to' the agreement must be filed in New York County" (*id.*, *quoting* MIPA at § 12[d]). In addition, Moving Defendants assert that "[l]itigating in New York [C]ounty also would be beneficial, since substantially all of the witnesses, documents, and events relevant to this action are there" (NYSCEF Doc. No. 43 at 21). According to Moving Defendants, Plaintiff's claim that "'the nerve center of the Newsweek business is . . . where Pragad has his home office' . . . is laughable" (*id.*, *quoting* Amended Complaint at ¶ 63), as the nerve center of Newsweek "is undoubtedly its corporate headquarters in Manhattan and not its CEO's personal home" (NYSCEF Doc. No. 43 at 22).

B. Plaintiff's Contentions in Opposition

In opposition to Moving Defendants' motion, Plaintiff submits: (1) an affirmation from IBT's CEO, Uzac, dated August 13, 2025 ("Uzac Aff."); and (2) a memorandum of law in opposition to the motion ("Plf's Opp. Mem.").

In his affirmation, Uzac sets forth a series of new facts primarily involving Pragad. Among these new facts, Uzac asserts that he recruited Pragad to take over the US operations because Uzac "thought [Pragad] managed IBT well in the UK" and that, because of Pragad's leadership, he had been "out of the loop . . . until recently" (Uzac Aff. at ¶ 1). Uzac claims that as a result of his focus on the Manhattan DA's investigation regarding equipment loans, he had "no time to focus on the business," and that "[a]ll the proceeds from the equipment loans were used for paying operational costs" rather than for his own gain or benefit (*id.* at ¶¶ 3-4). Uzac asserts that Pragad ran a similar scheme to the one that formed the subject of the Manhattan DA's investigation in the United Kingdom, and that Pragad had not paid back these loans, resulting in the liquidation of IBTimes Company Limited (*id.* at ¶¶ 5-6). Uzac asserts that he learned that Pragad "hated [his] guts" but that he "never fully understood why" (*id.* at ¶ 7).

According to Uzac, while he was preoccupied with the Manhattan DA's investigation, Pragad, along with Palacios and Kaytmaz, moved all of the staff to Newsweek from IBT, "except for a few low-performance staff between 2017 and 2018" (*id.* at ¶ 8). Uzac argues that, since IBT's main source of revenue is derived from its advertising revenue, which comes from an audience attracted to content produced by editorial staff, this move was the "key driver" in IBT's revenues falling from $34 million in 2017 to $3 million in 2018 (*id.* at ¶ 9).

Uzac contends that Pragad also engaged in advertising fraud when he moved to London, and that when he was caught, Pragad blamed everything on contractors when it was really Pragad who was the "mastermind and architect" (*id.* at ¶ 10). According to Uzac, this advertising fraud "negatively impacted IBT" and caused long-term consequences on IBT's advertising rates and "shadow banning by certain advertising networks" (*id.* at ¶ 11). Uzac claims Pragad went on to take IBT's advertisers and other clients, "raking in million over time" (*id.* at ¶ 12).

Furthermore, Uzac asserts that Pragad and Michael Lukac, the ex-CTO of IBT and current CTO of Newsweek, "took the keys to IBT Media's Google Cloud account . . . effectively taking with them all of IBT's information" (*id.* at ¶ 13). Additionally, Uzac alleges Pragad and Michael Lukac took IBT's and Newsweek's Content Management System without paying for it or returning it to IBT (*id.* at ¶ 14).

Uzac goes on to reiterate many of the claims found in the Amended Complaint, asserting, inter alia, that Pragad and the executive team conspired to fraudulently remove IBT's resources and transfer them to Newsweek without the knowledge of the Board (*id.* at ¶¶ 16-17). To this end, Uzac asserts that "[t]here was never anything in the MIPA authorizing [Pragad] to strip IBT of its assets. He engineered the gutting and did not tell me of it" (*id.* at ¶ 18). In addition to Pragad, Uzac claims Davis failed to prevent the transfer of assets from IBT to Newsweek and did not warn Uzac (*id.* at ¶ 19). Finally, Uzac asserts that Pragad only left IBT with the debts of Newsweek, creating a "nebula of LLCs with the name 'Newsweek' or 'NW' in them . . . leading the IRS and the DOJ to investigate Pragad for Tax Evasion" (*id.* at ¶¶ 19-21). For these reasons, Uzac argues Pragad defrauded and stole Newsweek by "saying that things will be better for IBT" and that, with "all the millions he took," he went on to by luxury goods, among other things (*id.* at ¶¶ 22-23).

In its opposition memorandum, Plaintiff summarizes the facts underlying its claims (Plf's Opp. Mem. at 1-3). Plaintiff further outlines the case's procedural history and the applicable legal standard of review (*id.* at 3-4).

As for Plaintiff's legal arguments, Plaintiff begins by arguing that Pragad owed a fiduciary duty to IBT, breached his fiduciary duty, and fraudulently misrepresented his intentions for the future of the company (*id.* at 4-5). Before the spin-off of Newsweek from IBT, Plaintiff asserts that "it is clear that Pragad owed a fiduciary duty to IBT as its [CEO]" and that during this time, Pragad suggested that IBT was poised for future growth, which representation Plaintiff contends was not truthful (*id.* at 5). Looking to other corporate breakups, Plaintiff asserts that there is a "key difference between the typical type of splits being announced this year and the one that Pragad announced between IBT and Newsweek – in a typical split, the CEO has a *plan*" (*id.*). In Plaintiff's view, while other executives understood "they have fiduciary duties to the brands they *currently* serve, not only the brands they will serve *post spinoff*. . . [that] truth was apparently lost on Pragad" (*id.* at 6). According to Plaintiff, while announcing the spin-off, "Pragad was busy internally gutting IBT, a company where he was a mere employee, and transferring all its valuable resources to Newsweek, a company where he was expected to become a future co-owner" and "Pragad had no plan for the 'future growth' of IBT . . . , other than to pillage it to maximize his own pocketbook"

(*id.* at 6-7). In support of that contention, Plaintiff states that "[w]here typical spinoffs result in a reasonable split of resources, the IBT Newsweek split resulted in 95% of revenue going to Newsweek, the company Pragad was set to own, leaving only 5% to IBT, the company where he was CEO while planning the split" (*id.* at 7; *see* NYSCEF Doc. No. 27). Plaintiff further points out that "100% of the IBT executive team, over 90% of IBT's editorial staff, and 100% of IBT's technology was transferred to Newsweek, with Newsweek then *locking IBT out* of core resources like IBT's own cloud drive that housed its corporate vault" (Plf's Opp. Mem. at 7; *see* Uzac Aff.). IBT accuses Pragad of taking "these actions without reporting any of this IBT's board or shareholders" (Plf's Mem. Opp. at 7). Plaintiff asserts that Pragad's public announcement in October 2018 that stated the spin-off would "'allow . . . IBT Media . . . to maximize [its] potential'" was "a deception and a lie, fraudulently designed to appease IBT's shareholders, board, and stakeholders . . . to keep [them] going along with Pragad's proposed split" (*id.*, *quoting* NYSCEF Doc. No. 33). Plaintiff continues by stating that "Pragad [also] spun his lie about the [Manhattan DA's] blessing the transaction to everyone involved in the split" (Plf's Opp. Mem. at 7). Focusing on the statement made, Plaintiff quotes Pragad's lead lawyer, who made the following statement right before closing that "[i]t would also be helpful to know that the [Manhattan DA's] office is comfortable with the recited consideration for this transaction" (*id.*, *quoting* NYSCEF Doc. No. 26). Plaintiff alleges that years later in 2024, IBT discovered that the Manhattan DA's office "was not even involved in the transaction . . . when they had an opportunity to broach the sensitive topic of the transaction with the lead District Attorney assigned to the case at the time" (Plf's Opp. Mem. at 8).

Plaintiff then addresses Moving Defendants' argument that Pragad's conduct was ratified by the Board or shareholders by stating that it "does not negate the issues raised by the Plaintiff's Amended Complaint" (*id.*). In sum, Plaintiff argues that Pragad misled the Board and others into signing off on the split by using false statements such as "this was better for the District Attorney case outcome, better to reduce the 'heat' on IBT and its shareholders, and better for the future of IBT because the company would benefit" (*id.*). Plaintiff contends that Pragad created a false sense of urgency to rush the spin-off and that, as a result of Uzac's deep trust in Pragad, Uzac moved forward without further questioning the spin-off or Pragad's motives or statements (*id.* at 8-9).

