

Anwar v. Fairfield Greenwich, Ltd.

United States District Court for the Southern District of New York

August 6, 2012, Decided; August 6, 2012, Filed

09 Civ. 0118 (VM)

Reporter

884 F. Supp. 2d 92; 2012 U.S. Dist. LEXIS 112461; 2012 WL 3245478

PASHA S. ANWAR, et al., Plaintiffs, - against -
FAIRFIELD GREENWICH LIMITED, et al., Defendants.

Subsequent History: Motion granted by, in part, Motion denied by, in part, Claim dismissed by [Anwar v. Fairfield Greenwich Ltd., 891 F. Supp. 2d 548, 2012 U.S. Dist. LEXIS 134121 \(S.D.N.Y., 2012\)](#)

Prior History: [Anwar v. Fairfield Greenwich, Ltd., 728 F. Supp. 2d 372, 2010 U.S. Dist. LEXIS 86716 \(S.D.N.Y., 2010\)](#)

Counsel: **[**1]** For Securities & Investment Company Bahrain, Harel Insurance Company, Ltd., St. Stephen's School, Lead Plaintiffs: David A. Barrett, LEAD ATTORNEY, Boies, Schiller & Flexner, LLP(NYC), New York, NY; Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL.

For AXA Private Management, Lead Plaintiff: David A. Barrett, LEAD ATTORNEY, Howard L. Vickery, II, Boies, Schiller & Flexner, LLP(NYC), New York, NY; Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL.

For Pacific West Health Medical Center, Inc. Employee's Retirement Trust, Lead Plaintiff: David A. Barrett, LEAD ATTORNEY, Boies, Schiller & Flexner, LLP(NYC), New York, NY; Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL; Natalie Marie MacKiel, Wolf Popper LLP, New York, NY.

For Fairfield Risk Services Ltd., Debtor: Mark Geoffrey Cunha, Simpson Thatcher & Bartlett LLP, New York, NY.

For Pasha S. Anwar, on behalf **[**2]** of themselves and all others similarly situated investors in the Greenwich Sentry, L.P. private investment limited partnership, Julia Anwar, on behalf of themselves and all others similarly situated investors in the Greenwich Sentry, L.P. private investment limited partnership, Plaintiffs: Christopher Lovell, LEAD ATTORNEY, Jody Krisiloff, Lovell Stewart Halebian Jacobson LLP, New York, NY; Victor E. Stewart, LEAD ATTORNEY, Lovell, Stewart, Halebian LLP, New York, NY; Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, PRO HAC VICE, Sashi Bach Boruchow, PRO HAC VICE, Stuart Harold Singer, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL; David A. Barrett, Howard L. Vickery, II, Boies, Schiller & Flexner, LLP(NYC), New York, NY; Susan E. Klock, Boies, Schiller & Flexner LLP (FL).

For Inter-Amrerician Trust, Elvira 1950 Trust, Bonaire Limited, Carlos Gauch, Plaintiffs: David A. Barrett, LEAD ATTORNEY, Howard L. Vickery, II, Boies, Schiller & Flexner, LLP(NYC), New York, NY Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, PRO HAC VICE, Sashi Bach Boruchow, PRO HAC VICE, Stuart Harold Singer, **[**3]** PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL; Jody Krisiloff, Lovell Stewart Halebian Jacobson LLP, New York, NY; Susan E. Klock, Boies, Schiller & Flexner LLP (FL).

For Loana Ltd., Banco General, S.A., Harvest Dawn International Inc., El Prado Trading, Omawa Investment Corporation, Carmel Ventures Ltd., Blythel Associated Corp., Marrekesh Resources, Centro Inspection Agency, Kalandar International, Landville Capital Management S.A., Diversified Investments Associates Class A Units, ABR Capital Fixed Option/Income Strategic Fund LP, Plaintiffs: Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL; David

A. Barrett, Howard L. Vickery, II, Boies, Schiller & Flexner, LLP(NYC), New York, NY; Susan E. Klock, Boies, Schiller & Flexner LLP (FL).

For Wall Street Securities, S.A., Plaintiff: Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL; David A. Barrett, Boies, Schiller & Flexner, LLP(NYC), New York, NY; Susan E. Klock, Boies, Schiller & Flexner LLP [**4] (FL).

For Traconcorp, Plaintiff: Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL; David A. Barrett, Howard L. Vickery, II, Boies, Schiller & Flexner, LLP(NYC), New York, NY; Susan E. Klock, Boies, Schiller & Flexner LLP (FL).

For 20/20 Investments, Plaintiff: Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, PRO HAC VICE, Susan E. Klock, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL; David A. Barrett, Howard L. Vickery, II, Boies, Schiller & Flexner, LLP(NYC), New York, NY.

For AXA Private Management, St. Stephen's School, Harel Investment and Financial Services Ltd., Plaintiffs: Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL; David A. Barrett, Howard L. Vickery, II, Boies, Schiller & Flexner, LLP(NYC), New York, NY; James Abram Harrod, III, Wolf Popper LLP, New York, NY; Susan E. Klock, Boies, Schiller & Flexner LLP (FL).

For Miguel Lomeli, Plaintiff: Robert Alan Wallner, LEAD ATTORNEY, Milberg LLP (NYC), New York, NY; Howard L. Vickery, [**5] II, Boies, Schiller & Flexner, LLP(NYC), New York, NY; Susan E. Klock, Boies, Schiller & Flexner LLP (FL).

For Morning Mist Holdings Limited, Plaintiff: Robert Alan Wallner, LEAD ATTORNEY, Milberg LLP (NYC), New York, NY; Susan E. Klock, Boies, Schiller & Flexner LLP (FL).

