SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SALIANN SCARPULLA** **PART** **IAS MOTION 39EFM**

Justice

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IN RE DENSPLY SIRONA, INC. SHAREHOLDERS LITIGATION

Plaintiff,

- v -

XXX,

Defendant.

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INDEX NO. 155393/2018

MOTION DATE 04/05/2019

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 146, 147, 148, 149, 150, 151, 152, 153, 154, 156, 157, 161, 162, 163, 164, 169, 170, 173

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

In this putative class action alleging violations of the Securities Act of 1933 ("'33 Act"), defendants Jeffrey Slovin ("Slovin"), Bret W. Wise ("Wise"), Christopher T. Clark ("Clark"), Michael C. Alfano ("Alfano"), Eric K. Brandt ("Brandt"), Paula H. Cholmondeley ("Cholmondeley"), Michael J. Coleman ("Coleman"), Willie A. Deese ("Deese"), William F. Hecht ("Hecht"), Francis J. Lunger ("Lunger"), John L. Miclot ("Miclot"), John C. Miles, II ("Miles"), Thomas Jetter ("Jetter"), David Beecken ("Beecken"), William K. Hood ("Hood"), Arthur D. Kowaloff ("Kowaloff"), Harry M. Jansen Kraemer, Jr. ("Kraemer") and Timothy P. Sullivan ("Sullivan") (together, the "Individual Defendants") and Dentsply Sirona Inc. ("Dentsply Sirona") (collectively

"Defendants") move, pursuant to CPLR 3211(a)(1), (5), (7) and (8)[1] to dismiss Plaintiffs' consolidated amended complaint (the "CAC").

On September 15, 2015, Dentsply International Inc. ("Dentsply Intl.") announced that it would acquire Sirona Dental Systems, Inc. ("Sirona") in an all-stock transaction, subject to shareholder approval, pursuant to which Sirona shareholders would exchange their Sirona shares for Dentsply Intl. shares. A prospectus ("Prospectus") and joint proxy statement ("Proxy") were filed in connection with the Acquisition (together, the "Registration Statement") and the SEC declared the Registration Statement effective on December 7, 2015. Dentsply Intl.'s acquisition of Sirona took place on February 29, 2016 (the "Acquisition") creating a combined company, Dentsply Sirona.

Dentsply Sirona and its predecessor companies sold dental products and services to distributors, which in turn sold the products to dentists. Three main distributors – Henry Schein, Inc. ("Henry Schein"), Patterson Companies, Inc. ("Patterson") and Benco Dental Supply Co. ("Benco") (together, the "Distributors") – controlled up to 85% of the U.S. distribution channel for dental supplies and did business with Dentsply Intl. and Sirona.

According to the CAC, the Registration Statement contained statements about industry competition that failed to disclose material information. Specifically, the CAC alleges that, although Dentsply Intl. and Sirona were aware of, and complicit in, a scheme

[1] Only Defendants Brandt, Cholmondeley, Coleman, Deese, Hecht, Lunger, Miclot and Miles move on CPLR 3211(a)(8) grounds.

perpetrated by the Distributors (the "Alleged Anticompetitive Scheme") to control supply distribution, limit competition, and receive artificially high profit margins, the Registration Statement did not disclose facts regarding this scheme, or the benefit that Dentsply Intl. and Sirona derived from it. The CAC alleges that the Alleged Anticompetitive Scheme artificially inflated the financial results, goodwill and intangible assets of both Dentsply Intl. and Sirona in addition to the value of Dentsply Sirona's goodwill and intangible assets and rendered their SEC filings (which were incorporated by reference in the Registration Statement) misleading.