Plaintiff further contends that Pragad had a duty to run IBT "in a commercially reasonable manner" (*id.* at 9). According to Plaintiff:

> nowhere in the motion to dismiss does Pragad explain where in the MIPA he was instructed *not* to make a plan for his own company . . . *not* to negotiate protections for IBT . . . *not* to write down $6.5 million of IBT's assets, which represented roughly 1/3 of the company's assets at the time of the deal, on the night before the deal . . . *not* to seek higher bidders to maximize the value of the any split that would take place . . . . *not* to have any loyalty to IBT, the company where he was still CEO, and instead to only negotiate a deal that would benefit himself (*id.* at 10).

Plaintiff repeats that "Pragad . . . fraudulently represented that somehow this split would be good for IBT. This was a lie" (*id.*). Plaintiff disputes Moving Defendant's assertion that IBT could have discovered such alleged fraud earlier, thereby foreclosing the use of the two-year discovery rule,

by stating that "[t]his type of delicate conversation is not a conversation Mr. Uzac could just waltz into, demanding answers. Years of preparation were needed to gain enough trust to broach such a sensitive issue with a prosecutor that formerly tried to put Mr. Uzac in jail" (*id.* at 10).

Plaintiff disputes Moving Defendants' contention that the MIPA controls this case based on Plaintiff's contention that the MIPA is not enforceable because it was induced by Pragad's fraudulent misrepresentations (*id.*).

Additionally, Plaintiff contends "that the reason Pragad had to abandon IBT in the first place was because of the fraud allegations against *him*" (*id.* at 11). Plaintiff argues that because of this pressure, Pragad transferred resources to Newsweek since it was "still relatively clean" and that "tax authorities were not fans of his U.S. tax evasion tactic of sending operating revenue to offshore accounts" (*id.*). Based on these facts, Plaintiff requests that the Court find Pragad liable for his alleged breach of fiduciary duty and fraudulent misrepresentation (*id.*).

Moving to the remaining Defendants, Plaintiff alleges that each Defendant owed a fiduciary duty to IBT and breached that duty by fraudulently misrepresenting IBT's future business prospects (*id.*). Similar to Pragad, Plaintiff contends each Defendant had "no plan to follow through on the press releases that were issued" and "[n]one of the executives raised red flags or alarm bells about how IBT might be affected after they finished transferring 95% of IBT's resources to Newsweek" (*id.*). Plaintiff points out that "Shah did not raise any alarm bell that there was absolutely no plan for IBT to continue functioning after it was crippled by the 95% revenue shift from IBT to Newsweek, where Shah himself would thereafter transfer his own employment" (*id.* at 11-12). Plaintiff further states that "[n]either did the C-level and other top executives in charge of Operations, Content and Strategy, Editorial, and Human Resources raise any flags" (*id.* at 12). To the degree that each Defendant failed to raise alarm bells or notify the Board of the "dire situation," Plaintiff alleges that Defendants breached their fiduciary duties to IBT (*id.*). Plaintiff continues by arguing that "[a]ny reasonable plans . . . would have by definition had to have been made prior to the split, while each of these executives was still an IBT employee, and still owed a duty to [IBT]" (*id.*). Plaintiff further suggests that each Defendant "stonewalled Davis, blocking him and Uzac from receiving information that would have informed them of the true picture of IBT post spinoff" and that "IBT has still not received advertising data . . . that would allow the company to determine how much advertising revenue it drove during the period leading up to and after the split" (*id.* at 12-13). In furtherance of this alleged plot, Plaintiff states that "[w]ith the help of Chief Technology Officer Miro Lukac, they stored IBT's core data in a cloud server where IBT employees could no longer see it" and because of this, IBT does not have possession of related plans or contracts (*id.* at 13).

Plaintiff argues that the Court should not consider Moving Defendants' arguments regarding, group pleading and the relevant pleading requirement to state its claims with particularity, because the information needed to state a more detailed claim is solely in the possession of Defendants (*id.*). According to Plaintiff, "[t]he 'detail' requirement for CPLR 3016(b) 'is not to be interpreted so strictly as to prevent an otherwise valid cause of action in situations where it may be "impossible to state in detail the circumstances constituting a fraud"'" (*id.* at 14 [citations omitted]). For this reason, Plaintiff contends that "the allegations of fraudulent

misrepresentation against the entire executive team have been adequately alleged in a way that meets the pleading standard well enough that the case should advance to discovery, where such information can then be brought to light and vetted" (Plf's Mem. Opp. at 14).

Plaintiff repeats its claim that Pragad consolidated enough power to render the Board virtually powerless (*id.*). Plaintiff argues "Pragad exerted undue influence over Mr. Uzac as the gatekeeper between Uzac and the entire IBT executive team" and that "Pragad pressured Mr. Uzac to resign from any operational role within the company . . . because Pragad would then have free reign to manage IBT and the spinoff" (*id.* at 14-15). Similarly, Plaintiff alleges Davis "had virtually no say in how the resources would be divvied between the entities" because Davis had little operational knowledge and Pragad "attempted to keep Davis as far away from Pragad's work as possible" (*id.* at 15). Plaintiff states that around March 2023, Davis "jumped ship" from IBT to Newsweek and that Plaintiff is now "also considering its legal options for how to handle the Davis issues" (*id.*).

Plaintiff concludes by claiming that the original expectation was for Newsweek and IBT to remain "sister entities" after the spin-off (*id.* at 16). Plaintiff contends that "[i]n this sense, even if IBT were pillaged," that would be "allowable" since IBT could then catch "Newsweek's tailwinds and continue to grow, albeit later" (*id.*). Instead, "Pragad did not agree with this direction in his heart, and secretly harbored the plan to truly split," which meant, according to Plaintiff, "IBT had no chance of recovering any of the losses Pragad caused the company to incur while he was its CEO" (*id.*).

C. Moving Defendants' Contentions in Further Support of Their Motion

In further support of their motion, Moving Defendants submit a reply memorandum of law ("Defs' Reply" [NYSCEF Doc. No. 50]).

Moving Defendants provide a brief preliminary statement in which they address the alleged deficiencies of Plaintiff's opposition (Defs' Reply at 1-2). Moving Defendants state that "IBT's Opposition to the Motion deserves little discussion" since it "cites exactly four cases for anything other than the standard for the Court's consideration of the Motion" and that "it does not defend the sufficiency of the allegations" nor "explain why the claims are not time-barred or otherwise barred because of the [final judgment] . . . in the 2022 Action" (*id.* at 1).

Moving Defendants assert that IBT's opposition is deficient on its face and that it impermissibly relies on documents outside the pleadings (*id.* at 2). First, Moving Defendants contend that Plaintiff's memorandum in opposition lacks sufficient case citations and Plaintiff's claim that it cited legal authority in its Amended Complaint is likewise deficient (*id.* at 2-3). Second, Moving Defendants argue "the most frequently cited support in the Opposition is neither a case nor even IBT's Amended Complaint" but instead "an affirmation submitted by a nonparty . . . that is not admissible evidence on this motion" (*id.* at 3; *see* Uzac Aff.). On this point, Moving Defendants assert that—since Moving Defendants invoke CPLR 3211(a)(1)—affirmations from witnesses are not "documentary evidence" and thus "cannot rescue their deficient pleading by belatedly finding . . . facts that have been in their possession all along" (*id.*).

Next, Moving Defendants contend that Plaintiff fails to respond to several aspects of Moving Defendants' motion, which mandates dismissal of the Amended Complaint (*id.* at 4). Moving Defendants state that "IBT's claim for fraudulent inducement into the MIPA was considered . . . in the 2022 Action" and "IBT's other claims could have been raised in that litigation and, thus, too are barred" and, therefore, since "IBT does not contest this argument . . . it now admits that this case is an attempt to redo the 2022 Action" (*id.*). Moving Defendants assert that they "argued that each of IBT's claims is time-barred and that [Plaintiff has] not alleged sufficient facts to invoke any discovery or 'continuing wrong' rule" (*id.*). According to Moving Defendants, "IBT does slightly better here and mentions the limitations period," but Plaintiff "does not say more than that IBT 'discovered its claims' after the 2022 Action" and IBT does not "explain specifically how it discovered the 'fraud' or, importantly, that (or how) it was diligent in discovering it" (*id.*). Moreover, Moving Defendants argue that Plaintiff admits it could have discovered its claims earlier and that "[w]hen IBT fails to respond or refute Defendants' arguments, it concedes them, and dismissal is warranted" (*id.* at 5).

