

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE PLATINUM AND PALLADIUM
ANTITRUST LITIGATION

)
)
) Lead Case No. 14-CV-9391
)
) Hon. Gregory H. Woods
)
) ORAL ARGUMENT REQUESTED
)
)

**DEFENDANT THE LONDON PLATINUM AND PALLADIUM FIXING COMPANY’S
MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS PURSUANT TO
FED. R. CIV. P. 12(b)(2)**

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INTRODUCTION

As set forth in Defendants’ Joint Motion to Dismiss, the First Consolidated Amended Class Action Complaint (“FAC”) suffers from a variety of legal flaws that require dismissal of Plaintiffs’ claims.¹ The FAC should also be dismissed because it fails to allege facts establishing a *prima facie* basis for asserting personal jurisdiction over Defendant The London Platinum and Palladium Fixing Company Ltd. (“LPPFC”).

Plaintiffs have not, and indeed cannot, plead that LPPFC is subject to either general or specific personal jurisdiction in New York in light of the Supreme Court’s most recent opinions on this subject. In *Daimler AG v. Bauman*, the Supreme Court clarified that, absent “an exceptional case,” corporations are only “at home” and subject to general jurisdiction in the state where they are incorporated or have their principal place of business. 134 S. Ct. 746, 761-762, 672 n.19 (2014). Under the *Daimler* standard, LPPFC is indisputably at home in the U.K. and is therefore not subject to the general jurisdiction of New York courts.

Nor can Plaintiffs show that LPPFC is subject to specific jurisdiction under the analysis set forth in *Walden v. Fiore*, 134 S. Ct. 1115 (2014). Specific jurisdiction may be asserted over a nonresident defendant whose conduct in the forum gave rise to a plaintiff’s claim; however, *Walden* makes clear that a defendant’s knowledge of the plaintiff’s residence, and thereby knowledge of the location of the alleged harm, is insufficient to assert jurisdiction over a nonresident defendant. *Id.* at 1125. As the Court observed, “[t]he proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant’s conduct connects him to the forum in a meaningful way.” *Id.* Here, LPPFC is singularly unconnected to

1. LPPFC specifically appears for the purpose of challenging this Court’s jurisdiction. LPPFC also joins the Motion to Dismiss the First Consolidated Amended Class Action Complaint that was filed on June 22, 2015 by Defendants BASF Metals Limited, Goldman Sachs International, HSBC Bank USA, N.A., and Standard Bank Plc. [ECF No. 79], but in doing so does not waive any arguments as to jurisdiction.

New York. LPPFC is incorporated in the U.K. Its principal place of business is in London, England. LPPFC's administration of the London Platinum and Palladium Market Fixing (the "Fixing") took place entirely in London. Indeed, rather than showing how LPPFC's relevant conduct was "expressly aimed at" New York, Plaintiffs allege that the Fixing is "widely published" and used as a "benchmark[] for platinum and palladium globally."

Failing to meet either standard for asserting jurisdiction over LPPFC directly, Plaintiffs nonetheless imply that LPPFC may still be subject to the jurisdiction of this Court as the alter ego of four of the other defendants in this case. Plaintiffs' alter ego theory fails under applicable English law for two reasons: first, Plaintiffs do not allege that LPPFC was established to assist the Defendants in evading liabilities they had incurred; and, second, Plaintiffs allege that they are able to recover directly from the alleged wrongdoers. Moreover, even if federal common law were applicable here, not only do Plaintiffs' conclusory allegations fail to establish the requisite factual basis for veil piercing, Plaintiffs do not articulate any basis in equity for asking this Court to take the extraordinary step of reverse piercing the corporate veil so as to join the alleged "shell" company to a lawsuit that is already pending against each of its alleged principals.

For these reasons, the FAC should be dismissed against LPPFC.

FACTUAL BACKGROUND

LPPFC is a private company organized under English law with its principal place of business in London, England. FAC ¶ 37. At all times since it was established in 2004, LPPFC has had four members: Defendants BASF Metals, Goldman Sachs (successor to J. Aron & Company), HSBC, and Standard Bank (hereinafter "Member Defendants"). *Id.* at ¶ 37-38. LPPFC's sole location is its principal place of business in London, England. *Id.* at ¶ 37. According to the FAC, "LPPFC's sole function [was] 'to take on and continue the promotion,

administration, and conduct of the London Platinum and Palladium Market Fixing.” *Id.* at ¶ 39. As its name suggests, the Fixing was an activity conducted in London, England. *Id.* at ¶¶ 2, 9.