The CAC also states that the Registration Statement made misleading statements about demand and inventory. Plaintiffs allege that, at the time of the Registration Statement's effective date, Patterson's purchases had outpaced its sales and, as a result, the channel for the products was "stuffed" with surplus inventory.[2]

Plaintiffs allege that despite the importance of the Patterson exclusivity agreement to Sirona and Dentsply Sirona, the Registration Statement failed to disclose the excess inventory issue and the likelihood that Patterson would not renew its agreements as a result. Further, the Registration Statement was allegedly misleading because its statements about growing demand and the "predictability" of Sirona's revenues as a benefit to the combined company did not disclose that Defendants knew that Dentsply

[2] Patterson was the exclusive distributor for Sirona's dental computer-aided design/computer-aided manufacturing system ("CAD/CAM") and its company-branded imaging products and equipment. The agreements governing this relationship were due to expire in September 2017 and required Patterson to make substantial minimum purchases to maintain exclusivity.

Sirona would be unable to maintain or grow its sales or revenue from the affected product lines. Plaintiffs allege that Defendants knew or should have known, prior to the Registration Statement's effective date, that the adverse effects of the Patterson exclusivity agreement's termination would continue for a long period of time yet failed to disclose it. Patterson ultimately terminated the exclusivity agreements with Dentsply Sirona in the fall of 2016, and, on March 1, 2017, Dentsply Sirona disclosed that the "termination of exclusivity" had negatively impacted sales for the 2016 fourth quarter.

Plaintiffs further allege that at the time of the Acquisition, there was also undisclosed inventory buildup and channel stuffing outside the U.S.[3]

On August 9, 2017, Dentsply Sirona reported a goodwill and intangible asset impairment charge of nearly $1.1 billion, which it attributed to the termination of the Patterson exclusivity agreements, the excess inventory levels in the distribution channels, lower sales and "an increase in competition." Dentsply Sirona's common stock price dropped more than 8% from its close of $61.41 per share on August 8, 2017, to $56.23 per share on August 9, 2017.

As per the CAC, Plaintiffs acquired Dentsply Intl. common stock in exchange for their shares of Sirona common stock pursuant to the Acquisition. The CAC, filed on November 2, 2018, brought claims for violations of Sections 11, 12(a)(2) and 15 of the of the Securities Act of 1933 (the "'33 Act").

[3] Sirona inventory levels in Italy, the United Kingdom and France exceeded what Dentsply Intl. considered normal or desirable, which was allegedly problematic for Henry Schein because it was a major distributor of products outside the U.S. and channel stuffing prevented it from selling the products.

Defendants filed this motion to dismiss on the grounds of documentary evidence, statute of limitations, failure to state a claim and lack of jurisdiction.[4]

Discussion

Statute of Limitations

To dismiss a claim based upon the statute of limitations, "a defendant bears the initial burden of demonstrating, prima facie, that the time within which to commence the action has expired." *Campone v. Panos*, 142 A.D.3d 1126, 1127 (2d Dept. 2016) (internal quotation and citations omitted). Then the burden shifts to the plaintiff "to raise a question of fact as to whether the statute of limitations is inapplicable or whether the action was commenced within the statutory period." *MTGLQ Investors, LP v. Wozencraft*, No. 850159/16, 172 A.D.3d 644 at *1 (1st Dept. May 30, 2019).

The statute of limitations for claims brought under Sections 11 and 12(a)(2) of the '33 Act is "within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence." 15 U.S.C. § 77m.

Defendants argue that Plaintiffs' claims under Sections 11 and 12(a)(2) are time-barred because any allegedly untrue statements or omissions were discoverable for more

[4] Subsequently, on December 19, 2018, an action entitled, *Boynton Beach General Employees' Pension Plan v. Dentsply Sirona, Inc., et al.*, No. 18-cv7253, was filed in the United States District Court for the Eastern District of New York (the "EDNY Action"). Based upon many of the same facts as alleged in this action, the EDNY action asserts claims under Sections 11, 12 and 15 of the '33 Act as well as claims under the Securities Exchange Act of 1934.