Moving Defendants repeat the deficiencies in Plaintiff's Amended Complaint by arguing that:

> IBT's claims are not sufficiently pleaded because 1) the default duties IBT invokes were displaced by written contracts (either the individuals' employment agreements or, later, the MIPA; 2) IBT does not explain the source of any fiduciary obligation or what obligations were owed; 3) IBT does not specify what actions actually breached these duties; and 4) the "fraud" allegations are not pleaded with particularity (*id.* at 5-6).

Instead, Moving Defendants assert that "IBT gloms onto its Amended Complaint a series of new fact assertions which have the same problems" (*id.* at 6). For example, Moving Defendants criticize Plaintiff's argument first raised in their memorandum that Pragad was not specifically authorized to take various actions, saying, "officers are not specifically granted authority to do everything and anything conceivable" and that "a claim for breaching contractual or fiduciary obligations only lies where the plaintiff, here IBT, can identify what and how a breach occurred" (*id.* at n 6). According to Moving Defendants, other new facts first alleged in Plaintiff's memorandum include Plaintiff's allegation that "100%" of IBT's technology and certain trade secrets were misappropriated; that IBT has a sensitive conversation with the Manhattan DA, which led to the discovery of the alleged fraud; and that Defendants are allegedly the only ones in possession of the specific information concerning the fraud conducted in this case (*id.* at 7-8). These new facts are contested by Moving Defendants based on Plaintiff's failure to allege each one with sufficient specificity (*id.*).

Moving Defendants argue that "[b]ecause IBT does not answer any of the arguments made in the Motion and instead chose to 'oppose' the Motion by introducing yet new and irrelevant allegations, the Court must dismiss this action" (*id.* at 8). Additionally, Moving Defendants argue that "IBT has failed to explain what the basis of any breached duty was or what specific actions any Defendant took to breach their obligations" and "IBT's claims sounding fraud and

misrepresentation . . . [do not] specifically [allege] either the fraudulent statements or the information they 'discovered' to reveal the truth" (*id.*, *quoting* Plf's Mem. Opp. at 20-21).

Lastly, Moving Defendants contend that IBT consents to a transfer of venue to New York County because the venue is designated by the MIPA and Plaintiff failed to respond to this point raised in their motion (Defs' Reply at 9).

DISCUSSION

A. Plaintiff's Claims Against Pragad Must Be Dismissed

The Amended Complaint as asserted against Pragad warrants dismissal based on, inter alia, CPLR 3211(a)(5), as res judicata precludes Plaintiff from asserting its First, Second, and Third Causes of Action against Pragad.[1]

CPLR 3211(a)(5) provides in relevant part:

> A party may move for judgment dismissing one or more causes of action asserted against him on the ground that . . . the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, *res judicata*, statute of limitations, or statute of frauds (emphasis added).

"'Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action'" (*Jacobson Dev. Group, LLC v Grossman*, 198 AD3d 956, 959 [2d Dept 2021], *quoting Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 347 [1999]). '"One linchpin of res judicata is an identity of parties actually litigating successive actions against each other: the doctrine applies only when a claim between the parties has been previously brought to a final conclusion'" (*Jacobson Dev. Group, LLC*, 198 AD3d at 959, *quoting Simmons v Trans Express Inc.*, 37 NY3d 107, 111 [2021]). "The doctrine of res judicata operates to preclude the reconsideration of claims actually litigated and resolved in a prior proceeding, as well as claims for different relief against the same party which arise out of the same factual grouping or transaction, and which should have or could have been resolved in the prior proceeding" (*Jacobson Dev. Group, LLC*, 198 AD3d at 959; *see Paramount Pictures Corp. v Allianz Risk Transfer AG*, 31 NY3d 64 [2018]). "A pragmatic test has been applied to make this determination – analyzing whether the facts are related in time, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage" (*Xiao Yang Chen v Fischer*, 6 NY3d 94, 100-101 [2005]). Importantly, the doctrine of res judicata may preclude reconsideration of claims against different defendants in a future action, but only where those defendants are in privity with the original defendants (*Blue Sky, LLC v Jerry's Self Stor., LLC*, 145 AD3d 945 [2d Dept 2016] [denying summary judgment where a defendant was not in privity with defendants in the prior related action]; *see Watts v Swiss Bank Corp.*, 27 NY2d 270, 277 [1970] [defining "privity" as

[1] There is no basis to dismiss this action as against the non-Pragad Defendants based on res judicata as Moving Defendants make no argument that the non-Pragad Defendants were parties to the 2022 Action or that they stood in privity with the parties in the 2022 Action.

including "those who are successors to a property interest, those who control an action although not formal parties to it, those whose interests are represented by a party to the action, and possibly coparties to a prior action"]).

New York courts follow a "transactional analysis approach in deciding res judicata issues" (*O'Brien v City of Syracuse*, 54 NY2d 353, 357 [1981]). Under this approach, "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy" (*id.*). In other words, the doctrine of res judicata applies to repetitive claims that stem from "the same factual grouping or transaction, and which should have or could have been resolved in the prior proceeding" (*Jacobsen Dev. Group, LLC*, 198 AD3d at 959; *see Simmons*, 37 NY3d 107; *see also Paramount Pictures Corp.*, 31 NY3d 64). Therefore, "events are part of . . . the same series of transactions where their 'foundational facts' are related in 'time, space, origin, or motivation,' where they 'form a convenient trial unit,' and where 'treatment [of the foundational facts] as a unit conforms to the parties' expectations'" (*Manko v Gabay*, 175 AD3d 484, 486 [2d Dept 2019], *quoting Coliseum Towers Assoc. v County of Nassau*, 217 AD3d 387, 390 [2d Dept 1996]; *see Xiao Yang Chen*, 6 NY3d 94).

Plaintiff's claims in the 2022 Action mirror Plaintiff's claims in this action, as they are predicated on Pragad's alleged misrepresentations concerning his intention, following the spin-off, to operate IBT and Newsweek together and/or that the spin-off would be undone once the pressure of the Manhattan DA's office's investigation and prosecution of Uzac and IBT concluded (*see* "2022 Complaint" [NYCEF Doc. No. 1, Complaint in 2022 Action]). Furthermore, in the 2022 Action, like this one, Plaintiff alleged that Pragad pillaged IBT's assets in the spin-off. In the 2022 Action, Plaintiff alleged claims for: (1) a declaratory judgment (First Cause of Action) declaring the MIPA invalid due to a lack of consideration (i.e., IBT's understanding that the consideration for the spin-off included that IBT and Newsweek would continue to operate under common control, both companies' profits would be reinvested in both companies, and that the IBT's membership interest in Newsweek would be returned to IBT/Uzac once Uzac determined his legal challenges were resolved, turned out to be false); (2) anticipatory breach of this oral side agreement (Second Cause of Action); (3) promissory estoppel (Third Cause of Action) based on Pragad's promise to return Newsweek to IBT once Uzac determined his legal challenges were resolved; (4) unjust enrichment (Fourth Cause of Action) based on Pragad's repudiation of his agreement to transfer Newsweek back to IBT and his receipt, for no consideration, of the assets of Newsweek based on their spin-off to NW Media; (5) fraudulent inducement (Fifth Cause of Action) based on Pragad's false representations to Uzac from August 2018 to September 13, 2018 "that if the parties documented a transaction to temporarily transfer control of the Newsweek Assets away from IBT, he would return the Newsweek Assets to IBT when Uzac determined that his legal challenges were resolved" because at the time he made these representations, he had no intention of honoring them (2022 Action, NYSCEF Doc. No. 1 at ¶¶ 125, 127); (6) unfair competition against NW Media (Sixth Cause of Action) arising from NW Media's (through Pragad) exploitation of not only Newsweek's assets (i.e., IBT's recruitment and training of staff members at Newsweek and its development of (i) strategies to drive large audiences to its websites, and (ii) propriety technology such as CMS) but also the use of IBT's assets that had been transferred to NW Media in launching "other IBT brands and verticals, including Medical Daily (rebranded Newsweek Health) and Player One (rebranded Newsgeek)" in direct competition with IBT; (7) misappropriation of trade secrets against NW Media (Seventh Cause of Action) based on

