UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION	18-cv-06658 (JSR)
MELANIE L. CYGANOWSKI, Plaintiff, -v- BEECHWOOD RE LTD., et al., Defendants.	18-cv-12018 (JSR)

DECLARATION OF IRA S. LIPSIUS IN SUPPORT OF THE BEECHWOOD PARTIES' PARTIAL MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

I, Ira S. Lipsius, hereby declare and state as follows:

1. I am a partner with the law firm Lipsius Benhaim Law LLP, counsel for the "Beechwood Parties," which are Defendants Beechwood Re Ltd. ("BRE"), Beechwood Re Investments, LLC ("BRILLC"), B Asset Manager LP ("BAM"), B Asset Manager II LP ("BAM II"), Beechwood Re Holdings, Inc. ("BRE Holdings "), Beechwood Bermuda International, Ltd. ("BBIL"), Beechwood Bermuda Ltd. ("BBL"), BAM Administrative Services LLC ("BAM Admin"), Mark Feuer, and Scott Taylor.

2. I submit this declaration, together with the attached exhibits, in support of the Beechwood Parties' partial motion to dismiss the First Amended Complaint by Melanie L. Cyganowski, as Equity Receiver for Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund International Ltd., Platinum Partners

Credit Opportunities Fund International (A) Ltd., and Platinum Partners Credit Opportunities Fund (BL) LLC.

3. Attached hereto as Exhibit 1 is a true and correct copy of the initial Complaint in *Cyganowski v. Beechwood Re Ltd. et al.*, No. 18-cv-12018 (S.D.N.Y.).

4. Attached hereto as Exhibit 2 is a true and correct copy of the First Amended Complaint in *Trott et al. v. Platinum Management (NY) LLC et al.*, No. 18-cv-10936 (S.D.N.Y.).

5. Attached hereto as Exhibit 3 is a true and correct copy of the Complaint in *Bankers Conseco Life Ins. Co., et. al. v. Moshe M. Feuer, et al.*, 16-cv-07646 (S.D.N.Y.).

6. Attached hereto as Exhibit 4 is a true and correct copy of the Second Amended Complaint in *Senior Health Insurance Co. of Pa. v. Beechwood Re Ltd., et al.*, 18-cv-6658 (S.D.N.Y.).

7. Attached hereto as Exhibit 5 is a true and correct copy of the Complaint in *Securities and Exchange Commission v. Platinum Management (NY) LLC, et al.*, 16-cv-06848 (E.D.N.Y.).

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 15, 2019, in Kew Gardens, New York.

/s/ Ira S. Lipsius
IRA S. LIPSIUS

EXHIBIT 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MELANIE L. CYGANOWSKI, AS EQUITY RECEIVER FOR PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP, PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND (TE) LLC, PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND LLC, PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND INTERNATIONAL LTD., PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND INTERNATIONAL (A) LTD., and PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND (BL) LLC,	Case No.
Plaintiff,	**<u>COMPLAINT</u>**
- against -	**<u>JURY TRIAL DEMANDED</u>**
BEECHWOOD RE LTD., BEECHWOOD RE INVESTMENTS, LLC, B ASSET MANAGER LP, B ASSET MANAGER II LP, BEECHWOOD RE HOLDINGS, INC., BEECHWOOD BERMUDA INTERNATIONAL, LTD., BEECHWOOD BERMUDA LTD., BAM ADMINISTRATIVE SERVICES LLC, BRE BCLIC 2013 LTC PRIMARY, BRE BCLIC 2013 LTC SUB, BRE WNIC 2013 LTC PRIMARY, BRE WNIC 2013 LTC SUB, MOSHE M. FEUER a/k/a MARK FEUER, FEUER FAMILY TRUST, TAYLOR-LAU FAMILY TRUST, SCOTT A. TAYLOR, SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, FUZION ANALYTICS, INC., BANKERS CONSECO LIFE INSURANCE COMPANY, WASHINGTON NATIONAL INSURANCE COMPANY, CNO FINANCIAL GROUP, INC., 40/86 ADVISORS, INC., and JOHN DOES 1-100,	
Defendants.	
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Plaintiff Melanie L. Cyganowski, as Receiver (the "**Equity Receiver**" or "**Plaintiff**") for, among other entities, the above-captioned Platinum funds (the "**Receivership Entities**"), for her Complaint against the above-captioned defendants (the "**Defendants**"), alleges, on knowledge as to her own status and actions, and otherwise upon information and belief, as follows:

I. NATURE OF THE ACTION

1. By this action, the equity receiver for those Platinum funds commonly referred to as the "Platinum Partners Credit Opportunities Funds" (the "**PPCO Funds**" or "**PPCO**") joins the chorus of complaints seeking redress for the massive fraudulent scheme masterminded by the now indicted and/or convicted insiders of Platinum (collectively consisting of the PPCO Funds, the PPVA Funds (defined below) and affiliated entities) – *e.g.,* Mark Nordlicht, Murray Huberfeld and David Levy. The scheme was fueled by the money ploughed into Platinum and its portfolio companies that were frequently speculative, unprofitable or distressed by their self-created, fraudulent vehicle (thinly veiled as a reinsurance company), "Beechwood," fronted by fellow fraudsters, Moshe M. Feuer and Scott Taylor, and eagerly funded by long term care insurance carriers with few, if any, other options, "BCLIC," "WNIC" and "SHIP". BLIC, WNIC and SHIP were saddled with legacy long-term care portfolios. Other complaints filed in this district alleging the same fraudulent scheme (and which corroborate the allegations of the Equity Receiver based on her own investigation) include: *Trott, et al. v. Platinum Management (NY) LLC, et al.,* 18 Civ. 10936- JSR (the "**PPVA Complaint**"); *Senior Health Insurance Co. of Pa. v. Beechwood Re Ltd., et al..,*18 Civ. 10936-JSR (as amended, the "**SHIP Complaint**"); and *Bankers Conseco Life Ins. Co., et. al.* v. *Moshe M. Feuer, et al.,* 16 Civ. 07646-ER (stayed) (the "**BLIC Complaint,**" and, with the PPVA Complaint, the SHIP Complaint, and this Complaint, the "**Complaints**").

2. As all of the Complaints agree, the object of the fraudulent scheme – indeed, what everyone now agrees was a racketeering enterprise – was the personal enrichment of the Platinum and Beechwood insiders, who collectively generated for themselves tens of millions of dollars in management fees, incentive fees, false profits and other remuneration over the years to the detriment of the innocent Platinum Investors. The complaints are further in unison that, at the heart of the scheme, was the wild overvaluation of illiquid and increasingly distressed assets, primarily at the "Platinum Partners Value Arbitrage Funds" (or "PPVA") but also at PPCO. Investments in, and loans to, portfolio companies that were under increasing duress, even in bankruptcy, consistently were valued at or above original book value. Emblematic of Platinum's fraudulent practices was PPCO's increasing the value on its books of its position in portfolio company LC Energy Operations LLC ("LC Energy"), even while PPCO had to infuse equity into that distressed company to enable it to continue making required interest payments that it otherwise would have defaulted on under its pre-existing credit facility from Beechwood.

3. The Complaints further agree that, in or around 2012, the fraudulent scheme metastasized due to a run of redemption requests on the illiquid PPVA. Internal e-mails like this one from Nordlicht in 2012 admitting that redemptions were "daunting" an "relentless" and in 2014, "[i]t can't go on like this or practically we will need to winddown . . . . this is code red" privately acknowledged the lie regarding the stellar performance and multi-billion valuations publicly touted to investors.

4. According to all of the aforementioned Complaints, the insiders' desperate need for capital to stave off redemption requests and to fund increasingly cash-thirsty portfolio companies led to the creation of Beechwood in or around 2013. Poorly masqueraded as a reinsurance company fronted by two previous reinsurance professionals, Feuer and Taylor,

Beechwood was conceived as the solution to primarily PPVA's growing liquidity crisis: By obtaining access to hundreds of millions of dollars in insurance assets, the insiders would be able to channel into PPVA (and to a lesser extent PPCO) and its distressed portfolio companies the much-needed cash to fund redemptions and meet portfolio company demands without having to worry about redemption requests that inevitably would follow the procurement of new investor money or having to sell distressed, illiquid assets in order to generate liquidity. At the same time, the insiders would continue to earn millions of dollars in management fees thereby lining their pockets to the detriment of the funds' investors. None of the funds from the fraudulent scheme benefitted PPC and PPLO.

5. Hidden in plain sight was the now universally acknowledged fact that Beechwood was capitalized and staffed by PPVA and PPCO and insiders and employees. Thus, as the SHIP Complaint states: "Beechwood Advisors and their related entities were formed as a mechanism to funnel money into Platinum [], a Manhattan-based hedge fund founded by Mark Nordlicht[], Murray Huberfeld[], and David Bodner [] to prolong their existing Ponzi-like scheme." (Ship Complaint, ¶ 15) Everyone except the fraudsters agrees.

6. Having procured BCLIC's, WNIC's and SHIP's funds, Beechwood – exactly according to plan – proceeded to channel hundreds of millions of dollars, often through PPCO, primarily into investments in PPVA, and to a lesser extent PPCO, and their flagging portfolio companies to meet redemption requests and other operating needs of PPVA. The Complaints filed in this district agree on all, or virtually all, of the foregoing facts.

7. Where this Complaint departs is by asserting that (i) contrary to their portrayal as unwitting victims of the scheme, BCLIC, WNIC and SHIP – along with their current or (in the case of SHIP) former parent company, CNO, and administrative agent, Fuzion, were willing

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participants, turning a blind eye from multiple red flags of fraud to transact with Beechwood in the hope that Beechwood would rescue them from being detrimentally burdened by the long term care insurance portfolios that were albatrosses around their necks, and (ii) that, in the final analysis, the ultimate victim of the fraudulent scheme was PPCO's direct and indirect investors. Eventually jettisoning any hope of salvaging PPVA as its liquidity crisis deepened and under pressure from the insurance carriers to reinvest and/or return their principal, the participants engaged in a massive offloading to PPCO of Beechwood's distressed and wildly-overstated investments, in return for cash and security interests in PPCO's more valuable assets. Thus, when the music stopped with the simultaneous filings of the SEC civil enforcement action and the US Government criminal proceeding against the Platinum Insiders on December 19, 2016, it was with PPCO where many of the distressed assets that had contributed to PPVA's liquidity crisis had landed.

8. The Receiver, standing in the shoes of the specific Receivership Entities for which she acts identified below, asserts claims to recover for the benefit of the innocent investors in and creditors to PPCO tens of millions of dollars, if not more, in damages that PPCO, and/or its individual funds, incurred by virtue of the common law fraud, aiding and abetting of common law fraud, aiding and abetting of breach of fiduciary duty, fraudulent conveyances, federal securities fraud, and violations of the Racketeer Influenced and Corrupt Organizations Act that it suffered. The Receiver also seeks to invalidate the security interests claimed by Beechwood, BCLIC, WNIC and SHIP in all of PPCO's and its affiliates' assets as a result of what the insurance carriers themselves now admit were fraudulent transactions.

II. THE BASES FOR THE RECEIVER'S INFORMATION AND BELIEF

9. Those allegations made herein on information and belief are based on a variety of sources, and follow an extensive investigation by the Receiver's professionals into the pre-receivership business and affairs of PPCO, including with respect to Beechwood. Whenever possible, the Receiver cites to one or more sources in the body of, or immediately following, the allegations based on information and belief set forth below . In many cases, the allegations are corroborated by corresponding allegations by several of the defendants, BCLIC, WNIC and SHIP, as well as by the joint liquidators of PPVA, the SEC and United States Government, and the Litigation Trustee of Black Elk Energy Offshore Operations, LLC (the "**Black Elk Trustee**").

10. Sources of information on which the Receiver's allegations are based include: internal e-mails and other documents on Platinum's server; PPCO's and PPVA's audited and unaudited financial statements; PPCO's and to a limited extent PPVA's books and records; third-party asset valuations procured by Platinum; the transaction documents between Beechwood, on the one hand, and BCLIC and WNIC or SHIP, on the other; BCLIC's, WNIC's, SHIP's and, where available, Beechwood's respective statutory filings; earnings and guidance calls with the management of BCLIC's and WNIC's parent, and SHIP's former parent, CNO; CNO investor presentations; rating agency statements regarding CNO; other publicly-available information concerning the long term care insurance industry; public proceedings concerning SHIP; transaction documents between Platinum, on the one hand, and Beechwood, on the other; transaction documents concerning the transfer of assets and other transactions referenced herein; statutory filings concerning Agera Energy LLC; filings in the bankruptcy proceedings of Platinum portfolio companies; and articles in established newspapers and periodicals on Platinum and its principals.

III. THE PARTIES

11. Plaintiff, the Equity Receiver, following the resignation of a prior equity receiver,[1]was appointed successor "equity receiver" of the Receivership Entities,, effective July 6, 2017, at the request of the United States Securities and Exchange Commission (the "**SEC**"), by the United States District Court for the Eastern District of New York (Cogan, U.S.D.J.) (the "**Receivership Court**"). By order, the Receivership Court empowered the Equity Receiver to, among other things, recover, liquidate, marshal,and preserve all assets of the Receivership Entities (the "**Receivership Orders**").

12. Receivership Entity Platinum Partners Credit Opportunities Master Fund LP ("**PPCO Master Fund**") is and, at all material times hereinafter mentioned, was a limited partnership organized under Delaware law with its principal place of business in New York, New York.

13. Receivership Entity Platinum Partners Credit Opportunities Fund (TE) LLC ("**PPCO Fund TE**") is and, at all material times hereinafter mentioned, was a limited liability company organized under Delaware law with its principal place of business in New York, New York.

14. Receivership Entity Platinum Partners Credit Opportunities Fund LLC ("**PPCO Fund**")is and, at all material times hereinafter mentioned, was a limited liability company organized under Delaware law with its principal place of business in New York, New York.

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[1] The prior equity receiver, Bart Schwartz, was appointed as receiver on December 19, 2017, but requested permission to resign as receiver and was replaced by the current receiver, Judge Cyganowski. (ECF Nos. 6 and 59-2, 170 and 226 at 4:11 in the receivership case)

15. Receivership Entity Platinum Partners Credit Opportunities Fund International Ltd. (“**PPCO Fund International**”)is and, at all material times hereinafter mentioned, was a Cayman Islands exempted company.

16. Receivership Entity Platinum Partners Credit Opportunities Fund International (A) Ltd. (“**PPCO Fund International A**”) is and, at all material times hereinafter mentioned, was a Cayman Islands exempted company.

17. Receivership Entity Platinum Partners Credit Opportunities Fund (BL) LLC (“**PPCO Blocker Company**”)is and, at all material times hereinafter mentioned, was a limited liability company organized under Delaware law with its principal place of business in New York, New York.

18. As set forth herein, the Receivership Entities were among three families of funds fraudulently marketed and operated under the name “Platinum” by a group of now indicted, convicted and/or otherwise malfeasant individuals, including Mark Nordlicht, Murray Huberfeld, David Bodner, David Levy, Daniel Small, Uri Landesman and Joseph SanFilippo (the “**Platinum Insiders**”).

19. Defendant Beechwood Re Ltd. (“**Beechwood Re**”) is and, at all material times hereinafter mentioned, was a stock life reinsurance company domiciled in the Cayman Island with its principal place of business in New York, New York.

20. Defendant Beechwood Investments LLC (“**Beechwood Investments**”) is and, at all material times hereinafter mentioned, was a Delaware limited liability company with its principal place of business in New York, New York.

21. Defendant B Asset Manager LP ("**BAM I**") is and, at all times hereinafter mentioned, was a Delaware limited partnership with its principal place of business in New York, New York.

22. Defendant B Asset Manager II LP ("**BAM II**") is and, at all material times hereinafter mentioned, was a Delaware limited partnership with its principal place of business in New York, New York.

23. Defendant Beechwood Re Holdings, Inc. ("**Beechwood Holdings**") is and, at all material times hereinafter mentioned, was a Delaware corporation with its principal place of business in New York, New York.

24. Defendant Beechwood Bermuda International Ltd. ("**Beechwood Bermuda Int'l**") is and, at all material time hereinafter mentioned, was an entity

25. Defendant Beechwood Bermuda Ltd. ("**Beechwood Bermuda**") is and, at all material time hereinafter mentioned, was an entity organized under Bermuda law, with its principal place of business in Bermuda and a place of business in New York. Beechwood Bermuda was a reinsurance company that was licensed as an insurer located in Hamilton, Bermuda and regulated by the Bermuda Monetary Authority.

26. Defendant BAM Administrative Services LLC ("**BAM Administrative**") is and, at all times hereinafter mentioned, was a limited liability company organized under Delaware law with its principal place of business in New York, New York.

27. Defendants BRe BCLIC 2013 LTC Primary, BRe BCLIC 2013 LTC Sub, BRe WNIC 2013 LTC Primary and BRe WNIC 2013 LTC Sub (collectively, the "**Beechwood Reinsurance Trust**s") are and, at all material times hereinafter mentioned, were insurance trusts

organized under Delaware law that, at all relevant times, were managed by BAM Administrative and administered in New York, New York.

28. Defendants Beechwood Re, Beechwood Investments, BAM I, BAM II, Beechwood Holdings, Beechwood Bermuda Int'l, Beechwood Bermuda, BAM Administrative, and the Beechwood Reinsurance Trusts, are hereinafter collectively referred to as the "**Beechwood Entities"** and, individually or collectively, as "**Beechwood**." As described herein (and in the other complaints), Beechwood was a fraudulent vehicle posing as a reinsurance company created by the Platinum Insiders, in conjunction with Moshe Feuer and Mark Taylor (collectively with the Platinum Insiders, the "**Beechwood Insiders**"), to gain access to insurance reserves that would then be channeled into the Platinum Funds, which, in varying degrees, required liquidity to meet redemption requests and continue funding its distressed portfolio.

29. Defendant Moshe M. Feuer a/k/a Mark Feuer ("**Feuer**") is and, at all material times hereinafter mentioned, was a resident of Lawrence, New York.

30. Defendant Feuer Family Trust ("**Feuer FT**") is a trust organized under New York law for the benefit of Feuer and/or his family members.

31. Defendant Scott A. Taylor ("**Taylor**") is and, at all material times hereinafter mentioned, was a resident of New York, New York.

32. Defendant Taylor-Lau Family Trust ("**Taylor-Lau FT**")is a trust organized under New York law for the benefit of Taylor and/or his family members.

33. Feuer and Taylor are hereinafter collectively referred to as the "**Individual Beechwood Defendants**" and, together with the Beechwood Entities Feuer FT and Taylor-Lau, as the "**Beechwood Defendants**."

34. Defendant Senior Health Insurance Company of Pennsylvania ("**SHIP**") is and, at all material times hereinafter mentioned, was an insurance company domiciled in the Commonwealth of Pennsylvania with its principal place of business in Carmel, Indiana.

35. Defendant Fuzion Analytics, Inc. ("**Fuzion**") is a corporation organized under Delaware law with its principal place of business in Carmel, Indiana.

36. Defendant Bankers Conseco Life Insurance Company ("**BCLIC**") is and, at all material times hereinafter mentioned, was an insurance company domiciled in New York with its principal place of business in Carmel, Indiana.

37. Defendant Washington National Insurance Company ("**WNIC**") is and, at all material times hereinafter mentioned, was an insurance company domiciled in Indiana with its principal place of business in Carmel, Indiana.

38. Defendant CNO Financial Group, Inc. ("**CNO**") is and, at all material times hereinafter mentioned, was a corporation organized under Delaware law with its principal place of business in Carmel, Indiana.

39. Defendant 40/86 Advisors, Inc. ("**40/86 Advisors**") is and, at all material times hereinafter mentioned, was a Delaware corporation with its principal place of business in Carmel, Indiana.

40. Defendant John Does 1-100 are entities and individuals, whose identities are not, at this time, known, who were involved in, or otherwise liable for, the fraudulent activities described herein. Does 1-100 may include the trustees of Beechwood Trust No. 1, Beechwood Trust No. 2, Beechwood Trust No. 3, Beechwood Trust No. 4, Beechwood Trust No. 5, Beechwood Trust No. 6, Beechwood Trust No. 7, Beechwood Trust No. 8, Beechwood Trust No. 9, Beechwood Trust No. 10, Beechwood Trust No. 11, Beechwood Trust No. 12, Beechwood

Trust No. 13, Beechwood Trust No. 14, Beechwood Trust No. 15, Beechwood Trust No. 16, Beechwood Trust No. 17, Beechwood Trust No. 18, Beechwood Trust No. 19 and Beechwood Trust No. 20.

IV. JURISDICTION AND VENUE

41. This Complaint is filed, and this Court has subject matter jurisdiction of the matters complained of, pursuant to 28 U.S.C. § 1331, 18 U.S.C. §§ 1961 and 1962(a), (c) and (d) *et seq.*, Sections 10(b) and 20(a) of the Securities Exchange Act of 1936 (the "**Exchange Act**") [15 U.S.C. §§78j(b) and 78t(a)], Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. §240.10b-5], Section 20 and Section 27 of the Exchange Act.

42. This Court has supplemental jurisdiction over Plaintiffs' state law and common law claims pursuant to 28 U.S.C. § 1367, as the claims against Defendants are related to the claims upon which subject matter jurisdiction is based.

43. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events, actions, or omissions giving rise to the dispute occurred in this District.

V. FACTS COMMON TO ALL CLAIMS

A. The Platinum Funds

44. The Receivership Entities are members of the "PPCO Funds," one of the three groups of funds that were managed by several entities led by Nordlicht and sometimes collectively referred to as "Platinum Partners."

45. The investment managers of "Platinum Partners" operated three groups of distinct investment funds: the "PPVA Funds," created in 2003; the "PPCO Funds," created in 2005; and

"the PPLO Funds," created in 2009. Each of these three groups of funds was structured to include a master fund, a management entity and several feeder funds.

46. The PPVA Funds, the PPCO Funds and the PPLO Funds and the entities that operated them – sometimes collectively referred to as "Platinum Partners" – were founded by three individuals; Nordlicht, Murray Huberfeld ("**Huberfeld**") and David Bodner ("**Bodner**").

47. By the time Nordlicht, Huberfeld and Bodner founded the Platinum Funds, each of them, individually and sometimes jointly, already had a long history of unscrupulous conduct. In 1992, for example, Bodner and Huberfeld pled guilty to a misdemeanor for sending an imposter to take his Series 7 brokerage licensing exam. Each was sentenced to two years' probation and paid a substantial fine to the SEC. In 1996, the SEC issued a cease and desist order against Huberfeld and Broad Capital Associates in which Huberfeld and Broad Capital Associates agreed to cease and desist from committing or causing securities violations and to disgorge $356,782 representing profits gained as a result of transactions in certain unregistered securities and to pay interest of $69,917.30. In 1998, Huberfeld and Bodner settled civil allegations with the SEC that they improperly sold more than 513,000 shares of restricted stock in Broad Capital Associates.

48. Nordlicht likewise has a checkered past. According to published reports, both Huberfeld and Nordlicht and their wives were sued in connection with the notorious Rothstein Ponzi scheme. In addition, one of Nordlicht's previous ventures, Optionable Inc., collapsed in a trading scandal in 2007 when another of its cofounders, Kevin Cassidy, was arrested for deliberately misstating the value of natural gas derivatives. Cassidy, who served two prior stints in prison, was sentenced to months in prison. When he was released, Platinum hired him as the

managing director of Agera Energy, a Platinum portfolio company. At the time, David Levy ("**Levy**") (Huberfeld's nephew) served as Beechwood's Chief Investment Officer.

1. <u>The PPCO Funds</u>

49. The PPCO Funds were marketed as a single-strategy group of funds whose business was to "originate short and medium term, high yield, debt secured by collateral, and/or equity investments." (PPCO Marketing Presentation - December 1 2015) The PPCO Funds originated loans and made equity investments in various industries, including, among others, consumer finance, litigation, metals and mining, oil and gas, alternative energy, retail energy, life settlements and asset-based finance.

50. According to the PPCO Funds' marketing materials, the PPCO Funds' investment strategy was to identify and finance companies closed out of traditional financing markets. PPCO would offer to provide such companies with capital infusions on certain terms. Marketing materials further stated that the PPCO Funds "understand[] that these loans require: Specialized skills to properly structure and negotiate a transaction; Added layers of due diligence and legal review; Extensive niche industry experience; Advanced monitoring capabilities; and Sophisticated controls to minimize fraud risk suited to minimize fraud risk." (PPCO Marketing Presentation - December 1 2015). As a result of the PPCO Funds' stated investment strategy, the majority of the PPCO Funds' positions were in investments without a ready market.

51. The PPCO Master Fund invested substantially all of the funds received into its four feeder funds. Credit Management served as portfolio manager for the Master Fund. Investors from the United States invested in one of those feeder funds. Investors from outside the United States invested in the other three feeder funds, which were based outside of the United States. For tax purposes, the PPCO feeder funds did not invest directly in PPCO Master

Fund. Instead, they invested substantially all of their capital in the PPCO Blocker Company, which, in turn, invested substantially all of its capital in the Master Fund.

52. PPCO Fund TE is one of the three feeder funds in PPCO Master Fund. PPCO Fund TE holds a partnership interest in the net assets of the PPCO Master Fund, indirectly through the PPCO Blocker Company, of approximately 15% at December 31, 2014.

53. PPCO Fund International is another feeder fund in PPCO Master Fund. PPCO Fund International holds a partnership interest in the net assets of the Master Fund, indirectly through the PPCO Blocker Company, of approximately 19% at December 31, 2014.

54. From at least 2007 through 2016, PPCO Fund International was managed by a board of three independent directors. Those directors owed nondelegatable fiduciary duties to PPCO International. If fraud had been brought to their attention they would have had a nondelegatable duty to stop that fraud by, among other things, reporting that fraud.

55. PPCO Fund International A is also a feeder fund in PPCO Master Fund. PPCO Fund International A holds a partnership interest in the net assets of the Master Fund, indirectly through the PPCO Blocker Company, of approximately 21% at December 31, 2014.

56. From at least 2012 through 2016, PPCO Fund International was managed by a board of three independent directors. Those directors owed nondelegable fiduciary duties to PPCO International. If fraud had been brought to their attention they would have had a nondelegatable duty to stop that fraud by, among other things, reporting that fraud.

57. The fourth feeder fund of PPCO Master Fund is PPCO Fund. PPCO Fund had U.S. investors and invested substantially all of its capital directly into the Master Fund. PPCO Fund's partnership interest in the net assets of the PPCO Master Fund was approximately 41% at December 31, 2014.

58. Nordlicht and Levy as co-chief investment officers of PPCO were jointly and solely responsible for the investment decisions of PPCO Master Fund. While Murray Huberfeld and David Bodner did not have a role in investment decision making, they were active behind the scenes in raising money for the PPCO Funds and maintaining relationship with PPCO Investors. Nordlicht, Bodner and Huberfeld were limited partners of Platinum Credit Management LP and members of Platinum Credit Holdings, LLC, the Investment Manager and General Partner of PPCO, giving them substantial responsibility and direct management power over all decision making of the PPCO Funds. As such, at all relevant times, these Platinum insiders owed fiduciary duties to each of the PPCO Funds, which duties as set forth below and in each of the other Complaints they breached.

59. According to the financial statements of PPCO Master Fund for the year ended December 31, 2014 (the "**2014 PPCO Master Fund Financial Statements**"), as of December 31, 2014, $459,250,674 (or 97.6%) of the PPCO Master Fund's $470,287,139 in reported total assets consisted of "[i]nvestments, at fair value."

60. According to its financial statements and marketing materials, the PPCO Funds recorded positive returns in a period that covered a number of major market dislocations, including the financial crisis of 2008 and 2009 and the correction to the oil markets in 2014 and 2015. In fact, energy investments were a significant portion of the PPCO portfolio, making up 38.8% of purported valuations as of December 2014. As is now known, underpinning the track record were highly inflated valuations on illiquid "Level 3 assets" (discussed below) that gave rise to the purported unrealized gains.

61. In a presentation dated December 1, 2015, net monthly returns for PPCO's Class B for the period from October 2005 through November 2015, with the exception of a negative -

1.20% for April 2009, always were reported to be positive, with a range from 0.36% to 3.58%. According to the marketing materials PPCO never had a down year, with annualized positive returns ranging from 3.41% to 18.95%, with a net average annualized return of 13.37% for the ten year period from 2005 through 2015. Management touted PPCO's ever increasing returns, claiming that "PPCO (onshore) had higher monthly returns vs. HedgeFund.net Asset Based Lending Average index for 102 out of 122 months since inception."

62. The PPCO Funds were primarily owned by outside investors, rather than insiders. In this regard, as of October 26, 2018, a total of $338,769,726 in investor claims had been recorded by PPCO Master Fund, out of which $292,559,247.83 came from what appear to be unaffiliated investors, including $224,843,285.13 from unaffiliated institutional investors and $67,715,962.70 from unaffiliated noninstitutional investors.

63. The feeder funds issued a variety of share classes that established different types of membership interests for investors with different types of rights. As of December 31, 2014:

(a) PPCO Fund (TE) had Class A, B and C interests at $8.7 million, $5.9 million and $49.3 million respectively;

(b) PPCO Fund had Class A, B and C interests of $103.4 million, $67.4 million and $6.9 million respectively;

(c) PPCO Fund International (A). had Class A and Class B interests of $26.9 million and $63.1 million respectively; and

(d) PPCO Fund International, Ltd. had Class A, B, C and D interests of $24.1 million, $62.1 million, $288,000 and $177,000 respectively..

64. The underlying limited partnership, operating agreements and private placement memoranda ("**PPMs**") for the PPCO Funds gave investors the right to redeem their investments.

65. Class A interests were subject to a lock-up period and could only be redeemed after being held for a minimum of 25 months from the date of issuance. Investors were required to give 90 days' notice to redeem.

66. There was no lock-up period for Class B or Class C Interests. However, Class B and Class C Interests were required to give at least six months' prior written notice of any redemption.

67. Once redemptions were effective, the PPCO Funds pledged to pay 90% of their good faith estimate of the redemption within 30 days following the applicable Redemption Date, with the balance of such amount to be paid within 30 days of the completion and receipt of the annual audit. The PPCO Funds intended to make "all redemption payments in cash… [though some redemptions] may be made in kind, in whole or in part." Most investments were in illiquid, Level 3 assets that had no ready market.

68. The 25-month lock-up period and 90-day notice period for Class A shares, and six-month notice period for Classes B and C shares were designed to provide adequate time for the PPCO Funds to realize fair market value for even its most illiquid Level 3 investments in order to satisfy redemption requests and fund operations.

69. Yet, as it is now known, most of the PPCO Funds' investments were so illiquid, so overvalued, and had no ready market, thereby rendering PPCO's lock-up and notice periods to be insufficient to generate the requisite liquidity for the funds.

2. **The PPLO Funds**

70. The PPLO Funds, certain of which also are in receivership under the control of the Receiver, were marketed as a group of funds that invested in U.S. and non-U.S. equity and debt securities (both public and private), currencies, futures, forward contracts, and other

commodity interests, options, swap contracts and other derivative instruments and other investments.

71. PPLO Master Fund is a Cayman Islands exempted limited partnership that is registered under the Mutual Funds law of the Cayman Islands.

72. As of December 31, 2014, excluding derivative contracts and securities purchased under agreements to resell, $37,481,139 (or $77.9%) of the $48,132,623 in total assets shown on PPLO Master Fund's Consolidated Statement of Financial Condition of PPLO Master Fund were "[i]nvestments in securities, at fair value."

3. The PPVA Funds

73. The PPVA Funds were marketed as a group of multi-strategy funds that included long/short fundamental equity trading, asset-based financing in energy, mining, and other industries; energy-related and Asia-based arbitrage opportunities, and event-driven investing in corporations.

74. PPVA Master Fund is a Cayman Islands exempted limited partnership that was managed by Platinum Management.

75. Platinum Management was PPVA Master Fund's general partner and certain feeder funds referred to below were limited partners in it.

76. Platinum Partners Value Arbitrage Fund (USA) L.P. ("**PPVA Onshore Feeder Fund**") is a limited partner in PPVA Master Fund, with investors within the United States serving as limited partners of the PPVA Onshore Feeder Fund.

77. Platinum Partners Value Arbitrage Fund (International) Limited ("**PPVA International Feeder Fund**") was a vehicle to attract non-U.S. investors and served as a limited partner of PPVA until June 22, 2010, when PPVA International Feeder Fund ceased to be a

limited partner of PPVA and Platinum Partners Value Arbitrage Intermediate Fund Ltd. ("**PPVA Intermediate Feeder Fund**" and, collectively with PPVA International Feeder Fund and the PPVA Onshore Feeder Fund, the "**PPVA Feeder Funds**") took its place as a limited partner of PPVA Master Fund.

78. Beginning in late 2015, the PPVA Feeder Funds ceased honoring most redemption requests. In August 2016, PPVA Master Fund and PPVA International Feeder Fund were placed in liquidation by order of the Grand Court of the Cayman Islands. On October 18, 2016, the liquidators of PPVA Master Fund and PPVA International Feeder Fund commenced a proceeding under Chapter 15 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. (Case No. 16-12925 (Bankr. S.D.N.Y.)). That case remains pending.

79. On or about February 14, 2017, PPVA Intermediate Fund was placed in liquidation. On October 17, 2017, its liquidators commenced a proceeding under Chapter 15 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. (Case No. 17-12269 (Bankr. S.D.N.Y.)). That case remains pending.

80. Consistent with the PPVA Feeder Funds' limited partnership agreements, their PPMs set out a fixed, orderly redemption process for all investors: quarterly redemptions, upon 60 or 90 days' advance notice (depending on the version of the PPM), with the fund "intend[ing] to pay" to the investor at least 90% of the amount requested within 30 days, with the remaining 10% potentially held back for completion of the fund's audit. (*See* PPVA Complaint at Ex. 6)

81. The time frames set for redemptions appeared feasible because the PPVA Funds represented that a substantial portion of their portfolios consisted of securities that were liquid. For example, according to the Platinum Insiders' representations, investments in the listed liquid

investment strategies represented as much as 61% of PPVA's portfolio. *See* PPVA Action, ECF No. 11-1, Ex. 4 at 2 . In this regard, a "Due Diligence Questionnaire" dated September 2015 prepared by Platinum Management (NY) LLC stated, in part:

> How long does it take to exit the most liquid positions in the portfolio? The Fund's most liquid positions could, under normal market conditions, typically be liquidated in less than a week, including assets in the Energy and Power Arbitrage, Long/Short Fundamental Equity, Event Driven, Quantitative and Asia Based Arbitrage strategies.

(*See* PPVA Complaint at Ex. 5.)

82. In the same vein, a December 2015 Presentation created by certain of the defendants stated that the PPVA would target "30% risk allocation to short term trading and relative value strategies, 30% to event driven strategies and 40% to asset-based finance strategies." (*See* PPVA Complaint at Ex. 7)

4. Other Entities Involved in the Management and Control of the PPVA Funds, the PPCO Funds and the PPLO Funds

83. PPVA Master Fund, PPCO Master Fund and PPLO Master Fund were each structured as a general limited partnership and each had a separate portfolio manager.

84. Platinum Management (NY) LLC ("**Platinum Management**") was the general partner in PPVA Master Fund, served as its investment manager, and was responsible for managing, trading, investing and allocating its assets. Platinum Management, an investment adviser previously registered with the SEC and a Delaware limited liability company headquartered in New York, New York, was the portfolio manager of various funds, including the PPVA Funds. As of March 30, 2016, PPVA Master Fund claimed to have approximately $1 billion in assets under management.

85. As set forth above, Platinum Credit Holdings LLC **("Credit Holdings")**, a limited liability company organized under Delaware law, served as the general partner of PPCO

Master Fund and the managing member of PPCO Fund TE, PPCO Fund International, PPCO Fund International A and PPCO Fund.

86. Platinum Credit Management, L.P. ("**Credit Management**" or the "**Portfolio Manager**"), a limited partnership headquartered in New York and organized under Delaware law, served as the portfolio manager of PPCO Master Fund, PPCO Fund International, PPCO Fund (TE), PPCO Fund International A and PPCO Fund. Credit Management was a "relying adviser" of Platinum Management, meaning that it was included within Platinum Management's umbrella adviser registration with the SEC.

87. Platinum Liquid Opportunity GP LLC, a limited partnership organized under Delaware law, served as the general partner of PPLO Master Fund.

88. Platinum Liquid Opportunity Management (NY) LLC served as the investment manager of the PPLO Master Fund and was responsible for the PPLO Master Fund's day-to-day operations. It was a "relying advisor" included within Platinum Management's umbrella adviser registration with the SEC.

5. Innocent Insiders at the PPCO Funds

89. While the Platinum Insiders were engaged in fraud, at all relevant times there were individuals in place who could have stopped the wrongdoing. For example, Daniel Mandelbaum ("**Mandelbaum**") was the Chief Financial Officer of Platinum Credit from January 2015 through at least October 2015. He also performed services for the PPCO Funds. Mandelbaum was not engaged in the Platinum Insiders' fraudulent activities and did take, or would have taken, steps to report and/or end such fraudulent activities.

90. In addition, Saurabh Shah ("**Shah**") was the Chief Legal Officer of Platinum Management from November 2014 until through at least April 30 2015. In this position, Shah

also effectively functioned as in-house legal counsel for the PPCO Funds. Likewise, Shah was not engaged in the Platinum Insiders' fraudulent activities and did take, or would have taken, steps to report and/or end such fraudulent activities.

B. The Fragile Financial Position of the PPCO Funds and the Liquidity Issues Experienced by the PPVA Funds

91. Beginning in 2012, the PPVA Funds faced a liquidity crisis that would consume the Platinum Funds' eco-system. The PPCO Funds were not far behind.

1. The Fragile Financial Position of the PPCO Funds

92. By the end of 2013, the PPCO Funds were in a fragile financial position because of the need to fund portfolio working capital requirements, a systematic overvaluing of assets over time, a concentration in Level 3 assets, and requests for redemptions.

93. The PPCO Master Fund had $5.7 million of cash on hand at the end of 2013. The PPCO Funds were not able to meet increased redemptions while funding working capital requirements, absent a large cash infusion from investments or subscriptions. This situation was exacerbated by the thin cushion of assets for which there was an active market and from which cash could be easily realized.

94. Under Generally Accepted Accounting Principles, there are three types of assets:

- "Level 1" assets have "[v]aluations based on quoted prices in active markets for identical investments."
- "Level 2" assets, which have "[v]aluations based on (i) quoted prices in markets that are not active; (ii) quoted prices for similar investments in active markets; and (iii) inputs other than quoted prices that are observable or inputs derived from or corroborated by market data."

- "Level 3" assets, which have "[v]aluations based on inputs that are unobservable, supported by little or no market activity, and that are significant to the overall fair value measurement."

(***Financial Statements of PPCO Master Fund and Subsidiaries as of December 31, 2014 at 11***)[2]

95. According to the PPCO Master Fund and its subsidiaries' Consolidated Condensed Schedule of Investments as of December 31, 2012, as of that date, "PPCO Master Fund and Subsidiaries" held investments having a total fair value of $306,588,145, including Level 3 assets having a total value of $270,251,902, Level 2 assets having a total value of $36,336,243, and Level 1 assets having a value of $0. (***PPCO Master Fund and Subsidiaries' Financial Statements as of December 31, 2012 at 6***)

96. According to the PPCO Master Fund and its subsidiaries' Consolidated Condensed Schedule of Investments for the year ended December 31, 2013, as of that date, "PPCO Master Fund and Subsidiaries" held investments having a total fair value of $317,371,713, including Level 3 assets having a value of $241,528,703, Level 2 assets having a value of $56,944,082, and Level 1 assets having a value of $18,898,928. (***PPCO Master Fund and Subsidiaries' Financial Statements as of December 31, 2013 at 6***)

97. Not only were the PPCO Funds' assets primarily made up of illiquid Level 3 assets, but some of the largest positions were significantly overvalued..

98. During 2012 and 2013, the PPCO Funds began to experience increasing withdrawals (*i.e.*, redemptions). In 2012, the $55.9 million of contributions (subscriptions) barely eclipsed the $50.8 million of redemptions. In 2013, the $67.7 million of withdrawals

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[2] PPCO Master Fund and Subsidiaries' Financial Statements for earlier periods included slightly different definitions for "Level 1," "Level 2" and "Level 3" assets.

(redemptions) exceeded the contributions (subscriptions) of $43.6 million. However, PPCO also needed to invest in securities. The net effect of the fund's investment and capital activity was a net decrease in the cash balance from $7.2 million to $5.7 million.

99. Around the end of 2013, Nordlicht also was not meeting some of the funding requests from PPCO's portfolio companies. In an email to Nordlicht, dated November 26, 2013, Zach Weiner, a portfolio manager asked: "Mark, Can you please give us an update on when we can expect some liquidity in PPCO for this week. We've pushed off everyone for a month now, but we really do need 80k for greentown, 50k for alcor… and 200k for daybreak… In addition, we need to pay 72K of receivership fees on RCKE prior to transferring the note to AYN. We have knocked this down as much as possible but we are kind of at the end of that game now." These requests were occurring in a period when investors were increasingly redeeming.

100. Thus, by the end of 2013, the financial condition of the PPCO Funds was fragile. The PPCO Funds were not in a state that also could support the increasing demands from the PPVA Funds.

2. <u>The Liquidity Crisis at the PPVA Funds</u>

101. Beginning in 2012, the PPVA Funds faced a much more severe liquidity crisis than the liquidity issue experienced at the PPCO Funds. That liquidity crisis was caused by several factors: (a) the PPVA Funds' investments were concentrated in certain highly illiquid investments, including equity and debt positions in non-operating, unprofitable or distressed companies many of which were not publicly traded; (b) many of those investments were overvalued and could not be sold without realizing large losses; (c) many of these companies in which the PPVA Funds had invested required large infusions of capital; and (d) the PPVA Funds faced growing redemption requests from investors.

102. Like the PPCO Funds' assets, the PPVA Funds' assets were highly illiquid Level 3 assets.

103. According to PPVA Master Fund and Subsidiaries' Financial Statements for the year ended December 31, 2012, as of that date, PPVA Master Fund and its subsidiaries had held assets valued at $902,835,645, which included investments in securities valued at $787,846,738, $572,401,712 of which were described as Level 3 assets, $105,782,380 of which were described as Level 2 assets, and $109,662,646 of which were described as Level 1 assets. (Platinum Partners Value Arbitrage Fund L.P. and Subsidiaries Consolidated Financial Statements Year Ended December 31, 2012 at 4, 13)

104. According to PPVA Master Fund and Subsidiaries' Financial Statements for the year ended December 31, 2013, PPVA and its subsidiaries had $1,000,181,360 in assets, which included investments in securities valued at $883,499,287, $669,742,575 of which were described as Level 3 assets. (Platinum Partners Value Arbitrage Fund L.P. and Subsidiaries Consolidated Financial Statements Year Ended December 31, 2013 at 7, 19, 32)

105. According to PPVA Master Fund's and its subsidiaries' financial statements dated as of December 31, 2014, as of that date, PPVA and its subsidiaries had $1,036,530,945 in assets, which included investments in securities valued at $872,158,921, $756,432,286 of which were described as Level 3 assets. (Platinum Partners Value Arbitrage Fund L.P. and Subsidiaries Consolidated Financial Statements Year Ended December 31, 2014 at 7, 19, 32)

106. Moreover, the lack of liquidity in the PPVA Master Fund's investment portfolio was exacerbated by the fact that many of the NAV's shown on its financial statements were greatly overstated and the companies in which it invested required constant and significant infusions of capital.

107. As a result, despite the PPVA Funds' representations in their PPMs that the funds were liquid, the PPVA Funds routinely relied upon funds invested by new investors to pay redemptions, as PPVA's assets were concentrated in illiquid Level 3 assets that were grossly overvalued by the Platinum Defendants and did not provide PPVA with a source of readily available and adequate liquidity to meet its needs.

108. Further, PPVA Master Fund's largest securities positions were in highly illiquid (and overvalued) limited liability companies and debt interests in overvalued companies in the volatile energy industry. For example, according to its financial statements for 2013 and 2014, as of December 31, 2013, $469,299,082, or 46.9%, of PPVA Master Fund's total assets, which were valued at $1,000,181,360, was concentrated in the energy industry, and as of December 31, 2014, $426,718,554, or 41.1%, of PPVA Master Fund's total assets, which were valued at ***$1,036,530,945***, was concentrated in the energy industry – making its portfolio even more illiquid.

109. As of December 31, 2012, approximately 37% to 43% of PPVA Master Fund's reported NAV consisted of its investments in two energy companies – Black Elk Energy Offshore Operations, LLC ("**Black Elk**"), a Gulf of Mexico oil platform operator, and Golden Gate Oil LLC ("**Golden Gate**"), a California-based onshore oil operation. *See* PPVA Action ECF No. 11-3, Ex. 22 .

110. As of the fourth quarter of 2012, PPVA's investment in Black Elk was its single largest position. However, after an explosion on an oil rig operated by Black Elk killed several Black Elk employees in 2012, the value of Black Elk dramatically decreased. Nevertheless, PPVA Master Fund actually ***increased*** its valuation of PPVA Master Fund's investment in Black Elk during this same period. At the time of the Black Elk explosion, approximately 40% of

PPVA Master Fund's total portfolio was worth significantly less than reported by the PPVA Master Fund, and the remaining "assets" were speculative and early-stage investments that would have required significant capital unavailable to PPVA for any hope of profitability. In the wake of the Black Elk explosion, Black Elk faced increasing liquidity problems throughout 2013.

111. PPVA Master Fund also greatly overrepresented the value of its debt and equity positions in Golden Gate Oil. *See* PPVA Complaint at ¶¶ 170-190.

112. According to PPVA Master Fund's 2014 financial statements, 28% of its entire NAV consisted of investments in two oil and gas exploration and production companies: $9,552,560 in debt securities and $140,000,000 in limited liability company interests in Golden Gate, and $5,000,000 in debt securities and $138,111,795 in limited liability company interests in Northstar Offshore Group, LLC ("**Northstar Offshore**"). While the true value of companies in the oil and gas industry was highly volatile, because it fluctuated with the prices of oil and gas on world markets[3], according to PPVA Master Fund's financial statements, the value of its investment in Golden Gate lost just over 21% of its value from 2013 to 2014. In addition, their valuations did not differentiate between proven reserves and unproven reserves.

113. The liquidity pressures on the PPVA Funds were further exacerbated because they overreported their income, resulting in larger management fees than was justified. From 2012 through 2015, PPVA Master Fund reported that it had annualized returns of 11.58% (2012) to 8.76% (2015), with the lowest annualized return during that time period being 7.11% for FY 2013. It also reported that it had a return of 2.6% for the first three months of 2016, and a

[3] For example, on January 2, 2014, the WTI spot price (dollars to barrel) was $95.14; it then peaked in 2014 around $107/barrel in June 2014; by the end of 2014 it had fallen to approximately $53 per barrel; and thereafter it continued to decline.

cumulative return since PPVA's inception of 687.40%. The PPVA Funds also represented that their assets under management had increased steadily from $688 million on January 1, 2012 to $789 million as of October 1, 2015. *See* November 2012 PPM for the PPVA Offshore Feeder Fund, *Trott v. Platinum Management (NY) LLC*, No. 18-cv-10936, ECF No. 1-1, at Ex. 6 (S.D.N.Y.) Moreover, the principals of Platinum Partners paid themselves distributions, fees and other compensation from the PPVA Fund based, in part, upon returns.

114. The illiquid nature of the PPVA Funds' investments, which were overvalued and underwater investments in need of constant infusions of capital, created severe problems for the PPVA Funds when investors sought to redeem their investments within the relatively short timeframes permitted under the PPVA Funds' limited partnership agreements and PPMs.

115. Beginning in 2012, the PPVA Funds' capital withdrawals significantly exceeded contributions, and by 2014, the PPVA Funds' redemptions exceeded the sum of their liquid Level 1 and Level 2 assets, so that further redemptions would have required forced sales of illiquid Level 3 assets. In this regard:

- During 2012, investors made $78.1 million in capital contributions in the PPVA Funds and made capital withdrawals of $170.6 from the PPVA Funds, so that capital withdrawals by investors from the PPVA Funds exceeded capital contributions by $92.5 million.
- According to PPVA Master Fund's financial statements, as of December 31, 2012, the PPVA Funds had Level 1 assets valued at $109.7 million, Level 2 assets valued at $105.8 million, and Level 3 assets of $572.4 million. During 2013, investors made $60.3 million in capital contributions in the PPVA Funds and made capital withdrawals of $114.0 million, so that capital withdrawals by

investors from the PPVA Funds exceeded capital contributions by a total of $53.7 million.

- According to PPVA Master Fund's financial statements, as of December 31, 2013, the PPVA Funds had Level 1 assets valued at $104.2 million, Level 2 assets valued at $108.4 million, and Level 3 assets valued at $669.7 million. During 2014, investors made $95.6 million in capital contributions in the PPVA Funds, made capital withdrawals of $163.3 million from the PPVA Funds, so that capital withdrawals by investors exceeded capital contributions by $67.7 million in 2014. However, $16.5 million of the $95.6 million was SHIP money.

116. The liquidity and solvency issues were far more serious at PPVA than at PPCO. By late 2012, Nordlicht and Landesman admitted that redemptions were "daunting" and "relentless," and in June 2014, Nordlicht wrote Landesman that "It can't go on like this or practically we will need to winddown....this is code red...We can't pay out 25 million in reds [redemptions] per quarter and have 5 come in." New subscriptions could not fund the gap and selling its concentrated illiquid positions would have exposed their serious and significant overvaluations. PPCO was used to prop up PPVA through a combination of intercompany transfers and asset purchases from PPVA at inflated valuations. PPVA used the proceeds it received to make redemptions and margin calls, and to prop up its own portfolio companies.

117. The Platinum Insiders relied increasingly on wildly inflated valuations, and funds from PPCO to conceal the growing liquidity crisis at PPVA and to prop it up, while the insiders collected significant management fees (third-party advisors were also paid substantial fees).

3. <u>Management Fees</u>

118. For the period from 2014 through 2016, the PPCO Funds recorded more than $25.6 million of management fees. Management fees were levied on the Net Asset Value ("NAV') of the PPCO Master Fund. For example, according the PPCO Onshore Class B PPM, "The Master Fund will pay … a monthly management fee equal to 1/12th of 2% of the total aggregate month-end Net Asset Value of the Master Fund (2% per annum) before deduction of any accrued Management Fees or Performance Allocations and before any distributions or redemptions made during the month (and after adjustment for reduced fees, if any, charged to Special Members) (the "Management Fee")." [PPCO Fund LLC April 2013 PPM].

119. The highly inflated valuations increased the PPCO Master Fund NAV, and resulted in ever increasing management fees. Management fees rose from $5.9 million in 2012, to $6.5 million in 2013, $7.9 million in 2014, reaching a high of $10.0 million in 2015, before dropping to $8.1 million in 2016. The management fees were excessive as they were based on highly inflated valuations.

120. The Platinum Insiders took advantage of the excessive management fee to pay themselves while their investors were facing longer periods to receive redemption payments. In 2014, the Platinum Insiders distributed nearly $2 million from the management fees to themselves through guaranteed payments, distributions of profits, and allocations of charitable contributions. In 2015, the Insiders distributed another $2 million to themselves through allocations of charitable distributions and expenses.

121. Moreover, as partners in the management company, the Platinum insiders benefited from the tax benefits flowing from the discretionary charitable contributions.

4. <u>Incentive Fees</u>

122. Furthermore, management received an incentive fee "at the end of each fiscal year, the General Partner … [will be paid] equal to 20% of the net income that would otherwise be credited to the capital account of limited partners...If there is a loss for the fiscal period, such loss is carried forward to future periods and no incentive allocation will be made to the General Partner until prior fiscal losses have been recovered." According to the 2014 PPCO Master Fund LP financial statements, incentive fees earned on 'performance' were allocated to the General Partner's capital account.

123. The fraudulent valuations and ever increasing NAV's resulted in the accrual of substantial incentive fees of $8.1 million in 2012, to $8.4 million in 2013, $8.2 million in 2014, and $11.4 million in 2015. The Platinum Insiders were able to extract millions from these incentive fees through distributions and transfers to their capital accounts, amounting to $5.5 million in 2014, $11.5 million in 2013 and $3.0 million in 2014. The Platinum Insider reinvested a portion of the ill-gotten gains in capital accounts, permitting them to enrich themselves by redeeming in the future at higher valuations. The 2015 incentive fees were not paid out as the music stopped in 2016.

124. The accrual and payments of management and incentive fees to the management company and the Platinum Insiders based on inflated valuations approved by the Platinum Insiders epitomize the self-dealing and conflicts disregarded by the Platinum Insiders. The PPCO Funds were harmed as the Platinum Insiders enriched themselves through millions of dollars of excessive management and unduly earned incentive fees.

C. The Creation of Beechwood

1. Purposes of Beechwood

125. By 2013, in a severe liquidity crisis, the PPVA Funds, as set forth above, needed constant cash infusions to prop them up and support growing redemptions from outside investors they could not control, as well as overvalued and illiquid assets that required increasing capital infusions. (*See* SHIP Complaint, ¶ 17)[4] As SHIP has alleged, Nordlicht, Huberfeld, Levy and Bodner could not attract investments directly from institutional investors because of their history of criminal convictions and civil liability. (SHIP Complaint ¶¶ 17, 18) As BCLIC has further explained, "'[f]or years, Platinum had little success attracting insurance-company money and considered starting a reinsurer to do so . . .'" (BCLIC Complaint, ¶ 6).

126. To overcome these obstacles, in BCLIC's words, "Huberfeld and Nordlicht partnered and conspired with Defendants Moshe M. Feuer, Scott Taylor and David Levy to form a reinsurance company, Beechwood Re Ltd. ('Beechwood')," and "[t]he co-conspirators established Beechwood with the objective of entering into one or more reinsurance treaties with insurance companies, so that they could take control of reinsurance trust fund assets and use those assets to benefit Platinum, thereby enriching Platinum's and Beechwood's owners." (BCLIC Complaint, ¶ 5) In this manner, the Beechwood Insiders hoped to create a permanent source of capital that, unlike capital from the PPVA Funds' and the PPCO Funds' current investors, was unlikely to be withdrawn, in order to shore up the PPVA Funds and the portfolio companies in which the PPVA Funds had invested.

127. As SHIP puts it, Beechwood was "formed as a mechanism to funnel money into Platinum Partners, L.P., a Manhattan-based hedge fund founded by [Nordlicht, Huberfeld and Bodner] to prolong their existing Ponzi-like scheme." (SHIP Complaint, ¶ 15) "In 2013, co-conspirators Nordlicht, Huberfeld, Bodner, Levy, Feuer, and Taylor formulated a scheme to

[4] Citations to the "SHIP Complaint" are to the original filed complaint.

create a new entity that would present the false appearance of being unrelated to Nordlicht, Huberfeld, or Bodner in order the attract institutional investors that Platinum itself could not attract directly." (SHIP Complaint, ¶ 48)

128. As SHIP further has admitted, "[i]n addition to Beechwood's undisclosed role in propping up Platinum Partners, Feuer, Taylor, and Levy personally profited from the artificial and fraudulent valuation of Beechwood's asset holdings." (SHIP Complaint, ¶ 18) For these purposes, Beechwood was established with both reinsurance and investment advisory businesses.

129. Beechwood was a perfect vehicle:

(a) to prop up the PPVA Funds and prevent them from failing, by funneling money into them in order to enable them to keep pace with ongoing requests for investor redemptions and funding needs for portfolio investments;

(b) to act as a buyer of last resort;

(c) to enable the PPCO Funds to engage in further transactions designed to prop up the PPVA Funds;

(d) to falsely inflate the reported net value of the PPVA Funds and the PPCO Funds in order to justify overcharging the PPVA Funds and the PPCO Funds for unearned partnership shares and fees to insiders;

(e) to provide a new business into which to transfer the assets of the PPVA Funds, the PPCO Funds and the PPLO Funds, if those funds failed; and

(f) to prioritize the interests of the Beechwood Entities over the interests of the PPCO Funds, by, among other things, consistently subordinating the PPCO Funds' prior rights in common collateral to those of the Beechwood

Entities, and grating the Beechwood Entities put rights against the PPCO Funds.

2. The Beechwood Entities and Affiliated Individuals

130. The effort to create Beechwood was coordinated by Nordlicht, Levy, Huberfeld, Taylor, Feuer and Bodner, working out of Platinum Management's offices. According to BCLIC and WNIC, which later engaged with Beechwood, Huberfeld and Nordlicht "found Feuer and Taylor, two professionals with excellent reputations who could serve as front men for a purported reinsurance company and which could, through reinsurance agreements, obtain control of trust assets for the benefit of furthering the Platinum fraud scheme and enriching scheme participants," and "[t]hat company was Beechwood." (BCLIC Complaint, ¶ 72)

131. As BCLIC and WNIC have revealed:

> "Feuer had long known some at Platinum, whose executives were active in the same religious community on New York's Long Island. He and Huberfeld served at a charity together, and Feuer's sister went to the same school as Platinum co-founder Mark Nordlicht . . . ." The ties between them ran deep.

(BCLIC Complaint, ¶ 7 (quotation omitted)

132. The majority ownership in, and ultimate control of, Beechwood was in fact held by Nordlicht, Huberfeld, Bodner and Levy (in part through trusts), while Taylor and Feuer maintained ostensible and nominal management authority, with Levy.

As BCLIC and WNIC put it:

> Beechwood was in substantial part owned by a series of family trusts in the names of Huberfeld and Nordlicht, as well as their family members (including spouses and children). Levy and his family trusts owned another 5%. Together, Huberfeld and Nordlicht controlled over 35% of Beechwood's equity, and with Levy's interest, they controlled 40%.

(BCLIC Complaint, ¶¶ 68)

133. Moreover, Beechwood's investment professionals were a revolving door of Platinum Management personnel. There were numerous other ties between Beechwood and Platinum Partners, including, among others:

(a) Huberfeld's son and son-in-law worked for Beechwood and BAM;

(b) Many of Platinum's employees (in addition to Levy) also worked for Beechwood, or consulted with Beechwood about significant matters;

(c) Rick Hodgdon was on Platinum Partners' payroll through June 2015 and simultaneously was Beechwood's Chief Underwriting Officer;

(d) Daniel Saks, a former Platinum Partners employee, served as BAM's CIO after Levy "resigned";

(e) Naftali Manela, then CFO of Platinum Partners, performed services for Beechwood related to general operations; and

(f) Eli Rakower, director of valuation at Platinum Partners, provided consulting services to Beechwood related to interaction with valuation firms that would value Trust assets.

134. Beechwood included a complex web of entities related to an insurance and investment advisory business that were, at all relevant times, owned and controlled primarily by Nordlicht, Bodner, Huberfeld, Feuer and Levy. The Beechwood Entities were devoted to the purposes of obtaining a more permanent source of capital for the PPVA Funds and getting monies to insiders of Beechwood and Platinum Partners.

135. Initially formed in 2013, Beechwood Re was and is a reinsurer domiciled in Grand Cayman and regulated by the Cayman Islands Monetary Authority (the "**CIMA**"). On July 25, 2017, after this scheme was exposed, the CIMA placed Beechwood Re in

Controllership. Approximately 68% of the beneficial ownership of Beechwood Re was beneficially held by various Beechwood Trusts created by Nordlicht, Bodner, Huberfeld and Levy.

3. Roles and Ownership of Beechwood Entities and Affiliates

136. Beechwood Capital Group LLC ("**Beechwood Capital**") is a New York limited liability company with its principal place of business in Lawrence, New York at the same address as Feuer's principal residence.

137. Beechwood Investments was used as a vehicle by the founders of Platinum Partners (Nordlicht, Huberfeld and Bodner) to purchase all the preferred shares in Beechwood Re and Beechwood Bermuda. The managing member of Beechwood Investments was N Management, LLC, a Nordlicht-controlled entity, and the other members of Beechwood Investments were entities owned or controlled by Nordlicht, Bodner, Levy or Huberfeld through various Beechwood Trusts. Beechwood Investments, an entity owned and controlled by Nordlicht, Bodner Huberfeld and Levy through trusts, owned all preferred shares of Beechwood Re.

138. BAM I and BAM II served as investment advisors for Beechwood Re, Beechwood Bermuda and (by agreement) SHIP, and were controlled by Nordlicht, Bodner, Huberfeld and Levy through trusts.

139. Beechwood Bermuda is a reinsurance company domiciled in Bermuda.

140. BAM Administrative served as agent for the Beechwood Reinsurance Trusts and as agent and signatory on behalf of the Beechwood Re and Beechwood Bermuda in connection with certain transactions.

141. BBLN-PEDCO Corp. and BHLN-PEDCO Corp. are special purpose vehicles that were managed by BAM Administrative.

142. BRe BCLIC 2013 LTC Primary, BRe BCLIC 2013 LTC Sub, BRe WNIC 2013 LTC Primary and BRe WNIC 2013 LTC Sub (*i.e.*, the Beechwood Reinsurance Trusts) are insurance trusts that were managed by BAM Administrative.

143. Beechwood Trust Nos. 1 through 20 (*i.e.*, the "**Beechwood Trusts")** are owned and controlled by Nordlicht, Bodner, Huberfeld and Levy through their families. The Beechwood Trusts, in turn, owned approximately 70% of the common stock of Beechwood Re.

144. Beechwood Re Investments, LLC Series A through Beechwood Re Investments, LLC Series I (*i.e.*, the "**Beechwood Series LLCs**") were owned and controlled by Nordlicht, Bodner, Huberfeld and Levy through their families. The Beechwood Series LLCs owned all of the membership interests in Beechwood Investments, which owned preferred stock in Beechwood Re.

145. Taylor (through trusts) owned common stock in Beechwood and had managerial authority over the Beechwood Entities. Until five years before forming Beechwood, Taylor had been an executive of Marsh & McLennan and COO for Merrill Lynch Wealth Management's Private Banking and Investments Group. (During the immediately preceding five years, he was out of the insurance business.)

146. Levy served as co-chief investment officer of Platinum Management together with Nordlicht. Beginning in 2013, Levy was instrumental in the creation of Beechwood and served as chief financial officer and secretary of Beechwood Re and Beechwood Bermuda. He was also chief investment officer of BAM I, the Beechwood asset management entity until 2014. Beechwood marketed Levy to potential clients as a member of its management team and

specifically highlighted Levy's eight years of experience with Platinum Management as key to Beechwood's future success. In late 2014, in the wake of the "Black Elk" scheme, described below, Levy returned to Platinum Management, yet remained an owner of Beechwood.

147. At all relevant times, Feuer (through trusts) owned common stock in various Beechwood Entities and had managerial authority over the Beechwood Entities.

148. The common stock of Beechwood Re was held by Beechwood Holdings.

149. Beechwood Holdings' equity, and the share capital of Beechwood Bermuda, was in turn owned by Feuer, Taylor, Levy, Nordlicht, Bodner and Huberfeld

150. Nordlicht, Bodner and Huberfeld together owned nearly 70% of the common stock in Beechwood Holdings and Beechwood Bermuda, and held their shares through Trusts No. 1-19, in which each of their children were the beneficiaries.

151. Levy held his common stock in Beechwood Holdings and Beechwood Bermuda as the beneficiary of Beechwood Trust No. 20.

152. The principals of Platinum Partners and Beechwood Defendants also created BAM to manage and invest the assets obtained through reinsurance agreements with the Beechwood Reinsurance Companies.

153. Nordlicht, Bodner, Huberfeld and Levy owned a controlling interest in BAM.

154. Nordlicht, Huberfeld, Bodner, Levy, Feuer and Taylor caused the creation of another Delaware limited liability company, Beechwood Investments.

155. The managing member of Beechwood Investments was N Management LLC, an entity controlled by Nordlicht.

156. The other nine members of Beechwood Investments were denominated as Beechwood Re Investments, LLC Series A through Beechwood Re Investments, LLC Series I.

157. Each Beechwood Series LLCs, in turn, was beneficially owned by Nordlicht, Bodner, Huberfeld, Levy and their families.

158. In connection with the wrongdoing described herein, each of the Beechwood Defendants, the Beechwood Trusts, and the Beechwood Series LLCs, had a complete, or nearly complete, identity of managers, failed to adhere to any corporate formalities (such as meetings of the members or managers) and were alter egos of each other, and the Beechwood Insiders, with the Feuer FT and Taylor-Lau FT, completely disregarded the corporate separateness of, and were alter egos of, the entities in order to distribute proceeds to themselves that otherwise should have been paid to PPCO and its innocent investors.

4. Capitalization of Beechwood

159. To attract reinsurance business and also satisfy the requirements of regulators, Beechwood required a source or sources of capital.

160. In the materials used to market the Beechwood reinsurance companies, the Beechwood Insiders indicated that they were capitalized with cash provided by Feuer, Taylor, Levy and certain investors.

161. For example, Levy, Feuer and Taylor created and showed potential clients an "Unaudited Balance Sheet September 1, 2013," which stated that the Beechwood Reinsurance Companies held assets totaling $114,801,585, including over $37 million in shares issued by a publicly traded company and over $10 million in "cash and cash equivalents," but no liabilities. *See* PPVA Complaint ECF No. 1-5 at Ex. 41 (S.D.N.Y.).

5. The Actual Formation of Beechwood

151. In or about February 2013, Levy and Nordlicht commenced working with Taylor and Feuer to create Beechwood

152. That Beechwood was a Platinum Insider creation (in conjunction with Feuer and Taylor) is beyond question. It is documented.

153. On February 26 to28, 2013, writing from "beechwoodcapitalgroup.com" email domains, Taylor and Feuer, copying Levy at his Platinum Management email address, discussed the execution of an NDA between Beechwood Capital and Alpha Re Limited, another reinsurance company. *See* PPVA Complaint at Ex. 29.

154. On or around April 17, 2013, Taylor drafted a memorandum intended to provide Beechwood's captive managers with an overview of Beechwood's corporate. *See* PPVA Complaint at Ex. 31.

155. On or about May 15, 2013, Levy executed initial due diligence documents for Beechwood Re as required by CIMA. *See* PPVA Action, ECF No. 1-4 at Ex. 32 (S.D.N.Y.).

156. On or about May 30, 2013, Levy emailed Nordlicht a draft term sheet for Beechwood Re. *See* PPVA Complaint at Ex. 33.

157. On or about May 31, 2013, Crystal O'Sullivan sent Levy an invoice for $25,000 for filing, licensing, legal, and administrative services in connection with the creation of the Beechwood Reinsurance Companies, so that Platinum Management could pay such fees on behalf of Beechwood. *See* PPVA Complaint at Ex. 34.

158. On June 4, 2013, Taylor emailed Levy under the subject "when you have a set of sample investment guidelines, please send them." The text of the email states "I am creating our Beechwood Re [Beechwood Re] 'document.'" *See* PPVA Complaint at Ex. 35.

159. On June 12, 2013, Taylor emailed Nordlicht, seeking Nordlicht's approval in regard to several potential "deal" opportunities for the Beechwood Reinsurance Companies. See PPVA Complaint at Ex. 36.

160. Also on June 12, 2013, Taylor sent Levy a general management and strategy document to assist Levy in drafting an unspecified "investment document." *See id.*

161. On June 16, 2013, Taylor emailed Levy a PowerPoint Presentation that he prepared entitled "Beechwood Re Investment Strategy & Guidelines Discussion Document" (the "**Beechwood Re Presentation**"). *See id*. At Ex. 37.

162. The Beechwood Re Presentation identifies Levy as a key member of the management team, and touts his 8 years of experience with Platinum Management as a strategy for Beechwood's future success. *See id.* at 12.

6. Management and Operation of Beechwood

163. From the time they were formed and at all relevant times thereafter, Feuer was Chief Executive Officer and Taylor was President of the Beechwood reinsurance companies.

164. Levy served as BAM's Chief Investment Officer and Chief Financial Officer until the end of 2014, when he was replaced by Saks, another Platinum Management executive.

165. At certain times, the management teams of Beechwood served and worked at the sole discretion of Beechwood's ultimate beneficial owners – Nordlicht, Bodner, Huberfeld and Levy -- and functioned as the alter ego of Platinum Management to the PPVA Funds' detriment.

166. The management team of Beechwood was largely comprised of personnel employed by or otherwise connected to Platinum Management.

167. For example, the Beechwood team included, from time to time, the following persons: (i) Levy, as "Chief Investment Officer"; (ii) Will Slota, as "Chief Operations Officer"; and (iii) David Ottensoser, as "General Counsel"; and (v) Small, as the "Senior Secured Collateralized Loans PM."

168. Although each of the foregoing persons had titles at the Beechwood, Entities they also were full-time officers or employees of Platinum Management.

169. During the following two years, additional Platinum Management employees also worked at Beechwood or otherwise directed the activities of Beechwood.

170. Stewart Kim, an employee of Platinum Management, simultaneously worked for Beechwood as its Chief Risk Officer until January 2015, when he became a full-time employee of Beechwood, having been hired by Feuer and Taylor as the Beechwood reinsurance companies' Chief Risk Officer.

171. Ezra Beren, Huberfeld's son-in-law, was hired in January 2014 to be a portfolio manager at Beechwood after serving in a similar capacity at Platinum Management.

172. After Levy left Beechwood to return to Platinum Management, Saks was hired to replace Levy as CIO of BAM.

173. Manela and Eli Rakower, both employees of Platinum Management, provided extensive and regular consulting services to Beechwood while also employed by Platinum Management.

174. BAM and the remainder of Beechwood operated out of Platinum Management's office space until at least the end of February 2014.

175. Even after separate office space was set up, Levy maintained an office at Beechwood through at least 2014, and Huberfeld took over Nordlicht's office at Beechwood when Nordlicht moved out.

D. Beechwood's Obtaining Control of BCLIC's, WNIC's and SHIP's Funds

1. Problems Experienced by Long-Term Care Insurers

176. Beechwood needed investors to fuel the fraud that was created by the Beechwood Insidersto. Because it was a startup reinsurer, and it would likely not have been able to transact with established life insurers, Beechwood targeted reinsurance with life insurance companies with limited, if any, options available to them. Beechwood initially settled on long-term care (“**LTC**”) insurers with troubled legacy portfolios.

177. LTC carriers with legacy portfolios originated had long faced an environment in which claims payments kept increasing, and, in turn, the profitability of these legacy policies kept decreasing, while capital requirements kept multiplying. These legacy policies were generally the early generation of long-term care policies with benefits and lower premiums that were no longer offered in the market. LTC carriers had already discontinued this line of business.

178. A survey of LTC insurers revealed that faulty underwriting assumptions were the primary cause of the decline in the industry. *See The State of LTC Insurance, the Market, Challenges and Future Innovations* (“The State of LTC Insurance”), published in May 2016 by the National Association of Insurance Carriers (“**NAIC**”) and the Center for Insurance Policy Research. These faulty assumptions included:

(a) Lower than anticipated interest rates: Over the life of the LTC policies, premiums are fixed while projected claims increase. Because long-term rates decreased in comparison to those assumes at policy origination, investment income earned from invested premiums, which was critical to profitability and capital generation, was lower than projected;

(b) Lower than expected voluntary lapse rates: LTC policies are guaranteed renewable, *i.e.* they can only be cancelled for non-payment of premiums.

Because lapse rates were lower than anticipated, insurers had to keep making claim payments; and

(c) Lower than expected morbidity and mortality of policy holders (actual vs. expected).

179. Various industry experts and publications repeatedly emphasized the difficulty LTC insurers historically faced and continued to face, and how few options were available to them to manage their long-term care exposure. Notable statements to this effect include:

(a) "LTC insurers have been subject to a perfect storm in recent years, with claims costs higher than expected, lapse and mortality rates much lower than the carriers expected, and interest rates dramatically below what was priced into the product," Dawn Helwig, Director of Milliman Inc., (August 24, 2013);

(b) "We're not aware of a single company that has consistently earned targeted rates of return (referring to insurers with LTC business)," Pressures Still Present in Long-Term-Care Insurance, RBC Report (August 26, 2013);

(c) "If LTC carriers had used a mortality table used to price individual annuities as opposed to the table that they did use (1994 Group Annuity Mortality table)... they would have come up with mortality rates 36% to 40% less than what the carriers ultimately ended up using. This factor alone amounting to premium shortfalls of ~14%," Life and Health Insurance, RBC Report (January 26, 2015); and

(d) "Society of Actuaries Presentation in 2014 Seemed to Suggest LTC Reserves Understated by as Much as 50% and Several Industry Experts Agree," US Life Insurance Report, Credit Suisse (April 10, 2017).

180. By 2012, having been burned by legacy LTC portfolios, had become increasingly unprofitable for insurers to write, and insurers had been exiting the business of writing new LTC policies on masse, while attempting to manage their increasingly costly legacy portfolios and searching for ways to underwrite new LTC policies amid increasing concern about their claims uncertainty. In fact, according to *The State of LTC Insurance*, between 2002 and 2012, due to the factors discussed above, new sales of LTC policies declined by approximately 70%. During that same approximate time period, in the absence of any appetite for opportunistic acquisitions of legacy LTC companies, the number of carriers writing LTC policies declined by over 90%. (*See The State of LTC Insurance*; and the 2002 and 2015 *Broker World Surveys.*)

181. Confronted with increasing risk, declining profitability and growing capital requirements, LTC insurers also struggled with minimal to non-existent means of offloading risk, especially for their legacy portfolios. Reinsurance for such risks was scarce.

182. Reinsurance is the transfer of part or all of the risks that a direct insurer (referred to as the cendant) of a single policy or pool of insurance to a second insurance carrier, the reinsurer, who typically has no direct contractual relationship with the insured. The transfer of risk involves the contractual transfer of all or an agreed upon portion of future claims liabilities to the reinsurer (referred to as the process of ceding policies and related anticipated claims liabilities by the insurer to the reinsurer; the reinsurer in turn assumes the policies and related claims from the insurer) in exchange for a negotiated cash consideration.

183. The cash consideration begins with an assessment by the reinsurer of the anticipated future claims for the portfolio of insurance policies, which may diverge from the actual anticipated future claims of the primary insurer. The cash consideration could also include adjustments including a ceding commission (paid typically by the reinsurer back to the insurer as compensation for originating the policies) as well as consideration for other balance sheet statutory liabilities transferred to the reinsurer. In certain transactions, such as with legacy LTC policies, uncertainty around claims could be so extreme that the transaction can only be consummated with a negative ceding commission. Put another way, the reinsurer expects to be compensated for assuming the policies.

