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

NATIONAL BANK TRUST and PJSC BANK OTKRITIE FINANCIAL CORPORATION, Plaintiffs, v. VADIM BELYAEV, a/k/a/ VADIM WOLFSON, Defendant.	Index No. 156903/2020 Justice Joel M. Cohen Motion Seq. No. 1

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

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Defendant Vadim Wolfson ("Mr. Wolfson") respectfully submits this Reply Memorandum of Law in further support of his motion to dismiss the Amended Complaint filed by National Bank Trust ("NBT") and PJSC Bank Otkritie Financial Corporation ("Bank Otkritie") (collectively, "Plaintiffs").

PRELIMINARY STATEMENT

Despite an Amended Complaint, 22 pages of opposition briefing, and 292 pages of extraneous new materials, Plaintiffs come no closer to justifying why a New York court should adjudicate this dispute. Plaintiffs do not (because they cannot) contest the basic truths requiring dismissal: Plaintiffs are Russian entities, controlled by the Russian state, whose forum-shopping is entitled to no deference; the Amended Complaint's events and transactions are all alleged to have occurred outside New York; the witnesses and evidence are located outside New York; the underlying claims are pleaded solely under Russian law; and Plaintiffs have already chosen to litigate duplicative claims against Mr. Wolfson in Russia (the "Russian Proceedings"), where the claims in this case could have and should have been asserted. These undisputed facts require dismissal for *forum non conveniens* and improper claim-splitting.

In their Opposition, Plaintiffs try to turn those doctrines on their head, arguing that the factors in Defendant's motion should all be ignored because of a single allegation—that Mr. Wolfson happened to rent an apartment in New York at the time of filing (incidentally, an apartment he no longer rents). Plaintiffs then try to downplay the obvious and severe burden of litigating, in New York, events that occurred in Russia, under Russian law, and in the Russian language, by pointing to Mr. Wolfson's alleged "substantial resources." But the law does not work that way. Allegations of wealth do not overcome *forum non conveniens* by treating a defendant who has "resources" differently from one who does not. Mr. Wolfson's erstwhile rental apartment is of minimal legal significance because it has ***nothing to do with the merits of this case***.

Considered against the factors that do matter, Mr. Wolfson's alleged connection to New York is insufficient to avoid dismissal for *forum non conveniens*.

Plaintiffs also cannot avoid dismissal for improper claim splitting. The Opposition does not and cannot contest that the Russian Proceedings are brought by the same real party in interest, arise from the same nucleus of operative facts, and turn on the same legal and factual questions about whether Mr. Wolfson can be deemed a "control person" under Russian law. Mr. Wolfson does not seek to "evade liability anywhere." (Opp. 2.) These claims undisputedly could have been asserted in the Russian Proceedings. If that is true, then they should be litigated there, and the current action should be dismissed.

ARGUMENT

I. Dismissal Is Proper for *Forum Non Conveniens*.

A. As Nonresidents, Plaintiffs' Choice of Forum Is Not Entitled to Deference.

Plaintiffs make no attempt to contest that Russia is available as an alternative forum to assert the claims in the Amended Complaint. As established in Defendant's motion, this is the "most important factor" in the analysis and justifies dismissal here. (Mot. 9 n.2.) Instead, Plaintiffs suggest that their decision to bring this case in New York should not "be disturbed." (Opp. 7-8.) But their authority for that deference is a case where plaintiffs sued in their *home* forum. *See J.G. Jewelry Pte. Ltd. v. TJC Jewelry, Inc.*, No. 651469/2018, 2020 WL 3578454, at *1 (N.Y. Sup. Ct. July 1, 2020). Where, as here, "none of the plaintiffs is a New York resident," dismissal remains appropriate, especially where the foreign plaintiffs have already brought parallel claims in their home forum. (Mot. 10) (quoting *BSR Fund v. Jagannath*, No. 650832/2019, 2020 WL 1274236, at *6 (Sup. Ct. Mar. 17, 2020) (Cohen, J.)).[1] Plaintiffs do not distinguish the authorities cited on

[1] Unless otherwise indicated, all internal quotations and citations are omitted; all emphases are added.

this point and instead cite cases with the opposite lineup of facts: where at least one plaintiff was a New York resident or the case otherwise had significant ties to New York.[2] None of that is true here.