Pragad and Newsweek staff knowing IBT's trade secrets (i.e., IBT's proprietary CMS technology, its SEO strategies, vendor information, and its business model that combines this information), which IBT maintained as secret by barring employees from disclosing the confidential information, using mutual non-disclosure agreements with strategic partners, and marking proprietary training materials and similar documents as confidential, and Pragad's violation of his duty as CEO to maintain the secrecy and limit the use of trade secrets by "using, taking advantage of, and disclosing IBT's trade secrets to allow NW Media to unjustifiably interfere with IBT's business by, among other things, using IBT proprietary CMS, SEO strategies, scaled incentives, and verticals strategy to compete against IBT" (2022 Action, NYSCEF Doc. No. 1 at ¶ 144); breach of fiduciary duty against Pragad and NW Media (Eighth Cause of Action) based on Plaintiff's allegation that Pragad had a fiduciary duty to IBT following the spin-off because "he was entrusted with decision-making authority over IBT's Newsweek Assets and was required to make those decisions with IBT's best interests in mind until Uzac determined that his legal challenges were resolved" and the same held true with regard to the relationship between NW Media and IBT (i.e., they both had the duty of loyalty to act for the benefit of IBT rather than for any personal benefit) and that those fiduciary duties were breached when "[t]hey usurped IBT brands, employees, and confidential proprietary information in order to run Newsweek as a competitor of IBT rather than its complement" (2022 Action, NYSCEF Doc. No. 1 at ¶ 151) and failing to return Newsweek to IBT after Uzac determined his legal challenges were resolved; (9) constructive trust over the Newsweek Assets held by NW Media (Ninth Cause of Action) based on NW Media's fiduciary duty to IBT to oversee and safeguard the Newsweek Assets during the temporary transfer and NW Media's promise (through Pragad) to return the Newsweek Assets to IBT once Uzac's legal challenges were resolved; and (10) equitable accounting (Tenth Cause of Action) against NW Media regarding all profits and gains obtained by NW Media through its control over IBT's membership interest in Newsweek.

In the 2022 Action, in response to Pragad's and NW Media's motion to dismiss, the trial court dismissed all the claims, except for the Sixth Cause of Action for unfair competition and the Seventh Cause of Action for misappropriation of trade secrets, with prejudice as they were not viable based on the plain terms of the MIPA (First, Second, Third, Fourth and Fifth Causes of Action) and because Plaintiff failed to allege that the parties had a fiduciary relationship and the rest of the factual allegations indicate that the parties could not have had a fiduciary relationship (Eighth, Ninth and Tenth Causes of Action) (*IBT Media Inc. v Pragad*, 2022 NY Slip Op 34341[U] [Sup Ct, NY County 2022]) and this decision was affirmed on appeal (*IBT Media Inc. v Pragad*, 220 AD3d 530 [1st Dept 2023]).[2] Accordingly, the claims dismissed pursuant to CPLR 3211(a)(1)

[2] For the most part, the Appellate Division, First Department, agreed with the grounds for dismissal by the trial court and only modified the trial court's decision by awarding a declaratory judgment to Pragad and NW Media that the MIPA is enforceable. On the fraudulent inducement claim, the First Department also included that the claim failed because Plaintiff failed to "allege facts establishing that in August and September 2018, when the parties were negotiating the terms of the [MIPA], Pragad had no intention of honoring his promises with respect to that agreement . . . At most, plaintiff alleges facts establishing that around three years later, in the fall of 2021, Pragad stated that he would not return Newsweek to Plaintiff" (*IBT Media Inc.*, 220 AD3d at 532). The First Department also noted with regard to the breach of fiduciary duty and equitable accounting claims, "plaintiff did not plead the necessary element of a fiduciary relationship between the parties . . . Rather, plaintiff's causes of action are based entirely on allegations that defendants breached

are subject to res judicata as there was a final determination on the merits of those claims (*Matter of Agai v Diontech Consulting, Inc.*, 149 AD3d 727 [2d Dept 2017]; *Kalter v Riversource Life Ins. Co. of N.Y.*, 142 AD3d 1141 [2d Dept 2006]; *Singer v Boychuk*, 194 AD2d 1049 [3d Dept 1993], *lv denied* 82 NY2d 657 [1993]; *Papa v Burrows*, 186 AD2d 375 [1st Dept 1992], *lv denied* 81 NY2d 707 [1993]). Regarding the two claims that the trial court in the 2022 Action granted Plaintiff leave to replead (i.e., Plaintiff's claims for unfair competition and misappropriation of trade secrets – the Sixth and Seventh Causes of Action), the trial court stated that "[r]ight now, they rely on the sale to NW Media being a sham, an argument that the court has rejected based on the plain language of the [MIPA]. To the extent IBT alleges that NW Media stole information from IBT that was not transferred in the Newsweek sale, there may be a cause of action" (*IBT Media Inc.*, 2022 NY Slip Op 34341[U] at *3). The law is well settled that a dismissal based on a failure to state a cause of action pursuant to CPLR 3211(a)(7), if not dismissed with prejudice, is not res judicata to a new action reasserting this claim, provided that the claim in the new action satisfies the requisite pleading requirements (*Asgahar v Tringali Realty, Inc.*, 18 AD3d 408 [2d Dept 2005]; *Schindler v Issler & Schrage, P.C.*, 262 AD2d 226 [1st Dept 1999], *lv dismissed* 94 NY2d 791 [1999]; *Rapp v Lauer*, 200 AD2d 726 [2d Dept 1994], *lv dismissed* 94 NY2d 791 [1999]; *Amsterdam Sav. Bank, FSB v Marine Midland Bank, N.A.*, 140 AD2d 781 [3d Dept 1988]). However, "[a]lthough, generally, an order granting a motion pursuant to CPLR 3211(a)(7) is not a determination on the merits . . . such a determination has preclusive effect as to 'a new complaint for the same cause of action which fails to correct the defect or supply the omission determined to exist in the earlier complaint'" (*Blake v City of N.Y.*, 144 AD3d 1071, 1072 [2d Dept 2016], *quoting 175 E. 74th Corp. v Hartford Acc. & Indem. Co.*, 51 NY2d 585, 590 n 1 [1980]).[3]

Here, Plaintiff's claims as against Pragad stem from the same factual grouping or series of transactions that formed the basis for its 2022 Action. The 2022 Action, like the current one, alleged that the Manhattan DA's investigation spurred the spin-off of Newsweek (2022 Action, NYSCEF Doc. No. 1 at ¶¶ 7-10, 62, 67-70); that Pragad made misleading or fraudulent statements to the Board to induce the spin-off of Newsweek via the MIPA (*id.* at ¶¶ 73 [ownership structure would be unwound at a later date] 83 [same]; 99-100; 125-127); that Pragad had no intention of following through on his promises regarding the future of IBT and Newsweek (*id.* at ¶¶ 86, 99); that Pragad owed a fiduciary duty and breached that fiduciary duty to IBT by preferring the Newsweek entity, referring to it as his "crown jewel" (*id.* at ¶¶ 8, 62, 148-152); that Pragad engineered the MIPA in such a way as to saddle IBT with Newsweek's debts and obligations (*id.* at ¶¶ 11, 77-78); that Pragad effectively stole, or at minimum breached his fiduciary duty to IBT, by transferring staff and other resources or assets to Newsweek (*id.* at ¶¶ 64, 85, 88, 136, 137, 141-144, 148-151); and that IBT incurred substantial losses from the transfer of staff and resources to Newsweek (*see* Amended Complaint at ¶¶ 1-2, 22-29, 31-32, 67, 78; *see also* Plf's Mem. Opp. at

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their duty under the oral agreement; the claims are therefore based on a contractual obligation rather than a fiduciary one" (*id.*).

[3] *See also Wymara Ltd. v Gansevoort Hotel Group LLC*, --- NYS3d ----, 2025 NY Slip Op 06220 at * 2 [2d Dept 2025] ["[a]lthough certain allegations asserted in the complaint in the instant action related to events that had not yet occurred when the prior action was commenced, res judicata nonetheless applies and precludes the plaintiffs' related claims because the plaintiffs could have moved to amend the complaint in the prior action before the court, in effect, directed dismissal of the complaint but failed to do so"]),

2, 8, 11, 15). In opposition, Plaintiff argues that res judicata should not apply to its breach of fiduciary duty and fraudulent misrepresentation claims under these facts.