184. This reinsurance risk transfer permits the ceding insurance company to write and assume individual risks that are greater than its capital size would allow. Reinsurance also protects insurers against catastrophic losses or volatile loss forecasts. It permits the insurer to smooth out its financial results of an insurance company, making them more predictable to reinsurance facilitates long term business planning. Rating agencies tend to view this reduction in volatility and loss uncertainty more favorably. High ratings (especially investment grade) are critical to insurance companies both for originating new business and to lower borrowing costs.

185. Due to the extreme challenges facing LTC carriers, by 2012, reinsurance was available only under extremely onerous terms in which the ceding insurance company would have to make significant payments (negative ceding commissions) to reinsurers to complete such transactions.

186. Comments from various reinsurance executives regarding the problems with reinsuring legacy LTC lines are revealing:

(a) "Okay. So U.S. long-term care is a very difficult line to write. Historically, we wrote a little bit of it and, quite frankly, our experience was not absolutely fantastic. So we -- a while ago, we have stopped writing it. We still have a little bit reserves left, long-term care reserves left in our book, but it is absolutely immaterial right now. We do not actively write this line of business... it's potentially also very tricky for insurers to write it. And right now, I feel we have not yet cracked the codes related to coming up with a solution that would make sense…," Swiss Re Ltd, 3Q14 Earnings Call on November 7, 2014;

(b) "So we've looked at a number of in-force legacy LTC blocks over the years, and I think we've been reporting that we just haven't been able to find a legacy block and a transaction that works for us. So we concluded, after a few years, that the likelihood of finding a deal where we could be successful was pretty low. So we essentially stopped pursuing those type of deals. However, we may, from time to time, look at blocks that either don't have all of the risk characteristics of those typical legacy blocks that we've explored time and time again or, perhaps, where a solution may involve the transfer of some of the elements and not all of the elements of the underlying risk, but what I will say is that we've taken a conservative approach at looking at legacy blocks. And we're going to continue to take that conservative approach to any opportunities that arise, and that's not going to change going forward," Reinsurance Group of America (RGA), 1Q17 Earnings Call on April 28, 2017; and

(c) We're not particularly looking to buyblocks of business just to keep growing in that particular marketplace unless we can fund them…priced", RGA 1Q2013 Earnings Call on April 26, 2013.

187. In sum, as one reinsurance industry expert put it, "[m]utually agreeable transactions [were] becoming increasingly difficult to craft. Even as recently as ten years ago, insurers that sought to cede their legacy LTCI risk expected to be paid outright to do so at little cost to them. That is no longer the case: an LTCI cendant now must be willing to pay to offload the risk." Stahl, *To Cede or Not to Cede: Overcoming the Hurdles to Ceding Legacy LTCI Risk* (2017), at p. 18.

188. Similarly, the then head actuary at Beechwood described the overall environment as: ". . .And not only were the carriers dropping out of the business, but reinsurance was not exactly attainable, either. No reinsurer wanted this business that many viewed as being challenging. For the same reasons the issuing companies didn't want it, the reinsurers weren't lining up to take it away from them." Keslowitz, *LTC Transactions: After So Many Years of No Interest, Why Now?* (April 2015), at p. 9.

189. With few affordable reinsurance options, incumbents in the market attempted to mitigate their LTC risk by drastically changing underwriting guidelines for new policies on the one hand, and on the other hand, creating discontinued lines of business out of their legacy LTC portfolios (referred to in the industry as closed blocks of business), gradually acknowledging the reality of increasing future claims on their balance sheets, and then requesting state insurance regulators for permission (though not always successfully) to raise premiums on the legacy LTC policy holders.

190. State regulators, in turn, expressed increasing reluctance to permit such large required rate increases. Despite rate increases, industry experts believe that these legacy LTC policy portfolios were under-reserved by as much as 50% *See* Credit Suisse US Life Insurance Industry Presentation, April 10, 2017. These industry issues also directly led to LTC insurance companies filing for rehabilitation and then liquidation. Penn Treaty was a notable large liquidation which had over $1 billion in assets prior to going into rehabilitation proceedings. Penn Treaty policy holders are not expected to be able to collect the full amount of their claims.

2. CNO's Hemorraghing LTC Portfolio: Its Spin Off of SHIP, the Creation of Fuzion, and the Runoff of BCLIC and WNIC with the Assistance of Fuzion

191. Against this backdrop, CNO was struggling to manage its sizable LTC portfolio.

192. CNO had long expressed a desire to find ways to mitigate its exposure to legacy LTC policies. Similar to other industry players, CNO was primarily concerned with the uncertain and increasing claims projections (due to higher morbidity, lower mortality and lower lapse rates for policy holders than projected when the policies were underwritten) for these LTC policies. For example, in an earnings call in April 2008 (CNO Financial Group, Inc. FQ4 2007 Earnings Call, Apr 01, 2008), Edward Bonach, then CFO of CNO stated:

> When we talked about decreasing our weight in long-term care that was a long-term objective, it was sort of a strategic objective because too great a proportion of the company's earnings were coming from long-term care. And it's a very volatile business, and it doesn't make sense for a company of our size to have as much as we have."

(Exiting the Market: Understanding the Factors Behind Carriers' Decision to Leave the Long-Term Care Insurance Market, U.S. Department of Health and Human Services Assistant Secretary for Planning and Evaluation Office of Disability, Aging and Long-Term Care Policy, July 2013)**.**

193. The investment income from premiums collected on these policies was also lower than projected in an environment of low interest rates. CNO provided more than $915 million to SHIP over a ten year period. These events led CNO to spin off SHIP, formerly Conseco Health Insurance Company, which held a closed-block book of legacy LTC policies, in November 2008 (Conseco Inc., Q4 2008 Earnings Call, March-31-2009).

194. In the months leading up to this spinoff, during an earnings call, CNO stated: "We (CNO) have talked about looking at and considering strategic alternatives while there may be other strategic moves that we make, there is unlikely to be any single strategic move in the near term that approaches the significance of transferring the bulk of the run-off block to a trust for a contribution of $175MM." (CNO Financial Group, Inc. NYSE:CNO FQ2 2008 Earnings Call Transcripts Tuesday, August 12, 2008)

195. As CNO's rating agencies observed, CNO's goal in spinning off SHIP was to reduce the strain on CNO from the continued ongoing support of SHIP's underwriting losses. For example, in August 2007, Standard & Poor's opined that "[i]f the CSHI run-off block continues to generate significant losses, further affecting interest coverage, the ratings on Conseco, Inc. and the core operating companies will likely be lowered." (Plan to Transfer Conseco Senior Health Insurance Company to Independent Trust, August 11, 2008) Similarly, A.M. Best wrote: "Conseco has contributed roughly $220 million of capital to CSHI over the last year … The recurrence of these charges has exceeded A.M. Best's expectations; as a result A.M. Best remains highly cautious on the future performance of the LTC block and has diminished confidence in Conseco's ability to generate consistent operating results in the near to medium term."

196. During and after the financial crisis of 2008, CNO faced significant liquidity issues at the holding company level as well as losses in its investment portfolio. These problems caused CNO to delay filing its 2009 Form 10-K in order to satisfy its auditors' concerns about the ability of the company to continue as a going concern. Given the financial support the company had provided to one of its LTC carriers, SHIP, over the years, including over $220 million in the course of the immediately preceding years (Plan to Transfer Conseco Senior Health Insurance Company to Independent Trust, August 11, 2008), CNO determined a spinoff of SHIP was critical to CNO's financial well-being.

3. <u>CNO's Spinoff of SHIP</u>

197. At the time of the spinoff, SHIP was the solvent run-off of a diminishing closed block of primarily long-term care policies issued by insurance companies that had been acquired by, or merged into, Conseco Senior Health Insurance Company (as SHIP was then known) between 1997 and 2000. Conseco Health Insurance Company was originally a wholly-owned subsidiary of Conseco, Inc. (CNO's predecessor). Following substantial and ongoing underwriting losses, SHIP stopped underwriting new business in 2003 and began working with the Pennsylvania Insurance Department to develop a run-off strategy, paying off claims of policyholders until the policies terminated. This had the effect of restricting access to capital and sources of income to fixed policyholder premiums and investment income.

198. From 2008 through 2017, CNO and its subsidiaries made approximately $915 million in capital contributions to SSHI (SHIP's predecessor under CNO), including approximately $220 million in capital contributions from January 1, 2006 through June 30, 2007. (Plan to Transfer Conseco Senior Health Insurance Company to Independent Trust, August 11, 2008 ("SHIP Plan," at 7, 11,

http://s1.q4cdn.com/448338635/files/doc_presentations/CSHI_Separation_Transaction_8.10.08.pdf)

199. In November 2008, ownership of SHIP was transferred from a wholly-owned subsidiary of Conseco, Inc. to the Senior Healthcare Trust, which was then merged into an independent oversight trust, the Senior Healthcare Oversight Trust ("SHOT"), and the company's name was changed to "Senior Health Insurance Company of Pennsylvania." The Trustees of SHOT serve as SHIP's directors and are primarily former insurance regulators.

200. At the time of the transfer, CNO and its subsidiaries contributed $164 million of capital to SHIP to add to SHIP's existing $125 million of adjusted statutory capital, reflecting concerns that SHIP would need additional capital to sustain itself on a standalone basis. *See SHIP Plan.*

201. Today, spun off from CNO, SHIP is a LTC care insurance company that remains in runoff. SHIP is domiciled in Pennsylvania and is licensed in every state except Connecticut, New York, Rhode Island and Vermont. (Report of Examination of Senior Health Insurance Company of Pennsylvania, Harrisburg, PA, As of December 31, 2013; Senior Health Insurance Company of Pennsylvania, Statutory Financial Statements, December 31, 2014 and 2013) It is operated from the same site in Carmel, Indiana as it operated while under CNO's control, along with CNO's other LTC legacy portfolios, BCLIC and WNIC.

202. SHIP is responsible for funding the covered long-term care expenses of its elderly policyholders. When all of SHIP's policies and other obligations have been satisfied, proceeds from the liquidation of SHIP, if any, will be disbursed by SHOT to a common law trust, which at that time will select an ultimate beneficiary.

203. Both SHIP and SHOT operate for the exclusive benefit of policy holders. SHOT is a business trust organized under the laws of the state of Pennsylvania and is governed by a Board of Trustees.

4. The Creation of Fuzion

204. Fuzion, a wholly-owned subsidiary of SHOT, was formed in 2012 to provide insurance data analytics capabilities to LTC insurance companies, including SHIP. In or about December 2013, pursuant to a comprehensive master services agreement, SHIP transferred its employees (former employees of CNO) and physical assets to Fuzion to provide comprehensive management services to SHIP. (Report of Examination of Senior Health Insurance Company of Pennsylvania, Harrisburg, PA, as of December 31, 2013)

205. This agreement replaced an administrative services agreement that had been in place with Fuzion until that time. Fuzion's employees were formerly CNO employees, who moved to SHIP following its spinoff from CNO. According to SHIP's statutory financial statements for the years 2014 to2017, as consideration for its services, upon information and belief, Fuzion received substantial payments in the range of approximately $15 million to 18 million during the years from 2014 through 2017 for managing SHIP (SHIP's payments to affiliates) (SHIP Statutory Financial Statements for 2014-2017). SHIP is entirely staffed by Fuzion employees, located in the same office complex in Carmel, Indiana as SHIP, BCLIC and WNIC.

206. Fuzion also "act[ed] as a third-party policy and claims administrator for policies of long-term care business issued by various insurers," (SHIP Complaint, ¶ 11), including, as set forth below, BCLIC and WNIC.

5. CNO's Continued LTC Struggles with BCLIC and WNIC

207. Even after spinning off SHIP, CNO's legacy LTC lines continued to flounder, dragging down CNO's financial performance. Consequently, CNO continued to devise ways to remove its subsidiaries' – BCLIC's and WNIC's -- legacy LTC business from its balance sheet and mitigate further risk.

208. At CNO, a common set of holding company board members and executive management directed the financial and risk-management decisions of individual insurance companies in the group. Further, the operations of individual insurance companies were integrated across entities, including common marketing operations. The holding company received dividends from its subsidiaries to fund its operations including operating expenses and interest expense on debt issued at the holding company level. The debt issued at the holding company level was guaranteed by its subsidiaries.

209. CNO was being run for the benefit of its shareholders and its executives were incentivized as such. The value of CNO stock derived from its ownership of the insurance subsidiaries. All earnings calls are directed and addressed by the executive management of CNO – they addressed business and financial strategy across all operating insurance companies. The rating agencies in their assessments of CNO acknowledged this unified management of CNO. In their credit and ratings reviews for the holding company, they frequently assessed transactions undertaken at the insurance company level.

210. 40|86 Advisors, a registered investment advisor and wholly owned subsidiary of CNO, manages the investment portfolios of CNO's insurance subsidiaries. Upon information and belief, the chief investment officer of 40|86 also served as an executive officer of the insurance subsidiaries, WNIC and BCLIC.

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211. In view of the direct impact on CNO's ratings, and, therefore, access to capital, CNO, and its wholly-owned subsidiary, 40/86 Advisors, directed the activities of BCLIC and WNIC, described below, with respect to efforts to reduce and mitigate its LTC exposure, particularly, though contracting with Beechwood. The actions that BCLIC and WNIC undertook with respect to Beechwood alleged herein were directed by, and for the benefit of, CNO by executive management of CNO.

212. In May 2010, CNO announced that it would be segregating its legacy LTC (BCLIC and WNIC) and other interest-rate sensitive life insurance, annuity and supplemental policies into a separate subsidiary, called Other CNO Businesses ("**OCB**"). The purpose of this action was to provide a sharper focus on improving the results of these legacy policies and to bring transparency to relatively better performance of the rest of the company's operations, which were profitable while OCB was not.

213. CNO also continued to make rate filings with insurance regulators requesting increases in premiums on its legacy LTC policies in order to offset increasing losses in CNO's legacy LTC portfolio, which had now been mostly segregated into its OCB segment. (3Q 2010 Earnings Presentation) As discussed on the year-end 2012 earnings call, the OCB segment continued to be volatile and the company continued to add modest reserves to this segment. (Earnings transcript for Q4 2012) The company also disclosed in its year-end 2012 investor presentation that it was reviewing reinsurance strategies for its OCB segment. CNO also continued to make rate filings with insurance regulators requesting increases in premiums on its legacy LTC policies. (December 2012 Investor Presentation)

214. At a J.P. Morgan Insurance Conference presentation in March 2013 Frederick J. Crawford, the then EVP of CNO, in response to a question regarding his "comfort level" with CNO's long-term care business, described it as follows:

> Yes, so long term care, we sometimes like to call it a 4-letter word at the company, because it's certainly dealt with that way by both rating agencies and investors, and for good reason. The track record is anything but stellar, and it's proving to be one of the more complicated businesses to manage consistently and profitably overtime. And a couple of things to recall about CNO, one is don't lose sight of the fact that we took $3 billion of the truly longer and fatter tail long-term care business, and walled that off completely from the company in a trust. We effectively mutualized it, we have no risk on that business or even affiliation with that business, and so that was a very important move that was made back a number of years ago, pre-crisis.

(CNO Financial Group, Inc. Presents at JPMorgan 2013 Insurance Conference, Mar-21-2013)

215. CNO also discussed accelerating the runoff of the OCB business through sales or reinsurance, because the business produced "zero return." (CNO Financial Group, Inc. Presents at Citigroup US Financial Services Conference, Mar-06-2013)

216. At the same conference, Edward Bonach, in response to a question about the state of the long-term care business responded: "To my earlier comment, any industry that isn't attracting capital eventually dies. We don't see that as good that the long-term care industry is retracting or that the number of companies actively selling in it is reducing." He also expressed concern that not all regulators were permitting premium increases on long-term care policies even though he believed that many middle income Americans would need it, stating "[s]o we hope that it doesn't continue on that vein, but it needs some regulatory cooperation and certainly interest rates being above where they are now would also help the industry in general." During this call, he further indicated that he was going to continue to request regulators for premium

increases and was hopeful that the industry would attract new capital in the form of "re-insurance M&A."

217. By 2013, CNO was managing its business through the four operating segments: BCLIC, WNIC, Colonial Penn, and Other CNO Business. BCLIC marketed and distributed Medicare supplement insurance, interest-sensitive life insurance, traditional life insurance, fixed annuities and LTC insurance products to the middle-income senior market. WNIC marketed and distributed supplemental health (including specified disease, accident and hospital indemnity insurance products) and life insurance to the middle-income market. The Colonial Penn segment marketed graded benefit and simplified issue life insurance directly to customers. The Other CNO Business segment consisted of blocks of interest-sensitive life insurance, traditional life insurance, annuities, long-term care insurance and other supplemental health products. These blocks of business were not actively marketed.

218. While CNO continued to focus on finding ways to runoff its OCB segment, it gradually shifted its LTC in-force mix towards shorter duration, limited benefit products, as compared to legacy policies. In an earnings update call in December 2013, Bonach, the then CEO of CNO discussed the rating agency perspective of the long-term business and legacy long-term care, stating "..the reality is that long-term care is a very low-rated product on the scales of the rating agencies…I would say they watch carefully our run-off blocks of business. They have proven to be a historic level of volatility and earnings surprises, and so they realize that the management of those run-off blocks and how we entertain strategies around that, play off so into their view of the forward beta of the company." (CNO Financial Group, Inc., 2014 Guidance Update Call, December 18, 2013)

219. In an earnings call on February 12, 2014, Scott Perry, CNO's then Chief Business Officer, described CNO's overarching goal for its LTC line of business as follows:

> Having a robust marketplace that includes private long-term care options is important for our country as it will reduce the burden on already-strapped state Medicaid programs. Despite this growing need, long-term care presents many challenges as insurers work to balance the need to price products profitably with providing affordable solutions for consumers. While new products currently offered in the marketplace are significantly different than products of the past, older blocks of the business continued to be a challenge in recognizing that re-rate actions are becoming increasingly more difficult than the current regulatory environment. At CNO, we continue to actively work our in-force block via rate actions and diligent claims management. Our current long-term care products generally provide limited benefit periods, and this is slowly shifting our in-force to a lower overall risk profile. Over the long range, we are focused on working with the regulators, legislators and industry partners to address this important need, and CNO remains committed to serving the needs of its customers by offering long-term care products.

(CNO Financial Group, Inc., Q4 2013 Earnings Call, February 12, 2014)

220. Thus, by 2014, CNO, for its own benefit and that of BCLIC and WNIC, already had a lengthy history of trying to reduce its LTC exposure due to concerns about the uncertain and increasing claims projections (due to higher morbidity, lower mortality and lower lapse rates for policy holders than projected when the policies were underwritten) for those policies, and that investment income from premiums collected on these policies was lower than projected in an environment of low interest rates. This made its subsidiaries, BCLIC and WNIC, prime candidates to furnish the assets that Beechwood's founders would need to fuel the fraud they planned to perpetrate.

6. <u>SHIP's Continued Struggles</u>

221. After CNO spun off SHIP, SHIP's financial condition continued to decline and SHIP's LTC portfolio continued to incur significant unforeseen increases in claims (in insurance

industry parlance, claims due to adverse development) totaling over $200 million in the five-year period from 2009 through 2013. During this period, SHIP's loss ratio, *i.e*., the ratio of claims to premiums, steadily increased, an indication of declining operating performance. (2009-2013 SHIP Statutory Financial Statements) Net investment income also declined, and was likely to continue to decline as SHIP's portfolio shrank from the need to make claims payments, in an environment of flat to declining interest rates from reinvestment at lower investment yields. Consequently, SHIP's financial condition continued to deteriorate.

222. SHIP had long had adverse loss experience in its LTC portfolio, which negatively affected its regulatory surplus. If its regulatory surplus were to decline below a certain threshold level, the Indiana Department of Insurance could exercise certain enforcement powers, including placing the company into receivership and ordering liquidation.

223. Following its spinoff from CNO, SHIP continued to be financially distressed. For instance, in 2013, SHIP's statutory reserves of $2.7 billion were over 30 times its statutory surplus of $90 million, implying that it was extremely vulnerable to further unexpected losses in its runoff portfolio.

224. Thus, by 2014, SHIP was in dire straits. It also had no, or virtually no, options for obtaining reinsurance or other arrangements for offloading any of its LTC risk, and, accordingly, it was a prime candidate to furnish the funds that would be used in Beechwood's fraud.

7. <u>BCLIC and WNIC's Introduction to Beechwood</u>

225. In 2013, CNO and 40/86 began to look for reinsurance CNO's legacy LTC policies at BCLIC and WNIC.

226. As part of that process, Rick Hodgdon (then an employee of Willis Re Inc. ("***Willis Re***") and later a Platinum and Beechwood employee) and Michael Kaster (a former

CNO employee with familiarity with the LTC portfolio) of Willis Re, a reinsurance subsidiary of Willis Group Holdings plc, introduced CNO to Beechwood Re, which, by all appearances, was a new insurance company with no existing business at this time, domiciled in the Cayman Islands. (BCLIC Complaint, ¶¶ 53, 54)

227. BCLIC and WNIC allege that they "went to the reinsurance marketplace to seek certain long-term care blocks of business," that "[s]everal reinsurers were interested in the business, including Beechwood," and that "Hodgdon purportedly joined Beechwood while Plaintiffs were evaluating competing reinsurance proposals." (BCLIC Complaint, ¶¶ 10, 54) In actuality, as forth above, by 2013, reinsurance capacity for books of legacy LTC business, such as those of BCLIC and WNIC, was unavailable or virtually unavailable.

228. In November 2013, CNO, BCLIC and WNIC began conducting due diligence on Beechwood. (BCLIC Complaint, ¶ 66) BCLIC and WNIC claim that, as part of that due diligence, they "made several inquiries to Feuer and Taylor about Beechwood's ownership structure and capitalization," but that "Feuer and Taylor repeatedly told Plaintiffs that Beechwood was mostly owned by them personally, as well as Levy, and that they had capitalized Beechwood with their families' investments and with monies earned during their successful careers." BCLIC further claims that "[w]hen Feuer and Taylor asked Beechwood about these family trusts, Beechwood refused to identify the investors, citing to 'confidentiality agreements,'" at which point BCLIC and WNIC claim that they accepted Feuer and Taylor's "represent[ations] to [them] that these minority interests represented purely "passive" investments." (BCLIC Complaint, ¶¶ 66, 67)

229. In marketing materials that were provided to CNO, for itself and BCLIC and WNIC, Beechwood Re was described as being formed to provide offshore reinsurance capacity

to Life, Accident and Health Insurance companies "seeking improved capital efficiency through reallocations of surplus." (Beechwood Re, Investment Strategy & Guidelines, Discussion Document, September 2013) Those materials also indicated that Beechwood would manage investments directly and through third-party managers across multiple strategies.

230. BCLIC and WNIC further allege that "Defendants repeatedly advised [BCLIC and WNIC] in writing, that the reinsurance trust assets would be managed responsibly, with proper risk management, for the benefit of policyholders" at a time when "Beechwood was a new reinsurance company with no existing business." (BCLIC Complaint, ¶¶ 55, 60) No prudent insurer would have accepted all these representations at face value.

231. Further, while BCLIC and WNIC claim that the insiders "*hid* Beechwood's deep ties to Platinum" (BCLIC Complain, ¶ 27), the connection between the two groups was hidden in plain sight. BCLIC and WNIC themselves acknowledge that Beechwood had "deep ties to Platinum." (BCLIC Complaint, ¶¶ 27, 36) These "deep ties" would have been readily apparent to any prudent insurer who investigated. In its marketing materials, Beechwood cited Levy's track record as the basis for investment returns for funds invested with Beechwood Re. Yet Levy's biography, which was included in the marketing materials provided to CNO, BCLIC and WNIC, described his extensive experience as a portfolio manager, which had been at PPVA Master Fund and was easily determinable. Moreover, this fact would have been obvious from even a cursory background check on him. The investment strategies that Beechwood Re described for its reinsurance clients closely matched Levy's own experience at the PPVA Funds.

232. As BCLIC and WNIC acknowledge in their pleadings, "no insurance company would invest in Platinum or enter into a reinsurance agreement with a reinsurer tied to Platinum."

(BCLIC Complaint, ¶ 41) Yet that is exactly what BCLIC and WNIC chose, with eyes wide open, to do.

233. In November 2013, BCLIC and WNIC sent a team to meet with Beechwood. As BCLIC acknowledges, in connection with that meeting, Hodgdon … sent [BCLIC and WNIC] an email dated November 5, 2013, identifying the representatives from Beechwood who would be attending the BCLIC and WNIC." (BCLIC Complaint, ¶ 63) As BCLIC has acknowledged:

> Beechwood, through Hodgdon, advised Plaintiffs that the following Beechwood personnel would join the meeting: Feuer and Taylor; Will Slota, who was designated as the "COO" of Beechwood; Paul Poteat, who was designated as the "CTO" of Beechwood; David Ottensoser, who was designated as the "General Counsel" of Beechwood; Dan Small, who was designated as the "Senior Secured Collateralized Loans PM" of Beechwood; and David Leff, who was designated as the "US Fixed Income PM" of Beechwood.

(BCLIC Complaint, ¶ 64)

234. Although BCLIC and WNIC claim to have only recently discovered that "Slota, Poteat, Ottensoser and Small were at that time employees of Platinum, not Beechwood" (BCLIC Complaint, ¶¶ 65, 66), most, if not all of, of these individuals' ties to Platinum Partners were discoverable online, and still are.

235. Meanwhile, Beechwood was anxious to get BCLIC and WNIC's money into Platinum Partners. For example, in an e-mail dated 2013, Nordlicht informed Naftali Manela: "Hoping for beechwood money by then," to enable him to pay a $2 million redemption by December 15, 2013.

236. On February 1, 2014, Fuzion, entered into a Master Services Agreement with Beechwood Re pursuant to which Fuzion agreed to administer the LTC insurance policies that had been reinsured with Beechwood Re by WNIC and BCLIC with the approval of their respective regulators. (SHIP Complaint, ¶¶ 11, 43) By February 1, 2014, the task of

administering the long-term BCLIC and WNIC policies in the Reinsurance Agreement was delegated to Fuzion, whose employees (as employees of SHIP under the CNO umbrella) had long been providing that service to SHIP.

8. The BCLIC and WNIC Reinsurance Agreements

237. Effective October 1, 2013, BCLIC and WNIC ceded substantially all of their long-term care business to Beechwood Re Ltd. in a 100% reinsurance transaction. The transaction closed on February 18, 2014. As part of the transaction, WNIC ceded $357 million of statutory reserves, and paid $394 million in cash to Beechwood Re. (WNIC Statutory Basis Financial Statements for the Years Ended December 31, 2014 and 2013) This amount mainly consisted of $357 million to cover the future losses from the policies plus a "negative ceding commission" of $42.2 million as additional cushion less certain transaction true up payments. (BCLIC Complaint, ¶ 74)

238. Similarly, BCLIC ceded $196 million of statutory reserves, and paid $198 million in cash to Beechwood Re. This amount mainly consisted of $196 million to cover the future losses from the policies plus a negative ceding commission of $1 million as additional cushion less certain transaction true-up payments. The transaction was approved by the appropriate state insurance regulators.

239. Because Beechwood Re was an unauthorized offshore reinsurer (*i.e.* domiciled outside the states of New York and Indiana where BCLIC and WNIC were domiciled), it was required to create on-shore reinsurance trusts (the Reinsurance Trusts) to manage the assets received in the reinsurance transaction. Wilmington Trust was the trustee for each of the Reinsurance Trusts. BAM was the asset manager. Fuzion was chosen to be the administrator of the reinsurance policies.

240. As BCLIC and WNIC have explained in the BCLIC Complaint:

> BCLIC and WNIC are cedents under two reinsurance agreements with reinsurer Beechwood. Under the Reinsurance Agreements, BCLIC and WNIC transferred certain long term care liabilities to Beechwood and paid Beechwood over $42 million as a negative ceding commission (that is, BCLIC and WNIC paid Beechwood $42 million to enter into the Reinsurance Agreements).
>
> Beechwood assumed control over claims administration, and BCLIC and WNIC deposited approximately $550 million into reinsurance trusts ("Trusts") to be invested and managed by Beechwood, subject to investment guidelines prescribed by the Reinsurance Agreements and the insurance laws of New York and Indiana. The assets in the Trusts were intended to serve as reliable (*i.e.*, safe and liquid) collateral for Beechwood's obligations to reimburse BCLIC and WNIC for claims on the transferred liabilities and for Plaintiffs to obtain reserve credits.

(BCLIC Complaint, ¶¶ 74, 75)

241. Pursuant to the reinsurance agreements, Beechwood was required to deposit assets into the Reinsurance Trusts accounts with an aggregate fair market value of 102% of the statutorily required reserves (*i.e.*, policy liabilities) as collateral for Beechwood's obligation to pay future claims on the reinsured policies. (New York Indemnity Reinsurance Agreement by and between Bankers Conseco Life Insurance Company and Beechwood Re Ltd; Indemnity Reinsurance Agreement by and between Washington National Life Insurance Company and Beechwood Re Ltd) Only trust assets in compliance with the reinsurance agreements' investment guidelines qualified as countable. The Reinsurance Agreements defined qualifying trust assets to include cash, certificates of deposit, or specific kinds of investments permitted under New York and Indiana insurance laws, not including investments in which either party or its affiliates had an interest, or investments in insolvent entities. In addition, Beechwood Re was required to setup supplemental trusts to provide additional collateralization to cover reinsurance liabilities.

242. The reinsurance agreements also required Beechwood to top-up the Reinsurance Trusts in the event that the market value of the assets in the trusts fell below 102% of the amount of the statutory liabilities. The reinsurance agreements permitted Beechwood to withdraw excess amounts if the aggregate fair market value of Reinsurance Trust assets exceeded 102% of the statutorily required reserves at the end of a quarter and the aggregate fair market value of the assets in certain supplemental trust accounts exceeded 5% of the trust amount.

243. Conversely, Beechwood was required to cover any shortfalls in the Reinsurance Trusts. Such shortfalls could occur if claims payments exceeded projections. Claim payment uncertainty and volatility was the principal reason for CNO's desire to reinsure this legacy portfolio. In effect, Beechwood Re was assuming CNO's risk through the reinsurance transaction. However, WNIC and BCLIC would still be responsible for claims if Beechwood Re were unable to do so through its replenishments of the Reinsurance Trusts. (BCLIC Complaint, ¶¶ 81-83)

244. The reinsurance agreements also established supplemental trust accounts to be maintained as overcollateralization of Beechwood's obligations. The supplemental trusts were to hold assets with an aggregate fair market value equal or greater than of 5% of the statutorily required reserves of the LTC policies.

245. Beechwood Re could request and withdraw excess funds from the supplemental trusts if the market value of the assets in them exceeded 5% of the statutorily required reinsurance reserves and the value of assets in the Reinsurance Trust exceeded 102% of the statutorily required reserves. Beechwood Re was required to make contributions to the supplemental trusts if the trusts were not in compliance with the 5% overcollateralization requirement. (BCLIC Complaint, ¶ 85)

246. As BCLIC and WNIC admit, the Reinsurance Agreements also included "audit provisions" which permitted BCLIC and WNIC to initiate an audit of the investments in certain circumstances." (BCLIC Complaint, ¶ 212)

247. The steps that CNO took to reduce and/or mitigate its LTC exposure, including its announced arrangement with Beechwood, were rewarded by its ratings agencies, exactly as CNO had hoped and precisely why CNO, and its subsidiary 40/86 Advisors, directly involved itself and directed the activities of BCLIC and WNIC in connection with their dealings with Beechwood:

(a) "A.M. Best views the recent long-term care reinsurance agreement with Beechwood Re and this current transaction, pending its closing, as a credit positive for CNO Financial," *A.M. Best Places Ratings of Conseco Life Insurance Company Under Review With Positive Implications*, A.M. Best Press Release, March 3, 2014 ;

(b) "…The ratings also reflect the success CNO Financial has had in executing its business strategy, which included exiting/de-emphasizing non-core product lines through divestiture and reinsurance. This included the sale of Conseco Life Insurance Company and its closed block of interest-sensitive life and annuity products to Wilton Reassurance Company and reinsuring some of its legacy blocks of long-term care (LTC) to Beechwood Re Ltd, both announced earlier this year," *A.M. Best Upgrades Issuer Credit Rating Outlook to Positive for CNO Financial (and subsidiaries BCLIC and WNIC)*, A.M. Best Press Release, August 14, 2014;

(c) "…Fitch's primary concern is CNO's large, albeit reduced, exposure to the individual long-term care (LTC) insurance business. The company has actively managed down the exposure to its LTC exposure through disposals, reinsurance, product design and systematic price increases over the last several years," *Fitch Affirms CNO Financial's Ratings; Outlook Positive*, Fitch Ratings Press Release, December 19, 2014.

9. SHIP's Introduction to Beechwood

248. SHIP was introduced to Beechwood Re in late 2013. According to SHIP, it "was aware of the BCLIC and WNIC reinsurance arrangements through SHIP's affiliate, Fuzion…" (SHIP Complaint, ¶ 11)

249. Following SHIP's introduction to Beechwood in 2013, Brian Wegner ("**Wegner**") the-then President and CEO, Paul Lorentz ("**Lorentz**"), the CFO of SHIP and others met with Feuer, Taylor and Levy to discuss SHIP's financial condition.

250. In November, 2013, in a blatant conflict of interest, Wegner attempted to personally profit from SHIP's prospective relationship with Beechwood, asking Feuer and Rick Hodgdon of Beechwood about the possibility of Beechwood taking part in a side deal with a separate business which he owned, in which Beechwood would provide that business with some or all of a $1 million investment.

251. A series of meetings and communications between Fuzion, for SHIP, and Beechwood ensued in 2014, when SHIP was evaluating Beechwood as a potential investment manager, Beechwood – primarily through Feuer, Taylor, and Levy. (SHIP Complaint, ¶ 64)

252. According to SHIP, it did not perform its own due diligence and instead relied on due diligence conducted by CNO.

253. Discussions between SHIP and Beechwood continued for some time. In 2014, Wegner met with Feuer, Taylor and Levy, and was informed that because of the distressed condition SHIP was in, Beechwood would not take on such liabilities in a reinsurance agreement. But instead, it was proposed that SHIP enter into an investment management agreement that would allow SHIP to participate in the same investments in which Beechwood was investing the trust assets held in the Reinsurance Agreements with BCLIC and WNIC.

254. SHIP has acknowledged that, given the distressed nature of its book of business, Beechwood Re indicated that it was unwilling to enter into a similar reinsurance arrangement with SHIP pursuant to which Beechwood would, in essence, take SHIP's reserves and then assume the financial obligation to pay policy claims. Beechwood nevertheless advised SHIP that it could gain access to the same kinds of allegedly high-quality, high-yield investments that supported the BCLIC and WNIC agreements by entering into investment management agreements with the Beechwood Advisors. (SHIP Complaint, ¶ 12)

255. Indeed, SHIP has alleged: "In 2014 and 2015, Wegner and Lorentz, and others again met with and otherwise communicated with Feuer, Taylor, and Levy electronically, by telephone, and in person to discuss SHIP's unique status as a run-off insurer and the particular challenges it faced with respect to its surplus. Feuer, Taylor, and Levy advised SHIP that Beechwood Re was unable to enter into a reinsurance agreement with SHIP. They proposed, however, to assist SHIP in improving its capital and surplus status by offering SHIP the opportunity to participate in the same investments in which Beechwood Re invested the reserves associated with the WNIC and BCLIC policies and certificates that were reinsured by Beechwood Re." (SHIP Complaint ¶ 45)

256. Unable to obtain reinsurance in the market, SHIP was highly motivated to enter into the IMAs. Moreover, one of Fuzion's primary functions was to provide all of SHIP's administrative services. Consequently, Fuzion, like SHIP, was highly motivated to enter into the IMAs with Beechwood. Indeed, keeping SHIP in runoff and out of insolvency proceedings – even by entering into what was, on its face, questionable arrangements – was the motivation of Fuzion and its management, which, otherwise, would have been without significant income and out of existence.

257. An examination of SHIP's expense history demonstrates Fuzion's parasitism. During the period 2012 to 2017, the number of SHIP's outstanding policies requiring administration declined by 40% to 50%. Yet, during that same period, its payments to Fuzion – for managing SHIP – *increased* by 20%. The dependency of Fuzion on the continued existence of SHIP led Fuzion to manage SHIP into arrangements with Beechwood that, on their face, presented risk of malfeasance.

10. <u>The SHIP Investment Management Agreements</u>

258. SHIP, acting by and through the Fuzion personnel that staffed SHIP, entered into three investment management agreements ("**IMAs**") with Beechwood entities with broadly similar terms that promised a guaranteed rate of return. Over time, SHIP invested approximately $270 million with Beechwood and its affiliates pursuant to the three IMAs.

259. All three IMAs contain the same basic structure, with minor exceptions: (a) upon SHIP depositing the funds into a designated trust account and granting Beechwood discretion over investments, Beechwood guaranteed an annual investment return equal to 5.85% (non-compounded) (the "**Benchmark Percentage**") of the net asset value of the assets contributed to the account; (b) this guaranteed payment was then immediately reinvested in the custody account

managed by Beechwood, which effectively made the guaranteed annual return "compounded;" (c) in the event that SHIP's investments under the IMAs did not achieve an annual Investment Return of 5.85%, Beechwood was obligated to "(i) pay the Client [SHIP] any Investment Return shortfall from its own account and (ii) as necessary, contribute assets to the Account from its own account such that the net asset value of the Account equals the Initial NAV."

260. This "True-Up Payment" provision effectively required Beechwood to pay the guaranteed investment return and maintain the asset base, whether the investments performed as Beechwood represented they would or not. The IMAs also permitted Beechwood to retain investment returns above the 5.85% guaranteed Investment Return as a "Performance Fee."[5]

261. On May 22, 2014, SHIP entered into its first IMA with Beechwood Bermuda (the "**BBIL IMA**"), which, as noted above, was a Beechwood entity domiciled in Bermuda. Pursuant to this IMA, SHIP deposited approximately $80 million into a custody account at Wilmington Trust for investment by Beechwood Bermuda on SHIP's behalf. Beechwood Bermuda "appointed … as SHIP's investment adviser and manager to invest and manage the funds on behalf of SHIP and 'subject at all times to the fiduciary duties imposed upon it by reasons of its appointment to invest and manage the assets.'" (SHIP Complaint, ¶¶ 82-85)

262. SHIP executed its second IMA (the "**BRe IMA**") with Beechwood Re on June 13, 2014 in which it invested an additional $80 million (estimated upon information and belief to be $50 million) with Beechwood Re for a guaranteed return of 5.85%. SHIP claims that it deposited that amount "into a custody account at Wilmington Trust for investment by Beechwood Re on SHIP's behalf." (SHIP Complaint, ¶ 100) In fact, SHIP originally made two

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[5] Two of the IMAs set forth these terms in the body of the agreement, while the third sets forth the guarantee of the Benchmark Percentage in a side letter, which also included for that third IMA a 1% of the net asset value Performance Fee even if the Benchmark Percentage is not achieved.

$25 million deposits and transferred $30 million from the BBIL IMA account, replenishing the BBIL IMA account only later in connection with or after its third transaction with Beechwood.

263. As SHIP has admitted, in the BRe IMA, "the BRe IMA appointed Beechwood Re as an investment adviser and manager to invest and manage the funds on behalf of SHIP and subject at all times to fiduciary duties. Beechwood Re agreed to 'use all proper and professional skill, diligence and care at all times in the performance of its duties and the exercise of its powers under this Agreement.' BRe IMA, ¶ 1." (SHIP Complaint, ¶ 101)

264. The third and final IMA was signed by SHIP with BAM I (the "**BAM IMA**"). SHIP invested $110 million with BAM I pursuant to this IMA.

265. According to SHIP: "Contemporaneous with execution of the BAM IMA, in January 2015, SHIP deposited an initial $50 million into a custody account at Wilmington Trust to be invested and managed by BAM, subject to investment guidelines prescribed by the IMAs and the insurance laws of Pennsylvania. Subsequently, in March 2015, SHIP deposited an additional $60 million into the same account and subject to the same investment guidelines and legal limitations, for a total investment of $110 million to be managed by BAM under the BAM IMA. This $110 million was in addition to the $160 million invested with Beechwood pursuant to the other two IMAs." (SHIP Complaint, ¶ 116)

266. In SHIP's further words, "[s]imilar to the other two IMAs, the BAM IMA appointed BAM as an investment adviser and manager to invest and manage the funds on behalf of SHIP and subject at all times to fiduciary duties. BAM agreed to 'use all proper and professional skill, diligence and care at all times in the performance of its duties and the exercise of its powers under this Agreement.' BAM IMA, ¶ 1." (SHIP Complaint, ¶ 117)

267. In contrast to the BBIL and BRe IMAS, "[t]he language of the BAM IMA . . . did not expressly guarantee a specific investment return." (SHIP Complaint, ¶ 118) Rather, SHIP, by its account, " entered into a side letter with BRILLC, which was commonly controlled along with the other Beechwood Advisors, and in the side letter BRILLC guaranteed an annual investment return of 5.85% (non-compounded) of the net asset value of the assets contributed by SHIP under the BAM IMA (the 'Side Letter')." (*Id.*)

268. By SHIP's account,"[t]he method of calculating BAM's Performance Fee was slightly different under the BAM IMA as compared with the other two IMAs," in that, under the BAM IMA, "BAM's Performance Fee was to be the greater of the following:

> 1% of the net asset value of the Assets in the Account as of the last day of each measuring Year, or (2) 100% of the cash value reflected in the Net Profit Yield (as defined below). For purposes hereof, (a) "Net Profit Yield" shall be defined as the Total Portfolio Yield (as defined below) minus 5.85% and (b) "Total Portfolio Yield" shall be defined as the investment return (based on both realized and unrealized trading profit) on the Account for each respective measuring Year…."). BAM IMA, Exhibit B at ¶ 1.

(SHIP Complaint, ¶ 119)

269. According to SHIP, under all three IMAs, Beechwood "promised to make all investment decisions and to manage SHIP's invested funds "consistent with the general investment policy, guidelines and restrictions" of Beechwood Bermuda, Beechwood Re Ltd. and BAM. (SHIP Complaint, ¶¶ 91) Further each of BBIL's, Beechwood Re Ltd.'s and BAM's "Adviser Investment Policy, Guidelines and Restrictions" and "Guidelines for Senior Secured Credit Opportunities expressly provide that Beechwood "must invest in a manner permitted by "SHIP's corporate investment guidelines 'Senior Health Insurance Company of Pennsylvania: Investment Objectives, Policies and Guidelines, Version 1.6.' ('SHIP's Investment Policies')." (SHIP Complaint, ¶¶ 92)

270. SHIP asserts that its "Investment Policies begin by emphasizing that '[c]ognizant of the fiduciary character of the insurance business, [SHIP] seeks to achieve investment returns commensurate with the protection of invested capital while minimizing the risk of impairment of investment assets to provide financial stability for its policy holders.' SHIP's 'general investment objective' was specified to be 'to seek current income consistent with the preservation of capital and prudent investment risk. Long-term growth is an important secondary consideration.'" (SHIP Complaint, ¶ 109) Further, according to SHIP, each of Beechwood Bermuda's, Beechwood Re Ltd.'s and BAM's "investment guidelines likewise required, among other things, that Beechwood . . . would 'engage in transactions in which there is a well-known and understood counterparty risk, and liquid/valuable collateral to secure any such loan. Controls are always in place to secure the movements of cash and proceeds such that Beechwood always has a first right to monies.'" (SHIP Complaint, ¶¶ 111).

271. In fact, by their very nature, especially in view of SHIP's financial condition and the low-interest rate environment (the 30 year treasury was 3.77% of January 1, 2014 while historically it had been 5%), the Beechwood investment contracts, with their non-investment yield guarantees, were not appropriate for a distressed insurance company such as SHIP. Any prudent insurance company in SHIP's poor financial condition should have been investing in investment grade securities. SHIP, on the other hand, knowingly took a significant financial risk by seeking a high non-investment grade yield.

272. A prudent company in SHIP's poor financial condition should have been investing in investment grade securities. Yet in order to achieve a contractual return of 5.85% in May 2014 when the contract was signed, Beechwood would have had to invest SHIP assets into non-investment grade securities with a B rating or below. (2014 SHIP Statutory Financial

Statements; SHIP Investment Management Agreement (IMA) dated 5/22/14) B-rated securities, at this time, were yielding approximately 5.3% and CCC-rated securities were yielding 8.5% (Bloomberg Market Data). With this investment contract, in addition to ongoing issues with accelerating insurance claims payments, SHIP was now exposed to the heightened risk of principal loss.

273. But given the economics of the line of business, the fact that BCLIC and WNIC were already invested by Beechwood in Platinum Partners investments, and the fact that at that point Platinum Partners was boasting outsized returns, SHIP knowingly took the risk and either allowed and turned a blind eye toward the investment in non-investment yield securities related to Platinum Partners.

E. The Investment of BCLIC's and WNIC's Monies in the Beechwood Reinsurance Trusts and SHIP's Monies in the IMAs into the PPVA and PPCO Funds, and CNO's, BCLIC's and WNIC's Knowledge of Same

274. BCLIC and WNIC transferred a total of approximately $592 million to Beechwood pursuant to the Reinsurance Agreements, and SHIP transferred another $270 million over time to Beechwood pursuant to the IMAs (collectively, the "**Insurance Company Funds**") – for a total of approximately $912 million.

275. After entering into the Reinsurance Agreements and taking control of the assets in the Beechwood Reinsurance Trusts and IMAs, Beechwood immediately began using the Insurance Company Funds to prop up the PPVA and, to a lesser extent, PPCO Funds.

1. CNO's, BCLIC's and WNIC's Knowledge and Actions Following Execution of the Reinsurance Agreements

276. The Reinsurance Agreements required Beechwood to provide reports, at least on a quarterly basis, in which a value was established for each of these investments, so as to determine whether the Benchmark Percentages were being maintained. Beechwood provided

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these reports to BCLIC and WNIC using the mails and wires of interstate commerce, and applied artificial values for these and other investments of the trust assets that overinflated true values so as to avoid having to "top off" any shortfalls with its own funds, and further so as to withdraw sums as "surplus" for its own benefit.

277. These reports identified the trust investments, some of which included the Platinum Partners' name, and some of which were easily associated with Platinum Partners by basic due diligence. BCLIC and WNIC knew Beechwood was investing trust assets with the PPVA Funds and/or the PPCO Funds.

278. BCLIC and WNIC quickly became suspicious of how the assets in the Beechwood Reinsurance Trusts were being reinvested. Indeed, they admit that:

> As Levy began investing the Trust assets in 2014, BCLIC and WNIC began receiving quarterly reports from Beechwood. Upon receiving these reports, BCLIC and WNIC began questioning a number of the investments into which Beechwood directed Trust assets. Among other things, BCLIC and WNIC learned that Beechwood:
>
> - purchased a loan to George Levin, who was a principal in the Rothstein Rosenfeldt Adler PA Ponzi scheme (the "Rothstein Ponzi scheme"). Platinum apparently obtained a large judgment against Levin, forcing him into bankruptcy. . . .
>
> - loaned money to a Platinum-controlled entity which was run by Moshe Oratz and Aaron Elbogen. Oratz was jailed in connection with a gambling ring, and Elbogen settled charges brought by the Securities Exchange Commission ("SEC") over fraudulent trade executions; and loaned money to Cashcall Inc., which was sued by the Consumer Financial Protection Bureau and 17 states for violating consumer protection and usury laws providing interest-rate caps.
>
> These investments were objectionable to [BCLIC and WNIC] because they are not suitable investments for reinsurance trust funds, which should be conservative investments to ensure that there are sufficient assets to pay policyholder claims. Additionally, for reputational reasons, Plaintiffs could not possibly be seen as doing business with such disreputable firms and individuals.

(BCLIC Complaint, ¶ ¶ 86-87)

279. BCLIC and WNIC also specifically discussed with Beechwood the millions of dollars of trust assets being invested with Platinum Funds and their portfolio entities, leaving no doubt that BCLIC and WNIC had specific knowledge that trust assets were being invested by Beechwood in very aggressive Platinum Partners-related investments as of March 2014.

280. Internal Beechwood/Platinum e-mails reflect that BCLIC's, WNIC's and CNO's questions resulted in a meeting with Beechwood at BCLIC's and WNIC's offices in Carmel, Indiana to address the insurers' concerns on March 25, 2014. In an e-mail to Levy, Nordlicht and Manela on March 10, 2014, Taylor called for an all-hands meeting to prepare for the March 25 meeting to respond to the questions of CNO Chief Investment Officer Eric Johnson regarding "Platinum" and Platinum investments, including Black Elk, ALS and Golden Gate (all discussed below). Five days later, in advance of the meeting, CNO's Johnson told Levy that "Platinum" fit CNO's (BCLIC's and WNIC's) investment guidelines only if "we treat it on a look through basis as to the fund's individual holdings." A slide presentation shows that during the March 25th meeting, the Beechwood representatives reviewed specific Platinum portfolio positions in which BCLIC's and WNIC's money was invested, including Golden Gate and Bradley (also discussed below).

281. BCLIC and WNIC also concede that they "raised questions concerning how Beechwood characterized and valued assets in the Trusts. For example, Beechwood made numerous investments of Trust assets in notes collateralized not by assets, but rather by the borrowers' equity or other borrowers' debt instruments. Yet, Beechwood inflated the value of these tenuous forms of collateral to conclude that the Trusts were over-collateralized. In addition,

Beechwood had invested assets in risky businesses, including start-up and severely distressed companies." (BCLIC Complaint, ¶ 89)

282. Thus, as the BCLIC Complaint (like Beechwood's and CNO's e-mails) makes clear, BCLIC and WNIC, and for that matter CNO, *knew* that the assets they (or in the case of CNO, its subsidiaries) invested were being invested with funds managed by Platinum Partners. That is why, according to BCLIC and WNIC, in response to BCLIC's and WNIC's purported demands:

> In late 2014, Feuer and Taylor promised [BCLIC and WNIC] that Beechwood would begin to unwind Beechwood's significant investments in companies controlled by Platinum. Plaintiffs were thus led to believe that Beechwood would take steps to divest itself of such investments. Beechwood partially redeemed its direct investments in the Platinum funds, but found other ways to support Platinum, namely, by investing in companies that Platinum owned or controlled.

(BCLIC Complaint, ¶ 97)

283. However, this divestment – despite additional Beechwood meetings at BCLIC's and WNIC's offices in Indiana, including in November 2014 -- according to BCLIC and WNIC, "did not occur" fully (BCLIC Complaint, ¶ 99) While Beechwood may have disposed of certain Platinum-related assets by 2015, it continued to hold and/or acquire others -- all without CNO, BCLIC or WNIC taking the steps they only later took when Platinum, due to the very public indictment of Huberfeld, became a public relations liability. Rather, according to BCLIC and WNIC, "Beechwood made investments with Trust assets through 2015 and 2016 totaling tens of millions of dollars in Platinum-related companies, including after Huberfeld was arrested" [as described below] and "[i]n 2016, Beechwood again invested Trust assets directly into Platinum's funds." (BCLIC Complaint, ¶ 99) Since BCLIC and WNIC were receiving statements and were already hyper-focused on Platinum, they knew or must have known this.

284. The Reinsurance Agreements also contained audit provisions, permitting BCLIC and WNIC the right to analyze the trusts investments for compliance with the Reinsurance Agreements themselves, for the reasonableness of the values given for them, and for any conflicts that may be an issue, among other things. After specifically discussing with Beechwood the millions of dollars of trust assets being invested in the PPVA Funds, the PPCO Funds and their portfolio entities, leaving no doubt that BCLIC and WNIC had specific knowledge that trust assets were being invested by Beechwood in very aggressive investments, BCLIC and WNIC did not then invoke these audit provisions.

285. Rather, for the next two years, BCLIC and WNIC maintained the *status quo* with Beechwood, and allowed the investments to continue in the same vein, which resulted in at least $325.2 million to be invested in the PPVA Funds and their portfolio entities, and approximately $108.9 million to be invested in the PPCO Funds and their portfolio entities.

286. Because they had no real alternatives to mitigate their LTC risk, BCLIC, WNIC and CNO were incentivized to continue their relationship with Beechwood for more than two years.

2. SHIP's Knowledge and Actions Following Execution of the Reinsurance Agreements

287. According to SHIP, "[r]ather than adhering to their representations and promises made in the IMAs and otherwise, the Beechwood Advisors, in concert with the Individual Defendants, used most of the SHIP funds entrusted to them to acquire high-risk, complex, inadequately collateralized, and often distressed investments tied to Platinum that were purposely structured by Beechwood, the Individual Defendants, and the co-conspirators to enrich themselves and their related parties at the expense of investors like SHIP." (SHIP Complaint,

¶ 130) Yet, it is clear that all along SHIP knew, or willfully blinded itself to the fact, that Beechwood was entrusting its money to Platinum Partners.

288. Events both before and after the creation of the IMAs confirm that the Beechwood Entities invested the funds in the SHIP IMAs into limited partnership interests in the PPCO Funds and the PPVA Funds, purchased securities from the PPVA Funds at inflated valuations and made direct investments into portfolio companies of the PPCO Funds and the PPVA Funds. (SHIP Complaint, ¶ 131)

289. According to SHIP, "Beechwood invested SHIP's money in direct and indirect interests in numerous loans that had been made by Platinum-related entities, including PPCO and PPVA" and "[w]hen they purchased these investments on SHIP's behalf, typically from PPCO, PPVA, or an entity managed by or related to Beechwood, the Individual Defendants knew, or were grossly negligent in not knowing, that the investments were severely distressed, defaulting, or about to default." (SHIP Complaint, ¶ 131)

290. However, SHIP admits that "Beechwood also provided monthly valuation reports to SHIP that purported to show the value of the assets under management." (SHIP Complaint, ¶ 133) In fact, the IMAs required monthly and quarterly holdings reports, with valuations prepared by independent appraiser, Lincoln International, with information obtained from Platinum Management regarding the portfolio companies, as described in a November 13, 2013 agreement between Lincoln Partners and Platinum Management. These holdings and valuation reports made clear that the assets being purchased in the accounts had significant connections to the funds of Platinum Partners. In addition, these holdings reports would also have revealed if the Beechwood funds were adhering to SHIP's investment management guidelines.

291. SHIP's knowledge that Beechwood was no typical reinsurer, and could not possibly have been guaranteeing SHIP's returns with legitimate, investment grade investments, became apparent upon a series of transactions in February 2015.

292. At that time, SHIP transferred $50.2 million in cash from its IMA with Beechwood Bermuda to Beechwood Investments in exchange for a note issued by Beechwood Investments to Beechwood Bermuda for SHIP's account (the "**Beechwood Investments Note**").

293. On the same day, in what appears to be a quid pro quo, round-trip arrangement, SHIP borrowed $50 million in funds from Beechwood Investments to shore up its balance sheet and issued a 6% junior surplus note due to Beechwood Investments in five years, in exchange. (SHIP and N Management (sole management of Beechwood Investments) $50 million Surplus Note Agreement dated 2/2/15).

294. This surplus note was critical to insurance regulators' approval of SHIP's continued operations outside of rehabilitation and therefore SHIP's survival. Between 2008, when CNO spun off SHIP, to 2015, when the surplus note was issued, SHIP's statutory surplus fell from $193 million to $56 million. However, because, the surplus note was junior to SHIP's policyholders' claims, it immediately increased SHIP's regulatory surplus by $50 million (2015 SHIP Statutory Financial Statements). This was important because interest and principal payments on the surplus note (or other debt) required approval of the Commissioner of the Indiana Department of Insurance, and debt that was ahead of policyholder claims was highly unlikely to be approved by the Commissioner because of SHIP's poor financial condition. Ultimately, no interest or principal payments were ever approved by the Commissioner.

295. Without this injection of $50 million in capital, all else equal, SHIP statutory surplus would have been below zero by year end 2015.

296. Another unusual aspect of the surplus note was its below market pricing. In 2009, before its credit ratings were discontinued entirely, SHIP was a CCC+ rated company with a deteriorating outlook. SHIP was likely worse off by the time of the surplus note issuance. Five-year CCC yields at this time were approximately 11%, which was 5% above the 6% coupon on the surplus note that was issued at par. The interest rate on the surplus note should have been even higher at the time of its issuance. At that time, given SHIP's poor financial condition, state regulators would almost certainly have not permitted SHIP to make any cash interest payments in the future. In fact, as mentioned earlier, SHIP has made no cash interest payments to date. Had this been a real transaction, rather a round-tripping of funds, the interest rate would have been much higher.

297. The surplus note transaction was a sweetheart deal for SHIP that encouraged it to look the other way and ignore the fact that its monies were being invested in funds of Platinum Partners, which it knew was laden with fraud and breaches of fiduciary duty. It also demonstrates SHIP's willingness to engage in questionable transactions in an attempt to survive. More than that, with $50 million of a total of $270 million that SHIP invested through the Beechwood IMAs now backed by the creditworthiness of SHIP (through the surplus note), SHIP had every reason to believe that Beechwood could not legitimately generate a guaranteed return of 5.85% on SHIP's funds. Put another way, to compensate for the substantial investment in SHIP debt, the Beechwood IMAs would have otherwise generate returns well in excess of 7%. This was proof positive that the arrangement between SHIP and Beechwood was a marriage of convenience – not legitimate risk mitigation – that SHIP eagerly embraced for its own survival, turning a blind eye from obvious red flags regarding Beechwood.

298. Indeed, by December 31, 2015, for purposes of its own statutory financial statements, SHIP had determined the fair value of the surplus note to be $37.3 million. Tellingly, by year-end 2017, SHIP valued this surplus note at only $1.8 million (2015 and 2017 SHIP Statutory Financial Statements).

F. The Specific Investments of the Insurance Company Funds in Platinum and Its Portfolio Companies

1. PPCO and the Insurance Company Funds

302. With respect to PPCO, between February 2014 and December 2015, the Beechwood Insiders caused the Beechwood Entities to use funds transferred by BCLIC or WNIC into the Beechwood Reinsurance Trusts to make certain investments including:

(a) to purchase LP interests in the PPCO funds for $36 million in February 2014;

(b) to make a $25 million loan to Credit Strategies, LLC ("**Credit Strategies**"), an entity owned by PPCO (an existing investor, Aaron Elbogen provided another $4 million and two other investors provided $1 million, bringing the total of the loan facility to $30 million) in February 2014, followed by a $19.8 million loan to Credit Strategies in February 2016. Credit Strategies, a Delaware LLC, was a subsidiary of PPCO and was formed to hold PPCO's membership interests in ALS Capital Ventures ("**ALS**"), a company that managed life settlement policies; and

(c) to make a $5 million loan (the "LC Energy Term Loan") to another portfolio company, LC Energy Operations LLC ("LC Energy") in June 2014.

2. Credit Strategies

303. The business model of ALS was to manage life insurance policies that it purchased from insured individuals at a discount to the policy death benefit, in exchange for making future insurance premium payments and the rights to receive the death benefit. Prior to 2014, ALS was majority owned jointly by PPCO and PPVA (with certain third parties holding a small interest). PPVA and PPCO were jointly responsible for paying the premiums for the life insurance policies.

304. The $36 million cash infusion from the Beechwood Reinsurance Trusts on or around February 19, 2014 enabled the Platinum Insiders to cause PPCO to purchase PPVA's membership interests in ALS for $24.5 million in cash. PPCO also purchased ALS interests from PPLO and other minority interest holders a few months later.

305. Through its purchase of ALS membership interests from PPVA for $24.5 million in cash, PPCO therefore ended up being the sole provider of financial and operating support to ALS – an entity that required substantial liquidity in order to make premium payments on the life insurance policies -- of over $41 million from 2014 until 2016 (2014-2016 PPCO Audited Financial Statements). Specifically, PPCO, by being made to buy the ALS interests from PPVA, became responsible for the entirety of ALS' funding needs (*i.e.*, premium payments) and thereby relieving the pressure on PPVA's liquidity from the need to fund a portion of the ALS premiums.

306. The 2014 financial statements for PPCO estimated premium funding needs at ALS of approximately $10 million to $12 million each year for the next 5 years (2014 PPCO Audited Financial Statements). Had PPCO not made these premium payments, the value of the ALS investment, which at $85 million was also significantly inflated, would have declined dramatically because of policy cancellations (Sterling Valuation Group, PPCO Valuation Opinion 12/31/14). As an alternative to perpetually funding ALS's needs, PPCO could have

attempted to sell the ALS investment (20% of total assets at year-end 2014) to third parties, likely at a significant discount to its inflated carrying value. As such, PPCO was harmed by the Platinum Insiders causing it to purchase PPVA's investment in ALS to the amount of approximately $23 million.

307. On or around March 19, 2014, the Beechwood Reinsurance Trusts loaned $25 million to Credit Strategies. PPCO used approximately $15.5 million of the proceeds to certain third parties on account of the Black Elk transactions. The Platinum Insiders caused approximately $3 million to be used to redeem certain insiders, and approximately $8 million was transferred to certain unprofitable PPCO portfolio companies, including LC Energy, Daybreak Oil and Gas, and Greentown Oil and Gas, and other PPCO companies including, ALS Capital Ventures, and Milberg LLP.

308. Furthermore, in February 2016, the Platinum Insiders caused Credit Strategies to enter into a loan and security agreement with certain the Beechwood Reinsurance Trusts. The Platinum Insiders further caused Credit Strategies to draw down more than $20 million under this facility in 2016. The majority of the $20 million funded ALS's life insurance premiums and $5.5 million was transferred to PPVA to help it conceal its liquidity crisis. The remainder was used to pay management fees ($1.5 million), fund Northstar ($1.2 million), and to fund Desert Hawk ($600,000), another failing portfolio company that had been put back to PPCO as part of the PPCO Loan transaction (described below). The Platinum Insiders' orchestration of this transaction harmed PPCO because the loan proceeds were used to sustain PPVA, pay management fees, and to prop up failing portfolio companies, Northstar and Desert Hawk.

3. LC Energy

309. LC Energy, a Delaware LLC, was formed as a shell by the Platinum Insiders in February 2014 was the assignee for PPCO to acquire the assets of the Lily Group through a Chapter 11 bankruptcy process (LC Energy APA dated 1/27/14). The Platinum Insiders then caused LC Energy to acquire substantially all of the assets of the Lily Group for a purchase price consisting of a $9 million credit bid (against PPCO's pre-petition secured claim of $18 million) and up to an additional $9 million in production payments to be made by December 2025 (Buyer's Closing Statement dated 4/7/14).

310. The major mining asset of Lily was the Landree mine, located in Greene County in Jasonville, Indiana in the Illinois Coal Basin. The mine had reserves of approximately 25 million tons and was not operational. After the successful bankruptcy bid, LC Energy restarted operations in May 2014. Prior to various accidents including a roof collapse, the mine was operating below full capacity and was producing approximately 15,000 tons/month, which was then sold for $61/ton. It had not yet reached cash flow breakeven. However, the company, controlled by the Platinum Insiders, claimed that it was working on several operational strategies to increase profitability and to optimize production (Platinum LC Energy Valuation Memo dated February 2014).

311. On June 3, 2014 the Platinum and Beechwood Insiders caused LC Energy to borrower $5 million from the Beechwood Reinsurance Trusts. The LC Energy Term Loan had an annualized interest rate of 18%, payable quarterly. LC Energy forwarded $3.5 million to PPCO, and retained $1.5 million immediately after the loan was made, LC Energy was unable to make interest payments on it. Nevertheless, from June 2014 to December 2015, the Platinum Insiders caused PPCO to advance a total of $12 million of Beechwood money to LC Energy, of

which $1.4 million was used to pay interest on the indebtedness to the Beechwood entities that held the LC Energy loan.

312. The Equity Receiver's financial analysis indicates that the LC Energy Term Loan was worth well below par. As discussed in more detail later, this loan was transferred back to PPCO in a fraudulent transfer that directly harmed PPCO.

4. **PPVA and the Insurance Company Funds**

313. As to PPVA, between February 2014 and December 2015, the Beechwood Insiders caused the Beechwood Entities to use funds transferred by BCLIC and WNIC into the Beechwood Reinsurance Trusts or by SHIP pursuant to the IMAs:

(a) to make $132.5 million of direct loans to portfolio companies of the PPVA Funds, $62.9 million of which were made with monies from BCLIC or WNIC and $69.6 million of which were made with monies from SHIP and (the "**Direct PPVA Portfolio Company Loans**");

(b) to pay approximately $176.2 million to the PPVA Funds to purchase investments in portfolio companies of the PPVA Funds directly from the PPVA Funds at inflated values, $110 million of which was made with monies from SHIP and $65.5 million of which were made with monies from BCLIC and WNIC (the "**Beechwood-PPVA Investment Purchases**"); and

(c) to pay approximately $16.5 million to the PPVA Funds to purchase limited partnership in them, all of which originated with SHIP (the "**PPVA Limited Partnership Purchases**," together with the Direct

PPVA Portfolio Company Loans and the PPVA Investment Purchases, collectively, the "**PPVA Infusions**").

314. In the aggregate, the Beechwood Insiders caused the Beechwood Reinsurance Trusts and the SHIP IMA accounts to invest $308 million in PPVA portfolio companies, through direct loans to portfolio companies and purchases of portfolio companies' securities from PPVA. Among others, these portfolio companies, included Black Elk Energy Energy Offshore Operations, LLC, Golden Gate Oil, LLC, PEDEVCO, Implant Sciences, Northstar Offshore Group, Montsant, Desert Hawk and China Horizon.

315. In many situations, these companies were either non-operating, unprofitable or financially distressed. All the parties to transactions involving these securities, notably Beechwood, CNO, BCLIC, WNIC and SHIP, were aware of these facts. Yet Beechwood, CNO, BCLIC, WNIC and SHIP orchestrated the eventual transfer to PPCO of a portion of their exposure to these companies, which they had previously acquired from PPVA in what amounted, as alleged below, to fraudulent transfers and securities fraud. In exchange, CNO, BCLIC, WNIC and SHIP siphoned away the most valuable asset of PPCO – its interests in Agera Energy LLC or acquired security interests in all of PPCO assets, including Agera Energy LLC.

5. Black Elk Energy Offshore Operations, LLC

316. The Platinum Insiders' manipulation of PPCO to participate in the Black Elk investment scheme depended on the use of funds from the Beechwood Reinsurance Trusts and the SHIP IMA accounts, and directly led to the damages claims of $24.6 million claim by the Black Elk Trustee against the PPCO Receivership.

317. Black Elk Energy, LLC ("**BEE**") was an independent oil and gas company headquartered in Houston, Texas. BEE was formed as the holding company for Black Elk, an

independent oil and gas company. Black Elk acquired distressed properties at deep discounts, improved production and decline rates, reduced operating costs, and then sold the assets at a premium. Black Elk focused its interests within the Mid-West and Southern Gulf Coast states. From 2008 to 2011, Black Elk employed an acquisition strategy to expand its holdings and further develop its business. (2014 Black Elk 10-K; Platinum Black Elk Investment Memo)

318. In 2009, PPVA invested in Black Elk. The investment initially appeared very successful. For instance, in 2011, the *Wall Street Journal* reported that, aided in part by the ban on drilling in the Gulf of Mexico after the BP Macondo explosion and oil spill, Platinum's Black Elk investment strategy "was Platinum's most successful last year, having contributed a significant portion of its high-teens return." To finance its operations, on November 23, 2010, Black Elk issued $150 million of 13.75% Senior Secured Notes (the "***Black Elk Bonds***"), with holders granted a first priority lien on substantially all of Black Elk's assets (2010 Black Elk 10-K).

319. A November 16, 2012 explosion and fire on an offshore Black Elk platform damaged the platform and caused the deaths of three workers. This incident combined with deteriorating investment and market conditions caused Black Elk's business to suffer and decline (2012 Black Elk 10-K). At year-end 2013, the company was not in compliance with its credit facility covenants (2013 Black Elk 10-K).

320. By year-end 2013, the approximately $209 million fair market value (according to PPVA's own financial statements) of PPVA's Black Elk position represented almost 24% of its investments in securities. Black Elk's collapse would have precipitated a collapse of PPVA given its own liquidity issues. (Platinum Partners Value Arbitrage Fund L.P. And Subsidiaries,

Consolidated Financial Statements, Year Ended December 31, 2013). At year-end 2013, PPVA controlled 85% of the voting interests of Black Elk.

321. By early 2014, Black Elk was effectively insolvent, with missed payments to creditors and increasing concerns about its impact on the closing of the Beechwood reinsurance transaction. For instance, in an email to Levy, then a portfolio manager at PPVA, Nordlicht told him: "We cant effect smooth transition to beechwood unless we straighten out black elk!!!!".

322. The Beechwood Insiders caused the Beechwood Reinsurance Trusts and SHIP IMA accounts also to provide support to Black Elk. In February 2014, the Beechwood Reinsurance Trusts were made to provide Black Elk with a $27 million line of credit.

323. PPCO, under the control of the Platinum Insiders, and SHIP also purchased Black Elk bonds during this time (2014 PPCO Audited Financial Statements). The SHIP IMA accounts purchased approximately $37 million in Black Elk bonds, while, by the hand of the Platinum Insiders, PPCO purchased approximately $32.9 million (Prime broker statement, Nomura, PPCO, March 01, 2014-March 31, 2014).

324. On April 1, 2014, PPCO was made by the Platinum Insiders to enter into an exchange agreement with PPBE. In this exchange, PPCO exchanged (at a price of $96.75 of par) $32.9 million of the Black Elk Bonds for a cash payment of $8.5 million and $23.3 million of Black Elk Series E preferred equity. With this exchange, PPCO was left with approximately $24 million in Series E preferred equity.

325. The Black Elk scheme, orchestrated by the Platinum Insiders, involved selling off Black Elk's prime assets to Renaissance Offshore, LLC (the "**Renaissance Sale**"), and diverting the proceeds from that sale to redeem the Series E Preferred equity. PPVA and Beechwood, controlled by the Platinum and Beechwood Insiders, implemented a scheme to fraudulently

claim that a majority of unaffiliated and disinterested holders of Black Elk Notes voted to permit the use of the proceeds of the Renaissance Sale to redeem the Series E preferred equity.

326. The lynchpin to the fraudulent transfer scheme was to secure an amendment of the indenture governing the Black Elk Bonds (the "**Indenture**") to permit use of the Renaissance Sale proceeds to redeem Series E preferred equity ahead of the Black Elk Notes. Securing such an amendment required the consent of a majority of disinterested holders.

327. As explained in the Offer to Purchase and Consent Solicitation Statement: "Pursuant to Section 316(a) of the Trust Indenture Act of 1939, Notes owned by the Company or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded for purposes of determining the majority." Because PPVA controlled Black Elk, this statement meant that the sum of all Notes held by Platinum, Platinum-affiliated entities and entities controlled by Platinum were to be subtracted from the $150 million Notes otherwise entitled to vote (On August 18, 2014, the Platinum Insiders caused PPCO to purchase Black Elk Notes from PPBE and Platinum Partners Black Elk Opportunities Fund International Ltd with a combined face value of $32.9 million). Of the remainder, a majority had to consent.

328. It was obvious that no rational unaffiliated and disinterested Black Elk Note holder would consent to the proposed Indenture amendment, as it would effectively deprive the holder of the senior security interest the Indenture otherwise afforded them in Black Elk's assets. The most obvious way – to the fraudsters -- to secure that consent was to use a Trojan horse "friendly" consenter: secure the votes of a company or companies holding a substantial number of Notes that looked independent, but were in fact controlled by Platinum.

329. The "friendly" consenters that the Platinum Insiders mustered up were a group of Beechwood Entities. As described earlier, in early 2014, Levy directed certain SHIP IMA accounts at Beechwood to obtain approximately $37 million of the Black Elk Senior Notes. The Beechwood Entities voted to consent in favor of the scheme. Shortly after engineering Beechwood's purchase of the Senior Secured Notes and voting those in favor of the Platinum scheme, Levy left his CIO position at Beechwood to return full time to PPVA.

330. Based on a fraudulent vote count that included both Notes owned by Platinum affiliates and the Platinum-controlled Beechwood entities, PPVA, at the hand of the Platinum Insiders, caused Black Elk to adopt a Second Supplement to the Indenture, which purported to permit use of the Renaissance Sale proceeds to redeem Black Elk Series E preferred equity ahead of the Senior Secured Notes. On the basis of this fraudulently secured supplement to the Indenture, Black Elk's PPVA-controlled Board of Managers directed that $98 million-virtually the entire remaining cash balance from the Renaissance Sale-be diverted to the redemption of Series E preferred equity that was either owned by Platinum or that Platinum would have been obligated to repurchase absent the redemption.

331. These fraudulent transfers also included a transfer of more than $80,000 to Chardan based on its role as broker of the put agreement that obligated PPVA to repurchase Series E preferred equity owned by a third party. PPCO was also redeemed by the Platinum Insiders out of its $24 million position in the Series E Preferred Equity. By virtue of the fraudulent scheme, PPCO transferred $25.3 million to PPBE (comprised of the $24 million received and another $1.3 million) to buy the 13.75% Black Elk Bonds previously exchanged with PPBE on April 1, 2014. (Black Elk Complaint dated 8/31/17). PPVA, too, by the hand of the Platinum Insiders, was redeemed of its position in the Series E Preferred Equity, and

promptly transferred approximately $42 million received directly from Black Elk to PPBEO and PPBOI to buy the 13.75% Black Elk Bonds it had previously exchanged with PPBE.

332. There are numerous emails evidencing the intimate involvement of Levy, Small and the Platinum Insiders in the Black Elk Scheme. For example, in an email from Mark Nordlicht to Zach Small dated May 13, 2014, Nordlicht instructed: "Beechwood is buying 8 million black elk from PPVA. What is the best way to cross? Can we do it today please." Similarly, on June 23, 2014, Nordlicht emailed, "I want to move/sell 10 million of black elk bonds to bbil the nomura account. Please take care of it."