For Jitendra Bhatia, Plaintiff: Matthew W. Cheney, LEAD ATTORNEY, PRO HAC VICE, Crowell & Moring LLP (DC), Washington, DC; William M. O'Connor, LEAD ATTORNEY, Crowell & Moring LLP (NYC), New York,

NY; Howard L. Vickery, II, Boies, Schiller & Flexner, LLP(NYC), New York, NY; Susan E. Klock, Boies, Schiller & Flexner LLP (FL).

For Gopal Bhatia, Kishanchand Bhatia, Jayshree Bhatia, Jayshree Bhatia, Mandakini Gajaria, Plaintiffs: Matthew W. Cheney, LEAD ATTORNEY, PRO HAC VICE, Crowell & Moring LLP (DC), Washington, DC; Howard L. Vickery, II, Boies, Schiller & Flexner, LLP(NYC), New York, NY; William M. O'Connor, Crowell & Moring LLP (NYC), New York, NY; Susan E. Klock, Boies, Schiller & Flexner LLP (FL).

For Bahia del Rio S.A., Bevington Management, Ltd., Calwell Investment S.A., Diamond Hills Inc., Hedge Strategy Fund LLC, Kivory Corporation, North Club, Inc., PFA Pension A/S, Plaintiffs: Howard L. Vickery, II, Boies, Schiller [**6] & Flexner, LLP(NYC), New York, NY; Susan E. Klock, Boies, Schiller & Flexner LLP (FL).

For Taurus the Fourth Ltd., Zenn Assets Holding, Ltd., Plaintiffs: Susan E. Klock, Boies, Schiller & Flexner LLP (FL).

For Carlos Mattos, Chandrashekar Gupta, Deepa Gupta, Ulrich Blass, Roberto Cioci, Sandra Marchi Cioci, John Paul Dougherty, E. Thomas Dougherty Novella, Muniandy Nalaiah, Lila Neemberry, Peter A. & Rita M. Carfagna Irrevocable Charitable Remainder UniTrust, Moshe Podhorzer, R. Wickneswari V. Ratnam, Enrique Santos, Enrique Santos Calderon, Jacqueline Urzola, Josefina Santos Urzola, Felipe J. Benavides, David Hopkins, Catalina Mejia, Cesar Mejia, R.M. Rademaker, The Alpha and Omega Partnership, LP, Plaintiffs: Howard L. Vickery, II, Boies, Schiller & Flexner, LLP(NYC), New York, NY.

For Pacific West Health Medical Center Inc. Employees Retirement Trust, On behalf of Itself, Consolidated Plaintiff: Carl Lester Stine, LEAD ATTORNEY, Chet Barry Waldman, LEAD ATTORNEY, James Abram Harrod, III, LEAD ATTORNEY, Robert Craig Finkel, LEAD ATTORNEYS, Natalie Marie MacKiel, Wolf Popper LLP, New York, NY; Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, [**7] PRO HAC VICE, Stuart Harold Singer, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL; Brian Dale Graifman, David Alan Gehn, Gusrae, Kaplan, Nusbaum, PLLC, New York, NY; David A. Barrett, Boies, Schiller & Flexner, LLP(NYC), New York, NY; Jody Krisiloff, Lovell Stewart Halebian Jacobson LLP, New York, NY.

For Pacific West Health Medical Center Inc. Employees Retirement Trust, on Behalf of All Others Similarly Situated, Consolidated Plaintiff: Carl Lester Stine, Chet Barry Waldman, James Abram Harrod, III, Robert Craig Finkel, LEAD ATTORNEYS, Wolf Popper LLP, New York, NY; Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, PRO HAC VICE, Stuart Harold Singer, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL; David A. Barrett, Boies, Schiller & Flexner, LLP(NYC), New York, NY.

For Shimon Laor, Consolidated Plaintiff: Catherine A. Torrell, LEAD ATTORNEY, Cohen Milstein Sellers & Toll P.L.L.C., New York, NY; Daniel Stephen Sommers, Steven Jeffrey Toll, LEAD ATTORNEYS, PRO HAC VICE, Cohen Milstein Sellers & Toll PLLC (DC), Washington, DC; Joshua Seth Devore, LEAD ATTORNEY, Cohen Milstein Sellers & Toll PLLC (DC), [**8] Washington, DC; Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL; David A. Barrett, Boies, Schiller & Flexner, LLP(NYC), New York, NY.

For David I. Ferber, Frank E. Pierce, Frank E. Pierce Ira, Consolidated Plaintiffs: Jean Lee, Kent Andrew Bronson, Kristi Stahnke McGregor, Robert Alan Wallner, LEAD ATTORNEYS, Milberg LLP (NYC), New York, NY; Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL; David A. Barrett, Boies, Schiller & Flexner, LLP(NYC), New York, NY.

For The Knight Services Holdings Limited, on behalf of itself and all others similarly situated, Consolidated Plaintiff: Daniel W. Krasner, Gregory Mark Nespole, LEAD ATTORNEYS, Wolf Haldenstein Adler Freeman & Herz LLP, New York, NY; Demet Basar, LEAD ATTORNEY, Wolf Haldenstein Adler Freeman & Herz, New York, NY; Adam S. Deckinger, PRO HAC VICE, Eli Justin Glasser, PRO HAC VICE, Jonathan Edgar Pollard, PRO HAC VICE, Boies, Schiller & Flexner LLP (FL), Fort Lauderdale, FL; David A. Barrett, Boies, Schiller & [**9] Flexner, LLP(NYC), New York, NY; Gustavo Fabian Bruckner, Pomerantz Haudek Block Grossman & Gross LLP, New York, NY.

For Nadav Zohar, on behalf of themselves and all others similarly situated, Consolidated Plaintiff: Hillary Sobel, Jeffrey Charles Zwerling, Robert S. Schachter,

Stephanie Elizabeth Kirwan, LEAD ATTORNEYS, Zwerling, Schachter & Zwerling (Madison Avenue), New York, NY.