First, Plaintiff argues that its breach of fiduciary duty claim was not actually litigated because the Court found that the claims were primarily based on a contractual obligation rather than a fiduciary one (Amended Complaint at n 9). However, New York's transactional analysis considers not simply whether a claim has been litigated, but rather, whether the claim "could have been raised in the prior litigation" (*Matter of Hunter*, 4 NY3d 260, 269 [2005]). The principle underlying this analysis "is that a party who has been given a fully and fair opportunity to litigate a claim should not be allowed to do so again" (*id.*). As part of that analysis, New York courts take into account that "'[c]onsiderations of judicial economy as well as fairness to the parties' mandate, at some point, an end to litigation'" (*id.*, *quoting Matter of Reilly v Reid*, 45 NY2d 24, 29-30 [1978]). Moreover, "'[w]hen a complaint is dismissed for legal insufficiency or other defect in [the] pleading, it does not act as a bar to [the] commencement of a new action for the same relief unless the dismissal was expressly made on the merits *or the new complaint fails to correct the defects or omissions fatal to the prior one*'" (*Furia v Furia*, 116 AD2d 694, 695 [2d Dept 1986] [emphasis added], *quoting VanMinos v Merkley*, 48 AD2d 281, 284 [4th Dept 1975]). As the Court in the 2022 Action found, and Plaintiff failed to address here, the Amended Complaint does no more than allege that Pragad owed and breached his fiduciary duties to IBT in a conclusory fashion and Plaintiff fails to contradict the MIPA ratified as proper Pragad's conduct that Plaintiff alleges breached his fiduciary duty. The dismissal of the claim for breach of fiduciary duty against Pragad in the 2022 Action was pursuant to CPLR 3211(a)(1) and, therefore, was on the merits (*Matter of Agai*, 149 AD3d 727; *Kalter*, 142 AD3d 1141; *Singer*, 194 AD2d 1049; *Papa*, 186 AD2d 375). Accordingly, Plaintiff's breach of fiduciary duty claim is precluded by res judicata as against Pragad.

Second, Plaintiff argues that its fraudulent misrepresentation claim is based upon new facts that are distinct from the transaction or series of transactions that made up its claims sounding in fraud in the 2022 Action (Amended Complaint at n 12). Specifically, Plaintiff alleges that it discovered, as recently as November 2024, "Pragad lying about conversations with prosecutors" (*id.*). However, New York courts have held that a subsequent discovery revealing evidence supporting fraud does not prevent the application of res judicata where a prior action between the same parties raised the issue of fraud (*Veleron Holding, B.V. v Morgan Stanley*, 151 AD3d 597, 598 [1st Dept 2017], *lv denied* 30 NY3d 908 [2017] ["the proper inquiry for res judicata purposes is not whether [plaintiff] had enough evidence to prove its claim, but when it had sufficient knowledge to raise the cause of action"]; *UBS Sec. LLC v Highland Capital Mgt., L.P.*, 86 AD3d 469 [1st Dept 2011] [same]). Here, Plaintiff possessed the requisite knowledge at the time of filing its 2022 Action to raise a cause of action sounding in fraud. Thus, any additional evidence discovered following its filing of its Complaint in the 2022 Action simply bolsters its allegations that Pragad's fraudulent statements induced the MIPA, but does not vitiate the applicability of res judicata to Plaintiff's fraud claim. As such, Plaintiff's fraudulent misrepresentation claim is likewise barred by res judicata as against Pragad.

Furthermore, even if Plaintiff's fraud claim against Pragad were not barred by res judicata, Plaintiff's position that it learned only in November 2024 that Pragad had lied about the DA's position is entirely inconsistent with Plaintiff's Complaint in the 2022 Action in which Plaintiff alleges that "the parties (**through Uzac's counsel**) confirmed that the DA did not object to a transaction that would transfer ownership of the Newsweek Assets away from IBT and Uzac"

(2022 Action, NYSCEF Doc. No. 1 at ¶ 70 [emphasis added]; *see also id.* at ¶¶ 9-10 ["Uzac, Davis, and Pragad discussed Pragad's proposal at length, and ultimately decided on a modified plan. Rather than transfer ownership outright to Pragad, who had only recently joined the company, owned no equity in IBT, and did not share Davis's and Uzac's financial and sweat equity investments in the business, the transfer of ownership would be partial and temporary. Effectively, the plan was to swap Pragad in as a co-owner of the Newsweek Assets in place of Uzac, but on a temporary basis until Uzac's legal issues were resolved, at which point his ownership would be restored . . . After reaching this agreement, they vetted the idea of a spin-off of the Newsweek Assets with the DA's office, which did not object"]). This statement constitutes a formal judicial admission that Uzac's counsel spoke with the Manhattan DA and that Uzac's counsel understood that the Manhattan DA was blessing a transaction that took the Newsweek Assets away from IBT and Uzac, which is directly at odds with the allegations in Plaintiff's Amended Complaint in this action suggesting that IBT's only source of this information was coming from Pragad, who was misrepresenting conversations with the Manhattan DA that never occurred[4] (*Figueiredo v New*

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[4] At paragraph 78 of the Amended Complaint, Plaintiff alleges:

> The defendants, namely defendant Pragad, misrepresented to IBT Media conversations Pragad claimed his lawyers had with the Manhattan District Attorney's office, thereby fraudulently inducing IBT Media to enter several devastatingly detrimental contracts. Specifically, the defendants, namely Pragad, represented that the Manhattan District Attorney's office wanted Newsweek split off from IBT Media and wanted Pragad to be installed as the owner of Newsweek. Pragad's representation of the Manhattan District Attorney office's wishes was materially false and misleading, because not only was this representation an outright lie, but also it was designed to induce IBT Media to jettison valuable assets and resources with no corresponding benefit to IBT (Amended Complaint at ¶ 78).

In its opposition memorandum, Plaintiff argues that

> The proposed split itself was based on a lie by Pragad. Pragad spun his lie about the District Attorney ("DA") blessing the transaction to everyone involved in the split, including IBT's directors and the conflicted lawyer that worked for both IBT and Newsweek that was at the center of the transaction (Plf's Opp. Mem. at 7). Unbeknownst at the time to the IBT shareholders, who were also on the same email chain, the DA's office was not even involved in the transaction—as IBT discovered only years later in 2024 when they had an opportunity to broach the sensitive topic of the transaction with the lead District Attorney assigned to the case at the time, who had since moved into private practice (*id.* at 8). To the extent there was board sign off on the split, it was based on a broad idea that this was better for the District Attorney case outcome, better to reduce the "heat" on IBT and its shareholders, and better for the future of IBT because the company would benefit as per Pragad's press releases and direct statements. These were all false reasons promoted by Pragad to the board. Pragad went a step further, lighting an artificial fire under the directors by giving the impression that the deal to split the

Palace Painters Supply Co., 39 AD3d 363 [1st Dept 2007]; *Falkowski v 81 & 3 of Watertown, Inc.*, 288 AD2d 890 [4th Dept 2001]; *Bogoni v Friedlander*, 197 AD2d 281 [1st Dept 1994], *lv denied* 84 NY2d 803 [1994]). Here, Plaintiff's new fraud claim, based on its supposed discovery in November 2024 that Pragad never had the conversations he claimed he had with the Manhattan DA's office, is utterly refuted by Plaintiff's Complaint in the 2022 Action in which Plaintiff repeatedly references such discussions and specifically asserts that Uzac's counsel was involved in the discussion in which the Manhattan DA blessed the proposed deal of transferring the Newsweek Assets from IBT and Uzac to a new entity owned by Pragad. As such, Plaintiff's fraud claim shall also be dismissed pursuant to CPLR 3211(a)(1) (*Morgenthow & Latham v Bank of N.Y. Co.*, 305 AD2d 74, 82 [1st Dept 2003], *lv denied* 100 NY2d 512 [2004] ["plaintiff's claim of justifiable reliance is flatly contradicted by their agency's allegations in the Federal action and that this contradiction requires dismissal of their fraud claim pursuant to CPLR 3211[a][1]).

The other fraud allegations involve Defendants' alleged "misrepresentations of their present and future intentions with regard to their management of both IBT and Newsweek for the benefit of both corporations" (i.e., that "they would manage IBT well even after the transfer of its assets and resources into Newsweek") (Amended Complaint at ¶ 78). Plaintiff raised this exact fraud claim in the 2022 Action, which was dismissed by the trial court pursuant to CPLR 3211(a)(7), which was affirmed on appeal and, accordingly, it is barred by res judicata since Plaintiff failed to rectify the deficiencies in its Amended Complaint that were found by the trial court and affirmed by the Second Department. Furthermore, as discussed infra, these allegations of promises of future performance are insufficient to support a claim of fraud without facts supporting that, at the time the representations were made, there was no intention to perform the promises.

Plaintiff's claim of negligent misrepresentation "could have been raised in the prior litigation" and is therefore precluded by the doctrine of res judicata (*Matter of Hunter*, 4 NY3d 260, 264 [2005]). Finally, as set forth below, the claims against Pragad are also barred by the various statute of limitations.