Here, Plaintiffs' home forum is Russia. They have already brought parallel claims there, which Mr. Wolfson is actively defending. Plaintiffs are not entitled to "defer[ence]" (Opp. 15) in deciding to file duplicative litigation on the other side of the world to further a global campaign of vexatious litigation. Such blatant forum-shopping deserves no deference.

B. New York Is Not a Convenient Forum Simply Because Mr. Wolfson Resided Here When the Complaint Was Filed.

In a *forum non conveniens* analysis, the "residence in New York of any party does not preclude the court from staying or dismissing the action." *Wyser-Pratte Mgmt. Co. v. Babcock Borsig AG.*, 7 Misc. 3d 1012(A), 6 (Sup. Ct., N.Y. County 2004). Dismissal remains appropriate where the defendant's New York residence has no connection to the case's merits. *See Becker v. Fed. Home Loan Mortg. Corp.*, 981 N.Y.S.2d 379, 379 (1st Dep't 2014) (defendant's New York office was "insufficient to create a factual connection between New York and the dispute"); *Koop v. Guskind*, 116 A.D.3d 672, 674 (2d Dep't 2014) (affirming dismissal where "defendant's residence [was] the sole connection in th[e] case to the State"); *see also Moezinia v. Moezinia*, 124 A.D.2d 571, 572 (Sup. Ct. Nassau County 1986) (dismissing where "[t]he only connection th[e] action ha[d] to New York [was] the defendant's residence in Nassau County"). That is true here. None of the complaint's transactions are alleged to have any connection to New York, Mr. Wolfson is not alleged to have conducted any relevant business from New York, and Mr. Wolfson

[2] *See J.G. Jewelry Pte. Ltd.*, 2020 WL 3578454, at *9 (all but one party conducted business and maintained offices in New York, the other party's business flowed through New York, the parties' joint venture operations took place in New York, and key witnesses and relevant documents were in New York); *Am. BankNote Corp. v. Daniele*, 45 A.D.3d 338, 339-40 (1st Dep't 2007) (relevant documents were in English and located in New York and New Jersey, and defendant met with plaintiffs in New York on a regular basis); *Elmaliach v. Bank of China Ltd.*, 110 A.D.3d 192, 208-09 (1st Dep't 2013) (defendant was litigating a separate but related case in New York federal court).

did not reside in New York during the relevant period. Instead, Mr. Wolfson happened to rent an apartment in New York when Plaintiffs commenced this action. That is insufficient to overcome dismissal. (Mot. 11-12.)[3]

Plaintiffs misapply the law in suggesting that Mr. Wolfson's temporary New York rental is somehow significant. Plaintiffs cite *High Street Capital Partners, LLC v. ICC Holdings LLC*, where the Court refused to dismiss an action for *forum non conveniens* because the defendants "chose to direct their business efforts towards this state." No. 652592/2018, 2019 WL 2106093, at *6 (N.Y. Sup. Ct. May 14, 2019) (Cohen, J.). Critically, however, those "business efforts [directed] towards this state" were the subject of the litigation itself. *Id.* Here, by contrast, Plaintiffs do not allege that Mr. Wolfson directed any business efforts toward New York, let alone that he conducted business in New York relevant to Plaintiffs' allegations. Instead, all of the alleged events occurred in Russia, and nearly all of the witnesses and evidence are in Russia. In those circumstances, Defendant's alleged connection to New York is irrelevant. (Mot. 12-15, 17-18.)

Even if Mr. Wolfson's alleged connection to New York were relevant—which it is not—Plaintiffs fail to demonstrate that any such connection creates the requisite "substantial nexus between New York and this action." *Kuwaiti Eng'g Grp. v. Consortium of Int'l Consultants, LLC*, 50 A.D.3d 599, 600 (1st Dep't 2008). New York is not Mr. Wolfson's permanent residence, and he no longer lives here. February 4, 2021 Affidavit of Vadim Wolfson ("Wolfson Aff.") ¶¶ 3-6. Nor do Plaintiffs cite any legal authority to support their assertions that other facts completely unrelated to the Amended Complaint, such as Wolfson's U.S. Social Security number and "online

[3] Contrary to Plaintiffs' argument (Opp. 10 n.6), Mr. Wolfson objected to a prior New York case, dismissed in 2017, because the case lacked a meaningful connection to New York. (Mot. 17-18.) Here, again, Mr. Wolfson would suffer substantial hardship because this case has no connection to New York.

presence," or Mr. Wolfson's ex-wife and children's presence in the state, have any bearing on this analysis. Again, what matters is whether the alleged connection is relevant *to this action*. None of these asserted ties to New York has anything to do with the merits of the case, and New York courts "should not be under any compulsion to add to their heavy burdens by accepting jurisdiction of a cause of action having no substantial nexus with New York." *Silver v. Great Am. Ins. Co.*, 29 N.Y.2d 356, 361 (1972).