than one year prior to the Plaintiffs' filing of the complaint. Specifically, Defendants argue that the statute of limitations started to run no later than March of 2017, when the Patterson exclusivity contracts had already been cancelled and Dentsply Sirona announced that Patterson was working off at least $80 million in inventory. As for the Plaintiffs' claims about the Alleged Anticompetitive Scheme, Defendants argue that those claims began to run from at least 2015 because attorney general investigations (in Arizona and Texas) into the antitrust schemes commenced that year, as did a class action complaint containing the allegations that Plaintiffs copied in this action.[5]

In opposition, Plaintiffs contend that investors did not suffer damages until August 2017 when Dentsply Sirona reported the impairment charge and its stock dropped, and therefore the complaint was timely filed.[6]

The question in determining when the statute of limitations began to run is "whether a plaintiff could have pled '33 Act claims with sufficient particularity to survive a [] motion to dismiss more than one year prior to the filing of the operative complaint." *In re Bear Stearns Mortg. Pass-Through Certificates Litigation*, 851 F.Supp.2d 746, 763

[5] To support their statute of limitations arguments, Defendants provided several documents that dated before August 2017 including: 1) a Texas attorney general press release, dated April 10, 2015, regarding an antitrust investigation into Benco; 2) a Law 360 article, dated January 25, 2016, discussing dentists' proposed class action against Patterson, Schein and Benco; 3) two Newsday articles about the Distributors and antitrust allegations; and 4) three articles from 2016 published in local Pennsylvania publications about the Benco and Distributors suits.

[6] Castronovo filed a complaint on June 7, 2018 and Golombeck filed a complaint on August 9, 2018.

(S.D.N.Y. 2012). Further, "whether sufficient facts existed at that time is, by definition, a fact-intensive inquiry and, thus, generally ill-suited for resolution at the motion to dismiss stage." *Id*.

At this early stage of the litigation and because the inquiry is fact-intensive, Defendants have failed to conclusively establish as a matter of law the date from which the statute of limitations began to run. I therefore decline to dismiss the complaint on statute of limitations grounds at this pre-answer stage of the litigation. *See In re Bear Stearns Mortg. Pass-Through Certificates Litigation*, 851 F.Supp.2d at 765. However, Defendants have raised issues of fact regarding when the statute began to run that will be addressed at a later stage if this litigation proceeds.

Failure to State a Claim

A motion to dismiss pursuant to CPLR 3211(a)(1) should only be granted when "the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.'" *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). Further, courts deciding motions to dismiss pursuant to CPLR 3211(a)(7), "must 'accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.'" *Sokol v. Leader*, 74 A.D.3d 1180, 1181 (2d Dept. 2010) (citations omitted). However, such consideration does not apply when a factual allegation fails to state a viable cause of action and/or merely consists of bare legal conclusions. *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 141-142 (2017) (citations omitted).

Defendants first argue that because Plaintiffs' claims include allegations of fraud and misrepresentation, the heightened pleading standard of CPLR 3016(b) applies. Defendants further argue that Plaintiffs fail to meet this heightened pleading standard which requires dismissal of the claims.

While it is true that the CAC alleges that Defendants made materially false and misleading statements, it does not contain claims for fraud or misrepresentation but instead alleges strict liability and negligence claims pursuant to Sections 11, 12(a)(2) and 15 of the '33 Act. Therefore, the heightened pleading standard of CPLR 3016(b) does not apply. *See Litwin v. Blackstone Group, L.P.*, 634 F.3d 706, 715 (2d Cir. 2011).

Claims under Sections 11 and 12(a)(2) of the '33 Act

Plaintiffs allege that Dentsply Sirona and the Dentsply Director Defendants are liable under Section 11, and all Defendants are liable under Section 12(a)(2), for numerous misleading statements found in either the Registration Statement or other filings that were incorporated by reference in the Registration Statement.

Section 11(a) of the 1933 Act provides that:

> [i]n case any part of the registration statement… contained an untrue statement of material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security… may… sue.