B. The Claims Against Moving Defendants Must be Dismissed as The Claims Are Barred by the Applicable Statute of Limitations

"On a motion to dismiss a complaint pursuant to CPLR 3211(a)(5) on statute of limitations grounds, the moving defendant must establish, prima facie, that the time in which to commence the action has expired . . .The burden then shifts to the plaintiff to raise a question of fact as to whether the statute of limitations is tolled or otherwise inapplicable, or whether the plaintiff actually commenced the action within the applicable limitations period" (*Coleman v Wells Fargo & Co.*, 125 AD3d 716, 716 [2d Dept 2015]; *Muscat v Mid-Hudson Med. Group., P.C.*, 135 AD3d 915 [2d Dept 2016]; *Macaluso v Del Col*, 95 AD3d 959 [2d Dept 2012]; *Kennedy v H. Bruce Fischer, Esq., P.C.*, 78 AD3d 1016 [2d Dept 2010]). Furthermore, in considering such motion, a court must give the allegations in the complaint and plaintiff's submissions in response to the motion "their most favorable intendment" (*Benn v Benn*, 82 AD3d 548, 548 [1st Dept 2011]). On

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companies had to be rushed to completion prior to the District Attorney's office taking any negative action against IBT or its shareholders (*id.*).

such a motion, affidavits may properly be considered, provided that the affidavits come from persons with personal knowledge of the facts (*Zhinin v Vicari*, 50 AD3d 786 [2d Dept 2008]).

A cause of action based upon fraud must be commenced within "the greater of six years from the date the cause of action accrued or two years from the time the plaintiff or the person under whom the plaintiff claims discovered the fraud, or could with reasonable diligence have discovered it" (CPLR 213[8]; CPLR 203[g] ["where the time within which an action must be commenced is computed from the time when facts were discovered or from the time when facts could with reasonable diligence have been discovered, or from either of such times, the action must be commenced within two years after such actual or imputed discovery or within the period otherwise provided, computed from the time the cause of action accrued, whichever is longer"]; *Monaco v New York Univ. Med. Ctr.*, 213 AD2d 167, 168 [1st Dept 1995], *lv dismissed in part, denied in part* 86 NY2d 882 [1995]; *Coleman*, 125 AD3d at 716). The two-year period begins to run when the circumstances reasonably would suggest to the plaintiff that he or she may have been defrauded, so as to trigger a duty to inquire on his or her part (*Pericon v Ruck*, 56 AD3d 635 [2d Dept 2008]). When the plaintiffs have knowledge of facts from which the fraud could be reasonably inferred, they will be held to have discovered the fraud (*MBI Intl. Holdings Inc. v Barclays Bank PLC*, 151 AD3d 108, 114 [1st Dept 2017]). The burden of establishing that the fraud could not have been discovered before the two-year period prior to the commencement of the action rests on the plaintiff, who seeks the benefit of the exception (*Celestin v Simpson*, 153 AD3d 656 [2d Dept 2017] [citations omitted]; *see also Cannariato v Cannariato*, 136 AD3d 627 [2d Dept 2016], *lv denied* 27 NY3d 903 [2016]; *Sands Brothers Venture Capital II, LLC v Metropolitan Paper Recycling, Inc.*, 67 Misc 3d 1216[A], 2020 NY Slip Op 50568[U] [Sup Ct, NY County 2020], *affd* 201 AD3d 421 [1st Dept 2022]).

The statute of limitations for negligent misrepresentation to the extent it is predicated on a fraud is six years from the date of the misrepresentation and there is no two-year discovery rule (*Meyer v Seidel*, 89 F4th 117, 129 [2d Cir 2023, *citing Fandy Corp. v Lung-Fong Chen*, 262 AD2d 352 [2d Dept 1999]; *see also Certain Underwriters at Lloyd's London v Mercer*, 7 Misc 3d 1008[A], 2005 NY Slip Op 50507[U] [Sup Ct, NY County 2005]).

Here, there are two different misrepresentations alleged: (1) Pragad's alleged misrepresentation concerning his discussion with the Manhattan DA; and (2) Defendants' statements concerning their intention to operate IBT and Newsweek side by side and that IBT would benefit from the spin-off. The only two-year discovery rule invoked by Plaintiff is the one relating to Pragad's alleged misrepresentation concerning the conversation with the Manhattan DA, which Plaintiff contends it only discovered in November 2024.[5] However, this misrepresentation had nothing to do with the remaining Moving Defendants and, therefore, this discovery rule cannot revive the claim against them and the six-year statute of limitations applies to Plaintiff's fraud and negligent misrepresentation claims against the non-Pragad Moving Defendants. Because the six years runs from the date of the alleged misrepresentations (i.e., no

[5] Even if a two-year discovery rule applied, Plaintiff was aware no later than the Fall 2021 that the Moving Defendants had no intention of benefitting IBT by the spin-off or returning the Newsweek membership interest to IBT, as that is when IBT contended in the 2022 Action that Pragad stated that he would not return Newsweek to Plaintiff (*IBT Media Inc.*, 220 AD3d at 532).

later than August/September 2018 when the spin-off occurred), these claims would have had to have been brought no later than August/September 2024. As these claims against the non-Pragad Defendants were initiated on April 30, 2025, they are time-barred.

Turning to Plaintiff's breach of fiduciary duty claim against Moving Defendants, New York law does not provide a single statute of limitations for causes of action alleging a breach of fiduciary duty. As espoused by the Appellate Division, Second Department, "[t]he statute of limitations for a breach of fiduciary duty cause of action depends on the substantive remedy which the plaintiff seeks . . . Where the relief sought is monetary in nature, the statute of limitations is three years . . . However, where an allegation of fraud is essential to a breach of fiduciary duty claim, courts will apply the six-year statute of limitations applicable to fraud"[6] (*Carbon Capital Mgt., LLC v American Express Co.*, 88 AD3d 933, 939 [2d Dept 2011]; *see also Gerschel v Christensen*, 143 AD3d 555, 557 [1st Dept 2016] [where an allegation of fraud is essential to a breach of fiduciary duty claim the statute of limitations is six years and the discovery accrual rule applies]). Here, Plaintiff's breach of fiduciary duty claim is grounded in its allegations concerning Moving Defendants' misappropriation of IBT's assets, which is governed by a three-year statute of limitations[7] (CPLR 214[4]; *CDx Labs, Inc. v Zila, Inc.*, 162 AD3d 970 [2d Dept 2018]; *IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132 [2009]; *Demas v Levitsky*, 291 AD2d 653 [3d Dept 2002], *lv dismissed* 98 NY2d 728 [2002]). Again, applying the three-year statute of limitations to this claim, Plaintiff's breach of fiduciary duty claim against Moving Defendants ran in August/September 2021 – three years after the transfer of the Newsweek Assets to NW Media.[8] Even if a continuing tort doctrine applied for purposes of tolling the statute of limitations, Plaintiff was aware that Moving Defendants had no intention of returning the Newsweek membership interest to IBT no later than the Fall 2021, as that is when IBT contended in the 2022 Action that Pragad stated that he would not return Newsweek to Plaintiff (*IBT Media Inc.*, 220 AD3d at 532). Accordingly, even if the continuing tort doctrine applied, Plaintiff's claim for breach of fiduciary duty against the non-Pragad Defendants ran in the Fall 2024 and this action, which was initiated on April 30, 2025, is untimely.

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[6] Again, even if the breach of fiduciary duty claim were governed by a six-year statute of limitations, the action is time-barred for the reasons stated herein.

[7] As noted infra, Plaintiff has not alleged a fraud claim against the Moving Defendants based on their statements of what they intended to do to benefit IBT following the spin-off, so there are no fraud-based breaches of fiduciary duty claims alleged and the claim is predicated on the Moving Defendants' alleged transfer of IBT's assets.

[8] Here, Plaintiff's breach of fiduciary duty claim is barred based on res judicata, but even if it wasn't barred by res judicata, it would be barred based on the statute of limitations since the six-month toll of CPLR 205(a) expired on January 19, 2024, three months after the Appellate Division, First Department affirmed the trial judge's dismissal of the 2022 Action on October 19, 2023 (*Sullivan v Nimmagadda*, 63 AD3d 908 [2d Dept 2009]).