C. The Location of Witnesses and Evidence Favors Dismissal.

Every other factor weighs heavily in favor of dismissal. Plaintiffs do not dispute that "key witnesses are located overseas" and "beyond the subpoena power of this Court." *Norex Petroleum Ltd. v. Blavatnik*, 22 N.Y.S.3d 138, at *31 (N.Y. Sup. Ct. Aug. 25, 2015), *aff'd*, 59 N.Y.S.3d 11 (1st Dep't 2017); (Mot. 12, 15-16). Plaintiffs profess to make certain Russian witnesses available in this Court. (Opp. 10-11.) But that can be no guarantee when witnesses are beyond the subpoena power of the Court, and means nothing for third-party witnesses, especially Russian government officials (*see* Wolfson Aff. ¶¶ 8-9), from whom securing evidence and testimony will remain a "great hardship." *Norex*, 22 N.Y.S.3d at *31; *see also Estate of Keiner v. UBS AG*, 175 A.D.3d 403, 405 (1st Dep't 2019) (dismissing case where defendant "UBS would be powerless to compel [the] attendance of [Swiss and German witnesses] in New York").[4] In any event, Plaintiffs cannot unilaterally identify the universe of relevant witnesses and proclaim them readily available to a New York court. Mr. Wolfson is entitled to mount a defense using his own evidence and witnesses, nearly all of which are located in Russia, including the closely-guarded "Participation Plan" that exposes the CBR's true motives in nationalizing Bank Otkritie. Wolfson Aff. ¶¶ 7-16.

[4] *Pac. All. Asia Opportunity Fund L.P. v. Kowk Ho Wan*, 160 A.D.3d 452, 453 (1st Dep't 2018) is distinguishable because the defendant lived in New York, was seeking asylum in New York (and could not return to the situs of the transaction), had brought suit in New York, and had invited others to sue him in New York.

Plaintiffs claim that, in Russia, Mr. Wolfson would be equally unable to compel witness testimony. (Opp. 12.) That may or may not be true, but it has nothing to do with the *convenience* of litigating in New York. Mr. Wolfson is entitled to mount a full and fair defense using whatever procedures are available. If the location of witnesses and evidence prevent Mr. Wolfson from even accessing those procedures, then New York is not a proper forum.[5]

Plaintiffs contend that New York is a convenient forum because Mr. Wolfson, whom they allege to be a "principal witness," is subject to personal jurisdiction here. (Opp. 10.) But personal jurisdiction does not equate to proper venue; even where personal jurisdiction may exist, if "*forum non conveniens* considerations clearly militate in favor of dismissal, a court may dismiss on the latter ground." *BSR Fund*, 2020 WL 1274236, at *3.

Desperate, Plaintiffs contend that all of this should be ignored because Mr. Wolfson has "resources," attempting to cloud the issues with inflammatory assertions about how Mr. Wolfson "is estimated by Forbes to be worth hundreds of millions of dollars" and "recently sold a house in Aspen for $12.5 million." (Opp. 13.) But Plaintiffs cannot cite a single authority suggesting that a defendant's alleged personal "resources" have any relevance to *forum non conveniens*. If they did, then a defendant with "resources" would be subject to suit by any plaintiff in any court in the world. That is not the law.[6]

[5] Mr. Wolfson's counsel's statement of confidence to the press about the merits of this case (Opp. 13-14) has nothing to do with whether litigating in New York would be appropriate.