For Ronit Zohar, on behalf of themselves and all others similarly situated, Consolidated Plaintiff: Jeffrey Charles Zwerling, Robert S. Schachter, Stephanie Elizabeth Kirwan, LEAD ATTORNEYS, Zwerling, Schachter & Zwerling (Madison Avenue), New York, NY.

For Fairfield Sentry Limited, Consolidated Plaintiff, Consolidated Defendant: David J. Molton, Martin S. Siegel, LEAD ATTORNEYS, Brown Rudnick LLP (NYC), New York, NY.

For Headway Investment Corp., Consolidated Plaintiff: Jorge Alejandro Mestre, LEAD ATTORNEY, Rivero Mestre & Castro, Coral Gables, FL; Paul Edouard Dans, Paul E. Dans, Attorney at Law, New York, NY.

For Jose Antonio Pujals, individually and in their representative capacities for all those similarly situated, Consolidated Plaintiff: David Alan Rothstein, LEAD ATTORNEY, Dimond Kaplan & Rothstein, [**10] Coconut Grove, FL; Jeffrey F. D. Bogert, LEAD ATTORNEY, Bogert & Rembold, P.L., Coral Gables, FL; Jeffrey Brett Kaplan, Lorenz Michel Pruss, LEAD ATTORNEYS, Dimond Kaplan & Rothstein PA, Coconut Grove, FL; Robert E. Linkin, PRO HAC VICE, Dimond Kaplan & Rothstein, PA, Miami, FL.

For Rosa Julieta A De Pujals, individually and in their representative capacities for all those similarly situated, Consolidated Plaintiff: David Alan Rothstein, LEAD ATTORNEY, Dimond Kaplan & Rothstein, Coconut Grove, FL; Jeffrey F. D. Bogert, LEAD ATTORNEY, Bogert & Rembold, P.L., Coral Gables, FL; Jeffrey Brett Kaplan, Lorenz Michel Pruss, LEAD ATTORNEYS, Dimond Kaplan & Rothstein PA, Coconut Grove, FL; Howard L. Vickery, II, Boies, Schiller & Flexner, LLP(NYC), New York, NY; Richard A Speirs, Zwerling, Schachter & Zwerling (Madison Avenue), New York, NY; Robert E. Linkin, PRO HAC VICE, Dimond Kaplan & Rothstein, PA, Miami, FL.

For Maridom Limited, a Foreign Corporation, Consolidated Plaintiff: Richard E. Brodsky, LEAD ATTORNEY, PRO HAC VICE, The Brodsky Law Firm, Miami, FL.

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For Stanchart [**11] Securities International, Inc., Consolidated Plaintiff: Joseph Emanuel Neuhaus, LEAD ATTORNEY, Sullivan and Cromwell, LLP(NYC), New York, NY.

For Maria Akriby Valladolid, Consolidated Plaintiff: Michael Jules Aguirre, Aguirre, Morris & Severson LLP, San Diego, CA.

For Ricardo Rodriguez Caso, Consolidated Plaintiff: Brandon R. Levitt, PRO HAC VICE, Kachroo Legal Services, P.C., New York, NY; David S. Stone, Boies Schiller & Flexner LLP(NJ), Short Hills, NJ; Gaytri D. Kachroo, John H. Ray, III, Kachroo Legal Services, P.C., Cambridge, MA; Mark Jackson Schirmer, Straus & Boies, LLP, Memphis, TN; Timothy D. Battin, PRO HAC VICE, Straus & Boies, LLP, Fairfax, VA.

Wong Yuk Hing de Lou, Consolidated Plaintiff, Pro se.

Moises Lou Martinez, Consolidated Plaintiff, Pro se.

For Sand Overseas Limited Sand Overseas Limited, Consolidated Plaintiff: Laurence Edward Curran, III, Curran & Associates, Coral Gables, FL.

For Blockbend Ltd, Baymall Investments Ltd, Eastfork Assets Ltd, Gerico Investments, Inc., Alicia Gaviria Rivera, Eduardo Child Escobar, Mailand Investment Inc., Consolidated Plaintiffs: Joel Steven Magolnick, LEAD ATTORNEY, PRO HAC VICE, Marko & Magolnick, P.A., Miami, FL.

For Fairfield Investor [**12] Group, Movant: Catherine A. Torell, LEAD ATTORNEY, Cohen Milstein Sellers & Toll P.L.L.C., New York, NY.

For Americas/SwissCo. Trustsm, Movant: Gregory Mark Nespole, LEAD ATTORNEY, Wolf Haldenstein Adler Freeman & Herz LLP, New York, NY.

For Fairfield Greenwich Limited, a Cayman Island company, Defendant: Mark Geoffrey Cunha, LEAD ATTORNEY, Simpson Thatcher & Bartlett LLP, New York, NY; Michael Joseph Chepiga, LEAD ATTORNEY, Simpson Thacher & Bartlett LLP (NY), New York, NY.

For Fairfield Greenwich Group, Defendant: Mark Geoffrey Cunha, LEAD ATTORNEY, Simpson Thatcher & Bartlett LLP, New York, NY; Michael Joseph Chepiga, Simpson Thacher & Bartlett LLP (NY), New York, NY.

For Fairfield Greenwich Advisors L.L.C., Defendant: Mark Geoffrey Cunha, Simpson Thatcher & Bartlett LLP, New York, NY; Michael Joseph Chepiga, Paige Elizabeth Fleming, Paul Jacob Sirkis, Peter Eric Kazanoff, Philip A. Mirrer-Singer, Sara Ann Ricciardi, Simpson Thacher & Bartlett LLP (NY), New York, NY.

For Walter M. Noel, Jr., Defendant: Glenn Kurtz, LEAD ATTORNEY, White & Case LLP (NY), New York, NY; Mark Geoffrey Cunha, Simpson Thatcher & Bartlett LLP, New York, NY.

