

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DENIS MARC AUDET, *et al.*,

Plaintiffs,

v.

HOMERO JOSHUA GARZA, *et al.*,

Defendants.

Case No. 3:16-CV-00940-MPS

December 6, 2016

**DEFENDANT STUART A. FRASER'S
MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

Defendant STUART A. FRASER (“Fraser”) hereby moves to dismiss the First Amended Complaint filed on November 4, 2016 in this action by Plaintiffs DENIS MARC AUDET, MICHAEL PFEIFFER, DEAN ALLEN SHINNERS AND JASON VARGAS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. In this action, Plaintiffs seek damages from Fraser pursuant to Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. § 78t(a)), Section 36b-29(a)(2) of the Connecticut Uniform Securities Act (C.G.S. § 36b-29(a)(2)), Section 36b-29(c) of the Connecticut Uniform Securities Act (C.G.S. § 36b-29(c)), and aiding and abetting common law fraud under Connecticut law stemming from an alleged scheme to defraud investors by Defendant HOMERO JOSHUA GARZA (“Garza”) and the Defendant companies, GAW MINERS, LLC and ZENMINER, LLC (with GAW Miners, LLC, the “Companies”). Pursuant to Rules 8(a), 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Fraser seeks relief on the following grounds:

1. Plaintiffs have not pled sufficiently or with the requisite particularity that Fraser (a) had control of a primary violator (Garza and/or the Companies) or (b) was a culpable participant in the alleged primary violations. As such, all of the claims against Fraser must be dismissed pursuant to Rules 8(a), 9(b) and 12(b)(2) of the Federal Rules of Civil Procedure for failure to state a claim.
2. In the alternative, if Plaintiffs' federal claim against Fraser is dismissed, the Court may decline to exercise supplemental jurisdiction over the remaining state law claims and dismiss Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(c)(3).

WHEREFORE, Fraser respectfully requests that his motion to dismiss be granted, and that the Complaint be dismissed as against him with prejudice.

DEFENDANT STUART A. FRASER

By: s/ Sarah L. Cave
Daniel H. Weiner (ct12180)
Sarah L. Cave (phv08437)
Sara E. Echenique (phv08436)
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004-1482
Tel.: (212) 837-6000
Fax: (212) 422-4726
Email: Sarah.cave@hugheshubbard.com

David R. Schaefer (ct04334)
Sean M. Fisher (ct23087)
Brenner, Saltzman & Wallman LLP
271 Whitney Avenue
New Haven, CT 06511
Tel.: (203) 772-2600
Fax: (203) 562-2098
Email: Sfisher@bswlaw.com

Attorneys for Defendant Stuart A. Fraser

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2016, a copy of the foregoing was filed electronically [and served by mail on anyone unable to accept electronic filing]. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system [or by mail to anyone unable to accept electronic filing]. Parties may access this filing through the Court's system.

s/ Sarah L. Cave
Sarah L. Cave (phv08437)