[6] Plaintiffs' cases on this point did not uphold forum based on a defendant's "resources," but instead based on the defendant's significant ties to New York or the United States, none of which are present here. *See Mionis v. Bank Julius Baer & Co.*, 9 A.D.3d 280, 282 (1st Dep't 2004) (defendant bank maintained a New York branch, individual defendants were New York residents, and medical witnesses and records were in New York); *Intertec Contracting A/S v. Turner Steiner Int'l, S.A.*, 6 A.D.3d 1, 5 (1st Dep't 2004) (because parties had engaged in "substantial pretrial discovery . . . most of the relevant and necessary records and documents . . . ha[d] already been exchanged and [were] present in New York"); *Bacon v. Nygard*, 160 A.D.3d 565, 566 (1st Dep't 2018) (New York an adequate forum because plaintiff was a New York resident, defendant publicly identified New York as its "World Headquarters," and defendant effectively conceded that New York law applied to the case); *K.T. v. Dash*, 37 A.D.3d 107, 110 (1st Dep't 2006) (involving "a personal interaction between two New York residents who were briefly situated in a foreign locale"); *Eclaire Advisor Ltd. v. Daewoo Eng'g & Constr. Co.*, 375 F. Supp. 2d 257, 265

D. The Need to Litigate Russian Evidence Under Russian Law Favors Dismissal.

Plaintiffs do not contest that the Amended Complaint's claims arise entirely under Russian law and that substantially all of the critical documentary and testimonial evidence will require translation. Nor do Plaintiffs attempt to distinguish the long line of cases holding that applicability of foreign law is "an important consideration . . . weigh[ing] in favor of dismissal." *Keiner*, 175 A.D.3d at 405; Mot. 16-18.

Plaintiffs argue that the need for translation, on its own, may be insufficient to justify dismissal (Opp. 14), but that is not the only factor warranting dismissal here.[7] *See Koop*, 116 A.D.3d at 673 (explaining that "no one factor is dispositive"). Regardless, Plaintiffs ignore that these translation requirements are often decisive, particularly where, as here, most of the important documentary evidence "require[s extensive] translation in order to be useful to an American court," *Base Metal Trading SA v. Russian Aluminum*, 253 F. Supp. 2d 681, 711-12 (S.D.N.Y. 2003), and "many witnesses may [be required to] testify through an interpreter," *LaSala v. TSB Bank, PLC*, 514 F. Supp. 2d 447, 461 (S.D.N.Y. 2007).[8] Here, as in *Base Metal Trading SA*, "the substantial degree to which . . . Russia and the Russian language outweigh the United States and English in

(S.D.N.Y. 2005) (U.S. had a strong interest in suit involving "a U.S. trustee acting on behalf of a U.S. creditor trust created by a U.S. court seeking to recover unpaid U.S. loans").

[7] Plaintiffs' cited cases are distinguishable because they do not turn on the court's application of foreign law or the translation of relevant evidence, but rather, as is appropriate, on the balance of **all** the *forum non conveniens* factors. *See Aon Risk Servs. v. Cusack*, 34 Misc. 3d 1234(A), (Sup. Ct., N.Y. County 2012) (dismissal improper because plaintiff is a New York resident, defendants regularly transacted business in New York, underlying torts occurred in New York, and defendant failed to demonstrate availability of an adequate alternative forum); *Yoshida Printing Co. v. Aiba*, 213 A.D.2d 275 (1st Dep't 1995) (New York resident defendant failed to identify specific material witnesses and evidence unavailable in New York). *See also Mionis*, 9 A.D.3d at 282, *supra* n.6; *Pac. All. Asia Opportunity Fund L.P.*, 160 A.D.3d at 453, *supra* n.4.

[8] Plaintiffs' contention that Mr. Wolfson is "sufficiently proficient in English" such that he would not need assistance from an interpreter (Opp. 15), which is contested, does not negate the fact that substantially all of the other relevant witnesses would require assistance from an interpreter, which this Court has noted would not only "add substantial time" to the litigation, but also create a "heavy financial burden" that "the taxpayers of this State should not be compelled to assume." *Filho v. Borges*, No. 651935/2018, 2019 WL 1877212, at *6 (Sup. Ct. Apr. 26, 2019) (Cohen, J.)

the location and format of many . . . documents demonstrates that the high burden of putting such evidence to use in this Court" supports dismissal. 253 F. Supp. 2d at 712; *see also* RIGroup LLC v. Trefonisco Mgmt. Ltd., 949 F. Supp. 2d 546, 556 (S.D.N.Y. 2013), *aff'd*, 559 F. App'x 58 (2d Cir. 2014) ("[M]ost, if not all, of the relevant documents are in Russian, which supports a finding that Russia is more convenient than this forum for litigation of Plaintiffs' claims.").