For Andres Piedrahita, Defendant: Andrew J. Levander, [**13] David Scott Hoffner, LEAD ATTORNEYS, Dechert, LLP (NYC), New York, NY; Jennie Boehm Krasner, Dechert, LLP (NJ), Princeton, NJ; Mark Geoffrey Cunha, Simpson Thatcher & Bartlett LLP, New York, NY.

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For Amit Vigayvergia, Defendant: Helen Virginia Cantwell, Debevoise & Plimpton, LLP (NYC), New York, NY; Mark Geoffrey Cunha, Simpson Thatcher & Bartlett LLP, New York, NY; Mark P. Goodman, Debevoise & Plimpton LLP(919 Third Ave), New York, NY.

For CITCO Fund Services (Europe) B.V., Defendant: Amanda MCGovern, LEAD ATTORNEY, PRO HAC VICE, Dyanne Eyce Feinberg, PRO HAC VICE, Elizabeth A. Izquierdo, Lewis Nathan Brown, Terence Michael Mullen, PRO HAC VICE, Gilbride Heller & Brown P.A, Miami, FL; Eliot Lauer, LEAD ATTORNEY, Curtis, Mallet-Prevost, Colt & Mosle, LLP(NYC), New York, NY; Anisley Tarragona, PRO HAC VICE, Annette Urena, PRO HAC VICE, John T Houchin, PRO HAC VICE, Joshua Daniel Clark, PRO HAC VICE, Brown and Heller P.A., Miami, FL; Catherine [**14] Whitfield, PRO HAC VICE, Brown and Heller, P.A., Miami-Dade, FL.

For Pricewaterhousecoopers L.L.P., Defendant: Andrew M. Genser, LEAD ATTORNEY, Kirkland & Ellis LLP (NYC), New York, NY; Amy E. Crawford, Emily Nicklin, Timothy A. Duffy, Kirkland & Ellis LLP (IL), Chicago, IL; Brenton Rogers, Kirkland & Ellis LLP, Chicago, IL.

For Citco Fund Services (Bermuda) Limited, Citco Group Limited, Defendants: Amanda MCGovern, LEAD ATTORNEY, PRO HAC VICE, Lewis Nathan Brown, Gilbride Heller & Brown P.A, Miami, FL; Anisley Tarragona, PRO HAC VICE, Annette Urena, PRO HAC VICE, John T Houchin, PRO HAC VICE, Joshua Daniel Clark, PRO HAC VICE, Brown and Heller P.A., Miami, FL; Catherine Whitfield, PRO HAC VICE, Brown and Heller, P.A., Miami-Dade, FL.

For Fairfield Heathcliff Capital LLC, Fairfield Risk Services Ltd., Defendants: Mark Geoffrey Cunha, Simpson Thatcher & Bartlett LLP, New York, NY.

For PricewaterhouseCoopers Accountants Netherlands N.V., Defendant: Gabrielle Sean Marshall, Sarah Loomis Cave, William R. Maguire, Hughes Hubbard & Reed LLP (NY), New York, NY.

For Carlos Gadala-Maria, Raul Mas, Robert Friedman, Rodolfo Pages, John G Dutkowski, Luisa Serena, Defendants: Ricardo Alejandro Gonzalez, [**15] PRO HAC VICE, Greenberg Traurig, P.A., Miami, FL.

For Miguel Calvo, Defendant: Stephen Lee Weinstein, Eiseman, Levine, Lehrhaupt & Kakoyiannis, P.C., New York, NY.

For EFG Capital International Corp., Defendant: Joseph Clay Coates, III., Greenberg Traurig, West Palm Beach, FL.

For EFG Capital International Corp., Defendant: Jon Andrew Jacobson, Lauren Whetstone, Greenberg Traurig, West Palm Beach, FL.

For Yanko Dellaw Schiava, Philip Toub, Lourdes Barreneche, Cornelis Boele, Vianney D'hendecourt, Harold Greisman, Jacqueline Harary, Richard Landsberger, David Lipton, Julia Luongo, Mark Mckeefry, Charles Murphy, Santiago Reyes, Lourdes Barenche, Daniel Lipton, Jacqueline Hararay, Corina Noel Piedrahita, Consolidated Defendants: Mark Geoffrey Cunha, Simpson Thatcher & Bartlett LLP, New York, NY.

For David Horn, Consolidated Defendant: Edward M. Spiro, Robert James Anello, LEAD ATTORNEYS, Claudio Godinez RoumainOchoa, Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C., New York, NY; Mark Geoffrey Cunha, Simpson Thatcher & Bartlett LLP, New York, NY.

For Maria Teresa Pulido Mendoza, Consolidated Defendant: Mark Geoffrey Cunha, LEAD ATTORNEY, Simpson Thatcher & [**16] Bartlett LLP, New York, NY.

For Andrew Smith, Consolidated Defendant: Peter Eric Kazanoff, Simpson Thacher & Bartlett LLP (NY), New York, NY; Mark Geoffrey Cunha, Simpson Thatcher & Bartlett LLP, New York, NY.

For CITCO Bank Nederland N.V. Dublin Branch, Consolidated Defendant: Amanda MCGovern, LEAD ATTORNEY, PRO HAC VICE, Dyanne Eyce Feinberg, PRO HAC VICE, Elizabeth A. Izquierdo, Lewis Nathan Brown, Terence Michael Mullen, PRO HAC VICE, Gilbride Heller & Brown P.A, Miami, FL; Eliot Lauer, Michael Joseph Moscato, Timothy Neil McCabe, LEAD ATTORNEYS, Curtis, Mallet-Prevost, Colt & Mosle, LLP(NYC), New York, NY; Anisley Tarragona, PRO HAC VICE, Annette Urena, PRO HAC VICE, John T Houchin, PRO HAC VICE, Joshua Daniel Clark, PRO HAC VICE, Brown and Heller P.A., Miami, FL; Catherine Whitfield, PRO HAC VICE, Brown and Heller, P.A., Miami-Dade, FL.