15 USC § 77k(a). Further, to determine whether "a misstatement or omission is material, a court 'must engage in a fact-specific inquiry' as to whether 'there is a substantial likelihood that a reasonable shareholder would consider it important' in making an investment decision." *In re Coty Inc. Securities Litigation*, No. 14-cv-919, 2016 WL

1271065, at *5 (S.D.N.Y. Mar. 29, 2016) (citation omitted). The inquiry is not whether the specific statements, viewed individually, were true, but whether the statements, viewed together, would mislead a reasonable investor. *Id*.

Under section 12(a)(2) of the '33 Act, any person who

> offers or sells a security… by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading… shall be liable… to the person purchasing the security from him, who may sue…

15 USC § 77l.

First, Plaintiffs allege that Defendants made the following misleading statements about competition and the company's performance: 1) Dentsply Intl's 2014 10-K represented that market conditions were "highly competitive and there is no guarantee that the Company can compete successfully;" and 2) Sirona's 2015 10-K stated that it competed with a variety of companies and its position was strengthened by its distribution networks.

Defendants argue that the statements about competition and the scope and prospects of Dentsply's and Sirona's business are too general and vague to be actionable and also constitute puffery. Defendants additionally assert that such statements were about the current state of competition rather than future competition and therefore were not misleading.

In opposition, Plaintiffs argue that the statements about competition were materially misleading because they misrepresented the state of competition in the

industry and failed to disclose the existence or impact of the Alleged Anticompetitive Scheme.

I find that Plaintiffs' statements concerning competition and the scope and prospects of Dentsply's and Sirona's business are "expressions of puffery and corporate optimism," and accordingly, "do not give rise to securities violations." *Rombach v. Chang*, 355 F.3d 164, 174 (2d Cir. 2004). The cases Plaintiffs' cite, in support of their argument that statements about competition are misleading absent disclosure of an existing anticompetitive scheme, are distinguishable in that those cases involved allegations that the *defendant companies themselves* participated in the anticompetitive schemes. *See, e.g., Speakes v. Taro Pharm. Indus. Ltd.*, 2018 WL 4572987 (S.D.N.Y. Sept. 24, 2018) (where the defendant company was allegedly part of a drug price fixing scheme, and plaintiffs' allegations contained details of that participation, the court found that defendant's statements about competition were misleading without disclosure of its anticompetitive conduct); *In re Mylan N.V. Securities Litigation*, 2018 WL 1595985, at *6 (S.D.N.Y. Mar. 28, 2018) (holding that because defendant company put its sources of income at issue, its statements explaining income were misleading absent disclosure of the fact that it entered into several anticompetitive agreements to inflate drug prices).

Here, in contrast, Plaintiffs allege that the Alleged Anticompetitive Scheme was perpetrated by Defendants' customers, the Distributors; the CAC does not allege that Defendants were participants in the Alleged Anticompetitive Scheme.[7] In these

[7] Indeed, the CAC's single, bare-boned allegation regarding Defendants' conduct vis-à-vis the Alleged Anticompetitive Scheme is that "leading dental manufacturers and

circumstances, Defendants' failure to disclose the Distributors' Alleged Anticompetitive Scheme did not cause their general statements about the state of market conditions to be misleading and Plaintiffs allegations therefore fail to state a claim under the '33 Act.

Second, Plaintiffs allege that Defendants made misleading statements regarding existing and growing demand in the industry because the channel stuffing, which was allegedly known to Defendants' leadership, meant that there wasn't growth over all segments and that growth was actually stifled.

In essence, Plaintiffs assert that Defendants' customers bought excess product and this fact rendered Defendants' statements about existing and growing demand false. Defendants' statements about growth are statements of opinion which are not actionable. *See Medina v. Tremor Video, Inc.*, No. 13-CV-8364, 2015 WL 3540809, at *9 (S.D.N.Y. June 5, 2015). Accordingly, Defendants' statements about growth also do not give rise to a claim under the '33 Act.