C. The Claims Against Moving Defendants Should Also Be Dismissed Pursuant to CPLR 3211(a)(1) and (a)(7)

To succeed on a motion to dismiss pursuant to CPLR 3211(a)(1) on the ground that a defense is founded on "documentary evidence," the documentary evidence that forms the basis of the defense must be such that it resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim (*AG Capital Funding Partners, L.P. v State St. Bank & Trust Co.*, 5 NY3d 582 [2005]; *511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144 [2002]; *Held v Kaufman*, 91 NY2d 425 [1998]; *Leon v Martinez*, 84 NY2d 83 [1994]; *Fontanetta v Doe*, 73 AD3d 78 [2d Dept 2010]). Documentary evidence is defined as evidence that is unambiguous and undeniable, such as judicial records and documents reflecting out-of-court transactions such as mortgages, deeds, and contracts (*Fontanetta*, 73 AD3d at 84-85). In contrast, letters, affidavits, notes, and deposition transcripts, generally, are not considered documentary evidence for the purposes of CPLR 3211(a)(1) (*id.* at 85-86; *see Mamoon v Dot Net Inc.*, 135 AD3d 656 [1st Dept 2016] ["an affidavit—let alone an affirmation—is not documentary evidence"]).[9] Where the documentary evidence disproves an essential allegation of the complaint, dismissal is warranted even if the allegations, standing alone, could withstand a motion to dismiss for failure to state a cause of action (*Snyder v Voris, Martini & Moore, LLC*, 52 AD3d 811 [2d Dept 2008]; *Peter F. Gaito Architecture, LLC v Simone Dev. Corp.*, 46 AD3d 530 [2d Dept 2007]).

The legal standards to be applied in evaluating a motion to dismiss pursuant to CPLR 3211(a)(7) are well-settled. In determining whether a complaint is sufficient to withstand a motion to dismiss pursuant to CPLR 3211(a)(7), "the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law, a motion for dismissal will fail" (*298 Humboldt, LLC v Torres*, 197 AD3d 1081, 1083 [2d Dept 2021], *quoting Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *see Leon*, 84 NY2d 83). "The complaint must be construed liberally, the factual allegations deemed to be true, and the nonmoving party granted the benefit of every possible favorable inference" (*298 Humboldt, LLC*, 197 AD3d at 1083, *quoting Leon*, 84 NY2d at 87; *see Leader v Steinway, Inc.*, 180 AD3d 886 [2d Dept 2020]).

The Amended Complaint as against all Defendants warrants dismissal pursuant to CPLR 3211(a)(1) and (a)(7) as to the First, Second, and Third Causes of Action.

Here, Moving Defendants submit the MIPA, the purchase agreement that controlled the transfer of the Newsweek Assets from IBT to NW Media, which they contend constitute documentary evidence resolving all factual issues as a matter of law, and conclusively disposing of Plaintiff's claims. Here, as in the 2022 Action, Plaintiff's allegations of breach of fiduciary duty

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[9] The Uzac affirmation has been considered because a party opposing a CPLR 3211 motion may submit evidence to support that a claim exists (*Leon*, 84 NY2d 83; *DaCosta v Trade-Winds Envtl. Restoration, Inc.*, 61 AD3d 627 [2d Dept 2009]; *Racquet v Travelers Cas. & Sur. Co.*, 2 AD3d 1310 [4th Dept 2003]; *Moses v Polk*, 251 AD2d 75 [1st Dept 1998]). There is a distinction between evidence submitted by a defendant in support of a motion to dismiss and evidence submitted by a plaintiff in opposition to a motion to dismiss, which may be considered (*Crepin v Fogarty*, 59 AD3d 837 [3d Dept 2009]).

are foreclosed by the existence of the MIPA as against Moving Defendants. In relevant part, the MIPA provides:

> [t]he undersigned, being all of the Directors of IBT Media, Inc. (the "Corporation"), hereby unanimously consent to the adoption of these Resolutions. The Corporation desires to sell to NW Media Holdings Corp. all of its right, title and interest in Newsweek LLC on the terms and conditions provided in that certain Membership Interest Purchase Agreement between the Corporation and NW Media Holdings Corp. dated September 13, 2018 ("Agreement"); therefore, IT IS HEREBY RESOLVED, that the Directors of the Corporation consent to the sale of the Corporation's Membership Interest in Newsweek LLC upon the same terms and conditions as are contained in the Agreement; and, it is further RESOLVED, that Etienne Uzac, President of the Corporation, is authorized to execute the Agreement, and any and all instruments, writings and other documents necessary to carry out the transaction contemplated under the Agreement; and, it is further RESOLVED, that all of the actions and decisions of the Officers and Board of Directors of the Corporation through the date of this action are hereby approved, ratified, and confirmed (MIPA at 3 [emphasis added]).

The MIPA further provides:

> FOR VALUE RECEIVED, the undersigned hereby transfers and assigns to **NW MEDIA HOLDINGS CORP.** one hundred percent (100%) of the membership interest in **NEWSWEEK, LLC**, a New York limited liability company (the "Company"), standing in the undersigned's name as evidenced by the Company's Operating Agreement dated July 30, 2013 (*id.* at 12).

Taken together, Plaintiff's allegations that Defendants breached their respective fiduciary duties as executives of IBT by transferring assets, attracting staff to Newsweek post-spin-off, and failing to create a plan for IBT post-spin-off or to alert the Board as to the "dire situation" facing IBT, among other things, are summarily addressed by the MIPA's ratification and approval of Moving Defendants' actions. As the trial court and the Appellate Division found in the 2022 Action, a breach of fiduciary duty claim cannot be maintained where there exists a contract governing the same subject matter (*Celle v Barclays Bank P.L.C.*, 48 AD3d 301, 302 [1st Dept 2008] ["[t]he breach of fiduciary duty claim was properly dismissed as the agreement 'cover[s] the precise subject matter of the alleged fiduciary duty'"]; *Raske v Next Mgt., LLC*, 40 Misc 3d 2140[A], 2013 NY Slip Op 51514[U] [Sup Ct, NY County 2013]). Moreover, the MIPA ratified the conduct of Moving Defendants as it relates to the transfer of assets and any membership interest in Newsweek from IBT to NW Media. Thus, since Plaintiff fails to allege any fiduciary duties that exist independent of the MIPA, the MIPA's terms control and conclusively dispose of Plaintiff's breach of fiduciary duty claim as against all Defendants pursuant to CPLR 3211(a)(1).[10]

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[10] To the extent the claim is predicated on conduct that occurred before the MIPA based on the Moving Defendants' alleged transfer of IBT assets that were not part of the spin-off while they were still IBT employees, Plaintiff had an opportunity in the 2022 Action to amend to allege misappropriation of proprietary information and unfair competition claims and failed to do so. Those claims are now barred by the relevant statute of limitations.

As for the Second and Third Causes of Action alleging fraudulent misrepresentation and negligent misrepresentation, respectively, Plaintiff fails to meet the requisite pleading requirements and its claims should be dismissed pursuant to CPLR 3211(a)(7) even if the allegations in the Amended Complaint are taken as true. It is well-settled that claims of fraud or misrepresentation must meet a heightened pleading standard pursuant to CPLR 3016(b) (*Clevenger v Yuzek*, 222 AD3d 931 [2d Dept 2023]; *Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553 [2009] [dismissing plaintiff's fraud claims in the absence of firm factual pleadings relevant to defendant's knowledge of the complained-of fraud]; *Manda Intl. Corp. v Yager*, 139 AD3d 594 [2d Dept 2016] [holding plaintiff's allegations of fraud as lacking sufficient detail such as the name of the relevant employee, the location of the overheard conversation, and when the relevant information was communicated to plaintiff]). The elements for fraud "'require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages'" (*Clevenger*, 222 AD3d at 935, *quoting Eurycleia Partners LP*, 12 NY3d at 559).

Here, Plaintiff's fraud claims are based on: (1) Defendants' alleged misrepresentation that the transfer of Newsweek Assets was only temporary and that Newsweek would be returned to IBT once the investigation and prosecution of IBT's and Uzac's criminal activities concluded and/or Defendants' alleged misrepresentation that the spin-off would benefit IBT or allow it to grow, when Defendants had no intention on following through on either of the representations; and (2) Pragad's alleged misrepresentation that the Manhattan DA's office blessed the idea that the Newsweek Assets be transferred away from IBT/Uzac to an organization headed by Pragad. As noted previously, this second basis for fraud fails as against the non-Pragad Moving Defendants as there are no allegations tying this alleged misrepresentation to them. And, as discussed supra, the fraud claim against Pragad based on his alleged misrepresentations concerning conversations with the Manhattan DA's office must be dismissed as it is utterly refuted by Plaintiff's judicial admissions contained in its allegations in the Complaint in the 2022 Action (*Morgenthow & Latham*, 305 AD2d 174).