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For GlobeOp Financial Services LLC., Consolidated Defendant: Jonathan David Cogan, Michael Sangyun Kim, LEAD ATTORNEYS, David Harrison McGill, Kobre & Kim LLP, New York, NY; Bradley H. Samuels, PRO HAC VICE, Kobre & Kim, LLP (DC), Washington, DC.

For Citco Canada Inc., Consolidated Defendant: Amanda MCGovern, Lewis Nathan Brown, Gilbride Heller & Brown P.A, Miami, FL; Anisley Tarragona, PRO HAC VICE, Annette Urena, PRO HAC VICE, John T Houchin, PRO HAC VICE, Joshua Daniel Clark, PRO HAC VICE, Brown and Heller P.A., Miami, FL; Catherine Whitfield, PRO HAC VICE, Brown and Heller, P.A., Miami-Dade, FL.

For Pricewaterhouse Coopers Accountants N.V., Consolidated Defendant: William R. Maguire, Hughes Hubbard & Reed LLP (NY), New York, NY.

For Citgo Global Custody N.V., Consolidated Defendant: Amanda MCGovern, Lewis Nathan Brown, Gilbride Heller & Brown P.A, Miami, FL; Anisley Tarragona, PRO HAC VICE, John T Houchin, PRO HAC **[**18]** VICE, Joshua Daniel Clark, PRO HAC VICE, Brown and Heller P.A., Miami, FL.

For Fairfield Greenwich Advisors, L.L.C., Consolidated Defendant: Mark Geoffrey Cunha, LEAD ATTORNEY, Simpson Thatcher & Bartlett LLP, New York, NY; Michael Joseph Chepiga, Philip A. Mirrer-Singer, Simpson Thacher & Bartlett LLP (NY), New York, NY.

For Robert Blum, Consolidated Defendant: Claudio Godinez RoumainOchoa, Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C., New York, NY; Mark Geoffrey Cunha, Simpson Thatcher & Bartlett LLP, New York, NY.

For Gregory Bowes, Consolidated Defendant: Bruce Allen Baird, LEAD ATTORNEY, Matthew Fitzgerald Dunn, PRO HAC VICE, Matthew Fitzgerald Dunn, Covington & Burling, L.L.P. (DC), Washington, DC.

For Standard Chartered Bank International (Americas) Limited, Standard Chartered PLC, Consolidated Defendants: Ricardo Alejandro Gonzalez, PRO HAC VICE, Greenberg Traurig, P.A., Miami, FL.

For American Express Company, ADR Provider: Louis Smith, Greenberg Traurig LLP (New Jersey), Florham Park, NJ.

For Arjan Mohandas Bhatia, Kishin Mohandas Bhatia, Suresh M. Bhatia, All Plaintiffs: Howard L. Vickery, II, Boies, Schiller & Flexner, LLP(NYC), New York, NY.

For Tradwaves, Ltd., **[**19]** All Plaintiffs: Matthew W. Cheney, LEAD ATTORNEY, PRO HAC VICE, Crowell & Moring LLP (DC), Washington, DC.

Parasram Daryani, All Plaintiffs, Pro se.

Neelam P. Daryani, All Plaintiffs, Pro se.

Vikas P. Daryani, All Plaintiffs, Pro se.

Nikesh P. Daryani, All Plaintiffs, Pro se.

Ashokkumar Damodardas Raipancholia, All Plaintiffs, Pro se.

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Kishu Nathurmal Uttamchandani, All Plaintiffs, Pro se.

Prerna Vinod Uttamchandani, All Plaintiffs, Pro se.

Rajendrakumar Patel, All Plaintiffs, Pro se.

Vandna Patel, All Plaintiffs, Pro se.

Bharat Mohandas, All Plaintiffs, Pro se.

Aarvee Ltd., All Plaintiffs, Pro se.

Judges: Victor Marrero, United States District Judge.

Opinion by: Victor Marrero

Opinion

[*94] DECISION AND ORDER

VICTOR MARRERO, United States District Judge.

By letters dated May 29, 2012 (Docket No. 886) and July 13, 2012 (Docket No. 901), defendants PwC Canada and PwC Netherlands (together, the "PwC Defendants") have requested a pre-motion conference to discuss the effect on the negligence-based claims in this case of two recent Second Circuit Court of Appeals summary orders, [Stephenson v. PricewaterhouseCoopers, LLP, No. 11-1204-cv, 482 Fed. Appx. 618, 2012 U.S. App. LEXIS 10017, 2012 WL 1764191 \(2d Cir. June 13, 2012\)](#) **[**20]** ("Stephenson"), and [Meridian Horizon Fund, LP v. KPMG \(Cayman\) \(In re Tremont Sec. Law\), Nos. 11-3311-cv, 11-3275-cv, 487 Fed. Appx. 636, 2012 U.S. App. LEXIS 14013, 2012 WL 2754933 \(2d Cir. July 10, 2012\)](#) ("Tremont").

The PwC Defendants — who are joined in their request by the Fairfield Defendants,¹ the Citco Defendants,² and defendant GlobeOp Financial Services LLC (collectively, "Defendants") — argue that, in light of the Second Circuit's holdings in Stephenson and Tremont, the Court should dismiss the negligence-based claims with prejudice, or at least allow the Defendants to bring a [*95] renewed motion to dismiss. In letter-briefs dated June 4, 2012 (Docket No. 908) and July 17, 2012, plaintiffs, who are members of a putative class of investors (collectively, "Plaintiffs"), opposed the PwC Defendants' request. The Court hereby deems the PwC Defendants' May 29, 2012 and July 13, 2012 letters a motion for reconsideration. For the reasons discussed below, the PwC Defendants' motion for reconsideration is GRANTED in part and DENIED in part.