ARGUMENT

Plaintiffs assert that this Court may exercise personal jurisdiction over LPPFC because it either (i) “transacted business throughout the United States,” (ii) “had substantial contacts with the United States,” (iii) “committed overt acts in furtherance of [the alleged conspiracy] in the United States,” or otherwise (iv) “had the intended effect of, causing injury to persons residing in, located in, or doing business throughout the United States, including in this District...” FAC ¶ 22. Contrary to Plaintiffs’ bald assertions, the FAC is utterly devoid of factual allegations to support such a conclusion. The FAC falls well short of making a *prima facie* showing that personal jurisdiction may be asserted over LPPFC, a company Plaintiffs cannot allege has ever been present in the United States or has ever conducted business in the United States. *See In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 673 (2d Cir. 2013) (plaintiffs’ *prima facie* showing “‘must include an averment of facts that . . . would suffice to establish jurisdiction over the defendant’”) (citations omitted); *Jazini v. Nissan Motor Co., Ltd.*, 148 F.3d 181, 184 (2d Cir. 1998) (noting that “conclusory statements” that amount to a “restatement, with slight changes, of the legal standard” do not satisfy the requirements of a *prima facie* showing).

I. PLAINTIFFS HAVE NOT ESTABLISHED JURISDICTION OVER LPPFC

The Due Process Clause of the Constitution permits personal jurisdiction to be asserted over a foreign corporation only when that corporation has “sufficient ‘minimum contacts’ with the forum ‘such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” *Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122, 134 (2d Cir. 2014)

(quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).² Depending on the extent of these contacts, personal jurisdiction may be general (all-purpose) or specific (conduct-linked). *In re Terrorist Attacks on September 11, 2001*, 714 F.3d at 673-74. Plaintiffs have failed to plead a *prima facie* case showing that personal jurisdiction exists in New York (or anywhere else in the United States) over LPPFC under either theory.

A. LPPFC Is Not Subject to the General Personal Jurisdiction of This Court

General jurisdiction may be asserted over LPPFC only if its “affiliations with [New York] are so constant and pervasive ‘as to render [LPPFC] *essentially at home* in [New York].’” *Daimler A.G. v. Bauman*, 134 S. Ct. 746, 751 (2014) (emphasis added) (quoting *Goodyear Dunlop Tires Operations S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011)). The FAC, however, is utterly devoid of any allegations that LPPFC has *any* contacts with New York (or with any other U.S. state), let alone the sort of constant and pervasive contacts that would suggest that LPPFC is “at home” here:

- Plaintiffs concede that LPPFC is incorporated in the U.K. FAC ¶ 37.
- Plaintiffs further concede that LPPFC’s principal place of business is in London, England. *Id.* at ¶¶ 2, 9, 37-39.

Accordingly, there is no basis to find that LPPFC is subject to the general jurisdiction of New York courts.

B. LPPFC Is Not Subject to Specific Personal Jurisdiction In This Case.

Plaintiffs fare no better under a theory of specific jurisdiction. The specific jurisdiction inquiry “focuses on the relationship among the defendant, the forum, and the litigation.”

2. While the exercise of personal jurisdiction over a foreign defendant must also be authorized by statute, an analysis of any such statute that Plaintiffs might rely on is unnecessary where, as here, jurisdiction would not comport with due process requirements. See *Sonera Holding B.V. v. Cukurova Holdings A.S.*, 750 F.3d 221, 225 (2d Cir. 2014).

Walden, 134 S. Ct. at 1121. Specific jurisdiction may therefore be asserted over LPPFC here only if Plaintiffs' claims arise out of an "activity or an occurrence that [took] place in [New York] and is therefore subject to [New York's] regulation." *In re Roman Catholic Diocese of Albany, N.Y., Inc.*, 745 F.3d 30, 38 (2d Cir. 2014) (quoting *Goodyear*, 131 S. Ct. at 2851). In sum, the FAC offers no explanation of how specific jurisdiction may be asserted over LPPFC, a company that has never been present in New York, has never conducted business in New York, and has no contacts with New York (or anywhere else in the United States) whatsoever.