E. All of the Relevant Events and Transactions Occurred in Russia.

In a *forum non conveniens* analysis, "[t]he fact that the 'transaction[s] out of which the cause of action arose occurred primarily in a foreign jurisdiction' weighs strongly in favor of dismissal." *Foster Wheeler Iberia S.A. v. Mapfre Empresas S.A.S.*, 15 Misc. 3d 1112(A) (Sup. Ct., N.Y. County 2007) (quoting *Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 479 (1984)). Here, Plaintiffs concede that "many of the substantive events may have taken place in Russia." (Opp. 16.) In fact, none of the alleged events or transactions has any discernable connection to New York. All of them are alleged to have involved foreign parties, foreign firms, and communications among foreign individuals concerning foreign banking systems. (Mot. 13-14.)

Instead of contesting these facts, Plaintiffs argue that Mr. Wolfson gives this factor too much weight. (Opp. 15-16.) But, as the cases establish, this factor often "weighs strongly in favor of dismissal." (Mot. 12-14 (citing cases).) Plaintiffs try to distinguish *BSR Fund* and *Filho* as turning on the residence of the "alleged mastermind" of the claimed scheme. (Opp. 16.) In fact, it was the situs of the transaction—when considered with the other relevant factors—that weighed in favor of dismissal in those cases. *See BSR Fund*, 2020 WL 1274236, at *3-5 (because parties were foreign residents, related suits were pending abroad, and material witnesses and relevant documents were located outside United States, "dismissal on *forum non conveniens* grounds [wa]s still appropriate, . . . [e]ven where some portion of the dispute—or the evidence—[could] be found in New York"); *Filho*, 2019 WL 1877212, at *3-6 (dismissal appropriate because, in addition to

fact that parties resided abroad, many key witnesses and documents were abroad, relevant evidence required translation, and "the critical events at issue here are not alleged to have taken place in New York").

Ultimately, this case is on all fours with both of those cases: Plaintiffs are Russian, the witnesses and evidence are in Russia,[9] the evidence has to be translated from Russian, and the underlying conduct occurred in Russia. As such, the fact that Mr. Wolfson maintained a rental property here when Plaintiffs filed their complaint makes the "New York connection . . . at best, only marginal and that . . . contact [on balance] does not make New York a convenient forum." *P.T. Delami Garment Indus. v. Cassa di Risparmio di Torino*, 164 Misc. 2d 38, 40-41 (Sup. Ct. N.Y. County 1994) (dismissing on *forum non conveniens* grounds).

F. Plaintiffs Do Not Contest That Russia Is An Available Alternative Forum.

Rather than respond to Mr. Wolfson's argument that Russia is an alternative forum for this dispute (Mot. 9-10), Plaintiffs resort to unsupported speculation about Mr. Wolfson's motivations for seeking to have this case moved to Russia. (Opp. 17-18.) This speculation—which is not based on any evidence—inaccurately describes proceedings in other jurisdictions, is untethered from the relevant legal framework, and should be rejected.

First, it is simply false that Mr. Wolfson "moved to dismiss [the English Proceedings] on the grounds that he lives in the United States" (Opp. 17), or that "in support of his claim that the English court should dismiss the case against him, [Mr. Wolfson] represented to that court that he currently lives in the United States" (Opp. 7). Mr. Wolfson did not contest jurisdiction on the basis of his U.S. residence; rather, as in the present case, his objection is based, *inter alia*, on all the

[9] *Grizzle v. Hertz Corp.*, 305 A.D.2d 311 (1st Dep't 2003) is inapposite because the plaintiff there was a New York resident, the majority of evidence was in New York, and there were at most three relevant witnesses in Jamaica. Here, Plaintiffs are Russian, the evidence is in Russia, and Plaintiffs alone have identified at least *nine* witnesses that would have to be brought from Russia to testify. (Opp. 11.)

factors that make Russia a more appropriate forum, and one where related proceedings had already been brought. (Cogan Aff. Ex. D ¶¶ 32-42, 66-67.)

Second, Plaintiffs' argument that they should get to litigate in New York because of a concern that Mr. Wolfson will at some point challenge the enforceability of any Russian judgment (Opp. 18) has no basis in law or common sense. According to Plaintiffs' reasoning, a foreign plaintiff should be allowed to litigate in any forum they wish if they have concerns about the enforceability of a judgment issued by their home forum. Such reasoning is particularly cynical coming from Plaintiffs, two entities controlled by the *Russian state*, and would turn upside down the entire system for the recognition and enforcement of foreign judgments, which appropriately considers different factors than the *forum non conveniens* analysis.