Last, Plaintiffs allege that Defendants made misleading statements concerning inventory because the Registration Statement did not disclose facts about the Distributors' inventory stockpiling and the likelihood that such stockpiling would result in Patterson's termination of the Exclusivity Agreement.

Again, the CAC does not demonstrate that the statements regarding inventory were misleading when made. Plaintiffs do not allege that at the time of the Registration Statement, Patterson had terminated its Exclusivity Agreement or notified Defendants of

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industry participants such as Dentsply Intl. were aware of, complicit in, and beneficiaries of this illicit conduct."

its intention to terminate. Where, as here, "an outcome is merely speculative, the duty to disclose does not attach." *In re Express Scripts Holding Co. Sec. Litig.*, 16 Civ. 3338, 2017 WL 3278930 at *11 (S.D.N.Y. Aug. 1, 2017) (holding that the duty to disclose does not arise until customer made a "definitive statement" of its intent to terminate its business relationship with the defendant corporation); *see also River Birch Capital, LLC v. Jack Cooper Holdings Corp.*, 17 CV 9193, 2019 WL 1099943 (S.D.N.Y. Mar. 8, 2019). Therefore, this category of alleged omissions also fails to state a claim.

For the foregoing reasons, Plaintiffs fail to state a claim under Sections 11 and 12(a)(2) of the '33 Act and I dismiss the aforementioned claims.

Items 303 and 503

Item 303 requires registrants to "describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations." Further, "[d]isclosure is required where the trend is both (1) known to management and (2) 'reasonably likely to have material effects on the registrant's financial condition or results of operations.'" *Stadnick v. Vivint Solar, Inc.*, 861 F.3d 31, 39 (2d Cir. 2017) (citation omitted). A company's failure to comply with Item 303 by omitting known trends or uncertainties is actionable under Sections 11 and 12(a)(2) of the '33 Act. *Stratte-McClure v. Morgan Stanley*, 776 F.3d 94, 101 (2d Cir. 2015) (citations omitted).

Item 503(c) addresses disclosure of risk factors and requires issuers to "explain how the risk affects the issuer or the securities." There is "scant" caselaw on Item 503,

but "the inquiry can be boiled down to whether the Offering Documents were accurate and sufficiently candid." *In re BHP Billiton Ltd. Sec. Litig.*, 276 F.Supp.3d 65, 89 (S.D.N.Y. 2017) (internal quotation marks and citation omitted).

Defendants contend that Plaintiffs failed to plead that the Distributors' Alleged Anticompetitive Scheme presented a known, undisclosed trend when the Registration Statement was filed. In opposition, Plaintiffs argue that the Alleged Anticompetitive Scheme, inventory stockpiling and sales channel stuffing presented known trends, risks and uncertainties and were required to be disclosed, pursuant to Items 303 and 503 of Regulation S-K, because exposure of the Alleged Anticompetitive Scheme and/or its discontinuation materially threatened Defendants' operations, and Defendants "faced the prospect of having to reverse revenue received via the scheme, and also faced reputational and other harm – including a reduction in the value of their intangible assets and goodwill – upon the resolution of the scheme." Plaintiffs also argue that even if Defendants' managements were unable to reasonably estimate or quantify how the Alleged Anticompetitive Scheme's revelation might impact the company, disclosure was still required.

Where, as here, plaintiffs "rely[] on Item 303 to establish a § 11 claim [they] must 'plead, with some specificity, facts establishing that defendant had actual knowledge of the purported trend.'" *In re Jumei Int'l Holding Ltd. Sec. Litig.*, 14CV9826, 2017 WL 95176, at *4 (S.D.N.Y. Jan. 10, 2017) (citation omitted); *see also Schaffer v. Horizon Pharma PLC*, 16-CV-1763, 2018 WL 481883 at *14 (S.D.N.Y. Jan. 18, 2018) (holding that Item 303 claims failed because, among other things, plaintiffs did not plead "with

any specificity, facts establishing that [d]efendants possessed any actual knowledge of the purported 'trend' or event"). Plaintiffs' pleading here lacks the requisite specificity.