In contrast to the summary assertion of jurisdiction contained in Plaintiffs' pleadings, to assert specific jurisdiction over LPPFC here, Plaintiffs must allege facts showing that (i) LPPFC's "suit-related conduct . . . create[d] a substantial connection" with New York, (ii) "the relationship" between LPPFC and New York "[arose] out of contacts" that LPPFC itself created with New York, and (iii) these contacts were with New York itself and not merely with persons who reside in New York. *See Walden*, 134 S. Ct. at 1121-22 (citations omitted). Plaintiffs' pleadings, however, are inapposite to a finding of specific jurisdiction by this standard: Plaintiffs concede that LPPFC's "suit-related conduct" took place entirely in London, England. *Compare* FAC at ¶¶ 2, 9 with *Absolute Master Value Fund, Ltd. v. Ficeto*, No. 09 Civ. 8862 (GBD), 2013 WL 1286170, at *12-13 (S.D.N.Y. Mar. 28, 2013) (specific jurisdiction may be asserted over a defendant only where plaintiffs' injuries were proximately caused by the defendant's contacts with the forum). Plaintiffs have not alleged a single instance of LPPFC transacting business or undertaking any conduct whatsoever in New York or anywhere else in the United States.

In exceptional cases, specific jurisdiction may be asserted over defendants who "expressly aimed" their suit-related conduct at the forum, despite having no contacts with the

forum itself. *Tarsavage v. Citic Trust Co.*, 3 F. Supp. 3d 137, 145 (S.D.N.Y. 2014). This is not such an exceptional case. Indeed, instead of alleging how LPPFC's administration of the Fixing was "expressly aimed" at New York, Plaintiffs simply conclude that LPPFC's conduct must have been "directed at, and had the intended effect of, causing injury to persons residing in, located in, or doing business throughout the United States, including in this District, and Plaintiffs' claims arise out of [LPPFC's] conduct." FAC ¶ 22; *see also id.* at ¶ 39. The Second Circuit, however, has rejected precisely this type of "legal conclusion couched as a factual allegation" as a basis for establishing jurisdiction. *In re Terrorist Attacks*, 714 F.3d at 673.

Plaintiffs cannot cure this fatal defect to their pleadings. As the Supreme Court and the Second Circuit have held, Plaintiffs must do more to establish specific jurisdiction than allege that LPPFC's conduct injured Plaintiffs in New York, or that it was foreseeable that LPPFC's conduct would have had an effect in New York. *Walden*, 134 S. Ct. at 1125 ("The proper question is not whether the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way."); *In re Terrorist Attacks*, 714 F.3d at 674 (a showing that "harm in the forum is foreseeable . . . is insufficient for the purpose of establishing specific personal jurisdiction over a defendant"). Plaintiffs, however, have not (and cannot) do anything more.

Plaintiffs are not alone in struggling to explain why U.S. courts should exercise specific jurisdiction over foreign defendants concerning allegations that they manipulated a foreign benchmark. *See 7 W. 57th St. Realty Co., LLC v. Citigroup, Inc.*, No. 13 CIV. 981 PGG, 2015 WL 1514539, at *10 (S.D.N.Y. Mar. 31, 2015) (declining to assert specific jurisdiction over foreign banks that had allegedly conspired to manipulate the London Interbank Offered Rate, or LIBOR); *Laydon v. Mizuho Bank*, No. 12 CIV. 3419 GBD, 2015 WL 1515358, at *2, *6

(S.D.N.Y. Mar. 31, 2015) (declining to assert specific jurisdiction over foreign banks despite allegations that defendants “took purposeful action to facilitate the manipulation of the price of Euroyen-based derivatives traded in the United States”). In these cases, these courts found that the core conduct alleged, namely the manipulation of a London-based benchmark by London-based employees of the London offices of foreign banks, was not “expressly aimed at” New York. *See Citigroup*, 2015 WL 1514539, at *10-11; *Laydon*, 2015 WL 1515358, at *2-3.³