333. In December 2014, PPCO was made to exchange the 13.75% Black Elk Bonds for Northstar Offshore debt (that was later converted to preferred equity) in a separate transaction involving the acquisition of certain Black Elk assets by the Northstar Offshore Group. (Black Elk and Northstar Exchange Agreement dated January 9, 2015)

6. Golden Gate

334. In April 2012, Golden Gate was formed for the purpose of acquiring and developing interests in certain oil and gas properties. The company was engaged in the acquisition, exploitation, development, and production of oil and gas reserves in the United States. (Golden Globe Form S-1). At the time of PPVA and Beechwood entities' investments, the company's current and planned development was located primarily in the Niobrara Shale play in Colorado, the Monterey Shale play in California, the Mississippian Lime play in Kansas, and the Pre-Caspian Basin in the Republic of Kazakhstan. The company was not producing oil nor was it expected to generate positive free cash flow for the foreseeable future. The company operated an independent reserve report for the company prepared in in December 2014 estimated

that the company had 17.5 million barrels of proved reserves, of which approximately 17.3 million barrels were undeveloped.

335. On April 10, 2012, Golden Gate issued $31.6 million of Senior Secured Promissory Notes to Precious Capital LLC, a wholly owned subsidiary of PPVA (Golden Gate Oil Advance Request to Precious Capital dated 4/18/12). Since PPVA's initial investment, due to the capital-intensiveness of the Company's business combined with the significant decline in oil prices, Golden Gate has consistently operated at a loss, burned through cash and has barely produced oil. [Golden Gate 2014 10-K; A&M 4Q15 valuation memo]. In 2013, Golden Gate generated only $1 million of revenue, but reported a net loss and operating cash burn of more than $6 million.

336. Neverthelss, on February 26, 2014, the Platinum Insiders caused PPVA sell its ownership in the Senior Secured Promissory Notes to CNO, BCLIC and WNIC through the Beechwood Reinsurance Trusts for $28.4 million, with Precious Capital LLC retaining $3.2 million of the note. The notes were secured by all of GGO's oil and gas assets, as well as all deposit, security and commodity accounts of GGO. (Golden Gate Oil Note Sale Agreement dated 2/26/14). Since issuance, GGO has failed to make a single interest payment on the Notes. (Golden Gate 2013 and 2014 10-K; PPVA Complaint). This would have been obvious to the holders of the Notes; *i.e.* CNO, BCLIC, WNIC and Beechwood.

337. On January 26, 2017, through the 2016 Agera Note Sale Class C Preferred Stock Redemption (described more fully below), the Beechwood Insiders caused the Beechwood Entities to redeem $35.4 million of the Agera Class C preferred shares, through which, Principal Growth Strategies ("**PGS**") was assigned $14.1 million of the GGO loan. While the $14.1 million GGO loan was exchanged for $14.1 million of Class C shares, the fair market value of

the GGO loan ranged from only $0.3 million to $0.7 million. CNO, BCLIC, WNIC and Beechwood misrepresented the value of these securities.

338. The Golden Gate loan was worth well below par. As discussed in more detail later, this loan was transferred back to PPCO in a fraudulent transfer that directly harmed PPCO.

7. PEDEVCO

339. PEDEVCO is an energy company engaged in the acquisition and development of high growth energy projects primarily in shale oil and gas in the United States. PEDEVCO's main assets are located in the DJ Basin in Colorado, in Comanche, Harper, Barber, and Kiowa Counties in Mississippi, Kansas, and in the North Sugar Valley in Texas. As of February, 2015, PEDEVCO had interest in 53 different wells, which produced approximately 994 bpd. The company was founded in 2011 and is publically traded. It is headquartered in Danville, California.

340. In March 2014, PEDEVCO issued Secured Promissory Notes ("PEDEVCO Notes") in the aggregate amount of $34.5 million, with total capacity of $50 million, in which both, at the hands of the Beechwood and Platinum Insiders, the Beechwood Reinsurance Trustsand RJ Credit LLC (a subsidiary of PPVA) participated. The PEDEVCO Notes held by PPVA's subsidiary were deliberatedly subordinated in priority to those held by the Beechwood Reinsurance Trusts. In October 2014, certain SHIP IMA accounts acquired a $2.4 million participation in the PEDEVCO Notes from the Beechwood Reinsurance Trusts.

341. As of year-end 2015, PEDEVCO had negative working capital, negative operating cash flows and had suffered recurring losses from operations. It had no history of generating any operating income and the auditors raised substantial doubt about its ability to continue as a going concern (2016 PEDEVCO 10-K)

342. By year-end 2015, the company's auditors expressed substantial doubt about its ability to continue as a going concern because of declining oil prices and the company's working capital deficit and the need for additional funding to continue operations. Further the company disclosed that if it ceased operations, all of its investors, including the Beechwood Reinsurance Trusts and the SHIP IMA accounts would lose their investments.

343. Beechwood, CNO, BCLIC, WNIC and SHIP knew or should have known about the dire financial condition of their PEDEVCO investment and looked for ways to alleviate their exposure over time. On May 12, 2016, following a series of deferrals of principal and interest payments to the Beechwood Reinsurance Trusts and SHIP on the Secured Promissory Notes, PEDEVCO undertook a senior debt restructuring and new series of secured notes, namely the Tranche A Notes and the Tranche B Notes. (2017 PEDEVCO 10-K; Amended and Restated Secured Promissory Note dated 5/12/16). The investor group for these Tranche A Notes consisted of RJC and two Beechwood entities, BHLN-Pedco and BBLN-Pedco, that were unaffiliated with either SHIP or the Beechwood Reinsurance Trusts. The Tranche A Notes (maturing in May 2019) had a maximum aggregate principal amount of $25.9 million, of which $6.4 million was initially funded by BBLN--Pedco and BHLN-Pedco. The existing investors, including SHIP, had their existing PEDEVCO Notes replaced with Tranche B Notes (the "**Amended PEDEVCO Notes**") that were subordinated to Tranche A Notes that PEDEVCO issued to BBLN-Pedco and BHLN-Pedco. Given the company's dire financial condition, the 15% interest on both series of notes was to accrue until 2017 and payable at maturity.

344. Given the poor financial prospects for the company, SHIP and the Beechwood Reinsurance Trusts controlled by the Beechwood Insiders were anxious to offload these securities. Within a month, in June 2016, approximately $8 million in face value of these

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Amended PEDEVCO Notes were used as part of its consideration by AGH Parent (discussed below) in its acquisition of a valuable convertible note issued by Agera Holdings LLC, from PGS. AGH Parent was an entity set up specifically for this acquisition and was owned at the time by SHIP and the Beechwood Reinsurance Trusts. After completing this fraudulent transfer, in January 2017, AGH Parent then used a further $5.7 million of these Amended PEDEVCO Notes as part of its consideration for the forced redemption of $35.4 million of its Class C preferred units, which damaged PPCO. In both cases, the Amended PEDEVCO Notes were contributed to AGH Parent by the SHIP IMA accounts and the Beechwood Reinsurance Trusts. For purposes of these transactions, the Amended PEDEVCO Notes were mispresented by SHIP, CNO, BCLIC, WNIC and Beechwood as if they were worth par, despite all the evidence to the contrary.

8. Northstar Offshore

345. Northstar Offshore was formed in 2012 as an oil and gas exploration company headquartered in Houston, Texas and strategically focused in the Gulf of Mexico. Northstar GOM Holdings LLC ("**Northstar Holdings**"), a Delaware LLC, was formed on September 18, 2014 by PPVA, by the Platinum Insiders, for the purpose of acquiring Northstar Offshore from Natural Gas Partners, an energy private equity firm. (Northstar Offshore Group, LLC, Financial Statements with Independent Auditor's Report, December 31, 2014 and Northstar GOM Holdings LLC as Issuer and Each of the Guarantors Party Hereto, 12% Second Priority Senior Secured Notes Due 2019, (the "12% Secured Notes") Indenture, Dated September 18, 2014). The acquisition was partially funded by $80 million of 12% Second Priority Senior Secured Notes (the "**Northstar Indenture Debt**") issued by Northstar Holdings. Northstar Offshore served as a guarantor of this debt.

346. SHIP, through its accounts at Beechwood, purchased $31 million of the Northstar Indenture Debt. (Purchase Agreements with SHIP for $10.8 million and $20.2 million, March 31, 2015) One of the Beechwood Reinsurance Trusts, BRe WNIC 2013 LTC Primary, purchased $19 million of this debt. (Purchase Agreement with BRe WNIC 2013 LTC Primary, March 31, 2015) New Mountain Finance Holdings purchased the remaining $30 million of the debt. (Securities Purchase Agreement and Put Agreement, November 17, 2014). The Northstar Indenture Debt held by the Beechwood entities was further collateralized by PGS' ownership stake in Agera Energy LLC. *See* PPVA Complaint Ex. 60.

347. In December 2014, Northstar Offshore acquired a 14 field package of operating and non-operating properties from Black Elk Energy. In this transaction, PPCO was caused by the Platinum Insiders to exchange its remaining interest in the 13.75% Black Elk Bonds for notes issued by Northstar Offshore.

348. Northstar Offshore was affected by the dramatic decline in commodity prices that began in the second half of 2014 and was unable to raise additional capital. Northstar Holdings could not service its debt including paying interest when due. PPVA was caused to fund a portion of the interest due from mid-2015 through the March 22, 2016 Transaction. For example PPVA purchased $770,000 of Class A Preferred Units of Northstar Holdings on or around June 15, 2015, $905,000 of Class A Preferred Units of Northstar Holdings on or around August 15, 2015, $1 million of Class A Preferred Units of Northstar Holdings on or around September 2015, and later $1.8 million of Class A Preferred Units of Northstar Holdings.

349. PPVA also provided Northstar with a term loan, of which $1,000,000 was advanced in December 2015. This support from PPVA, at the hand of the Platinum Insiders, was not able to meet the total interest due under the loan and millions of interest remained

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outstanding. As holders of the debt, WNIC, SHIP and Beechwood were by this time fully apprised that the Northstar Indenture Debt was non-performing.

350. On March 22, 2016, PPCO borrowed $52.8 million from SHIP and the Beechwood Reinsurance Trusts to effectuate the following transactions.

351. PPCO was made to use $31.45 million of the loan from SHIP and the Beechwood Reinsurance Trusts to buy the 12% Secured Notes from their lenders, SHIP and the Beechwood Reinsurance Trusts on that date. WNIC, SHIP and Beechwood knew that the 12% secured notes were not worth $31.45 million yet they executed at that price. Accordingly, the sale of that security necessarily involved the misrepresentations by WNIC, SHIP and Beechwood that $31.45 million was a fair price. The $31.45 million consisted of $30.8 million of principal and $1.65 million of accrued and unpaid interest.

352. The remaining $21.35 million was 'loaned' to PPVA by PPCO to purchase the remaining 12% Secured Notes from SHIP. The $21.35 million consisted of $20.2 million of principal and $1.15 million of accrued and unpaid interest.

353. However, no cash was moved. These series of transactions caused SHIP and WNIC, through the Beechwood Reinsurance Trust, to harm PPCO by obtaining secured priority over PPCO's assets, and saddling PPCO with the twin yokes of an interest in a company on the verge of bankruptcy and a receivable from an equally financially precarious PPVA.

354. As part of a March 2016 restructuring, PPVA, at the hand of the Platinum Insiders, attempted to satisfy its outstanding loans to PPCO. In order to do so, the Platinum Insiders had PPVA transfer to PPCO 40.59 shares of Urigen for $17.2 million. According to the PPVA complaint, PPVA had repeatedly failed to meet its lending obligations to Urigen. (PPVA Complaint, ¶123). In effect, the Platinum Insiders used PPVA to transfer an investment that had

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been starved of capital to PPCO at par. The Platinum Insiders also caused PPVA to transfer to PPCO interests in Navidea for $7.0 million, including $461,800 of accrued interest, and interests in Airdye for $13.5 million consisting of $11.65 million of principal and $1.8 million of accrued interest. (PPCO Assignment Agreements for Airdye and Urigen). Each of these transfers assumed a significantly inflated valuation for the securities transferred and essentially reduced the loans payable to PPCO on a dollar-for-dollar basis.

355. The magnitude of oil price declines, along with the Northstar Offshore's inability to raise capital, eventually led the Company to file for Chapter 11 on December 2, 2016.

9. <u>Montsant</u>

356. Montsant appears to have been a shell company with no operating assets of its own interests in various Platinum portfolio companies including Black Elk and Implant Sciences Corporation ("**Implant**").

357. Due to public reports and their own inside knowledge of Black Elk, the Platinum Insiders and Beechwood Insiders were well aware that Black Elk would be unable to meet its obligations under the 13.75% Senior Secured Notes. Despite this, on or about January 31, 2015, the Platinum Insiders and Beechwood Insiders caused a subsidiary of PPVA, Montsant Partners LLC ("**Montsant**"), to purchase all of the 13.75% Senior Secured Notes held by the Beechwood Entities at 93.5% of par, and to pay interest on the Golden Gate Oil Loan.

358. To finance these transactions, the Platinum Insiders and Beechwood Insiders caused Montsant to "borrow" $35.5 million at 12% interest from SHIP, via a loan administered by Beechwood (the "**2015 Montsant Loan**") (Montsant Disbursement Letter and Funds Flow dated 1/30/15; Montsant Loan Agreement dated 1/30/15). Although the 2015 Montsant Loan initially was made on an unsecured basis, the transaction documents required that collateral be

posted to secure the loan post-closing (Montsant Loan Pledge and Security Agreement). Thereafter, Platinum Management, transferred equity securities and notes belonging to PPVA and DMRJ to an account pledged as collateral to secure amounts due under the 2015 Montsant Loan (the "**Montsant Collateral Account**"), under transactions and circumstances that are the subject of continuing investigation (Montsant Loan Pledge and Security Agreement).

359. Implant develops, manufactures, and sells sensors and systems for the security, safety, and defense industries, primarily in the United States and internationally. Implant was founded in 1984 and is headquartered in Wilmington, MA. (Platinum Implant Investment Memo; A&M 1Q16 PPVA valuation report).

360. PPVA's subsidiary DMRJ Group, LLC ("***DMRJ***") began investing in Implant Sciences in late 2008, when it subscribed to a $5.6 million Senior Secured Convertible Note. PPVA made several more investments in a variety of loan facilities and convertible stock and warrants. In the period from 2008 through 2014, Implant defaulted on the loan facilities at various times and agreed to several amendments and additional capital contributions with PPVA. By the end of 2013, PPVA controlled the company (Platinum Implant Investment Memo; A&M 1Q16 PPVA valuation report)

361. According to the PPVA Complaint, on or about March 19, 2014, the Platinum Insiders and the Beechwood Insiders caused BAM Administrative to refinance $20 million of the revolving loan issued by DMRJ to Implant Sciences Corporation ("**IMSC**"). The revolving loan and certain existing term loans also held by DMRJ were secured by liens on and security interests in all of the assets of IMSC and its affiliates. DMRJ subordinated all of its liens on IMSC's assets, including the lien securing DMRJ's revolving loan to IMSC to the liens securing repayment of BAM Administrative's term loan. The intercreditor agreement between DMRJ and

BAM Administrative also ceded to BAM Administrative significant rights in the event of an IMSC bankruptcy, even though DMRJ held much larger loans to that company. PPVA paid down margin calls and meet other operational needs with the $20 million cash infusion from Beechwood. (Implant Intercreditor Agreement dated 3/19/14).

362. As part of the PPVA Restructuring in March of 2016, the Platinum Insiders caused PPVA to pledge to repay the Montsant Loan with the first $20 million PPVA would receive from repayment of any PPVA's other holdings in Implant Sciences Corp. Levy was the CIO of both Beechwood and PPVA.

363. By mid-2016, PPVA had significant ownership of Implant's Senior Secured Promissory Notes, line of credit, First, Second and Third Senior Secured Promissory Notes, as well as the Company's common equity. PPVA's debt investments were carried at par, totaling nearly $86 million (Platinum Implant Investment Memo; A&M 1Q16 PPVA valuation report).

364. On or around October 10, 2016 Christen Thomas, Beechwood's general counsel, sent a letter via email to the PPVA liquidators attaching a one-page letter signed by Nordlicht on January 13, 2016 and addressed to Beechwood, whereby Nordlicht promised to use all the cash proceeds which PPVA would receive from its stake in Implant Sciences towards the repayment of the Montsant Partners and Golden Gate Oil loans owed to Beechwood. Feuer signed this letter as the witness.

365. Implant was pledged as collateral for the Monsant loan, which in turn was transferred back to PGS as part of the consideration for the January 2017 forced redemption of $35.4 million of Class C preferred stock of AGH Parent, held by PGS.

10. <u>China Horizon</u>

366. China Horizon Investments Group ("**China Horizon**") is an early stage privately-held company engaged in the wholesale and retail distribution of packaged foods, household products, agricultural products, animal feed, cosmetics and related items to both Company operated convenience stores in three Chinese provinces. China Horizon built a network of convenience stores by partnering with the China Post, the postal service of China. (Platinum China Horizon Investment Memo dated 12/31/13)

367. PPVA initially invested in the Company in 2007 through the purchase of the Company's $5 million issuance of the Series A Preferred Shares (Platinum Updated Investment Memo).

368. PPVA participated in subsequent rounds of financing for China Horizon, with the company raising tens of millions of dollars from additional outside unaffiliated investors, including John Mack (from Morgan Stanley) and Howard Shultz (from Starbucks) (Platinum China Horizon Investment Memo dated 12/31/13)

369. From November 2013 through June 2015, the Platinum Insiders caused PPVA to make approximately $350,000 of principal loans in the form of Secured Promissory Notes and $4.8 million in Demand Promissory Notes to China Horizon. (Platinum Demand Promissory Note dated 8/3/16)

370. In May, September and December 2015, the Beechwood Insiders caused the Beechwood Reinsurance Trusts to make an additional $12 million of loans to China Horizon. (Beechwood Notes Amended and Restated Promissory Note dated 4/1/16).

371. In January 2016, China Horizon filed a lawsuit against China Post in the New York State Supreme Court in regards to confusion surrounding market rights of the two entities, effectivity ending the joint venture with China Post. As a result, a restructuring occurred and

Yellow River was created. Yellow River was a standalone entity that was set up as a parallel structure to China Horizon. Ownership interests in Yellow River were distributed to China Horizon stakeholders. (Yellow River Investor Presentation dated 4/1/16). As part of this restructuring, equity holders of China Horizon received a 65% interest in Yellow River and debt holders of China Horizon received a 35% interest in Yellow River.

372. From that point forward, Yellow River was a standalone entity that no longer had the benefit of partnership with China Post.

373. On June 9, 2016, Beechwood, SHIP and the Beechwood Reinsurance Trusts caused PGS to accept approximately $8.9 million of the Beechwood loans at par as part of the $170 million purchase consideration for Agera. Given the fall off in the business model, China Horizon was significantly overvalued at the time the assignment.

11. <u>The Fraudulent Securities Transactions</u>

374. Each of the above-described investments in the PPCO Funds and the PPVA Funds, and in the companies in which they made investments, constitute securities transactions.

375. These securities transactions were made, directly or indirectly, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, wire services, or of a facility of a national securities exchange, in connection with the transactions, acts, practices, or courses of business alleged herein, certain of which occurred in this District.

376. Beechwood used funds transferred by SHIP pursuant to the IMAs to purchase $16.5 million in limited partnership or membership interests in the PPVA Funds.

377. The PPVA Infusions masked the performance failures at the operating companies in which the PPVA Funds had invested, and were used to justify ever increasing valuations that defied market realities, and thereby pay management unearned fees.

378. But for the PPVA Infusions, the PPVA Funds certainly would have failed by 2014, because they would have been unable to cover an approximately $100 million cash deficit in 2014. Moreover, liquidating the PPVA Funds' investments to cover this deficit would have exposed that the investments were worth only a fraction of the valuations at which they were being carried.

379. But for the purchase by PPCO of these securities, at overly inflated value, misrepresented by the Beechwood Entities, BCLIC, WNIC and SHIP as fair value, PPCO would not have continued to operate at a time when it was actually or nearly insolvent and should have been winding down it business.

380. In order to prop up the PPVA Funds and prevent them from failing, the Beechwood Principals and other Platinum Partners insiders (i) caused the Beechwood Entities to use funds transferred by BCLIC or WNIC into the Beechwood Reinsurance Trusts or by SHIP pursuant to the IMAs to purchase securities in or loan monies to the PPCO Funds (Credit Strategies) and to purchase limited partnership interests in the PPCO Funds, and (ii) thereafter caused the PPCO Funds to enter into transactions in which such monies were used, including as follows:

(a) The PPCO Funds provided PPVA with $77.8 million in cash of which PPVA repaid $46.5 million, leaving more than $31 million unpaid. PPVA Funds used to pay down redemptions and conceal its liquidity crisis.

(b) On February 19, 2014, PPCO Master Fund received $36 million from Beechwood (including $1,000,000 from BRe BCLIC Sub, $1,7500,000 from BRe WNIC 2013 LTC Sub and $33,250,000 from BRe WNIC 2013 LTC Primary) to purchase limited partnership interests in the PPCO Funds. PPCO Master Fund used $24.5 million to purchase membership interests in ALS from PPVA. The Equity Receiver has not found any evidence that a valuation was performed for this transaction. As a result, the PPCO Funds ended up being the sole provider of financial and operating support to ALS, to the tune of over $16 million between 2014 and 2016. In other words, PPCO Master Fund, by buying the membership interests from interests from PPVA Master Fund, became solely responsible for the entirety of ALS' future funding needs, thereby relieving the pressure on the PPVA Funds' liquidity from the need to fund a portion of the ALS premiums. The 2014 financial statements for PPCO estimated premium funding needs at ALS of approximately $10 million to $12 million each year for the next five years. Had PPCO Master Fund not made these premium payments, the value of the ALS investment, which at $85 million was also significantly inflated, would have declined dramatically. Alternatively, PPCO Master Fund could have attempted to sell its investment in ALS (20% of total assets at year-end 2014) to third parties likely at a significant discount to its inflated carrying value of the purchase of membership interests.

(c) Using funds that Beechwood had obtained from SHIP, BCLIC and WNIC, PPCO Master Fund made a temporary purchase bonds in Black Elk Energy Offshore Operations, LLC ("**Black Elk**") – a transaction from which the PPCO Funds received no benefit but which later resulted in a $24 million damages claim against the Receivership estate by the bankruptcy trustee of Black Elk. The Platinum Insiders caused PPCO to be ensnared in the Black Elk Scheme for the benefit of PPBE, PPVA and the Beechwood Reinsurance Trusts.

381. The above-described investments in the PPCO Funds and the PPVA Funds and in the companies in which they made investments, constitute securities transactions.

382. These securities transactions were made, directly or indirectly, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, wire services, or of a facility of a national securities exchange, in connection with the transactions, acts, practices, or courses of business alleged herein, certain of which occurred in this District.

1. The Worsening Liquidity Problems at the PPCO Funds and the PPVA Funds

383. Meanwhile, the liquidity problems of the PPVA Funds and the PPCO Funds continued, with both groups of funds holding highly illiquid and overvalued "Level 3" assets, and the PPVA Funds facing growing redemption requests.

384. According to PPVA Master Fund's financial statements dated as of December 31, 2014, as of that date, PPVA Master Fund and its subsidiaries had $1,000,181,360 in assets, which included investments in securities valued at $872,158,921, $756,432,286 of which were described as "Level 3" assets. (Platinum Partners Value Arbitrage Fund L.P. and Subsidiaries

Consolidated Financial Statements Year Ended December 31, 2014 at 7, 19, 32) The lack of liquidity in the PPVA Master Fund's investment portfolio was exacerbated by the fact that many of the NAVs shown on PPVA Master Fund's financial statements were greatly overstated and the companies in which it invested required constant and significant infusions of capital.

385. Even those numbers do not reflect the full extent of the PPVA Funds' liquidity crisis because: (a) Beechwood provided over $100 million in assistance to the PPVA Funds by purchasing approximately $100 million of their assets at significantly inflated valuations and by purchasing approximately $16 million in limited partnership subscriptions in the PPVA Feeder Funds; (b) Beechwood provided indirect liquidity support to the PPVA Funds by making a $29 million loan to Pedeveco, in which PPVA Master Fund had invested, funding $50 million of the $80 million under a secured note that enabled PPVA Master Fund to fund PPVA Master Fund's acquisition of Northstar, and orchestrating a transaction involving Black Elk; and (c) the PPVA Funds received nearly $40 million in additional liquidity support from the PPCO Funds in sales at inflated valuations to the PPCO Funds of membership interests in ALS Capital Ventures, LLC ("**ALS**"), which the PPVA Funds used to satisfy redemptions, and to purchase certain securities in Black Elk, which the PPVA Funds used to meet margin calls.

386. Similarly, according to PPCO Master Fund and its subsidiaries' Consolidated Condensed Schedule of Investments for the year ended December 31, 2014, as of December 31, 2014, PPCO Master Fund and Subsidiaries had investments having a total fair value of $459,250,674, including "Level 3" assets having a value of $448,488,499, "Level 2" assets having a value of $2,110,231, and "Level 1" assets having a value of $8,651,944. (PPCO Master Fund and Subsidiaries' Financial Statements as of December 31, 2014 at 6)

387. The PPCO Funds also required funds from Beechwood to sustain themselves. Had insiders at Platinum Partners not continued to support the PPCO Funds through purchases of limited partnership interests, a limited set of assets from the PPCO Funds and directly funding certain portfolio companies, and had the Beechwood Entities, CNO, BCLIC, WNIC and SHIP not misrepresented the value of these securities as fair value, rather than its true negligent value, the PPCO Funds would likely have been wound down as well, and over $75 million in subsequent investments into failing portfolio companies could have been avoided. Indeed, most of these investments were carried at significantly elevated valuations; these values were unlikely to be realized in an orderly disposition of these assets as the Receivership has determined through its sale process.

388. The insiders at Platinum Partners became more creative and began to obtain cash infusions and loans from Beechwood, insiders and affiliated entities in the Platinum funds. For example, in or about September 2014, the Platinum Insiders caused PPVA to issue a promissory note with a maximum principal amount of $36 million and an interest rate of 1.333% per month (the "16% PPNE Note"). The 16% PPNE Note enabled insiders to make loans to PPVA. [PPVA Complaint ¶¶ 491-501].

389. In October 2014, PPCO loaned $10 million to PPVA. According to the SEC, the PPM's of both PPCO and PPVA prohibited lending or borrowing other than to facilitate an investment. This loan was repaid by December 2014.

390. PPVA's financial condition continued to worsen throughout 2015 and 2016 and it became increasingly difficult to pay out redemptions. For example, PPVA was unable to meet the June 30, 2015 redemption request of PPVA Offshore Feeder Fund investor Kismetia Ltd.

("**Kismetia**"), instead opting to issue a promissory note dated as of that date but effective as of December 31, 2015 for the redemption balance. (PPVA Complaint, ¶¶ 502-505)

391. According to the PPVA Complaint, "[b]y December 2015, cash redemption payments to PPVA's investors had ceased. During the first six months of 2016, PPVA's financial condition continued to worsen…PPVA was unable to comply with its ongoing obligations to its investments, which caused the value of those investments to deteriorate significantly. It also faced numerous demands and lawsuits from creditors. Likewise, PPVA repeatedly failed to meet its lending obligations to Urigen Pharmaceuticals, Inc. ("Urigen"), a pharmaceutical startup in which it had invested. In a series of emails from March 29-April 1, 2016, the president of Urigen informed Nordlicht and Levy that, as a result of PPVA's failure to provide the agreed-upon financing, Urigen had missed payroll and monthly overhead and had failed to pay creditors." (PPVA Complaint at paragraph 119, 120, 124) Faced with an ever-expanding hole that could not be met by the insiders or Beechwood direct infusions into PPVA, the insiders at Platinum caused PPCO to be raided by PPVA.

392. Beginning on or about January 1, 2015, PPCO provided two lines of credit to PPVA with interest rates of 12% and 16% (the "12% Line of Credit" and the "16% Line of Credit", collectively the "2015 Lines of Credit"). Over the next two years, PPVA was advanced more than $31 million in cash than it repaid to PPCO under these facilities. The cash enabled PPVA to meet a portion of the many cash needs. Insiders at Platinum also caused PPCO and PPVA to engage in a variety of non-cash transactions under lines of credit from 2015.

393. Not only did the Platinum Insiders cause PPCO to send cash to PPVA through a line of credit for uses not permitted by the PPM's, they caused harm to PPCO by offloading a series of non-performing and impaired investments to PPCO.

394. For example, as part of the PPCO Loan transactions, on or about December 31, 2015, the Platinum Insiders caused PPCO to purchase the remaining Desert Hawk position from PPVA for $9.0 million. Desert Hawk was a non-performing investment, yet the $9.0 million par value was credited as a repayment by PPVA. Further, PPVA could not meet the cash infusions needed by Desert Hawk, a capital intensive mining investment. [PPVA Complaint at paragraph 121 and 122] leading the Desert Hawk operator to complain to Levy that that Desert Hawk was "an absolute living hell … It is not possible to run … without proper capitalization." [January 8, 2016 Desert Hawk email]. On February 18, 2016, a Desert Hawk representative emailed Levy that the company could not complete its audit because of insufficient funding. [February 18, 2016 Desert Hawk email]. PPCO was harmed by both a reduction in the amount owed by PPVA, but also by the millions of dollars it spent subsequently to prop up Desert Hawk.

395. Numerous discrepancies existed with respect to PPVA Funds' financial records. As a result, the PPVA Funds' audited financial statements for the year ended December 31, 2013 were delivered on February 11, 2015, more than 287 days after the due date of April 30, 2014. This prolonged delay caused Platinum Management to violate the custody rule promulgated under the Investment Advisers Act of 1940 (the "Advisers Act") under which Platinum Management was required to either engage an independent public accountant to conduct a surprise examination once per year, or to circulate audited financial statements to investors within 120 days of the end of its fiscal year. The late delivery of audited financial statements was a "red flag" that was indicative of financial distress or other problems that arose during the audits. Indeed, CohnReznick's audit of PPVA's 2014 financial statements was not rendered until September of 2015, so CohnReznick also had firsthand knowledge of those indicators of distress

or other problems. This was an obvious "red flag" of fraud that BCLIC, WNIC, CNO, SHIP and Fuzion should have heeded.

396. By December 2015, cash redemption payments to the PPVA Funds' investors had ceased, with the notable exception of select redemption payments to insiders of Platinum Management and certain principals.

397. As limited partnership investors in the PPVA Funds and the PPCO Funds, BCLIC and was entitled to receive audited financial statements from the funds. However, the audits of the PPVA Funds for the fiscal year ended December 31, 2013 were not finalized until February 2015. This extensive delay was caused by the auditors, BDO's ongoing concerns with valuation issues. This huge delay in the audit no doubt raised substantial doubts about the nature of the valuation issues well before CNO, SHIP and BCLIC claimed to have been aware of Platinum Partners' deep involvement with Beechwood.

398. During the first six months of 2016, the PPVA Funds' financial condition continued to worsen. As a result, the PPVA Funds were unable to comply with their ongoing obligations to its investments, which caused the value of those investments to deteriorate significantly.

399. During this time, the PPVA Funds also faced numerous demands and lawsuits from creditors. As just a few examples:

(a) On January 8, 2016, Levy received an email from the operator of Desert Hawk Gold Corp. ("**Desert Hawk**") – a gold mining operation and a company in which a PPVA subsidiary had invested – claiming that Desert Hawk was "an absolute living hell … It is not possible to run … without proper capitalization." *See* January 8, 2016 Desert Hawk email. *See Trott*

v. Platinum Management (NY) LLC, No. 18-cv-10936, ECF No. 1-1, at Ex. 8 (S.D.N.Y.).

(b) On February 18, 2016, a Desert Hawk representative emailed Levy that the company could not complete its audit because of insufficient funding. *See* Feb. 18, 2016 Desert Hawk e-mail, *Trott v. Platinum Management (NY) LLC*, No. 18-cv-10936**,** ECF No. 1-1, at Ex. 9 (S.D.N.Y.),.

(c) PPVA Master Fund repeatedly failed to meet its lending obligations to Urigen Pharmaceuticals, Inc. ("Urigen"), a pharmaceutical startup in which it had invested. In a series of emails from March 29-April 1, 2016, the president of Urigen informed Nordlicht and Levy that, as a result of PPVA's failure to provide the agreed-upon financing, Urigen had missed payroll and monthly overhead and had failed to pay creditors. *See* Urigen emails, *Trott v. Platinum Management (NY) LLC*, No. 18-cv-10936, ECF No. 1-1 at Ex. 10 (S.D.N.Y.).

(d) On June 15-22, 2016, a Platinum Management representative exchanged a series of email with a representative of Golden Gate Oil (an investment marketed at various times as worth more than $100 million according to the Platinum Defendants), whereby Golden Gate Oil complained that, due to PPVA's inability to fund working capital, Golden Gate Oil was unable to meet payroll expenses for the second month in a row. See Golden Gate Oil emails *Trott v. Platinum Management (NY) LLC*, No. 18-cv-10936 ECF No. 1-2 at Ex. 11. (S.D.N.Y.).

G. <u>The Defendants' Movement of Assets Out of the PPCO Funds.</u>

400. By the fall of 2015, PPCO Master Fund, PPCO Fund TE, PPCO Fund, PPCO Fund International and PPCO Fund International A as well of each of the PPVA Funds were insolvent in that each of their liabilities exceeded each of their assets.

401. Beginning in late 2015 and continuing until early 2017, the Defendants conspired to transfer or encumber nearly all of the remaining PPCO Fund assets to or for the benefit of BCLIC, WNIC, SHIP, Beechwood and the select insiders of Platinum Partners.

1. The PPCO Loan Transactions and Securities Purchases

402. BCLIC, WNIC, SHIP, acting through Beechwood affiliates that invested the funds deposited by them, caused PPCO Master Fund to issue a secured loan to them in exchange for assets worth only a fraction of their value.

403. Between December 21, 2015 and March 21, 2016, PPCO Master Fund entered into a series of transactions in which it borrowed $69,153,626.82 from SHIP (through BAM Administrative, which as SHIP's nominee) and from the Beechwood Reinsurance Trusts (through the BAM Administrative) (collectively, the "**PPCO Loan Transactions**"), in order to purchase certain securities from Beechwood (which held assets as nominee of SHIP), SHIP and the Beechwood Reinsurance Trusts (which held assets of BCLIC and WNIC) worth only a fraction of that amount (the "**Purchased Securities**") in a series of non-cash transactions (collectively, the "**PPCO Loan Transactions and Securities Purchases**"). As part of the PPCO Loan Transactions and Securities Purchases, BAM Administrative (as agent for SHIP and the Beechwood Reinsurance Trusts, which held assets for the benefit of BCLIC and WNIC) also purportedly received security interests securing PPCO Master Fund's obligations under PPCO Loan Transactions and Security Purchases, in PPCO Master Fund's assets and its subsidiaries' assets, including equity interests.

404. The PPCO Loan Transactions and Securities Purchases included several agreements and transfers which are summarized below.

405. Under a Delayed Draw Demand Note, dated December 23, 2015, SHIP (through BAM Administrative, as SHIP's agent) loaned PPCO approximately $14,198,750 (the "**SHIP Note**"). The principal amount of the SHIP Note was $15,500,000 and it was made payable by PPCO Master Fund to the order of SHIP and issued solely to SHIP. In conjunction with the SHIP Note, PPCO Master Fund and thirty-five of its subsidiaries (the "**MSA PPCO Subsidiaries**") entered into a Master Security Agreement, dated December 23, 2015 (the "**MSA**"). Under the MSA, PPCO Master Fund and each of the MSA PPCO Subsidiaries granted security interests to BAM Administrative, as agent on behalf of SHIP in substantially all of their respective assets to secure PPCO Master Fund's obligations under the SHIP Note.

406. In addition, the MSA Subsidiaries also entered into a Subsidiary Guarantee, dated December 23, 2015 (the "**MSA Subsidiary Guarantee**"), pursuant to which the MSA Subsidiaries guaranteed payment of the SHIP Note.

407. On December 23, 2015, $9,1978,750 funded by SHIP under the SHIP Note was disbursed by BAM Administrative (as agent for SHIP) as follows:

(a) $1,711,989.58 to Beechwood Bermuda (as SHIP's nominee) for PPCO Master Fund to purchase Desert Hawk debt held in SHIP's IMA account at Beechwood Bermuda;

(b) $3,398,427.08 to Beechwood Bermuda (as SHIP's nominee) for PPCO Master Fund to purchase additional Desert Hawk debt held in SHIP's IMA account Beechwood Bermuda; and

(c) $4,088,333.34 to Beechwood Re (as SHIP's nominee) for PPCO Master to purchase certain Desert Hawk debt.

408. On December 30, 2015, $5,000,000 of the funds loaned under the SHIP Note were disbursed by BAM Administrative for full repayment of all indebtedness owing by LC Energy under:

(a) June 3, 2014 Secured Term Note issued by LC Energy to originally BRe WNIC 2013 LTC Primary in the original principal amount of $3,091,292.00;

(b) June 3, 2014 Secured Term Note issued by PPCO originally to BRe WNIC 2013 LTC Sub in the original principal amount of $151,425.00;

(c) June 3, 2014 Secured Term Note by LC Energy originally to BRe BCLIC 2013 LTC Primary in the original principal amount of $1,675,167.00; and

(d) June 3, 2014 Secured Term Note by LC Energy originally to BRe BCLIC 2013 LTC Sub in the original principal amount of $82,116.00.

409. SHIP (through BAM Administrative as its agent) subsequently loaned an additional $2,000,000 to PPCO Master Fund pursuant to an Amended and Restated Delayed Draw Demand Note, dated January 20, 2016 (the "**First A&R SHIP Note**"), increasing the outstanding amount loaned by SHIP to approximately $16,017,788.55. The First A&R SHIP Note amended and restated the SHIP Note such that the principal amount increased to $18,500,000.

410. In conjunction with the First A&R SHIP Note, PPCO Master Fund and the MSA PPCO Subsidiaries entered into a Reaffirmation and Ratification Agreement, dated January 20, 2016 (the "**Ratification Agreement**"). Under the Ratification Agreement, the MSA PPCO

Subsidiaries reaffirmed and ratified the MSA Subsidiary Guaranty. The Ratification Agreement also confirmed that the obligations under the MSA and MSA Subsidiary Guarantee included the First A&R SHIP Note.

411. On March 21, 2016, PPCO Master Fund, BAM Administrative, as agent, and various purchasers, including SHIP and the Beechwood Reinsurance Trusts entered into a Note Purchase Agreement, dated March 21, 2016 (the "**NPA**"). Under the NPA, the purchasers, which included SHIP and the Beechwood Reinsurance Trusts (collectively, the "**Creditor Parties**"), agreed to extend additional loans to PPCO pursuant to five secured term notes up to $70,000,000 (the "**NPA Notes**").

412. In conjunction with the NPA, PPCO Master Fund entered into an Amended and Restated Master Security Agreement, dated March 21, 2016 (the "**A&R MSA**."). While the MSA PPCO Subsidiaries executed both the MSA and the Ratification Agreement, no subsidiaries of PPCO Master Fund executed the A&R MSA. In fact, the MSA expressly did not amend or restate the security interest granted by the MSA PPCO Subsidiaries as collateral for the obligations of these subsidiaries under the MSA Subsidiary Guarantee. Rather, according to SHIP, under the A&R MSA, PPCO Master Fund granted security interests to BAM, as agent, on behalf of the Creditor Parties, in substantially all of PPCO Master Fund's assets. Schedule C of the A&R MSA purports to list all of the equity interests owned by "each Assignee" (without expressly defining the term "**Assignee**") and the percentage ownership of each "Assignee." Schedule C lists twenty-nine subsidiaries of PPCO Master Fund but contains no information below the headings "Class," 'Certificate No.," "Par Value" or "Number of Interests." Specifically, according to SHIP, the A&R MSA provides that the MSA "shall be amended and restated in its entirety by [the A&R MSA] except for the liens and security interest granted

pursuant to the [MSA], which liens and security interests shall continue in full force and effect during the term of this [A&R MSA] and any renewals or extensions thereof and shall continue to secure the Obligations."

413. SHIP has claimed that the A&R MSA defines the term "Obligations" to include the NPA and related agreements. Under the A&R MSA, PPCO Master Fund reaffirmed "the liens and security interests granted to [BAM Administrative as] the Agent" under the MSA. In other words, according to SHIP, under its express terms, the A&R MSA did not extinguish or otherwise affect the security interests granted by PPCO Master Fund under the MSA. Rather, according to SHIP, PPCO Master Fund, on its own behalf, granted additional security interests to the Creditor Parties, including SHIP, under the A&R MSA. Likewise, according to SHIP, the A&R MSA did not extinguish or otherwise affect the security interests granted by the MSA PPCO Subsidiaries only to SHIP under the MSA, nor could it since the MSA PPCO Subsidiaries' were not parties to the A&R MSA.

414. Also in conjunction with the NPA, thirty-five PPCO subsidiaries and Platinum Partners Credit International LP (collectively, the "**NPA Guarantors**") entered into a Subsidiary Guaranty, dated March 21, 2016 (the "**NPA Guaranty**"). Pursuant to the NPA Guaranty, the NPA Guarantors guaranteed to the Creditor Parties, including SHIP, the payment of Obligations, including the NPA Notes. The NPA Guaranty, however, does not contain any term in which it purports to amend or otherwise modify the MSA Subsidiary Guaranty.

415. First, as SHIP had already loaned money to PPCO Master Fund, however, it did not enter into a new note with PPCO Master Fund like the other purchasers. Rather, under the NPA, the SHIP Note was amended pursuant to a Second Amended and Restated Secured Note, dated March 21, 2016 (the "**Second A&R SHIP Note**"). The Second A&R SHIP Note amended

and restated the SHIP Note such that the face principal amount increased from $18,500,000 to $42,963,949.04. Pursuant to the NPA and the Second A&R SHIP Note, SHIP loaned PPCO Master Fund an additional $26,590,877.78, increasing the total amount loaned which, with accrued interest from the SHIP Note (as amended and restated by the A&R SHIP Note), totaled the face principal amount of the Second A&R SHIP Note. BAM Administrative, as agent for SHIP, BRe WNIC 2013 LTC Primary, Beechwood Bermuda International Limited and Beechwood Bermuda Investment Holdings, Ltd.

416. Second, on or about March 21, 2016, PPCO Master Fund and BRe BCLIC 2013 LTC Primary entered into a $10 Million Secured Term Note dated March 21, 2016 in which BRe BCLIC 2013 LTC agreed to loan $10 million to PPCO Master Fund.

417. Third, on or about March 21, 2016, PPCO Master Fund and BRe BCLIC 2013 LTC Sub entered into a $500,000 Secured Term Note dated March 21, 2016 in which BRe BCLIC 2013 LTC Sub agreed to loan $500,000 to PPCO Master Fund.

418. Fourth, on or about March 21, 2016, PPCO Master Fund and BRe WNIC 2013 LTC Primary entered into a $14,989,677.78 Secured Term Note dated March 21, 2016 in which BRe BCLIC 2013 LTC Sub agreed to loan $14,989,677.78 to PPCO Master Fund.

419. Fifth, on or about March 21, 2016, PPCO Master Fund and BRe WNIC 2013 LTC Sub entered into a $700,000 Secured Term Note dated March 21, 2016 in which BRe WNIC 2013 LTC Sub agreed to loan $700,000 to PPCO Master Fund.

420. On or about March 21, 2016, BAM Administrative, as agent for BReWNIC 2013 LTC Primary and SHIP, executed an Assignment Agreement dated as of March 21, 2016, in which (a) BRe WNIC 2013 LTC Primary purported to assign $20,056,611.11 to PPCO Master Fund, and (b) SHIP purported to assign $11,400,600.00 to PPCO Master Fund ("**Assignment**

Agreement No. 1"). This assignment was used for PPCO Master Fund to purchase (a) $20,056,611.11 of 12% Second Priority Senior Secured Notes (the "Northstar Indenture Debt") from BRe WNIC 2013 LTC Primary, including $19,000,000.00 of principal indebtedness and $1,056,611.11 in accrued and unpaid interest, and (b) $11,400,600.00 in Northstar Indenture Debt from SHIP, including $11,400,600.00 in principal indebtedness and $1,056,611.11 in interest.

421. On or about March 21, 2016, BAM Administrative, as agent for SHIP, executed an Assignment Agreement dated as of March 21, 2016, in which SHIP purported to assign $21,323,344.44 to PPVA Oil and Gas, LLC ("**Assignment Agreement No. 2**"). This assignment was used for PPVA Oil and Gas, LLC to purchase $21,323,344.44 of Northstar Indenture Debt, including $20,200,000.00 in principal indebtedness and $1,123,344.44 in accrued and unpaid interest purchased, from SHIP (through BAM Administrative, as agent). None of those amounts were paid to the assignees and instead were paid to the assignors.

422. PPCO Master Fund loaned the PPVA Oil and Gas, LLC $21,323,344.44 from the proceeds of the Secured Term Note. On the same day, PPVA Oil and Gas, LLC transferred several investment securities to PPCO Master Fund to repay the "loan" for the Northstar Indenture Debt. In actuality, no cash was exchanged in the transactions.

423. Instead, the monies under those assignment agreements were paid to the assignees in a transactions in which PPCO Master Fund purchased $50,000,000 of Northstar Indenture Debt and paid approximately $2.9 million in interest under that debt from the assignors under Assignment Agreement No. 1 and Assignment Agreement No. 2.

424. The Purchased Securities included (a) assets transferred by Beechwood (for the account of SHIP) to PPCO Master Fund and/or PPVA Oil & Gas, LLC assigned a par value of

approximately $43 million, and (b) assets transferred by the Beechwood Reinsurance Trusts to PPCO Master Fund assigned a par value of approximately $26 million. Moreover, over $21 million of those assets were transferred to PPVA Oil & Gas, LLC.

425. On or about the dates on which the PPCO Loan Transactions and Securities Purchases were consummated, SHIP, Beechwood, BCLIC and WNIC represented that these were the true values of the Purchased Securities, which representations were false and were known by these defendants to be false when made.

426. These securities transactions were made, directly or indirectly, by use of the means of instruments of transportation or communication in interstate commerce, or of the mails, or in service of or a national securities exchange, in connection with the transactions, acts, practices, or courses of business alleged herein, certain of which accrued in this District.

427. However, the actual value of the securities and other assets transferred by Beechwood (for the account of SHIP) and the Beechwood Reinsurance Trusts in connection with the PPCO Loan Transactions and Securities Purchases was actually a fraction of the par value assigned for purposes of the transactions.

428. For example, the Northstar Indenture Debt was valued at par for purposes of the PPCO Loan Transactions and Securities Purchases, but that valuation substantially overstated the true value of those securities for several reasons. First, Northstar had unusually high levels of undeveloped reserves (approximately 70% of total proved reserves). Therefore, any valuation of the reserves as a measure of the enterprise value of the company must be adjusted for the probability that production from these reserves would never be realized. For instance, the Society of Petroleum Engineers ("**SPEE**") in its 34th annual survey recommended significant haircuts (50% and higher) to expected production volumes from undeveloped reserves and probable

reserves. Per SEC guidelines, the PV-10 for a company is not a valuation measure; it is meant to be solely used as a relative measure of reserves across operations. Upon information and belief, the company and the Beechwood entities used a multiple of PV-10 applied to all reserves, proved, developed and producing or non-producing or if they were undeveloped. Second, upon information and belief, the assessment of the fair market value of the assets did not take into consideration the dire financial condition of Northstar at this time including its inability to make interest payments. An appropriate approach to value such a speculative oil and gas company would be use to a discounted cash flow approach using the most current reserve report projections with appropriate haircuts for likelihood of actual production and a discount rate that reflected the level of risk inherent to such an enterprise. In the Receiver's estimation, the estimated fair market value of the Northstar Indenture was well below par that it was purported to be.

429. Similarly, the LC Energy Term Loan was worth well below par. In order to estimate the fair market value of the LC Energy Term Loan, the Receiver estimated the enterprise value of LC Energy using a discounted cash flow ("**DCF**") approach and a comparable companies' precedent transactions approach. In preparing the DCF valuation, the Receiver made multiple adjustments to the LC Energy's financial projections to reflect more reasonable operating assumptions and a discount rate (cost of capital) more reflective of a development-stage mining company. For instance, the company's projections did not appear to take into account these additional funding needs. The financial projections also relied upon unreasonable volume and pricing assumptions. The Receiver adjusted the company's reserve estimates down to reflect the uncertainty of extraction, as indicated in its own reserve reports. Further, the Receiver adjusted the company's unreasonable pricing assumptions. And finally, the Receiver

applied a discount rate to the adjusted projections that reflected more appropriately the high cost of capital for development-stage mining companies. In preparing an transactions analysis, the Receiver relied on an assessment of the value ascribed to proven and provable reserves in recent precedent transactions.

430. In determining the estimated fair market value of the $9 million Desert Hawk Senior Secured Term Loan that PPCO Master Fund received as part of the PPCO Loan Transactions and Securities Purchases, the Receiver relied on an multiple approaches including a discounted cash flow approach, and market based analyses including, a comparable companies analysis and a precedent transactions analysis. In the market-based analyses, the Receiver assessed the enterprise value of Desert Hawk from a market-based assessment of the value of its reserves. Based on this analysis, the Receiver concluded that the Desert Hawk Senior Secured Term Loan had an estimated fair market value that was well below the par value implied by the PPCO Loan Transactions and Securities Purchases.

431. The value of the loans and liens that PPCO Master Fund transferred in those transactions was at least $69 million.

432. PPCO Master Fund did not "fair consideration" for the securities it transferred in connection with the PPCO Loan Transactions and Securities Purchases.

2. <u>The Agera Transactions</u>

433. The defendants Beechwood, SHIP and Fuzion engineered the June 9, 2016 transfer of one of PPCO Master Fund's most valuable assets – its interest in Agera Energy.

434. Agera Energy LLC ("Agera Energy") is an energy company that supplies electricity and natural gas to businesses and residents, while offering efficiency services (demand management and utility audits) for businesses and residents. Until June 2016, PPCO and PPVA

owned Agera Energy through their membership interests (45% and 55%, respectively) in PGS. PGS held a secured convertible note issued by Agera Energy LLC (the "Agera Note"). The convertible note, issued in May 2014, could be converted into 95.0% of the outstanding securities of Agera Energy. The Agera Note was one of PPCO's most valuable positions.

435. In 2016, Nordlicht and prior management initiated a series of transactions that fraudulently transferred the Agera Note to AGH Parent LLC, a company owned and controlled by SHIP, the Beechwood Reinsurance Trusts and other Beechwood Entities, and Starfish Capital, Inc. ("Starfish Capital") Starfish Capital was a company whose principal was Kevin Cassidy. Prior to his involvement with Starfish Capital and Agera, Cassidy was convicted for a fraudulent mark-to-market scheme when he was CEO of Optionable Inc. ("Optionable"). Optionable was a company founded by Nordlicht. [Forbes article dated April 26, 2012]

436. On May 31, 2016, Nordlict formed AGH Parent LLC ("Agera Parent") with the specific intent of purchasing the Agera Note from PGS. In fact, the CNO Complaint alleges that Feuer and Taylor approached CNO about the Agera Note transaction with the reasoning that it would be a way for CNO to offload some of its "bad assets".

437. On June 8, 2016, in preparation for the sale of the Agera Note, Nordlicht and Cassidy caused PGS to admit Starfish Capital as a "profits member". Starfish Capital was given 8% ownership of PGS. Upon information and belief, no valuation was performed at this date and no consideration was given to PPCO in exchange for giving up equity to accommodate Starfish Capital. According to a one sentence letter signed by Nordlicht, purportedly dated August 19, 2015, this ownership grant was compensation to Cassidy for his work overseeing Agera Energy [Starfish Consulting Agreement, Cassidy Ownership Letter].

438. On June 9, 2016, in order to fund the purchase of the Agera Note for $170 million SHIP, the Beechwood Reinsurance Trusts and other Beechwood entities capitalized AGH Parent with $108.9 million in cash and assets in exchange for a Class A, Class B, Class B-1, Class B-2, Class C preferred shares and B-1 debt securities.

439. The details of the funding transactions and capitalization of AGH Parent were as follows [Agera Funds Flow Memo dated 6/9/16]:

(a) Assets contributed for 350,000 Class A Preferred Units:

(i) SHIP contributed $35 million in cash in exchange for 350,000 Class A Preferred Units

(b) Assets contributed for 220,000 Class B-1 Preferred Units:

(i) BRe WNIC 2013 LTC Primary contributed $3.1 million of principal indebtedness outstanding under that certain Secured Term Note, dated as of March 21, 2016, issued by PPCO.

(ii) BBLN-Agera Corp. contributed $60,000 in cash in exchange for 600 Class B-1 Preferred Units and contributed 50% of its right title and interest under that certain Amended and Restated Assignment of Note and Liens ("**Repo Agreement**"), entered into as of May 12, 2016 by and among Principal Growth Strategies LLC, BBIL ULICO 2014, Beechwood Bermuda Investment Holdings Ltd., linked to its Segregated Accounts, Beechwood Bermuda International Ltd. and BBLNAgera Corp. (the "Repo Agreement") for 50,000 Class B-1 Preferred Units. BBLN-Agera Corp.'s 50%

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Interest in the Repo Agreement had a purported value of $5,000,000.

(iii) BBIL ULICO 2014 contributed $90,000 in cash in exchange for 900 Class B-1 Preferred Units and contributed 100% of its right title and interest under the Repo Agreement for 75,000 Class B-1 Preferred Units. BBIL ULICO 2014's 100% interest in the Repo Agreement had a purported value of $7,500,000.

(iv) BHLN-Agera Corp. contributed $60k in cash in exchange for 600 Class B-1 Preferred Units and contributed 100% of its right title and interest under the Repo Agreement, for 50,000 Class B-1 Preferred Units. BHLN-Agera Corp.'s 100% interest in the Repo Agreement had a purported value of $5,000,000.

(v) BOLN-Agera Corp. contributed $1.2 million in cash in exchange for 11,721 Class B-1 Preferred Units.

(c) Assets contributed for $52 million AGH B-1 Debt:

(i) SHIP (through its SHIP-BAM Account) contributed $0.3 million in cash in exchange for $0.3 million AGH B-1 Debt and $12.9 million of principal indebtedness outstanding under that certain Second Amended and Restated Secured Term Note, dated as of March 21, 2016, issued by PPCO in exchange for $12.9 million AGH B-1 Debt

(ii) SHIP also contributed $15.0 million in cash in exchange for $15.0 million of AGH B-1 Debt

(iii) BBLN-Agera Corp. contributed $4.1 million in cash in exchange for $4.1 million of AGH B-1 Debt and contributed 49.7% of its right title and interest under the Repo Agreement in exchange for $5.0 million AGH B-1 Debt

(iv) BOLN-Agera Corp. contributed $2.5 million in cash in exchange for $2.5 million AGH B-1 Debt, contributed its $12.3 million of participation interest in the PPCO Loan in exchange for $12.3 million AGH B-1 Debt and contributed an additional $1.7 million of participation interest in the PPCO Loan in exchange for $1.7 million AGH B-1 Debt

(v) B Re WNIC 2013 LTC Primary contributed $4.6 million of Amended PEDEVCO Notes in exchange for $3.0 million AGH B-1 Debt, and contributed $0.6 million of principal and $31,000 of accrued and unpaid interest under the Secured Promissory Note issued by China Horizon in exchange for $0.7 million AGH B-1 Debt, and contributed $0.6 million of principal and $23k of accrued and unpaid interest under the China Horizon Secured Promissory Note in exchange for $0.7 million AGH B-1 Debt, contributed $4.2 million of principal and $0.2 million of accrued and unpaid interest under the China Horizon Amended and Restated Convertible Note, in exchange for $4.4 million AGH B-1 Debt and contributed $0.6 million of cash in exchange for $0.6 million AGH B-1 Debt

(vi) B Re WNIC 2013 LTC Sub contributed $0.7 million of cash in exchange for $0.7 million AGH B-1 Debt

(vii) BRe BCLIC Sub contributed $0.5 million of cash in exchange for $0.5 million AGH B-1 Debt

(d) In summary, the Beechwood Reinsurance Trusts and other Beechwood entities provided $10 million in cash and $48.9 million of assets in exchange for 220,000 AGH B-1 Preferred Units and $37 million of AGH B-1 Debt

(e) SHIP contributed $50 million of cash in exchange for 350K Class A Preferred Units and $15 million AGH B-1 Debt

(f) Beechwood Investments contributed $100 in cash for 5,730 AGH Parent Common Shares, representing 100% of AGH Parent Common Equity

(g) The remaining $61.1 million of the $170 million purchase price consideration was funded by issuing 590,400 AGH Parent Class C Units for an purported value of $59.1 million and 3,438 AGH Parent Class B-2 preferred Units representing a $2.0 million in value

440. On June 9, 2016, PGS sold the Agera Note (the Agera Note was amended just prior to the transaction to be issued by Agera Holdings LLC, the parent holding company of Agera Energy) to AGH Parent for a purported consideration of $170 million.

441. The $170 million of consideration was comprised of the following.

(a) $8.9 million of China Horizon Secured Promissory Notes

(b) $8.0 million of Pedevco Notes

(c) $59 million in Class C Preferred Units

(d) $26.8 million of Participation in the PPCO Loan

(e) $65.3 million of cash.

(f) $2 million in class B-2 Preferred Limit

442. Using proceeds from the transaction, Nordlicht and Cassidy caused PGS to repurchase Starfish Capital's 8% ownership interest in PGS for $7 million in cash, $2 million in AGH Parent Class B-2 preferred units and $4.6 million of AGH Parent Class C preferred units [Agera Note Purchase Agreement; Final Funds Flow].

443. On January 26, 2017, AGH Parent redeemed $35.4 million of the AGH Parent Class C preferred units (336,928 Class C Preferred Units) helf by PGS by assigning the $14.1 million Golden Gate Oil loan, $15.6 million Montsant loan and $5.7 million Pedevco notes to PGS. PGS did not receive any cash consideration from the redemption but was left with approximately 207,970 Class C Preferred Units. [Agera Note February 2018 Conversion Application pg.23-26)]

444. At a time when it was insolvent, PGS did not receive reasonably equivalent value in the sale of the Agera Note to AGH Parent. Therefore, the Agera Note sale was a fraudulent transfer and PGS is owed damages of at least $100 million.

445. At a time when it was insolvent, PGS did not receive reasonably equivalent value in the $35.4 million forced redemption of the AGH Parent Class C preferred units. Therefore, the AGH Parent Class C note redemption was a fraudulent transfer and PGS is owed damages of at least $15 million.

446. The Equity Receiver prepared an estimated fair market value of the Agera Note first by estimating the enterprise value of Agera Energy and then estimating the value of the Agera Note, which is dependent on this enterprise value. The Equity Receiver estimated the

enterprise value of Agera Energy using the three generally accepted approaches to business valuation – the discounted cash flow approach, and by reference to valuations implied by comparable companies and comparable transactions. In determining the enterprise value of Agera Energy using the discounted cash flow approach, the Equity Receiver relied primarily on the company's own business plan and projections with some adjustments to reflect its recent historical performance, and applied a discount rate derived from comparable companies.

447. According to PPVA cash accounts, on June 9, 2016 PPVA only received $58.8 million in cash upon the close of the Agera Note sale. Of the cash PPVA received, only $3.0 million was advanced to PPCO, which only represented 5.1% of the cash distributed to PGS, despite its 45% membership interest in PGS.

448. Nevertheless, these Defendants orchestrated these series of transactions referred to as the Agera Note Sale for cash and noncash consideration supposedly worth a total of $170 million. This was then known by SHIP, AGH Parent, PGS, Beechwood and the Platinum Insiders to be at least $40 million below the actual value of the Agera Note at a time when the PPVA Funds and the PPCO Funds were insolvent.

449. As described, the consideration actually received by PGS in the Agera Note Sale was actually far less than $170 million because the noncash assets were knowingly misrepresented by SHIP, AGH Parent, Beechwood and the Platinum Insiders at the time of execution of the sale of the security to be at fair value, when in fact it was not.

450. In particular, these transactions were designed or implemented in a manner in which they defrauded PPCO Master Fund, which subsequently received only $3.0 million in cash (5.1% of the cash consideration paid by Beechwood), together with noncash consideration consisting of overvalued investment in the Agera Note Sale, while PPVA Master Fund received

$55.3 million of the cash consideration in that transaction. As part of that transaction, the Agera Note was also transferred to AGH Parent, and benefitted SHIP which owned 100% of AGH Parent.

451. Tellingly, in a complaint they filed against Feuer, Taylor and Levy in this Court, BCLIC and WNIC admitted, among other things, that "[t]he Agera restructuring was represented by Feuer and Taylor to Plaintiffs as a mechanism to allow the Trusts to divest other bad Platinum-related investments." *Bankers Conseco Life Ins. Co. v. Feuer, et al.*, No. 16-cv-7646 ¶ 125(b) (S.D.N.Y. Sept. 29, 2016).

452. These transactions were made, directly or indirectly, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, wire service or of a facility of a national securities exchange, in connection with the transactions, acts, practices or courses of business alleged herein, certain of which accrued in this District.

453. Further, the noncash consideration received by PGS in the AGH Note Sale included, among other assets, AGH Parent Class C Preferred Units which were assigned a "par value" of $59.0 million in the Agera Note Sale, meaning that they were deemed to represent $59.0 million of the $170 million supposedly received by PGS in the Agera Note Sale. However, if AGH Parent were to deliver a redemption notice of the Class C Preferred Shares before October 31, 2016, the shares could be redeemed for non-cash consideration with the remainder delivered in cash. On October 28, 2016, AGH Parent delivered a redemption notice and Beechwood Re redeemed $35.4 million of the Agera Class C Preferred shares (336,928 of the Class C Preferred Shares, leaving PGS with 207,970 of Class C Preferred Shares) by assigning certain overvalued securities, which were then represented by SHIP, Beechwood and AGH Parent to be at fair value when each knew they were overvalued (a $14.1 million loan note

to Golden Gate, a $15.6 million loan note to Montsant, and $5.7 million in Tranche B Notes from Pedveco), causing further damage to PPCO Master Fund (the "**Class C Redemption**").

454. These securities transactions were made, directly or indirectly, by use of the means of instrumentalities of transportation or communication in interstate commerce, or of the mails, or in service of or a national securities exchange, in connection with the transactions, acts, practices, or courses of business alleged herein, certain of which accrued in this District.

VI. <u>The Collapse of the PPVA Funds and the PPCO Funds</u>

455. On June 8, 2016, Huberfeld was arrested and criminally charged by the U.S. Attorney for the Southern District of New York in connection with his bribing a union official to make a $20 million investment in a fund owned and operated by Platinum Partners.[6]

456. As described in the numerous media reports following that arrest, this included not only the bribery scheme to the union official, but also paying reported investment gains with money from incoming ones in the fashion of a Ponzi scheme, and obtaining further investments from new investors by deception to continue to prop up the hedge fund.

457. On December 19, 2016, an eight-count indictment was unsealed in the United States District Court for the Eastern District of New York charging seven Platinum Partners defendants, including Nordlicht and Levy, and commencing the criminal action against them (the "**Criminal Action**").

458. Nordlicht, Levy and other insiders of Platinum Partners were criminally charged with securities fraud, investment adviser fraud, securities fraud conspiracy, investment adviser fraud conspiracy and wire fraud conspiracy for defrauding investors through, among other

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[6] On May 25, 2018, Huberfeld pled guilty to wire fraud conspiracy.

things, the overvaluation of their largest assets, the concealment of severe cash flow problems at the PPVA Funds, and the preferential payment of redemptions.

459. Upon announcing the Criminal Action, Robert L. Capers, United States Attorney for the Eastern District of New York stated: "As alleged, Nordlicht and his cohorts engaged in one of the largest and most brazen investment frauds perpetrated on the investing public, earning Platinum more than $100 million in fees during the charged conspiracy. Platinum Partners purported to be a standard bearer in the hedge fund industry, reporting annual average returns of more than 17 percent since inception in 2003. In reality, their returns were the result of the overvaluation of their largest assets, which eventually led to Nordlicht and his co-conspirators operating Platinum like a Ponzi scheme, where they used loans and new investor funds to pay off existing investors."

460. On the same day, December 19, 2016, the SEC commenced an enforcement action against Nordlicht, Levy, other individuals and Platinum Partners entities for securities laws violations (the "Enforcement Acton"). Upon announcing the Enforcement Action, the Director of the SEC's Division of Enforcement, Andrew J. Ceresney, stated: "As alleged in our complaint, investors were repeatedly presented a false picture of the performance of the Platinum funds and their overall liquidity situation. As investors sought redemptions, the defendants engaged in numerous improper measures in an attempt to meet redemption requests, including taking out high-interest rate loans, commingling monies among funds, and raising money from new investors through fraudulent misrepresentations."

461. Both the Criminal Action and the Enforcement Action are still pending.

VII. The RICO Enterprise

462. The Beechwood Entities, including Beechwood Re, BBIL, BAM, Beechwood Investments and the Reinsurance Trusts are enterprises within the meaning of the Racketeer Influenced and Corrupt Organizations Act of 1970, 18 U.S.C. § 1961 ("**RICO**"). Moreover, Beechwood – the association-in-fact of Beechwood Re, BBIL, BAM, Beechwood Investments, Beechwood Holdings, Beechwood Investments, and the Beechwood Reinsurance Trusts – constitutes a second RICO enterprise. And the association-in-fact of these entities and their co-conspirators, including, but not limited to, Feuer, Taylor, Levy, Nordlicht and others at or associated with Platinum Partners, as well as BCLIC, WNIC, SHIP, CNO and Fuzion constitutes a third RICO enterprise. As set forth in this Complaint, as well as in the pleadings set forth in the Criminal Action and the SEC Action, the Defendants and their co-conspirators functioned as a unit and conducted the affairs of each of these three RICO enterprises through a pattern of racketeering activity.

463. These RICO enterprises shared common purposes and a structure. The primary purpose was to use the vehicles of Beechwood Re, BBIL, BAM, Beechwood Investments and the Beechwood Trusts to obtain funds from institutional investors, particularly insurance companies desperate to get unprofitable LTC business off their books, including BCLIC, WNIC and SHIP, and to use them as co-conspirators in the fraudulent scheme.

464. Defendants' and their co-conspirators' use of the mails and wires of interstate commerce was integral to their perpetration of their common purposes and fraudulent schemes. Each of the co-conspirators agreed and committed to participate in these RICO enterprises and their common purposes and fraudulent schemes through two or more predicate acts of racketeering activity.

465. These RICO enterprises had an ascertainable structure and organization that existed apart from the predicate acts of racketeering activity, as is demonstrated by: (a) the ownership and management structure of Beechwood Re, BBIL, BAM, Beechwood Investments, Beechwood Holdings, Beechwood Investments, and the Beechwood Reinsurance Trusts; (b) the roles the co-conspirators played in the establishment of, acquisition of interests in, and operation and management of Beechwood Re, BBIL, BAM, Beechwood Investments, Beechwood Holdings, Beechwood Investments, and the Beechwood Reinsurance Trusts; (c) many of the co-conspirators' often overlapping roles and positions at Beechwood Re, BBIL, BAM, Beechwood Investments, Beechwood Holdings, Beechwood Investments, the Beechwood Reinsurance Trusts and the various Platinum Partners entities; and (d) the participation and advancement of the scheme by CNO, BCLIC, WNIC, SHIP and Fuzion.

466. As is demonstrated not only by each of the Defendants' roles and positions, but also by the facts set forth in this Complaint, the pleadings set forth in the Criminal Action and Enforcement Action, the co-conspirators functioned as a unit, with each of the Defendants participating in the operation or management of the RICO enterprises and playing vital roles in directing the enterprises' affairs through a pattern of racketeering activity.

467. On May 25, 2018, a Department of Justice press release announced that Huberfeld pled guilty to conspiracy to commit wire fraud in connection with at least one aspect of his Platinum-related activities.

468. The co-conspirators' pattern of racketeering activity has been continuous and ongoing. The pleadings set forth in the Criminal Action and Enforcement Action as well as the complaints filed by BCLIC, WNIC, SHIP and PPVA confirm the pattern of racketeering, as it relates to insurers, that commenced at least by 2013 and remains ongoing and open-ended. For

example, Beechwood Re's and BBIL's reinsurance relationships with other insurers apart from BCLIC, WNIC and SHIP appear to be continuing at present, and Beechwood Re still maintains control of reinsurance trust assets. The predicate acts of racketeering activity are all related, as all are tied to the enterprises' central purposes, as identified in this Complaint, and all have had the same or similar results (*e.g.*, inducing institutional investors such as insurers to entrust assets to Beechwood), participants (*e.g.*, the co-conspirators, including those identified as Defendants in this action), victims (*e.g.*, the Platinum Investors), methods of commissions (*e.g.*, deceptive schemes and promises, misrepresentations, fraudulent concealment of material facts, and over- valuation of assets), personally profiting Defendants and Platinum-related participants (*e.g.*, Nordlicht, Huberfeld, Levy, Feuer, and Taylor), and other distinguishing characteristics such as using Platinum's designees to serve as Beechwood managers. The predicate acts of racketeering activity have been an integral part of the enterprises' regular way of doing business.

CLAIMS FOR RELIEF

First Claim for Relief

Aiding and Abetting Breach of Fiduciary Duty
Against the Beechwood Defendants, BCLIC, WNIC, SHIP, CNO and Fuzion

469. The Equity Receiver repeats and realleges each of the above paragraphs as if fully set forth herein.

470. Nordlicht, Huberfeld and Levy oversaw the management, operation, valuation and administration of the PPCO Funds and their subsidiaries. In addition, Credit Holdings was the general partner of PPCO Master Fund. Accordingly, Nordlicht, Huberfeld, Levy and Credit Holdings (together with Nordlicht, Huberfeld and Levy, collectively, the "**Fiduciaries**") owed fiduciary duties to the PPCO Funds.

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471. The Fiduciaries (a) were obligated and bound to act in a responsible and lawful manner, in good faith, so as not to cause injury to the PPCO Funds; (b) were obligated to exercise due care and diligence to preserve, invest, value, manage, operate, and administer the PPCO Funds, their subsidiaries, their property and their assets; (c) owed the PPCO Funds duties of full and candid disclosure of all material facts relevant to the PPCO Funds, to deal fairly, honestly and in good faith with the PPCO Funds, and not to omit any material facts; (e) were obligated to ensure that they did not engage in any fraudulent, unsafe, unlawful or unsound investment, operational, administrative or management practices; owed the PPCO Funds fiduciary duties of loyalty and good faith; and (f) were duty bound to act in a responsible and lawful manner, in good faith, so as not to cause injury to the PPCO Funds.

472. By engaging in the fraudulent scheme described herein – including (i) causing PPCO Master Fund to make nearly $30 million in transfers and/or loans to the PPVA Funds which were never repaid; (ii) causing PPCO Master Fund to purchase membership interests in ALS, an unprofitable entity, at the wildly inflated price of $24.5 million, which then required the PPCO Funds to provide millions of dollars of additional funds to ALS annually; (iii) causing PPCO Master Fund to make a temporary purchase of an interest in Black Elk for the purpose of benefitting the PPVA Funds, which subsequently resulted in a $24 million damages claim against the Receivership estate by the bankruptcy trustee of Black Elk; (iv) the systematic misrepresentation and overvaluation of the PPCO Funds' NAV for the purpose of paying the Beechwood Principals and other select insiders of the PPCO Funds unearned fees, resulting in the payment of, among other amounts, unearned management and professional fees believed to be at least $35 million, and tens, if not hundreds, of millions of unnecessary investments by the PPCO Funds in underwater investments; and (v) the transfer or encumbrance of the PPCO

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Funds' assets for the sole benefit of Beechwood, the Beechwood Principals, BCLIC, WNIC, CNO, SHIP, Fusion, the PPVA Funds and select insiders of Platinum Partners and to the detriment of the PPCO Funds in connection with, among other transactions, the PPCO Loan Transactions and Securities Purchases, the Agera Note Sale and the Class C Redemption – the Fiduciaries repeatedly breached their fiduciary obligations of due care and loyalty to the PPCO Funds. In this regard, set forth in the Complaint in the SEC Action, the Fiduciaries managed the PPCO Funds in an unlawful manner and failed to manage the PPCO Funds in good faith.

473. As a direct and proximate result of the Fiduciaries' breaches of their fiduciary duties, the PPCO Funds were injured and sustained damages.

474. The Fiduciaries engaged in a consistent pattern of self-dealing and breaches of their duty of loyalty throughout the course of the schemes.

475. As a direct and proximate result of the Fiduciaries' self-dealing and breaches of their duty of loyalty to the PPCO Funds, the PPCO Funds were injured and sustained damages.

476. The Beechwood Entities initially shared offices and several senior staff members of the Platinum Partners entities (including Credit Holdings) were current or seconded employees of the Beechwood Entities, including Levy, who was named as BAM's initial CIO and was marketed as part of the Beechwood Entities' senior executive team.

477. BCLIC, WNIC, SHIP, CNO, Fuzion and the Beechwood Defendants, on one hand, communicated regularly by e-mail and in person with the Fiduciaries in their capacities and insiders at Platinum Partners entities including Credit Holdings, on the other, regarding the statements and transactions comprising the schemes.

478. BCLIC, WNIC, SHIP, CNO, Fuzion and the Beechwood Defendants substantially assisted and participated in the Fiduciaries' breaches of their fiduciary obligations to the PPCO

Funds in connection with the schemes by, *inter alia* – – including, without limitation, (i) engaging in transactions that caused PPCO Master Fund to make nearly $30 million in transfers and/or loans to the PPVA Funds which were never repaid; (ii) engaging in transactions that caused PPCO Master Fund to purchase membership interests in ALS, an unprofitable entity, at the wildly inflated price of $24.5 million, which then required the PPCO Funds to provide millions of dollars of additional to ALS annually; (iii) engaging in transactions that caused PPCO Master Fund to make a temporary purchase of an interest in Black Elk for the purpose of benefitting the PPVA Funds, which subsequently resulted in a $24 million damages claim against the Receivership estate by the bankruptcy trustee of Black Elk; (iv) engaging in transactions that resulted in the transfer or encumbrance of the PPCO Funds' assets, in the scheme, for the sole benefit of Beechwood, the Fiduciaries, BCLIC, WNIC, CNO, SHIP, Fusion, the PPVA Funds and select insiders of Platinum Partners and to the detriment of the PPCO Funds in connection with, among other transactions, the PPCO Loan Transactions and Securities Purchases, the Agera Note Sale and the Class C Redemption. In the aggregate, over the period from 2014-2016, the Platinum Insiders caused PPCO to make net investments off approximately $75,000,000 into their failing portfolio companies.