The CAC states, without supporting facts, that Patterson's inventory problems "were common knowledge in the industry" and that Sirona's management was "aware" based on undescribed reports received. These types of general allegations fail sufficiently to show knowledge.[8]

Similarly, Plaintiffs' claim under Item 503 is insufficient. Plaintiffs base this claim on the same types of disclosures upon which the Item 303 claim is based. Disclosures required by Item 503 "are limited to 'the most significant factors that make the offering speculative or risky'" and Plaintiffs do not adequately plead that Defendants' alleged omissions met this standard. *See In re BHP Billiton Ltd. Sec. Litig.*, 276 F.Supp.3d at 89. Accordingly, Plaintiffs' claims under Item 303 and Item 503 are dismissed.

Section 15 claim against Dentsply Sirona and Dentsply Director Defendants

Section 15 of the '33 Act states that:

> Every person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with

[8] The cases cited by Plaintiffs are distinguishable because, in those cases, sufficient facts demonstrating knowledge were alleged. For example, in *In re CPI Card Group Inc. Sec. Litig.*, the court found that plaintiffs alleged facts that made it "plausible" that defendant knew of a trend (that was not disclosed), and thus sufficiently plead a Section 11 claim. *See In re CPI Card Group Inc. Sec. Litig.*, 16-CV-4531, 2017 WL 4941597 at *4-5 (S.D.N.Y. Oct. 30, 2017). The S.D.N.Y in that case held that the following facts, taken together, established knowledge: 1) defendants made statements on earnings calls; 2) details were provided for other statements made about customer relationships; and 3) claims from a confidential witness also established defendants' knowledge. *Id.* at *4.

> one or more other persons by or through stock ownership, agency or otherwise, controls any person liable under section 11 or 12 of this title, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

15 U.S.C. § 77o.

Defendants argue that Plaintiffs' Section 15 claims must be dismissed because: 1) they improperly allege that each Defendant is both a primary violator and a control person; and 2) the CAC improperly relies solely on the Individual Defendants' positions to allege control and fails to allege that the Individual Defendants "prepared" or "issued" the Registration Statement.

Absent an adequately plead '33 Act Section 11 or Section 12(a)(2) claim, Plaintiffs' Section 15 claim cannot stand. *See Acacia Nat. Life Ins. Co. v. Kay Jewelers, Inc.*, 203 A.D.2d 40, 46 (stating that to establish a claim under Section 15 of the '33 Act, "a plaintiff must allege facts that set forth a primary violation of the securities laws"). Because I am dismissing Plaintiffs' Sections 11 and 12(a)(2) of the '33 Act claims, Plaintiffs' Section 15 claims are also dismissed.[9]

[9] Some of the Individual Defendants also move to dismiss the complaint for lack of personal jurisdiction. Defendants state that all but one of the Individual Defendants who were Dentsply directors are non-residents of New York. Defendants Brandt, Cholmondeley, Coleman, Deese, Hecht, Lunger, Miclot and Miles argue that personal jurisdiction is lacking under the transacting business prong of CPLR 302(a)(1) because the only act attributed to the Individual Defendants, signing the registration statement, occurred outside of New York and thus the CAC must be dismissed as to them.

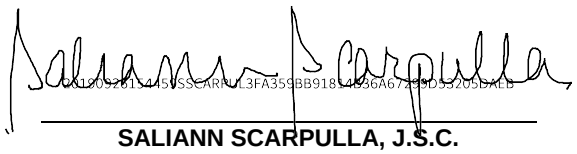
Because I am dismissing the complaint based on Plaintiffs' failure to state a claim, I did not address this other potential ground for dismissal.

In accordance with the foregoing, it is

ORDERED that Defendants' motion to dismiss the complaint is granted and the Plaintiffs' complaint is dismissed in its entirety; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.



9/26/2019
DATE

SALIANN SCARPULLA, J.S.C.

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