I. BACKGROUND

As explained in greater detail in previous opinions in this case,³ this lawsuit is a putative class action on behalf of individuals and entities who invested large sums of money in four feeder-funds (the "Funds"), which in turn invested heavily in the Ponzi scheme operated by Bernard L. Madoff ("Madoff"). The Second Consolidated Amended Complaint ("SCAC") alleges that certain defendants who were outsiders to the Funds — i.e., investment managers, administrators, custodians, and auditors — owed duties of care to the Plaintiffs as investors in the Funds. The Plaintiffs claim that, as a result of the Defendants' negligence, they were 1) induced to invest in the Funds ("Inducement Claims"); and 2) induced to retain their investments in the Funds ("Holder Claims").

A. ANWAR II

The Court has twice addressed the adequacy of Plaintiffs' negligence-based claims, once at the motion to dismiss phase and once upon reconsideration.

In Anwar II, the Court granted in part and denied in part the Defendants' motions to dismiss the Plaintiffs'

negligence-based claims. See Anwar II, 728 F. Supp. 2d at 431-435, 448-50, 454-57. In reaching that conclusion, the Court rejected the Defendants' argument that the Plaintiffs lacked standing to bring their common law claims because, according to Defendants, those claims were derivative. Id. at 401 ("[T]o the extent that Plaintiffs properly allege duties owed by each defendant directly to them . . . they have standing to pursue such claims.")

In order to determine whether the Plaintiffs had adequately pled that the Defendants owed them a duty of care, the Court applied the test articulated in Credit Alliance Corp. v. Arthur Andersen & Co., 65 N.Y.2d 536, 483 N.E.2d 110, 118, 493 N.Y.S.2d 435 (N.Y. 1985):

To show that a defendant not in privity with a plaintiff nevertheless owes a duty to give that plaintiff accurate information, the plaintiff must show, according to Credit Alliance Corp., (1) an awareness by the maker of the statement that it is to be used for a particular purpose; (2) reliance by a known party on the statement in furtherance of that purpose [the "Known Party" requirement]; and (3) some conduct by the maker of the statement linking it to the relying party and evincing its understanding of that reliance [the "Linking Conduct" requirement].'

Anwar II, 728 F. Supp. 2d at 432 (quoting Pension Comm. of Univ. of Montreal Pension Plan v. Banc of Am. Sec., 446 F. Supp. 2d 163, 199 (S.D.N.Y. 2006) (citation omitted). The Court found that the SCAC satisfied all the requirements of Credit Alliance, and therefore the Plaintiffs had adequately pled that the Citco Defendants, GlobeOp Financial Services LLC, and the PwC Defendants owed a duty of care to the Plaintiffs, despite the [*96] fact that they were not in privity with them. Id. at 432-35, 448-49, 454-57.

A year later, the Court denied the PwC Defendants' motion for reconsideration of Anwar II's ruling regarding the negligence-based claims. Anwar v. Fairfield Greenwich Ltd., 800 F. Supp. 2d 571 (2d Cir. 2011).

¹ The Fairfield Defendants are: Fairfield Greenwich Ltd.; Fairfield Greenwich Group; Fairfield Healthcliff Capital, LLC; Fairfield Risk Services [*21] Ltd.; Greenwich Sentry L.P.; Fairfield Sentry Ltd.; Fairfield Greenwich (Bermuda) Ltd.; Fairfield Greenwich Advisors, LLC; Fairfield International Managers, Inc.; and Fairfield Greenwich Corp.

² The Citco Defendants are: Citco Group Ltd.; Citco Fund Services (Europe) B.V.; Citco Fund Services (Bermuda) Ltd.; Citco Bank Nederland N.V. Dublin Branch; and Citco (Canada) Inc.

³ See Anwar v. Fairfield Greenwich Ltd., 728 F. Supp. 2d 354 (S.D.N.Y. 2010); [*22] Anwar v. Fairfield Greenwich Ltd., 728 F. Supp. 2d 372 (S.D.N.Y. 2010) ("Anwar II").

II. DISCUSSION

A. LEGAL STANDARD FOR RECONSIDERATION

Reconsideration of a previous order [**24] by the Court is an "extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." *In re Health Mgmt. Sys. Inc. Sec. Litig.*, 113 F. Supp. 2d 613, 614 (S.D.N.Y. 2000) (internal citations and quotation marks omitted). "The provision for reargument is not designed to allow wasteful repetition of arguments already briefed, considered and decided." *Schonberger v. Serchuk*, 742 F. Supp. 108, 119 (S.D.N.Y. 1990). "The major grounds justifying reconsideration are an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992) (quoting 18 C. Wright, et al., *Federal Practice & Procedure* § 4478 at 790).

To these ends, a request for reconsideration under *Local Rule 6.3* ("*Rule 6.3*") must demonstrate controlling law or factual matters put before the court in its decision on the underlying matter that the movant believes the court overlooked and that might reasonably be expected to alter the conclusion reached by the court. See *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). [**25] *Rule 6.3* is intended to "ensure the finality of decisions and to prevent the practice of a losing party . . . plugging the gaps of a lost motion with additional matters." *Sec. and Exch. Comm'n v. Ashbury Capital Partners, No. 00 Civ. 7898*, 2001 U.S. Dist. LEXIS 7094, 2001 WL 604044, at *1 (S.D.N.Y. May 31, 2001) (quoting *Carolco Pictures, Inc. v. Sirota*, 700 F. Supp. 169, 170 (S.D.N.Y. 1988)). A court must narrowly construe and strictly apply *Rule 6.3* so as to avoid duplicative rulings on previously considered issues and to prevent *Rule 6.3* from being used either to advance different theories not previously argued or as a substitute for appealing a final judgment. See *Montanile v. Nat'l Broad. Co.*, 216 F. Supp. 2d 341, 342 (S.D.N.Y. 2002); *Shamis v. Ambassador Factors Corp.*, 187 F.R.D. 148, 151 (S.D.N.Y. 1999).