As was the case in both *Citigroup* and *Laydon*, Plaintiffs here fail to allege that LPPFC’s conduct was “expressly aimed at” New York. Plaintiffs admit that the Fixing took place in London (FAC ¶ 1), was administered by LPPFC in London (*id.* at ¶¶ 1, 37, 55), and was based on bids and offers made in auctions that occurred in London by London-based traders. *Id.* at ¶¶ 42-44. Simply put, Plaintiffs cannot allege that LPPFC’s administration of the Fixing was “expressly aimed at” New York because, as Plaintiffs concede, the Fixing was administered entirely in London, published to the world, and used by traders globally. *See* FAC ¶ 69 (alleging that “the Fixing . . . is an integral part of the market for London platinum and palladium as well as global markets The Fixing . . . acted as benchmarks for platinum and palladium globally and were widely published.”) (emphasis added).⁴

Lacking specific factual allegations that plausibly suggest that LPPFC’s conduct was intentionally directed at New York, Plaintiffs have, at best, shown “conduct [which] incidentally

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3. It is worth noting that the *Citigroup* and *Laydon* courts declined to assert personal jurisdiction over the foreign banks, despite allegations that went far beyond the meager allegations made against LPPFC here. *See, e.g. Citigroup*, 2015 WL 1514539, at *10 (noting allegations that some of the bank employees responsible for the alleged manipulation were based in New York); *Laydon*, 2015 WL 1515358, at *3 (noting allegations that defendants used electronic connections to the U.S. via the Bloomberg network to execute the alleged manipulation).
 4. Plaintiffs’ assertions that LPPFC acted to manipulate investments in New York is a legal conclusion that is not based on any facts whatsoever, and should therefore not be presumed to be true in deciding this motion. *See Ashcroft v. Iqbal*, 556 U.S. 662, 680-681 (2009) (granting motion to dismiss and holding that plaintiff’s conclusory allegation that John Ashcroft was the “principal architect” of the DOJ policy at issue was not entitled to the presumption of truth).

had an effect in the forum.” *Citigroup*, 2015 WL 1514539, at *9. Such allegations are insufficient to establish specific personal jurisdiction. *Id.*

C. The Alter Ego Doctrine Does Not Provide an Alternative Basis for Asserting Personal Jurisdiction Over LPPFC.

Although Plaintiffs assert that the Member Defendants “control the LPPFC and the LPPFC is so dominated by [the Member Defendants] that it is indistinguishable from them for jurisdictional purposes” (FAC ¶ 38), the alter ego doctrine cannot be used to assert personal jurisdiction over LPPFC here for three reasons:

- *First*, the standard for establishing alter ego under applicable English law requires Plaintiffs to show that the Member Defendants established LPPFC only after incurring potential liability to Plaintiffs.
- *Second*, English law rejects the use of alter ego in cases where Plaintiffs may recover directly from the principal actors.
- *Third*, even under federal common law, there is no equitable justification for taking the extreme step of piercing the corporate veil here, even for the limited purpose of asserting jurisdiction over LPPFC.

1. Plaintiffs fall well short of pleading alter ego under English law.

When courts are asked to pierce the corporate veil against a defendant’s alter ego, they look to the state where the defendant is incorporated. *United States v. Funds Held ex rel. Wetterer*, 210 F.3d 96, 106 (2d Cir. 2000); *Soviet Pan Am. Travel Effort v. Travel Comm., Inc.*, 756 F. Supp. 126, 131 (S.D.N.Y. 1991) (“Because a corporation is a creature of state law whose primary purpose is to insulate shareholders from legal liability, the state of incorporation has the greater interest in determining when and if that insulation is to be stripped away.”).⁵ As LPPFC

5. New York choice of law rules look to the law of the place of incorporation to determine whether the corporate form will be disregarded. *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1456 (2d Cir. 1995); *see also Nat’l Gear & Piston v. Cummins Power Sys.*, 975 F. Supp. 2d 392, 401 (S.D.N.Y. 2013) (applying Delaware law on corporate veil piercing based on Sherman Act claims); *In re Digital Music Antitrust Litig.*, 812 F. Supp. 2d 390, 417-18 (S.D.N.Y. 2011) (same). The fact that a suit is brought pursuant to federal statutes does not trigger the

is incorporated in the U.K., English law applies when analyzing Plaintiffs' assertion that LPPFC is subject to the personal jurisdiction of this Court as the alter ego of the Member Defendants.