479. Beechwood Defendants, BCLIC, WNIC, SHIP, CNO and Fuzion had actual knowledge that the Fiduciaries were engaging in the actions comprising the schemes.

480. As a direct and proximate result of the Fiduciaries' actions and substantial participation, the PPCO Funds were damaged.

481. The actions of the Beechwood Defendants, BCLIC, WNIC, SHIP, CNO and Fuzion caused harm on which the primary liability of breach of fiduciary duties is predicated.

482. By reason of the foregoing, the Equity Receiver is entitled to a judgment awarding her compensatory damages in an amount to be determined at the trial to this action, together with interest at the statutory rate.

483. In addition, because the Beechwood Entities, BCLIC, WNIC, SHIP, CNO and Fusion acted in a manner that was willfully, grossly, recklessly and wantonly negligent, and without regard for the PPCO Funds' rights and interests, the Equity Receiver is further entitled to punitive damages for the misconduct alleged herein.

Second Claim for Relief

Common Law Fraud
(Against the Beechwood Entities,
BCLIC, WNIC, SHIP, CNO and Fuzion)
[By the PPCO Master Fund]

484. The Equity Receiver repeats and realleges each and every allegation contained above as if set forth herein.

485. Prior to and at the time of execution of the transaction documents in connection with the PPCO Loan Transactions and Securities Purchases, the Beechwood Entities, BCLIC, WNIC, SHIP, CNO and Fuzion knowingly made numerous false representations of material fact to the PPCO Funds, including misrepresentations that the value of the Purchased Securities was the par value ascribed to them in the transaction documents for the PPCO Loan Transactions and Securities Purchases.

486. The Beechwood Defendants, BCLIC, WNIC, SHIP, CNO and Fuzion made those misrepresentations knowing that they were false and with the intent of inducing the PPCO Funds to enter into those transaction documents.

487. The Beechwood Defendants, acting on behalf of themselves and as agent for BCLIC, WNIC, SHIP, CNO and Fuzion, also knowingly omitted and concealed from PPCO

Master Fund material information, even though they knew such information was material, as detailed in this Complaint that the value of the Purchased Securities was only a fraction of the par value ascribed to them in the transaction documents for the PPCO Loan Transactions and Securities Purchases, and they did so with the intent of inducing PPCO Master Fund to enter into those transaction documents.

488. The PPCO Funds were thereby induced to believe that the value of the Purchased Securities was the par value ascribed to them in such transaction documents.

489. The PPCO Master Fund justifiably relied upon such misrepresentations and omissions or concealments to its detriment in entering into the transaction documents for the PPCO Loan Transactions and Securities Purchases and in borrowing $42.963 million from SHIP through the IMAs, and $26.2 million from the Beechwood Reinsurance Trusts in order to purchase the Purchased Securities, which were worth only a fraction of that amount.

490. As a proximate result of the fraudulent misrepresentations, omissions, and concealments, by the Beechwood Defendants, BCLIC, WNIC, SHIP, CNO and Fuzion, the PPCO Fund sustained damages because the value of PPCO Loan Transactions and Securities Purchases and the liens purportedly transferred to the Beechwood Defendants for the account of SHIP was worth over $69 million whereas the value of the assets transferred to the PPCO Funds was only a fraction of their par value.

491. The Beechwood Entities' misrepresentations and omissions or concealments in inducing the PPCO Master Funds to enter into and consummate the transactions in connection with the PPCO Loan Transactions and Securities Purchases were intentional and deliberate, evidence a high degree of moral turpitude, and demonstrate the Beechwood Entities', BCLIC's,

WNIC's, SHIP's, CNO's and Fuzion's wanton dishonesty or reckless disregard for the rights of PPCO Master Fund.

492. As a result of the foregoing wrongful conduct of the Beechwood Entities, the Individual Beechwood Defendants, BCLIC, WNIC, SHIP, CNO and Fuzion's wrongful conduct, PPCO Master Fund has sustained damages in an amount to be determine at trial, not less than the difference between (a) the value of the loan payments due to, and liens purportedly received by, the Beechwood Entities, BCLIC, WNIC and SHIP in connection with the PPCO Loan Transactions and Securities Purchases, believed to be at least $69 million, and (b) the actual value of the Purchased Securities.

493. Because of the intentional, deliberate, and malicious nature of Beechwood's acts, as set forth in this Complaint, PPCO Master Fund is entitled to punitive damages.

Third Claim for Relief

Common Law Fraud
(Against the Beechwood Defendants,
BCLIC, WNIC, SHIP, CNO and Fuzion)
[By PPCO Blocker Company, PPCO Fund TE, PPCO Fund International and PPCO Fund International A (the "Feeder Funds)]

494. The Equity Receiver repeats and realleges each and every allegation contained above as if set forth herein.

495. Prior to and at the time of execution of the transaction documents in connection with the PPCO Loan Transactions and Securities Purchases, the Beechwood Entities, BCLIC, WNIC, SHIP, CNO and Fuzion knowingly made numerous false representations of material fact to the PPCO Funds, including misrepresentations that the value of the Purchased Securities was the par value ascribed to them in the transaction documents for the PPCO Loan Transactions and Securities Purchases.

496. The Beechwood Defendants, BCLIC, WNIC, SHIP, CNO and Fuzion made those misrepresentations knowing that they were false and with the intent of inducing the PPCO Funds to enter into those transaction documents.

497. The Beechwood Defendants, acting on behalf of themselves and as agent for BCLIC, WNIC, SHIP, CNO and Fuzion, also knowingly omitted and concealed from PPCO Master Fund material information, even though they knew such information was material, as detailed in this Complaint that the value of the Purchased Securities was only a fraction of the par value ascribed to them in the transaction documents for the PPCO Loan Transactions and Securities Purchases, and they did so with the intent of inducing PPCO Master Fund to enter into those transaction documents.

498. The PPCO Funds were thereby induced to believe that the value of the Purchased Securities was the par value ascribed to them in such transaction documents.

499. The Feeder Funds justifiably relied upon such misrepresentations and omissions or concealments to its detriment in entering into the transaction documents for the PPCO Loan Transactions and Securities Purchases and in borrowing $42.963 million from SHIP through the IMAs, and $26.2 million from the Beechwood Reinsurance Trusts in order to purchase the Purchased Securities, which were worth only a fraction of that amount.

500. As a proximate result of the fraudulent misrepresentations, omissions, and concealments, by the Beechwood Entities, BCLIC, WNIC, SHIP, CNO and Fuzion, the Feeder Fund sustained damages because the value of PPCO Loan Transactions and Securities Purchases and the liens purportedly transferred to the Beechwood Entities for the account of SHIP was worth over $69 million whereas the value of the assets transferred to the PPCO Funds was a fraction of their par value.

501. The Beechwood Entities' misrepresentations and omissions or concealments in inducing the Feeder Funds to enter into and consummate the transactions in connection with the PPCO Loan Transactions and Securities Purchases were intentional and deliberate, evidence a high degree of moral turpitude, and demonstrate the Beechwood Entities', BCLIC's, WNIC's, SHIP's, CNO's and Fuzion's wanton dishonesty or reckless disregard for the rights of PPCO Master Fund.

502. As a result of the foregoing wrongful conduct of the Beechwood Entities, the Individual Beechwood Defendants, BCLIC, WNIC, SHIP, CNO and Fuzion's wrongful conduct, PPCO Master Fund has sustained damages in an amount to be determine at trial, not less than the difference between (a) the value of the loan payments due to, and liens purportedly received by, the Beechwood Entities, BCLIC, WNIC and SHIP in connection with the PPCO Loan Transactions and Securities Purchases, believed to be at least $69 million, and (b) the actual value of the Purchased Securities.

503. Because of the intentional, deliberate, and malicious nature of Beechwood's acts, as set forth in this Complaint, PPCO Master Fund is entitled to punitive damages.

Fourth Claim for Relief

Aiding and Abetting Common Law Fraud
Against the Beechwood Defendants, BCLIC, WNIC, SHIP, CNO and Fuzion

504. The Equity Receiver repeats and realleges each of the above paragraphs as if fully set forth herein.

505. By engaging in the fraudulent scheme described herein, Nordlicht, Huberfeld, Bodner and Levy caused: (i) PPCO Master Fund to make nearly $30 million in transfers and/or loans to the PPVA Funds which were never repaid; (ii) PPCO Master Fund to purchase membership interests in ALS, an unprofitable entity, at the wildly inflated price of $24.5 million,

which then required the PPCO Funds to provide millions of dollars of additional funds to ALS annually; (iii) PPCO Master Fund to make a temporary purchase of an interest in Black Elk for the purpose of benefitting the PPVA Funds, which subsequently resulted in a $24 million damages claim against the Receivership estate by the bankruptcy trustee of Black Elk; (iv) the systematic misrepresentation and overvaluation of the PPCO Funds' NAV for the purpose of paying unearned fees, resulting in the payment of, among other amounts, unearned management and professional fees believed to be at least $35 million, and tens, if not hundreds, of millions of unnecessary investments by the PPCO Funds in underwater investments; and (v) the transfer or encumbrance of the PPCO Funds' assets for the sole benefit of Beechwood, the Beechwood Principals, BCLIC, WNIC, CNO, SHIP, Fusion, the PPVA Funds and select insiders of Platinum Partners and to the detriment of the PPCO Funds in connection with, among other transactions, the PPCO Loan Transactions and Securities Purchases, the Agera Note Sale and the Class C Redemption.

506. BCLIC, WNIC, SHIP, CNO, Fuzion and the Beechwood Defendants each provided substantial assistance in connection with the schemes by, *inter alia* – – including, without limitation, (i) engaging in transactions that caused PPCO Master Fund to make nearly $30 million in transfers and/or loans to the PPVA Funds which were never repaid; (ii) engaging in transactions that caused PPCO Master Fund to purchase membership interests in ALS, an unprofitable entity, at the wildly inflated price of $24.5 million, which then required the PPCO Funds to provide millions of dollars of additional to ALS annually; (iii) engaging in transactions that caused PPCO Master Fund to make a temporary purchase of an interest in Black Elk for the purpose of benefitting the PPVA Funds, which subsequently resulted in a $24 million damages claim against the Receivership estate by the bankruptcy trustee of Black Elk; (iv) engaging in

transactions that resulted in the transfer or encumbrance of the PPCO Funds' assets, in the scheme, for the sole benefit of Beechwood, the Fiduciaries, BCLIC, WNIC, CNO, SHIP, Fusion, the PPVA Funds and select insiders of Platinum Partners and to the detriment of the PPCO Funds in connection with, among other transactions, the PPCO Loan Transactions and Securities Purchases, the Agera Note Sale and the Class C Redemption.

507. Beechwood Defendants, BCLIC, WNIC, SHIP, CNO and Fuzion had actual knowledge that Nordlicht, Huberfeld, Bodner and Levy were engaging in the actions comprising the schemes.

508. As a direct and proximate result of the actions and substantial participation of the Beechwood Entities, BCLIC, WNIC, SHIP, CNO and Fuzion, the PPCO Funds were damaged.

509. By reason of the foregoing, the Equity Receiver is entitled to a judgment awarding her compensatory damages in an amount to be determined at the trial to this action, together with interest at the statutory rate.

510. In addition, because the Beechwood Defendants, BCLIC, WNIC, SHIP, CNO and Fusion acted in a manner that was willfully, grossly, recklessly and wantonly negligent, and without regard for the PPCO Funds' rights and interests, the Equity Receiver is further entitled to punitive damages for the misconduct alleged herein.

Fourth Claim for Relief

Violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 Promulgated Thereunder (Against the Beechwood Defendants, the Individual Beechwood Defendants, BCLIC, WNIC and SHIP)

511. The Equity Receiver repeats and realleges each and every allegation contained above as if set forth herein.

512. In connection with the sale of the Purchased Securities to the PPCO Funds, the Beechwood Entities, BCLIC, WNIC and SHIP, each materially misrepresented to the PPCO Funds that the true value of the Purchased Securities was their par value as set forth in the transaction documents for the PPCO Loan Transactions and Securities Purchases, and knowingly omitted or concealed that the true value of the Purchased Securities was only a fraction of par value set forth in the transaction documents.

513. Each such misrepresentation, omission or act of concealment was made with the intent to deceive the PPCO Funds and with knowledge that the representation, omission or act of concealment was false or with willful blindness as to its truth or falsity, and was made in connection with the purchase and sale of a security, namely the Purchased Securities.

514. The PPCO Funds reasonably and justifiably relied upon such misrepresentations and omissions or concealments to their detriment in entering into the transaction documents for the PPCO Loan Transactions and Securities Purchases and in borrowing approximately $42.963 million from SHIP through the IMAs, and approximately $26.2 million from the Beechwood Reinsurance Trusts in order to purchase the Purchased Securities for approximately $69 million, when in fact the actual value of the Purchased Securities was a fraction of their par value.

515. Each such representation was reasonably relied upon by the PPCO Funds, in causing PPCO Master Fund to enter into the PPCO Loan Transactions and Securities Purchases and the purchase the Purchased Securities thereunder.

516. The purchase by PPCO Funds of the Purchased Securities at overly inflated value, mispresented by the Beechwood Entities, BCLIC, WNIC and SHIP as fair value, caused PPCO to continue to operate at a time when it was actually or nearly insolvent and should have been winding down its business.

517. By reason of the foregoing, the PPCO Funds sustained damages in an amount not less than $48 million.

518. By committing the foregoing acts the Beechwood Defendants, BCLIC, WNIC and SHIP:

(a) engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business that operated as a fraud and deceit upon the Platinum Investors;

(b) obtained money or property by means of various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) employed devices, schemes and artifices to defraud in connections with the purchase and sale of securities. Such scheme was intended to, and did, deceive investors as alleged herein.

Fifth Claim for Relief

Violations of Section 20 of the Exchange Act
(Against Individual Defendants Feuer and Taylor)

519. The Equity Receiver repeats and realleges each and every allegation contained above as if set forth herein.

520. Individual Defendants Feuer, Taylor and Levy participated in the operation and management of the Beechwood Entities, and conducted and participated, directly and indirectly, in the conduct of the business affairs of the Beechwood Entities.

521. Because of their senior positions in the Beechwood Entities, the Individual Defendants knew of the plan, scheme, conspiracy and course of conduct to defraud the PPCO Funds in connection with the purchases of the Purchased Securities in connection with the PPCO Loans and Securities Purchases.

522. As officers of the Beechwood Entities, Individual Defendants acted as controlling persons of Beechwood. By reason of their senior management positions at the Beechwood Entities, the Individual Defendants had the power to direct the actions of, and exercised the same to cause, the Beechwood Entities to engage in the unlawful acts and conduct complained of herein. The Individual Defendants exercised control over the financial operations of Beechwood and possessed the power to control specific activities that comprise the primary violations about which the Equity Receiver complains.

523. By reason of the above conduct, Individual Defendants Feuer, Taylor and Levy are liable pursuant to Section 20(a) of the Exchange Act for violations committed by Beechwood in an amount not less than $48 million.

Sixth Claim for Relief

Violation of RICO – 18 U.S.C. § 1962(c)
(Against All Defendants)

524. The Equity Receiver repeats and realleges each and every allegation contained above as if set forth herein.

525. Under 18 U.S.C. § 1962(c), it is "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity."

526. Each of the PPCO Funds is a "person" as defined in 18 U.S.C. § 1961(3).

527. Each of the Defendants is a "person" as that term is defined in 18 U.S.C. § 1961(3).

528. The Equity Receiver and the PPCO Entities are "person[s]" as that term is defined in 18 U.S.C. § 1961(3).

529. Each of the Defendants was employed by, an owner of, or associated with certain enterprises: (a) Beechwood Re, BBIL, BAM, Beechwood Investments, or the Beechwood Reinsurance Trusts; (b) Beechwood – the association-in-fact of Beechwood Re, BBIL, BAM, Beechwood Investments, Beechwood Holdings, Beechwood Investments, and the Beechwood Reinsurance Trusts; (c) the association-in-fact of Defendants and their co-conspirators, including, but not limited to, Nordlicht, Huberfeld, and the other Platinum Partners-related persons; (d) SHIP; (e) BCLIC; (f) WNIC; (g) CNO; (h) Fuzion and (i) the association-in-fact of SHIP, BCLIC, WNIC, CNO and Fuzion.

530. Each of these entities or associations-in-fact constitutes an "enterprise" within the meaning of RICO, 18 U.S.C. § 1961(4). Each of these RICO enterprises had an ascertainable structure, organization, and common purposes and existed apart from the predicate acts perpetrated by these Defendants. At all relevant times, each enterprise engaged in, and its activities affected, interstate commerce. Each of the Defendants participated directly or indirectly in the management, direction, or operation of each enterprise.

531. As set forth in detail in this Complaint, the Defendants conducted or participated in the conduct of affairs of each of these RICO enterprises through a pattern of racketeering activity, as set forth in 18 U.S.C. § 1961(5). That is, each of the Defendants, knowingly perpetrated and agreed to perpetrate numerous predicate acts of racketeering activity identified

under 18 U.S.C. § 1961(1), specifically mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343.

532. Each of the Defendants knowingly perpetrated and agreed to perpetrate two or more acts of racketeering activity in furtherance of their fraudulent schemes or artifices to defraud, with a specific intent (i) to defraud the PPCO Funds into believing that they and the PPVA Funds were solvent, were being operated in a lawful manner that was in their interests, and to obtain money and property by means of false pretenses, representations and promises, and (ii) to cause to be transferred the PPCO Funds' most valuable assets from the PPCO Funds to the Beechwood Entities for itself and as agent for SHIP, and to the Beechwood Reinsurance Trusts for the benefit of SHIP in the PPCO Loan Transactions and Securities Purchases, the Agera Note Sale and the Class C Redemptions.

533. Predicate acts of racketeering include, but are not limited to, using the mails and wires of interstate commerce to:

(a) transmit communications and documents among the Beechwood Defendants, Beechwood, SHIP, BCLIC, WNIC, CNO and Fuzion that contained inflated, and in some cases fraudulent, valuations of the PPVA Fund and PPCO Fund and their investments, so as to perpetuate the scheme which involved enriching the Beechwood Entities, the Beechwood Defendants, SHIP, BCLIC, WNIC, CNO and Fuzion and to collect unearned performance fees;

(b) make e-mail communications furthering the fraudulent scheme to cause the PPVA Funds, the PPCO Funds and their subsidiaries to sell securities

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to Beechwood Entities, as agent for BCLIC, WNIC, SHIP, CNO and Fuzion at artificial and inflated prices;

(c) make numerous email communications in between December 21, 2015 and March 21, 2016, to negotiate, close and implement the PPCO Loan and Securities Purchase;

(d) make email communications in June 2016 and October 2016 in connection with the Agera Note Sale and the Class C Redemption in order to deprive the PPCO Funds of tens of millions of dollars of value; and

(e) transmit communications among Beechwood, SHIP, BCLIC and WNIC concerning investments in Platinum Partners and maintaining the *status quo* even after the arrest of Huberfeld.

534. These predicate acts of racketeering activity are all related, as the Defendants have perpetrated the predicate acts from the common purpose of furthering their fraudulent schemes, as identified and discussed in detail in this Complaint. Their predicate acts of racketeering activity have all had common (a) results (furthering their fraudulent schemes to induce institutional investors trust assets to Beechwood that could be used to prop up the PPVA Funds and to cause the transfer assets of the PPCO Funds to the PPVA Funds and cause the PPCO Funds to engage in transactions for the benefit of the PPVA Funds, (b) participants (Defendants and their co-conspirators), (c) victims (the PPCO Funds), (d) methods of commission (the false and fraudulent over-valuation of assets, entry into transactions involving the PPCO Funds to prop up the PPVA Funds and cause the PPCO Funds to make loans to and transfer assets for the benefit of the PPVA Funds and to enter into transactions for the benefit of the PPCO Funds, and to transfer assets of the PPCO Funds to the Beechwood Entities, BCLIC,

WNIC, SHIP, CNO and Fuzion) and (e) other distinguishing characteristics (such as using Platinum-associated individuals as purported Beechwood managers and maintaining the *status quo* after the arrest of Huberfeld).

535. The predicate acts of racketeering have also been continuous. The Defendants began perpetrating predicate acts of racketeering in furtherance of their fraudulent schemes in August 2013 at the latest, when they established Beechwood and then began negotiating with BCLIC and WNIC, and continued after they entered into the Reinsurance Agreements with BCLIC and WNIC and after they entered into the IMAs with SHIP, and by the Defendants have perpetrated the scheme continuously for several years.

536. Their predicate acts of racketeering remain ongoing and open-ended, as the Defendants retain millions in funds or assets from and owing to many investors, which the Defendants misappropriated and misused over a period of several years. The predicate acts of racketeering activity have been an integral part of the enterprises' regular way of doing business. The Defendants thus have engaged in a "pattern" of racketeering activity, as that phrase is defined in 18 U.S.C. § 1961(5).

537. Each of the Defendants has violated 18 U.S.C. § 1962(c) by conducting or participating in the conduct of the enterprises' affairs through a pattern of racketeering activity.

538. The PPCO Funds have been injured in their business and property by reason and a proximate result of each of Defendants' violations of 18 U.S.C. § 1962(c), in at least the following ways: (a) by being fraudulently induced to believe that the PPCO Funds and the PPVA Funds were solvent and operating lawfully; (b) by reducing the value of PPCO Funds' assets through investments that are speculative, risky, or simply sham transactions, all of which were made to benefit the Defendants but in fact further increased the damage to the PPCO Funds;

(c) by the need to hire consultants and legal counsel to unwind Beechwood's improper investment into the PPCO Funds and related securities; and (d) by the need to hire legal counsel to pursue the claims on behalf of Platinum Investors.

539. By virtue of the Defendants' violations of 18 U.S.C. §1962(c), the Equity Receiver is entitled to recover on behalf of the PPCO Funds three times the damages sustained by reason of the Defendants' actions, and others acting in concert with them, together with the costs of suit, including reasonable attorneys' fees.

Seventh Claim for Relief

Violation of RICO – 18 U.S.C. § 1962(a)
(Against All Defendants)

540. The Equity Receiver repeats and realleges each and every allegation contained above as if set forth herein.

541. Under 18 U.S.C. § 1962(a), it is "unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce."

542. Each of the Defendants have received income derived, directly or indirectly, from the pattern of racketeering set forth above, including, but not limited to: (a) the assets transferred from PPCO Master Fund to Beechwood for itself and as agent of SHIP, and to the Beechwood Reinsurance Trusts for themselves and as agent of BCLIC and WNIC, and ultimately in part to CNO and Fusion, which assets were used to enrich the Defendants; (b) the unearned performance fees that Defendants collected as a result of the fraudulent valuations of investments

provided by Beechwood; (c) the profits and transfers that Defendants received from the investments alleged herein.

543. Although Defendants represented that they would invest assets conservatively, Defendants instead used SHIP, BCLIC, WNIC and other institutional funds to buy Beechwood-Platinum Partners related entities out of distressed and highly risky investments, and in some instances subordinated investors interests beneath their own. This enriched Defendants enriched themselves and former Platinum Partners insiders and allowed them to perpetuate their Ponzi-type scheme, which in turn further injured the PPCO Funds.

544. Defendants used the above-mentioned racketeering income in furtherance of their above-mentioned RICO enterprises. Each enterprise was engaged in and affected interstate and foreign commerce. The racketeering income was reinvested in these enterprises as part of a scheme by Defendants to perpetuate more injurious and illegal acts.

545. Each of the Defendants' violation of 18 U.S.C. §1962(a) has directly and proximately injured the PPCO Funds in their business and property in at least the following ways: (a) by being fraudulently induced to believe that the PPVA Funds and the PPCO Funds were solvent and operating in a lawful manner; (b) by reducing the value of the PPCO Funds' assets, all of which were made to benefit Beechwood, the Individual Beechwood Defendants; (c) by the need to hire consultants and legal counsel to unwind Beechwood's improper investment into Platinum Partners and related securities; and (d) by the need to hire legal counsel to pursue the administer the Receivership proceedings, to assess and maximize the Receivership estate, and to pursue claims on behalf of the PPCO Funds for the benefit of their investors.

546. By virtue of Defendants' violations of 18 U.S.C. §1962(a), the Equity Receiver is entitled to recover on behalf of the PPCO Funds three times the damages sustained by reason of

the claims submitted by them, and others acting in concert with them, together with the costs of suit, including reasonable attorneys' fees.

Eighth Claim for Relief

Violation of RICO – 18 U.S.C. § 1962(d)
(Against All Defendants)

547. The Equity Receiver repeats and realleges each and every allegation contained above as if set forth herein.

548. Under 18 U.S.C. § 1962(d), it is "unlawful for any person to conspire to violate any of the provisions of [§ 1962(a), (b), or (c)]."

549. As described in detail in this Complaint, the Defendants and their co-conspirators agreed and conspired with each other to violate 18 U.S.C. §§ 1962(a) and (c).

550. The purposes of the conspiracy included obtaining funds from institutional investors via investment management agreements and reinsurance agreements, taking control of such funds, and using them to further and perpetuate the co-conspirators' ongoing Ponzi-type scheme to enrich Defendants and their co-conspirators to the detriment of their purported investors.

551. Defendants, as co-conspirators, perpetrated and agreed to perpetrate numerous predicate acts of racketeering activity identified under 18 U.S.C. § 1961(1), specifically mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343. Each of the Defendants perpetrated and agreed to perpetrate two or more acts of racketeering activity in furtherance of their fraudulent schemes or artifices to defraud, with a specific intent to defraud Platinum Investors and other institutional investors to enter into investment management agreements or reinsurance agreements and to obtain money and property by means of false pretenses, representations and

promises. Predicate acts of racketeering include, but are not limited to, using the mails and wires of interstate commerce to:

(a) make representations that Defendants would provide secure, highly collateralized and well-protected investments, when instead Defendants intended to use investment assets to perpetuate a scheme that involved enriching Platinum Partners and/or committing trust assets in risky, speculative transactions, and subordinating investors interests to those of Beechwood-related entities;

(b) transmit communications that contained inflated, and in some cases fraudulent, valuations of Beechwood's Platinum Partners-related investments, which in turn were used by Defendants to collect unearned performance fees;

(c) transmit communications, primarily statements by Feuer and Taylor, misrepresenting that Beechwood was well capitalized and would prudently invest investors assets, while concealing and affirmatively misrepresenting Beechwood Re's true ownership structure and purpose;

(d) transmit communications that misrepresented Beechwood's management team, while concealing its ties to and control by Platinum Partners, Nordlicht, Huberfeld, and other Platinum-related persons;

(e) orchestrate the use of funds invested by SHIP, BCLIC, WNIC and others to acquire highly risky debt assets, then subordinate investors' interests to those of Beechwood-related entities, thereby enriching Defendants; and

(f) transmit communications among Beechwood, SHIP, BCLIC and WNIC concerning investments in Platinum Partners and maintaining the *status quo* even after the arrest of Huberfeld.

552. Each of the Defendants' agreement can reasonably be inferred from the close ties to the other co-conspirators and their mutually dependent, coordinated efforts to achieve the common purposes of the co-conspirators and each enterprise. Specifically, the Individual Defendants, as the primary executives and Chief Investment Officer of Defendants Beechwood Re, BBIL and BAM, acted in concert with Beechwood Principals to create a fraudulent scheme to attract new, unsuspecting institutional investors, which included SHIP, BCLIC and WNIC, without revealing that such investors were being committed to investment through Platinum Partners, but which upon learning of the true nature of the investments SHIP, BCLIC and WNIC participated with the scheme and maintained the *status quo*.

553. The Platinum Investors have been injured in their business and property by reason of the aforementioned conspiracy, and a proximate result of each of Defendants' violations of 18 U.S.C. §§ 1962(a) and (c), in at least the following ways: (a) by being fraudulently induced to believe Platinum Partners was solvent and operating in a lawful manner; (b) by reducing the value of the Platinum Investors' assets through investments that were speculative, risky, or simply sham transactions, all of which were made to benefit Defendants and the former principals of Platinum; (c) by the need to hire consultants and legal counsel to unwind Beechwood's improper investment into Platinum Partners and related securities; and (d) by the need to hire legal counsel to pursue the claims on behalf of Platinum Investors.

554. By virtue of the Defendants' violations of 18 U.S.C. §1962(d), the Equity Receiver is entitled to recover on behalf of the Platinum Investors three times the damages

sustained by reason of the claims submitted by them, and others acting in concert with them, together with the costs of suit, including reasonable attorneys' fees.

Ninth Claim for Relief

Fraudulent Conveyance in Violation of N.Y. Debtor and Creditor Law §§ 273 and 278 (Against the Beechwood Entities, BCLIC, WNIC, SHIP, CNO and Fuzion)

555. The Equity Receiver repeats and realleges each and every allegation contained above as if set forth herein.

556. PPCO Master Fund was insolvent when each transaction in connection with the PPCO Loan Transactions and Securities Purchases was entered into, when each transfer thereunder was made, when each lien thereunder was granted, and when each obligation thereunder was incurred, or that transaction, transfer, lien or obligation rendered PPCO Master Fund insolvent.

557. The Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP did not give PPCO Master Fund, and PPCO Master Fund did not receive, fair consideration for the assets, liens and obligations transferred, incurred and granted by PPCO Master Fund and its subsdiaries in the PPCO Loan Transactions and Securities Purchases.

558. The Equity Receiver is entitled to avoid the PPCO Loan Transactions and Securities Purchases pursuant to New York Debtor & Creditor Law § 273 and 278.

559. By reason of the aforementioned fraudulent conveyances, without fair consideration, the Equity Receiver is entitled to a judgment avoiding each transaction under the PPCO Loan Transactions and Securities Purchases, granting her recovery of the assets conveyed by PPCO Master Fund, and invalidating and avoiding the obligations undertaken in and the liens granted by PPCO Master Fund and its subsidiaries to the Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP, in the PPCO Loan Transactions and

Securities Purchases, and to recover an amount not less than $70 million from the Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP.

560. The Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP were not in good faith.

561. By reason of the aforementioned fraudulent conveyances, without fair consideration, the Equity Receiver is also entitled to statutory interest, attorneys' fees and costs incurred in this action.

Tenth Claim for Relief

Fraudulent Conveyance in Violation of N.Y. Debtor and Creditor Law §§ 274 and 278
(By the Receiver on behalf of PPCO Master Fund and Against the Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP)

562. The Equity Receiver repeats and realleges each and every allegation contained above as if set forth herein.

563. When each transaction in connection with the PPCO Loan Transactions and Securities Purchases was entered into, when each transfer thereunder was made, when each lien thereunder was granted, and when each obligation thereunder was incurred, PPCO Master Fund was engaged in, or was about to engage in, a business or transaction for which the property remaining in the hands of each of the PPCO Funds was unreasonably small.

564. The Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP did not give PPCO Master Fund, and PPCO Master Fund did not receive, fair consideration for the assets, liens and obligations transferred, incurred and granted by PPCO Master Fund and its subsdiaries in the PPCO Loan Transactions and Securities Purchases.

565. The Equity Receiver is entitled to avoid the PPCO Loan Transactions and Securities Purchases pursuant to New York Debtor & Creditor Law § 274 and 278.

566. By reason of the aforementioned fraudulent conveyances, without fair consideration, the Equity Receiver is entitled to a judgment avoiding each transaction under the PPCO Loan Transactions and Securities Purchases, granting her recovery of the assets conveyed by PPCO Master Fund, and invalidating and avoiding the obligations undertaken in and the liens granted by PPCO Master Fund and its subsidiaries to the Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP, in the PPCO Loan Transactions and Securities Purchases, and to recover an amount not less than $70 million from the Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP.

567. The Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP were not in good faith.

568. By reason of the aforementioned fraudulent conveyances, without fair consideration, the Equity Receiver is also entitled to statutory interest, attorneys' fees and costs incurred in this action.

Eleventh Claim for Relief

Fraudulent Conveyance in Violation of N.Y. Debtor and Creditor Law §§ 275 and 278 (By the Receiver on behalf of PPCO Master Fund and Against the Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP)

569. The Equity Receiver repeats and realleges each and every allegation contained above as if set forth herein.

570. PPCO Master Fund and each of its subsidiaries entered into each of the transactions in connection with the PPCO Loan Transactions and Securities Purchases, made each transfer thereunder, incurred each obligation thereunder and granted each lien thereunder, while intending or believing that PPCO Master Fund and its subsidiaries would incur debts beyond their ability to pay as they matured.

571. The Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP did not give PPCO Master Fund, and PPCO Master Fund did not receive, fair consideration for the assets, liens and obligations transferred, incurred and granted by PPCO Master Fund and its subsdiaries in the PPCO Loan Transactions and Securities Purchases.

572. The Equity Receiver is entitled to avoid the PPCO Loan Transactions and Securities Purchases pursuant to New York Debtor & Creditor Law § 275 and 278.

573. By reason of the aforementioned fraudulent conveyances, without fair consideration, the Equity Receiver is entitled to a judgment avoiding each transaction under the PPCO Loan Transactions and Securities Purchases, granting her recovery of the assets conveyed by PPCO Master Fund, and invalidating and avoiding the obligations undertaken in and the liens granted by PPCO Master Fund and its subsidiaries to the Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP, in the PPCO Loan Transactions and Securities Purchases, and to recover an amount not less than $70 million from the Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP.

574. The Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP were not in good faith.

575. By reason of the aforementioned fraudulent conveyances, without fair consideration, the Equity Receiver is also entitled to statutory interest, attorneys' fees and costs incurred in this action.

Twelfth Claim for Relief

Fraudulent Conveyance in Violation of N.Y. Debtor and Creditor Law §§ 276 and 278
(By the Receiver on behalf of PPCO Master Fund and Against the Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP)

576. The Equity Receiver repeats and realleges each and every allegation contained above as if set forth herein.

577. Each transfer made, each obligation incurred, and each lien given to any of the Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP in connection with the PPCO Loan Transactions and Securities Purchases, was made, incurred or given by PPCO Master Fund and its subsidiaries with an actual to hinder, delay and defraud their present and future creditors, in violation of New York Debtor & Creditor Law § 276.

578. The Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP did not give PPCO Master Fund, and PPCO Master Fund did not receive, fair consideration for the assets, liens and obligations transferred, incurred and given by PPCO Master Fund and its subsdiaries in the PPCO Loan Transactions and Securities Purchases.

579. The Equity Receiver is entitled to avoid the PPCO Loan Transactions and Securities Purchases pursuant to New York Debtor & Creditor Law §§ 276 and 278.

580. By reason of the aforementioned fraudulent conveyances, without fair consideration, the Equity Receiver is entitled to a judgment avoiding each transaction under the PPCO Loan Transactions and Securities Purchases, granting her recovery of the assets conveyed by PPCO Master Fund, and invalidating and avoiding the obligations undertaken in and the liens granted by PPCO Master Fund and its subsidiaries to, the Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP, in the PPCO Loan Transactions and Securities Purchases, and to recover an amount not less than $70 million from the Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP.

581. The Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP were not in good faith.

582. By reason of the aforementioned fraudulent conveyances, without fair consideration, the Equity Receiver is also entitled to statutory interest, attorneys' fees and costs incurred in this action.

Thirteenth Claim for Relief

Invalidation of Liens under N.Y. Debtor and Creditor Law §§ 273, 274, 275, 276 and 278 (By the Receiver on behalf of PPCO Master Fund and Against the Beechwood Reinsurance Trusts, the other Beechwood Entities, BCLIC, WNIC and SHIP)

583. The Equity Receiver repeats and realleges each and every allegation contained above as if set forth herein.

584. By reason of the foreoing, each of the PPCO Loan Transactions and Securities Purchases, the SHIP Note, the MSA, the MSA Subsidiary Guarantee, the First A&R SHIP Note, the Ratification Agreement, the NPA, the A&R MSA, the NPA Guaranty, the Second A&R SHIP Note, the $10 Million Secured Term Note dated March 21, 2016, the $500,000 Secured Term Note dated March 21, 2016, the $14,989,677.78 Secured Term Note dated March 21, 2016, and the $700,000 Secured Term Note dated March 21, 2016, Assignment Agreement No. 1 or Assignment Agreement No. 2, and its obligation, liability or lien thereunder, and each lien perfect with respect to thereot, should deemed avoided by PPCO Master Fund and each of its subsidiaries.

WHEREFORE, the Equity Receiver, on behalf of each of the PPCO Funds, demands judgment against each of the Defendants in the amount of actual damages proven at trial, including all direct or consequential damages, avoidance and recovery of the assets, obligations and liens referred to above, treble damages pursuant to 18 U.S.C. § 1964 (RICO), punitive damages under state law, damages for diminution of value, and restitution, plus all applicable

interest, attorneys' fees, costs of suit, and such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

585. The Equity Receiver demands a trial by jury on all issues so triable.

Dated: New York, New York
December 19, 2018

OTTERBOURG P.C.

By: /s/Adam C. Silverstein

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARTIN TROTT and CHRISTOPHER SMITH, as Joint Official Liquidators and Foreign Representatives of PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (in OFFICIAL LIQUIDATION) and PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (in OFFICIAL LIQUIDATION)

Plaintiffs,

- against -

PLATINUM MANAGEMENT (NY) LLC, MARK NORDLICHT, DAVID LEVY, ESTATE of URI LANDESMAN, MURRAY HUBERFELD, DAVID BODNER, DAVID STEINBERG, DANIEL SMALL,

Case No. 18-CIV-10936 (JSR)

FIRST AMENDED COMPLAINT

JURY TRIAL REQUESTED

JOSEPH SANFILIPPO, DAVID OTTENSOSER, BERNARD FUCHS, MICHAEL NORDLICHT, MICHAEL KATZ, KEVIN CASSIDY, SETH GERSZBERG, EZRA BEREN, NAFTALI MANELA, DANIEL SAKS, MOSHE M. FEUER a/k/a MARK FEUER, SCOTT TAYLOR, DHRUV NARAIN, PLATINUM PARTNERS BLACK ELK OPPORTUNITIES FUND LLC, PLATINUM PARTNERS BLACK ELK OPPORTUNITIES FUND INTERNATIONAL LTD., MORRIS FUCHS, LEON MEYERS, MN CONSULTING NY LLC, ESTATE of JULES NORDLICHT, BARBARA NORDLICHT, ESTATE OF SOLOMON ENGLANDER, ESTATE OF GERTRUDE ENGLANDER, ROCKWELL FULTON CAPITAL, L.P., DITMAS PARK CAPITAL, L.P., PLATINUM FI GROUP LLC, FCBA TRUST, AARON PARNES, SARAH PARNES, SHMUEL FUCHS FOUNDATION, SOLOMON WERDIGER, OLIVE TREE HOLDINGS LLC, HUANG LAI TSU HSIA, HUBERFELD FAMILY FOUNDATION, MIND, BODY & SOUL CO., LIMITED, TWOSONS CORPORATION, GRD ESTATES LTD., MEADOWS CAPITAL LLC, ABRAHAM C. GROSSMAN, DAVID GICHTIN, ORA GICHTIN, GOLDA WILK, THE ESTATE OF MARCOS KATZ, ADELA KATZ, BEECHWOOD CAPITAL GROUP, LLC, B ASSET MANAGER LP, B ASSET MANAGER II LP, BEECHWOOD RE INVESTMENTS, LLC, BEECHWOOD RE HOLDINGS, INC., BEECHWOOD RE LTD., BEECHWOOD BERMUDA INTERNATIONAL LTD., BAM ADMINISTRATIVE SERVICES LLC, ILLUMIN CAPITAL MANAGEMENT LP, BRE BCLIC PRIMARY, BRE BCLIC SUB, BRE WNIC 2013 LTC PRIMARY, BRE WNIC 2013 LTC SUB, BBIL ULICO 2014 TRUST, BBLN-PEDCO CORP., BHLN-PEDCO CORP., BEECHWOOD TRUST NO. 1, BEECHWOOD TRUST NO. 2, BEECHWOOD TRUST NO. 3, BEECHWOOD TRUST NO. 4, BEECHWOOD TRUST NO. 5, BEECHWOOD TRUST NO. 6, BEECHWOOD TRUST NO. 7, BEECHWOOD TRUST NO. 8, BEECHWOOD TRUST NO. 9, BEECHWOOD TRUST NO. 10, BEECHWOOD TRUST NO. 11, BEECHWOOD TRUST NO. 12, BEECHWOOD TRUST NO. 13, BEECHWOOD TRUST NO. 14, BEECHWOOD TRUST NO. 15, BEECHWOOD TRUST NO. 16, BEECHWOOD TRUST NO. 17, BEECHWOOD TRUST NO. 18, BEECHWOOD TRUST NO. 19, BEECHWOOD TRUST NO. 20, BEECHWOOD RE INVESTMENTS, LLC SERIES A, BEECHWOOD RE

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Defendants.

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DESCRIPTION OF THE CASE

1. This case arises in connection with one of the most spectacular hedge fund collapses in recent memory –whereby a fund with a purported net asset value ("**NAV**") of nearly $1 billion turns out to not only be insolvent but to have liabilities, or a ***negative*** NAV, in the range of $400 to $800 million.

2. Martin Trott and Christopher Smith are the Court-appointed Joint Official Liquidators and Foreign Representatives (the "**JOLs**") of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) ("**PPVA**" and collectively with the JOLs, "**Plaintiffs**"), with authority pursuant to Orders of the Grand Court of the Cayman Islands and the United States Bankruptcy Court of the Southern District of New York to liquidate the assets of PPVA and bring litigation on its behalf

3. The defendants in this case are an interrelated and overlapping group of persons and entities, including the **Platinum Defendants** (Mark Nordlicht, David Bodner, Murray Huberfeld, Uri Landesman, David Levy, Bernard Fuchs, Naftali Manela, David Ottensoser, Joseph SanFilippo, and Daniel Small, Ezra Beren and Platinum Management (NY) LLC); the **Beechwood Defendants** (Mark Nordlicht, David Bodner, Murray Huberfeld, David Levy, Mark Feuer, Scott Taylor, Naftali Manela, David Ottensoser, Daniel Saks, Ezra Beren, Dhruv Narain, Illumin Capital Management LP, and the Beechwood Entities (as defined below), and certain other culpable and entities and individuals, including the **BEOF Funds** and the **Preferred Investors of the BEOF Funds** (both as defined below), **Michael Joseph Nordlicht**, **Kevin Cassidy**, **Seth Gerszberg**, and **Michael Katz** (collectively, "**Defendants**") – several of whom have been indicted and/or sued for their role in connection with certain of the acts discussed below – who used their positions of trust, access and authority to either enrich themselves and certain friends and family at the expense of PPVA.

4. The harm to PPVA resulted from actions constituting conspiracy, fraud, deceit, asset dissipation and breaches of fiduciary obligations. Defendants are among those who committed these tortious acts or directly aided and abetted this conduct.

5. Defendants "papered" their acts and transactions to make them appear legitimate when those acts and transactions actually were permeated by fraud, deceit and breach of trust.

6. As a result, Defendants are liable to PPVA in an amount to be proved at trial for the harms caused by the nine-figure schemes.

7. In large part, this case arises out of the relationship between and among PPVA, its general partner Platinum Management (NY) LLC ("**Platinum Management**"), Platinum Management's "Beechwood" alter ego, and the individuals who owned, operated and managed Platinum Management and Beechwood -- Nordlicht, Landesman, Huberfeld, Bodner, Fuchs, Levy, Steinberg, Small, SanFilippo, Ottensoser, Manela, Saks, and Beren.

8. Beechwood, a business comprised of reinsurance companies, investment management entities, investment trusts and related entities (collectively, "**Beechwood**"), was founded, owned and managed by the very persons who founded, owned and managed Platinum Management – and originally was operated out of Platinum Management's offices.

9. From 2013 until 2015, the Platinum Defendants and Beechwood Defendants caused PPVA (and/or its subsidiaries) to engage in a series of non-commercial transactions with the Beechwood Entities (defined below) designed to:

(i) falsely inflate the net value ascribed to PPVA's assets, thereby enabling Platinum Management to collect unearned partnership shares/fees;

(ii) prioritize the interests of the Beechwood Entities over the interests of PPVA, by, *inter alia*, consistently subordinating PPVA's prior rights in common collateral to those of the Beechwood Entities, and granting the Beechwood Entities put rights against PPVA; and

(iii) enable Platinum Management insiders, friends and designated investors/creditors to take the proceeds from the sale of the assets of PPVA's largest investment, Black Elk, in contravention of the prior rights of PPVA and Black Elk's other creditors, while leaving the Black Elk investment worthless to PPVA, and PPVA liable for tens of millions of dollars of fraudulent conveyance and other claims (the "**Black Elk Scheme**");

This set of acts and transactions is referred to herein as the "**First Scheme**."

10. By late 2015, with PPVA's collapse imminent and faced with a serious investigation of the Black Elk Scheme, the Platinum Defendants – with material assistance from the other Defendants – further breached their duties to PPVA by conspiring to transfer or encumber all or nearly all of PPVA's remaining assets for the benefit of the Beechwood Defendants, select insiders, and Platinum Partners Credit Opportunities Master Fund L.P. ("**PPCO**"), another Platinum Management operated fund. This set of acts and transactions is referred to herein as the "**Second Scheme**."

11. The significant wrongful acts and transactions within the Second Scheme, addressed in detail below, include the following:

(i) a one page document dated January 13, 2016, signed by Mark Nordlicht on and witnessed by Mark Feuer, which requires PPVA and any of its subsidiaries and affiliates holding the valuable proceeds from the sale of Implant Sciences Corporation ("**IMSC**") to use such proceeds to pay approximately $37 million of uncollectable debt owed to Beechwood by Golden Gate Oil, LLC, for no benefit to PPVA (the "**Nordlicht Side Letter**");

(ii) a March 2016 "restructuring" by which tens of millions of dollars were stripped from PPVA and assets were encumbered by Platinum Management for the benefit of PPCO and Beechwood;

(iii) a March 2016 "Master Guaranty Agreement" and related documents[1] between and among PPVA, certain of its subsidiaries, and Beechwood, among others, by which Beechwood was granted liens on available PPVA

[1] In addition to the Master Guaranty, the Platinum Defendants caused PPVA to execute that certain China Horizon Collateral Assignment dated March 21, 2016, that certain Turnover Agreement dated March 21, 2016, and that certain Carbon Credits Portfolio Assignment dated March 21,2016 (collectively, the "**March Beechwood Assignments**").

assets to further collateralize otherwise uncollectable debt owed to Beechwood (the "**Master Guaranty**");

(iv) the series of transactions, documents and promissory notes that the Platinum Defendants, together with Defendant Seth Gerszberg, caused PPVA to enter into with select redeeming investors and certain creditors of PPVA, by which those investors and creditors preferentially were granted security interests and liens on all assets of PPVA (and in some cases subsidiary assets) to collateralize tens of millions of dollars of equity redemption claims or otherwise unsecured debt for no additional consideration (the "**Security Lockup**"); and

(v) the June 9, 2016 transfer of one of PPVA's last valuable assets, a majority interest in Agera Energy (defined below), worth between $200-$300 million, to Beechwood and Senior Health Insurance Company of Pennsylvania ("**SHIP**"), for little to no consideration. The Agera Energy transactions was the culmination of the Second Scheme and a self-described "insider transaction" conceived of by defendant Michael Katz, the Platinum Defendants and the Beechwood Defendants (the "**Agera Transactions**") to strip PPVA of its largest asset and acquire the value of the same while dissipating the purported proceeds.

12. The persons responsible for sourcing, overseeing, managing and valuing PPVA's investments and assets, assessing and determining appropriate levels of risk, operating PPVA's business and in whom PPVA reposed confidence and trust for these purposes included, inter alia:

(i) **Mark Nordlicht ("Nordlicht")**, who was the co-chief investment officer of PPVA and managing member of Platinum Management, which in turn was the General Partner of PPVA. Nordlicht was chairman of the valuation committee and risk committee, had ultimate oversight of all trading, asset allocation, and risk management activities, was the managing member/manager of substantially all of the subsidiaries through which PPVA's investments were held, was responsible for sourcing investment opportunities, marketing to investors, overseeing the operation and management of PPVA (and Platinum Management's) business, hiring personnel, meeting with outside counsel, developing business strategy. Nordlicht is a founder and member of Platinum Management and was a

direct beneficiary of all of the inflated distributions, fees and other payments made to it by PPVA;

(ii) **Uri Landesman ("Landesman")**, who until spring 2015 held the title President of Platinum Management. Together with Nordlicht, he served as co-chief investment officer of PPVA, responsible for all trading, asset allocation and risk management on behalf of PPVA, and was a member of both the valuation and risk committees. Landesman was a member of Platinum Management, so was a direct beneficiary of all of the inflated distributions, fees and other payments made to it by PPVA even after he resigned in 2015. He remained involved in developing strategy for managing PPVA's liquidity issues and seeking out new investors even after his resignation in 2015;

(iii) **Murray Huberfeld ("Huberfeld")**, who, together with Nordlicht and David Bodner, founded and is an owner of Platinum Management. Huberfeld also is a founder and was at all relevant times an owner of the Beechwood Entities. Among other things, Huberfeld was involved with sourcing investment opportunities, meeting with and marketing to important investors and developing business and investment strategy for PPVA. He also was involved in the management and operation of PPVA and of Platinum Management, taking part in meetings with attorneys, interviewing new personnel, and meeting with investment partners. As an owner, Huberfeld was a direct beneficiary of all of the inflated distributions, fees and other payments made to Platinum Management by PPVA;

(iv) **David Bodner ("Bodner")**, is another founder and owner of Platinum Management. Bodner also is a founder and was at all relevant times an owner of the Beechwood Entities. Like Huberfeld, Bodner was involved with sourcing investment

opportunities, meeting with and marketing to important investors and developing investment strategies for PPVA and its investments, including, for example, its investment in China Horizon/Yellow River. He also was involved in the management and operation of PPVA and of Platinum Management, taking part in meetings with attorneys, interviewing new personnel, and meeting with investment partners. As an owner, Bodner was a direct beneficiary of all of the inflated distributions, fees and other payments made to Platinum Management by PPVA;

(v) **Bernard Fuchs** was a principal of Platinum Management who benefited from the inflated distributions, fees and other amounts paid by PPVA. Bernard Fuchs was involved with meeting with and marketing to new investors, efforts to retain existing investors, sourcing and managing investments and developing business strategy for PPVA. He was involved in planning significant investments and transactions including with respect to Black Elk and the Agera Transactions. He also was involved in the management and operation of PPVA and of Platinum Management, taking part in meetings with attorneys, meeting with potential investment partners and negotiating personnel matters. During the period leading up to the Cayman Liquidation, Bernard Fuchs was tasked with communicating with investors seeking information as to the status of their unfulfilled redemption requests. He provided false and misleading information to investors about the status of PPVA's financial situation and solvency;

(vi) **David Levy ("Levy")** was a portfolio manager and beginning in 2015, co-chief investment officer of PPVA. He had direct responsibility for overseeing and managing many of PPVA's most significant investments, including, *inter alia*, Black Elk, Implant Sciences, China Broadband, China Cablecomm, China Networks, and Desert Hawk, and

was paid based on the increase in value of those investments, whether realized or unrealized, as well as the profits of the Platinum affiliated management companies, including Platinum Management. As such, he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA. He was a member of the risk and valuation committees responsible for valuing PPVA's assets and assessing risk related thereto, and was appointed as an operating officer/manager of certain subsidiaries through which PPVA's investments were held, such as DMRJ. During 2013-2014, he also was employed as the Chief Investment Officer of BAM (defined below), even when BAM ostensibly was on the opposite side of a transaction from PPVA;

(vi) **David Steinberg ("Steinberg")**, was at various times a portfolio manager, investment advisor and co-chief risk advisor for PPVA, and was at all relevant times a member of the valuation committee that had overall responsibility for valuing PPVA's assets. In his capacity as a member of the risk committee and co-chief risk advisor, Steinberg was responsible for assessing the risk associated with PPVA's investments, a significant issue in determining value. Steinberg had direct responsibility for overseeing and managing PPVA's investments in PEDEVCO, Navidea Biopharmaceuticals, Inc., Vistagen Therapeutics, Inc., Urigen Pharmaceuticals, Inc., and Echo Therapeutics, Inc., among other credits, was the official responsible for reviewing and negotiating the agreements and other documents relating to the March 2016 restructuring and the Agera Transactions, and was appointed as an officer/manager/authorized signatory of certain PPVA subsidiaries such as Principal Growth Strategies LLC (the entity through which PPVA held its interest in the Agera Note) and Montsant Partners LLC, as well as companies

in which PPVA invested such as PEDEVCO. During the relevant period, Steinberg was paid a base salary as well as incentive compensation that was directly tied to the increase in the value of the investments he managed, whether realized or unrealized. As such, he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA. Beginning in 2014, Steinberg, together with Ezra Beren, also was a co-investment advisor to BAM (defined below), the Beechwood entities' investment advisor, for which he was paid based on the performance of the investments he managed;

(vii) **Daniel Small ("Small")**, was the managing director and portfolio manager charged with originating, managing and overseeing many of PPVA's investments, including its investments in Black Elk, Implant Sciences, China Cablecomm, Desert Hawk and Northstar until his employment was terminated in or about July 2015. Small was responsible for identifying potential investment opportunities, performing due diligence on potential investments, designing and implementing the structure of investments, negotiating the terms of investments and monitoring and monetizing investment decisions. Small was paid a base salary plus bonus compensation that was directly tied to the increase in the value of the investments he managed, whether realized or unrealized. As such, he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA;

(viii) **Joseph SanFilippo ("SanFilippo")**, chief financial officer for PPVA and a member of the valuation and risk committees who also was an officer of certain

subsidiaries through which PPVA held its investments. In his capacity as a member of the valuation and risk committees and as chief financial officer, he was, among others, responsible for determining the value of and risk associated with PPVA's investments. SanFilippo also was responsible for communicating with the third parties who routinely performed valuation, accounting and administrative services on behalf of PPVA, including calculating and reporting PPVA's NAV on a monthly basis and providing valuation reports each quarter. SanFilippo received a salary as well as bonus compensation, so he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA;

(ix) **David Ottensoser ("Ottensoser")**, general counsel, chief compliance officer and a member of the risk committee. Ottensoser participated in drafting, reviewing and/or commenting on the contracts and other documents that bound PPVA to the improper transactions comprising the First and Second Schemes and without which the First and Second Scheme could not have occurred. As a member of the risk committee, he was responsible for assessing the risk associated with PPVA's investments, a significant issue in determining value. At the same time, Ottensoser provided legal services to BAM/the Beechwood Entities, even when those parties ostensibly were on opposite sides of a transaction from PPVA. Ottensoser received a salary as well as bonus compensation, so he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA;

(x) **Naftali Manela ("Manela")**, was chief operating officer, a member of the valuation committee and an officer of certain subsidiaries through which PPVA held its investments, such as DMRJ. Manela was responsible for all aspects of the administration of PPVA's business. Manela also worked closely with senior management including Nordlicht, Bodner, Huberfeld, Levy, Fuchs, and the portfolio managers such as Small and Steinberg in structuring transactions and investments on behalf of PPVA. At the same time, Manela worked for BAM/the Beechwood Entities, performing similar services, even when those parties ostensibly were on opposite sides of a transaction from PPVA. Manela received a salary as well as bonus compensation, so he directly benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA;

(xi) **Daniel Saks ("Saks")**, was, until about 2014, a portfolio/investment manager with oversight and control over numerous PPVA investments. In particular, by the end of 2013, Saks became responsible for overseeing and managing PPVA's bio/pharma investments in companies including Advaxis Inc., Angiolight, Inc., Echo Therapeutics Inc., FluoroPharma, Navidea Biopharmaceuticals Inc., NewCardio Inc., Urigen Pharmaceuticals Inc., and Vistagen Therapeutics Inc., and previously was involved with overseeing the investment in Golden Gate Oil. During 2014, Saks began working for the Beechwood Entities, eventually serving as Chief Investment Officer and then President of B Asset Manager LP during and after 2015; and

(xii) **Ezra Beren ("Beren")**, who until the end of 2015 was an investment manager with responsibility for overseeing and managing PPVA's subsidiary RJ Credit and its various investments (e.g., PEDEVCO), among other investments, as well as a required

member of the valuation committee that had responsibility for valuing all of PPVA's assets and investments and was paid a salary plus incentive compensation based on the increased value of the investments he managed, whether realized or unrealized. In 2014, Beren also entered into an investment management agreement with BAM, for which he was paid based on the performance of the investments he managed, so he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA. Beren worked for BAM/the Beechwood Entities even when those parties ostensibly were on opposite sides of a transaction from PPVA. As of January 1, 2016, he worked at BAM full time.

13. The Platinum and Beechwood Defendants scrambled to close the Agera Transactions on June 9, 2016, the day after defendant Murray Huberfeld, a co-founder and principal of Platinum Management, was arrested in connection with the misappropriation of PPVA funds to bribe a pension official in exchange for investing in PPVA. A true and correct copy of the Superseding Information in *United States v. Murray Huberfeld*, Case No. 16-CR-467 (AKH), filed in connection with Huberfeld's guilty plea for defrauding PPVA, is attached hereto as **Exhibit 1.**

14. After Murray Huberfeld's arrest, the Federal Bureau of Investigation executed a search warrant on Platinum Management's offices in connection with multiple government investigations.

15. By June 14, 2016, Nordlicht announced that reporting as to PPVA's NAV would be suspended and PPVA would be liquidated.

16. PPVA was placed into provisional liquidation under the supervision of the Grand Court of the Cayman Islands on August 23, 2016 (the "**Cayman Liquidation**"). At that time, Platinum Management and its executives were still publicly claiming that PPVA had a NAV of nearly $1 billion.

17. In reality, as of the date the Cayman Liquidation was commenced, the First and Second Schemes had left PPVA potentially liable for as much as $400-$800 million in creditor claims and virtually no valuable assets other than litigation claims and defenses.

18. PPVA at one time, held valuable assets.

19. But from at least 2012 until the commencement of PPVA's Cayman Liquidation, the Platinum Defendants failed to abide by the balanced investment strategies set forth in PPVA's governing documents, which were designed to maintain PPVA's liquidity and financial condition.

20. Rather, the Platinum Defendants caused PPVA's investment portfolio to be increasingly more concentrated in illiquid investments, including equity and debt positions in start-up companies, many of which were not publicly traded.

21. By the end of 2012, the Platinum Defendants caused PPVA's investments to become concentrated such that 40% of its reported NAV was represented by investments in **just two** oil and gas operations: Black Elk Energy Offshore Operations, LLC ("**Black Elk**"), a Gulf of Mexico oil platform operator, and Golden Gate Oil, LLC ("**Golden Gate**"), a California-based onshore oil operation.

22. Golden Gate was a highly speculative investment that the Platinum Defendants realized was a failure at an early stage, as Golden Gate barely produced any oil, suffered large operating losses and never made a single interest payment on loans originated by PPVA. Despite

this, Platinum Management falsely reported a five-fold increase in the value of PPVA's Golden Gate Oil investment during fiscal year 2013.

23. Black Elk was a Houston, Texas based publicly reporting company that mostly operated offshore platforms located in the Gulf of Mexico. In November 2012, an explosion occurred on Black Elk's West Delta 32 platforms, resulting in the death of Black Elk employees and prompting numerous investigations (the "**Black Elk Explosion**"). Following the Black Elk Explosion, Black Elk's financial results, liquidity and business operations deteriorated significantly.

24. Given the impact that the Black Elk and Golden Gate Oil business losses would have had on PPVA's NAV if reported accurately, PPVA should have been liquidated in 2013. Indeed, forty percent of PPVA's total portfolio was worth far less than reported.

25. The Platinum Defendants refused to admit a loss or realize a write-down in value, declaring instead that PPVA's NAV actually *increased* during this period, in order to enrich themselves with unearned partnership shares and/or fees.

26. The Platinum Defendants' concentration of PPVA's investments in illiquid assets meant that the Platinum Defendants had significant discretion over their valuation, since there was no ready market for such investments. The lack of a ready market also meant that many of these investments could not be quickly or easily liquidated to meet the Platinum Defendants' need for cash to pay themselves, operate Platinum Management, and continue to hide the losses at PPVA.

27. To resolve this difficulty, the Platinum Defendants and the Beechwood Defendants, among others, conceived of and executed the First Scheme.

28. In 2013, Nordlicht, Huberfeld, Bodner (collectively the co-founders of Platinum Management), together with Levy, Scott Taylor ("**Taylor**"), and Moshe "Mark" Feuer ("**Feuer**")

created Beechwood and, between March 2013 and late 2015, these individuals used their positions of trust, authority and control over PPVA to cause PPVA and the Beechwood Entities to engage in the fraudulent, non-commercial transactions that comprise the First Scheme.

29. During the period from 2012 through 2015, the Platinum Defendants reported that PPVA "experienced" annualized returns of between a maximum of 11.6% and a minimum of 7.15%, and reported that the ***net value*** of its assets under management for PPVA had increased steadily from $688 million until they reached $789 million as of October 1, 2015, awarding themselves partnership distributions, fees and other compensation based on these results.

30. By late 2015, the liabilities resulting from the non-commercial transactions to which the Platinum and Beechwood Defendants had caused PPVA to become a party, coupled with ongoing losses at PPVA's most significant investments, made it clear that PPVA could not continue to exist for much longer. At that time, Defendants conceived and executed the Second Scheme to encumber or strip the last valuable assets away from PPVA to benefit themselves and particularly Beechwood, PPCO, and certain insiders of the Platinum Defendants.

31. As a result of Defendants' actions, hundreds of millions of dollars were diverted from PPVA, PPVA's remaining assets lost value or were purportedly encumbered, and tort and contract claims crystalized against PPVA – all under circumstances where master funds like PPVA are supposed to hold zero or minimal debt.

32. By the time the Cayman Liquidation was commenced, most of PPVA's remaining investments (i) had little to no net value; (ii) required so much investment and were at such an early stage they effectively had no value to PPVA in liquidation; and/or (iii) were valuable but subject to significant creditor liens and/or claims.

33. Thus, rather than the positive NAV that potentially could have been salvaged in 2013, Defendants ensured a 2016 liquidation outcome with NAV of zero and hundreds of millions of dollars of creditor claims that PPVA could not pay.

34. Platinum Management, in its capacity as PPVA's general manager, and its principals/managers/advisors/owners, Nordlicht, Huberfeld, Bodner, Landesman, Bernard Fuchs, Levy, Steinberg, Beren, Manela, Ottensoser, SanFilippo, and Small (collectively, the "**Platinum Defendants**") were obligated to manage and operate PPVA in good faith, in accordance with the terms of the partnership agreement, other operating documents, marketing materials, and the representations, statements and promises made to PPVA. Unless otherwise noted, all references herein to the Platinum Defendants means that each of the persons named as such were involved in the act, omission, misstatement, or breach at issue, *provided however* that references to the Platinum Defendants for the time period after July 2015 do not include Small and provided further that references to the Platinum Defendants for the period after January 2016 do not include Beren.

35. The Platinum Defendants breached this duty, and were materially assisted in this breach by, among others: (i) Nordlicht, Huberfeld, Bodner, Levy, Beren, Manela, Ottensoser (each to the extent they were acting on behalf of the Beechwood Entities), Daniel Saks ("**Saks**"), Taylor, Feuer, Dhruv Narain ("**Narain**") and Illumin Capital Management LP ("**Illumin**") (collectively, together with the Beechwood Entities, the "**Beechwood Defendants**"); (ii) the BEOF Funds (defined below); (iii) the Preferred Investors of the BEOF Funds (defined below); (iv) Kevin Cassidy; (v) Michael Katz; (vi) Michael Nordlicht; and (vii) Seth Gerszberg (collectively, the

persons identified in subparagraphs (i)–(vii) together with the Platinum Defendants, "**Defendants**").[2]

36. Unless otherwise noted, all references herein to the Beechwood Defendants means that each of the persons named as such were involved in the act, omission, misstatement, or breach at issue, *provided however* that references to the Beechwood Defendants for the time period before January 2016 do not include Narain or Illumin.

PARTIES RELEVANT TO THE JOLS' CLAIMS

37. Plaintiffs Martin Trott and Christopher Smith are the duly appointed Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation).

38. Plaintiff Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) is an exempted limited partnership marketed as a multi-strategy investment fund and registered under the Exempted Limited Partnership Law, 2014, of the Cayman Islands.

39. Platinum Management is a Platinum Defendant and a Delaware limited liability company with its principal place of business in New York, New York. Platinum Management is the general partner of PPVA.

40. Defendant Mark Nordlicht is a Platinum Defendant as well as a Beechwood Defendant. Nordlicht is a resident of New Rochelle, New York.

41. Together with Huberfeld and Bodner, Nordlicht founded Platinum Management and the Platinum affiliated group of funds that includes, inter alia, PPVA, PPCO, PPLO, the BEOF Funds, and controlled and orchestrated the creation of Beechwood.

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[2] Unless otherwise stated to the contrary, references herein to the Platinum Defendants and/or the Beechwood Defendants refer to a certain Defendant to the extent he was employed or otherwise affiliated with Platinum Management or Beechwood, respectively, at the given time.

42. Nordlicht was the managing member of Platinum Management and, together with Landesman (at all relevant times until about first quarter 2015) then Levy (at all relevant times from and after 2015), the co-chief investment officer of PPVA.

43. Nordlicht directly or indirectly holds ownership interests in Platinum Management, and thus personally benefitted from the inflated fees and other payments made by PPVA to Platinum Management as a result of the First and Second Scheme.

44. Nordlicht was a member of the risk committee, and in that capacity was responsible for assessing the risks associated with PPVA's investments, which is a significant factor in determining the value of such investments.

45. Nordlicht also was a member of the valuation committee. In that capacity, he was responsible for assessing the actual value of PPVA's investments and reporting such values so that PPVA's NAV could be accurately determined and any fees and other charges accurately calculated.

46. Nordlicht also was an owner and controlling person for Beechwood, operating the business of Beechwood both directly and via intermediaries, including Defendants David Levy, Naftali Manela, Daniel Saks, Dhruv Narain, Taylor and Feuer

47. Indeed, from and after the period when Beechwood commenced occupying office space separate from Platinum Management through the end of 2014, Nordlicht even maintained an office within Beechwood's offices.

48. Nordlicht was involved in every aspect of the First and Second Schemes, including, inter alia, (i) by using his position as a member of the valuation committee to falsely inflate the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing

PPVA to pay excessive fees and other amounts to the Platinum Defendants; (ii) orchestrating the Black Elk Scheme; (iii) orchestrating the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of fees and other amounts to the Platinum Defendants, (iv) orchestrating the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) using his position to cause PPVA to engage in the transactions referred to herein as the Security Lock-Up.

49. Defendant David Levy is a Platinum Defendant as well as a Beechwood Defendant. Levy is a resident of New York, New York and defendant Huberfeld's nephew.

50. From and after 2015, Levy served as co-chief investment officer of PPVA alongside Nordlicht. Levy also was a portfolio manager with responsibility for overseeing and managing several of PPVA's most significant investments, including, as noted above, Implant Sciences and Black Elk. He also was appointed as an officer/manager of certain of the PPVA subsidiaries, including DMRJ, in which PPVA held its investments.

51. As a portfolio manager, Levy received a salary as well as a bonus based on the realized and/or unrealized increase in the performance of the PPVA investments that he managed. As co-chief investment officer, Levy received, among other things, a percentage of the profits of Platinum Management. As such, he personally benefitted from the inflated valuations, and excessive fees and other payments made by PPVA to Platinum Management as a result of the First and Second Scheme.

52. Levy was a member of the valuation committee. In that capacity, he was responsible for assessing the actual value of PPVA's investments and reporting such values so that

PPVA's NAV could be accurately determined and any fees and other charges accurately calculated.

53. Beginning in 2013, Levy was instrumental in the creation of Beechwood and served as chief investment officer of BAM I (defined below), the Beechwood asset management entity until the end of 2014. Beechwood marketed Levy to potential clients as a member of its management team and specifically highlighted Levy's eight years of experience with Platinum Management as a key to Beechwood's future success. In late 2014/early 2015, in the wake of the Black Elk Scheme, Levy returned to work at Platinum Management. Levy remained an owner of Beechwood after his return to Platinum Management.

54. Levy was involved in every aspect of the First and Second Schemes, including, inter alia, (i) by using his position as a member of the valuation committee to falsely inflate the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing PPVA to pay excessive fees and other amounts to the Platinum Defendants; (ii) orchestrating the Black Elk Scheme; (iii) orchestrating the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of fees and other amounts to the Platinum Defendants, (iv) orchestrating the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) using his position to cause PPVA to engage in the transactions referred to herein as the Security Lock-Up.

55. Defendant the Estate of Uri Landesman ("**Landesman Estate**") is a Platinum Defendant. Landesman was a resident of New Rochelle, New York until his death on September 14, 2018.

56. At all relevant times until about April 2015, Landesman served as the President of Platinum Management, a Director of the Feeder Funds (defined below) and co-Chief Investment Officer of PPVA.

57. Until April 2015, Landesman shared responsibility with Nordlicht for all trading, asset allocation and risk management on behalf of PPVA.

58. Landesman was a member of the risk committee, and in that capacity was responsible for assessing the risks associated with PPVA's investments, which was a significant factor in determining value.

59. Landesman also was a member of the valuation committee. In that capacity, he was responsible for assessing the actual value of PPVA's investments and reporting such values so that PPVA's NAV could be accurately determined and any fees and other charges accurately calculated.

60. Landesman was involved with sourcing investment opportunities, meeting with and marketing to important investors and developing investment and business strategy for PPVA and its investments.

61. Landesman directly or indirectly holds ownership interests in Platinum Management, and thus personally benefitted from the inflated valuations and excessive fees and other payments made by PPVA to Platinum Management as a result of the First and Second Schemes.

62. Landesman was granted distributions and/or a salary in respect of his interest in Platinum Management after his resignation, and thus he continued to be enriched by the inflated fees and other payments made by PPVA to Platinum Management as a result of the First and Second Scheme after April 2015.

63. In connection with the First Scheme, Landesman was responsible for marketing PPVA on behalf of Platinum Management, and making representations concerning PPVA's NAV and the status of its various investments, such as Black Elk. Despite his direct knowledge of PPVA's liquidity issues and the Platinum Defendants' misrepresentation of PPVA's NAV, Landesman routinely misrepresented PPVA's financial condition.

64. Even after Landesman resigned, he continued to be involved with PPVA investor relations on behalf of Platinum Management.

65. During 2015 and 2016, Landesman was involved in discussions with Nordlicht, Bodner, Huberfeld, Levy, Fuchs and other Platinum Defendants concerning the status of PPVA, its true financial situations and liquidity issues.

66. Landesman materially misstated PPVA's financial condition and omitted information concerning the true status of its financial condition to PPVA and various third parties during 2015 and 2016. As a result, the other Platinum Defendants were able to complete the transactions comprising the Second Scheme, to PPVA's detriment.

67. Defendant Murray Huberfeld is a Platinum Defendant as well as a Beechwood Defendant. He resides in Lawrence, New York.

68. Huberfeld is a co-founder of Platinum Management and PPVA together with Nordlicht and Bodner.

69. At all relevant times, Huberfeld directly or indirectly held ownership interests in Platinum Management, and thus personally benefitted from the inflated fees and other payments made by PPVA to Platinum Management as a result of the First and Second Schemes.

70. Until his indictment on June 8, 2016, Huberfeld continued to make management decisions that directly impacted PPVA.

71. On or about May 25, 2018, Huberfeld pled guilty to federal charges of conspiracy to commit wire fraud, in connection with a bribe Huberfeld offered to Norman Seabrook, the former President of the Correction Officer's Benevolent Association of New York ("**COBA**"), in exchange for COBA's investment of $20 million with PPVA and other Platinum-affiliated funds.

72. In 2013, Huberfeld was instrumental in the creation of Beechwood and helped solicit the initial investment funds for use by Beechwood. At all relevant times, Huberfeld was a direct or indirect owner of Beechwood.

73. Huberfeld was involved in every aspect of the First and Second Schemes, including, inter alia, (i) using his position as a senior Platinum Management executive to participate in the false inflation of the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing PPVA to pay excessive fees and other amounts to the Platinum Defendants; (ii) orchestrating the Black Elk Scheme; (iii) orchestrating the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of fees and other amounts to the Platinum Defendants, (iv) orchestrating the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) using his position to cause PPVA to engage in the transactions referred to herein as the Security Lock-Up.

74. Defendant David Bodner is a Platinum Defendant as well as a Beechwood Defendant. Bodner is a resident of Monsey, New York.

75. Along with Huberfeld and Nordlicht, Bodner is a co-founder of Platinum Management and PPVA who helped solicit the initial investment funds for PPVA from his contacts in the New York Jewish community.

76. At all relevant times, Bodner directly or indirectly held ownership interests in Platinum Management, and thus personally benefitted from the inflated fees and other payments made by PPVA to Platinum Management as a result of the First and Second Schemes.

77. Bodner was instrumental in the creation of Beechwood. At all relevant times, Bodner directly or indirectly held ownership interests in Beechwood.

78. Bodner was involved in every aspect of the First and Second Schemes, including, inter alia, (i) by using his position as a senior Platinum Management executive to participate in the false inflation of the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing PPVA to pay excessive fees and other amounts to the Platinum Defendants; (ii) orchestrating the Black Elk Scheme; (iii) orchestrating the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of fees and other amounts to the Platinum Defendants, (iv) orchestrating the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) using his position to cause PPVA to engage in the transactions referred to herein as the Security Lock-Up.

79. In February 1990, Huberfeld and Bodner were arrested for sending imposters to take their Series 7 brokerage licensing exams. They eventually pled guilty to misdemeanors and were sentenced to two years of probation and paid substantial fines to the SEC.

80. Thereafter, in 1998, Huberfeld and Bodner settled civil allegations that they sold more than 513,000 shares of restricted stock in an investment company. Huberfeld and Broad Capital, the fund Bodner and Huberfeld were managing at that time, made large restitution claims to the SEC in connection with these acts.

81. Huberfeld and Bodner's checkered pasts are matters of public record. Published articles concerning Platinum Management routinely mentioned their arrests, guilty pleas and SEC fines.