Here, the PwC Defendants move for reconsideration on the basis of a change in law as a result of the *Stephenson* and *Tremont* summary orders.

B. STEPHENSON AND TREMONT

In *Stephenson* and *Tremont*, the Second Circuit affirmed judgments dismissing the negligence-based claims of investors in Madoff feeder funds.

Stephenson held that, under Delaware law, the plaintiff lacked standing to make a holder claim because [**26] he had not pled individualized harm. *2012 U.S. App. LEXIS 10017*, 2012 WL 1764191, at *2 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) ("Stephenson cannot 'prevail [on his holding claim] without showing injury to the [partnership as a whole]."). While the Court held that Stephenson did have standing to bring an inducement claim, it found that he had failed to satisfy the "Known Party" prong of the *Credit Alliance* test:

Because Stephenson was nothing more than a 'prospective limited partner[], unknown at the time and who might be induced to join [the partnership], 'he was not a known party to PWC prior to [**97] his investment in Greenwich Sentry and thus cannot maintain a claim for malpractice against PWC under an inducement-to-invest theory.

2012 U.S. App. LEXIS 10017, [WL] at *3 (quoting *White v. Guarente*, 43 N.Y.2d 356, 372 N.E.2d 315, 401 N.Y.S.2d 474 (N.Y. 1977)).

In *Tremont*, the Second Circuit held that the plaintiff-investor had failed to satisfy both the "Known Party" requirement of *Credit Alliance*, as well as the requirement that the plaintiff show "some conduct on the part of the accountants linking them to [the plaintiffs, which evinces the accountants' understanding of [the plaintiffs'] reliance." *Credit Alliance*, 483 N.E.2d at 118; [**27] see *Tremont*, 2012 U.S. App. LEXIS 14013, 2012 WL 2754933, at *4 (same). Specifically, *Tremont* held that the allegation that the defendant-auditors addressed their audit reports to "The Partners" of the fund was not sufficient linking conduct because the fund itself, rather than the auditors, sent the report to the limited partners (including the plaintiffs). *2012 U.S. App. LEXIS 14013*, [WL] at *4 (quoting *CRT Invs., Ltd. v. BDO Seidman, LLP*, 85 A.D.3d 470, 925 N.Y.S.2d 439, 441 (App. Div. 1st Dep't 2011)).

C. THE IMPLICATIONS OF STEPHENSON AND TREMONT FOR ANWAR

Although *Stephenson* and *Tremont* are summary orders, and thus do not have precedential effect, see Second Circuit Local Rule 32.1.1, they are nevertheless persuasive authority to the extent that their factual patterns align with the instant case and their reasoning is compelling.

1. Inducement Claims

As a preliminary matter, in their letter dated June 4, 2012, the Plaintiffs concede that, following Stephenson, "damages are not available from PwC for the class negligent misrepresentation cause of action with respect to new investors making initial investments." (Docket No. 908.) This conclusion is correct because Stephenson held that the "known party" prong of Credit Alliance cannot be satisfied when **[**28]** the claim pertains to inducement of an initial investment. See Stephenson, 2012 U.S. App. LEXIS 10017, 2012 WL 1764191, at *3. Defendants, who were not in privity with Plaintiffs, cannot owe a duty to prospective investors who were unknown to Defendants at the time they made the alleged misrepresentations. Therefore, the Plaintiffs' negligence-based initial investment claims are dismissed without prejudice. Such claims may be reple only if Plaintiffs — either as individuals or as members of a certified class — can show that they were, in fact, known to the Defendants prior to their initial investment in the Funds.

Despite this concession, Plaintiffs are correct that Stephenson and Tremont do not directly address claims regarding inducement to make subsequent investments. The plaintiff in Stephenson made an initial investment of \$60 million in the Greenwich Sentry fund, but there is no indication or discussion of subsequent investments. See 2012 U.S. App. LEXIS 10017, [WL] at *1. According to Defendants, the plaintiffs in Tremont did make subsequent investments; however, the Second Circuit's decision does not discuss this nuance. Thus, the Court cannot conclude that Plaintiffs' claims regarding inducement to make subsequent investments should **[**29]** necessarily fail the "Known Party" requirement of Credit Alliance.

Nor does the Second Circuit's ruling in Tremont regarding the "Linking Conduct" requirement of Credit Alliance compel dismissal of Plaintiffs' Inducement Claims. In Anwar II, the Court specifically cited the SCAC's allegation that the PwC Defendants **[*98]** had addressed audit reports to the Plaintiffs as fulfilling the Linking Conduct requirement of Credit Alliance. See Anwar II, 728 F. Supp. 2d at 455. Tremont found similar conduct insufficient because the audit reports were sent to the Plaintiffs by the funds, and not the auditors. 2012 U.S. App. LEXIS 14013, 2012 WL 2754933, at *4. However, the pleadings in Anwar do not indicate whether the Funds or the PwC Defendants themselves sent the audit reports to the investors. Indeed, the Plaintiffs allege that PwC's "Audit Plan" contained an acknowledgment that the purpose of their engagement

was to deliver information directly to the Funds' investors. It does not appear that Tremont involved similar allegations.