Following the recent English Supreme Court case of *Prest v. Petrodel Resources Limited and others*, under English law a plaintiff must allege that the defendant has sought deliberately to evade or frustrate an obligation or liability by interposing an alter ego. [2013] UKSC 34. In prior cases, English courts had articulated this concept by reference to a temporal element, namely whether the defendant had "placed the [alleged alter ego] between himself and his victim after incurring liability." *Tianbo Huang v. iTV Media, Inc.*, 13 F. Supp. 3d 246, 259-60 (S.D.N.Y. 2014) (citing Judge Cote's analysis of English alter ego law from *In re Tyson*, 433 B.R. 68, 88 (S.D.N.Y. 2010), in turn analyzing the English case of *Adams v. Cape Indus. Plc.*, [1990] Ch. 433 (C.A.)).

However expressed, Plaintiffs cannot meet this critical element of the alter ego doctrine under English law: LPPFC was formed in 2004, but Plaintiffs' alleged relevant period, *i.e.*, the period during which Plaintiffs' "right of relief" arose, began four years later, in 2008. FAC ¶¶ 38, 233.

2. The English alter ego doctrine is more limited and inapplicable where, as here, a plaintiff may recover directly from the alleged wrongdoer.

The English alter ego doctrine further differs from its U.S. counterpart in one very fundamental respect: while U.S. law recognizes an *equitable* doctrine, the English doctrine is principally *legal* in nature. *Compare Bhd. of Locomotive Eng'rs v. Springfield Terminal Ry. Co.*,

application of federal common law absent compelling circumstances. *New York v. Nat'l Serv. Indust., Inc.*, 460 F.3d 201, 208 (2d Cir. 2006) (finding that "a mere federal interest in uniformity is insufficient to justify displacing state law in favor of a federal common law rule"); *Star Intern. Co. Inc. v. Fed. Reserve Bank of N.Y.*, 742 F.3d 37, 41 (2d Cir. 2014) (noting that "the Supreme Court has specified that displacement of state law by federal common law occurs in areas of 'uniquely federal interest' when 'a significant conflict' exists between an identifiable 'federal policy or interest and the [operation] of state law'" (alteration in original) (citing *Boyle v. United Tech. Corp.*, 487 U.S. 500, 504-07 (1988))).

210 F.3d 18, 26 (1st Cir. 2000) (noting “the broad principle that a corporate entity may be disregarded *in the interests of public convenience, fairness, and equity.*”) (emphasis added) *with Kensington Int’l Ltd. v. Congo*, [2005] EWHC 2684 (Q.B.D.) [¶ 177] (“The authorities make it plain that the separate personality of the company cannot be ignored *merely because a court considers that it might be just to do so.*”) (emphasis added). In fact, the seminal principle of *Salomon v. A. Salomon & Co., Ltd.*, [1897] A.C. 22 (H.L.), which established the law of limited liability, can only be ignored under English law “in cases which turn on the wording of particular statutes or contracts” (*Adams*, [1990] Ch. at 536) or “where a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control.” *Prest*, [2013] UKSC at 35. As Judge Cote noted in *Tyson*, the use of alter ego doctrine is accordingly “quite rare under English law”; cases that recognize alter egos are “few in number and striking on the facts.” *Tyson*, 433 B.R. at 86 (citing *Hashem v. Shayif*, [2008] EWHC 2380 [¶ 221] (Fam.) and quoting *Ord v. Belhaven Pubs Ltd.*, [1998] B.C.C. 607 (C.A.) 615). This is not such a case.

In keeping with its more limited view of the alter ego doctrine, English law prefers that plaintiffs seek to recover directly from the alleged wrongdoers themselves, rather than by imposing indirect liability via veil piercing. *Tyson*, 433 B.R. at 89. For this reason, English courts reject the use of alter ego theory where, as here, Plaintiffs may recover directly from the Member Defendants. *Id.* (citing *Std. Chartered Bank v. Pak. Nat’l Shipping Corp.*, [2002] UKHL 43 [¶¶ 20-22] for the proposition that where individuals may be made to answer for their own torts directly, there is no need to pierce the corporate veil under English law). Here,

Plaintiffs have asserted several claims against each of the Member Defendants. Under English law, joining LPPFC to this case would be superfluous and should, on this basis, be rejected.

3. Even under federal common law, there is no basis to assert personal jurisdiction over LPPFC as an alter ego of the Member Defendants.