82. Neither Huberfeld nor Bodner had an official title at Platinum Management. Instead, Bodner and Huberfeld generally conducted business at Platinum Management via a shared secretary, through whom the substantial majority of emails to and from Bodner and Huberfeld were exchanged. The secretary would, in turn, either print out copies of the relevant emails and attachments to show to Bodner and Huberfeld or forward the emails to Bodner and/or Huberfeld at their personal email addresses. Attached as **Exhibit 2** are true and correct copy of a February 11, 2016 email from Bernard Fuchs to the secretary for Huberfeld and Bodner, directing the secretary to provide the email to Bodner.

83. Among other things, both Bodner and Huberfeld were involved with sourcing investment opportunities, meeting with and marketing to important investors, dealing with issues concerning liquidity and redemptions, and developing business and investment strategy for PPVA.

84. At all relevant times, Bodner and Huberfeld also were involved in the management and operation of PPVA and of Platinum Management, taking part in meetings with attorneys, interviewing new personnel, and meeting with investors. Although they did not have official titles, Bodner and Huberfeld's approval was required for all significant business, investment and personnel decisions.

85. At all relevant times Nordlicht, Bodner and Huberfeld were the concealed owners and co-lead managers of the Beechwood Entities. They wielded this power and control via intermediaries, including the outward facing Beechwood Managers, Taylor, Feuer and Narain. Their approval was required for all significant decisions including all investment decisions.

86. On information and belief, both Bodner and Huberfeld also participated in improperly inflating the values of PPVA's assets in order to improperly increase PPVA's NAV, thereby causing PPVA to pay excessive distributions, fees and other payments to the Platinum Defendants.

87. Defendant David Steinberg is a Platinum Defendant and a resident of Clifton, New Jersey. Steinberg joined Platinum Management in May 2009, and at all relevant times served as portfolio manager for various PPVA investment positions.

88. Steinberg also held the position of co-chief risk officer for Platinum Management and PPVA, with responsibility for assessing the risk of PPVA's investments.

89. Steinberg was involved in every aspect of the First and Second Schemes, including, inter alia, (i) by using his position as a member of the valuation committee to participate in the false inflation of the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing PPVA to pay excessive distributions, fees and other amounts to the Platinum Defendants; (ii) helping to orchestrate the Black Elk Scheme; (iii) helping to orchestrate the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of distributions, fees and other amounts to the Platinum Defendants, (iv) helping to orchestrate the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) assisting in the consummation of the transactions referred to herein as the Security Lock-Up.

90. Steinberg was involved with and responsible for negotiating and executing numerous transactions involving PPVA that are part of both the First Scheme and Second

Schemes, including but not limited to the Black Elk Scheme, the January 2015 Montsant loan, the PEDEVCO transaction, the March 2016 Restructuring and the Agera Transactions.

91. Due to his active management of various PPVA investment positions and his positions as a member of the valuation and risk committees and co-chief risk officer, Steinberg had direct knowledge of the Platinum Defendants' inflation of the value of PPVA's assets and the misrepresentation of PPVA's NAV.

92. Steinberg also was involved in the creation of Beechwood and even worked for Beechwood at the same time as he was supposed to be working on behalf of PPVA.

93. Steinberg was a direct participant in the Black Elk Scheme, using an account maintained in the name of his wife to purchase Black Elk bonds for the purpose of voting in favor of the consent required to amend the Indenture, then subsequently reselling such bonds to an affiliated fund, PPLO, after the scheme concluded.

94. Steinberg was a responsible person or officer or fiduciary for various PPVA subsidiaries involved in the transactions comprising the First and Second Schemes, including Montsant and PGS. Steinberg executed the original Montsant transaction documents, the Agera Sale documents on behalf of PGS, was instrumental in negotiating the terms of significant components of the Second Scheme including the March 2016 PPVA restructuring, the Agera Transactions (as defined below), and the Security Lockup, which stripped PPVA of millions of dollars' worth of assets.

95. Defendant Daniel Small is a Platinum Defendant and a resident of New York, New York. Small was an employee of Platinum Management from 2007 until July 2015, and served as Platinum Management's Managing Director.

96. Together with Levy, Small served as portfolio manager for, *inter alia*, PPVA's investments in Black Elk, Implant Sciences, China Cablecomm, and China Horizon until he left Platinum Management in July 2015. Small's compensation as portfolio manager was based in part on increases to the value of the assets he managed, so he profited from the inflated values ascribed to those assets.

97. Small had direct knowledge of the Black Elk Explosion and the effect it had on the value of PPVA's investment in Black Elk and PPVA's overall NAV, the subsequent financial issues faced by Black Elk during 2013 and 2014. He was an architect of and helped carry out the Black Elk Scheme and the transactions by which the remaining Black Elk assets were acquired to create Northstar. Both of these transactions have been challenged as fraudulent transfers by the Black Elk Trustee, resulting in tens of millions of potential liabilities to PPVA.

98. Joseph SanFilippo is a Platinum Defendant and a resident of Freehold, New Jersey. At all relevant times, SanFilippo served as Chief Financial Officer of Platinum Management and PPVA.

99. At all relevant times, SanFilippo was a member of both the valuation committee and the risk committee. As such, SanFilippo was responsible for assessing the value of PPVA's assets and determining the risk associated therewith.

100. In his capacity as chief financial officer and member of the valuation and risk committees, SanFilippo played an instrumental part in the systematic overvaluation of PPVA's assets by the Platinum Defendants and the resulting inflation of PPVA's NAV.

101. SanFilippo was responsible for, *inter alia*, the creation of false financial disclosure documents for PPVA.

102. SanFilippo also had responsibility for communicating with PPVA's auditors, third party valuation providers, and fund administrators and did so on a routine basis.

103. On information and belief, SanFilippo also was involved in preparing the documents and information necessary to complete the March 2016 Restructuring and particularly the transfer of assets to PPCO.

104. SanFilippo was involved in every aspect of the First and Second Schemes, including, inter alia, (i) by using his position as a member of the valuation and risk committees to participate in the false inflation of the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing PPVA to pay excessive distributions, fees and other amounts to the Platinum Defendants; (ii) helping to orchestrate the Black Elk Scheme; (iii) helping to orchestrate the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of distributions, fees and other amounts to the Platinum Defendants, (iv) helping to orchestrate the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) assisting in the consummation of the transactions referred to herein as the Security Lock-Up.

105. David Ottensoser is a Platinum Defendant as well as a Beechwood Defendant. He is a resident of Woodmere, New York. At all relevant times, Ottensoser served as general counsel and Chief Compliance Officer for Platinum Management and PPVA.

106. Ottensoser was one of the in house counsel responsible for documenting the transactions that comprised the First and Second Schemes and was actively involved in closing those transactions.

107. Ottensoser also was involved in creating Beechwood and worked as general counsel for Beechwood during its initial stages, providing legal services to Beechwood and PPVA even when both parties ostensibly were on opposite sides of a transaction.

108. In his capacity as general counsel of Platinum Management, PPVA and Beechwood, Ottensoser was aware of the conflicts between those entities and arising out of the transactions comprising the First and Second Schemes, and that PPVA's interests were being subordinated to those of Beechwood, the Preferred Investors of the BEOF Funds, PPCO and/or the counterparts in connection with the Security Lock Up.

109. As a member of the risk committee, Ottensoser was responsible for assessing the risk associate with PPVA's assets and investments, a significant issue in determining the value thereof.

110. Ottensoser was involved in every aspect of the First and Second Schemes, including, inter alia, (i) by using his position as a member of the risk committee to participate in the false inflation of the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing PPVA to pay excessive distributions, fees and other amounts to the Platinum Defendants; (ii) helping to orchestrate the Black Elk Scheme; (iii) helping to orchestrate the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of distributions, fees and other amounts to the Platinum Defendants, (iv) helping to orchestrate the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) assisting in the consummation of the transactions referred to herein as the Security Lock-Up.

111. Bernard Fuchs, a/k/a Berish Fuchs, is a Platinum Defendant as well as a Preferred Investor of the BEOF Funds (defined below). Bernard Fuchs is a resident of Lawrence, New York.

112. Bernard Fuchs is the direct or indirect holder of ownership interests in Platinum Management. As such, he personally benefitted from the inflated distributions, fees and other payments made by PPVA to Platinum Management as a result of the First and Second Schemes.

113. Bernard Fuchs did not have an official title, but nevertheless had day to day involvement in the management and operations of Platinum Management and PPVA.

114. Among other things, Bernard Fuchs was involved with meeting with and marketing to important investors, dealing with issues concerning liquidity and redemptions, and developing business and investment strategy for PPVA.

115. Bernard Fuchs took part in meetings with attorneys, investors and investment partners related to the operation and management of PPVA and the transactions comprising the First and Second Schemes. He also was aware of and participated in the planning, marketing and execution of various aspects of the transactions comprising the First and Second Schemes, such as marketing to the Preferred Investors of the BEOF Funds in connection with the Black Elk Scheme and assisting in the planning of the Agera Transactions.

116. During late 2015 and the first quarter of 2016, Bernard Fuchs engaged in numerous discussions with investors seeking information concerning the status of PPVA, their investments and requests for redemption, often exchanging emails with Nordlicht, Bodner Huberfeld, Levy and/or Landesman concerning the best response to those investor inquiries and/or forwarding on such inquiries.

117. During his exchanges with investors, Bernard Fuchs misrepresented the financial status of PPVA and failed to provide information concerning PPVA's actual financial status, even encouraging investors to invest additional funds at a time when PPVA was unable to pay redemptions and potentially insolvent.

118. In one email exchange during the last week of February 2016, Bernard Fuchs even berated an investor who suggested that it would be forced to send a letter to the SEC seeking an investigation as to why investors had not been paid for long outstanding redemption requests if those redemption requests were not honored, claiming that the letter had done damage to Platinum Management's business. *See* Exhibit 2.

119. On information and belief, Bernard Fuchs' misrepresentations and omissions delayed and or dissuaded investors from taking steps to contact authorities, which enabled the other Defendants to complete the various transactions comprising the March 2016 Restructuring, the Agera Transactions and the Security Lock-Up, to the detriment of PPVA.

120. Defendant Ezra Beren is a Platinum Defendant as well as a Beechwood Defendant. He is a resident of New York, New York. Beren is the son-in-law of Murray Huberfeld.

121. From March 2007 until December 2015, Beren served as Vice President of Platinum Management. In January 2016, Beren was hired by BAM (defined below) as a credit analyst.

122. Due to his management role with Platinum Management and Beechwood, Beren was involved in the acts that comprise the First and Second Schemes, including the misrepresentation of PPVA's NAV, the creation of Beechwood and the series of transactions between Beechwood Entities and PPVA that are included in the Second Scheme.

123. Beren was a portfolio manager for various PPVA investments and in that capacity participated in meetings of the valuation committee. As such, he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants, and from the inflated distributions, fees and other payments made to Platinum Management by PPVA.

124. Beren also was engaged as a portfolio manager for BAM beginning in 2014, at the same time as he was working as a portfolio manager for PPVA.

125. Defendant Naftali Manela is a Platinum Defendant as well as a Beechwood Defendant. He is a resident of Brooklyn, New York.

126. Manela worked interchangeably at Platinum Management and Beechwood, assisting the Defendants in orchestrating the First and Second Schemes, including the Black Elk Scheme and the Agera Transactions.

127. Manela was a member of the valuation committee, and in that capacity was responsible for assessing the value of PPVA's assets.

128. Manela was involved in every aspect of the First and Second Schemes, including, inter alia, (i) by using his position as a member of the valuation committee to participate in the false inflation of the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing PPVA to pay excessive distributions, fees and other amounts to the Platinum Defendants; (ii) helping to orchestrate the Black Elk Scheme; (iii) helping to orchestrate the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of distributions, fees and other amounts to the Platinum Defendants, (iv) helping to orchestrate the series of transactions among PPVA, Beechwood and/or

affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) assisting in the consummation of certain of the transactions referred to herein as the Security Lock-Up.

129. Michael Joseph Nordlicht is a Defendant and the nephew of Mark Nordlicht. Michael Nordlicht resides in West Hempstead, New York. In or about 2014, Mark Nordlicht installed Michael Nordlicht as in-house counsel for Agera Energy, LLC ("**Agera Energy**"), an energy reseller managed by Platinum Management as a joint investment by PPVA and PPCO. Prior to the Agera Transactions discussed below, Michael Nordlicht held a 95.01% indirect equity interest in Agera Energy.

130. Michael Nordlicht participated in and helped facilitate the closing of the Agera Transactions, to the detriment of PPVA.

131. Michael Katz ("**Katz**") is a Defendant and a resident of New York, New York.

132. Katz is the grandson of Marcos Katz, a significant investor in PPVA.

133. In 2015, Marcos Katz sought to redeem his investment in PPVA but there was not sufficient funds to honor this request. Instead, Nordlicht, Huberfeld, Bodner and Fuchs offered Marcos Katz the opportunity to exchange his investment in PPVA for an interest in Platinum Management and certain other consideration. As part of the proposed deal, Marcos Katz was offered the opportunity to appoint a representative to oversee his interests.

134. Although a term sheet was prepared, final documents between and among Marcos Katz and the other members of Platinum Management apparently were never finalized. Despite this, Michael Katz, Marcos Katz's grandson, began taking an active role at Platinum Management beginning in or about January 2016.

135. Michael Katz knew Nordlicht, Levy, Huberfeld, Bodner and Fuchs before he began representing his grandfather's interests in 2016. In fact, Katz and Levy previously had invested in an energy company that was merged into Agera in 2014, during the startup phase of that business.

136. By March 2016, Katz began formally advising Platinum Management in connection with the Second Scheme, and, in particular, the Agera Transactions. In March 2016, Katz conspired with Nordlicht, Levy and other Platinum Defendants to develop the plan to transfer PPVA's interest in Agera Energy to an "insider." Katz had knowledge of certain Second Scheme Transactions and exerted control over PPVA and its subsidiaries in connection with such Second Scheme Transactions.

137. Kevin Cassidy ("**Cassidy**") is a Defendant and a resident of Briarcliff Manor, New York.

138. In 2007, Optionable Inc., a fund co-founded by Cassidy and affiliated with Nordlicht, collapsed after Cassidy was arrested for deliberately misstating the value of Optionable, Inc.'s natural gas derivatives. Cassidy, who had served two prior stints in prison, was sentenced to be incarcerated for 30 months.

139. When Cassidy was released from prison in 2014, Nordlicht, Bodner and Huberfeld installed him as the *managing director* of Agera Energy.

140. Starfish Capital, Inc. ("**Starfish**"), an entity created and controlled by Cassidy, was made a party to the Agera Transactions as a means of paying Cassidy millions of dollars out of the proceeds thereof for no apparent consideration.

141. Cassidy had knowledge of certain Second Scheme Transactions and exerted control over PPVA and its subsidiaries in connection with such Second Scheme Transactions.

142. Seth Gerszberg ("**Gerszberg**") is a Defendant and a resident of Englewood, New Jersey. Beginning at the latest by about January 2016, Gerszberg served as an advisor to Platinum Management in connection with various PPVA investment positions and negotiations with PPVA's creditors. Gerszberg orchestrated and executed certain of the transactions and transfers that comprise the Second Scheme, particularly the purported encumbrance of the debt position in Implant Sciences Corporation as well as the outflow of substantially all of PPVA's cash on hand immediately following the Agera Transactions. Gerszberg had knowledge of certain Second Scheme Transactions and exerted control over PPVA and its subsidiaries in connection with such Second Scheme Transactions.

143. Defendant Platinum Partners Black Elk Opportunities Fund LLC ("**BEOF I**") is a Delaware limited liability company with its principal place of business in New York. BEOF I is not a subsidiary of PPVA, but rather an investment vehicle for the Platinum Defendants and their preferred investors and creditors. The Platinum Defendants used BEOF I to provide themselves and select insiders with the proceeds of the Renaissance Sale (defined below) to the detriment of PPVA.

144. Defendant Platinum Partners Black Elk Opportunities Fund International Ltd. ("**BEOF II**" and together with BEOF I, the "**BEOF Funds**") is a limited company domiciled in the Cayman Islands with its principal place of business in New York. BEOF II is not a subsidiary of PPVA, but rather an investment vehicle for the Platinum Defendants and their preferred investors and creditors. The Platinum Defendants used BEOF II to provide themselves and select insiders with a majority of the proceeds of the Renaissance Sale to the detriment of PPVA.

145. Defendants "**The Preferred Investors of the BEOF Funds**" are various individuals and entities, and their successors-in-interest and transferees (to be discovered), that

were direct or indirect investors in the BEOF Funds and received proceeds from the Renaissance Sale (defined below). The Preferred Investors of the BEOF Funds were aware of the actions of the Platinum and Beechwood Defendants in furtherance of the Black Elk Scheme, as well as Beechwood's representations that it was unaffiliated with Platinum Management.

146. The Preferred Investors of the BEOF Funds include the following persons and entities: (i) Morris Fuchs; (ii) Leon Meyers; (iii) Small; (iv) Levy; (v) MN Consulting NY LLC; (vi) Estate of Jules Nordlicht; (vii) Barbara Nordlicht; (viii) Estate of Solomon Englander; (ix) Estate of Gertrude Englander; (x) Rockwell Fulton Capital; (xi) Ditmas Park Capital, LP; (xii) Platinum FI Group LLC; (xiii) FCBA Trust; (xiv) Aaron Parnes; (xv) Sarah Parnes; (xvi) Shmuel Fuchs Foundation; (xvii) Solomon Werdiger; (xviii) Olive Tree Holdings LLC; (xix) Huang Lai Tsu Hsia; (xx) Huberfeld Family Foundation; (xxi) Mind, Body & Soul Co., Limited; (xxii) Twosons Corporation; (xxiii) GRD Estates Ltd.; (xxiv) Meadows Capital LLC; (xxv) Abraham C. Grossman; (xxvi) David Gichtin; (xxvii) Ora Gichtin; (xxviii) Golda Wilk; (xxix) Estate of Marcos Katz; (xxx) Adela Katz; and (xxxi) John Does 1-100.

147. The Preferred Investors of the BEOF Funds are comprised of Platinum Defendants such as Levy and Small, as well as persons and entities who are friends and family of or otherwise personally or professionally connected to one or more of the Platinum Defendants.

148. For example, Preferred Investors of the BEOF Funds Barbara Nordlicht and, before his death on or about August 3, 2018, Jules Nordlicht, are the parents of defendant Mark Nordlicht and grandparents of defendant Michael Joseph Nordlicht.

149. Preferred Investors of the BEOF Funds Gertrude and Solomon Englander, both of whom have since passed away, were long term investors in funds managed by the Platinum Defendants.

150. Preferred Investor of the BEOF Funds the Huberfeld Family Foundation is set up for the benefit of the family of defendant Murray Huberfeld. The Huberfeld Family Foundation itself also appears to have had transactions/connections with certain of the other Preferred Investors of the BEOF Funds during the same time period, such as Aaron Elbogen.

151. Preferred Investor of the BEOF Funds Morris Fuchs is the brother of defendant Bernard Fuchs and was a long term investor in various funds managed by the Platinum Defendants.

152. Preferred Investor of the BEOF Funds the Shmuel Fuchs Foundation is set up for the benefit of the family of defendants Bernard Fuchs and Morris Fuchs.

153. Preferred Investor of the BEOF Funds Leon Meyers is a long term investor in various funds managed by the Platinum Defendants who was a personal friend of both Nordlicht and Levy.

154. On information and belief, Leon Meyers often had lunch and/or dinner with Levy or Nordlicht, and spent time with both men and their families away from the office during holidays and on weekends.

155. Preferred Investor of the BEOF Funds MN Consulting NY LLC is an investment vehicle owned by Mark Friedman and Neil Einhorn, who are investors in a chain of nursing homes. On information and belief, Einhorn and Friedman both have known Huberfeld for many years. Einhorn is active in and a significant contributor to at least one charity in which Huberfeld serves as vice president.

156. Preferred Investor of the BEOF Funds Solomon Werdiger is another close friend of Huberfeld. On information and belief, Solomon Werdiger is active in and a significant contributor to one or more charities in which Huberfeld serves as vice president. He also was long term investor in various funds managed by the Platinum Defendants.

157. On information and belief, Preferred Investor of the BEOF Funds Huang Lai Tsu Hsia is a personal client of defendant Bernard Fuchs.

158. On information and belief, Preferred Investor of the BEOF Funds Olive Tree Holdings was a longtime client of Murray Huberfeld. Huberfeld referred to Olive Tree as one of "my people" and its managing member, Avi Schron, routinely attended lunches with Huberfeld and Bodner and also is active in a religious/political group in which Huberfeld is active.

159. On information and belief, Preferred Investor of the BEOF Funds FCBA Trust is a trust set up by Aaron and Chaya Elbogen, who are longtime friends of Bodner and Huberfeld as well as Manela. The Elbogens and their various entities are long term investors in various funds managed by the Platinum Defendants.

160. Notably, the SEC previously has charged Aaron Elbogen with aiding and abetting another fraudulent scheme. In that case, the SEC alleged that Elbogen and others employed by Datek Securities and Securities Corp. manipulated NASDAQ's small order execution system during the period from 1993 through 2001. Elbogen was chief executive officer of Datek, which was a day trading firm that subsequently sold its day trading business to Heartland, a registered broker dealer owned in part by Aaron Elbogen. Elbogen and the other parties charged in the scheme settled the charges in 2003 and paid an aggregate of $70 million in fines and penalties, including $1.4 million by Elbogen personally. Elbogen also agreed to an order barring him from associating with any broker or dealer, which remains in effect today.

161. It should be noted that during 2014, the very same time that the Preferred Investors of the BEOF Funds received the proceeds of the Black Elk Renaissance Sale as a result of the Black Elk Scheme, Preferred Investor of the BEOF Funds the Huberfeld Family Foundation, Inc., a purported charitable foundation set up by defendant Huberfeld and his family, maintained two

separate loans, each in the amount of $1.5 million, to another trust apparently related to Aaron Elbogen (the Aaron Elbogen Irrevocable Trust). The two loans purportedly each bore interest at the astounding rate of 700%. A true and correct copy of the 2014 Tax Return for the Huberfeld Family Foundation is attached as **Exhibit 3**.

162. On information and belief, Preferred Investor of the BEOF Funds Platinum FI Group LLC, is a longtime client, and its principal, Mark (Moshe) Leben, is a close friend, of Huberfeld.

163. On information and belief, Preferred Investor of the BEOF Funds GRD Estates Ltd. is a longtime client of Huberfeld, and its principal, Gordon Diamond, is Huberfeld's close personal friend.

164. Preferred Investor of the BEOF Funds Meadows Capital LLC is an investment firm located in New Jersey and managed by Robert Cohn. Mr. Cohen was an acquaintance of Mr. Huberfeld, and held several meetings with Huberfeld and Bodner leading up to the Renaissance Sale.

165. Preferred Investor of the BEOF Funds Abraham C. Grossman is a long-term investor with Murray Huberfeld and Mark Nordlicht various funds, including the BEOF Funds and PPVA.

166. On information and belief, Preferred Investor of the BEOF Funds Golda Wilk is an investment manager located in Belgium. Ms. Wilk is one of the largest investors in the BEOF Funds, receiving a distribution of more than $4 Million in connection with the Renaissance Sale.

167. The late Marcos Katz, along with his wife, Adela Katz, are Preferred Investors of the BEOF Funds. Marcos Katz was a significant investor of the BEOF Funds, PPVA and other

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funds managed by Nordlicht, Huberfeld and Bodner. In March 2016, Marcos Katz was permitted to appoint Michael Katz at Platinum Management to directly oversee his investment with PPVA.

168. Preferred Investor of the BEOF Funds Ora Gichtin is the sister of Mark Nordlicht. Along with her husband, David Gichtin, Ms. Gichtin was provided an interest in the BEOF Funds at the direction of Mark Nordlicht.

169. On information and belief, Preferred Investor of the BEOF Funds Mind Body & Soul Co. Ltd. was a client of Huberfeld. Mind Body & Soul Co. Ltd. was represented by its agent Ezra Erani, a close friend of Huberfeld, who arranged for Mind Body & Soul Co. Ltd. to invest in the BEOF Funds among other Platinum related investments. Ezra Erani was invited to attend the celebrations following Huberfeld's daughter's wedding.

170. On information and belief, Preferred Investor of the BEOF Funds Aaron Parnes and his wife Sarah also are clients of Murray Huberfeld and were referred to by him as among "his people." They were long terms investors in various funds managed by the Platinum Defendants.

171. On information and belief, Preferred Investor of the BEOF Funds Rockwell Fulton Capital, L.P. and Ditmas Park Capital L.P., both of which have common ownership, were clients of Nordlicht.

172. Defendant Twosons Corporation ("**Twosons**") purports to be a foreign corporation authorized to do business in New York. As a Preferred Investor of the BEOF Funds, Twosons received $15.4 million of proceeds from the Black Elk Renaissance Sale (defined below). Twosons and its principals the Harari family were good friends and clients of Huberfeld.

173. Defendant Daniel Saks is a Beechwood Defendant and a resident of Teaneck, New Jersey. Until 2014, Saks worked as a portfolio manager at Platinum Management.

174. During 2014, Saks began working at BAM, although he was still also working for PPVA/Platinum Management.

175. In late 2014, Daniel Saks replaced Levy as chief investment officer for BAM subsequent to Levy's return to Platinum Management, and later served as its President.

176. Saks routinely received and was involved in commenting on the third party valuation reports sent to BAM that included inflated valuations of the Beechwood transactions with PPVA.

177. Saks was instrumental to Beechwood's involvement in the First Scheme and Second Scheme discussed below, and acted as signatory on behalf of various Beechwood Entities in connection with several of the transactions among Beechwood Entities and PPVA. For example, Saks was involved in orchestrating the January 2015 Montsant transaction and executed the transaction documents on behalf of BAM. Saks similarly was involved in negotiating amendments to the Golden Gate Oil transaction documents.

178. Defendant Moshe M. Feuer is a Beechwood Defendant and a resident of Lawrence, New York. Feuer, Levy and Taylor were the original public face of Beechwood and, together with Nordlicht, Bodner and Huberfeld, founded the company. Feuer remained with Beechwood at all relevant times.

179. At all relevant times, Feuer (through trusts) owned common stock in various Beechwood Entities and had managerial authority over the Beechwood Entities. Feuer also acted as signatory for Beechwood as to certain transactions comprising the Second Scheme, such as the Nordlicht Side Letter.

180. Before establishing Beechwood, Feuer was the CEO of Marsh USA Inc. and had pre-existing relationships with Nordlicht, Huberfeld and certain other Platinum Defendants. Feuer

had long known the senior executives at Platinum Management, who were active in the same social community on New York's Long Island. Feuer and Huberfeld served on the board of a charity together, and Feuer's sister went to the same school as Nordlicht.

181. Feuer had knowledge of certain First Scheme Transactions and Second Scheme Transactions, and exerted control over PPVA and its subsidiaries in connection therewith.

182. For example, Feuer was the person who witnessed Nordlicht's execution of the Nordlicht Side Letter.

183. Defendant Scott Taylor is a Beechwood Defendant and a resident of New York, New York. Taylor, Feuer and Levy founded Beechwood together with Nordlicht, Bodner and Huberfeld. Taylor, Feuer and Levy were the original public face of Beechwood, and Taylor remained with Beechwood at all relevant times.

184. At all relevant times, Taylor (through trusts) owned common stock in Beechwood and had managerial authority over the Beechwood Entities.

185. Prior to forming Beechwood, Taylor had been an executive of Marsh & McLennan and COO for Merrill Lynch Wealth Management's Private Banking and Investments Group.

186. Taylor had knowledge of certain First Scheme Transactions and Second Scheme Transactions, and exerted control over PPVA and its subsidiaries in connection therewith.

187. Taylor, together with Levy, helped prepare the marketing documents by which various reinsurance clients were induced to invest funds with the Beechwood Reinsurance Companies, and which did not disclose the connections between the Beechwood entities and Platinum Management.

188. On information and belief, Taylor and Feuer were involved in orchestrating the various transactions comprising the First and Second Schemes.

189. Defendant Dhruv Narain is a Beechwood Defendant and a resident of Purchase, New York.

190. Narain became a senior executive at BAM (defined below) and the Beechwood Entities (defined below) no later than January 2016, and was instrumental in the execution of certain transactions comprising the Second Scheme, including the March 2016 PPVA Restructuring (including execution of the Master Guaranty), the 2016 Montsant Transaction, matters involving PEDEVCO during 2016, and the Agera Transactions.

191. Narain was one of the primary persons who orchestrated the terms of the March 2016 Transaction and the Agera Transactions, and exerted control over PPVA and its subsidiaries in connection therewith.

192. Narain was aware of the true value of Agera, having obtained third party valuation reports about that company.

193. Narain worked with Nordlicht, Levy, Steinberg, Ottensoser, Fuchs, Bodner, Huberfeld, Katz, Cassidy, Michael Nordlicht, Platinum Management and the Beechwood Defendants to transfer ownership and control of Agera to the Beechwood Entities, which were controlled and owned, at least in part, by Nordlicht, Bodner, Huberfeld and Levy.

194. Defendant Beechwood Capital Group, LLC ("**Beechwood Capital**") is a Beechwood Entity and a New York limited liability company with its principal place of business in Lawrence, New York, at the same address as Feuer's principal residence.

195. Defendant B Asset Manager LP ("**BAM I**") is a Beechwood Entity and a Delaware limited partnership, which had its principal place of business in New York, New York at all relevant times. BAM I served as an investment advisor for Beechwood and its various investments.

196. Defendant B Asset Manager II LP ("**BAM II**" and, collectively with BAM I, "**BAM**") is a Beechwood Entity and a Delaware limited partnership, which had its principal place of business in New York, New York at all relevant times. BAM II served as an investment advisor for Beechwood and its various investments. Nordlicht, Bodner, Huberfeld and Levy owned nearly 70% of the partnership interests in BAM.

197. Defendant Beechwood Re Investments, LLC ("**Beechwood Investments**") is a Beechwood Entity and a Delaware limited liability company, which had its principal place of business in New York, New York at all relevant times. Beechwood Investments was used as a vehicle by Nordlicht, Bodner and Huberfeld to purchase all the preferred shares in the Beechwood Reinsurance Companies. The managing member of Beechwood Investments was N Management, LLC, a Nordlicht-controlled entity, and the other members of Beechwood Investments were entities owned or controlled by Nordlicht, Bodner, Levy or Huberfeld through various Beechwood Trusts.

198. Defendant Beechwood Re Holdings, Inc. ("**Beechwood Holdings**") is a Delaware corporation and a Beechwood Entity. Beechwood Holdings holds all the common stock of Beechwood Re Ltd.

199. Defendant Beechwood Re Ltd. ("**Beechwood Cayman**") is a Beechwood Entity and a reinsurance company domiciled in the Cayman Islands, which had its principal place of business in New York, New York at all relevant times. Nearly 70% of the common stock of Beechwood Re was held by various Beechwood Trusts created by Nordlicht, Bodner, Huberfeld and Levy. Beechwood Investments, an entity owned and controlled by Nordlicht, Bodner Huberfeld and Levy through trusts, owned all preferred shares of Beechwood Re.

200. Defendant Beechwood Bermuda International Ltd. ("**Beechwood Bermuda**" and, collectively with Beechwood Cayman, the "**Beechwood Reinsurance Companies**") is a Beechwood Entity and a reinsurance company domiciled in Bermuda which had its principal place of business in New York, New York at all relevant times.

201. Defendant BAM Administrative Services LLC ("**BAM Administrative**") is a Beechwood Entity and a Delaware limited liability company which had its principal place of business in New York, New York at all relevant times. BAM Administrative served as agent for the Beechwood Insurance Trusts and acts as agent and signatory on behalf of the Beechwood Reinsurance Companies in connection with certain transactions within the First and Second Schemes.

202. Defendants BBLN-PEDCO Corp. and BHLN-PEDCO Corp. are special purpose vehicles (collectively, the "**Beechwood SPVs**") and Beechwood Entities that, at all relevant times, were managed by BAM Administrative and administered in New York, New York.

203. Defendants BRe BCLIC Primary, BRe BCLIC Sub, BRe WNIC 2013 LTC Primary, BRe WNIC 2013 LTC Sub and BBIL ULICO 2014 Trust (collectively, the "**Beechwood Insurance Trusts**") are insurance trusts and Beechwood Entities that, at all relevant times, were managed by BAM Administrative and administered in New York, New York.

204. Defendants Beechwood Trust Nos. 1 through 20 (each a "**Beechwood Trust**") are Beechwood Entities created in connection with transactions that occurred in New York, New York. The Beechwood Trusts were owned and controlled by Nordlicht, Bodner, Huberfeld and Levy through their families. The Beechwood Trusts owned approximately 70 percent of the common stock of Beechwood Cayman.

205. Each of the Beechwood Trusts is an alter ego of its respective direct or indirect owner, having been dominated and controlled by Nordlicht, Bodner, Huberfeld and Levy for the purpose of concealing their ownership and control of the Beechwood Entities.

206. Defendants Beechwood Re Investments, LLC Series A through Beechwood Re Investments, LLC Series I (each a "**Beechwood Series**", and together with Beechwood Capital, Beechwood Holdings, BAM, Beechwood Investments, Beechwood Cayman, BAM Administrative, Beechwood Bermuda, the Beechwood Insurance Trusts, the Beechwood SPVs and the Beechwood Trusts, the "**Beechwood Entities**") are Beechwood Entities and Delaware limited liability companies which had their principal place of business in New York, New York at all relevant times.

207. The Beechwood Series were owned and controlled by Nordlicht, Bodner, Huberfeld and Levy through their families. The Beechwood Series owned all of the membership interests in Beechwood Investments, which owned all of the preferred stock in Beechwood Re.

208. Each of the Beechwood Series is an alter ego of its respective direct or indirect owner, having been dominated and controlled by Nordlicht, Bodner, Huberfeld and Levy for the purpose of concealing their ownership and control of the Beechwood Entities.

209. Defendant Illumin Capital Management LP is a Beechwood Defendant and a Delaware limited partnership, which had its principal place of business in New York, New York at all relevant times. On information and belief, Illumin is owned and control by Dhruv Narain, who joined Beechwood in January 2016. Illumin acted as an investment advisor to Beechwood during the course of the Second Scheme.

JURISDICTION AND VENUE

210. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1334 and 1367.

211. Venue of this case is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1409.

212. This court has personal jurisdiction over each of the Defendants because they: (i) are a citizen otherwise domiciled in the United States; (ii) are authorized to do business in the United States; (iii) have transacted business in the United States, including the State of New York, with respect to certain of the agreements and other matters at issue in this case and have consented to the jurisdiction of the state and federal courts in New York, New York to resolve any disputes arising out of such agreements; or (iv) have committed tortious acts within the United States, including within the State of New York.

FACTUAL BACKGROUND

A. The PPVA Investment Structure

213. PPVA was formed in 2003. It was marketed as a multi-strategy hedge fund.

214. At the time its insolvency proceeding was commenced, PPVA was operating pursuant to a Second Amended and Restated Limited Partnership Agreement, dated July 1, 2008, registered with the Cayman Islands Registrar of Exempted Limited Partnerships (the "**PPVA Partnership Agreement**"). A true and correct copy of the PPVA Partnership Agreement is attached hereto as **Exhibit 4.**

215. The PPVA Partnership Agreement provides that Platinum Management is the general partner and certain Feeder Funds (defined below) are the limited partners of PPVA.

216. Platinum Partners Value Arbitrage Fund (USA) L.P. (the "**Onshore Feeder Fund**") is a limited partner under the PPVA Partnership Agreement, with investors within the United States serving as limited partners of the Onshore Feeder Fund.

217. Platinum Partners Value Arbitrage Fund (International) Limited (in official liquidation) (the "**Offshore Feeder Fund**") served as the vehicle to attract offshore investors and served as a limited partner of PPVA until June 22, 2010, when the Offshore Feeder Fund ceased

to be a limited partner of PPVA and Platinum Partners Value Arbitrage Intermediate Fund Ltd. (in official liquidation) (the "**Intermediate Offshore Feeder Fund**" and, collectively with the Offshore Feeder Fund and the Onshore Feeder Fund, the "**Feeder Funds**") took its place as a limited partner of PPVA.

218. The Feeder Funds and PPVA form a master/feeder investment fund structure typical of Cayman Islands-based funds whereby:

- offshore and U.S. tax-exempt investors invested in the Offshore Feeder Fund, which in turn invested in the Intermediate Offshore Feeder Fund, which in turn invested in PPVA;
- onshore investors invested in the Onshore Feeder Fund, which in turn invested in PPVA;
- the investment activities of the Offshore Feeder Fund, the Onshore Feeder Fund and PPVA were managed by Platinum Management in its separate capacity as a General Partner of PPVA and as investment manager, appointed pursuant to the terms of the Investment Management Agreement (defined below);
- PPVA was marketed to these investors as a multi-strategy hedge fund that sought to achieve significant returns while attempting to minimize downside risk; and
- PPVA's operations were managed by Platinum Management from its offices in New York, New York.

219. From February 22, 2006 until June 15, 2016, two employees of DMS Offshore Investment Services, David Bree and Don Seymour (the "**DMS Directors**") served as directors for the Offshore Feeder Fund and Intermediate Offshore Feeder Fund (together, the "**Offshore Funds**"), which were limited partners under the PPVA Limited Partnership Agreement.

220. Landesman served as a director for the Offshore Feeder Fund and Intermediate Offshore Feeder Fund until April 15, 2015, at which time he was replaced by Nordlicht.

221. The DMS Directors regularly attended and participated in board meetings for the Offshore Funds, which were limited partners of PPVA, at which (i) the financial condition of

PPVA was discussed; and (ii) representatives of Platinum Management confirmed that it was abiding by all applicable requirements set forth in the governing documents of PPVA and the Feeder Funds, including the Private Placement Memoranda (collectively, the "**PPMs**") and applicable law.

222. The approval of the DMS Directors was required for certain transactions entered into and disclosures made by PPVA.

223. The DMS Directors notified the Platinum Defendants of their resignation as directors of the Offshore Funds, effective as of June 15, 2016.

B. Platinum Management as General Partner

224. Platinum Management is a Delaware limited liability company organized on or about August 22, 2001. A true and correct copy of the January 1, 2011 Second Amended and Restated Operating Agreement for Platinum Management is attached hereto as **Exhibit 5.**

225. In addition to being the general partner of PPVA at all relevant times, Platinum Management managed several other funds, including PPCO and Platinum Partners Liquid Opportunities Fund L.P. ("**PPLO**").

226. The founders and, at certain times, owners of Platinum Management included Nordlicht, Huberfeld and Bodner and various trusts and entities for which they held a direct or indirect beneficial interest.

227. Landesman and Fuchs were also managers of and holders of membership interests in Platinum Management.

228. Upon information and belief, Levy held membership interests in Platinum Management.

229. Platinum Management and the individual Platinum Defendants operated out of various locations in New York, New York. From 2012 until the date of the Indictment (defined

below), the office of Platinum Management and the Platinum Defendants was located at 250 West 55th Street, 14th Floor, New York, NY 10019.

230. Section 2.02 of the PPVA Partnership Agreement provides that "the management of the Partnership shall be vested exclusively in the General Partner" *i.e.*, Platinum Management.

231. According to Section 1.06 of the PPVA Partnership Agreement, the "Purposes of the Partnership" are "realizing capital appreciation by investing and trading in U.S. and non-U.S. Securities . . . and to engage in all activities and transactions as the General Partner [Platinum Management] may deem necessary or advisable in connection therewith, including, without limitation:"

> (i) to invest on margin, to engage in short sales and option writing, to enter into repurchase agreements and reverse repurchase agreements or to engage in such other investment techniques as the General Partner believes to be appropriate;
>
> (ii) to purchase, hold, sell, exchange, transfer and otherwise acquire and dispose of and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Securities and other property, funds or rights held or owned by the Partnership including, without limitation, such property, funds or rights which constitute non-traditional investment instruments;
>
> (iii) to allocate and invest discrete segments of the Partnership's assets to entities managed by others ("Portfolio Entities") and, pursuant to agreements granting trading authority over the segments of the Partnership's assets, to investment managers selected by the General Partner ("Managed Accounts"); provided, that the General Partner shall be responsible for monitoring the trading activities of the Partnership, the Portfolio Entities and the Managed Accounts;
>
> (iv) to borrow or raise moneys, and to issue, accept, endorse and execute promissory notes and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of such or other obligations of the Partnership by hypothecation or pledge of all or part of the property of the Partnership, whether at the time owned or thereafter acquired;
>
> (v) to engage personnel, including Affiliates (as defined in Section 2.05) of the General Partner, whether part-time or full-time, and do such other acts as the General Partner may deem necessary or advisable in connection with the maintenance and administration of the Partnership; and

(vi) to engage attorneys, independent accountants, consultants, investment managers, investment advisors, traders or such other persons as the General Partner may deem necessary or advisable.

232. As General Partner, Platinum Management was responsible for allocating Net Capital Appreciation and Net Capital Depreciation to the accounts of all partners, and for calculating PPVA's NAV. *See* PPVA Partnership Agreement at Sections 3.05, 3.06.

233. Although the PPVA Partnership Agreement made Platinum Management responsible for calculating PPVA's NAV, it provided criteria as to how NAV must be calculated:

(i) *Listed Securities*. Freely marketable Securities listed or admitted to trading on any U.S. or non-U.S. stock exchange or the U.S. NASDAQ National Market System or comparable non-U.S. market system ("NMS") shall be valued (A) at the last reported sale price of the Security on the primary stock exchange or the NMS, as the case may be, on the date of determination, or in case there shall have been no sale of such security on such date, then (B) at the mean between representative "bid" and "asked" prices for such security on such exchange or the NMS at the close of business on the date of determination, or if no such "bid" and "asked" prices are reported on such date, then (C) at the last reported sale or mean between representative "bid and "asked" price within the five-day period preceding such date; or, if neither such last sale price nor "bid" and "asked" prices are reported during such period, then (D) at such price as the General Partner deems to be fair market value.

(ii) *Unlisted Securities*. Freely marketable Securities traded over-the-counter or on another dealer market shall be valued (A) at the "last sale" price as reported by the National Association of Securities Dealers Automated Quotation System ("NASDAQ") or other primary U.S. or non-U.S. quotation system as of the date of determination or, if no such price is reported for such date, then (B) at the mean between representative "bid" and "asked" prices at the close of business on the date of determination, as reported in NASDAQ or such other system (or, if not so reported, then as reported by a recognized quotation service); or, if no such price is reported on such date, then (C) at the "last sale" or mean between representative "bid" and "asked" prices so reported within the five-day period preceding such date; or, if neither such "last sale" price nor such "bid" and "asked" prices are reported during such period, then (D) at such price as the General Partner deems to be fair market value.

(iii) *Restricted Securities*. All Securities which are not freely marketable by reason of legal restrictions ("Restricted Securities"), if readily and immediately convertible into or exercisable for freely marketable Securities, shall be valued on the basis applicable to such underlying Securities, reduced by the applicable conversion or exercise price, as the case may be, and all other Restricted Securities will be valued at their fair value, on the basis of the last representative sale price of similarly restricted Securities, or if no such sale price is available, then at such price as the General Partner deems to be fair value.

(iv) *Short Positions*. Securities held short by the Partnership will be valued as respectively provided in (i), (ii) or (iii) hereof, as applicable. The value of Securities held short by the Partnership shall be treated as a liability of the Partnership and, together with the amount of any margin or other loans on account thereof, shall be subtracted from the Partnership's assets in determining net assets of the Partnership.

(v) *Options*. Options for the purchase or sale of Securities will be valued as respectively provided in (i), (ii), (iii) or (iv) hereof, as applicable, except that options listed on an exchange will in any event be valued at the mean between the representative "bid" and "asked" prices at the close of business on the date of determination. Premiums from the sale of options written by the Partnership shall be included in the assets of the Partnership and the market value of such options shall be included as a liability of the Partnership.

(vi) *Dividends*. Dividends declared but not yet received, and rights in respect of Securities which are quoted ex-dividend or ex-rights, shall be included at the fair value thereof, less any applicable taxes thereon, as determined by the General Partner, which may, but need not, be the fair market value so determined on the day the particular Securities are first quoted ex-dividend or ex-rights.

(vii) *Commodity Interests*. Positions in commodities, commodity futures contracts, options on such futures contracts or other interests in commodities traded on an exchange, through a clearing firm or a bank or other financial institution shall be valued at their most recent settlement price, or closing market quotation, as appropriate, on the applicable exchange or with such firm or institution on the applicable determination date. If such contract cannot be liquidated, due to the operation of daily limits or otherwise, as of such determination date, the liquidating value on the first subsequent day on which the contract would be liquidated may be used or such other value as the General Partner may deem fair and reasonable.

(viii) *Cash Items*. Short-term money market instruments and bank deposits shall be valued at cost (together with accrued and unpaid interest) or market, depending on the type of investment, as the General Partner shall deem appropriate.

(ix) *Assets Allocated to Portfolio Managers*. All assets of the Partnership that are allocated to an independent portfolio manager (through a Portfolio Entity or Managed Account) for management shall be valued by the portfolio manager at their market value.

(x) *Other Assets*. The value of any other assets of the Partnership (or the value of the assets mentioned in this subsection (a) in situations not covered thereby, or in the event of any other happening determined by the General Partner in its discretion to make another method of valuation advisable) shall be their fair value, determined in such manner as may be selected from time to time by the General Partner in its discretion. All values assigned to assets by the General Partner pursuant to this Article III shall be final and conclusive as to all of the Partners.

See PPVA Partnership Agreement at Section 3.06.

234. PPVA was required to reimburse Platinum Management for any expenses it incurred on its behalf in its capacity as General Manager, including overhead/salaries. *See* PPVA Partnership Agreement at Section 2.09.

235. The partners of PPVA, including Platinum Management, also were entitled to distributions from their capital accounts as determined by the General Partner, Platinum Management. *See* PPVA Partnership Agreement at Article 4.

236. Platinum Management, PPVA and the Feeder Funds also were parties to that certain investment management agreement initially dated as of March 9, 2007 (as at any time amended and restated, the "**Investment Management Agreement**"). In addition to any fees and capital amounts due to it as General Partner, Platinum Management charged PPVA certain management and incentive fees in its capacity as investment manager, calculated using as their base the NAV of the realized and unrealized value of PPVA's assets. *Id.*

237. Between January 1, 2013 and August 23, 2016, PPVA paid the Platinum Defendants, either directly or indirectly, distributions and/or fees totaling at least $95,112,245.00, based on the Platinum Defendants' calculation of PPVA's purported net asset value.

C. Platinum Defendants' Valuation and Risk Assessment Process and Representations Concerning Investments and NAV

238. At all relevant times, Platinum Management maintained a valuation committee and a risk committee to assess the value of and risk associated with PPVA's investments.

239. The members of the valuation and risk committees shifted over time as personnel changes occurred.

240. Nordlicht and SanFilippo were members of the valuation committee throughout the relevant period. Landesman was a member of the valuation committee until he resigned as President of Platinum Management in April 2015. Levy, Steinberg and Manela also were

members of the valuation committee.

241. Nordlicht and Ottensoser were members of the risk committee. Landesman was a member of the risk committee until he resigned as President of Platinum Management in April 2015. Steinberg was a member of the risk committee and later became co-chief risk officer.

242. The portfolio managers, such as Small, Beren, Levy and Steinberg also contributed to valuation and risk determinations.

243. On information and belief, Huberfeld, Bodner and Fuchs also had input into determinations as to the value of and risk associated with PPVA's investments.

244. In addition to the valuation and risk committees, which met periodically, SanFilippo, Nordlicht and other Platinum Management staff routinely communicated valuation information to PPVA's external fund administrator, SS&C Technologies, Inc., which, in turn would use that information to perform the calculations necessary to prepare PPVA's monthly NAV statements.

245. During the period from 2012 through 2015, the Platinum Defendants reported to PPVA that it had annualized returns of 11.58% (2012) to 8.76% (2015), with the lowest annualized return during that time period being 7.11% for FY 2013. *See* Platinum Management's March 2016 Tear Sheet for PPVA, a true and correct copy of which is attached as **Exhibit 6**.

246. PPVA further reported to PPVA that PPVA had a return of 2.6% for the first three months of 2016, and a cumulative return since PPVA's inception of 687.40%. *Id.*

247. The Platinum Defendants represented to PPVA that the value of PPVA's assets under management had increased steadily from $688 million on January 1, 2012 to $789 million as of October 1, 2015. *See* September 2015 Due Diligence Questionnaire ("**DDQ**"), a true and correct copy of which is attached as **Exhibit 7**.

248. The Platinum Defendants paid themselves distributions, fees and other compensation based on these reported financial results.

249. The Platinum Defendants were required to manage PPVA as a liquid fund.

250. The PPMs for the Feeder Funds, consistent with their respective limited partnership agreements and governing articles, set out a fixed, orderly redemption process for all investors: quarterly redemptions, upon 60 or 90 days' advance notice (depending on the version of the PPM), with the fund "intend[ing] to pay" to the investor at least 90% of the amount requested within 30 days, with the remaining 10% potentially held back for completion of the fund's audit. A true and correct copy of a November 2012 PPM for the Offshore Feeder Fund is attached hereto as **Exhibit 8**.

251. The Platinum Defendants represented to PPVA that PPVA's investments would be and were allocated across a variety of different investment strategies, including short-term relative value, event-driven, and asset-based finance. *See* September 2015 Due Diligence Questionnaire.

252. A December 2015 Presentation created by the Platinum Defendants stated that the Platinum Defendants would cause PPVA to target "30% risk allocation to short term trading and relative value strategies, 30% to event driven strategies and 40% to asset based finance strategies." A true and correct copy of the December 2015 Presentation is attached hereto as **Exhibit 9**.

253. The September 2015 DDQ stated, in part:

> How long does it take to exit the most liquid positions in the portfolio?
>
> The Fund's most liquid positions could, under normal market conditions, typically be liquidated in less than a week, including assets in the Energy and Power Arbitrage, Long/Short Fundamental Equity, Event Driven, Quantitative and Asia Based Arbitrage strategies.

See September 2015 DDQ at p. 17.

254. According to the Platinum Defendants' representations, investments in the listed liquid investment strategies represented as much as 61% of PPVA's portfolio. *See* March 2016 Tear Sheet at p. 2.

255. As the general partner and/or the persons or entities who exercised day-to-day management over PPVA, its subsidiaries and its assets, the Platinum Defendants had fiduciary duties of due care and loyalty to PPVA and were obligated to manage and operate PPVA in good faith, in accordance with its operating documents. Those fiduciary duties included investing PPVA's assets in accordance with PPVA's investment parameters, assessing the net value of its assets at their market or fair value (depending on the asset), maintaining adequate liquidity, not acting in their own interests to the detriment of the interests of PPVA, not paying themselves unearned fees and stripping or causing liens to be placed on PPVA assets for the benefit of themselves, the Beechwood Defendants, PPCO and other "friends and family."

256. Instead, the Platinum Defendants reneged on their obligations and breached their duties of due care and loyalty to PPVA, and acted in bad faith and with blatant disregard for the terms of PPVA's operating documents.

257. The Beechwood Defendants, together with Defendants Katz, Gerszberg, Cassidy, the BEOF Funds and the Preferred Investors of the BEOF Funds, among others, materially and knowingly aided and abetted the Platinum Defendants' breach of their fiduciary duties to PPVA.

D. The Collapse and Liquidation of PPVA

258. By December 2015, cash redemption payments to PPVA's investors had ceased, with the notable exception of select redemption payments to insiders of Platinum Management and the Defendants.

259. During the first six months of 2016, PPVA's financial condition continued to worsen. PPVA was unable to comply with its ongoing obligations to its investments, which caused the value of those investments to deteriorate significantly. It also faced numerous demands and lawsuits from creditors.

260. For example, on January 8, 2016, Levy received an email from the operator of Desert Hawk Gold Corp. ("**Desert Hawk**") – a gold mining operation and a company in which a PPVA subsidiary had invested – claiming that Desert Hawk was "an absolute living hell … It is not possible to run … without proper capitalization." A true and correct copy of the January 8, 2016 Desert Hawk email is attached hereto as **Exhibit 10**.

261. On February 18, 2016, a Desert Hawk representative emailed Levy that the company could not complete its audit because of insufficient funding. A true and correct copy of the February 18, 2016 Desert Hawk email is attached hereto as **Exhibit 11.**

262. Likewise, PPVA repeatedly failed to meet its lending obligations to Urigen Pharmaceuticals, Inc. ("**Urigen**"), a pharmaceutical startup in which it had invested.

263. In a series of emails from March 29-April 1, 2016, the president of Urigen informed Nordlicht and Levy that, as a result of PPVA's failure to provide the agreed-upon financing, Urigen had missed payroll and monthly overhead and had failed to pay creditors. True and correct copies of the Urigen emails are attached hereto as **Exhibit 12.**

264. Similarly, on June 15-22, 2016, a Platinum Management representative exchanged a series of email with a representative of Golden Gate Oil (an investment marketed at various times as worth more than $100 million according to the Platinum Defendants), whereby Golden Gate Oil complained that, due to PPVA's inability to fund working capital, Golden Gate Oil was unable to meet payroll expenses for the second month in a row. True and correct copies of the

Golden Gate Oil emails are attached hereto as **Exhibit 13.**

265. PPVA's financial distress was exacerbated by the events of June 2016, which culminated in the commencement of the Cayman Liquidation.

266. On June 8, 2016, the United States Attorney's Office for the Southern District of New York filed criminal charges against Huberfeld in connection with a bribery scheme by which Huberfeld used PPVA funds to pay kickbacks to a New York City Correction Officer's Union official (the "**Huberfeld Arrest**").

267. On June 14, 2016, Nordlicht announced on an investor call that Platinum Management had decided that PPVA would stop taking in new investors and all PPVA investments would be unwound and liquidated. Attached hereto as **Exhibit 14** is a true and correct copy of Nordlicht's June 30, 2016 letter to investors, confirming the suspension of NAV reporting for PPVA and the Feeder Funds.

268. Following Nordlicht's announcement that PPVA would be liquidated, PPVA's brokerage firms began to declare events of default, made margin calls, demanded additional collateral, and sought the immediate unwinding of their relationships with PPVA.

269. On or about June 22, 2016, the Federal Bureau of Investigation executed a search warrant at Platinum Management's offices in connection with a broad, multi-agency federal investigation of PPVA's business practices (the "**Search Warrant**").

270. On July 8, 2016, when PPVA was facing margin calls by its securities transaction counterparties, PPVA had less than $100 cash on hand. Attached as **Exhibit 15** is a true and copy

of an email from Mark Nordlicht containing Platinum Management's July 8, 2016 cash report for PPVA.

271. On July 28, 2016, Parris Investment Limited, an investor in the Offshore Funds, filed an involuntary petition against the Offshore Feeder Fund in the Grand Court of the Cayman Islands (the "**Grand Court**"), seeking commencement of an involuntary liquidation proceeding and appointment of the JOLs' predecessors as joint official liquidators for the Offshore Feeder Fund.

272. On August 23, 2016, the Grand Court entered a winding up order, commencing the liquidation of the Offshore Feeder Fund and appointing Christopher Kennedy and Matthew Wright as joint official liquidators.

273. On August 23, 2016, Platinum Management, as general partner of PPVA, filed a voluntary petition seeking the liquidation of PPVA and the appointment of Christopher Kennedy and Matthew Wright as joint provisional liquidators (the "**Cayman Petition**"). A true and correct copy of the Cayman Petition is attached hereto as **Exhibit 16.**

274. Accompanying the Cayman Petition was the August 23, 2016 Second Affidavit of Mark Nordlicht (the "**Nordlicht Affidavit**"). A true and correct copy of the Nordlicht Affidavit is attached hereto as **Exhibit 17.**

275. In the Nordlicht Affidavit, Nordlicht states that the value of PPVA's assets as of August 23, 2016 is approximately $1.1 billion, provided that PPVA was able to wind down its operations in the ordinary course of business pursuant to a proposed restructuring plan. *See* Nordlicht Affidavit at ¶ 33.

276. On August 25, 2016, the Grand Court entered an order (the "**August 25, 2016 Order**") directing the provisional liquidation of PPVA and appointing Matthew Wright and

Christopher Kennedy as its joint provisional liquidators (the "**Cayman Liquidation**"). A true and correct copy of the August 25, 2016 Order is attached hereto as **Exhibit 18.**

277. After their appointment as liquidators for PPVA, Messrs. Wright and Kennedy began learning that Nordlicht's assertions as to the value of PPVA's assets were false and that there would be insufficient funds coming in from PPVA's investments to fund the restructuring plan proposed in the Nordlicht Affidavit.

278. Messrs. Wright and Kennedy also learned that significant claims would be made against PPVA in connection with the Black Elk Scheme and the acts of the Platinum Defendants and Beechwood Defendants, but did not have full access to PPVA's documents and records, so as to learn the extent of the schemes, until the Spring of 2018.

279. On October 26, 2016, the litigation trustee for the Black Elk bankruptcy estate (the "Black Elk Trustee") filed an adversary complaint against, among others, PPVA, seeking recovery of more than $90 million in fraudulent transfers in connection with the Black Elk Scheme and other relief, in a case styled, *Schmidt v. Platinum Partners Value Arbitrage Fund LP et al.*, Adv. No. 16-03237, pending in the United States Bankruptcy Court for the Southern District of Texas (the "**Black Elk Adversary Complaint**").

280. On October 18, 2016, the predecessors of the JOLs filed petitions and accompanying Declarations of Christopher Kennedy (respectively, the "**Chapter 15 Petitions**" and "**Kennedy Chapter 15 Declarations**") seeking recognition of the Cayman liquidations of PPVA and the Offshore Feeder Fund as foreign main proceedings and the JOLs as foreign representatives and certain other relief under chapter 15 of the Bankruptcy Code (the "**Chapter 15 Bankruptcy**") in the United States Bankruptcy Court for the Southern District of New York, jointly administered as Case No. 16-12925 (the "**Chapter 15 Court**").

281. On October 27, 2016, the Grand Court entered an order directing that PPVA's Cayman Liquidation be converted to an official liquidation and, after determining that PPVA and the Offshore Feeder Fund should not share the same liquidators, appointing Messrs. Wright and Kennedy as Interim Joint Official Liquidators until a final hearing in December 2016 (the "**October 27, 2016 Order**"). A true and correct copy of the October 27, 2016 Order is attached hereto as **Exhibit 19**.

282. On November 23, 2016, the Chapter 15 Court entered an order recognizing the Cayman Liquidation and Messrs. Kennedy and Wright as a foreign main proceeding, and as foreign representatives, respectively, pursuant to 11 U.S.C. 1501 *et seq.* (the "**Chapter 15 Recognition Order**"). A true and correct copy of the Chapter 15 Recognition Order is attached hereto as **Exhibit 20**.

283. On December 16, 2016, the Grand Court entered an order appointing Messrs. Wright and Kennedy as Joint Official Liquidators of PPVA the (the "**December 16, 2016 Order**"). A true and correct copy of the December 16, 2016 Order is attached hereto as **Exhibit 21**. In connection with their appointment as Joint Official Liquidators, Messrs. Wright and Kennedy resigned as liquidators of the Offshore Feeder Fund.

284. Martin Trott and Christopher Smith are the current Joint Official Liquidators of PPVA. Attached hereto as **Exhibit 22** are true and correct copies of Orders entered by the Grand Court reflecting: (i) the September 29, 2017 appointment of Martin Trott and corresponding release of Matthew Wright as a Joint Official Liquidator; and (ii) the July 6, 2018 appointment

of Christopher Smith and corresponding release of Christopher Kennedy as a Joint Official Liquidator.

285. On December 19, 2016, a Grand Jury for the Eastern District of New York returned a criminal indictment, pending as Case No. 16-cr-00640, against, among others, Nordlicht, Levy, Landesman and Small, stating charges including Securities Fraud, Investment Advisor Fraud and Wire Fraud (the "**Indictment**").

286. On December 19, 2016, the Securities and Exchange Commission filed a parallel civil action against, among others, Nordlicht, Levy, Small, Landesman and Platinum Management (the "**SEC Action**"), in the United States District Court for the Eastern District of New York as Case No. 16-cv-06848, alleging civil damages for violations of, among other things, the Investment Advisors Act of 1940, 15 U.S.C.§ 80b-1 *et seq.*, the Securities Act of 1933, 15 U.S.C. § 77a *et seq*. and the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq*. A true and correct copy of the December 19, 2016 civil complaint filed by the Securities and Exchange Commission is attached hereto as **Exhibit 23**.

287. Since their appointment, the JOLs have continued their investigation into the assets and liabilities of PPVA, and have been engaged in the process of liquidating PPVA's assets.

288. Among other things, as of the date of this complaint, the JOLs have realized $73,719,174 in connection with the liquidation of PPVA and its subsidiaries, and estimate that the gross, total realization in connection with PPVA's assets will be between $75,719,174 and $88,294,174, less encumbrances, claims, fees and litigation claims to the recovery – at the subsidiary level – and not including any amounts recovered as a result of litigation against third parties commenced by the JOLs.

289. The aggregate amount of proofs of debt filed in the Cayman Liquidation is $1,156,949,339, with at least $132,000,000 of such debt being on account of purported secured creditors.

290. The aggregate amount of proofs of debt filed in the Cayman Liquidation by parties affiliated with Beechwood is $79,146,350.64.

291. On November 20, 2018, the Grand Court entered an Order permitting the JOLs to file this complaint against the Defendants ("**Sanction Order**").

E. Concentration in Illiquid Investments

292. By about the end of 2012, the Platinum Defendants' statements to PPVA concerning the amount of and purported growth in PPVA's NAV, as well as their claims regarding the allocation of PPVA's investments and the liquidity thereof were false.

293. Notwithstanding the representations made to PPVA, the Platinum Defendants had concentrated PPVA's investments in certain highly illiquid investments, including equity and debt positions in start-up companies, many of which were not publicly traded.

294. As of December 31, 2012, approximately 37-43% of PPVA's reported NAV consisted of its investments in Black Elk and Golden Gate Oil. A true and correct copy of selected portions of the 2012 4th Quarter Valuation Report commissioned by Platinum Defendants and prepared by Sterling Valuation Group, Inc. is attached hereto as **Exhibit 24.**

295. Under the terms of the PPVA Partnership Agreement, the value of assets of the partnership for which a valuation method was not prescribed or where the Platinum Management believed other methods were advisable, was to be their "fair value" as determined in Platinum Management's discretion. *See* PPVA Partnership Agreement at Section 3.06(x).

296. PPVA's PPMs required that the Platinum Defendants exercise their discretion in determining net asset value so that the results represent "fair value." *See* November 2012 PPM for the Offshore Feeder Fund.

297. The Platinum Defendants stated in its DDQs that valuations of PPVA's assets were verified and finalized by an internal valuation committee. *See* September 2015 DDQ, at p. 26.

298. The Platinum Defendants, however, routinely engaged in the practice of adjusting NAV subsequent to valuation committee meetings, in order to continue the illusion of a steadily increasing NAV, in order to award themselves fees. For example, attached as **Exhibit 25** is a true and correct copy of a January 21-22, 2015 email exchange among Platinum Management employees discussing Nordlicht's readjustment of NAV subsequent to a valuation committee meeting.

F. Misrepresentation of PPVA's NAV in the Wake of the Black Elk Explosion

299. As of the fourth quarter of 2012, PPVA's investment in Black Elk was its single biggest position.

300. As noted above, the Black Elk Explosion occurred in November 2012. The Black Elk Explosion caused the deaths of Black Elk employees and a serious devaluation in PPVA's investment in Black Elk.

301. In the wake of the Black Elk Explosion, Black Elk faced increasing liquidity problems throughout 2013.

302. Nevertheless, the Platinum Defendants actually increased their valuation of PPVA's investment in Black Elk during this same period.

303. At the time of the Black Elk Explosion, approximately 40% of PPVA's total portfolio was worth significantly less than reported to PPVA by the Platinum Defendants, and

the remaining "assets" were speculative and early-stage investments that would have required significant capital unavailable to PPVA for any hope of profitability.

304. Instead of winding down in the face of these events, the Defendants conceived and executed the First Scheme and then the Second Scheme to award fees to Platinum Defendants and eventually to strip PPVA of its remaining valuable assets.

305. Keeping a substantial majority of PPVA's assets concentrated in illiquid positions, most of them categorized for accounting purposes as "Level 3" assets[3] that were not publicly traded and for which there were no readily available market prices, enabled the Platinum Defendants to retain control over how those assets would be valued for purposes of determining PPVA's NAV.

306. The Platinum Defendants' control over the valuation of PPVA's illiquid positions in turn enabled them to ensure that PPVA's performance, which was largely composed of unrealized gains, steadily increased, thereby ensuring that there would always be distributions and fees due to Platinum Management and its members, Nordlicht, Bodner, Huberfeld, Landesman, Fuchs and Levy, and bonuses due and payable to the individuals, such as David Levy, Dan Small, David Steinberg, Ezra Beren and others whose compensation was directly tied to such increases.

307. The lack of liquidity in PPVA's investments as well as the misrepresented NAV created problems when investors sought to redeem their investments on the short timeline provided for in the PPMs and the applicable limited partnership agreements, and when the Platinum Defendants sought to pay themselves.

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[3] Level 3 assets are assets whose fair value cannot be determined by using observable inputs or measures, such as market prices or models. Level 3 assets are typically very illiquid, and fair values can only be calculated using estimates or risk-adjusted value ranges.

308. Despite the financial reports and the PPMs representing PPVA as a liquid fund, the Platinum Defendants routinely relied upon funds invested by new investors in order to pay redemptions, as a significant amount of PPVA's assets were concentrated in illiquid "Level 3" assets that were grossly overvalued by the Platinum Defendants and did not provide PPVA with a source of liquidity.

G. <u>Misrepresentation of Value for Golden Gate Oil</u>

309. An example of the Platinum Defendants misrepresenting the value of PPVA's assets concerns PPVA's debt and equity position in Golden Gate Oil.

310. At the end of 2012, PPVA held 48% of the equity in Golden Gate via a wholly owned subsidiary, Precious Capital LLC ("**Precious Capital**"). *See* Exhibit 24 at pp. 143-146.

311. Precious Capital also had extended a working capital loan to Golden Gate that was secured by all of Golden Gate's assets (the "**Golden Gate Oil Loan**"). At the end of 2012, the principal and interest outstanding on the Golden Gate Oil Loan totaled $12,893,000. *See id.*

312. At the end of 2012, the Platinum Defendants valued PPVA's 48% equity investment in Golden Gate Oil at $37 million, which implied a total value for the company of approximately $78 million, and valued the Golden Gate Oil Loan at par. *Id*.

313. One year later, the Platinum Defendants reported that the value of PPVA's 48% investment in Golden Gate Oil had risen sharply, to as much as <u>$173 million</u>. The Platinum Defendants once again valued the Golden Gate Oil Loan, which by then had grown to $24,392,489, at par. True and correct copies of selected portions of Sterling Valuation's 4th Quarter 2013 Valuation Report are attached hereto as **<u>Exhibit 26</u>**.

314. The Golden Gate Oil equity interests and Golden Gate Oil Loan constituted approximately 19% of PPVA's reported NAV as of the end of 2013, and other than Black Elk was one of PPVA's largest investments.

315. The value ascribed to PPVA's investment in Golden Gate Oil by the Platinum Defendants, including the value of the Golden Gate Oil Loan, was significantly inflated.

316. Golden Gate's first stage of operations involved the drilling of seven wells (the "**Golden Gate Oil Wells**"), but it encountered large drilling cost overruns, as well as delays in obtaining needed permits.

317. As a result, Golden Gate Oil had utilized the $18 million borrowed from PPVA by the end of 2013.

318. More problematic than the delays and cost overruns was the fact that the Golden Gate Oil Wells that eventually were completed produced mostly water and many were shut in *(i.e.,* not producing).

319. During 2013, the revenue realized from the only consistently-producing Golden Gate Oil Well was less than 10% of initial projections.

320. As a result, far from generating the millions in present cash flow that had been expected to pay for future drilling, Golden Gate Oil suffered $6 million in *net losses* in 2013.

321. The Platinum Defendants did not disclose any of this information in its valuation reports when valuing PPVA's investment in Golden Gate Oil.

322. In November 2013, Black Elk reported in a public filing that it had obtained an option to purchase all membership interests in Golden Gate Oil for $60 million. True and correct copies of the relevant pages from the Form 10-Q filed with the Securities and Exchange Commission by Black Elk are attached hereto as **<u>Exhibit 27</u>**.

323. This disclosure demonstrated that the value the Platinum Defendants placed on Golden Gate Oil was inflated.

324. On May 23, 2014, Ari Hirt, a Platinum Management portfolio manager for Golden Gate Oil, told Nordlicht, Levy, Saks and Steinberg that a potential third-party lender had brought up Black Elk's SEC filing, saying "the issue is that it publicly discloses the value of the option and therefore pegs GGO [Golden Gate Oil]'s value to $60M. This is ultimately a marketing issue that could be dealt with but something we should all be aware of." A true and correct copy of this May 23, 2014 email is attached hereto as **Exhibit 28**.

325. Internal emails indicate that Nordlicht and the other Platinum Defendants were well aware that the values ascribed to Golden Gate Oil were inflated as early as 2012.

326. For example, in early 2012, Nordlicht scoffed at his portfolio manager's optimistic projections concerning Golden Gate Oil's performance: "I cringe at the 1 billion PV-10 number [a measure of the present value of the oil reserves] as it doesn't mean anything . . . . when u have billion pv 10 on fields that are worth 15 [$15 million] in sale now, it doesn't really mean much..." A true and correct copy of this April 3, 2012 Nordlicht email is attached hereto as **Exhibit 29.**

327. Likewise, in late 2012, one of Platinum Management's project managers for Golden Gate Oil wrote to Nordlicht that once Golden Gate Oil, as a first step, had the first seven Golden Gate Oil Wells producing at its two fields, the value of Golden Gate Oil would rise to $45 million. A true and correct copy of this email is attached hereto as **Exhibit 30.**

328. Yet, at the end of 2013, when Golden Gate Oil's drilling program had fallen far short even of that goal and Golden Gate Oil was deeply in debt, the Platinum Defendants increased their valuation of PPVA's equity interest in Golden Gate Oil to $173 million.

329. The Platinum Defendants also continuously valued the Golden Gate Oil Loan at par, even though it appears that Golden Gate Oil never made a single interest payment to the holder of the debt during the entire period the Golden Gate Loan was outstanding.

H. Creation of Beechwood

330. In order to justify charging PPVA for increasing partnership distributions and other fees, the Platinum Defendants had to keep up the pretense that PPVA's NAV was steadily increasing.

331. As a corollary, the Platinum Defendants had to keep pace with ongoing requests for investor redemptions, or risk disclosure of the liquidity issues and true NAV of PPVA.

332. The Platinum Defendants had caused PPVA's assets to be invested in illiquid investments, however, which made this difficult.

333. Nordlicht, Huberfeld, Levy and Bodner, together with Feuer and Taylor, developed a scheme to create Beechwood as a way to generate capital in a new business venture that they could use for their personal benefit to, among other things, allocate to themselves an ever increasing share of PPVA assets.

334. The majority ownership in and ultimate control of Beechwood was in fact held by Nordlicht, Huberfeld, Bodner and Levy, while Taylor and Feuer maintained ostensible and nominal management authority, with Levy.

335. The Platinum Defendants established Beechwood while working out of Platinum Management's offices. The effort was coordinated by Nordlicht, Levy, Huberfeld, Taylor, Feuer and Bodner.

336. Beechwood's investment professionals were simply a revolving door of Platinum Management personnel, including Levy, Saks, Manela, Ottensoser, Beren, and others.

337. The Platinum Defendants and individual Beechwood Defendants used a portion of the funds entrusted to the Beechwood Entities to enrich themselves, as the Beechwood Entities provided Platinum Management with transaction partners that could be used to justify the First Scheme and PPVA's inflated NAV, while ultimately causing significant harm to PPVA.

338. The Beechwood Entities were conceived of and functioned as the alter ego of Platinum Management for this wrongful purpose.

339. David Bodner himself confirmed that Platinum Management and the Beechwood Entities are alter egos and that the connections between the entities were hidden from third parties in order to serve the purposes of the Platinum and Beechwood Defendants.

340. In a July 29, 2015 email that Bodner apparently asked his secretary to type and send to his personal email and which was sent two years after the framework for Beechwood was first conceived, Bodner expressed concern that a Beechwood client not discover that the funds it had entrusted to Beechwood for investment actually were invested in illiquid investments at PPVA, which did not fit the client's investment parameters.

341. In the same email, Bodner stated that he did not want the client to find out that the Beechwood Defendants "weren't exactly honest" about the fact that Beechwood and Platinum Management "really were integrated."

342. If this information came out, Bodner cautioned that the client might seek to pull all of its money out, which could result in Beechwood having to dissolve. A true and correct copy of this July 29, 2015 email is attached hereto as **Exhibit 31**.

343. The scheme began in about February 2013, when Bodner, Huberfeld, Nordlicht and Levy commenced working with Taylor and Feuer to create the Beechwood Entities.

344. By February 28, 2013, Levy and Nordlicht were advising Beechwood Capital and designating Taylor as Beechwood Capital's manager.

345. On February 26-28, 2013, writing from "beechwoodcapitalgroup.com" email domains, Taylor and Feuer, copying Levy at his Platinum Management email address, discussed the execution of an NDA between Beechwood Capital and Alpha Re Limited, another reinsurance

company. A true and correct copy of this February 26-28, 2013 email exchange is attached hereto as **Exhibit 32**.

346. On March 28, 2013, Steinberg sent an email to Huberfeld forwarding a list of wire transfers.[4] Included among them is a transfer by Platinum Management of $1,749,666.51 to Beechwood Capital, evidencing Platinum Management's initial investment in Beechwood and corresponding control thereof. A true and correct copy of this email is attached hereto as **Exhibit 33.**

347. On or around April 17, 2013, Taylor drafted a memorandum intended to provide Beechwood's captive managers with an overview of Beechwood's corporate structure (the "**Beechwood Overview Memorandum**"). A true and correct copy of a cover email from Taylor to Levy, attaching the Beechwood Overview Memorandum, is attached hereto as **Exhibit 34**.