Moreover, in Tremont, the Second Circuit cited CRT Invs. Ltd., 85 A.D.3d 470, 925 N.Y.S.2d 439 ("CRT II"), in reaching its holding on the Linking Conduct requirement. CRT II affirmed the holding and underlying reasoning **[**30]** of CRT Invs. Ltd. v. Merkin, 29 Misc. 3d 1218[A], 918 N.Y.S.2d 397, 2010 NY Slip Op 51868[U] (N.Y. Sup. 2010) ("CRT I"), a New York Supreme Court case that this Court already distinguished from Anwar when it denied the PwC Defendants' first motion for reconsideration. See Anwar, 800 F. Supp. 2d at 573. In CRT I, the New York Supreme Court held that the pleadings failed to satisfy the "Linking Conduct" requirement of Credit Alliance because "the direct contact between the accountant and the plaintiff is minimal or nonexistent[.]" 2010 NY Slip Op 51868[U] at *12. As this Court explained in denying the first Anwar motion for reconsideration,

[i]n the course of rendering [Anwar II], the Court had the New York Supreme Court decision in CRT Investments before it, took it into account, and found it to be sufficiently distinguishable. In particular, among other reasons, in Anwar II, the Court found it compelling that the auditors recognized that their reports would be communicated directly to shareholders, who might thus rely on those financial statements to make investment decisions.

Id. Unlike this case, neither Tremont nor CRT I included allegations that the defendant-auditor agreed to provide audit reports directly to the plaintiffs or that the defendant **[**31]** was aware that providing such information to investors was the primary purpose of its engagement. Thus, the Court is not persuaded that Tremont, which cites and is factually similar to New York case law which the Court already found distinguishable, compels dismissal of the Plaintiffs' negligence-based Inducement Claims at this stage of the proceedings.

However, the Court recognizes that evidence uncovered during discovery might determine whether the Plaintiffs ultimately have proved all the elements of the Credit Alliance test. The Defendants are free to raise Stephenson and Tremont at the motion for summary judgment phase, when their argument may benefit from a fuller record.

2. Holder Claims

The PwC Defendants argue that the Plaintiffs have no standing to bring Holder Claims because Stephenson held that such claims are derivative. However, Stephenson based that portion of its holding on Delaware law, while Anwar II found that New York law is applicable to the claims in this case.⁴ See Anwar II, [**99] 728 F. Supp. 2d at 399-400. Indeed, other courts in this District have recognized that New York law considers shareholders' tort claims based on misrepresentation, rather than mismanagement, [**32] to be direct and not derivative. See Pension Comm., 446 F. Supp. 2d at 192 (applying New York law and declining to dismiss common-law claims based on retention of securities where plaintiff-investors alleged injuries arising out of misrepresentations of fund administrators); In re WorldCom, Inc. Sec. Litig., 382 F. Supp. 2d 549, 559 (S.D.N.Y. 2005) (citation omitted) ("New York recognizes a claim of fraud where investors were induced to retain securities in reliance on a defendant's misrepresentations."). Cf. In re Optimal U.S. Litig., 813 F. Supp. 2d 351, 376-80 (S.D.N.Y. 2011) (distinguishing between mismanagement- and misrepresentation-based shareholder claims). As the Court explained in Anwar II, Plaintiffs' principal claim is not mismanagement, but "nondisclosure of or failure to learn facts which should have been disclosed based on duties that were independently owed to Plaintiffs." 728 F. Supp. 2d at 401 n.9. Thus, the Court's decision in Anwar II, based on New York law, was correct. Since Stephenson is based on Delaware law, rather than New York law, the Court is not persuaded to reconsider its earlier decision.

In fact, in Anwar II, the Court noted that the Plaintiffs would have standing even under Delaware law. 728 F. Supp. 2d at 401 n.9. Stephenson does not change that analysis because its facts are distinguishable. The plaintiff in Stephenson had no standing because his "holding claim involve[d] no 'harm' to an individual partner and s[ought] [**34] no 'recovery' for any individual partner, distinct from other partners." 2012 U.S. App. LEXIS 10017, 2012 WL 1764191, at *2. In

contrast, in Anwar II, the Court explained that the "asymmetrical injury alleged" in the SCAC — the fact that some investors lost money, while others did not — further supported the Court's conclusion that, "[a]t the pleadings stage, Plaintiffs have alleged sufficient information to show that Plaintiffs suffered individual harm distinct from losses experienced by other investors." 728 F. Supp. 2d at 402.

Indeed, the Court explained in Anwar II that "this facet of Plaintiffs' standing argument [i.e., the differential injury argument] is ripe for further factual development and is more properly decided at the class certification or summary judgment stage of this proceeding." Id. (citation omitted). The Court notes that after many months of litigation, the discovery phase of this case is now nearly complete, and the Plaintiffs' motion for class certification is currently sub judice. Given how far litigation has progressed, the issue of standing at this point would be more appropriately and fairly addressed following the Court's decision regarding class certification and with the benefit [**35] of a full record at summary judgment. The Court therefore denies the PwC Defendants' motion for reconsideration with respect to the Plaintiffs' Holder Claims without prejudice [**100] to Defendants' raising the issue again on summary judgment.

III. ORDER

For the reasons stated above, it is hereby

ORDERED that the motion (Docket Nos. 886 and 901) of defendants PwC Canada and PwC Netherlands for reconsideration is hereby GRANTED in part and DENIED in part in accordance with this Decision and Order.

SO ORDERED.

Dated: New York, New York

6 August 2012

⁴ The law regarding whether a claim is direct or derivative is similar [**33] in New York and Delaware, but not identical; Delaware law is slightly more strict, requiring that courts consider both the harm and the remedy. Compare Stephenson, 2012 U.S. App. LEXIS 10017, 2012 WL 1764191, at * 2 ("Under settled Delaware law, to determine whether a claim is direct or derivative courts must consider: '(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders individually)[.]'" (quoting Tooley, 845 A.2d at 1033) with Fraternity Fund Ltd. v. Beacon Hill Asset Mgmt. LLC, 376 F. Supp. 2d 385, 409 (S.D.N.Y. 2005) ("a shareholder may sue individually 'when the wrongdoer has breached a duty owed to the shareholder independent of any duty owing to the corporation wronged'" (quoting Abrams v. Donati, 66 N.Y.2d 951, 489 N.E.2d 751, 498 N.Y.S.2d 782 (N.Y. 1985))).

/s/ Victor Marrero

U.S.D.J.

Victor Marrero