Plaintiffs' jurisdictional argument would fare no better even if this Court were to apply the federal common law of alter ego. In keeping with the equitable nature of the alter ego doctrine, Plaintiffs must show that "it would be unfair under the circumstances not to disregard the corporate form" if personal jurisdiction were not asserted against LPPFC here. *See S. New England Tel. Co. v. Global NAPs, Inc.*, 624 F.3d 123, 139 (2d Cir. 2010). Plaintiffs have not articulated any such reason.⁶

Plaintiffs allege that LPPFC is merely a "shell," that its only function was to administer the Fixing, and that the Fixing was conducted by LPPFC's directors, who were also employees of the Member Defendants. FAC ¶¶ 38-39. Plaintiffs also allege that LPPFC is controlled by the Member Defendants. *Id.* at ¶ 37. It is therefore difficult to see what injustice could befall Plaintiffs if LPPFC is not joined to this case. There is no recovery possible against LPPFC that is not also recoverable against the Member Defendants. There are no relevant witnesses or documents in the possession of LPPFC that are not also under the control of each of the Member Defendants. Even if Plaintiffs were to plead sufficient facts that would justify finding that

6. It should be noted that Plaintiffs' argument is based on the ludicrous assertion that LPPFC is the alter ego of four completely independent and unaffiliated entities. Simply put, it is difficult to understand how BASF Metals, ICBC Standard, HSBC and Goldman Sachs, by virtue of their membership in LPPFC, operate as "a single economic unit." *S. New England Tel. Co.*, 624 F.3d at 138. Moreover, to pierce the corporate veil here, Plaintiffs must first be able to establish personal jurisdiction over the Member Defendants. For the reasons set forth in Defendant BASF Metals' Memorandum of Law in Support of Motion to Dismiss [ECF No. 82] and Defendant ICBC Standard's Supplemental Memorandum of Law in Support of its Motion to Dismiss [ECF No. 84], however, jurisdiction does not even exist over two of the four alleged dominating Member Defendants, including over the Member Defendant that allegedly served as chair during the relevant period.

LPPFC is the alter ego of the Member Defendants (which they have not),⁷ there is no *equitable* reason to pierce the corporate veil to join LPPFC to a lawsuit where it is not needed.

II. PLAINTIFFS ARE NOT ENTITLED TO JURISDICTIONAL DISCOVERY

Plaintiffs have not alleged a plausible basis to obtain jurisdictional discovery. Jurisdictional discovery is inappropriate where Plaintiffs rely upon conclusory allegations to support personal jurisdiction. *Jazini*, 148 F.3d at 185-86. Thus, because Plaintiffs have failed to put forward a sufficient showing of general or specific jurisdiction against LPPFC, discovery here would be an inappropriate “fishing expedition.” *NovelAire Techs., L.L.C. v. Munters AB*, No. 13 Civ. 472 (CM), 2013 WL 6182938, at *13 (S.D.N.Y. Nov. 21, 2013).

7. Plaintiffs’ alter ego argument depends almost exclusively on LPPFC having overlapping directors and employees as the Member Defendants; they make no allegations that LPPFC and the Member Defendants commingled funds, that LPPFC was inadequately capitalized, or that LPPFC disregarded corporate formalities such as the maintenance of separate books and records from the Member Defendants or a functioning board of directors. *See, e.g., Capmark Fin. Grp. Inc. v. Goldman Sachs Credit Partners L.P.*, 491 B.R. 335, 349-350 (S.D.N.Y. 2013) (“That a subsidiary shares employees, officers, and directors with a parent does not permit the corporate form to be disregarded.”); *In re Aluminum Warehousing Antitrust Litig.*, No. 13-MD-2481 KBF, 2015 WL 892255, at *16 (S.D.N.Y. Mar. 3, 2015) (“It is commonplace for executives to hold several roles at several affiliated companies. But so long as separate corporate formalities are maintained, the mere fact that some employees of a parent are also officers of a subsidiary does not imply that the subsidiary is an agent of the parent.”).

CONCLUSION

For these reasons, the First Consolidated Amended Class Action Complaint should be dismissed as to The London Platinum and Palladium Fixing Company Ltd. for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2).

Dated: July 15, 2015
New York, New York

Respectfully submitted,

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