348. On or about May 15, 2013, Levy executed initial due diligence documents for Beechwood Cayman as required by the Cayman Islands Monetary Authority. True and correct copies of April-May 2013 correspondence between Levy and Crystal O'Sullivan concerning the Beechwood questionnaire are attached hereto as **Exhibit 35**.

349. On or about May 30, 2013, Levy emailed Nordlicht a draft term sheet for Beechwood Cayman. A true and correct copy of this email together with the draft term sheet is attached hereto as **Exhibit 36**.

350. On or about May 31, 2013, Crystal O'Sullivan sent Levy an invoice for $25,000 for filing, licensing, legal, and administrative services in connection with the creation of the Beechwood Reinsurance Companies, so that Platinum Management could pay such fees on behalf of Beechwood. A true and correct copy of the cover email from Crystal O'Sullivan, together

[4] The list also appears to reflect investments connected to certain of the Preferred Investors of the BEOF Funds.

with the invoice, is attached hereto as **Exhibit 37**.

351. On June 4, 2013, Taylor emailed Levy under the subject "when you have a set of sample investment guidelines, please send them." The text of the email states "I am creating our Beechwood Re [Beechwood Cayman] 'document.'" A true and correct copy of this June 4, 2013 email is attached hereto as **Exhibit 38**.

352. On June 12, 2013, Taylor emailed Nordlicht, seeking Nordlicht's approval in regard to several potential "deal" opportunities for the Beechwood Reinsurance Companies. A true and correct copy of this June 12, 2013 email correspondence between Taylor and Nordlicht is attached hereto as **Exhibit 39**.

353. Also on June 12, 2013, Taylor sent Levy a general management and strategy document to assist Levy in drafting an unspecified "investment document." *See id.*

354. On June 16, 2013, Taylor emailed Levy a PowerPoint Presentation that he prepared entitled "Beechwood Re Investment Strategy & Guidelines Discussion Document" (the "**Beechwood Re Presentation**"). A true and correct copy of the June 16, 2013 cover email from Taylor to Levy, together with the attached Beechwood Re Presentation, is attached hereto as **Exhibit 40**.

355. The Beechwood Re Presentation identifies Levy as a key member of the management team, and touts his 8 years of experience with Platinum Management as a strategy for Beechwood's future success. *See id.* at 12. The presentation did not, however, indicate that Levy would continue to work at Platinum Management while working at Beechwood.

356. Platinum Management engaged the law firm of Bryan Cave LLP ("**Bryan Cave**") as outside counsel to assist in the creation of the Beechwood Entities. True and correct copies of emails dated June 20, 2013, between Andrew E. Auerbach of Bryan Cave, Levy and David

Ottensoser, discussing the opening of a new matter for creation of "Beechwood Re Investment LLC," are attached hereto as **Exhibit 41**. A true and correct copy of the Bryan Cave engagement letter, directed to "David Levy at Beechwood Re, c/o Platinum Partners," is attached hereto as **Exhibit 42**.

357. By July 3, 2013, Bryan Cave prepared the initial corporate documents, including an LLC agreement for Beechwood Reinvestment LLC and subscription documents for investment in the membership interests in that entity.

358. These documents were sent to the Platinum Defendants and used by them to grant Nordlicht, Bodner, Huberfeld and Levy majority ownership and control over Beechwood. A true and correct copy of an email from Laurel A. Durham of Bryan Cave to Levy and Ottensoser, attaching a draft of the Beechwood Reinvestment LLC Operating Agreement and subscription documents is attached hereto as **Exhibit 43**.

I. Structure and Ownership of Beechwood

359. As a result of the foregoing actions by the Platinum Defendants acting in concert with the Beechwood Defendants, by February 26, 2014, the Beechwood Reinsurance Companies were established and had received significant funds for investment from insurance investors, including SHIP.

360. The common stock of Beechwood Cayman was held by Beechwood Holdings.

361. Beechwood Holdings' equity, and the share capital of Beechwood Bermuda, was in turn owned by Feuer, Taylor, Levy, Nordlicht, Bodner and Huberfeld.

362. Nordlicht, Bodner and Huberfeld together owned nearly **70%** of the common stock in Beechwood Holdings and Beechwood Bermuda, and held their shares through Beechwood Trusts No. 1-19, in which each of their children were the beneficiaries.

363. Levy held his common stock in Beechwood Holdings and Beechwood Bermuda as the beneficiary of Beechwood Trust No. 20.

364. The Platinum Defendants and Beechwood Defendants also created BAM to manage and invest the assets obtained through reinsurance agreements with the Beechwood Reinsurance Companies.

365. Nordlicht, Bodner, Huberfeld and Levy owned a controlling interest in BAM.

366. To attract reinsurance business and also satisfy the requirements of regulators, Beechwood required a source of capital.

367. In the materials used to market the Beechwood Reinsurance Companies, the Beechwood Defendants indicated that they were capitalized with cash provided by Feuer, Taylor, Levy and certain investors.

368. For example, Levy, Feuer and Taylor created and showed potential clients an "Unaudited Balance Sheet September 1, 2013," which stated that the Beechwood Reinsurance Companies held assets totaling $114,801,585, including over $37 million in shares issued by a publicly traded company and over $10 million in "cash and cash equivalents," but no liabilities. A true and correct copy of the September 1, 2013 Balance Sheet is attached hereto as **Exhibit 44**.

369. Nordlicht, Huberfeld, Bodner, Levy, Feuer and Taylor caused the creation of another Delaware limited liability company, Beechwood Investments.

370. The managing member of Beechwood Investments was N Management LLC, an entity controlled by Nordlicht.

371. The other nine members of Beechwood Investments were denominated as Beechwood Re Investments, LLC Series A through Beechwood Re Investments, LLC Series I.

372. On information and belief, each Beechwood Series, in turn, was beneficially owned by Nordlicht, Bodner, Huberfeld, Levy and their families.

373. From the time they were formed and at all relevant times thereafter, Feuer was Chief Executive Officer and Taylor was President of the Beechwood Reinsurance Companies.

374. Levy served as BAM's Chief Financial Officer and Chief Investment Officer until the end of 2014, when he was replaced by Saks, another Platinum Management executive.

375. Narain became a senior executive of BAM no later than January 2016. On information and belief, Narain held ownership interests and/or control in certain of the Beechwood Entities.

376. At all relevant times, the management teams of the Beechwood Entities served and worked at the sole discretion of Beechwood's ultimate beneficial owners – Nordlicht, Bodner, Huberfeld and Levy -- and functioned as the alter ego of Platinum Management to PPVA's detriment.

377. The management team of the Beechwood Entities largely was comprised of personnel employed by or otherwise connected to Platinum Management.

378. For example, the Beechwood team included, from time to time, the following persons: (i) Levy, as "Chief Investment Officer"; (ii) Will Slota, as "Chief Operations Officer"; (iii) Paul Poteat, as "Chief Technology Officer"; (iv) David Ottensoser, as "General Counsel"; and (v) Daniel Small, as the "Senior Secured Collateralized Loans PM."

379. Although each of the foregoing persons had titles at Beechwood, they also were full-time officers or employees of Platinum Management.

380. During the following two years, additional Platinum Management employees also worked at Beechwood or otherwise directed the activities of the Beechwood Entities.

381. Stewart Kim, a former Platinum Management employee, was hired by Feuer and Taylor as the Beechwood Reinsurance Companies' Chief Risk Officer.

382. Beren, Huberfeld's son-in-law, was hired by Feuer and Taylor in January 2016 to be a portfolio manager at Beechwood after serving in a similar capacity at Platinum Management from 2011 through 2015.

383. After Levy left Beechwood to return to Platinum Management full time, Feuer and Taylor hired Saks to replace Levy as CIO and president of BAM

384. Manela and Eli Rakower, both employees of Platinum Management, provided extensive and regular consulting services to the Beechwood Entities while also employed by Platinum Management.

385. BAM and the other Beechwood Entities operated out of Platinum Management's office space until at least the end of February 2014.

386. Even after separate office space was set up, Nordlicht maintained an office at Beechwood through at least 2014, and Huberfeld took over Nordlicht's office at Beechwood when Nordlicht moved out.

J. Beechwood and the First Scheme

387. Immediately after the Beechwood Entities gained access to the first reinsurance trust assets, the Platinum Defendants and the individual Beechwood Defendants caused PPVA to enter into numerous non-commercial transactions with the Beechwood Entities and, in some cases, to co-invest with the Beechwood Entities in third-party companies.

388. The prices at which assets/loans were bought and sold were used to support the Platinum Defendants' valuations of the relevant equity, debt or investment.

389. These were not real market transactions in which prices are established as a result of arm's-length negotiations.

390. To the contrary, the transactions between and among the Beechwood Entities and their clients, on the one hand, and PPVA and its subsidiaries/affiliates on the other, were insider transactions, orchestrated by the Platinum Defendants and the Beechwood Defendants, including the Platinum Management executives that owned the Beechwood Entities, which transactions harmed PPVA.

391. The prices and the terms of these transactions were set without regard to the actual value of the underlying asset or the likelihood that principal or interest on a loan ever would be repaid, but rather to further the goal to enrich the Platinum Defendants and Beechwood by increasing the fees payable to Platinum Management and BAM (the "**First Scheme Transactions**")

392. In some cases the First Scheme Transactions were used to justify ever-increasing valuations of the underlying assets as reported by Platinum Management.

393. In other cases, the First Scheme Transactions were used to mask the performance failures at the underlying operating companies.

394. In all cases, the First Scheme Transactions were used as a basis to pay the Platinum Defendants unearned partnership shares and/or fees.

395. Platinum Defendants used First Scheme Transactions in which significant loans were extended/purchased or investments made by a "third party," *i.e.*, the Beechwood Entities, as evidence of the validity of the Platinum Defendants' "estimate" as to the true enterprise value of the underlying company.

396. These were insider transactions, however. Also, in most cases, any investment or loan made by the Beechwood Entities was backed by a guarantee from or a put right back to PPVA, and thus was not a valid basis upon which to assess the merits of the underlying business.

397. In other cases, PPVA's prior rights in collateral were made subordinate to the rights of the Beechwood Entities.

398. The Platinum and Beechwood Defendants damaged PPVA because they favored the rights of the Beechwood Entities – which were owned by Nordlicht, Huberfeld, Levy, Bodner, Feuer and Taylor – over those of PPVA, by causing PPVA to grant guarantees and put rights in favor of the Beechwood Entities, and to subordinate its rights in collateral in favor of the Beechwood Entities.

399. These inflated valuations enabled the Platinum Defendants to report to PPVA a steady rise in the NAV of the assets they managed, which in turn enabled the Platinum Defendants to pay themselves excessive partnership shares, investment management and performance fees, to the detriment of PPVA.

1. Golden Gate Oil

400. An example of a First Scheme Transaction used to artificially inflate the reported value of PPVA's investments is the sale of Precious Capital's interest in the Golden Gate Oil Loan to the Beechwood Entities.

401. Given Golden Gate Oil's ongoing operational issues, steep losses and the serious questions concerning the true value of its business, it would be difficult to find an arm's length lender willing to purchase its debt, and certainly not for anything close to par.

402. On February 3, 2014, Nordlicht sent an email to Platinum Management executives complaining about Golden Gate Oil's lack of performance and increased need for financing. A true and correct copy of Nordlicht's February 3, 2014 email is attached hereto as **Exhibit 45.**

403. On February 26, 2014, the Platinum Defendants and Beechwood Defendants caused BAM I, acting as agent for certain Beechwood reinsurance trusts, to purchase the Golden Gate Oil Loan from Precious Capital.

404. As of February 26, 2014, the total amount of principal and interest outstanding on the Golden Gate Oil Loan was in excess of $28 million.

405. The Platinum Defendants and Beechwood Defendants caused BAM Administrative, on behalf of its clients, to buy the Golden Gate Oil Loan at par. A copy of the February 26, 2014 Note Purchase Agreement by and among Precious Capital and BAM Administrative (the "**GGO Note Purchase Agreement**") is attached hereto as **Exhibit 46.**

406. This transaction provided the Platinum Defendants with a basis upon which to justify their valuation of that investment as reported to PPVA.

407. However, the GGO Note Purchase Agreement contained a hidden failsafe for the benefit of Beechwood.

408. The GGO Note Purchase Agreement specifically provided that BAM I could put the Golden Gate Oil Loan it had purchased to PPVA and that PPVA would guarantee payment of that debt in full (the "**GGO Put Option and Guaranty**"). *See* GGO Note Purchase Agreement at ¶ 8.

409. The Platinum Defendants and Beechwood Defendants used BAM I's purchase of the Golden Gate Oil Loan as a way to justify their then-current valuation of PPVA's investment in Golden Gate Oil, which had inexplicably risen from $37 million to $173 million during 2013, and to justify their management fees, but nevertheless left PPVA liable to pay the Beechwood Entities in the event that the underlying operating company failed to repay the Golden Gate Loan, which all parties knew would likely occur.

410. The GGO Put Option and Guaranty protected Beechwood's investment in Golden Gate Oil at the expense of PPVA.

2. PEDEVCO

411. During the following months, the Platinum Defendants and Beechwood Defendants caused PPVA and the Beechwood Entities to engage in a series of additional transactions whereby PPVA was required to subordinate, willfully and improperly, its interests to those of Beechwood.

412. By such transactions, the Platinum Defendants breached their fiduciary duties to PPVA, and such breaches were aided and abetted by the Beechwood Defendants.

413. Although the Platinum Defendants directed PPVA and its subsidiaries to enter into certain multi-party agreements with certain Beechwood Entities as co-lenders, the Platinum Defendants did not ensure that the interests of PPVA were protected.

414. Instead, the Platinum Defendants, with the assistance of the Beechwood Defendants, acted to protect the interests of the Beechwood Entities at the expense and to the detriment of the interests of PPVA.

415. For example, on March 7, 2014, Platinum Defendants, and Beechwood Defendants caused a subsidiary of PPVA – RJ Credit LLC ("**RJ Credit**") – as well as certain Beechwood Entities to purchase certain senior secured notes (the "**PEDEVCO Notes**") issued by PEDEVCO Corp. ("**PEDEVCO**"), a publicly traded oil and gas company based in Texas. A true and correct copy of the Note Purchase Agreement by which RJ Credit obtained its interest in PEDEVCO is attached hereto as **Exhibit 47**.

416. Under the terms of the PEDEVCO Notes, RJ Credit was the only lender obligated to make continuing loans to PEDEVCO, such that the Platinum Defendants and Beechwood Defendants favored the interests of the Beechwood Entities and its clients over PPVA with this transaction.

417. The PEDEVCO Notes held by PPVA's subsidiary were also subordinated in priority to those held by the Beechwood Entities and its clients such that no interest could be paid

on the PEDEVCO Notes held by RJ Credit unless and until all interest due to Beechwood's clients was paid in full.

418. In addition, no principal could be paid on the PEDEVCO Notes held by RJ Credit until all principal on the PEDEVCO Notes held by the Beechwood investors was paid in full.

419. In May 2016, the PEDEVCO Notes were restructured due to the falling price of oil and other operational issues that had caused a significant revenue shortfall at the company, as a result of which PEDEVCO was unable to pay interest on the notes and its other liabilities.

420. Beechwood Defendant Dhruv Narain caused certain affiliates of the Beechwood Entities to make a further investment in PEDEVCO. The monies invested by these affiliates of the Beechwood Entities in May 2016 were made senior in priority to the monies invested by certain Beechwood Entities in March 2014, however, further subordinating the PEDEVCO Notes held by RJ Credit.

421. Despite the fact that they were aware that the PEDEVCO Notes held by RJ Credit were now subordinated to two layers of financing and that, by spring 2016, PEDEVCO was unable to pay interest on its secured debt and that PEDEVCO's ability to pay the note and other liabilities was in significant doubt, the Platinum Defendants nevertheless claimed that the net asset value of PPVA indirect interests in PEDEVCO still were worth approximately $28 million.

422. The Beechwood Defendants had direct knowledge of this misrepresented valuation and participated in misleading PPVA as to the value of this asset.

3. Implant Sciences

423. Also in March 2014, the Platinum Defendants and Beechwood Defendants caused BAM Administrative, on behalf of its clients, to refinance $20 million of the revolving loan issued by PPVA's subsidiary, DMRJ Group, LLC ("**DMRJ**"), to Implant Sciences Corporation ("**IMSC**").

424. The revolving loan and certain existing term loans also held by DMRJ were secured by liens on and security interests in all of the assets of IMSC and its affiliates.

425. The Platinum Defendants could have arranged for IMSC to issue a new term note to Beechwood that would be *pari passu* with the existing IMSC debt held by DMRJ, as had been done previously when IMSC revolver debt was refinanced.

426. Instead the Platinum Defendants and Beechwood Defendants caused DMRJ to subordinate all of its liens on IMSC's assets, including the lien securing DMRJ's revolving loan to IMSC – even though that lien secured future loans to that company – to the liens securing repayment of BAM Administrative' s term loan. The intercreditor agreement between DMRJ and BAM Administrative also ceded to BAM I significant rights in the event of an IMSC bankruptcy, even though DMRJ held much larger loans to that company. A true and correct copy of the March 2014 Intercreditor Agreement by and between BAM Administrative and DMRJ is attached hereto as **Exhibit 48**.

K. Black Elk Scheme

427. The Platinum Defendants also conspired with the Beechwood Defendants, as well as the BEOF Funds and the Preferred Investors of the BEOF Funds, to help the Platinum Defendants and the Preferred Investors of the BEOF Funds cash out their investment in a rapidly deteriorating Black Elk ahead of the interests of PPVA. The Platinum Defendants returned the favor by causing PPVA to cash out the Beechwood Entities, leaving PPVA holding the bag.

428. As noted above, Black Elk was an oil and gas company headquartered in Houston, Texas. Most of its producing assets were located offshore in the Gulf of Mexico.

429. In 2009, the Platinum Defendants caused PPVA to acquire ownership of a majority of Black Elk's common equity in connection with a loan made to the company. The original loan

was repaid in December 2010, with a portion of the proceeds realized by Black Elk through the private placement of $150 million in 13.75% Senior Secured Notes.

430. In August 2011, Black Elk completed an exchange offer by which the original Black Elk 13.75% Senior Secured Notes were exchanged for new notes with substantially the same terms, except that the new notes were publicly listed and did not contain trading restrictions (the "**13.75% Senior Secured Notes**").

431. PPVA and/or its subsidiaries held a significant portion of the 13.75% Senior Secured Notes, while the remainder were publicly held.

432. The indenture governing the 13.75% Senior Secured Notes (the "**Indenture**") did not permit Black Elk to use the proceeds of an asset sale to make a dividend to or otherwise redeem its preferred equity. A true and correct copy of the Indenture is attached hereto as **Exhibit 49**.

433. The Black Elk Explosion occurred in November 2012.

434. The Platinum Defendants represented that, as of the end of 2012, PPVA's investment in Black Elk's common and preferred equity was worth between $208 to 286 million. *See* Exhibit 24.

435. PPVA's investment in Black Elk constituted approximately 35% of PPVA's total reported net asset value at the end of 2012 and was by far the largest position held by PPVA.

436. The Black Elk Explosion was followed by a series of investigations and litigation and a significant deterioration in Black Elk's financial condition and liquidity that worsened throughout 2013.

437. During the first quarter of 2013, the Platinum Defendants caused PPVA, via its subsidiary PPVA Black Elk (Equity) LLC, to buy $10 million of Series E preferred equity units and additional class B equity units, and to exchange class D preferred units that PPVA already

held for more Series E preferred equity from Black Elk. The agreements between Black Elk (Equity) LLC and Black Elk were signed by David Levy.

438. In addition, the Platinum Defendants set up the BEOF Funds. The BEOF Funds were not PPVA subsidiaries.

439. Rather the BEOF Funds were a standalone mechanism by which Platinum Management personnel, their family and friends, and certain preferred investors were offered the opportunity to invest in Black Elk "outside of the regular funds." *See, e.g.,* February 1, 2013 Email from Murray Huberfeld to Fabrice Harari of Twosons describing opportunity to invest in BEOF Funds, a true and correct copy of which is attached as **Exhibit 50**.

440. The key persons managing the BEOF Funds included Mark Nordlicht, Uri Landesman, Naftali Manela, David Levy and Daniel Small. In addition, Nordlicht, Fuchs, Huberfeld, Landesman and Bodner were heavily involved in marketing the investment to potential investors and were aware of and involved in the planning of all aspects of the transactions between and among the BEOF Funds and PPVA.

441. Twosons was one of the "important client[s] and good friend[s]" to which Murray Huberfeld pitched an investment in Black Elk via the BEOF Funds during the first quarter of 2013. A true and correct copy of a February 7, 2013 email from Huberfeld to Fabrice Harari, copying David Levy, is attached hereto as **Exhibit 51.** Others included Jules and Barbara Nordlicht, Mark Nordlicht's parents, and the Huberfeld Family Foundation, an investment vehicle related to Murray Huberfeld.

442. Collectively, the Preferred Investors of the BEOF Funds purchased an aggregate of $40 million of the Series E preferred equity pursuant to contribution agreements executed between Black Elk and BEOF I during the first quarter of 2013.

443. Daniel Small and David Levy each signed one or more contribution agreements between BEOF I and Black Elk on behalf of BEOF I.

444. The first round of BEOF Fund investment in Black Elk occurred during the first quarter of 2013, before the full extent of Black Elk's financial difficulties arising out of the Black Elk Explosion was fully known.

445. Nevertheless, the onerous terms of the series E preferred clearly indicate that Black Elk was having difficulty obtaining financing even as early as the beginning of 2013.

446. Pursuant to the Third Amendment to the Second Amended and Restated Operating Agreement of Black Elk, which is dated January 25, 2013 and which set the terms of the series E preferred equity, Black Elk was obligated to pay 20% interest per annum on that security through March 24, 2014, with such interest to be capitalized each quarter and added to the balance to the extent not distributed, plus additional class B shares. If the total principal and interest due with respect to the series E preferred equity was not repaid by March 24, 2014, interest would increase to *36% per annum*.

447. During 2013, Black Elk accrued significant unsecured liabilities in addition to its secured obligations, because it was not paying its trade creditors on a timely basis. As a result, Black Elk may even have been insolvent by the end of 2013.

448. The facts concerning Black Elk's deteriorating financial condition, were reported clearly and in detail by Black Elk in its public filings.

449. In addition, during 2013 the rating agencies downgraded Black Elk, first in June and then in September 2013. On June 7, 2013, Moody's downgraded Black Elk because of "the significant deterioration in [Black Elk's] liquidity position since the third quarter of 2012." On September 17, 2013, Reuters published an article titled "S&P cuts Black Elk Energy Offshore

rating to 'CCC+'," reporting a downgrade in both Black Elk's credit rating and Note rating. That article stated: "The outlook is negative" and explained its rationale that "[t]he rating on Black Elk reflects our view of its 'vulnerable' business risk and 'highly-leveraged' financial risk, incorporating the company's small reserve and production base, high operating costs, and acquisitive growth strategy."

450. Black Elk's second quarter 2013 10-Q, issued on August 14, 2013, discussed at length the legal effects of the Black Elk explosion and again showed that total liabilities exceeded total assets, accounts payable and accrued expenses growing to $160.1 million, a members deficit of $186.0 million, and acknowledged "restricted credit availability." Black Elk also reported that it was evaluating other credit sources, including Platinum.

451. Black Elk reported in its public filings that, as of December 31, 2013, entities affiliated with Platinum Management beneficially owned approximately 85% of its outstanding voting membership interests and approximately 66% of total outstanding membership interests. A true and correct copy of relevant pages from Black Elk's 10-K for FY 2013 is attached hereto as **Exhibit 52**.

452. As a result, Black Elk stated that "for as long as [the Platinum entities] hold a membership interest in us, Platinum has the ability to remove and appoint key personnel, including all of our managers, and to determine and control our company and management policies, our financing arrangements, the payment of dividends or other distributions, and the outcome of certain company transactions or other matters submitted to our members for approval, including potential mergers or acquisitions, asset sales and other significant corporate transactions. As a controlling member, Platinum could make decisions that may conflict with noteholders' interests." *Id.*

453. The Platinum Defendants aggressively exercised this power, through Nordlicht, as well as through Levy and Small who were the portfolio managers for Black Elk. However, the other individual Platinum Defendants, including Bodner, Huberfeld, Landesman, Manela, SanFilippo, Ottensoser, Steinberg, Beren and Fuchs were aware of and participated in the actions and transactions with respect to Black Elk and the Black Elk Scheme as set forth below.

454. Nordlicht, Levy and Small exercised this power by, *inter alia*, appointing a majority of Black Elk's Board of Managers, appointing Jeffrey Shulse ("**Shulse**") as CFO of Black Elk, repeatedly forcing the Black Elk CEO to rescind his firing of Shulse as CFO and otherwise usurping the CEO's authority. True and correct copies of a collection of these communications are attached hereto as **Exhibit 53.**

455. In early 2014, at the direction of the Platinum Defendants, Black Elk entered into negotiations to sell a significant portion of its prime assets (the "**Renaissance Sale**") to Renaissance Offshore, LLC ("**Renaissance**").

456. The Indenture required that unless the proceeds of such a sale were to be used to purchase replacement assets, Black Elk was required to use the sale proceeds to repay the holders of the 13.75% Senior Secured Notes, a significant portion of which were held by PPVA or its subsidiaries.

457. In addition to the 13.75% Senior Secured Notes that were held by PPVA and its affiliates, a significant number of such Notes were then held by public bondholders.

458. By 2014, Black Elk had tens of millions of unsecured debt in addition to the amounts it owed with respect to the 13.75% Senior Secured Notes.

459. If the proceeds of the Renaissance Sale were to be distributed to the bondholders, it was unlikely that there would be any recovery for holders of Black Elk's preferred and equity

interests, a substantial portion of which were held by the Preferred Investors of the BEOF Funds such as Twosons, Jules and Barbara Nordlicht, the Huberfeld Family Foundation and other friends and family of the Platinum Defendants.

460. On information and belief, at least certain of the investors in the BEOF Funds raised concerns as to the status of their investment by the beginning of 2014.

461. As a result, Platinum Management's statements concerning the value of PPVA's investment in Black Elk's equity would be exposed as a lie, and the Preferred Investors of the BEOF Funds would lose their investment.

462. The Platinum Defendants and Beechwood Defendants developed the Black Elk Scheme to divert the proceeds from the Renaissance Sale to redeem the series E preferred shares in Black Elk for the benefit of the Preferred Investors of the BEOF Funds and to hide Platinum Management's false valuations of the Black Elk equity.

463. An amendment to the Indenture governing the 13.75% Senior Secured Notes was needed to allow Black Elk to use the proceeds of the Renaissance Sale to redeem its series E preferred shares and accomplish their goal.

464. The Indenture required a majority vote of the holders of the 13.75% Senior Secured Notes to amend the Indenture.

465. While Platinum Management and affiliates controlled a significant portion of the 13.75% Senior Secured Notes by that time, they could not vote in favor of an amendment to the Indenture, because the consent solicitation (the "**Consent Solicitation**") specifically provided that "Notes owned by [Black Elk] or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with [Black Elk] shall be disregarded for purposes of determining the majority."

466. Therefore, the Platinum Defendants, led by Nordlicht, Levy and Small, needed to obtain the necessary consents in a manner that deceived independent noteholders.

467. To that end, Nordlicht, Landesman, Small, Levy and the other managers of the BEOF Funds, working with Huberfeld and Platinum Defendants, caused PPVA to transfer a portion of the 13.75% Senior Secured Notes it held to the BEOF Funds, partly in exchange for series E preferred equity held by the BEOF Funds.

468. The debt for equity swaps were made subsequent to a March 2014 offering by the BEOF Funds, by which investors were offered the opportunity to roll over their existing investment in the BEOF Funds and/or invest additional capital, which purportedly would be used to purchase 13.75% Senior Secured Notes from PPVA or its affiliates, the open market or from Black Elk in the event it issued additional Notes (none were issued).

469. The Preferred Investors of the Preferred Funds each agreed to participate in the March 2014 offering, either by rolling over their existing investment in the BEOF Funds (and thus in Black Elk) and/or by investing additional capital. For example, Twosons invested $10 million in connection with the March 2014 offering.

470. Given Black Elk's precarious financial condition, the Preferred Investors of the BEOF Funds clearly were aware of and agreed to participate in the March 2014 offering in order to aid Nordlicht, Levy, Small, Landesman, Manela and the other Platinum Defendants and the Beechwood Defendants in their scheme to ensure that those Preferred Investors would not lose their investment in Black Elk, with actual knowledge that Beechwood was affiliated with the Platinum Defendants.

471. The true purpose of the swaps was to create the appearance that independent entities, *i.e.*, the BEOF Funds, were the owners of the 13.75% Senior Secured Notes,

notwithstanding that the same people, including Nordlicht, Levy, Small, Landesman, Manela, Huberfeld, Bodner and SanFilippo, were managing both PPVA and the BEOF Funds.

472. Platinum Management thereafter caused PPVA to sell approximately $24.5 million worth of the 13.75% Senior Secured Notes to Beechwood Entities managed by BAM at prices solely designated by Nordlicht.

473. Levy and the other Beechwood Defendants also caused certain Beechwood Entities to purchase 13.75% Senior Secured Notes on the "open market," and through allegedly independent noteholders, including but not limited to the wife of Steinberg. A true and correct copy of an email dated March 3, 2015 from Platinum Management Chief Compliance Officer David Ottensoser confirming that Steinberg's wife purchased certain of the 13.75% Senior Secured Notes is attached hereto as **Exhibit 54.**

474. Numerous emails reflect the involvement of Nordlicht, Levy, Small, and other Platinum Defendants and Beechwood Defendants in this scheme. For example, in a May 13, 2014 email, Nordlicht instructed that "Beechwood is buying 8 million black elk from PPVA. What is the best way to cross? Can we do it today please."

475. Similarly, on June 23, 2014, Nordlicht emailed: "I want to move/sell 10 million of black elk bonds to bbil the nomura account. Please take care of it."

476. After confirming that "BBIL" (a Beechwood reinsurance trust) was buying 13.75% Senior Secured Notes from PPVA, Nordlicht emailed instructions on July 1, 2014, to sell $7 million in 13.75% Senior Secured Notes from PPVA to a Beechwood reinsurance trust. True and correct copies of these emails are attached hereto as **Exhibit 55.**

477. Levy's position as CIO for BAM (along with the fact that many other Platinum Management employees also worked at Beechwood) assured Nordlicht that the Beechwood

Entities would support the scheme by purchasing the required amount of 13.75% Senior Secured Notes and supporting amendment of the Black Elk Note Indenture.

478. Similarly, the BEOF Funds supported the amendment to the Black Elk Notes Indenture.

479. By July 2014, Platinum Management, Beechwood and their affiliates managed or controlled approximately 66% of the 13.75% Senior Secured Notes.

480. The Beechwood Defendants worked with their own counsel and with counsel for Black Elk to draft the Consent Solicitation to be circulated to the holders of the 13.75% Senior Secured Notes, which contained two closely related parts.

481. The first part was a tender offer, which included an offer by Black Elk to buy back the 13.75% Senior Secured Notes at par.

482. The second part was a request that noteholders consent to certain amendments to the Indenture. The most notable proposed amendment provided that, after payment of any tendered 13.75% Senior Secured Notes, the proceeds of the Renaissance Sale could be used to redeem Black Elk preferred shares.

483. The final Consent Solicitation contained this false representation:

> As of the date hereof, there are $150 million aggregate principal amount of Notes issued and outstanding under the Indenture. Platinum Partners Value Arbitrage Fund, L.P. and its affiliates, which own approximately 85% of our outstanding voting membership interests, own approximately $18,321,000 principal amount of the outstanding Notes.
>
> Otherwise, neither we, nor any person directly or indirectly controlled by or under direct or indirect common control with us, nor, to our knowledge, any person directly or indirectly controlling us, hold any Notes. (Emphasis added.)

484. The $18 million figure was a vast understatement, as it failed to disclose the $72 million in 13.75% Senior Secured Notes held by other funds managed by the Platinum Defendants and the Beechwood Defendants.

485. The Platinum Defendants and Beechwood Defendants were aware that the Consent Solicitation contained this falsehood, that the vote was rigged, and the result would be a massive loss to PPVA to the benefit of the BEOF Funds and their equity interests.

486. Despite this, Small signed as a manager and directed the CEO to sign the Black Elk Board of Managers' authorization for Black Elk to conduct the Consent Solicitation, and to implement the solicitation should the requisite number of consents be obtained. A true and correct copy of this authorization is attached hereto as **Exhibit 56.**

487. The Platinum Defendants and Beechwood Defendants caused all of the 13.75% Senior Secured Notes held by the other funds managed by the individual Platinum Defendants (including the BEOF Funds) and the Beechwood Entities to vote in favor of the Consent Solicitation.

488. On August 21, 2014, Black Elk issued a Form 8-K announcing that it had received "the requisite consents" of noteholders to, among other things, apply the proceeds from the recently-concluded Renaissance Sale to retire the tendered notes and use the remaining proceeds to repurchase preferred equity issued by Black Elk. A true and correct copy of the August 21, 2014 Black Elk 8-K, exhibits excluded, is attached hereto as **Exhibit 57.**

489. On August 18, 2014, Small sent an email from his Platinum Management email address that purported to speak for the Black Elk Board of Managers directing Shulse to wire $70 million in partial payment of series E preferred shareholders. Levy also sent Shulse specific wire instructions for sending the designated parties most of the proceeds from the Renaissance Sale. After Nordlicht emailed Shulse to "send these wires out already," Shulse complied with the directions and caused the wire transfers to be sent out. A true and correct copy of the August 18, 2014 email is attached hereto as **Exhibit 58**.

490. Between August 18 and 21, 2014, Black Elk wired approximately $98 million in Renaissance Sale proceeds to holders of its series E preferred equity.

491. Included in this amount was approximately $47 million that was transferred to a Sterling Bank Account in the name of PPVA (the "**Sterling Bank Deposit**"). A true and correct copy of PPVA's Sterling Bank account statement for the month of August 2014 is attached hereto as **Exhibit 59**.

492. In the days following the Sterling Bank Deposit, the Platinum Defendants caused PPVA to transfer approximately $36 million of the Sterling Bank Deposit to bank accounts in the name of the BEOF Funds at North Fork Bank. A true and correct copy of wire records evidencing wire transfers from PPVA's Sterling Bank account to the BEOF Funds' bank account is attached hereto as **Exhibit 60**.

493. On information and belief, the BEOF Funds subsequently distributed the amounts they received to the Preferred Investors of the BEOF Funds. The following is a list detailing the date[s] and amount of the distributions to each of the Preferred Investors of the BEOF Funds, along with their investment positions at critical points:

	Investment		Final Capital Distribution	Date
	As of 31 December 13	As at 1 August 14		
Platinum Partners Black Elk Opporutnities Fund LLC				
Jules Nordlicht	$ 7,000,000	$ 7,000,000	$ 7,187,005	21-Aug-14
Jules and Barbara Nordlicht Foundation Inc	$ 500,000	$ 500,000	$ 513,357	21-Aug-14
Morris Fuchs	$ 3,000,000	$ 2,000,000	$ 2,053,430	21-Aug-14
Shmuel Fuchs Foundation Inc	$ 1,500,000	$ 1,000,000	$ 1,026,715	21-Aug-14
David Levy	$ 250,000	$ 250,000	$ 256,679	21-Aug-14
Dan Small	$ 100,000	$ 100,000	$ 102,672	21-Aug-14
Leon Meyers	$ 3,250,000	$ 3,250,000	$ 3,433,002	21-Aug-14
GRD Estates Ltd	$ 2,000,000	$ 1,898,000	$ 1,948,705	21-Aug-14
Olive Tree Holdings LLC	$ 500,000	$ 500,000	$ 513,357	21-Aug-14
Solomon and Gertrude Englander	$ 500,000	$ 500,000	$ 513,357	21-Aug-14
Platinum F.I Group LLC	$ 750,000	$ 750,000	$ 770,036	21-Aug-14
Aaron Parnes	$ 1,000,000	$ 1,000,000	$ 1,026,715	21-Aug-14
Sol Werdiger	$ 1,000,000	$ 2,000,000	$ 2,053,430	21-Aug-14
Rockwell Fulton Capital, L.P.	$ 550,000	$ 550,000	$ 564,693	21-Aug-14
Ditmas Park Capital L.P.	$ 500,000	$ 500,000	$ 616,029	21-Aug-14
FCBA Trust	$ 1,500,000	$ 1,000,000	$ 1,026,715	21-Aug-14
MN Consulting NY LLC	$ -	$ 250,000	$ 256,679	21-Aug-14
Meadows Capital LLC	$ 500,000	$ 500,000	$ 508,329	21-Aug-14
Abraham C. Grossman	$ 250,000	$ 500,000	$ 508,329	August-14
David and Ora Gichtin	$ 500,000	$ 500,000	$ 508,329	21-Aug-14
Platinum Partners Black Elk Opporutnities Fund Internaitonal LLC				
Huberfeld Family Foundation	$ 1,000,000	$ 1,000,000	$ 1,026,677	21-Aug-14
Twosons Corp.	$ -	$ 15,000,000	$ 15,400,152	21-Aug-14
Mind, Body and Soul Co. LTD	$ -	$ 1,000,000	$ 1,026,677	21-Aug-14
Huang Lai Tsu Hsia	$ -	$ 500,000	$ 513,338	21-Aug-14
Golda Wilk	$ 300,000	$ 4,002,145	$ 4,068,741	21-Aug-14
Marcos and Adela Katz	$ 4,000,000	$ 4,000,000	$ 4,066,560	21-Aug-14

494. An involuntary bankruptcy petition was filed against Black Elk in August 2015 in the United States Bankruptcy Court for the Southern District of Texas, which subsequently was converted to a voluntary chapter 11 case in September 2015 (the "**Black Elk Bankruptcy**").

495. At the time of the Black Elk Bankruptcy, PPVA held approximately $22 Million of 13.75% Senior Secured Notes, which remained unpaid.

496. During the Black Elk Bankruptcy, the creditors' committee commenced an investigation of the events surrounding the 13.75% Senior Secured Notes Consent Solicitation.

497. The investigation of the Black Elk Scheme, orchestrated by the Platinum Defendants and Beechwood Defendants, resulted in the commencement of litigation against PPVA by the Black Elk post-confirmation litigation trustee in which the trustee has asserted millions of dollars of claims against PPVA. Among other things, the trustee sought to avoid and recover all

transfers to PPVA and to equitably subordinate PPVA's claims in connection with its 13.75% Senior Secured Notes.

498. The Black Elk Scheme also forms one of the primary bases for the Criminal Action and the SEC Action, which had the effect of further devaluing PPVA's assets. A true and correct copy of the Black Elk Adversary Complaint against, among others, PPVA, is attached hereto as **Exhibit 61**.

499. The Platinum Defendants, under Nordlicht's direction, generated certain reports to PPVA regarding PPVA's performance, such as financial statements that reported fund performance based, in part, on the outcome of the Black Elk Scheme.

500. These reports omitted the material fact that the proceeds initially paid to PPVA on account of its Black Elk Class E preferred shares were based on the above-referenced conduct and for the benefit of the BEOF Funds and **not** PPVA.

501. If the Platinum and Beechwood Defendants had not engaged in the Black Elk Scheme, the proceeds of the Renaissance Sale likely would have been used to pay off the Black Elk 13.75% Senior Secured Notes in full, a portion of which would have gone to PPVA in respect of the Notes it held, including the Notes it sold to the Beechwood Entities.

502. Instead, as a result of the actions of the Platinum and Beechwood Defendants, the Black Elk Scheme enabled the Preferred Investors of the BEOF Funds to recoup their equity investment ahead of the higher priority bonds held by PPVA, render those bonds and re-acquired bonds worthless, and enabled the Platinum Defendants to pay themselves inflated distributions and/or fees, while leaving PPVA vulnerable to millions of dollars of claims by the Black Elk Litigation Trustee.

L. Creation of Montsant and Repurchase of Black Elk Bonds

503. In connection with the Black Elk Scheme, the Platinum Defendants and Beechwood Defendants caused the Beechwood Entities to purchase approximately $25 million worth of 13.75% Senior Secured Notes from PPVA and its subsidiaries.

504. In addition, Platinum Defendants and Beechwood Defendants caused the Beechwood Entities to purchase additional 13.75% Senior Secured Notes on the open market, such that the total amount of 13.75% Senior Secured Notes ultimately held by the Beechwood Entities was approximately $37 million.

505. Once the Platinum Defendants diverted the proceeds from the Renaissance Sale to themselves and their friends and family at the BEOF Funds, the 13.75% Senior Secured Notes held by the Beechwood Entities for purposes of the Black Elk Scheme were worth significantly less than they had been before the Renaissance Sale.

506. Moreover, the Platinum Defendants and Beechwood Defendants were aware that and acknowledged that any recovery Beechwood received with respect to the 13.75% Senior Secured Notes would be subject to a claim for equitable subordination once the Black Elk Scheme was inevitably disclosed in connection with Black Elk's bankruptcy.

507. Black Elk's quarterly report for the third quarter of 2014 indicates that, after the Black Elk bond solicitation described above was completed and the proceeds of the Renaissance Sale distributed to the holders of Black Elk series E preferred and the few non-consenting bondholders, Black Elk was left with $138 million of outstanding bonds, approximately $100 million of accounts payable as well as significant other liabilities, but limited assets or sources of revenue with which to pay such liabilities. A true and correct copy of the Black Elk 2014 Third Quarter 10-Q Report is attached hereto as **Exhibit 62.**

508. Due to these public reports and their own inside knowledge of Black Elk, the Platinum Defendants and Beechwood Defendants were well aware that Black Elk would be unable to meet its obligations under the 13.75% Senior Secured Notes.

509. Despite this, on or about January 31, 2015, the Platinum Defendants and Beechwood Defendants caused a subsidiary of PPVA, Montsant Partners LLC ("**Montsant**"), to purchase all of the 13.75% Senior Secured Notes held by the Beechwood Entities at 93.5% of par, and to pay interest on the Golden Gate Oil Loan.

510. To finance these transactions, Platinum Defendants and Beechwood Defendants caused Montsant to "borrow" $35.5 million at 12% interest from SHIP, a Beechwood client, via a loan administered by Beechwood (the "**2015 Montsant Loan**").

511. Although the 2015 Montsant Loan initially was made on an unsecured basis, the transaction documents required that collateral be posted to secure the loan post-closing. A true and correct copy of the promissory note evidencing the 2015 Montsant Loan is attached hereto as **Exhibit 63**.

512. David Steinberg, listed as an "authorized signatory" executed the transaction documents related to the 2015 Montsant Loan on behalf of Montsant. Steinberg also negotiated the terms of the 2015 Montsant Loan in his capacity as a fiduciary of this wholly owned PPVA subsidiary.

513. Thereafter, Platinum Management transferred equity securities and notes belonging to PPVA and DMRJ to an account pledged as collateral to secure amounts due under the 2015 Montsant Loan (the "**Montsant Collateral Account**"), under transactions and circumstances that are the subject of continuing investigation. A true and correct copy of the May 13, 2015 Pledge Agreement by and between Montsant and BAM Administrative, as agent (the "**Montsant Pledge**

Agreement") is attached hereto as **<u>Exhibit 64.</u>**

514. SanFilippo, Steinberg, and Levy, among other Platinum Defendants, were involved with and responsible for transferring the PPVA and DMRJ assets and securities to the Collateral Account.

515. As a result, the Platinum Defendants caused PPVA assets to be pledged to secure a debt to benefit Beechwood, the Platinum Defendants' new business venture, which debt was only incurred in order to repay Beechwood for its corrupt participation in the Black Elk Scheme for the BEOF Funds' benefit and to PPVA's detriment. Additional details related to this transaction are set forth below.

M. <u>Northstar</u>

516. In May 2014, Platinum Defendants and Beechwood Defendants entered into negotiations to invest in certain oil and gas properties located in the Gulf of Mexico and owned by a predecessor to Northstar Offshore Group, LLC ("**Northstar**").

517. Northstar's initial acquisition of assets in 2014 was financed in part by the issuance of $80 million of notes (the "**Northstar Notes**"), of which $50 million subsequently were purchased by Beechwood Entities. The initial Northstar acquisition was completed in Fall 2014. True and correct copies of the Northstar Notes issued to Beechwood Entities are attached hereto as **<u>Exhibit 65.</u>**

518. The Northstar Notes were supposed to be fully secured by all of the assets of Northstar.

519. The Platinum Defendants and Beechwood Defendants nevertheless took additional steps to protect the interests of Beechwood over those of PPVA by granting certain Beechwood Entities a lien on PPVA's interests in Agera Energy, one of PPVA's most significant assets, as additional collateral to secure repayment of the Northstar Notes (the "**Agera Security**

Agreement"). A true and correct copy of the Agera Security Agreement is attached hereto as **Exhibit 66.**

520. In or around Spring 2015, the Platinum Defendants caused Northstar to purchase certain remaining assets of Black Elk, with the consideration for such purchase being the assumption by Northstar of the obligation to pay approximately $65 million worth of Black Elk 13.75% Senior Secured Notes held by PPVA and funds affiliated with Platinum Management, which the Platinum Defendants subsequently caused to be converted to equity in the parent company of Northstar[5].

521. The Platinum Defendants represented to investors that PPVA's equity interests in its oil and gas investments (including Northstar, Black Elk and Golden Gate Oil) were worth approximately $240 million as of the end of 2014.

522. By the first quarter of 2015, the Platinum Defendants claimed that PPVA's interests in the preferred equity of Northstar's parent separately were worth an additional $26-28 million. True and correct copies of the selected portions of PPVA's 4th Quarter 2014 and 1st Quarter 2015 Valuations are attached hereto as **Exhibit 67** and **Exhibit 68** respectively.

523. By June 2016, the Platinum Defendants valued PPVA's equity interests in Northstar as approximately $200 million, or 21.3% of PPVA's NAV. A true and correct copy of the June 30, 2016 Indicative NAV Report shared with PPVA's investors is attached hereto as **Exhibit 69**.

524. The Platinum Defendants consistently valued PPVA's approximately $8 million of unsecured loans to Northstar at par.

[5] Even after this transaction, PPVA still held a portion of Black Elk 13.75% Senior Secured Notes.

525. By June 30, 2016, the Platinum Defendants and Beechwood Defendants had caused PPVA to engage in a series of transactions with the Beechwood Entities and PPCO that resulted in PPVA holding $22 million worth of the Northstar Notes, which it reported as being secured by a second priority interest in all of Northstar's assets and also valued at par.

526. Throughout the first six months of 2016, the equity, preferred equity and debt investment in Northstar was the largest portion of PPVA's reported net asset value. A true and correct copy of portions of PPVA 1st Quarter 2016 Valuation is attached hereto as **Exhibit 70**.

527. The Platinum Defendants' valuation of Northstar was inflated, false and omitted material information.

528. For example, the Platinum Defendants' claim that PPVA's interest in $22 million of Northstar Notes was secured by liens on all of Northstar's assets was materially false.

529. No mortgages or financing statements were filed on behalf of the holders of the Northstar Notes with respect to the properties acquired from Black Elk.

530. At all relevant times, Platinum Defendants controlled P Administrative Services LLC, the entity serving as trustee for the Northstar Notes, but failed to ensure that the necessary filings to perfect the security interests and liens of holders of the Northstar Notes were ever made.

531. By 2016, Northstar was experiencing significant challenges managing operations and expenses due to the reduction in revenue resulting from falling oil prices.

532. As a result, Northstar had accumulated millions of dollars in unpaid trade payables and accrued and unpaid interest on the Northstar Notes, with Platinum Management largely financing Northstar's day-to-day operations by allowing it to draw on unsecured credit lines from PPVA and PPCO.

533. Moreover, the Northstar transactions detailed above, which were engineered by the Platinum Defendants, were the subject of claims for breach of fiduciary duty, usurpation of a corporate opportunity and other allegations against PPVA and potential fraudulent conveyance claims against Northstar by the Black Elk Trustee. *See* Black Elk Adversary Complaint, Exhibit 61.

534. A Platinum Management employee served on the Northstar board of directors and thus the Platinum Defendants were well aware of Northstar's financial condition.

535. On August 12, 2016, certain of Northstar's creditors filed an involuntary chapter 7 bankruptcy petition against the company. Northstar subsequently moved to convert the case to a case under chapter 11 of the Bankruptcy Code, and an order for relief was entered on December 2, 2016.

536. Northstar's assets eventually were sold pursuant to a transaction effected under 11 U.S.C. § 363 for $13,250,000 in cash, a $19 million working capital facility in order to pay assumed liabilities, replacement of certain plugging & abandonment bonds and up to $150,000 to fund a post-confirmation litigation trust (the "**Northstar Sale**"). A true and correct copy of the Order of the United States Bankruptcy Court for the Southern District of Texas approving the Northstar Sale, exhibit excluded, is attached hereto as **Exhibit 71**.

537. Holders of the Northstar Notes and Northstar's preferred and common equity, including PPVA and its subsidiaries, received no recovery from the proceeds of the Northstar Sale.

N. The Second Scheme

538. Despite the actions of the Defendants set forth above, by mid-2015 PPVA still held assets worth approximately $300 million, a significant portion of which was comprised of PPVA's investment positions in IMSC and Agera Energy (the "**Remaining PPVA Assets**").

539. Beginning in late 2015, the Defendants conspired to commence the Second Scheme, engaging in an intentional scheme to transfer or encumber nearly all of the Remaining PPVA Assets to or for the benefit of the Platinum Defendants, the Beechwood Defendants, PPCO and select insiders of the Platinum Defendants, and to the detriment of PPVA.

540. Throughout the course of the Second Scheme, the Platinum Defendants deliberately granted the Beechwood Entities, PPCO and other insiders/friends/preferred investors liens on PPVA's investments at the subsidiary level, and the Platinum Defendants would consistently report PPVA's NAV without taking into account the encumbrances provided to these insider parties, thereby inflating the total amount of fees and other compensation due to them. *See* Exhibit 70.

541. The Second Scheme was executed successfully by the Defendants, such that by the time the Cayman Liquidation of PPVA had commenced, PPVA had hundreds of millions in liabilities and minimal assets.

542. Certain of the transactions comprising the Second Scheme ("**Second Scheme Transactions**") are set forth below.

1. <u>Use of Montsant to Hide Beechwood Encumbrance of PPVA Assets</u>

543. As noted above, the Platinum Defendants used Montsant to provide subsidiary level liens on certain of the Remaining PPVA Assets to or for the benefit of the Beechwood Defendants by way of the Montsant Collateral Account.

544. At the direction of the Platinum Defendants and Beechwood Defendants, Montsant was a party to a series of transactions whereby Beechwood was granted liens on certain of the Remaining PPVA Assets that held actual value.

545. Notably, Beechwood was not granted liens on PPVA's oil and gas investments, which the Platinum Defendants and Beechwood Defendants knew had little or no value.

546. Instead, interests in oil and gas companies such as Golden Gate Oil and PEDEVCO were used as illusory consideration to offload assets and security interests to Beechwood during the course of the Second Scheme.

547. As noted above, the Beechwood Entities held liens against PPVA's assets via the Montsant Collateral Account.

548. The Platinum Defendants transferred assets held by PPVA into the Montsant Collateral Account at will and generally with no consideration.

549. Although the assets within the Montsant Collateral Account were still included in calculations of PPVA's NAV as though they held value to PPVA, the assets were wholly encumbered, at the subsidiary level, for the benefit of Beechwood and its clients in connection with the First and Second Schemes.

550. The existence of these subsidiary level encumbrances were not incorporated in the PPVA NAV calculations by SanFilippo, Manela or the other Platinum Defendants.

551. The assets that the Platinum Defendants caused PPVA and its subsidiaries to transfer into the Montsant Collateral Account included equity securities in Navidea Biopharmaceuticals, Inc. ("**Navidea**") and equity securities and debt instruments issued by Vistagen Therapeutics, Inc. ("**Vistagen**").

552. The Navidea and Vistagen shares transferred into the Montsant Collateral Account were previously directly held by PPVA and/or another of its subsidiaries.

553. Similarly, on May 4, 2015, DMRJ and Montsant entered into an agreement (the "**Montsant Assignment Agreement**") by which DMRJ assigned to Montsant its rights, title, and interest in that certain December 2008 Term Note issued by IMSC with an original principal

amount of $5.6 million (the "**December 2008 Note**"). A true and correct copy of the Montsant Assignment Agreement is attached hereto as **Exhibit 72.**

554. The Platinum Defendants and Beechwood Defendants thereafter caused Montsant to deposit the December 2008 Note into the Montsant Collateral Account, as part of the collateral securing Montsant's obligations under the 2015 Montsant Loan.

555. Steinberg executed the 2015 Montsant Loan agreement as an "authorized signatory" on behalf of Montsant.

2. Nordlicht Side Letter

556. In January 2016, the Platinum Defendants and Beechwood Defendants faced a crisis at Beechwood.

557. The Beechwood Entities were saddled with the approximately $37 million due and owing under the Golden Gate Oil Loan, with, as they were aware, no prospect for Golden Gate Oil to repay this debt. They also had purchased shares of Navidea stock from Montsant on or about October 25, 2015 at the then market price of $6,137.215.50, but by January the value of the stock had dropped significantly.

558. Until January 2016, the Platinum Defendants caused PPVA to pay the interest on the Golden Gate Oil loan to Beechwood. At that time, however, PPVA no longer was able to do so because it was facing margin calls of more than $1.5 million and had only $16,700.00 in available cash. A true and correct copy of PPVA's January 13, 2016 cash report is attached hereto as **Exhibit 73.**

559. On information and belief, at the same time, the Beechwood Entities were facing questions from regulators due to the significant drop in the share price of the Navidea stock they had purchased from PPVA only a few months before.

560. To help his Beechwood interests, but to the detriment of PPVA, on or about January 13, 2016, Nordlicht apparently executed the Nordlicht Side Letter.

561. The Nordlicht Side Letter states that it is made on behalf of Nordlicht, PPVA, PPCO "and each of their affiliates" and provides:

> To the extent not otherwise in violation of applicable law, *upon the sale of the assets and/or equity (collectively, the "Sale") of Implant Sciences, Inc. and/or any of its subsidiaries (collectively, the "Company"), the proceeds of such Sale that inure, directly or indirectly, to the benefit of Platinum, shall immediately upon consummation of such Sale be applied and remitted to B Asset Manager, LP ("BAMLP"), in such amount necessary to purchase and/or repay in full all indebtedness owing by Golden Gate Oil Inc. to BAMLP and each of its investment advisory clients at such time (collectively, "BAM")*; provided, that, nothing herein shall modify the obligations of the Company herein to first repay all indebtedness owing by the Company to BAM with proceeds of a Sale ("Implant Repayment").

A true and correct copy of the Nordlicht Side Letter is attached hereto as **Exhibit 74.**

562. The Nordlicht Side Letter further states that Nordlicht agrees "to take or cause to be taken all additional actions deemed by BAM to be reasonably necessary in furtherance of the foregoing, as well as to create a perfected security interest in the obligations described above to the extent requested by BAM." *Id.*

563. The Nordlicht Side Letter is purportedly signed by Beechwood Defendant Mark Feuer as a witness.

564. Neither PPVA nor any of its subsidiaries received any consideration whatsoever for the Nordlicht Side Letter.

565. At the time of execution of the Nordlicht Side Letter, IMSC was being marketed for sale.

566. By executing the Nordlicht Side Letter, Nordlicht purported to grant the Beechwood Entities an interest in the proceeds of a separate investment held by another PPVA

subsidiary, that otherwise would not have been available to them to pay off the Golden Gate Oil Loan, to the detriment of PPVA.

567. At the time the Nordlicht Side Letter was executed, approximately $37 million was due and owing under the Golden Gate Oil Loan.

568. The Nordlicht Side Letter benefits the Beechwood Entities, owned by Nordlicht, Huberfeld, Bodner, Levy, Feuer and Taylor, at the expense of PPVA.

569. The executed Nordlicht Side Letter was circulated among the executives and lawyers employed by Platinum Management, including Ottensoser and Manela. Despite this, the Nordlicht Side Letter was not considered when determining the value of the PPVA assets to which it ostensibly applied, thereby inflating the value of those assets.

570. The existence of the Nordlicht Side Letter also was not disclosed in the Nordlicht Affidavit or any of the supporting documents submitted in connection with the Cayman Liquidation.

571. BAM subsequently has asserted a claim that the Nordlicht Side Letter was a valid and binding encumbrance upon the proceeds of PPVA's subsidiary DMRJ's interest in IMSC, and has asserted a claim to recover up to the full amount of the Golden Gate Oil debt out of the proceeds that DMRJ received from IMSC pursuant to the terms of the Nordlicht Side Letter.

3. March 2016 "Restructuring" of PPVA/PPCO/Beechwood Transactions

572. A few weeks later, in March 2016, Platinum Defendants and Beechwood Defendants orchestrated a series of transactions in connection with a "restructuring" of all of the transactions previously entered into between and among PPVA, PPCO and the Beechwood Entities, whereby all the benefits flowed directly to certain Beechwood Entities and PPCO, and thus to the individual Platinum and Beechwood Defendants who owned and managed those entities and were entitled to charge them for partnership shares and fees, to the detriment of PPVA.

573. For example, on March 21, 2016, Montsant and BAM entered into a series of agreements (the "**2016 Montsant Transactions**") by which the 2015 Montsant Loan was amended and restated, and Montsant purportedly borrowed an additional $6,137,215.50 from BAM client and Beechwood Entity BBIL ULICO 2014 to fund Montsant's purported re-purchase of certain Navidea shares.

574. The 2016 Montsant Transactions reversed the October 25, 2015 sale by which Montsant had sold equity securities in Navidea from the Montsant Collateral Account to certain Beechwood Entities for $6,137.215.50. The October 2015 sale was made for the then market price of $1.95 per share. Attached as **Exhibit 75** is the stock ticker price reflecting the October 26, 2015 share price for Navidea on the open market.

575. The actual closing price for Navidea stock as of March 21, 2016 was approximately $1 per share. True and correct copies of stock ticker reports evidencing the March 21, 2016 share price for Navidea are attached hereto as **Exhibit 76.**

576. Nevertheless, pursuant to the 2016 Montsant Transactions, Montsant re-purchased the Navidea shares from the Beechwood Entities at $1.95 per share.

577. Nothing in the original October 25, 2015 transaction documents granted the Beechwood Entities the right to put the Navidea stock back to PPVA at the October 2015 sale price.

578. Rather than purchase the Navidea stock at the market price, the Platinum Defendants and Beechwood Defendants conspired for Montsant to purchase the Navidea shares at **double the market price**, in order to boost the Beechwood Entities' secured claim against Montsant and PPVA and further enrich the Beechwood Entities at PPVA's expense.

579. The assets in the Montsant Collateral Account, including the December 2008 Note and the Navidea shares that were re-purchased by Montsant pursuant to the 2016 Montsant Transactions, were pledged for the repayment of both the original amounts owing to SHIP under the 2015 Montsant Loan as well as the additional amounts purportedly borrowed from BBIL ULICO 2014 by Montsant in March 2016.

580. Also on March 21, 2016, Precious Capital, BAM Administrative, Golden Gate Oil and certain Beechwood Entities entered into the Sixth Omnibus Amendment to the Golden Gate Oil Loan (the "**Sixth Omnibus Amendment**"), by which notes evidencing the Golden Gate Oil Loan were reissued in the following amounts (the "**GGO Notes**"):

- Fifth Amended and Restated Senior Secured Promissory Note, dated March 21, 2016, in the initial principal amount of $11,249,414.40, originally issued to SHIP;
- Fifth Amended & Restated Senior Secured Promissory Note, dated March 21, 2016, in the initial principal amount of $551,147.03, originally issued to BRe BCLIC Sub;
- Fifth Amended and Restated Senior Secured Promissory Note, dated March 21, 2016, in the initial principal amount of $20,405,749.26, originally issued to BRe WNIC 2013 LTC Primary; and
- Fifth Amended and Restated Senior Secured Promissory Note, dated March 21, 2016, in the initial principal amount of $999,370.23, originally issued to BRe WNIC 2013 LTC Sub.

581. Also on or about March 21, 2016, Montsant, PPVA, Golden Gate Oil and BAM Administrative entered into the Master Guaranty, by which, inter alia, Montsant agreed to guaranty amounts owed to various Beechwood Entities and SHIP by Golden Gate Oil, to the extent of the assets contained in the Montsant Collateral Account. A true and correct copy of the Master Guaranty is attached hereto as **Exhibit 77.**

582. The Master Guaranty further purported to provide BAM Administrative, as agent for certain Beechwood Entities and SHIP, with a non-recourse guaranty from PPVA of amounts owed by Golden Gate Oil and amounts owed by Montsant.

583. The guaranty was limited to certain amounts to be received by PPVA from the anticipated future sale of IMSC. As stated in the Master Guaranty:

> Immediately following PPVA's receipt of any payments, proceeds, distributions and/or other amounts arising in any manner whatsoever from any right, title and/or interest, PPVA may have in and to Implant Sciences Corporation (the "Proceeds"), PPVA shall immediately following such receipt remit such Proceeds in immediately available funds as follows:
>
> (a) First, PPVA shall make or cause to be made a payment to BAM [BAM Administrative] in an amount equal to Twenty-Million Dollars ($20,000,000.00) to prepay the principal amount owed by GGO to the Investors, as such term defined in that certain Note Purchase Agreement, (as same may be amended, restated, modified and or supplemented from time to time), dated as of April 10, 2012, by and between GGO and BAM (as successor agent to Precious); and
>
> (b) Second, PPVA shall make or cause to be made a payment of any remaining Proceeds to pay in full all outstanding obligations and liabilities under that certain Note Purchase Agreement, dated as of March 19, 2014, by and between Implant Sciences Corporation, each of the investors party thereto, and the Agent [BAM Administrative].

Master Guaranty at ¶ 1

584. The Master Guaranty was further secured by collateral assignments from PPVA to Beechwood Entities of: (i) amounts owed under certain promissory notes issued by China Horizon Investment Group ("**China Horizon**") to PPVA, in the original principal amount of $4,764,872; and (ii) carbon credits, emission reductions and related assets due and payable to PPVA under certain carbon credit portfolio agreements. True and correct copies of the Collateral Assignment and Turnover Agreement assigning PPVA's interests in the China Horizon promissory note to BAM Administrative are attached as **Exhibit 78** and **Exhibit 79**, respectively. A true and correct copy of the Collateral Assignment of carbon credits from PPVA to BAM Administrative is attached as **Exhibit 80**.

585. Also on March 21, 2016, the Montsant Pledge Agreement in favor of BAM was amended to provide that the Montsant Collateral Account would secure all of Montsant's obligations under the March 2016 Guaranty and the 2016 Montsant Transactions.

586. The Master Guaranty in no way benefitted PPVA.

587. Rather, the Master Guaranty benefited Beechwood by providing it with additional collateral to secure the non-performing Golden Gate Oil Loan, comprised of a significant portion of PPVA's remaining valuable assets.

588. In connection with the Master Guaranty, several of the transactions entered into during the prior two years among PPVA and its subsidiaries and Beechwood were effectively reversed for Beechwood's benefit and to PPVA's detriment via a $70 million "loan" to PPCO, by which certain Platinum positions were transferred from certain Beechwood reinsurance trusts to PPCO, which was thought to be solvent (unlike PPVA), and then, in a classic insider and undervalue transaction, valuable assets of PPVA, then worth in excess of $20-$80 Million, were transferred to PPCO without valuable consideration.

589. On March 22, 2016, various documents were executed among various Beechwood Entities and PPCO, by which PPCO became indebted to these Beechwood Entities in the original principal amount of $70,000,000 (the "**PPCO Indebtedness**").

590. Thereafter, the Platinum Defendants caused PPCO to transfer approximately $20 million in <u>uncollectable</u> Northstar debt to PPVA at par, in exchange for certain known "good and collectable" assets of PPVA, including PPVA's equity and debt interests in certain investments, such as Navidea, Urigen, and Airdye Solutions, LLC, among others.

591. The Platinum Defendants and PPCO were aware that the Northstar notes had no value, while the assets transferred to PPCO were believed to have significant value at the time they were transferred to PPCO. In fact, the Navidea note ultimately was paid at par.

592. The net effect of this March 2016 "restructuring" was to prop up Beechwood and PPCO to PPVA's substantial detriment, under circumstances where Beechwood and PPCO were chosen as the "good funds" to continue onward, while PPVA was left heading towards liquidation with the Platinum Defendants' insiders largely paid out for their actual investments.

593. The transaction documents evidencing the March restructuring were signed by Mark Nordlicht on behalf of PPVA, Montsant and Golden Gate Oil. Notably, David Steinberg is listed as the notice party in the documents.

594. The terms of and specific steps by which the various transactions comprising the March 2016 restructuring were accomplished were developed, coordinated and accomplished by Nordlicht, Huberfeld, Bodner, Levy, Bernard Fuchs, Steinberg, SanFilippo and Ottensoser, working together with Narain, Taylor, and Feuer.

O. The Agera Transactions

595. As early as March 2016, the Platinum Defendants and Beechwood Defendants had conspired to transfer the rest of the Remaining PPVA Assets by way of a series of "insider" transactions in order to clear out the uncollectable debt obligations owed to Beechwood by companies such as Golden Gate Oil and PEDEVCO, leaving PPVA with little to nothing in exchange for the transactions.

596. The scheme was initiated by Defendant Katz, who, by email on March 13, 2016, suggested to Mark Nordlicht a "potential sale to an insider" as a "solution" in order to keep PPVA's

interest in Agera with the Platinum Defendants' friends and family. Attached as **Exhibit 81** is a true and correct copy of the March 13, 2016 email from Katz to Nordlicht.

597. Katz is an advisor to Platinum Management and the grandson of Platinum investor Marcos Katz.

598. In March 2016, Nordlicht introduced Katz as an advisor to Platinum Management to oversee the final stages of the Second Scheme. A true and correct copy of Nordlicht's March 21, 2016 email introducing Katz to certain Platinum Management employees is attached hereto as **Exhibit 82.**

1. Agera Energy

599. Agera Energy is a Delaware limited liability company and a leading energy reseller to the consumer and business markets.

600. Agera Energy maintains a principal place of business in Briarcliff Manor, New York.

601. Agera Energy was formed through the combination of Agera Energy LLC, an entity formed at the direction of the Platinum Defendants, and the assets of Glacial Energy Holdings LLC, which were purchased pursuant to a June 17, 2014 sale order entered by the United States Bankruptcy Court for the District of Delaware pursuant to Section 363 of the Bankruptcy Code (the "**Glacial Energy Purchase**").

602. PPVA and PPCO owned a controlling interest in Agera Energy through a jointly-owned subsidiary, Principal Growth Strategies, LLC ("**PGS**"). Before June 8, 2016, PPVA held 55% of the membership interests in PGS, and PPCO held 45% of the PGS membership interests.

603. At all relevant times before the Agera Sale, PGS was the holder of a May 19, 2014 promissory note convertible into approximately 95% of the equity in Agera Energy (the "**Agera**

Note"). A true and correct copy of the Second Amended and Restated Agera Note is attached hereto as **Exhibit 83.**

604. Shortly after the Glacial Energy Purchase, at the direction of Nordlicht, Kevin Cassidy was hired by Agera Energy as a senior executive.

605. Cassidy, who had served two prior stints in prison, was arrested a third time in 2007 for deliberately misstating the value of natural gas derivatives held by one of Nordlicht's previous funds, Optionable Inc., which had collapsed amid scandal in 2007.

606. Nordlicht or other persons employed by Platinum Management caused Cassidy to be hired as a senior executive by Agera Energy upon Cassidy's release from prison, despite the fact that he had no prior experience in the energy sector.

607. Despite Cassidy's multiple convictions, Nordlicht vouched for Cassidy's integrity when questioned by a reporter. A true and correct copy of a March 21, 2016 email from Nordlicht to a reporter for Thomson Reuters, attached as **Exhibit 84.**

608. Agera Energy is a wholly owned subsidiary of Agera Holdings, LLC, a Delaware limited liability company ("**Agera Holdings**").

609. Agera Holdings' sole business is to act as a holding company and control the business of its wholly owned subsidiaries. Those subsidiaries are Agera Energy, Utility Recovery LLC and Agera Solutions LLC.

610. Immediately prior to the Agera Sale, Agera Holdings was owned 95.01% by Michael Joseph Nordlicht and 4.99% by MF Energy Holdings, LLC ("**MF Holdings**"). Feuer held all of the membership interests in MF Holdings.

611. Michael Joseph Nordlicht is Nordlicht's nephew.

612. According to his LinkedIn profile, he graduated from Georgetown University Law Center in 2012 and then he worked a few months as a law clerk for the Public Defender's office in Baltimore, Maryland. He also was an associate attorney for about eight months at the Maryland Attorney General's office in the Department of Public Safety and Correctional Services.

613. In or about late 2013, Nordlicht installed his nephew as the general counsel of Agera Energy, despite the fact that he appears to have had no prior experience in private practice or in the energy sector.

614. Michael Nordlicht did not pay anything for the equity he held in Agera Holdings.

2. The Agera Energy Valuation

615. Based on its December 31, 2015 financial statements, Agera Energy achieved FYE 2015 revenues of $301.4 million and EBITDA of $20.2 million.

616. Agera Energy's value as of March 31, 2016 was estimated to be between $225,533,000 and $283,553,000. *See* PPVA 1st Quarter 2016 Valuation, Exhibit 70 at p. 128. This valuation report was issued on the same day as the Agera Sale.

617. In a July 15, 2016 investment memorandum sent to BAM, Narain stated that due to Agera Energy's profitable financial performance, the true valuation of Agera Energy was closer to the high end of available estimates. A true and correct copy of this investment memorandum from Narain to BAM is attached as **Exhibit 85.**

3. The Agera Sale Process

618. By March 27, 2016, Nordlicht, Bodner, Huberfeld, Levy, Bernard Fuchs and Katz began planning an insider sale of Agera to a "[B]eechwood led consortium." A true and correct copy of this email is attached hereto as **Exhibit 86**.

619. Between May 1, 2016 and June 9, 2016, the specific terms by which the Agera Sale was effected were put in place by Steinberg, Ottensoser, Taylor and Narain, all operating with the

knowledge of and in conjunction with the other Platinum Defendants, Katz, the Beechwood Defendants, SHIP, Cassidy and Michael Nordlicht. Steinberg and Michael Nordlicht, together with help from Cassidy, also worked together to create the schedules and back up for the deal documents.

620. Steinberg also worked directly with Cassidy and his counsel to create the mechanism by which 8% of the Agera purchase price was paid to an entity set up by Cassidy to avoid having taxes withheld from such payment.

621. Platinum Management portfolio managers typically were compensated with a bonus calculated as a percentage of the profits earned on the PPVA investments they managed. Between 2014 and June 2016, Platinum Management had alleged in responses to SEC inquiries that Cassidy was not employed as a portfolio manager at Platinum Management. Cassidy also did not have a written contract with Platinum Management, PPVA or PGS that would entitle him to any payment in connection with the sale of the Agera Note.

622. On information and belief, during the period between 2014 and June 2016, Cassidy was paid a salary of $135,000 per year and Starfish was paid approximately $2.5 million by Agera in connection with Cassidy's work at Agera.

623. Steinberg, Ottensoser, Michael Nordlicht, Narain and Cassidy, worked together to prepare the documents by which the various parts of the Agera transaction were accomplished.

624. Michael Nordlicht and Kevin Cassidy actively participated in the negotiation and closing of the Agera Transactions, with actual knowledge of the deflated sale price and that Beechwood would be paid substantial fees from the closing.

625. The insider transaction was intended to be substantially below fair value and was the product of the insider relationship between Beechwood and Platinum Management. The transaction was executed, performed, overseen and then managed by Narain and Illumin.

626. The Platinum Defendants did not attempt to market the Agera Note and actively dissuaded potential buyers from inquiring into the purchase of the Agera Note.

627. For example, on May 11, 2016, in response to an inquiry by a non-investor potential purchaser, Nordlicht stated that PPVA's interest in Agera Energy was off the market. A true and correct copy of this May 11, 2016 email is attached hereto as **Exhibit 87.**

628. The Platinum Defendants also did not obtain a fairness opinion in connection with the Agera Sale.

629. IMSC, PPVA's other remaining investment of significant value, was being marketed for sale at the same time as the Platinum Defendants and Beechwood Defendants were "negotiating" the Agera Sale.

630. By contrast to their actions in connection with the sale of the Agera Note, the Platinum Defendants arranged for IMSC to hire an investment banker to openly market IMSC for sale and took all necessary due diligence actions customary for the legitimate sale of an operating company.

4. The Agera Sale

631. On June 9, 2016, the day after the arrest of Huberfeld, the Platinum Defendants, working in concert with the Beechwood Defendants and SHIP, caused PGS to transfer its interest in the Agera Note to AGH Parent LLC ("**AGH Parent**") – an entity not affiliated with PPVA, but at that time controlled directly by the Platinum Defendants and Beechwood Defendants, and for the benefit of SHIP (the "**Agera Sale**").

632. SHIP, with full knowledge of the insider nature of the Agera Sale and the detriment it caused to PPVA, contributed approximately $50 million for the closing of the Agera Sale to benefit and enrich itself, working in tandem with Beechwood to the detriment of PPVA, just weeks before SHIP would publicly distance themselves from Beechwood for fraud, and while, upon information and belief, litigation was anticipated.

633. On June 9, 2016, AGH Parent amended its Limited Liability Company Agreement (the "**AGH Parent Amended Operating Agreement**") and entered into a series of related transactions, resulting in AGH Parent admitting SHIP and certain Beechwood Entities as new members of AGH Parent. A true and correct copy of the AGH Parent Amended Operating Agreement is attached hereto as **Exhibit 88.**

634. Narain executed the AGH Parent Amended Operating Agreement on behalf of both AGH Parent and certain Beechwood Entities. Only the AGH entities were advised by outside counsel in connection with the Agera Transactions, which was hurriedly closed the day after Huberfeld's arrest.