Turning to the viability of Plaintiff's fraud claim as predicated on Moving Defendants' alleged misrepresentations that they would operate IBT and Newsweek together, sharing profits such that IBT would benefit from the spin-off, to allege a claim of fraudulent inducement, a plaintiff must allege that: (1) defendant made a material misrepresentation of an existing fact; (2) with knowledge of such falsity; (3) with an intent to induce reliance thereon; (4) plaintiff justifiably relied upon the misrepresentation; and (5) damages (*Mitchell v Diji*, 134 AD3d 779 [2d Dept 2015]; *Small v Lorillard Tobacco Co.,* 94 NY2d 43 [1999]; 60A NY Jur 2d Fraud and Deceit § 232 [2d ed, Nov. 2025 update]). CPLR 3016(b) provides that where a cause of action or defense is based upon fraud, the circumstances constituting the wrong shall be stated in detail (*see* CPLR 3016[b]; *Swartz v Swartz,* 145 AD3d 818 [2d Dept 2016]; *Stortini v Pollis*, 138 AD3d 977 [2d Dept 2016]; *Palmetto Partners, L.P. v AJW Qualified Partners, LLC*, 83 AD3d 804, 808 [2d Dept 2011]). The complaint must make factual allegations sufficient to support each element of a cause of action for fraud (*see Kaufman v Cohen,* 307 AD2d 113 [1st Dept 2003]) and bare allegations of fraud, without allegations of the details constituting the wrong, are insufficient (*Gervasio v DiNapoli,* 126 AD2d 515 [2d Dept 1987]). Thus, pursuant to CPLR 3016, the plaintiff is required to set forth the time and place of the alleged misrepresentations and who made them (*see., e.g., Daly v Kochanowicz*, 67 AD3d 78 [2d Dept 2009]; *Eastman Kodak Co. v Roopak Enters., Ltd.*, 202 AD2d 220 [1st Dept 1994]). The Court of Appeals has made clear that "[t]he purpose of

section 3016(b)'s pleading requirement is to inform a defendant with respect to the incidents complained of ... [and] should not be so strictly interpreted 'as to prevent an otherwise valid cause of action in situations where it may be impossible to 'state in detail the circumstances constituting a fraud'"" (*Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 491 [2008], *quoting Lanzi v Brooks*, 43 NY2d 778, 780 [1977], *quoting Jered Contr. Corp. v New York City Tr. Auth.*, 22 NY2d 187, 194 [1968]). Nevertheless, a plaintiff is ordinarily required to set forth the time and place of the alleged misrepresentations and who made them (*see, e.g., Daly,* 67 AD3d 78; *Eastman Kodak Co.*, 202 AD2d 220).

In a fraudulent inducement claim, the alleged misrepresentation should be one of then-present fact, which would be extraneous to the contract and involve a duty separate from or in addition to that imposed by the contract (*see Deerfield Communications Corp. v Chesebrough-Ponds, Inc.*, 68 NY2d 954 [1986]), and not merely a misrepresented intent to perform (*see Hawthorne Group, LLC v RRE Ventures*, 7 AD3d 320, 323-324 [1st Dept 2004]). "A fraud claim does not lie where the only fraud alleged arises from the breach of a contract . . . 'A present intent to deceive must be alleged and a mere misrepresentation of an intention to perform under the contract is insufficient to allege fraud. Conversely, a misrepresentation of material fact that is collateral to the contract and serves as an inducement for the contract is sufficient to sustain a cause of action alleging fraud'" (*Selinger Enters., Inc. v Cassuto*, 50 AD3d 766, 768 [2d Dept 2008], *quoting WIT Holding Corp. v Klein*, 282 AD2d 527, 528 [2d Dept 2001]; *see also Hawthorne Group, LLC,* 7 AD3d 320). Plaintiff fails to allege any facts to support that at the time Defendants made promises to Plaintiff, Defendants had no intention of performing (*see Perella Weinberg Partners LLC v Kramer*, 153 AD3d 443, 449 [1st Dept 2017] ["the facts alleged are insufficient to raise an inference of a present intent to deceive at the time the alleged misrepresentations were made in 2011"]; *Forty Cent. Park S., Inc. v Anza*, 117 AD3d 523, 524 [1st Dept 2014] ["complaint fails to state a cause of action for fraudulent inducement, since it essentially alleges that defendant did not intend to perform under the contract when he made the promissory statements, which gives rise only to a breach of contract claim"]; *Pope v New York Prop. Ins. Underwriting Assn.*, 112 AD2d 984, 985 [2d Dept 1985] ["it is well-settled that an allegation of fraud based upon a statement of future intention must allege facts sufficient to show that the party, at the time the promissory representation was made, never intended to honor or act on those statements"], *affd in part & lv dismissed in part*, 66 NY2d 857 [1985]).[11]

Plaintiff's fraud claim is that Defendants induced it to transfer the Newsweek Assets based on representations that the transfer would benefit IBT and the organizations would be run together and would increase in value based on their sharing of resources and profits. The alleged

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[11]The inference of fraudulent intent "may be established . . . either by alleging facts to show that defendants had both motive and opportunity to commit fraud, or . . . by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness" (*Shields v Citytrust Bancorp., Inc.*, 25 F3d 1124, 1128 [2d Cir 1994]). Here, as the First Department noted in the 2022 Action, the allegations in the Complaint suggested no fraudulent intent not to perform at the time of the spin-off in August/September 2021 since "[a]t most, plaintiff alleges facts establishing that around three years later, in the fall of 2021, Pragad stated that he would not return Newsweek to Plaintiff" (*IBT Media Inc.*, 220 AD3d at 532).

misrepresentations involve statements of opinion or "'future expectations, and do not constitute material misstatements of present fact'" (*New Hackensack Realty, LLC v Lawrence Dev. Realty, LLC*, 226 AD3d 799, 802 [2d Dept 2024], *quoting Kato Intl. LLC v Gerard Fox Law, P.C.*, 195 AD3d 516, 517 [1st Dept 2021], *lv dismissed* 37 NY3d 1087 [2021]; *see also Consolidated Bus Tr., Inc. v Treiber Group, LLC*, 97 AD3d 778 [2d Dept 2012]; *FMC Corp. v Fleet Bank*, 226 AD2d 225 [1st Dept 1996]). As noted by the Appellate Division, First Department in the 2022 Action, these allegations fail because they constitute statements of intent concerning future performance and Plaintiff has failed to allege facts supporting its contention that at the time the statements were made, Defendants did not intend to perform (*IBT Media Inc.*, 220 AD3d 530; *see also Wyle Inc. v ITT Corp.*, 130 AD3d 438 [1st Dept 2015]; *First Bank of Am. v Motor Car Funding*, 257 AD2d 287 [1st Dept 1999]; *Jo Ann Homes at Bellmore, Inc. v Dworetz*, 25 NY2d 112 [1969]).

Plaintiff has not alleged any misrepresentations of present facts. Nor has Plaintiff alleged a claim of fraud with the particularity required by CPLR 3016. Plaintiff's allegations of fraud are deficient as they simply allege misrepresentations of an intention to perform under an oral contract and, therefore, are breach of contract claims cloaked in fraud clothing. Because "the only fraud alleged relate[s] to the cause of action to recover for damages for breach of contract" (*Tucker v AM Sutton Assocs.*, 16 AD3d 670, 671 [2d Dept 2005]), it fails to state a cause of action for fraud (*id.*; *see also Stangel,* 74 AD3d 1050; *McGee v J. Dunn Constr. Corp.*, 54 AD3d 1010 [2d Dept 2008]). Accordingly, the branch of Defendants' motion seeking to dismiss Plaintiff's Second Cause of Action for fraud shall be granted and the Second Cause of Action shall be dismissed.

Plaintiff's fraudulent inducement claim is analogous to the alleged misrepresentations found in *Stevens v Publicis* (2004 WL 7324913 [Sup Ct, New York County 2004]) to be insufficient to state a fraud cause of action. In *Stevens*, the plaintiff alleged that he had been induced to sell his company premised on alleged representations that, inter alia, the defendant would not merge the company into another entity, that plaintiff would earn substantial profits under the earn-out, and that the defendant would direct business to the company. In *Stevens*, the trial court found that "[t]hose allegations do not constitute a misrepresentation of present fact. Rather, they constitute expressions of future intent to perform, and, therefore, are insufficient to state a cause of action for fraudulent inducement" (*Stevens*, 2004 WL 7324913 at *3). The same holds true here and Plaintiff's fraud claim must be dismissed for failure to state a cause of action pursuant to CPLR 3211(a)(7).

Because the Court is granting Moving Defendants' motion and dismissing the claims for all the foregoing reasons, the Court shall not address Moving Defendants' other argument that there is no personal jurisdiction over the out-of-state Defendants.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the motion by Defendants Dev Pragad, Dayan Candappa, Leiann Kaytmaz, and Nancy Cooper for an order dismissing the Amended Complaint, with prejudice, is granted.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
December 10, 2025

ENTER:

HON. GRETCHEN WALSH, J.S.C.

TO:

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