II. Dismissal Is Proper Under the Claim-Splitting Doctrine.

Plaintiffs seek to avoid dismissal for their obvious claim-splitting by arguing (i) that one of the Plaintiffs here, NBT, is not a party to the Russian Proceedings and (ii) that the Russian Proceedings involve "completely different" claims and damages. (Opp. 19.) Neither argument has any merit.

First, NBT is clearly in privity with the CBR, the plaintiff in the Russian Proceedings and the real party in interest in all of these cases. A party may not bring a cause of action arising "out of the same transaction or series of transactions as a cause of action that either was raised or could have been raised in the prior proceeding" if that party was in privity with any party in the prior proceeding. *Douglas Elliman, LLC v. Bergere*, 98 A.D.3d 642, 643 (2d Dep't 2012); *Waldman v. Vill. of Kiryas Joel*, 207 F.3d 105, 110 (2d. Cir. 2000) ("[A] plaintiff cannot avoid the effects of res judicata by 'splitting' his claim into various suits.").

Under New York law, privity "is established when the connection between the parties is such that the interests of the nonparty can be said to have been represented in the prior proceeding."

Karali v. Araujo, 48 Misc. 3d 1043, 1047 (N.Y. Sup. 2015). That is clearly the case here. As alleged in the Amended Complaint, NBT "operates" under the direction of the CBR, which is its 98% shareholder. (Opp. 3.) NBT has been specifically "charged by the [CBR]" to pursue recovery of Bank Otkritie's assets and Plaintiffs claim that "NBT has been empowered" by the CBR to "investigate the misconduct within Otkritie Holding and its subsidiaries." (Am. Compl. ¶ 9.) Just as it brought claims in Russia on behalf of Bank Otkritie, the CBR could have and should have brought its NBT claims against Mr. Wolfson in the Russian Proceedings.[10] (*See* November 6, 2020 Affirmation of Dr. Ilia Rachkov ("Rachkov Aff.") ¶¶ 12, 43.)

Second, Plaintiffs cannot avoid dismissal simply because the claims in Russia are not exactly "duplicative." (Opp. 18.) What matters is "how the facts are related in time, space, 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." *Douglas Elliman LLC*, 949 N.Y.S.2d at 767. Plaintiffs' attempt to separate claims in the Russian Proceedings for the expenses the CBR incurred "in bailing out [Bank Otkritie]" and the claims here for the losses allegedly suffered by "a distressed financial institution that is rescued from insolvency by the Central Bank of Russia" is a distinction without a difference. (Opp. 20.) Both proceedings arise from the same nucleus of facts—the alleged liquidity crisis at Bank Otkritie that the CBR used as an opportunity to nationalize the bank—and both turn on whether Mr. Wolfson is a "control person" under Russian law. (Mot. 9; *see also* Rachkov Aff. ¶ 43 ("Plaintiffs NBT and Bank Otkritie could have asserted each of their claims from the [Amended] Complaint in the New York Proceedings

[10] In New York, privity is evaluated under "a flexible analysis of the facts and circumstances of the actual relationship between the party and nonparty in the prior litigation." *Rossiello v. Divine Media Grp. LLC*, 977 N.Y.S.2d 670 (N.Y. Sup. 2013); *see also Lederman v. New York City Dep't of Parks & Recreation*, 110 N.Y.S.3d 792 (N.Y. Sup. Ct. 2018) ("A privity analysis for res judicata purposes is broader than a traditional privity analysis.").

in Russia.").) Plaintiffs' attempts to distract the court from these basic facts by emphasizing technical differences between the claims in the two actions should be rejected under a straightforward application of New York's claim-splitting doctrine.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests dismissal of the Amended Complaint with prejudice.

Dated: February 5, 2021
New York, NY

Respectfully Submitted,

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ATTORNEY CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17

I, Duane L. Loft, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this memorandum of law complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)) because it contains 4,199 words, excluding the parts of the memorandum exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this memorandum.

Dated: February 5, 2021
New York, New York

/s/ *Duane L. Loft*
Duane L. Loft