635. Simultaneous with the execution of the AGH Parent Amended Operating Agreement, PGS and AGH Parent entered into the Purchase Agreement (the "**Agera Purchase Agreement**"), by which PGS sold the Agera Note to AGH Parent. A true and correct copy of the Agera Purchase Agreement is attached hereto as **Exhibit 89.**

636. Steinberg executed the documents as the "responsible person" and fiduciary of PPVA's subsidiary, PGS, the seller of the Agera Note.

637. Even though the Platinum Defendants and Beechwood Defendants had evidence and believed that the market value for the Agera Note was between $225-285 million, the stated purchase price for the Agera Note was only $170 million (the "**Note Purchase Price**").

638. The Note Purchase Price also was significantly below the $213,256,350-$269,356,350 million valuation of the Agera Note that Platinum Management had commissioned in March 31, 2016, just two months prior to the transaction, which valuation was delivered to SanFilippo on behalf of Platinum Management on the same day the Agera Sale closed. *See* PPVA 2016 First Quarter Valuation at Exhibit 70. Copies of that report, in both draft and final form, were circulated among the Platinum Defendants.

639. Even then, at least **two-thirds** of the Note Purchase Price was paid in the form of uncollectable, valueless debt instruments that were transferred at par value, as well as membership interests in AGH Parent that were subject to redemption at the sole discretion of the Beechwood Defendants and Beechwood Entities in exchange for worthless debt and equity interests.

640. Altogether, approximately $115 million of the purported $170 million Note Purchase Price was paid or payable in a combination of Beechwood "debt forgiveness" and worthless debt and equity assignments, which assignments benefited the Defendants, and in no way benefitted PPVA.

641. A significant portion of the $43,666,460 of the Note Purchase Price attributed to debt transfers was comprised of highly distressed debt, including debt owed by China Horizon and under the PEDEVCO Notes, which were transferred to AGH Parent by certain Beechwood Entities and SHIP at the direction of Narain and Illumin, and which had little or no actual value.

642. Documents drafted by the Platinum Defendants in connection with the Agera Transactions evidence that only $55 million of the Note Purchase Price was paid in cash to PGS, with approximately $10 million still remaining unaccounted for. True and correct copies of these closing documents are attached hereto as **Exhibit 90**.

643. In connection with the Agera Sale, all of the equity and voting interests in Agera Holdings were transferred from Michael Nordlicht and MF Holdings to AGH Parent.

644. As noted above, Cassidy was not an employee of Platinum Management, PPVA or PGS. Nevertheless, Nordlicht, Steinberg, Narain and Ottensoser conspired with Cassidy to pay Cassidy 8% of the **gross** proceeds from the sale of Agera.

645. To effect the payment, Steinberg, Cassidy and his counsel prepared an amendment to the PGS operating agreement that granted Starfish, Cassidy's alter ego, 8% of the membership interests in PGS on the day before the Agera Sale closed. The grant was made for no consideration.

646. Thereafter, on June 9, 2016 (concurrent with the Agera Sale and Huberfeld's arrest), PGS entered into a Purchase Agreement with Starfish by which PGS purported to "repurchase" Starfish's membership interests in PGS for $13,552,000 (the "**Starfish Purchase Agreement**"), consisting of: (i) $7,000,000 in cash; (ii) $2,000,000 of Class B-2 Preferred Interests in AGH Parent; and (iii) $4,552,000 in Class C Preferred Interests in AGH Parent., Cassidy's Class C Preferred Interests were not subject to redemption in exchange for "PGS Value." A true and correct copy of the Starfish Purchase Agreement is attached hereto as **Exhibit 91.**

647. The payoff to Cassidy was structured as a grant and repurchase of membership interests in PGS by Starfish so that Cassidy could avoid the payment of any withholding taxes with respect to the transfer.

648. Immediately after the Agera Sale, the Platinum Defendants transferred substantially all of the remaining cash proceeds of the Agera Sale to insiders of Platinum Management, including $15 million for the benefit of Seth Gerszberg, as discussed below.

5. The Redemption of the Class C Portion of the Note Purchase Price

649. Approximately $59 million of the Note Purchase Price was paid to PGS via Class C Units in AGH Parent. In fact, these units had little or no value.

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650. The Amended AGH Parent Operating Agreement provided that $35.4 million of the Class C Portion was subject to being redeemed in exchange for $35.4 million (the "**PGS Value**") of debt or partnership interests held by Beechwood Entities or SHIP.

651. On October 28, 2016, the Beechwood Defendants caused AGH Parent to deliver a letter to PGS (the "**AGH Redemption Notice**"), indicating its intent to exercise the redemption rights set forth in Section 9.06(a)(i) of the Amended AGH Parent Operating Agreement "with respect to the portion of Class C Preferred Units held by PGS that may be redeemed with the full amount of PGS Value." A true and correct copy of the AGH Redemption Notice is attached hereto as **Exhibit 92.**

652. Thereafter, on January 26, 2017, the Beechwood Defendants and Illumin caused AGH Parent to deliver a letter to PGS enclosing an Assignment (the "**PGS Assignment**"), executed by AGH Parent, transferring to PGS all of AGH Parent's interest in the debt obligations set forth on Schedule A thereto. A true and correct copy of the PGS Assignment is attached hereto as **Exhibit 93.**

653. Together, the investments listed on Schedule A of the PGS Assignment have a face value equal to the PGS Value ($35.4 million).

654. However, the investments listed in the PGS Assignment consist of distressed debt obligations transferred to AGH Parent by various Beechwood Entities and SHIP at the direction of the Beechwood Defendants and Illumin.

655. The distressed debt obligations listed in the PGS Assignment include: (i) $14.1 million owed by Golden Gate Oil under the GGO Notes (ii) $5.7 million owed by PEDEVCO under the PEDEVCO Notes; and (iii) $15.6 owed by Montsant under the 2015 Montsant Loan.

656. As a result of the purported AGH Redemption Notice and purported PGS Assignment, AGH Parent redeemed 336,928.93 Class C Preferred Units held by PGS and recorded satisfaction relative to PGS of $1,707,107 in accretive Class C Preferred Return related to such redeemed units, leaving PGS with approximately 207,970 Class C Preferred Units.

657. In or about December 2016, six months after the Agera Sale, the Beechwood Defendants, led by Narain and Illumin, which had taken over management of the Beechwood Entities from BAM beginning in 2017, were marketing and negotiating the sale of AGH Parent to a third party investor for approximately $315 million in cash.

658. On information and belief, the Beechwood Defendants thereafter sold their interests in Agera to an affiliate of Eli Global (the "**Eli Global Proceeds**").

659. AGH Parent continues to hold the Agera Note, and Eli Global has acquired Beechwood's interests in AGH Parent.

660. The Agera Transactions were the culmination of the Second Scheme and, standing alone, resulted in the dissipation of as much as $150 million of value to the Beechwood Entities, at a time when PPVA was known to be insolvent. The loss of PPVA's interest in Agera has caused substantial consequential damages in an amount to be determined at trial.

661. PGS has not received any further distributions in respect of its Class C membership interests in AGH Parent.

P. <u>The Security Lockup</u>

662. As PPVA's financial condition worsened throughout 2015 and 2016, the Platinum Defendants, orchestrated increasingly brazen transactions between PPVA and its subsidiaries and insiders in order to maintain control of such assets in the eventual liquidation of PPVA.

663. At the same time, they conspired with certain friends, family and preferred investors to cash out, prioritize and secure their investments to the significant detriment of PPVA.

664. To that end, in addition to the security interests and liens granted to the Beechwood Entities, the Platinum Defendants caused PPVA and its subsidiaries to enter into a series of agreements and transactions for the purposed of providing certain insiders and preferred investors and creditors with security interests in and liens on PPVA's Remaining Assets.

665. These security interests and liens were designed to provide those insiders and preferred investors and creditors a priority debt position, to the detriment of other similarly situated creditors and investors.

1. PPNE Notes

666. Beginning in or about September 2014, the Platinum Defendants caused PPVA to issue a promissory note with a maximum principal amount of $36 million and an interest rate of 1.333% per month, and which subsequently was reissued in or about May 2015 (the "**16% PPNE Note**").

667. The 16% PPNE Note is not payable to a particular person, but rather "to the order of each Lender."

668. The 16% PPNE Note is signed by Nordlicht, as "CIO of PPVA." A true and correct copy of a certain version of the 16% PPNE Note is attached as **Exhibit 94.**

669. Thereafter, on or about August 12, 2015, the Platinum Defendants caused PPVA to execute a promissory note with a maximum principal amount of $150 million and an interest rate of 1% per month (the "**12% PPNE Note**" and together with the 16% PPNE Note, the "**PPNE Notes**").

670. Like the 16% PPNE Note, the 12% PPNE Note is payable "to the order of each Lender" rather than to a particular person. The August 2015 PPNE Note also is signed by

Nordlicht, as "CIO of PPVA." A true and correct copy of the August 2015 PPNE Note is attached as **Exhibit 95.**

671. Paragraph 2 of each of the PPNE Notes provides that the following collateral would secure PPVA's obligations under the PPNE Notes:

> As collateral security for all indebtedness, obligations and other liabilities of [PPVA] to [the PPNE Lenders] now or hereafter arising evidenced by this [PPNE Notes], [PPVA] hereby transfers, grants and pledges a continuing perfected security interest in all of [PPVA's] right, title and interest in and to the assets held by [PPVA] on the date hereof, all options and other rights, contractual or otherwise, in respect thereof and all distributions, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such assets, and all proceeds of any and all of the foregoing (collectively, the "**Collateral**").

PPNE Notes at ¶ 2.

672. The PPNE Notes do not identify the Lenders on the face of the document, nor did Platinum Management regularly annex an attachment listing the parties that are Lenders.

673. Instead, from time to time, the Platinum Defendants caused PPVA to enter into side agreements with certain preferred insiders. Under the terms of those agreements, the insider would be permitted to exchange its investment interest or its unsecured debt for ostensibly secured debt as a PPNE "lender."

674. Certain of the Preferred Investors of the BEOF Funds were granted an interest in the PPNE Notes.

675. Platinum Management did not disclose the existence or terms of, or amounts due under the PPNE Notes.

676. Platinum Management also did not include the amount due under the PPNE Notes in calculating the net value of PPVA's assets.

2. Kismetia

677. Offshore Feeder Fund investor Kismetia Ltd. ("**Kismetia**") likewise was given preferential treatment by the Platinum Defendants.

678. In or about June 30, 2015, Kismetia sought to redeem its investment in the Offshore Feeder Fund.

679. At that time, PPVA was under severe liquidity constraints. Although Platinum Management directed a partial payment of the amounts due to Kismetia, it did not cause the full payment of the amount owed to Kismetia in respect of Kismetia's redemption request.

680. On or about March 16, 2016, the Platinum Defendants caused PPVA to issue a promissory note dated as of that date but effective as of December 31, 2015 (the "**Kismetia Note**") to Kismetia for the balance of the redemption payment due to it.

681. Like the PPNE Notes, paragraph 2 of the Kismetia Note provides that the following collateral would secure PPVA's obligations under the Kismetia Note:

> As collateral security for all indebtedness, obligations and other liabilities of [PPVA] to [Kismetia] now or hereafter arising evidenced by this [Kismetia Note], [PPVA] hereby transfers, grants and pledges a continuing perfected security interest in all of [PPVA's] right, title and interest in and to the assets held by [PPVA] on the date hereof (including without limitation all assets now or in the future held in the Special Investments also known the "Side Pocket" whereby the Platinum Partners Value Arbitrage Fund L.P. may invest part of its assets in investments that the General Partner believes are illiquid, lacking a readily assessable market value or should be held until the resolution of a special event or circumstances) all options and other rights, contractual or otherwise, in respect thereof and all distributions, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such assets, and all proceeds of any and all of the foregoing. (collectively, the "**Collateral**"). In addition, [PPVA] shall pledge [Kismetia's] redeemed equity interest in the [Offshore Fund] to Kismetia as additional security for [PPVA's] obligations under this Note and shall deliver any certificates reflecting such redeemed interest to [Kismetia] to secure such pledge.

Kismetia Note at ¶ 2.

682. The Kismetia Note was amended on June 14, 2016, six days after the Huberfeld Arrest and the same day Nordlicht announced that PPVA would stop taking redemption requests and its assets would be liquidated.

683. Among other changes, the amendment provides that $484,338.36 in accrued interest was due by August 31, 2016, that all principal and interest would be due as of August 31, 2016 or potentially earlier dates, and that if all amounts were not paid in full, interest would triple, from 1% per month to 3% per month.

684. As a result of the Kismetia Note, as amended, Kismetia exchanged worthless interests in the Offshore Feeder Fund and a worthless redemption claim for a claim secured by all the assets of PPVA that purports to accrue interest at *3% per month* or *36% per year*, to the detriment of PPVA.

3. <u>Twosons</u>

685. Defendant Twosons Corporation ("**Twosons**") is a Panamanian corporation authorized to do business in New York. Twosons was an investor in the BEOF Funds (defined below) that received $15.4 million of proceeds from the Black Elk Renaissance Sale (defined above). Nordlicht subsequently executed a promissory note dated September 18, 2014 on behalf of PPVA as borrower in the original maximum principal amount of $14 million dollars for the benefit of Twosons that accrued interest at a rate of 1.333% per month (the "**Twosons Note**"). A true and correct copy of the Twosons Note is attached hereto as **<u>Exhibit 96</u>**.

686. Twosons is owned principally and managed by members of the Harari family and their agents/employees, including, inter alia, Fabrice Harari, Raphael Harari, and Benjamin Uzan.

687. The Hararis are a family from France and Geneva, Switzerland with an estimated net worth of 400 - 500 million Swiss francs (about $400 - $500 million USD).

688. The Hararis made a fortune in France from a pharmaceutical company called

Negma Laboratories, which they owned for 35 years and sold in 2007 for a reported $250 million.

689. The Hararis also own Steba Biotech, which they created in 1996 to begin developing a new prostate cancer drug called Tookad. Tookad reached Phase II trials in 2008, and completed its Phase III trials in 2016. Mexico approved the use of Tookad for early-stage prostate cancer in 2016, and the European Medicines Agency approved Tookad in November 2017.

690. Steba Biotech is a private company. The Hararis financed Steba Biotech themselves, investing hundreds of millions of dollars into that company.

691. There are significant business and personal connections between the Harari family and certain of the Platinum Defendants. Raphael Harari and Twosons invested in PPCO as early as 2011.

692. In a February 7, 2013 email to Fabrice Harari regarding David Levy's cell phone number on which David Levy is copied, Murray Huberfeld writes "David -- I had a call today with fabrice. Harari regarding black elk. Told him to reach out to u next week with any questions or concerns Please respond to him and give him any information he requires. **Fabrice is an important client as well as a close friend.** I told him that u will be in London on Feb 12 in case he or someone from his team will be there as well Thx Murray." *See* Exhibit 51 (emphasis supplied).

693. The Hararis'/Twosons' involvement with Black Elk had begun the week before when, on February 1, 2013, Murray Huberfeld emailed Fabrice Harari to offer him the opportunity to participate in a "one off deal" for Black Elk and provided a short description of the terms of the deal, including an initial interest rate of 16% net to investor, paid quarterly, which would increase to 36% if not paid on time, plus equity grants depending on the total amount invested. The term of the investment was 14 months.

694. As noted, the original Twosons investment was in PPCO, which provided a return of 9.5%. By February 18, 2013, Twosons' principals were looking to redeem that investment in favor of something "more aggressive," such as the returns provided in connection with an investment in Black Elk that Murray Huberfeld had described the week before to Fabrice Harari.

695. On information and belief, the Hararis' self-financing of Steba Biotech may explain in part the Twosons / Hararis' involvement with the Platinum Defendants and their efforts to lock in unusually high rates of return in 2013 and 2014, which was about seven years after the Hararis' initial investment in Steba Biotech, and two years before Steba Biotech received approvals for Tookad from Mexico and the European Union.

696. Twosons eventually purchased $10 million of Black Elk series E preferred in 2013 from a PPVA subsidiary. Under the terms of a side letter executed by Nordlicht in connection with the purchase, PPVA was obligated to repurchase the series E preferred that Twosons had bought at Twosons' request. The side letter also required the payment of cash interest to Twosons even though other holders of the series E preferred would receive payment in kind "PIK" interest.

697. Thereafter, in 2014, Twosons and its principals knowingly acted to further aid and abet Nordlicht, Huberfeld, Levy, Small, Bodner, Manela, Landesman and the other Platinum Defendants to maintain the pretense that PPVA was a liquid fund with high net asset values thereby justifying the excessive fees charged.

698. In return, the Platinum Defendants agreed to continue to provide Twosons and its principals the Hararis with special rights, privileges and rates of return not available to other investors and lenders.

699. For example, in connection with Twosons' agreement to roll over their existing investment in the BEOF Funds in spring 2014 and invest an additional $10 million, Nordlicht

executed a "side letter" dated April 1, 2014 on behalf of PPVA, BEOF II and certain related parties (the "**Side Letter**"). A true and correct copy of the Side Letter is attached hereto as **Exhibit 97.**

700. The Side Letter provided that Twosons would receive its quarterly 20% dividends in cash, even though the BEOF Funds documents permitted such dividends to be paid in kind and all other investors received their payments in kind.

701. Likewise, the Side Letter provided that Twosons could put their shares back to BEOF II at par, irrespective of certain events that would permit that fund to decline to redeem other investors' shares.

702. Nordlicht, Landesman, Levy, Manela, Small, Fuchs and the other Platinum Defendants also caused the BEOF Funds to repurchase Twosons' series E preferred equity on or about April 1, 2014 at par.

703. Within days after the Black Elk Renaissance Sale closed and the proceeds thereof purportedly were used to redeem the series E preferred equity,[6] Nordlicht, Small, Levy, Manela, Fuchs, Huberfeld, Landesman worked together to cause PPVA to transfer approximately $36 Million of those proceeds to bank accounts in the name of the BEOF Funds at North Fork Bank, which in turn were distributed to the Preferred Investors of the BEOF Funds, among others.

704. On August 21, 2014, Twosons received $15,400,152.42 of those proceeds in respect of its remaining position as a Preferred Investor of the BEOF Funds. *See* Exhibit 60.

705. Within weeks after Twosons cashed out its investment via the Black Elk Scheme, Twosons once again agreed to aid and abet Huberfeld, Nordlicht, and the other Platinum Defendants and maintain the ongoing fraud regarding PPVA's inflated net asset value and

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[6] It should be noted that, although the funds purportedly were supposed to redeem the series E preferred equity, corporate formalities were not fully observed in making such payments, nor were the series E preferred equity redeemed pro rata. Rather, the Platinum Defendants directed how and to whom the proceeds of the Renaissance Sale should be paid out.

liquidity, by loaning them $14 million of those proceeds to use in their operation, which was structured as secured "loan" to PPVA.

706. Once again, Nordlicht rewarded Twosons and its principals for helping to maintain the Platinum Defendants' fraud concerning the true status of PPVA's asset values, liquidity and business by binding PPVA to a transaction that provided Twosons with special protections and incentives not generally available to other investors and not disclosed when calculating PPVA's NAV.

707. Among other things, the Twosons Note required PPVA to pay Twosons interest on the loan at the exorbitant rate of 1.33% per month or 16% per year, and also purported to grant Twosons a security interest in and lien on all of "[PPVA's] right, title and interest in and to the assets held by [PPVA] on the date hereof, all options and other rights, contractual or otherwise, in respect thereof and all distributions, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such assets, and all proceeds of any and all of the foregoing" as collateral to secure the repayment of the loan.

708. Nordlicht signed and executed the Twosons Note in his capacity as Chief Investment Officer of PPVA on or about September 18, 2014, approximately one month after the proceeds of the Black Elk Scheme were disbursed.

709. The original principal amount of the Twosons Note was $14 million.

710. Between October 2014 and June 2016, the Platinum Defendants caused PPVA to pay Twosons monthly interest totaling $2.15 million.

711. In addition, PPVA repaid $8 million in principal to Twosons during that period.

712. The Platinum Defendants caused PPVA to pay Twosons its monthly interest every

month through June 2016, even when Platinum Management caused PPVA not to fund payments necessary to preserve the value of its investments, pay redemption payments to investors or pay other creditors.

713. Nordlicht, SanFilippo, Steinberg and the other members of the valuation committee did not include the amount due to Twosons in communicating to SS&C information required to calculate the net value of PPVA's assets.

714. Platinum Management also did not include the amount due to Twosons in communicating to SS&C information required to calculate the fees payable to Platinum Management or in determining the amounts payable to the individual Platinum Defendants.

4. <u>Seth Gerszberg and West Loop/Epocs</u>

715. For certain preferred investors and creditors, the Platinum Defendants provided even greater illicit protection by purporting to grant security interests and liens at the subsidiary level, while at the same time failing to include these subsidiary encumbrances when calculating PPVA's NAV.

716. A prime example of a subsidiary level security interest was that provided to Beechwood and SHIP is with respect to the Montsant Collateral Account.

717. Another example is the series of transactions and collateral grants engaged in by Nordlicht and the other Platinum Defendants for the benefit of Nordlicht's close friend, Seth Gerszberg and Gerszberg's relatives, to the detriment of PPVA.

718. In or about 2009, Defendant Seth Gerszberg began to form a collection of entities to operate his apparel wholesale and retail businesses ("**The Collective**") and utilize an exclusive license of the Mark Ecko apparel brands, a company he co-founded in 1993.

719. On September 8, 2014, Atlantic Growth Capital, LLC ("**Atlantic Growth**"), a PPVA subsidiary, entered into a loan agreement with certain entities comprising The Collective,

in order to provide The Collective with a $30 million line of credit for The Collective's working capital needs (the "**Collective Loan**") and loaned it funds thereunder.

720. In connection with its apparel operations, The Collective also entered into a series of sub-licensing and supply agreements with West Loop, South, LLC ("**West Loop**") a company owned and managed by Steven and Alan Finkelman (together, the "**Finkelmans**"), who were cousins of Gerszberg.

721. The Finkelmans and Gerszberg had a longstanding business relationship due to the Finkelmans' position in the apparel importing industry and The Collective's retail and wholesale operations.

722. By the summer of 2015, The Collective was unable to make payments to PPVA or Atlantic Growth under the Collective Loan.

723. By the summer of 2015, The Collective also was in debt to West Loop for an amount of more than $2.4 million, and West Loop refused to ship additional apparel to The Collective unless Gerszberg found a way to pay West Loop for the outstanding debt.

724. Faced with a failing business and the prospect of no apparel for the critical holiday season, Gerszberg approached Nordlicht for financial assistance.

725. The Platinum Defendants failed to take steps to protect PPVA's interests by declaring a default on the loans owed to PPVA by Seth Gerszberg and his companies and seeking to foreclose on the collateral securing such loans.

726. Instead, in August 2015, the Platinum Defendants caused PPVA to enter into a series of transactions with West Loop and Epocs Real Estate Partnership Ltd. ("**Epocs**" and together, "**West Loop/Epocs**") over the coming months that would solely benefit West Loop/Epocs, Gerszberg and The Collective, to the detriment of PPVA.

727. These transactions included: (i) PPVA assuming approximately $2.5 million of debt owed by The Collective to West Loop and granting West Loop a corresponding interest in the 12% PPNE Note; (ii) PPVA incurring a sham "loan" obligation to Epocs of approximately $2.5 million, where the loan proceeds were in fact provided to The Collective and providing Epocs with a corresponding interest in the 12% PPNE Note; and (iii) PPVA guarantying an apparel buyback obligation of approximately $2.5 million owed by The Collective to West Loop (collectively, the "**Purported Underlying West Loop/Epocs Obligations**").

728. Instead of foreclosing on the non-performing Collective Loan and the guarantees by its shareholders, *i.e.* Gerszberg and his wife, the Platinum Defendants caused PPVA to enter into the Purported Underlying West Loop/Epocs Obligations although they knew The Collective had no ability to pay its debts to West Loop, as The Collective had been running at a substantial loss for months, its retail locations were in disrepair, and the Mark Ecko trademark license held by The Collective and West Loop was set to expire in September 2015.

729. At the direction of the Platinum Defendants and Gerszberg, West Loop and Epocs were purportedly granted an interest as "lenders" under the 12% PPNE Note in the principal amount of approximately $5 million, even though they never provided any loan funds to PPVA or any company affiliated with PPVA.

730. Once The Collective was unable to pay the Purported Underlying West Loop/Epocs Obligations, the Platinum Defendants made no effort to enforce PPVA's rights and collect from Gerszberg or The Collective on the Underlying West Loop/Epocs Obligations or the Collective Loan.

731. To compound these breaches, on or around January 1, 2016, Nordlicht began to consult with Gerszberg with respect to business decisions concerning PPVA.

732. From January 1, 2016, until commencement of the Cayman Liquidation, Gerszberg advised the Platinum Defendants with respect to PPVA's investments and provided substantial assistance in the formulation and execution of the Second Scheme.

733. At this time, Gerszberg was provided with information concerning PPVA's financial condition, its ongoing liquidity issues and the misrepresentation of its NAV by the Platinum Defendants.

734. Gerszberg also substantially assisted the Platinum Defendants with certain of the transactions comprising the Security Lockup.

735. On July 4, 2016, Nordlicht informed Gerszberg that PPVA would be commencing the Cayman Liquidation and the Chapter 15 Bankruptcy, leaving creditors of PPVA, such as West Loop/Epocs, with claims in PPVA's insolvency proceedings. A true and correct copy of Nordlicht's July 4, 2016 email to Gerszberg is attached hereto as **Exhibit 98.**

736. On July 6, 2016, as Gerszberg demanded and the Platinum Defendants agreed, a Forbearance and Security Agreement, dated July 5, 2016, was entered into among PPVA, DMRJ, West Loop and Epocs (the "**Forbearance and Security Agreement**"). A true and correct copy of the Forbearance and Security Agreement is attached hereto as **Exhibit 99**.

737. The Forbearance and Security Agreement purports to provide West Loop/Epocs with a security interest in DMRJ's rights to certain proceeds from the sale of IMSC, specifically from one of the IMSC Notes owned by DMRJ.

738. With direct knowledge of PPVA's imminent liquidation, Gerszberg, as agent or representative of West Loop/Epocs, drafted the Forbearance and Security Agreement for the sole benefit of West Loop/Epocs, and to the detriment of PPVA, knowing the alleged forbearance was wholly illusory.

739. The Forbearance and Security Agreement orchestrated by Gerszberg and the Platinum Defendants sought to encumber PPVA's assets at the subsidiary level for the benefit of Gerszberg's family members, at a time when Platinum Management already had engaged counsel to prepare the filings in connection with PPVA's liquidation and the commencement of an insolvency proceeding was a certainty.

740. In addition, the Platinum Defendants conspired with Gerszberg to effectuate the transfer of $15 million from the Agera proceeds to a Gerszberg-controlled entity for no consideration.

741. On or about June 3, 2016, Gerszberg and Franky Zapata ("**Zapata**") entered into that certain Master Agreement for the Unification of Zapata and Gerszberg Businesses (the "**Zapata Master Agreement**"). A true and correct copy of the Zapata Master Agreement is attached hereto as **Exhibit 100.**

742. Zapata is the principal of the French company Zapata Industries SAS ("**Zapata Industries**") and the inventor of a water-based flyboard device.

743. The Zapata Master Agreement provides for the rights and duties of Gerszberg, Zapata and their affiliates upon the occurrence of a proposed merger between Zapata Industries and IMSC (the "**Proposed Zapata/IMSC Merger**").

744. As a condition of the Zapata Master Agreement becoming effective, Gerszberg-controlled entity Spectrum30, LLC ("**Spectrum30**") was required to deposit €10,000,000 into Zapata's bank accounts by June 10, 2016.

745. On June 9, 2016, day the Agera Transaction closed, the Platinum Defendants caused PPVA subsidiary Huron Capital LLC ("**Huron**") to transfer $15 million from the Agera proceeds to or on behalf of Gerszberg and Spectrum30 (the "**Spectrum30 Loan**"). Of that amount,

a total of $11 million was wired directly to Zapata. A true and correct copy of documents evidencing that $15 million of the Agera proceeds were used for the "Zapata" transaction and that $11 million was wired directly to Zapata are attached hereto as **Exhibit 101.**

746. PPVA had no obligation under the Zapata Master Agreement to provide funds to Gerszberg, Spectrum30, or Zapata in connection with the Proposed Zapata/IMSC Merger, and received no valuable consideration in return.

747. The Platinum Defendants and Gerszberg caused PPVA to transfer a substantial portion of the limited cash PPVA received from the Agera Sale to Gerszberg and Zapata, to the detriment of PPVA.

748. Thereafter, the Platinum Defendants and Gerszberg took steps in an attempt to protect Gerszberg and Spectrum from any claim in connection with the Spectrum30 Loan, regardless of whether or not the Proposed Zapata/IMSC Merger occurred.

749. On August 23, 2016, the same day PPVA filed its winding up petition in the Grand Court of the Cayman Islands, the Platinum Defendants and Gerszberg caused the promissory note evidencing the Spectrum30 Loan to be amended (the "**Amended Spectrum30 Note**").

750. The Amended Spectrum30 Note provides that if the Proposed Zapata/IMSC Merger occurs, Spectrum30 is released from any and all obligations in connections with the Spectrum30 Loan.

751. The Amended Spectrum30 Note provides that if the Proposed Zapata/IMSC Merger *does not* occur, any amount owed to Huron under the Spectrum Loan is offset by claims of The Collective against Atlantic Growth and "the Finkelman Debt."

CLAIMS FOR RELIEF

First Count: Breach of Fiduciary Duty (Duty of Care and Good Faith) Against the Platinum Defendants

752. The Plaintiffs repeat and re-allege paragraphs 1-751 as if fully set forth herein.

753. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties to PPVA.

754. The Platinum Defendants were obligated and bound to act in a responsible and lawful manner, in good faith, so as not to cause injury to PPVA.

755. The Platinum Defendants were obligated to exercise due care and diligence to preserve, invest, value, manage, operate, and administer PPVA, its subsidiaries, its property and its assets.

756. The Platinum Defendants also owed PPVA duties of full and candid disclosure of all material facts relevant to PPVA, to deal fairly and honestly with PPVA, and not to omit any material facts.

757. The Platinum Defendants were obligated to ensure that they did not engage in any fraudulent, unsafe, unlawful or unsound investment, operational, administrative or management practices.

758. In engaging in the First and Second Schemes described herein, including: (i) the systematic misrepresentation and overvaluation of PPVA's NAV for the purpose of paying the Platinum Defendants unearned fees (First Scheme); (ii) the Black Elk Scheme, Black Elk bond devaluation, and the significant creditor claims that resulted therefrom (First Scheme); and (iii) the transfer or encumbrance of nearly all of PPVA's Remaining Assets for the sole benefit of

Beechwood, PPCO and other select insiders and to the detriment of PPVA (Second Scheme), the Platinum Defendants repeatedly breached their fiduciary obligation of due care to PPVA.

759. As set forth in the SEC Action, the Platinum Defendants managed PPVA in an unlawful manner and failed to manage PPVA in good faith.

760. As a direct and proximate result of the Platinum Defendants' breaches of their fiduciary duties, PPVA was injured and suffered damages.

761. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

762. In addition, because the Platinum Defendants acted knowingly, intentionally, purposefully, maliciously, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Second Count: Breach of Fiduciary Duty
(Duty of Loyalty/Self-Dealing) Against the Platinum Defendants

763. The Plaintiffs repeat and re-allege paragraphs 1-762 as if fully set forth herein.

764. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed PPVA fiduciary duties of loyalty and good faith.

765. The Platinum Defendants were duty bound to act in a responsible and lawful manner, in good faith, so as not to cause injury to PPVA.

766. In engaging in the First and Second Schemes described herein, including: (i) intentionally engaging in certain acts for the purpose of artificially inflating PPVA's NAV, in order to generate unearned fees, bonuses, salaries, and other payments to enrich themselves at the expense of PPVA (First Scheme); (ii) intentionally engaging in the Black Elk Scheme, to enable

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the Preferred Investors of the BEOF Funds to take the proceeds from the Black Elk Renaissance Sale in contravention of the prior rights of PPVA, leaving PPVA with significant losses and claims (First Scheme); and (iii) the transfer or encumbrance of nearly all of PPVA's Remaining Assets for the sole benefit of Beechwood, PPCO and other select insiders and to the detriment of PPVA (Second Scheme), the Platinum Defendants breached their duties of loyalty and good faith to PPVA.

767. For these reasons and others set forth herein, the Platinum Defendants engaged in a consistent pattern of self-dealing and breaches of their duty of loyalty throughout the course of the First and Second Schemes.

768. As a direct and proximate result of the Platinum Defendants' self-dealing and breaches of their duty of loyalty to PPVA, PPVA was injured and suffered damages.

769. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

770. In addition, because the Platinum Defendants acted knowingly, intentionally, purposefully, maliciously, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Third Count: Aiding and Abetting Breach of
<u>Fiduciary Duties against the Individual Platinum Defendants</u>

771. The Plaintiffs repeat and re-allege Paragraphs 1-770 as if fully set forth herein.

772. Platinum Management, the General Partner of PPVA, owed fiduciary duties of due care, loyalty and good faith to PPVA.

773. As set forth above, Platinum Management breached its fiduciary duties to PPVA by its actions in connection with the First and Second Schemes.

774. Platinum Defendants Nordlicht, Huberfeld, Bodner, Landesman, Bernard Fuchs, Levy, Steinberg, Beren, Manela, Ottensoser, SanFilippo, and Small (collectively, the "**Individual Platinum Defendants**") used their positions as owners, executives and managers of Platinum Management to cause Platinum Management to breach its fiduciary duties to PPVA.

775. In addition, the Individual Platinum Defendants substantially assisted, aided and abetted, and participated in Platinum Management's breaches of its fiduciary obligations in connection with the First and Second Schemes by, *inter alia*, (i) orchestrating transactions among PPVA and various insiders designed to support the inflated NAV ascribed to PPVA's assets by the Platinum Defendants, so as to enable Platinum Management to charge PPVA for unearned fees and expenses; (ii) causing PPVA and its subsidiaries to engage in transactions to benefit the Platinum Defendants, BEOF Funds and the Beechwood Defendants to the detriment of PPVA; (iii) participating in the Black Elk Scheme; and (iv) engaging in transactions which purposefully transferred or encumbered the assets of PPVA and its subsidiaries, designed to benefit the Beechwood Defendants and other insiders to the detriment of PPVA.

776. The Individual Platinum Defendants had actual knowledge that Platinum Management was breaching its fiduciary obligations to PPVA by engaging in the actions and transactions comprising the First and Second Schemes.

777. As a direct and proximate result of the Individual Platinum Defendants' actions and substantial participation, PPVA was damaged.

778. The actions of the Individual Platinum Defendants caused the harm on which the primarily liability of breach of fiduciary duties is predicated.

779. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

780. In addition, because the Individual Platinum Defendants acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Fourth Count: Fraud against the Platinum Defendants

781. The Plaintiffs repeat and re-allege paragraphs 1-780 as if fully set forth herein.

782. As detailed herein, the Platinum Defendants intentionally engaged in the First and Second Schemes by communicating material representations to PPVA in various forms and by omitting to state material facts.

783. These material representations occurred by way of the Platinum Defendants making, and causing to be made, written and oral representations concerning the financial condition of PPVA and the acts in furtherance of the Platinum Defendants' administration and management of PPVA's assets and investments.

784. These material representations included statements concerning the nature and characteristics of the investments of PPVA, the method of valuation of PPVA assets, including NAV, and the management and other fees earned by Platinum Defendants and subsequently paid by or charged to PPVA.

785. At all relevant times, the Platinum Defendants knew that such representations were material to PPVA.

786. At all relevant times, the Platinum Defendants knew that their omissions and the representations they individually or collectively made, caused to be made, or knew were being made with their consent, were false when made.

787. At all relevant times, the Platinum Defendants misrepresented to PPVA that PPVA's NAV was steadily increasing, despite PPVA's assets being increasingly concentrated in speculative and unproven start-up companies, many of which were not publicly traded and for which there were no readily available market prices.

788. The Platinum Defendants represented to PPVA that asset valuations for PPVA's investment positions would be initially set by an internal valuation committee. Such initial valuations, however, were arbitrarily adjusted by Nordlicht, with the consent of the other Platinum Defendants, in order to increase NAV and increase management fees paid to the Platinum Defendants.

789. The Platinum Defendants caused PPVA and its subsidiaries to engage with the Beechwood Entities and the Beechwood Defendants in insider investments, loans and other transactions including, among others, Golden Gate Oil, PEDEVCO, Black Elk, Northstar, Montsant/Navidea and Implant Sciences, at non-market prices, at terms unconnected to the actual value of the transaction, and with improper guaranty and put arrangements, by which the Platinum Defendants misrepresented the risk of loss to PPVA and placed the interests of the Beechwood Entities ahead of PPVA's interests.

790. The Platinum Defendants intentionally did not include the liabilities arising from the guaranties and put agreements that they caused PPVA to grant to the Beechwood Entities when they calculated the PPVA NAV and determined the amount of partnership share, fees and expenses owed to them by PPVA even though those guaranties placed PPVA at significant risk of loss.

791. At all times after the Black Elk Explosion, the Platinum Defendants falsely inflated PPVA's total net investment in Black Elk even though they well knew that Black Elk was

experiencing significant deterioration in performance and had accrued significant unsecured liabilities and secured obligations.

792. The Platinum Defendants schemed to, and did, divert from PPVA and misappropriate to themselves and the Preferred Investors of the BEOF Funds proceeds from the Renaissance Sale, by engaging in the Black Elk Scheme, which resulted in significant claims against PPVA.

793. The Platinum Defendants falsely reported and inflated the valuation of Northstar, based in part on the false claim that PPVA's claims against Northstar were secured by liens on all of Northstar's assets even though they well knew mortgages and financing statements had not been filed with respect to any of the leases and other assets that Northstar purchased from Black Elk, the company was struggling to pay its obligations, and Platinum Management was causing PPVA and PPCO to fund Northstar's operations.

794. The Platinum Defendants falsely inflated the NAV of PPVA's assets, in order to generate for themselves tens of millions of dollars in fraudulent fees and payments – to which they were not entitled – all to the detriment of PPVA.

795. The Platinum Defendants knowingly and intentionally made numerous false representations of material fact and omitted to state material facts to PPVA concerning the Platinum Defendants' intent to manage and administer PPVA, its subsidiaries and its assets in compliance with the terms of PPVA's governing documents, including but not limited to the PPVA Partnership Agreement.

796. The Platinum Defendants also knowingly and intentionally defrauded PPVA by causing it to engage in transactions with and involving the Beechwood Entities that were designed to benefit the Beechwood Entities to the detriment of PPVA.

797. The Platinum Defendants caused PPVA and its subsidiaries to engage with the Beechwood Defendants, PPCO and other insiders in insider investments, loans and other transactions at non-market prices and terms unconnected to the actual value of the transaction, such as the Nordlicht Side Letter, the Master Guaranty, creation of the Montsant Collateral Account and the Agera Transactions, without disclosing the purpose of these transactions to encumber or transfer PPVA's assets for the benefit of insiders.

798. The Platinum Defendants intentionally withheld from PPVA the nature of the Second Scheme Transactions, purposefully omitting the encumbrances that the Platinum Defendants had granted upon PPVA's assets for the benefit of insiders and the significant loss to PPVA that resulted from the Second Scheme Transactions.

799. PPVA justifiably relied on the foregoing false representations, omissions and fraudulent actions of the Platinum Defendants.

800. PPVA has been damaged as a proximate result of each of the Platinum Defendants' fraudulent misrepresentations, omissions and actions to defraud PPVA during the First and Second Schemes in at least the following ways: (i) PPVA paid the Platinum Defendants tens of millions of dollars in unearned distributions and/or fees, expenses, bonuses and other payments; (ii) PPVA incurred tens of millions of dollars in creditor claims arising out of the Black Elk Scheme; (iii) the Preferred Investors of the BEOF Funds improperly received priority payments ahead of PPVA and its subsidiaries due to the Black Elk Scheme; and (iv) PPVA and its subsidiaries were made parties to numerous non-commercial transactions with the Beechwood Entities, PPCO and other Platinum Management insiders that subordinated PPVA's interests and depressed or encumbered the value of PPVA's assets.

801. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

802. In addition, because the Platinum Defendants acted knowingly, intentionally, purposefully, maliciously, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Fifth Count: Constructive Fraud against the Platinum Defendants

803. The Plaintiffs repeat and re-allege paragraphs 1-802 as if fully set forth herein.

804. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties of due care, loyalty and good faith to PPVA.

805. As detailed herein, the Platinum Defendants intentionally engaged in the First and Second Schemes by communicating material representations to PPVA in various forms and by omitting to state material facts.

806. These material representations occurred by way of the Platinum Defendants making, and causing to be made, written and oral representations concerning the financial condition of PPVA and the acts in furtherance of the Platinum Defendants' administration and management of PPVA's assets.

807. These material representations included statements concerning the nature and characteristics of the investments of PPVA, the method of valuation of PPVA assets, including NAV, and the management and other fees earned by Platinum Defendants and subsequently paid by or charged to PPVA.

808. At all relevant times, the Platinum Defendants knew that such representations were material to PPVA.

809. At all relevant times, the Platinum Defendants knew that their omissions and the representations they individually or collectively made, caused to be made, or knew were being made with their consent, were false when made.

810. At all relevant times, the Platinum Defendants misrepresented to PPVA that PPVA's NAV was steadily increasing, despite PPVA's assets being increasingly concentrated in speculative and unproven start-up companies, many of which were not publicly traded and for which there were no readily available market prices.

811. The Platinum Defendants represented to PPVA that asset valuations for PPVA's investment positions would be initially set by an internal valuation committee. Such initial valuations, however, were arbitrarily adjusted by Nordlicht, with the consent of the other Platinum Defendants, in order to increase NAV and increase management fees paid to the Platinum Defendants.

812. The Platinum Defendants caused PPVA and its subsidiaries to engage with the Beechwood Entities and the Beechwood Defendants in insider investments, loans and other transactions including, among others, Golden Gate Oil, PEDEVCO, Black Elk, Northstar, Montsant/Navidea and Implant Sciences, at non-market prices, at terms unconnected to the actual value of the transaction, and with improper guaranty and put arrangements, by which the Platinum Defendants misrepresented the risk of loss to PPVA and placed the interests of the Beechwood Entities ahead of PPVA's interests.

813. The Platinum Defendants intentionally did not include the liabilities arising from the guaranties and put agreements that they caused PPVA to grant to the Beechwood Entities when they calculated the PPVA NAV and determined the amount of partnership share, fees and expenses owed to them by PPVA even though those guaranties placed PPVA at significant risk of loss.

814. At all times after the Black Elk Explosion, the Platinum Defendants falsely inflated PPVA's total net investment in Black Elk even though they well knew that Black Elk was experiencing significant deterioration in performance and had accrued significant unsecured liabilities and secured obligations.

815. The Platinum Defendants schemed to, and did, divert from PPVA and misappropriate to themselves and the Preferred Investors of the BEOF Funds proceeds from the Renaissance Sale, by engaging in the Black Elk Scheme, which resulted in significant claims against PPVA.

816. The Platinum Defendants falsely reported and inflated the valuation of Northstar, based in part on the false claim that PPVA's claims against Northstar were secured by liens on all of Northstar's assets even though they well knew mortgages and financing statements had not been filed with respect to any of the leases and other assets that Northstar purchased from Black Elk, the company was struggling to pay its obligations, and Platinum Management was causing PPVA and PPCO to fund Northstar's operations.

817. The Platinum Defendants falsely inflated the NAV of PPVA's assets, in order to generate for themselves tens of millions of dollars in fraudulent fees and payments – to which they were not entitled – all to the detriment of PPVA.

818. The Platinum Defendants knowingly and intentionally made numerous false representations of material fact and omitted to state material facts to PPVA concerning the Platinum Defendants' intent to manage and administer PPVA, its subsidiaries and its assets in compliance with the terms of PPVA's governing documents, including but not limited to the PPVA Partnership Agreement.

819. The Platinum Defendants also knowingly and intentionally defrauded PPVA by causing it to engage in transactions with and involving the Beechwood Entities that were designed to benefit the Beechwood Entities to the detriment of PPVA.

820. The Platinum Defendants caused PPVA and its subsidiaries to engage with the Beechwood Defendants, PPCO and other insiders in insider investments, loans and other transactions at non-market prices and terms unconnected to the actual value of the transaction, such as the Nordlicht Side Letter, the Master Guaranty, creation of the Montsant Collateral Account and the Agera Transactions, without disclosing the purpose of these transactions to encumber or transfer PPVA's assets for the benefit of insiders.

821. The Platinum Defendants intentionally withheld from PPVA the nature of the Second Scheme Transactions, purposefully omitting the encumbrances that the Platinum Defendants had granted upon PPVA's assets for the benefit of insiders and the significant loss to PPVA that resulted from the Second Scheme Transactions.

822. PPVA reposed trust and confidence in the Platinum Defendants, based on the Platinum Defendants' assurances that they would invest PPVA's assets prudently and in PPVA's best interest, in accordance with all relevant investment guidelines.

823. Because of the nature of the fiduciary relationship, PPVA justifiably relied upon the Platinum Defendants' misrepresentations and omissions or concealments to its detriment, by permitting the Platinum Defendants to continue management of PPVA's assets and by paying the Platinum Defendants unearned fees and bonuses based off of the Platinum Defendants' misrepresentations and omissions.

824. PPVA has been damaged as a proximate result of each of the Platinum Defendants' fraudulent misrepresentations, omissions and actions to defraud PPVA during the First and Second

Schemes in at least the following ways: (i) PPVA paid the Platinum Defendants tens of millions of dollars in unearned distributions and/or fees, expenses, bonuses and other payments; (ii) PPVA incurred tens of millions of dollars in creditor claims arising out of the Black Elk Scheme; (iii) the Preferred Investors of the BEOF Funds improperly received priority payments ahead of PPVA and its subsidiaries due to the Black Elk Scheme; and (iv) PPVA and its subsidiaries were made parties to numerous non-commercial transactions with the Beechwood Entities, PPCO and other Platinum Management insiders that subordinated PPVA's interests and depressed or encumbered the value of PPVA's assets.

825. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

826. In addition, because the Platinum Defendants acted knowingly, intentionally, purposefully, maliciously, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

<u>Sixth Count: Aiding and Abetting Fraud against the Individual Platinum Defendants</u>

827. The Plaintiffs repeat and re-allege paragraphs 1-826 as if fully set forth herein.

828. As set forth above, Platinum Management defrauded PPVA in connection with the actions comprising the First and Second Schemes.

829. The Individual Platinum Defendants substantially assisted and participated in Platinum Management's material misrepresentations, omissions and actions to defraud PPVA in connection with the First and Second Schemes by, *inter alia*, (i) engaging in transactions with the Beechwood Defendants and other insiders designed to support the inflated net asset values ascribed to PPVA's assets by Platinum Management, so as to enable Platinum Management to cause PPVA to pay it unearned distributions, fees, expenses and other payments; (ii) engaging in transactions

to benefit the Platinum Defendants, Beechwood Defendants and other insiders to the detriment of PPVA; and (iii) participating in the Black Elk Scheme, including, among other things, the amendment of the Black Elk Indenture; and (iv) engaging in transactions which purposefully transferred or encumbered the assets of PPVA and its subsidiaries, designed to benefit the Platinum Defendants, Beechwood Defendants, the BEOF Funds and the Preferred Investors of the BEOF Funds, PPCO and other insiders to the detriment of PPVA.

830. The Individual Platinum Defendants had actual knowledge that Platinum Management was defrauding PPVA by engaging in the acts and transactions and making the material misrepresentations and omissions comprising the First and Second Schemes.

831. As a direct and proximate result of the Individual Platinum Defendants' actions and substantial participation, PPVA was damaged.

832. The actions of the Individual Platinum Defendants caused the harm on which the primary liability of fraud is predicated.

833. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

834. In addition, because the Individual Platinum Defendants acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Seventh Count: Aiding and Abetting Breach of
Fiduciary Duties against the Beechwood Defendants

835. The Plaintiffs repeat and re-allege paragraphs 1-834 as if fully set forth herein.

836. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties of due care, loyalty and good faith to PPVA.

837. As set forth above, the Platinum Defendants breached their fiduciary duties to PPVA by their actions in connection with the First and Second Schemes as detailed above.

838. At all relevant times, Nordlicht, Levy, Huberfeld and Bodner, together with Feuer and Taylor, created, owned, managed, controlled and operated the Beechwood Entities.

839. Beechwood and Platinum Management initially shared offices and several senior staff members of the Beechwood Entities were current or seconded employees of Platinum Management, including Levy, who was named as BAM's initial CIO and was marketed as part of the Beechwood Entities' senior executive team.

840. The Beechwood Defendants and Platinum Defendants communicated with one another regularly by email and in person regarding the statements and transactions comprising the First and Second Schemes.

841. The Beechwood Defendants substantially assisted and participated in the Platinum Defendants' breaches of their fiduciary obligations in connection with the First and Second Schemes by, *inter alia*, (i) engaging in transactions with PPVA designed to support the inflated NAV ascribed to PPVA's assets by the Platinum Defendants, so as to enable the Platinum Defendants to charge and pay themselves unearned fees and expenses; (ii) engaging in transactions to benefit the Platinum Defendants, BEOF Funds and the Beechwood Defendants to the detriment of PPVA; (iii) participating in the Black Elk Scheme; and (iv) engaging in transactions which purposefully transferred or encumbered the assets of PPVA and its subsidiaries, designed to benefit the Beechwood Defendants and other insiders to the detriment of PPVA.

842. The Beechwood Defendants had actual knowledge that the Platinum Defendants were breaching their fiduciary obligations to PPVA by engaging in the actions and transactions comprising the First and Second Schemes.

843. As a direct and proximate result of the Beechwood Defendants' actions and substantial participation, PPVA was damaged.

844. The actions of the Beechwood Defendants caused the harm on which the primarily liability of breach of fiduciary duties is predicated.

845. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

846. In addition, because the Beechwood Defendants acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Eighth Count: Aiding and Abetting Fraud
<u>against the Beechwood Defendants</u>

847. The Plaintiffs repeat and re-allege paragraphs 1-846 as if fully set forth herein.

848. As set forth above, the Platinum Defendants defrauded PPVA in connection with the actions comprising the First and Second Schemes.

849. At all relevant times, Nordlicht, Levy, Huberfeld and Bodner, together with Feuer and Taylor, created, owned, managed, controlled and operated the Beechwood Entities.

850. The Beechwood Entities and Platinum Management initially shared offices and several senior staff members of the Beechwood Entities were current or seconded employees of Platinum Management, including Levy, who was named as BAM's initial CIO and was marketed as part of the Beechwood Entities' senior executive team.

851. The Beechwood Defendants and Platinum Defendants communicated with one another regularly by email and in person regarding the statements and transactions comprising the First and Second Schemes.

852. The Beechwood Defendants substantially assisted and participated in the Platinum Defendants' material misrepresentations, omissions and actions to defraud PPVA in connection with the First and Second Schemes by, *inter alia*, (i) engaging in transactions with PPVA designed to support the inflated net asset values ascribed to PPVA's assets by the Platinum Defendants, so as to enable the Platinum Defendants to charge and pay themselves unearned fees and expenses; (ii) engaging in transactions to benefit the Platinum Defendants, Beechwood Defendants and other insiders to the detriment of PPVA; and (iii) participating in the Black Elk Scheme, including, among other things, the amendment of the Black Elk Indenture; and (iv) engaging in transactions which purposefully transferred or encumbered the assets of PPVA and its subsidiaries, designed to benefit the Beechwood Defendants and other insiders to the detriment of PPVA.

853. As a result, the Beechwood Defendants had actual knowledge that the Platinum Defendants were defrauding PPVA by engaging in the acts and transactions and making the material misrepresentations and omissions comprising the First and Second Schemes.

854. As a direct and proximate result of the Beechwood Defendants' actions and substantial participation, PPVA was damaged.

855. The actions of the Beechwood Defendants caused the harm on which the primary liability of fraud is predicated.

856. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

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857. In addition, because the Beechwood Defendants acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Ninth Count: Aiding and Abetting Breach of Fiduciary Duties
against the BEOF Funds and the Preferred Investors of the BEOF Funds

858. The Plaintiffs repeat and re-allege paragraphs 1-857 as if fully set forth herein.

859. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties of due care, loyalty and good faith to PPVA.

860. As set forth above, the Platinum Defendants breached their fiduciary duties to PPVA by their actions in connection with the Black Elk Scheme.

861. As described herein, the Platinum Defendants orchestrated the Black Elk Scheme so as to divert the proceeds of the Renaissance Sale for the benefit of themselves, the BEOF Funds and the Preferred Investors of BEOF, resulting in significant losses to and claims against PPVA.

862. Both BEOF Funds were formed, managed and marketed by the Platinum Defendants, including Nordlicht, Landesman, Levy, Manela, Huberfeld, Bodner, Fuchs, Small, Steinberg, SanFilippo, Beren and other persons employed Platinum Management.

863. Both BEOF Funds share overlapping investors with the funds managed by Platinum Management by way of the Preferred Investors of the BEOF Funds.

864. Both BEOF Funds were formed in the offices of Platinum Management and operated until their conclusion by Platinum Management from the same offices.

865. That being said, the Preferred Investors of the BEOF Funds made a conscious choice to participate in the Platinum Defendants' actions with respect to Black Elk and eventually the Black Elk Scheme. In spring 2014, each of the Preferred Investors of the BEOF Funds agreed

to exchange their existing investments in the BEOF Funds for new investments and in some cases to invest additional funds, which agreements substantially assisted the Platinum Defendants in making it possible to effect the Black Elk Scheme.

866. The spring 2014 agreements by the Preferred Investors of the BEOF Funds to exchange their existing investments in the BEOF Funds for new investments and/or to invest additional funds were made notwithstanding the fact that by Spring 2014, Black Elk's public filings indicated that it likely was insolvent.

867. Both BEOF Funds and the Preferred Investors of the BEOF Funds substantially assisted and participated in the Platinum Defendants' breaches of their fiduciary obligations in connection with the Black Elk Scheme by, *inter alia*, (i) participating in the Black Elk Scheme; and (ii) engaging in transactions to benefit the Platinum Defendants, the BEOF Funds and the Preferred Investors of the BEOF Funds to the detriment of PPVA.

868. The BEOF Funds and the Preferred Investors of the BEOF Funds had actual knowledge that the Platinum Defendants were breaching their fiduciary obligations to PPVA by engaging in the acts and transactions comprising the Black Elk Scheme.

869. As a direct and proximate result of the actions and substantial participation of both BEOF Funds and the Preferred Investors of the BEOF Funds, PPVA was damaged.

870. The actions of the BEOF Funds and the Preferred Investors of the BEOF Funds caused the harm on which the primarily liability of breach of fiduciary duties is predicated.

871. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

872. In addition, because the BEOF Funds and the Preferred Investors of the BEOF Funds acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Tenth Count: Aiding and Abetting Fraud against
the BEOF Funds and the Preferred Investors of the BEOF Funds

873. The Plaintiffs repeat and re-allege paragraphs 1-872 as if fully set forth herein.

874. As set forth above, the Platinum Defendants defrauded PPVA in connection with the actions comprising the Black Elk Scheme.

875. As described herein, the Platinum Defendants orchestrated the Black Elk Scheme so as to divert the proceeds of the Renaissance Sale for the benefit of themselves, the BEOF Funds and the Preferred Investors of the BEOF Funds, resulting in significant losses and claims against PPVA.

876. Both BEOF Funds were formed, managed and marketed by the Platinum Defendants, including Nordlicht, Landesman, Levy, Manela, Huberfeld, Bodner, Fuchs, Small, Steinberg, SanFilippo, Beren and other persons employed Platinum Management.

877. Both BEOF Funds share overlapping investors with the funds managed by Platinum Management by way of the Preferred Investors of the BEOF Funds.

878. Both BEOF Funds were formed in the offices of Platinum Management and operated until their conclusion by Platinum Management from the same offices.

879. That being said, the Preferred Investors of the BEOF Funds made a conscious choice to participate in the Platinum Defendants actions with respect to Black Elk and eventually the Black Elk Scheme. In spring 2014, each of the Preferred Investors of the BEOF Funds agreed to exchange their existing investments in the BEOF Funds for new investments and in some cases

to invest additional funds, which agreements substantially assisted the Platinum Defendants in making it possible to effect the Black Elk Scheme.

880. The spring 2014 agreements by the Preferred Investors of the BEOF Funds to exchange their existing investments in the BEOF Funds for new investments and/or to invest additional funds were made notwithstanding the fact that by Spring 2014, Black Elk's public filings indicated that it likely was insolvent.

881. The BEOF Funds and the Preferred Investors of BEOF Funds substantially assisted and participated in the Platinum Defendants' material misrepresentations, omissions and actions to defraud PPVA in connection with the Black Elk Scheme by, *inter alia*, (i) engaging in transactions with PPVA designed to support the inflated NAV ascribed to PPVA's investment in Black Elk by the Platinum Defendants, so as to enable the Platinum Defendants to charge and pay themselves unearned fees and expenses; (ii) engaging in transactions to benefit the Platinum Defendants, the BEOF Funds and the Preferred Investors of BEOF Funds to the detriment of PPVA; and (iii) participating in the Black Elk Scheme.

882. The BEOF Funds and the Preferred Investors of the BEOF Funds had actual knowledge that the Platinum Defendants were defrauding PPVA by engaging in the acts and transactions and making the material misrepresentations and omissions comprising the Black Elk Scheme.

883. As a direct and proximate result of the actions and substantial participation of the BEOF Funds and the Preferred Investors of the BEOF Funds, PPVA was damaged.

884. The actions of the BEOF Funds and the Preferred Investors of the BEOF Funds caused the harm on which the primary liability of fraud is predicated.

885. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

886. In addition, because the BEOF Funds and the Preferred Investors of the BEOF Funds acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Eleventh Count: Aiding and Abetting Breach of
Fiduciary Duties against Michael Katz

887. The Plaintiffs repeat and re-allege paragraphs 1-886 as if fully set forth herein.

888. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties of due care, loyalty and good faith to PPVA.

889. As set forth above, the Platinum Defendants breached their fiduciary duties to PPVA by, among other things, causing PPVA and its subsidiaries to enter into the Agera Transactions.

890. Beginning at least in March 2016, Katz served as an advisor to Platinum Management, and assisted in orchestrating the scheme whereby the Platinum Defendants caused PPVA's interest in Agera Energy to be transferred to an "insider" to the detriment of PPVA, which was thereafter effectuated by way of the June 2016 Agera Transactions.

891. The Platinum Defendants communicated with Katz regularly by email and in person regarding the Agera Transactions.

892. Katz substantially assisted and participated in the Platinum Defendants' breaches of their fiduciary obligations in connection with the Agera Transactions by, *inter alia*,

orchestrating the Agera Transactions in order to transfer PPVA's interest in Agera Energy to the Beechwood Defendants at a significant loss to PPVA.

893. Katz had actual knowledge that the Platinum Defendants were breaching their fiduciary obligations to PPVA by engaging in the Agera Transactions.

894. As a direct and proximate result of Katz's actions and substantial participation, PPVA was damaged.

895. The actions of Katz caused the harm on which the primary liability of breach of fiduciary duty is predicated.

896. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

897. In addition, because Michael Katz acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Twelfth Count: Aiding and Abetting Breach of Fiduciary Duties against Kevin Cassidy and Michael Nordlicht

898. The Plaintiffs repeat and re-allege paragraphs 1-897 as if fully set forth herein.

899. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties of due care, loyalty and good faith to PPVA.

900. As set forth above, the Platinum Defendants breached their fiduciary duties to PPVA by, among other things, causing PPVA and its subsidiaries to enter into the Agera Transactions.

901. When Cassidy was released from prison in 2014, Nordlicht, Bodner and Huberfeld installed him as the managing director of Agera Energy.

902. Also in 2014, Michael Nordlicht was installed by Mark Nordlicht, his uncle, as in-house counsel for Agera Energy

903. Cassidy and Starfish, an entity dominated and controlled by Cassidy, were parties to the Agera Transactions, and received millions of dollars in Agera Sale proceeds in exchange for nothing.

904. Michael Nordlicht willfully consented to and actively participated in the Agera Transactions and the transfer of his voting and equity interests in Agera Holdings to AGH Parent.

905. The Platinum Defendants communicated with Cassidy and Michael Nordlicht regularly by email and in person regarding the Agera Transactions, as both Cassidy and Michael Nordlicht were deeply involved in the negotiation of the Agera Transactions.

906. Cassidy substantially assisted and participated in the Platinum Defendants' breaches of their fiduciary obligations in connection with the Agera Transactions by, *inter alia*, (i) orchestrating the Agera Transactions in order to transfer PPVA's interest in Agera Energy to the Beechwood Defendants; and (ii) receiving $13,552,000 in cash and interests in AGH Parent from the corrupt Agera Transactions by way of his entity, Starfish.

907. Michael Nordlicht substantially assisted and participated in the Platinum Defendants' breaches of their fiduciary obligations in connection with the Agera Transactions by, *inter alia*, (i) orchestrating the Agera Transactions in order to transfer PPVA's interest in Agera Energy to the Beechwood Defendants; and (ii) consenting to the transfer of his voting and equity interests in Agera Energy's parent company to AGH Parent.

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908. Cassidy and Michael Nordlicht had actual knowledge that the Platinum Defendants were breaching their fiduciary obligations to PPVA by engaging in the Agera Transactions.

909. As a direct and proximate result of Cassidy and Michael Nordlicht's actions and substantial participation, PPVA was damaged.

910. The actions of Cassidy and Michael Nordlicht caused the harm on which the primary liability of breaches of fiduciary duty is predicated.

911. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

912. In addition, because Cassidy and Michael Nordlicht acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Thirteenth Count: Aiding and Abetting Breach of
<u>Fiduciary Duties against Seth Gerszberg</u>

913. The Plaintiffs repeat and re-allege paragraphs 1-912 as if fully set forth herein.

914. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties of due care, loyalty and good faith to PPVA.

915. As set forth above, the Platinum Defendants breached their fiduciary duties to PPVA by, among other things, causing PPVA and its subsidiaries to enter into the certain transactions constituting the Security Lockup.

916. On January 1, 2016, Nordlicht brought on Gerszberg as an informal advisor to Platinum Management.

917. From January 1, 2016 until commencement of the Cayman Liquidation, Gerszberg advised the Platinum Defendants and provided substantial assistance in the formulation and execution of the Second Scheme.

918. The Platinum Defendants communicated with Gerszberg regularly by email and in person regarding the Second Scheme.

919. Gerszberg substantially assisted and participated in the Platinum Defendants' breaches of their fiduciary obligations in connection with the Second Scheme by, *inter alia*, (i) causing PPVA to allegedly incur significant liabilities due to the Purported Underlying West Loop/Epocs Obligations; (ii) negotiating certain Second Scheme Transactions on behalf of the Platinum Defendants; (iii) negotiating and drafting the Forbearance and Security Agreement on behalf of West Loop/Epocs; and (iv) directing the transfer of $15 million in Agera Sale proceeds to himself (via Spectrum30) and Franky Zapata, all of which actions were a detriment to PPVA and its subsidiaries.

920. Gerszberg had actual knowledge that the Platinum Defendants were breaching their fiduciary obligations to PPVA by engaging in the Second Scheme.

921. As a direct and proximate result of Gerszberg's actions and substantial participation, PPVA was damaged.

922. The actions of Gerszberg caused the harm on which the primary liability of breaches of fiduciary duty is predicated.

923. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

924. In addition, because Gerszberg acted willingly, grossly, recklessly and wantonly negligent, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Fourteenth Count: In the Alternative, Unjust Enrichment against the Beechwood Defendants, Kevin Cassidy and Seth Gerszberg

925. The Plaintiffs repeat and re-allege paragraphs 1-924 as if fully set forth herein.

926. In connection with the Second Scheme and as described herein, the Platinum Defendants intentionally engaged in certain acts for the purpose of transferring or encumbering PPVA's assets for the sole benefit of insiders of the Platinum Defendants, including the Beechwood Defendants, Kevin Cassidy and Seth Gerszberg.

927. The Platinum Defendants orchestrated the Second Scheme for the intentional purpose of diverting the remaining assets of PPVA and its subsidiaries to insiders such as the Beechwood Defendants, Cassidy and Gerszberg.

928. In connection with the Second Scheme and as described herein, the Platinum Defendants did not seek fair market terms in connection with the Second Scheme Transactions, and instead set transaction terms that knowingly caused significant damage to PPVA and would unjustly benefit insiders such as the Beechwood Defendants, Cassidy and Gerszberg.

929. Platinum Management caused PPVA and its subsidiaries to have a direct relationship with the Beechwood Defendants, Cassidy and Gerszberg.

930. The Beechwood Defendants would be unjustly enriched at the expense of PPVA if they were permitted to receive full benefit from the Second Scheme Transactions and related transfers.

931. PPVA would suffer an unjust detriment if the Beechwood Defendants were permitted to receive the full benefits of the Second Scheme Transactions.

932. Permitting the Beechwood Defendants, Cassidy and Gerszberg to receive full benefit of the Second Scheme Transactions at the expense of PPVA would be against equity and good conscience.

933. By reason of the foregoing, and pled in the alternative pursuant to Fed. R. Civ. P. 8(d)(2), the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

934. In addition, because the Beechwood Defendants, Cassidy and Gerszberg acted knowingly, intentionally, purposefully, maliciously, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Fifteenth Count: In the Alternative, Unjust Enrichment against the BEOF Funds and the Preferred Investors of the BEOF Funds

935. The Plaintiffs repeat and re-allege paragraphs 1-934 as if fully set forth herein.

936. In connection with the Black Elk Scheme and as described herein, the Platinum Defendants intentionally engaged in certain acts that resulted in the improper conveyance and transfer of $36 million to the BEOF Funds and the Preferred Investors of the BEOF Funds to the detriment of PPVA and its subsidiaries.

937. The Platinum Defendants orchestrated the Black Elk Scheme in part to divert the proceeds of the Renaissance Sale away from PPVA for the benefit of the BEOF Funds and the Preferred Investors of the BEOF Funds.

938. Platinum Management caused PPVA and its subsidiaries to have a direct relationship with the BEOF Funds and the Preferred Investors of the BEOF Funds.

939. The BEOF Funds and the Preferred Investors of the BEOF Funds would be unjustly enriched at the expense of PPVA if they were permitted to receive and retain the proceeds they received from the Black Elk Scheme.

940. PPVA would suffer an unjust detriment if the BEOF Funds and the Preferred Investors of the BEOF Funds are permitted to receive the full benefits of the Black Elk Scheme and the transfers related thereto.

941. Permitting the BEOF Funds and the Preferred Investors of the BEOF Funds to retain the full benefit of the Black Elk Scheme and the transfers related thereto at the expense of PPVA would be against equity and good conscience.

942. By reason of the foregoing, and pled in the alternative pursuant to Fed. R. Civ. P. 8(d)(2) the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

943. In addition, because the BEOF Funds and the Preferred Investors of the BEOF Funds acted knowingly, intentionally, purposefully, maliciously, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Sixteenth Count: Civil Conspiracy against the Platinum Defendants and the Beechwood Defendants

944. The Plaintiffs repeat and re-allege paragraphs 1-943 as if fully set forth herein.

945. As set forth herein, Defendants, acting in concert and as a conspiracy, engaged in various tortious conduct against PPVA in connection with the First and Second Schemes, including breach of fiduciary duties, fraud, constructive fraud and/or aiding and abetting of the same.

946. At all relevant times, each Defendant was a knowing and intentional participant in the conspiracy and agreed to pursue its aims, namely, to transfer or encumber PPVA's assets for the benefit of the Defendants.

947. Defendants were closely related entities or individuals, with close corporate relationships and common control, that entered into various agreements among themselves and conspired to intentionally damage PPVA.

948. Each Defendant committed one or more overt acts in furtherance of the conspiracy, including, but not limited to: (i) engaging in transactions designed to support the inflated NAV ascribed to PPVA's assets by the Platinum Defendants, so as to enable the Platinum Defendants to charge and pay themselves unearned fees and expenses; (ii) engaging in transactions to benefit the Platinum Defendants, Preferred Investors of the BEOF Funds and the Beechwood Defendants to the detriment of PPVA; (iii) participating in the Black Elk Scheme; and (iv) engaging in transactions which purposefully transferred or encumbered the assets of PPVA and its subsidiaries, designed to benefit the Beechwood Defendants and other insiders to the detriment of PPVA.

949. PPVA has been injured as a proximate result of the wrongful acts committed by Defendants in furtherance of the conspiracy, as set forth in this Amended Complaint.

950. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

951. In addition, because Defendants acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Seventeenth Count: Violation of Civil RICO against the Platinum Defendants and the Beechwood Defendants

952. The Plaintiffs repeat and re-allege paragraphs 1-951 as if fully set forth herein.

953. The RICO scheme has common participants and a common victim. Each of the Platinum Defendants and Beechwood Defendants violated RICO, and PPVA was injured as a result.

954. Each of the Platinum Defendants and Beechwood Defendants is a "person" capable of holding legal or beneficial interest in property within the meaning of 18 U.S.C. Section 1961(3).

955. Each of the Platinum Defendants and Beechwood Defendants violated 18 U.S.C. § 1962(c) by means of the acts described in the preceding paragraphs and as further described below.

956. Each of the Platinum Defendants and Beechwood Defendants, whether as an owner or employee of, or otherwise associated with, the Beechwood Entities, conducted the affairs of each of the Beechwood Entities through illegal acts as they individually and collectively directly or indirectly participated in managing, directing or operating each separate entity of the Beechwood Entities.

957. The Enterprise. The Platinum Defendants, Beechwood Defendants, and Beechwood Entities form an association-in-fact for the common and continuing purpose described herein and constitute an "enterprise," under 18 U.S.C. Section 1961(4) engaged in the conduct of their affairs through a continuing pattern of racketeering activity. The members of the enterprise functioned as a continuing unit with an ascertainable structure separate and distinct from that of the conduct of the pattern of racketeering activity. Each one was an ongoing association with a shared purpose and relationships among the individual Platinum Defendants and Beechwood Defendants associated with the enterprise, and each entity of association endured with sufficient longevity so as to permit, encourage and support the individual associates in their efforts and actions in pursuing and advancing the purpose(s) of the enterprise. There may be other members of the enterprise who are unknown at this time.

958. Pattern of Racketeering Activity. The Platinum Defendants and Beechwood Defendants, each of whom is a person associated with, or employed by the enterprise, did knowingly, willfully, and unlawfully conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. Sections 1961(1), 1961(5), and 1962(c). The racketeering activity was made possible by the Platinum Defendants and Beechwood Defendants' regular and repeated use of the facilities and services of the enterprise. The Platinum Defendants and Beechwood Defendants had the specific intent to engage in the substantive RICO violations alleged herein.

959. Predicate acts of racketeering are acts that are indictable under provisions of the United States Code enumerated in 18 U.S.C. Section 1961(1)(B), as more specifically alleged below. The Platinum Defendants and Beechwood Defendants each committed at least two such acts or else aided and abetting such acts.

960. The acts of racketeering were not isolated. Rather, the acts of the Platinum Defendants and Beechwood Defendants were related in that they had the same or similar purpose and result, participants, victims, and method of commission. Further, the acts of racketeering have been continuous. There was repeated conduct during a period of time beginning in approximately February 2014 and continuing through June 2016.

961. Predicate Acts: Use of Mails and Wires to Defraud in Violation of 18 U.S.C. Sections 1341 and 1343. Each of the Platinum Defendants and Beechwood Defendants, through the association-in-fact enterprise, engaged in two or more acts constituting indictable offenses under 18 U.S.C. Sections 1341 and 1343 in that they devised or intended to devise a scheme or artifice to defraud PPVA, and to obtain money and property from PPVA, through false pretenses, representations, and promises. To execute their scheme or artifice, the Platinum Defendants and

Beechwood Defendants caused delivery of various documents and things by the U.S. mails or by private or commercial interstate carriers, or received such therefrom and transmitted or caused to be transmitted by means of wire communications in interstate or foreign commerce various writings, signs, and signals. The acts of the Platinum Defendants and Beechwood Defendants were done with knowledge that the use of the mails or wires would follow in the ordinary course of business, or that such use could have been foreseen, even if not actually intended. These acts were done intentionally and knowingly with the specific intent to advance the scheme or artifice.

962. The predicate acts of racketeering include: (i) an email, dated March 11, 2014, to further the Black Elk Scheme to secure the votes to amend the Indenture through the fraudulent use of Beechwood as an unauthorized proxy; (ii) emails dated May 13, 2014, June 23, 2014, and July 1, 2014, furthering the fraudulent scheme to cause PPVA to sell loan interests to Beechwood Entities at artificial and inflated prices; (iii) email communication containing false representations in the final Consent Solicitation published prior to amended of the Indenture; (iv) email communications to the Indenture Trustee consenting to the Indenture amendment; (v) an email, dated August 18, 2014, directing wire of tens of millions of dollars in funds to designated parties from proceeds of the Renaissance Sale; (vi) email communications concerning Platinum Defendants and Beechwood Defendants' causing Montsant, a PPVA subsidiary, to purchase remaining 13.75% Senior Secured Noted Beechwood Entities held at 93.5% of par; (vii) email communications from April through June 2016 concerning the sale by PGS, of which PPVA held a 55% interest, of PGS's only asset, the Agera Note, to an insider for a fraction of its fair market value; and (viii) the Nordlicht Side Letter, dated January 14, 2016, purportedly providing the proceeds owed to DMRJ from sale of IMSC to repay debts of Golden Gate Oil owed to Beechwood

Entities. Each of these communications by or on behalf of the Platinum Defendants and Beechwood Defendants constitutes a distinct and separate offense.

963. The aforementioned predicate acts of racketeering activity involve distinct and independent criminal acts. They were neither isolated nor sporadic event but rather involve regular and repeated violations of law to accomplish the Platinum Defendants' and Beechwood Defendants' desired ends in the course of the business of the association-in-fact enterprise. These acts were related to one another and to the objects of the fraudulent schemes and of obtaining money and property through the First and Second Schemes, and the Platinum Defendants and Beechwood Defendants have perpetrated and engaged in the predicate acts to further their fraudulent schemes and obtain money and property. The predicate acts of racketeering activity have in common: (i) objectives (to divert PPVA's funds and assets for their own personal and financial benefit); (ii) participants (Platinum Defendants and Beechwood Defendants); (iii) victims (PPVA and its investors and creditors); (iv) methods of executing the schemes to defraud and to obtain money and property (using false and fraudulent representations regarding liquidity and fair market values of PPVA's assets to induce investment and regarding the independence of the Platinum Defendants and Beechwood Defendants and co-schemers); and (v) installing PPVA insiders to manage the Beechwood Entities in violation of their fiduciary duties and in furthering the First and Second Schemes.

964. The Platinum Defendants and Beechwood Defendants' predicate acts of racketeering were conducted in furtherance of the schemes to defraud and to obtain money and property and were continuous since February 2014 until June 2016. The predicate acts of racketeering continue formed an integral part of the enterprises' *modus operandi*.

965. Accordingly, the Platinum Defendants and Beechwood Defendants have engaged in a pattern of racketeering activity, pursuant to 18 U.S.C. Section 1961(5).

966. At all relevant times, each enterprise engaged in, and its activities affected, interstate commerce.

967. Each of the Platinum Defendants and Beechwood Defendants has therefore violated 18 U.S.C. Section 1962(c) by conducting or participating in the conduct of the enterprises' affairs through a pattern of racketeering activity.

968. PPVA has been injured in its business and property as a proximate result of each of the Platinum Defendants and Beechwood Defendants' violations of 18 U.S.C. Section 1962(c), in at least the following ways: (i) defrauding PPVA through the falsely inflated net asset value of the assets of PPVA; (ii) the Black Elk Scheme, which resulted in claims of more than $100 million against PPVA and the diversion of the Renaissance Sale proceeds away from PPVA; and (iii) the transactions comprising the Second Scheme, where PPVA's assets of approximately $300 million were offloaded to Beechwood Entities or insiders of Platinum Defendants and Beechwood Defendants, to the detriment of PPVA.

969. All of these facts, in addition to others stated above, make it clear that Platinum Management and its executives dominated and controlled the Beechwood Entities in furtherance of the First and Second Schemes. Accordingly, the Beechwood Entities are liable for all amounts owed by Platinum Management to PPVA in connection with the First and Second Schemes.

Eighteenth Count: (For Relief Only) Alter Ego against the Beechwood Entities in respect of Counts One, Two, Four and Five

970. The Plaintiffs repeat and re-allege paragraphs 1-969 as if fully set forth herein.

971. This count is pleaded as additional allegations for relief against the Beechwood Entities as alter egos of Platinum Management in respect of Counts One, Two, Four and Five and not as a separate cause of action.

972. The Beechwood Entities were formed and conceived as the alter-ego of Platinum Management for the purpose of inflicting harm upon PPVA.

973. The Beechwood Entities and Platinum Management have overlapping ownership, in particular, Nordlicht, Huberfeld, Levy and Bodner.

974. The Beechwood Entities and Platinum Management have overlapping management, founders and officers, including Huberfeld, Nordlicht, Bodner, Levy, Ottensoser, Small, Saks, Manela, Beren and the other persons listed herein.

975. The Beechwood Entities were founded in and initially operated from the offices of Platinum Management.

976. The Beechwood Entities were capitalized by the Platinum Defendants with assets controlled by Platinum Management. The Beechwood Entities and Platinum Management were inadequately capitalized relative to their business and investment risks at all relevant times.

977. The Beechwood Entities were financed and created by Platinum Management and assets controlled by Platinum Management were used to finance the Beechwood Entities.

978. The individual Platinum Defendants and Beechwood Defendants, including Levy and Manela, used email addresses at both Beechwood and Platinum Management interchangeably in furtherance of their efforts in connection with the First and Second Schemes.

979. As set forth in detail herein, Platinum Management and the Beechwood Entities used the property of PPVA in furtherance of a fraud, in order to siphon fees off of inflated NAVs. The Beechwood Entities and Platinum Management caused PPVA and Beechwood to make joint investments, often to the detriment of PPVA and its creditors and investors. Beechwood and Platinum Management entered into informal and unreported loan agreements and terms, put-back agreements, and guarantees including the GGO Put Option and Guaranty, cross collateralization of assets, and the Nordlicht Side Letter, all of which were not reported to PPVA.

980. The ultimate decision making for both Platinum Management and the Beechwood Entities rested with the same controlling minds: Nordlicht, Huberfeld, Levy and Bodner.

981. Platinum Management often caused PPVA to commit acts which benefited the Beechwood Entities at PPVA's expense, including but not limited to the Black Elk Scheme, the Nordlicht Side Letter, the Master Guaranty, the PEDEVCO subordination, and the Agera Transactions.

982. By virtue of the Master Guaranty and the Agera Transactions, PPVA assets were transferred to the ownership and control of the Beechwood Defendants and Beechwood Entities without formal marketing or other market-based controls, by way of corrupt and wrongful insider transactions.

983. Beechwood and Platinum Management engaged in a corrupt enterprise to pursue fraudulent, wrongful, and illicit purposes, which directly harmed PPVA. This enterprise and plan is summarized herein as the First Scheme and the Second Scheme, wherein Platinum Management formed and created the Beechwood Entities for the corrupt and wrongful purposes of inflating PPVA's asset values and taking fees based upon these values, engaging in the Black Elk Scheme

for the benefit of the BEOF Funds and to the detriment of PPVA, and then forming and executing the Second Scheme for the purpose of dissipating PPVA's remaining valuable assets to Beechwood, most notably its interests in IMSC and Agera Energy.

984. By reason of the foregoing, the Beechwood Entities are alter egos of Platinum Management and are liable to the same extent as Platinum Management in connection with the Plaintiffs' Counts One, Two, Four and Five.

Nineteenth Count: (For Relief Only) Alter Ego against the BEOF Funds in respect of Counts One, Two, Four and Five

985. The Plaintiffs repeat and re-allege paragraphs 1-984 as if fully set forth herein.

986. This count is pleaded as additional allegations for relief against the BEOF Funds as alter egos of Platinum Management in respect of Counts One, Two, Four and Five and not as a separate cause of action.

987. Platinum Management formed the BEOF Funds for the corrupt and wrongful purpose of siphoning nearly $100 million in funds out of Black Elk in connection with the Renaissance Sale, all the while allowing PPVA and its subsidiaries to face the consequences in the form of substantial creditor claims and the total devaluation of the Black Elk bonds that would be repurchased by PPVA via Montsant.

988. Both BEOF Funds were formed by the same persons and counsel that formed Platinum Management.

989. Both BEOF Funds have overlapping ownership, management and control with Platinum Management, and were formed by a corrupt group of the Platinum Defendants for the purpose of covering their Black Elk investment losses in the wake of the Black Elk Explosion.

990. Platinum Management directed the capitalization of both BEOF Funds.

991. Both BEOF Funds share overlapping investors with the funds managed by Platinum Management.

992. Both BEOF Funds were formed in the offices of Platinum Management and operated until their conclusion by Platinum Management from the same offices.

993. Both BEOF Funds were named similar to other funds managed by Platinum Management, which other funds shared overlapping investments in Black Elk.

994. Ultimate decision making for both Platinum Management and the BEOF Funds rested in the same controlling minds: Nordlicht, Huberfeld, Small, Levy and Bodner.

995. Both BEOF Funds were formed and conceived to execute a fraud that harmed PPVA and benefited both BEOF Funds, to wit – the diversion of the Renaissance Sale proceeds.

996. By reason of the foregoing, the BEOF Funds are alter egos of Platinum Management and are liable to the same extent as Platinum Management in connection with Plaintiffs' Counts One, Two, Four and Five.

Twentieth Count: Declaratory Judgment
The Nordlicht Side Letter Is Void and Unenforceable as Contrary to Public Policy

997. The Plaintiffs repeat and re-allege paragraphs 1-996 as if fully set forth herein.

998. On or about January 14, 2016, Nordlicht executed the Nordlicht Side Letter purportedly on behalf of himself, PPVA, PPCO "and each of their affiliates."

999. The Nordlicht Side Letter is purportedly signed by Feuer as a witness.

1000. Neither PPVA nor any of its subsidiaries received any consideration whatsoever in return for executing the Nordlicht Side Letter.

1001. The intended and direct result of the Nordlicht Side Letter was to provide the Beechwood Entities with a right to obtain payment of the Golden Gate Oil Loan, which at that time totaled approximately $37 million, from the proceeds of the sale of IMSC and the repayment

of IMSC's loan obligations to DMRJ and Montsant, irrespective of whether such amounts were held by PPVA or one of its affiliates.

1002. The Nordlicht Side Letter constituted a furtherance of the corrupt and fraudulent First and Second Schemes, whereby the Platinum Defendants and Beechwood Defendants siphoned off hundreds of millions of dollars in assets from PPVA for their own benefit.

1003. As the Nordlicht Side Letter is permeated with fraud and in violation of applicable law, the dictates of public policy and justice warrant a finding that the Nordlicht Side Letter is void and unenforceable.

1004. By reason of the foregoing, the Plaintiffs are entitled to a judgment declaring that the Nordlicht Side Letter cannot be enforced by any of the Beechwood Defendants in any capacity, as the Nordlicht Side Letter is void and unenforceable as against public policy.

Twenty-First Count: Declaratory Judgment that the
Master Guaranty Is Void and Unenforceable as against Public Policy

1005. The Plaintiffs repeat and re-allege paragraphs 1-1004 as if fully set forth herein.

1006. On or about March 21, 2016, Montsant, PPVA, Golden Gate Oil and BAM Administrative entered into the "Master Guaranty", by which, *inter alia*, (i) Montsant agreed to guaranty amounts owed to various Beechwood Entities and SHIP by Golden Gate Oil, to the extent of the assets contained in the Montsant Collateral Account; and (ii) BAM Administrative, as agent for certain Beechwood Entities and SHIP, was provided with a non-recourse guaranty from PPVA of amounts owed by Golden Gate Oil and amounts owed by Montsant.

1007. The Master Guaranty amounted to a significant encumbrance of the remaining assets of PPVA which solely benefited the interests of the Beechwood Defendants.

1008. The intended result of the Master Guaranty was to provide the Beechwood Entities holding the Golden Gate Oil debt with a claim to IMSC proceeds, the Montsant Collateral Account, and various other PPVA assets.

1009. As a result of the Master Guaranty, the Platinum Defendants and Beechwood Defendants were able to continue their misrepresentation as to the value of the Golden Gate Oil investment, as the anticipated sale proceeds from IMSC and the assets in the Montsant Collateral Account could be used to pay the Golden Gate Oil Loan in full.

1010. The Master Guaranty constituted a furtherance of the corrupt First and Second Schemes, whereby the Platinum Defendants and Beechwood Defendants siphoned off hundreds of millions of dollars in assets from PPVA for their own benefit.

1011. As the Master Guaranty is permeated with fraud and in violation of applicable law, the dictates of public policy and justice warrant a finding that the Master Guaranty is void and unenforceable.

1012. By reason of the foregoing, the Plaintiffs are entitled to a judgment declaring that the Master Guaranty cannot be enforced by the Beechwood Entities in any capacity, as the Master Guaranty is void and unenforceable as against public policy.

WHEREFORE, the Plaintiffs pray that this Court enter judgment against Defendants as follows:

a) on the Plaintiffs' first count, awarding compensatory damages against the Platinum Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Platinum Defendants in an amount to be determined at trial;

b) on the Plaintiffs' second count, awarding compensatory damages against the Platinum Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Platinum Defendants in an amount to be determined at trial;

c) on the Plaintiffs' third count, awarding compensatory damages against the Individual Platinum Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Individual Platinum Defendants in an amount to be determined at trial;

d) on the Plaintiffs' fourth count, awarding compensatory damages against the Platinum Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Platinum Defendants in an amount to be determined at trial;

e) on the Plaintiffs' fifth count, awarding compensatory damages against the Platinum Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Platinum Defendants in an amount to be determined at trial;

f) on the Plaintiffs' sixth count, awarding compensatory damages against the Individual Platinum Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Individual Platinum Defendants in an amount to be determined at trial;

g) on the Plaintiffs' seventh count, awarding compensatory damages against the Beechwood Defendants in an amount to be determined at trial plus interest at

the statutory rate, plus punitive damages against the Beechwood Defendants in an amount to be determined at trial;

h) on the Plaintiffs' eight count, awarding compensatory damages against the Beechwood Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Beechwood Defendants in an amount to be determined at trial;

i) on the Plaintiffs' ninth count, awarding compensatory damages against the BEOF Funds and the Preferred Investors of the BEOF Funds in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the BEOF Funds and the Preferred Investors of the BEOF Funds in an amount to be determined at trial;

j) on the Plaintiffs' tenth count, awarding compensatory damages against the BEOF Funds and the Preferred Investors of the BEOF Funds in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the BEOF Funds and the Preferred Investors of the BEOF Funds in an amount to be determined at trial;

k) on the Plaintiffs' eleventh count, awarding compensatory damages against Michael Katz in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against Michael Katz in an amount to be determined at trial;

l) on the Plaintiffs' twelfth count, awarding compensatory damages against Kevin Cassidy and Michael Nordlicht in an amount to be determined at trial plus

interest at the statutory rate, plus punitive damages against Kevin Cassidy and Michael Nordlicht in an amount to be determined at trial;

m) on the Plaintiffs' thirteenth count, awarding compensatory damages against Seth Gerszberg in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against Seth Gerszberg in an amount to be determined at trial;

n) on the Plaintiffs' fourteenth count, compensatory damages against the Beechwood Defendants, Seth Gerszberg and Kevin Cassidy in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Beechwood Defendants, Seth Gerszberg and Kevin Cassidy in an amount to be determined at trial;

o) on the Plaintiffs' fifteenth count, compensatory damages against the BEOF Funds and the Preferred Investors of the BEOF Funds in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against BEOF Funds and the Preferred Investors of the BEOF Funds in an amount to be determined at trial;

p) on the Plaintiffs' sixteenth count, compensatory damages against the Platinum Defendants and Beechwood Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Platinum Defendants and Beechwood Defendants in an amount to be determined at trial;

q) on the Plaintiffs' seventeenth count, treble damages against the Platinum and Beechwood Defendants in an amount to be determined at trial plus interest at the statutory rate;

r) on the Plaintiffs' eighteenth count, awarding compensatory damages against the Beechwood Entities as the alter ego of Platinum Management in respect of counts one, two, four and five, in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Beechwood Entities in an amount to be determined at trial, to the same extent that the Platinum Defendants are liable on the Plaintiffs' first, second, fourth and fifth counts;

s) on the Plaintiffs' nineteenth count, awarding compensatory damages against the BEOF Funds as the alter ego of Platinum Management in respect of counts one, two, four and five, in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the BEOF Funds in an amount to be determined at trial, to the same extent that the Platinum Defendants are liable on the Plaintiffs' first, second, fourth and fifth counts;

t) on the Plaintiffs' twentieth count, a judgment declaring that the Nordlicht Side Letter cannot be enforced by the Beechwood Entities in any capacity as the Nordlicht Side Letter is void and unenforceable as against public policy; and

u) on the Plaintiffs' twenty-first count, a judgment declaring that the Master Guaranty cannot be enforced by the Beechwood Entities in any capacity as the Master Guaranty is void and unenforceable as against public policy.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury on all issues so triable.

Dated: January 23, 2019
New York, New York

HOLLAND & KNIGHT LLP

By:__________________________
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Attorneys for Plaintiffs Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation), and for Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation)

INDEX OF EXHIBITS

Exhibit No.	Description
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3	Huberfeld Family Foundation 2014 Tax Return
4	PPVA Second Amended & Restated Limited Partnership Agreement
5	Platinum Management Second Amended & Restated Operating Agreement
6	March 2016 PPVA Tearsheet
7	September 2015 PPVA Due Diligence Questionnaire
8	November 2012 PPM for Offshore Feeder Fund
9	December 2015 PPVA Marketing Presentation
10	January 8, 2016 Desert Hawk Email to Levy
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12	March 29-April 1, 2016 Urigen Email RE Missed Payroll
13	June 15-22, 2016 GGO Email RE Missed Payroll
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100	Zapata and Gerszberg Master Agreement for Unification of Businesses
101	Spectrum30 Flow of Funds Letter

EXHIBIT 3

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BANKERS CONSECO LIFE INSURANCE COMPANY and WASHINGTON NATIONAL LIFE INSURANCE COMPANY, Plaintiffs, v. MOSHE M. FEUER, SCOTT TAYLOR, and DAVID LEVY, Defendants.	Case No. 16-cv-7646 **COMPLAINT AND DEMAND FOR TRIAL BY JURY**

Plaintiffs Bankers Conseco Life Insurance Company ("BCLIC") and Washington National Insurance Company ("WNIC"), by and through their counsel, hereby allege as follows for their Complaint against Defendants:

NATURE OF THE ACTION

1. This action emanates from the widely-publicized Platinum fraud. To date, the Platinum fraud has resulted in a criminal prosecution against one scheme participant, and other

co-conspirators remain under investigation by multiple agencies of the federal government. Plaintiffs are victims of that fraud.

2. For years, Platinum Partners, LP has managed investment funds – also bearing the name "Platinum" (Platinum Partners, LP, the Platinum funds and their affiliates shall be referred to as "Platinum" in the Complaint) – that reported outsized returns, purportedly by investing in high-risk and speculative investments. Those investments were often with disreputable principals and companies. Platinum was owned and managed by Murray Huberfeld and Mark Nordlicht, each of whom have checkered pasts. Huberfeld, for example, has a criminal record.

3. Institutional investors such as insurance companies typically would not make significant (or any) investments in high-risk funds like Platinum. However, Platinum sought new investors and especially institutional investors for their funds.

4. In 2012 and 2013, Platinum's founders, Huberfeld and Nordlicht, stepped up their efforts to acquire funds from institutional investors with the goal to continue the Platinum fraud. Platinum, however, could not successfully and credibly seek investments directly from institutional investors, so Huberfeld and Nordlicht hatched a plan to obtain institutional investor capital through fraudulent means.

5. Specifically, and hidden from Plaintiffs until recently, Huberfeld and Nordlicht partnered and conspired with Defendants Moshe M. Feuer, Scott Taylor and David Levy (Huberfeld's nephew) to form a reinsurance company, Beechwood Re Ltd ("Beechwood"). The co-conspirators established Beechwood with the objective of entering into one or more reinsurance treaties with insurance companies, so that they could take control of reinsurance trust fund assets and use those assets to benefit Platinum, thereby enriching Platinum's and Beechwood's owners.

6. On September 17, 2016, the *Wall Street Journal* reported ("9/17 *WSJ* Article")[1] that "[f]or years, Platinum had little success attracting insurance-company money and considered starting a reinsurer to do so . . . . It didn't proceed, but after Feuer and Taylor opened Beechwood Re, more than 40% of Beechwood's equity was held by family-member trusts of Platinum's founders as well as by a former Platinum employee."

7. Also reported in the 9/17 *WSJ* Article was that "Feuer had long known some at Platinum, whose executives were active in the same religious community on New York's Long Island. He and Huberfeld served at a charity together, and Feuer's sister went to the same school as Platinum co-founder Mark Nordlicht . . . ." The ties between them ran deep.

8. At the time that the co-conspirators established Beechwood, Huberfeld already had a criminal background, and Nordlicht had an entrenched reputation for making speculative investments with unsavory companies. Platinum's funds likewise enjoyed the disreputable reputation as its founders.

9. Upon information and belief, the co-conspirators agreed that (a) Platinum's founders would own a significant part of Beechwood and provide it with capital and employees to further the scheme, and (b) Platinum's control over Beechwood would remain a closely-guarded secret, while Feuer, Taylor and Levy served as the front men.

10. In 2013, Plaintiffs went to the reinsurance marketplace to seek reinsurance for certain long term care blocks of business. Several reinsurers were interested in the business, including Beechwood.

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[1] *Adviser With Ties to Hedge Fund Platinum Put Client Funds in It*, WSJ, Sept. 17, 2016, available at http://www.wsj.com/articles/adviser-with-ties-to-hedge-fund-platinum-put-client-funds-in-it-1473997753.

11. At the time, Beechwood was a start-up company with no other reinsurance business. Pursuant to its founders' fraud scheme, Beechwood sought Plaintiffs' business based upon the sterling reputations of Feuer and Taylor. Accordingly, Feuer and Taylor made numerous verbal and written promises to Plaintiffs indicating that they would expertly administer policy claims and prudently invest trust assets for the protection of policyholders and Plaintiffs. Relying upon Defendants' representations, and the representations from Defendants' paid advisors and professional consultants, Plaintiffs selected Beechwood as their reinsurer.

12. As part of their design to induce Plaintiffs to enter into reinsurance agreements with Beechwood, representatives of Beechwood repeatedly told Plaintiffs that Beechwood was owned by Feuer and Taylor, who represented themselves as two upstanding professionals, who capitalized Beechwood with family money and the fortunes earned during their professional careers, with a third principal, David Levy.

13. Due to Feuer's and Taylor's representations, it was carefully and intentionally hidden from Plaintiffs for over two years that Beechwood was actually largely capitalized with a $100 million note from a series of trusts owned or controlled by Nordlicht, his family and other confederates. In fact, Plaintiffs were only made aware of this after (a) Huberfeld was arrested, (b) Plaintiffs commenced an audit and investigation of the trusts, (c) the Platinum-Beechwood alliance received scrutiny in the *Wall Street Journal* and other publications, and (d) repeated requests for information from the New York State Department of Financial Services.

14. During a series of meetings in late 2013, when Plaintiffs were selecting a reinsurer, Beechwood consistently misrepresented Platinum employees as being senior officers of Beechwood. As Plaintiffs later learned, every single purported senior officer of Beechwood was actually an employee of Platinum, with only one exception other than Feuer and Taylor.

15. Moreover, numerous individuals who would work for Beechwood after Plaintiffs entered into the reinsurance agreements, including employees who directed Plaintiffs' reinsurance trust assets, were former Platinum employees, Platinum employees seconded to Beechwood from Platinum, or relatives of the co-conspirators. For example, Huberfeld's nephew, David Levy, Huberfeld's son, and Huberfeld's son-in-law all held positions at Beechwood at some time. Until very recently, Beechwood's Chief Investment Officers were all former Platinum employees. Beechwood's Chief Underwriting Officer was a Platinum secondment.

16. The substantial overlap between the workforces of Beechwood and Platinum hidden from Plaintiffs enabled the Defendants and their co-conspirators to invest reinsurance trust assets in Platinum and Platinum-related entities, without any scrutiny from other senior level executives who might otherwise question such transactions.

17. During the negotiation of the reinsurance agreements, Feuer and Taylor advised Plaintiffs that there was a $100 million demand note capitalizing Beechwood. Despite Plaintiffs' requests that Beechwood disclose the identity of the backers of the demand note, Beechwood refused, citing "confidentiality agreements."

18. Unbeknownst to Plaintiffs until very recently, those investors were the founders of Platinum and trusts in the names of their families and confederates.

19. The parties entered into the reinsurance agreements signed in February 2014 ("Reinsurance Agreements"). According to the 9/17 *WSJ* Article, Feuer and Taylor contacted Huberfeld and Nordlicht within ten minutes of the arrival of the reinsurance trust funds at

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Beechwood upon the closing of the transaction.[2] The scheme to attract institutional investors in the Platinum funds had succeeded: Plaintiffs gave Beechwood the keys to a $550 million reinsurance trust, without ever suspecting that they were in reality doing business with Platinum.

20. After entering into the Reinsurance Agreements and taking control of the trust assets, Beechwood, which owed fiduciary duties to Plaintiffs, immediately began using the trust funds to aid Platinum. Among other things, Beechwood (a) invested directly in the Platinum funds, which would help Platinum meet investor redemption demands in further aid of the Platinum fraud scheme; (b) entered into transactions with known criminals who were friends and associates of Huberfeld and Nordlicht; and (c) loaned money to or entered into other transactions with at least a dozen entities controlled by Platinum that any reasonable investment manager would pass on because they were too risky for reinsurance trusts. Indeed, these transactions were in violation of state laws pertaining to the investment of reinsurance trust assets, as well as the express terms of the Reinsurance Agreement's investment guidelines. Collectively, these transactions accounted for more than $150 million of the trust assets.

21. Shortly after effectuating the Reinsurance Agreements, Platinum also proceeded to use Beechwood as Platinum's piggybank. For example, throughout 2014, Beechwood made short-term loans to an investment company owned by Platinum, without having those loans valued and rated as required by the Reinsurance Agreements.

22. Under the Reinsurance Agreements, Beechwood is required to submit quarterly reports that demonstrate the actual value of assets in the reinsurance trusts. The Reinsurance Agreements also required that non-conventional investments such as loans and real estate,

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[2] "Less than 10 minutes after Beechwood received word that money for its first transaction had arrived, Beechwood's founders notified Nordlicht and Huberfeld, documents reviewed by the Journal show." *See* 9/17 *WSJ* Article.

among others, were independently valued and rated. If the assets in the trust fell below a certain amount, Beechwood was required to top up the trusts with its own funds. If the assets in the trust exceeded that amount, Beechwood could take surplus amounts as profits.

23. In order to conceal their fraudulent scheme, Defendants and other purported employees of Beechwood submitted quarterly reports that contained inflated, and in some cases actually fraudulent, valuations. Defendants then used these erroneous valuations of trust assets to support their removal of $134 million from the trusts as purported "surplus." However, unknown to Plaintiffs at the time, the trusts were undervalued at all times Beechwood submitted reports, or, given the facts and circumstances of many trust investments, valuations could not be verified sufficiently to allow any surplus withdrawals.

24. In mid-to-late 2014, Plaintiffs learned that Beechwood had invested trust assets in the Platinum funds, and brought to Feuer and Taylor's attention that these investments were not suitable. Feuer and Taylor represented to Plaintiffs that these improper investments were the work of Levy (Huberfeld's nephew), who had left Platinum to become the Chief Investment Officer ("CIO") of Beechwood. They conceded that these investments were not suitable for the reinsurance trusts. Around December 2014, they also told Plaintiffs that Levy had left Beechwood. Levy immediately returned to Platinum, after having breached his fiduciary duties by serving Platinum's interests while he was Beechwood's CIO.

25. Defendants also told Plaintiffs that the reinsurance trusts' Platinum investments would be unwound and that, by dint of Levy's resignation, Beechwood's ties to Platinum had been cut. That statement was false because, unknown by Plaintiffs until recently, numerous Platinum employees still worked directly for Beechwood; Platinum routinely consulted with Beechwood; and Huberfeld, Levy and Nordlicht still owned 40% of Beechwood, between

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themselves and their family trusts. These significant ties between Beechwood and Platinum meant that Platinum could influence Beechwood's operations, including the investment of reinsurance trust assets. Platinum continued to do so even after Levy returned to Platinum.

26. Throughout the life of the reinsurance relationship, Defendants and their paid advisors and consultants submitted false valuation reports to Plaintiffs purporting to show that the trusts' Platinum-related investments were performing well and that the reinsurance trusts were adequately funded.

27. During this time, Defendants continually hid Beechwood's deep ties to Platinum, and removed $134 million from the trusts as purported "surplus," while continually misrepresenting to Plaintiffs that Beechwood would unwind investments made to Platinum-related entities.

28. In fact, Beechwood did not unwind the trusts' Platinum investments as promised, but rather continued to make massive additional Platinum investments. This continued even after Huberfeld was arrested in June 2016.

29. Beechwood and its paid advisors and consultants also continued to submit false quarterly valuations to Plaintiffs in order to declare surpluses and support further depletion of the trusts.

30. Moreover, Beechwood continued to hide its true connections to Platinum, including the fact that Huberfeld, Nordlicht and Levy owned 40% of Beechwood and that its professional staff, including those in charge of investments, were serving Platinum.

31. The scheme to defraud Plaintiffs began to unravel on June 8, 2016, when Huberfeld was arrested and charged with bribing a union official to make a $20 million investment in one of Platinum's funds. In connection with Huberfeld's arrest, Beechwood's

offices were raided by the FBI. Moreover, and unbeknownst to Plaintiffs, it was reported by the media at that time that Huberfeld maintained an office at Beechwood.

32. Over the summer of 2016, the *Wall Street Journal* and other publications exposed Beechwood's deep ties to Platinum, and these publications reported that Huberfeld and Nordlicht used Beechwood to attract institutional investors for the Platinum funds. The United States Attorneys for both the Eastern and Southern Districts of New York are currently investigating Platinum and its founders.

33. Plaintiffs, alarmed by the trusts' continued deep investments with Platinum-related entities, the raid of Beechwood's offices, Huberfeld's arrest, and media reports concerning the same, began their own audit of the trust's investments with the aid of counsel and an independent financial consultant, Cornerstone Research ("Cornerstone").

34. The audit and investigation, which is ongoing, revealed that Beechwood, the Defendants and their paid advisors and consultants overvalued the trusts' assets and that, as a result of the co-conspirators' self-dealing, conflicts of interest and non-arm's length transactions, many assets had been improperly valued.

35. The audit and investigation also revealed that Defendants and their co-conspirators engaged in a continuous stream of misrepresentations since the inception of the relationship, concerning Beechwood's ownership structure, the nature and value of assets in the trusts, Beechwood's relationship with Platinum, and Defendants' knowledge of, and participation, in the fraud.

36. On September 29, 2016, state insurance departments in New York (where BCLIC is domiciled) and Indiana (where WNIC is domiciled), after a lengthy investigation of the reinsurance trusts (in which Beechwood and two of its law firms participated), concluded that

many assets in the trusts were "not compliant" with the conservative investment guidelines prescribed by applicable state law.

37. The state regulator in New York gave Plaintiffs ten days to bring the trust into compliance, but that will not be possible given the structure of the assets and, Beechwood advised that it would take months if not years to unwind all of the trusts' Platinum-related investments.

38. As a result of Beechwood's material breaches of the Reinsurance Agreements, as well as the regulatory directives Plaintiffs received from two state insurance departments, Plaintiffs initiated the termination of the reinsurance agreements on September 29, 2016. At the same time, Plaintiffs advised the trustee, Wilmington Trust, to return all trust assets to Plaintiffs as required by the relevant agreements. Plaintiffs also initiated the process to take control of all claims administration and commenced an arbitration against Beechwood seeking money damages and emergent relief enforcing Plaintiffs' audit and inspection rights under the relevant terms of the Reinsurance Agreements.

39. As stated in the 9/17 *WSJ* Article, "Platinum's fund investors have been largely concentrated in a tight-knit group of observant Jewish businesspeople. Exposure to Platinum reached a far wider realm as a result of Beechwood's having directed insurance-client money into Platinum funds and related investments." The co-conspirators' plan to bring institutional investor money into Platinum succeeded, by having Feuer and Taylor serve as the front men to induce insurance companies to unwittingly invest in Platinum. But the co-conspirators' success has caused immense damage to Plaintiffs.

40. According to the 9/17 *WSJ* Article, "Since early 2014, Beechwood has put more than $200 million of client money in Platinum-linked investments, according to public filings

and people familiar with the matter." The 9/17 *WSJ* Article reported that this $200 million came from Plaintiffs and another insurance company, Senior Health Insurance Co. of Pennsylvania ("SHIP"), which was formerly affiliated with Plaintiffs before being spun off years ago.

41. Also according to the 9/17 *WSJ* Article, "The CEO of Beechwood, Mark Feuer, said he didn't tell SHIP and other clients about his firm's ties to Platinum because the ownership stakes were passive and didn't come with a management role." But the real reason that Feuer did not reveal Beechwood's ties to Platinum is that no insurance company would invest in Platinum or enter into a reinsurance agreement with a reinsurer tied to Platinum, and Feuer and Taylor were in cahoots with Platinum to bring institutional investor money to Platinum without the institutional investors' knowledge of Beechwood's Platinum ties.

42. That is, Beechwood's massive and risky investments with reinsurance trust fund assets in Platinum and Platinum-related entities was not some grand coincidence, or the result of an analytical process in which investment professionals decided that, among many thousands if not millions of different investment opportunities available to the reinsurance trusts, investing in Platinum-related companies represented the best and most prudent investments. To the contrary, Beechwood's massive and risky investments with Platinum and Platinum-related entities was the *goal* of the fraudulent scheme hatched by Defendants and others to bamboozle institutional investors like Plaintiffs out of their money by tricking them into indirectly investing with Platinum.

43. Plaintiffs now bring this action to recover damages against Defendants for their participation in the fraudulent scheme.

PARTIES

44. BCLIC is an insurance company domiciled in New York with its principal place of business in Carmel, Indiana.

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45. WNIC is an insurance company domiciled in Indiana with its principal place of business in Carmel, Indiana.

46. Upon information and belief, Moshe M. Feuer is a resident of Long Island, New York.

47. Upon information and belief, Scott Taylor is a resident of New York, New York.

48. Upon information and belief, David Levy is a resident of Long Island, New York.

JURISDICTION AND VENUE

49. This Complaint is filed, and this Court has subject matter jurisdiction of the matters complained of, pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 1961, et seq.

50. This Court has supplemental jurisdiction over Plaintiffs' state law and common law claims pursuant to 28 U.S.C. § 1367, as the claims against Defendants are related to the claims upon which subject matter jurisdiction is based.

51. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events, actions, or omissions giving rise to the dispute occurred in this District.

FACTUAL BACKGROUND

A. Origin Of The Reinsurance Agreements.

52. BCLIC is an insurance company domiciled in New York. WNIC is an insurance company domiciled in Indiana. Both are indirect subsidiaries of CNO Financial Group, Inc. ("CNO"), a publicly traded insurance holding company.

53. In 2013, BCLIC and WNIC turned to the reinsurance marketplace to explore transferring certain long term care liabilities to a qualified reinsurer. As part of that process, Rick Hodgdon and Michael Kaster of Willis Re Inc. ("Willis Re"), a reinsurance subsidiary of Willis Group Holdings plc, introduced Plaintiffs to Beechwood.

54. Kaster had formerly worked for CNO companies, and thus he had some familiarity with the lines of business to be ceded. Kaster was known to be a credible insurance professional. Hodgdon purportedly joined Beechwood while Plaintiffs were evaluating competing reinsurance proposals. However, in another recent admission of truth, Defendants admitted that Hodgdon was actually a Platinum employee seconded to Beechwood during this time period.

55. At that time, Beechwood was a new reinsurance company with no existing business. Feuer and Taylor advised Plaintiffs that Beechwood was founded by two reputable businessmen, attorney Feuer, who had been the Chief Executive Officer of Marsh USA Inc., and Taylor, who at different times had been an executive of Marsh & McLennan and Chief Operating Officer for Merrill Lynch Wealth Management's Private Banking and Investments Group.

56. Beechwood's pitch for BCLIC's and WNIC's business was twofold. *First*, Feuer and Taylor represented that they had strategies to more effectively manage claims, which they learned from their stints at prior companies. *Second*, they were experienced investment professionals, who would bring superior management of trust assets, allowing for greater returns.

57. Beechwood's written materials, which were prepared by Defendants, promised its investment team had "extensive experience" with "strong risk management processes." These written materials also stated, "Beechwood Re Must Deploy a Responsible Investment Strategy Capable of Generating Adequate Returns." The written materials also promised that, "Beechwood Re's management team has extensive experience utilizing credit-based investment strategies to generate returns while using strong risk management processes."

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58. Defendants recognized that Plaintiffs would not select Beechwood as reinsurer unless it made "responsible" investments, as the reinsurance trust funds would secure policyholder claims.

59. Defendants repeatedly advised Plaintiffs, verbally and in writing, that the reinsurance trust assets would be managed responsibly, with proper risk management, for the benefit of protecting policyholders.

60. Between improving policyholder morbidities and increasing investment returns, Beechwood, under the guidance of these seasoned professionals, represented that it would be able to effectively manage the transferred blocks of business.

61. In 2013, Feuer and Taylor, on behalf of Beechwood, sent Plaintiffs a document titled "Beechwood Re/Discussion Document/June 2013." In that document, Feuer and Taylor represented to Plaintiffs that Beechwood "is capitalized with over $100MM in capital, with access and intent to fund up to $500 million additional over coming years." Defendants wanted Plaintiffs to believe that Feuer and Taylor brought to the table significant capital to shoulder the burden and risk of a reinsurance relationship.

62. Throughout June, July, August and September of 2013, Feuer and Taylor represented to Plaintiffs that Beechwood was owned by just three individuals, with no connection to any private equity investors, and that they had initial "non-redeemable capital" of over $100 million.

63. In November 2013, Beechwood sent a team to meet with Plaintiffs. In connection with that meeting, Hodgdon, at the direction of Defendants, sent Plaintiffs an email dated November 5, 2013, identifying the representatives from Beechwood who would be attending the

meeting. Hodgdon, by this time, had left Willis Re to work for Platinum, but Defendants deceitfully advised Plaintiffs that Hodgdon worked for Beechwood.

64. Beechwood, through Hodgdon, advised Plaintiffs that the following Beechwood personnel would join the meeting: Feuer and Taylor; Will Slota, who was designated as the "COO" of Beechwood; Paul Poteat, who was designated as the "CTO" of Beechwood; David Ottensoser, who was designated as the "General Counsel" of Beechwood; Dan Small, who was designated as the "Senior Secured Collateralized Loans PM" of Beechwood; and David Leff, who was designated as the "US Fixed Income PM" of Beechwood.

65. In fact, unknown to Plaintiffs but now recently discovered, Slota, Poteat, Ottensoser and Small *were at that time employees of Platinum, not Beechwood*. Only Leff appears to have been an actual Beechwood employee. Hence, Beechwood misrepresented to Plaintiffs that individuals who were employed by Platinum were actually Beechwood employees. Defendants were aware of this misrepresentation at the time it was made, directed it and intentionally concealed it.

66. As discussions between Beechwood and Plaintiffs progressed in November 2014, Plaintiffs began its due diligence on Beechwood. Plaintiffs made several inquiries to Feuer and Taylor about Beechwood's ownership structure and capitalization. Feuer and Taylor repeatedly told Plaintiffs that Beechwood was mostly owned by them personally, as well as Levy, and that they had capitalized Beechwood with their families' investments and with monies earned during their successful careers.

67. Plaintiffs recently learned that those representations were false. Beechwood was in substantial part owned by a series of family trusts owned by individuals other than Feuer and Taylor. When Feuer and Taylor asked Beechwood about these family trusts, Beechwood refused

to identify the investors, citing to "confidentiality agreements." Feuer and Taylor also represented to Plaintiffs that these minority interests represented purely "passive" investments.

68. Unknown to Plaintiffs at that time, but recently discovered, Beechwood was in substantial part owned by a series of family trusts in the names of Huberfeld and Nordlicht, as well as their family members (including spouses and children). Levy and his family trusts owned another 5%. Together, Huberfeld and Nordlicht controlled over 35% of Beechwood's equity, and with Levy's interest, they controlled 40%.

69. Upon information and belief, Feuer, Taylor, Huberfeld, Nordlicht and Levy formed Beechwood for the purpose of entering into reinsurance agreements in which they would take control of trust assets and use them to benefit Platinum and enrich themselves. In fact, according to published reports, Feuer and Taylor notified Huberfeld and Nordlicht that the trust assets were available to invest less than ten minutes after receiving the news that the funds had arrived.

70. Most institutional investors like insurance companies would not ordinarily invest in Platinum, which made investments in unscrupulous companies and which engaged in unscrupulous acts.

71. Seeking additional investments from institutional investors to further fund their fraud scheme, Huberfeld and Nordlicht sought conspirators to form a reinsurance or other seemingly legitimate company for the purpose of obtaining large amounts of money to pilfer for the benefit of Platinum and the co-conspirators.

72. Ultimately, they found Feuer and Taylor, two professionals with excellent reputations who could serve as the front men for a purported reinsurance company and which

could, through reinsurance agreements, obtain control of trust assets for the benefit of furthering the Platinum fraud scheme and enriching scheme participants. That company was Beechwood.

73. While Feuer and Taylor were nominally in charge of Beechwood, it was actually controlled by Platinum, its founders and its employees, including Levy, who left Platinum to become the CIO of Beechwood, and then returned to Platinum. Feuer, Taylor, and Levy proceeded to use the reinsurance trust assets to benefit Platinum.

B. The Reinsurance Agreements.

74. BCLIC and WNIC are cedents under two reinsurance agreements with reinsurer Beechwood. Under the Reinsurance Agreements, BCLIC and WNIC transferred certain long term care liabilities to Beechwood and paid Beechwood over $42 million as a negative ceding commission (that is, BCLIC and WNIC paid Beechwood $42 million to enter into the Reinsurance Agreements).

75. Beechwood assumed control over claims administration, and BCLIC and WNIC deposited approximately $550 million into reinsurance trusts ("Trusts") to be invested and managed by Beechwood, subject to investment guidelines prescribed by the Reinsurance Agreements and the insurance laws of New York and Indiana. The assets in the Trusts were intended to serve as reliable (*i.e.*, safe and liquid) collateral for Beechwood's obligations to reimburse BCLIC and WNIC for claims on the transferred liabilities and for Plaintiffs to obtain reserve credits.

76. Pursuant to the Reinsurance Agreements, Beechwood was required to deposit assets into the reinsurance Trust accounts with an aggregate fair market value of 102% of the statutorily required reserves (*i.e.*, policy liabilities) as collateral for Beechwood's obligation to pay future claims on the reinsured policies. For purposes of this calculation, only Trust assets in

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compliance with the Reinsurance Agreements' investment guidelines qualified as countable. The Reinsurance Agreements define Qualifying Trust Assets to include cash, certificates of deposit, or specific kinds of investments permitted under New York and Indiana insurance laws, not including investments in which either party or its affiliates has an interest, or investments in insolvent entities.

77. Thereafter, the Reinsurance Agreements empower Beechwood to direct the Trustee to invest or reinvest the Trust assets in accordance with the Reinsurance Agreements' conservative investment guidelines.

78. The Reinsurance Agreements require Beechwood to top-up the Trusts in the event that the market value of the assets in the Trusts fall below 102% of the amount of the statutory liabilities ceded to Beechwood. Beechwood's promise to preserve the value of, and properly and prudently manage, the Trust assets was essential to BCLIC's and WNIC's agreement to reinsure the transferred business with Beechwood.

79. The Reinsurance Agreements also allow Beechwood to remove from the Trusts for their benefit money as surplus if the Trusts' assets are greater than a threshold amount.

80. The Reinsurance Agreements require Beechwood, at the end of each quarter, to provide written reports to BCLIC and WNIC that describe the fair market value of Qualifying Trust Assets. The reports must contain supporting detail and other information necessary for BCLIC and WNIC to verify that the assets are Qualifying Trust Assets and that the investment guidelines have been followed.

81. If the aggregate fair market value of Qualifying Trust Assets is determined to exceed 102% of the statutorily required reserves at the end of a quarter and the aggregate fair market value of the assets in the supplemental Trust accounts exceeds 5% of the Trust amount

and above the "Supplemental Trust Amount," the Reinsurance Agreements provide that Beechwood may ask BCLIC and WNIC to withdraw the excess amounts.

82. If, however, the aggregate fair market value of the Qualifying Trust Assets is determined to be less than 102% of the statutorily required reserves at the end of a quarter, then Beechwood is required to make deposits into the Trusts to bring the aggregate fair market value of Qualifying Trust Assets to no less than 102% of the statutorily required reserves.

83. Thus, to determine if Beechwood needed to add money to the Trusts or could withdraw money from the Trusts, the Reinsurance Agreements provide that Beechwood would provide quarterly reports of assets in the Trusts, with proper valuations.

84. The Reinsurance Agreements also establish supplemental Trust accounts to be maintained as overcollateralization of Beechwood's obligations. Under the Reinsurance Agreements, the supplemental Trusts must contain assets with an aggregate fair market value equal to the greater of 5% of the Trust Amounts and the Supplemental Trust Amount. Both the BCLIC and the WNIC supplemental Trust accounts are governed by investment guidelines very similar to or the same as the investment guidelines governing the WNIC Trust.

85. With respect to the supplemental Trust accounts, Beechwood may ask BCLIC and WNIC to withdraw assets from the supplemental Trusts if, at the end of a quarter, the market value of the assets in the supplemental Trusts exceed the greater of 5% of the Trust amounts and the Supplemental Trust Amounts, and the value of Qualifying Trust Assets is determined to exceed 102% of the statutorily required reserves. If, however, the market value of the assets in the supplemental Trusts are less than the greater of 5% of the Trust amounts and the Supplemental Trust Amounts at the end of a quarter, then Beechwood is required to make deposits into the supplemental Trusts to bring the aggregate fair market value of supplemental

Trust assets to no less than the greater of 5% of the Trust amounts and the Supplemental Trust Amount.

C. In 2014, BCLIC and WNIC Object To Certain Investments, Including Transactions With Suspect Individuals And With Platinum.

86. As Levy began investing the Trust assets in 2014, BCLIC and WNIC began receiving quarterly reports from Beechwood. Upon receiving these reports, BCLIC and WNIC began questioning a number of the investments into which Beechwood directed Trust assets. Among other things, BCLIC and WNIC learned that Beechwood:

- purchased a loan to George Levin, who was a principal in the Rothstein Rosenfeldt Adler PA Ponzi scheme (the "Rothstein Ponzi scheme"). Platinum apparently obtained a large judgment against Levin, forcing him into bankruptcy. BCLIC and WNIC did not know at the time of the 2014 quarterly reports, and just recently learned, that Beechwood purchased the loan to Levin from Platinum;
- loaned money to a Platinum-controlled entity which was run by Moshe Oratz and Aaron Elbogen. Oratz was jailed in connection with a gambling ring, and Elbogen settled charges brought by the Securities Exchange Commission ("SEC") over fraudulent trade executions; and
- loaned money to Cashcall Inc., which was sued by the Consumer Financial Protection Bureau and 17 states for violating consumer protection and usury laws providing interest-rate caps.

87. These investments were objectionable to Plaintiffs because they are not suitable investments for reinsurance trust funds, which should be conservative investments to ensure that there are sufficient assets to pay policyholder claims. Additionally, for reputational reasons,

Plaintiffs could not possibly be seen as doing business with such disreputable firms and individuals.

88. In addition, Beechwood had directly invested tens of millions of dollars of Trust assets in certain of Platinum's funds. At the time, the Platinum funds were known to make aggressive investments in distressed and disreputable companies, and such investments were not consistent with the Reinsurance Agreements' investment guidelines or with Plaintiffs' business strategies and reputation.

89. BCLIC and WNIC also raised questions concerning how Beechwood characterized and valued assets in the Trusts. For example, Beechwood made numerous investments of Trust assets in notes collateralized not by assets, but rather by the borrowers' equity or other borrowers' debt instruments. Yet, Beechwood inflated the value of these tenuous forms of collateral to conclude that the Trusts were over-collateralized. In addition, Beechwood had invested assets in risky businesses, including start-up and severely distressed companies.

90. At no time during all of the 2013 and 2014 discussions between Plaintiffs and Defendants, did anyone advise Plaintiffs of the significant interests that Platinum and its principals, Huberfeld and Nordlicht, had in Beechwood, that Huberfeld had an office at Beechwood, that Huberfeld's son-in-law worked at Beechwood affiliate and asset manager, B Asset Manager ("BAM"), or that Huberfeld's son interned at BAM. Nor did Feuer and Taylor advise Plaintiffs of the significant number of Platinum employees who worked for Beechwood, who were seconded to Beechwood, or who were advising Beechwood.

91. Instead, Defendants, and others at Beechwood, kept all of these connections secret and represented to Plaintiffs that these high-risk investments were appropriate and properly valued.

D. The Black Elk Investment; Levy Leaves Beechwood And Returns To Platinum.

92. According to a special report by Reuters,[3] Platinum obtained the majority interest in Black Elk Energy LLC ("Black Elk"), a Houston-based company that purchased unproductive oil wells, sometime after 2009. In 2012, an explosion on a Black Elk rig off the Louisiana coast killed three workers, seriously injured another three workers, and spilled oil into the Gulf of Mexico. Prior to this incident, the rig received hundreds of safety citations from the U.S. Department of the Interior's Bureau of Safety and Environmental Enforcement, and after an investigation, the same agency concluded that the safety culture on the rig was "poor at best." Eventually, the U.S. Department of Justice announced criminal charges against Black Elk. Black Elk was forced into bankruptcy in August 2015.

93. In or around February, 2014, immediately upon closing the transaction, however, before Black Elk entered bankruptcy, Beechwood invested $27 million of Trust assets in Black Elk high-yield junk bonds. Also before going into bankruptcy, however, Black Elk sold its main assets to a third party for $149 million. The majority of the proceeds from this sale went to a subsidiary of Platinum, and not to the senior creditors that included Beechwood. Black Elk's remaining assets were also sold to a different Platinum subsidiary. Not long after, Black Elk's secured creditors demanded to know how, in light of their first priority status, Platinum was paid from the asset sale before payment was made to them.

94. In fact, Platinum managed to subordinate the interests of the secured creditors through trickery. Just prior to the first asset sale, Platinum used a consent solicitation to ask bondholders of $150 million of Black Elk's high-yield junk bonds to approve a measure that

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[3] *See* Lawrence Delevingne, *The Top-Performing Hedge Fund Manager That's Too Hot For Big Money To Handle*, Reuters, Apr. 13, 2016, available at http://www.reuters.com/investigates/special-report/usa-hedgefunds-platinum.

would let Platinum receive proceeds of the asset sale ahead of bondholders and other secured creditors. The bondholders approved this absurd request – to strip themselves and secured creditors of their priority – because of varying methods of control Huberfeld and Nordlicht's fund exerted over 70% of the bonds. Levy, then at Beechwood, exploited his role as Beechwood's CIO to approve the consent on behalf of the junk bonds Beechwood had purchased with Plaintiffs' Trust assets (in addition to bonds Beechwood had purchased while managing others' funds).

95. In short, Beechwood, in the person of David Levy, voted the Beechwood-purchased bonds, including the Trusts' bonds, against the interests of the Trusts and Beechwood, and in favor of subordinating them to Platinum's interests, even though this vote meant that the Trusts' bonds would be exposed to greater risk of loss, because all the value of Black Elk's assets was paid to Platinum.

96. Feuer and Taylor offered no justification for the vote. Instead, they pinned all of Beechwood's actions to assist Platinum on Levy. Levy left Beechwood to immediately return to Platinum, where he and others could continue to direct the Trusts' investments through their control of numerous Platinum employees who worked at Beechwood, who were seconded to Beechwood, or who were consulting with Beechwood employees on a regular basis.

E. Feuer and Taylor Promise To Cut The Ties Between Beechwood And Platinum, But They Do Just The Opposite.

97. In late 2014, Feuer and Taylor promised Plaintiffs that Beechwood would begin to unwind Beechwood's significant investments in companies controlled by Platinum. Plaintiffs were thus led to believe that Beechwood would take steps to divest itself of such investments. Beechwood partially redeemed its direct investments in the Platinum funds, but found other ways to support Platinum, namely, by investing in companies that Platinum owned or controlled.

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98. To lull Plaintiffs into a false sense of security, Feuer and Taylor represented to Plaintiffs in late 2014 that Beechwood's ties to Platinum had been "cut" with Levy's departure. Thus, Plaintiffs were led to believe that Beechwood, under the supervision of Feuer and Taylor and a dedicated team of investment professionals, would unwind and properly value the questionable investment of Trust assets, and replace such investments with suitable investments.

99. That did not occur. According to the 9/16 *WSJ* Article, Beechwood has invested more than $200 million of client funds with Platinum-linked entities since 2014. And Beechwood made investments with Trust assets throughout 2015 and 2016 totaling tens of millions of dollars in Platinum-related companies, including after Huberfeld was arrested. In 2016, Beechwood again invested Trust assets directly into Platinum's funds.

100. Moreover, as Plaintiffs learned recently, Feuer and Taylor hid troubling facts concerning Huberfeld's and Nordlicht's involvements with Beechwood. Huberfeld and Nordlicht owned much of Beechwood's equity, and without their investments, Beechwood would not have had the capital to top-up the Trusts, as required by the Reinsurance Agreements, in the event of a shortfall. Defendants never disclosed this conflict to Plaintiffs.

101. Instead, Feuer and Taylor advised Plaintiffs in 2013, when Plaintiffs were in the process of selecting a reinsurer, that it had a demand note in the amount of $100 million for extra security in case a top-up of the Trusts was necessary, and access to an additional $500 million in capital. As Plaintiffs recently learned, however, the issuer of that note was none other than Nordlicht, and trusts created substantially for his benefit and related parties.[4]

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[4] Some portion of the Note was also guaranteed by trusts in the name of David Bodner and his family members. Bodner, who also has a criminal record, had long and deep ties to Huberfeld and Nordlicht.

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102. And, in May 2014, the demand note was reduced, without explanation or disclosure, to $25 million, an amount wholly insufficient given the magnitude of the Trusts' assets then. Moreover, the additional $500 million in capital simply does not exist.

103. Beechwood recently has advised Plaintiffs it is about to run out of cash and that Feuer and Taylor will have to fund operations with their own money. Feuer and Taylor have complained about the strain of that economic burden, and are now seeking additional surplus funds from the Trusts to fund Beechwood's operations. Thus, Feuer and Taylor's representations to Plaintiffs in 2013 concerning its access to capital were false and misleading.

F. Beechwood's Significant Ties With Platinum.

104. In addition to Beechwood being owned in substantial part by Platinum's principals (and their trusts), Huberfeld having an office at Beechwood, Beechwood employing Huberfeld's nephew (Levy) as its CIO, and Huberfeld's son and son-in-law working for Beechwood and BAM, many of Platinum's employees (in addition to Levy) left Platinum to work for Beechwood, or consulted with Beechwood about significant matters. For example:

a. Rick Hodgdon was seconded to Beechwood by Platinum and serves as Beechwood's Chief Underwriting Officer;

b. Daniel Saks, a former Platinum employee, served as BAM's CIO after Levy "resigned";

c. Naftali Manela, an employee of Platinum, provided consulting services to Beechwood related to general operations; and

d. Eli Rakower, an employee of Platinum, provided consulting services to Beechwood related to interaction with valuation firms that would value Trust assets.

105. The individuals set forth above were either aware that Platinum was engaging in a fraud against Plaintiffs, or were willfully blind to it, and in any event were sent to work at Beechwood, or consulted with Beechwood, on Platinum's behalf, to facilitate the fraud.

G. Huberfeld Is Arrested; Nordlicht Is Investigated For Fraud; The Platinum Funds Begin Liquidating.

106. According to published reports, on June 8, 2016, the U.S. Attorney for the Southern District of New York arrested Huberfeld and announced that criminal charges were being brought against him and Platinum in connection with bribing a union official to make a $20 million investment in a fund owned and operated by Platinum.[5]

107. Both Huberfeld and Platinum have a long history of unscrupulous conduct. In 1992, for example, Huberfeld pled guilty to a misdemeanor for sending an imposter to take his Series 7 brokerage licensing exam.[6] He was sentenced to two years' probation and paid a substantial fine to the SEC.[7] Just a few years later, in 1998, Huberfeld and another co-founder of Platinum, David Bodner (who is also one of the investors in Beechwood through his participation in the initial $100 million capitalization), settled civil allegations that they sold

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[5] *See* Jody Godoy, *NYC Fund Manager, Union Head Accused of $20M Fraud*, Law360, June 8, 2016, available at http://www.law360.com/articles/804854/ nyc-fund-manager-union-head-accused-of-20m-fraud.

[6] *See* Zeke Faux, *No Blow Up Is Big Enough to Tarnish Platinum Partners' Returns*, Bloomberg, Oct. 21, 2015, available at http://www.bloomberg.com/ news/articles/2015-10-21/no-blow-up-is-big-enough-to-tarnish-platinum-partners-returns.

[7] *Id*.

more than 513,000 shares of restricted stock in a particular company.[8] Huberfeld made an even larger payment to the SEC, in addition to the fine imposed on his then-fund.[9]

108. Several years later, in 2012, Platinum and Nordlicht's other fund, Centurion, entered into a sizeable settlement with the Chapter 11 Trustee of the Rothstein Ponzi scheme in relation to fraudulent transfers made to the funds.[10] And Platinum's subsidiary, BDL Manager, entered into yet another settlement with the SEC in 2014 in connection with a scheme to profit from the imminent deaths of terminally ill patients in nursing homes and hospice care.[11] Specifically, BDL Manager's brokers tricked dying patients into providing personal information that the brokers then used to make risky investments in variable annuities, which paid benefits to BDL Manager when the patients died.[12]

109. Nordlicht, Huberfeld's longtime partner and co-founder of Platinum, likewise has a checkered past. According to published reports, both Huberfeld and Nordlicht and their wives were sued in connection with the Rothstein Ponzi scheme. In addition, one of Nordlicht's previous funds, Optionable Inc., collapsed in a trading scandal in 2007 when another of its co-founders, Kevin Cassidy, was arrested for deliberately misstating the value of natural gas

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[8] *See* Lorena Mongelli and Bruce Golding, *Hedgie Accused of Bribing Union Boss Has Criminal Past*, NY Post, June 8, 2016, available at http://nypost.com/2016/06/08/hedgie-accused-of-bribing-union-boss-has-criminal-past.

[9] *Id*.

[10] *See* Sindhu Sundar, *Fund Managers Put Up $32M To End Rothstein Trustee Claims*, Law360, available at http://www.law360.com/articles/359744/fund-managers-put-up-32m-to-end-rothstein-trustee-claims.

[11] *See* SEC Press Release: SEC Announces Charges Against Brokers, Adviser, and Others Involved in Variable Annuities Scheme to Profit From Terminally Ill, Mar. 13, 2014, available at https://www.sec.gov/News/PressRelease/Detail /PressRelease/1370541121951.

[12] *Id.*

derivatives.[13] Cassidy, who served two prior stints in prison, was sentenced to another 30 months.[14] When he was released, Platinum hired him as the managing director of Agera Energy, a distressed company that Platinum had taken over and in which David Levy, while serving as Beechwood's Chief Investment Officer, had invested Trust assets in its high-risk debt.[15]

110. According to published reports, Nordlicht is currently under investigation along with Platinum. On June 22, 2016, the FBI and the U.S. Postal Inspection Service raided Platinum.[16] According to the *New York Post*, the FBI is "expected to look at Platinum's valuation of its hard-to-value illiquid assets."[17]

111. According to a July 25, 2016 article in the *Wall Street Journal* ("7/25 *WSJ* Article"),[18] the government has launched a "fraud investigation" against Platinum. Platinum had for years boasted of its outsized returns on investments, but those returns are likely fictitious and designed to induce others to invest money in the Platinum scheme.

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[13] *See* SEC Press Release: SEC Charges Banker and Brokerage Executives With Multi-Million Dollar Financial Fraud, Nov. 18, 2008, available at https://www.sec.gov/news/press/2008/2008-274.htm.

[14] *See* Bill Singer, *Commodities CEO Gets 30 Months in Prison in Mark to Market Scheme*, Forbes, Apr. 26, 2012, available at http://www.forbes.com /sites/billsinger /2012/04/26/commodities-ceo-gets-30-months-in-prison-in-mark-to-market-scheme/#62116c652089.

[15] *Id*.

[16] *See* Kaja Whitehouse and Josh Kosman, *FBI Raids Hedge Fund Linked to Union Head's Kickback Probe*, NY Post, June 22, 2016, available at http://nypost.com/ 2016/06/22/fbi-raids-hedge-fund-linked-to-union-heads-kickback-probe/.

[17] *Id*.

[18] *See* Rob Copeland, *Fraud Probe Ricochets through Platinum Partners, a Hedge Fund With Ties to Jewish Community*, available at http://www.wsj.com/articles/fraud-investigation-ricochets-through-hedge-fund-known-for-ties-to-jewish-community-1469439181.

112. As explained in the 7/25 *WSJ* Article, Platinum began borrowing money to repay investors starting in 2012, when investors began asking for their money back. The 7/25 *WSJ* Article reported that Platinum has recently suspended all redemptions from its funds and could not commit to investors that the Platinum funds would pay investors "cash matching the full investment gains the firm has reported." In other words, the money Platinum represented was in the Platinum funds is not actually there.

113. The government, according to the 7/25 *WSJ* Article, is investigating whether "Platinum had been paying some reported investment gains to existing investors with money from incoming ones." The 7/25 *WSJ* Article also reported that Nordlicht is a target of the investigation, along with Huberfeld, who, as noted above, has a criminal record and is presently under indictment for bribing a union official.

114. Due to its ties to Platinum, government agents also raided Beechwood's offices on the morning of Huberfeld's arrest. As explained in the 7/25 *WSJ* Article – but which was news to Plaintiffs at the time of its publication – Huberfeld and Nordlicht had started and funded Beechwood.

115. According to the 7/25 *WSJ* Article, and contrary to Defendants' assertions preceding the execution of the Reinsurance Agreements that the company was "owned by three individuals," Huberfeld maintained an office at Beechwood and his son and son-in-law worked at a Beechwood affiliate, BAM. His nephew, Levy, controlled Beechwood's investments for over a year and funneled Trust assets into numerous Platinum-related schemes, investments and entities.

116. Plaintiffs would not have entered into the Reinsurance Agreements if they had known of Beechwood's ties to Platinum, Huberfeld and Nordlicht. Indeed, no insurance

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company would knowingly invest its assets backing policyholder liabilities with such unscrupulous characters, and insurance regulators would not have knowingly permitted insurers to do anything of the kind.

117. According to the 7/25 *WSJ* Article, Platinum began running out of cash in 2015 as Platinum investors began increasing redemption requests. To fund those redemptions, Beechwood lent money to Platinum and purchased parts of Platinum's portfolio, so that "Platinum ended up owing Beechwood around $70 million." Beechwood appears to have been funding Platinum's redemptions to defrauded investors who were demanding an exit from Platinum funds.

118. This is further confirmed by an article appearing in the *New York Observer* on June 23, 2016.[19] The *Observer* reported that Platinum lacked funds in November 2015 to meet redemption demands. The *Observer* reported that the Fruchthandler family (real estate moguls whose holdings include the Woolworth Building) could not redeem $600,000 from the Platinum Funds and filed a complaint with the SEC.

119. Tellingly, the *Observer* reprinted a letter written by the Fruchthandler family's attorney to the General Counsel of Platinum, David Ottensoser – *the same person Beechwood told Plaintiffs in November 2013 was the General Counsel of Beechwood*. The *Observer* also reported that Platinum could not come up with $7.5 million in November 2015 to satisfy a put to New Mountain Finance Corporation.

120. Around the same time, in October 2015, New Zealand's Parris Investments Ltd. ("Parris Investments") submitted a redemption request to Platinum, asking for the return of its

[19] *See* Ken Lurson, *Exclusive: Bribe Suspect Huberfeld Accused of Stiffing Previous Platinum Investors*, Observer, June 23, 2016, available at http://observer.com/2016/06/exclusive-bribe-suspect-huberfeld-stiffed-previous-platinum-investors/.

funds. Platinum failed to return the money to Parris Investments by the end of December, which was the due date specified by the parties' agreement. According to Parris Investments' court filings, Platinum then made a series of promises over the next several months, indicating it would return the funds. It never did, and in July 2016, Parris Investments filed a complaint against Platinum in the Cayman Islands where Platinum is domiciled. A month later, the Cayman Islands judge issued an order that validated concerns about Platinum's inability to repay investors.[20] The order turned over the international unit of Platinum's main fund to court-appointed liquidators.

H. The Cornerstone Investigation And BCLIC And WNIC's Realization That Trust Assets Are Overvalued

121. Plaintiffs invoked the audit provisions of the Reinsurance Trust Agreements shortly after Huberfeld's arrest in June 2016. In light of the arrest and related press coverage, Plaintiffs specified that the audit would encompass (1) whether the investment of Trust assets complied with the terms of the Reinsurance Agreements and associated investment guidelines, (2) Beechwood's valuation of those assets, and (3) Beechwood's relationship with Platinum.

122. Plaintiffs hired Cornerstone Research ("Cornerstone") to perform the audit of the investments. Cornerstone's work consisted of analyzing (1) the transactions and interconnections between Beechwood's investments of Trust assets and any Platinum related entities; (2) potential sources for conflict of interest between Beechwood and BAM, on the one hand, and Platinum, on the other; (3) whether the terms of Beechwood's investments of Trust assets were economically reasonable; and (4) the valuations of the Trust assets performed by Duff & Phelps on behalf of Beechwood.

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[20] *See* Kaja Whitehouse, *Hedge Fund Linked to Prison Guards' Union Goes to 'Liquidators,'* NY Post, Aug. 24, 2016, available at http://nypost.com/2016/08/24/hedge-fund-linked-to-prison-guards-union-goes-to-liquidators/.

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123. By August 2016, Plaintiffs had determined that approximately $280 million of the $591 million assets held in Trust are Level 3 assets, which is the category of most-difficult-to-value assets, and approximately *$116 million* of the $302 million of Level 3 assets are inextricably intertwined with Platinum.[21]

124. Cornerstone also uncovered significant problems with the valuation reports that Duff & Phelps prepared and that Beechwood submitted to Plaintiffs. For example, their valuations (a) generally provided no explanations or evidence to support the valuations, (b) were often based on unsubstantiated, incorrect and sometimes irrelevant assumptions and questionable methodologies, (c) ignored evidence that the transactions were not at arm's-length, and (d) ignored the extensive dealings between Beechwood and Platinum that illustrated Beechwood's conflicts of interest. Plaintiffs believe that their reinsurance Trusts are underfunded.

125. Plaintiffs recently learned through the audit that many investments of Trust assets Beechwood made were with Platinum-linked companies, and that Beechwood and Duff & Phelps have improperly valued such investments. These include at least the following:

a. Agera Energy. Agera Energy was owned by a Platinum, which had purchased its assets from a distressed company. Beechwood initially invested Trust assets in Agera. Later, on June 9, 2016, one day after Huberfeld was indicted for bribing a union official to invest the union's funds with Platinum, Beechwood invested more of the Trusts' assets in loans to Agera as part of a restructuring. Platinum brought the transaction to Beechwood, informing it that Platinum needed cash and was hoping Beechwood would assist it by arranging a deal to provide it. Beechwood acceded to Platinum's request by agreeing to a deal to cash out

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[21] *See Fitch Places CNO Financial Group on Rating Watch Negative*, Reuters, Aug. 3, 2016, available at www.reuters.com/article/idUSFit969502.

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Platinum's interest in Agera. To justify these loans, Beechwood claimed that Agera's enterprise value had increased by 550% between Platinum's 2014 acquisition of Agera and June 2016. In June 2016 alone, Beechwood and Duff & Phelps reported that Agera's enterprise valuation had increased by 46% *in just 3 weeks*. The Agera restructuring was represented by Feuer and Taylor to Plaintiffs as mechanism to allow the Trusts to divest other bad Platinum-related investments. In fact, the June 9 restructuring was a continuation of the pattern of using the Trusts to benefit Platinum because the Trusts put in new money which was used to cash out Platinum-related investments.

b. Newel Trading. Beechwood made tens of millions of dollars of short term loans to Newel Trading, a company owned by Platinum, using Trust assets, but Beechwood failed to value these loans in its quarterly reports to Plaintiffs. Beechwood was using the Trust funds as Platinum's piggybank.

c. LC Energy Operations. LC Energy Operations is owned by Platinum. Beechwood invested trust assets in a loan to LC Energy that was used to retire Platinum's preferred securities. Many of Beechwood's investments of Trust assets have been used to retire Platinum securities or cash out Platinum's positions.

d. Implant Sciences Corp. Platinum owns enough of the convertible debt of Implant Sciences Corp. to obtain a majority stake in the company. Implant Sciences' business consists of an explosive trace detection product, but it has announced plans to sell that business and transition to jet-powered hoverboards. Implant Sciences is a distressed company and was de-listed from the New York Stock

Exchange in 2009. In March 2015, Beechwood loaned Implant Sciences money from the Trusts, the proceeds of which were used to reduce a Platinum loan. The loan's maturity date has repeatedly been extended due to Implant Sciences inability to pay. The Trusts' current exposure to this investment is just under $7 million. Beechwood and Defendants continue to value this investment at par.

e. China Horizon Investment Group. Platinum was a significant shareholder in China Horizon Investments Group. Beechwood invested Trust assets in a loan to it, the proceeds of which were used to repay "shareholder loans."

f. Golden Gate Oil LLC. Platinum had a significant equity stake in Golden Gate Oil LLC. Beechwood used Trust assets for a loan to it, the proceeds of which were used to purchase Platinum's loan. Beechwood's valuation of Golden Gate relies on an assumption that oil will sell for $90 per barrel and that Golden Gate's wells will be productive, when oil is currently selling for $50 per barrel and less than 2% of Golden Gate's wells have been developed. It is producing 30 barrels per day. Beechwood and Defendants still value this asset at par.

g. Northstar GOM LLC. Platinum has a significant equity stake in Northstar GOM LLC. Beechwood invested Trust assets in a loan in which the proceeds were used to fund Platinum's purchase of the company.

h. ALS Capital Ventures/Credit Strategies. Credit Strategies is a non-operating entity owned by Platinum. Credit Strategies owns 83% of ALS Capital Ventures ("ALS"), a life insurance settlement fund that owns life insurance policies. ALS pays the premiums on the policies and depends on death benefits to make profits. Beechwood invested Trust assets in loans to Credit Strategies, the non-operating

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company owned by Platinum, presumably to allow ALS to continue to make premium payments on the policies. As of August 31. 2016, Beechwood's loan of Trust assets to Credit Strategies has created an exposure of more than $10 million for the Trusts. This loan is nothing more than a manner of using Trust assets to subsidize Credit Strategies' indirect investment in life insurance policies. The 2014 audited financial statements for ALS show that, in 2014, ALS' "members" withdrew $26.3 million in "capital," or equity, while the Trusts' loan remains unpaid.

i. Pedevco: Pedevco is another distressed oil and gas development company, similar to GGO, discussed above. Like GGO, Pedevco has numerous interrelationships with Platinum. Platinum owns 100% of Pedevco's Series A preferred, along with 9.9% of its common stock. Platinum also holds tranches A & B of Pedevco's senior secured debt and a Platinum representative sits on the Pedevco board of directors. Beechwood invested millions of dollars of Trust assets in Pedevco's tranche B notes.

j. PPCO: In March 2016, a year and a half after Defendants advised Plaintiffs that Defendants would unwind the Trusts' investments with Platinum and Platinum-related entities, Beechwood directly invested Trust assets with PPCO, a Platinum fund. This fund is now in liquidation, and the Trusts' exposure to PPCO is approximately $6.8 million. Beechwood's investment of Trust assets in PPCO occurred within a couple of months of the June 9, 2016 Agera transaction, which was initiated when Platinum informed Beechwood of Platinum's need for liquidity and its desire to obtain that liquidity from Beechwood. Beechwood and

Defendants continue to value this investment at or near par, that is, in the range of $6.725 million to $6.86 million. Given that PPCO is in liquidation and has suspended redemptions, that the FBI has raided Platinum's office, that Platinum is under federal investigation and that one of Platinum's founders is now under indictment for bribing a union official to invest union funds in Platinum, the Trusts' may suffer a considerable loss in this Platinum-related investment.

k. Black Elk: Beechwood invested Trust assets in junk bonds issued by Black Elk Energy LLC, an oil company. With Black Elk in financial distress following an oil rig explosion, it sought to sell its principal assets. Platinum, which owned a majority interest in the company, asked owners of the junk bonds to subordinate their interests and allow Platinum to receive the proceeds of the asset sales. Beechwood voted the Trusts' shares of its junk bond in favor of self-subordination to Platinum, contrary to the interests of the Trusts. Platinum succeeded in obtaining all proceeds of the asset sales.

I. Feuer and Taylor Admit They Hid Huberfeld And Nordlicht's Interests In Beechwood.

126. In August 2016, after Huberfeld was indicted, Feuer and Taylor admitted with feigned disdain that they discovered Levy was using Trust assets to provide liquidity and profits to Platinum. Feuer and Taylor stated that they were "surprised" by how Levy used the Trust assets and that they "woke up to a new reality" that Levy was actually using the Trusts' funds to benefit Platinum. Feuer and Taylor admitted that Levy had loaned Trust assets to "highly questionable parties." Feuer and Taylor nonetheless replaced Levy as CIO with another employee of Platinum and continued to direct that Trust assets be used to aid Platinum.

127. In another surprise bout of honesty, Feuer and Taylor recently (just this month) explained to Plaintiffs that they have been associates of Huberfeld for many years. According to Feuer and Taylor, Huberfeld learned that they were starting a reinsurance company, and Huberfeld and Nordlicht then invested in Beechwood, taking a significant stake in the company. Once Huberfeld and Nordlicht became part of Beechwood, they used Beechwood to benefit Platinum. Feuer and Taylor also admitted that Huberfeld and his family still owned preferred shares in Beechwood and that they are also creditors of Beechwood.

J. The Regulatory Orders.

128. On September 29, 2016, the New York State Department of Financial Services ("NYDFS") and the Indiana Department of Insurance (IDOI) sent letters concerning BCLIC and WNIC, respectively, declaring that, after their investigation of the Trust assets, "a substantial portion of the current assets held within the Trust[s] are not in compliance" with state law requirements.

129. The NYDFS required Plaintiffs to remediate this deficiency within ten days, and the IDOI directed that corrective actions be taken immediately.

130. The letter from the NYDFS states, in pertinent part:

> The New York State Department of Financial Services (the "Department") has conducted a review of the New York Insurance Regulation 114 Trust (the "Trust"), established pursuant to 11 NYCRR 126, which collateralizes the reinsurance treaty between Bankers Conseco Life Insurance Company ("Bankers Conseco") and Beechwood Re, Ltd. ("Beechwood Re").
>
> As a result of this review, which included a detailed analysis of assets and multiple rounds of communication between the Department, Bankers Conseco and Beechwood Re, ***the Department has concluded that a substantial portion of the current assets held within the Trust are not in compliance with the standards set under 11 NYCRR § 126 (Insurance Regulation 114), which is also required under the express terms of the***

> ***reinsurance treaty.*** The Department observed that certain assets within the Trust were removed subsequent to the Department's approval of the reinsurance treaty and replaced with assets that do not comply with 11 NYCRR § 126(a)(2) …
>
> ***Bankers Conseco is hereby directed to remediate this deficiency within ten days*** of the date of this letter by ensuring the assets held within the Trust meet the requirements of Insurance Regulation 114. Failure to bring the Trust into compliance may result in the denial of reserve credit and disciplinary action from the Department.
>
> (emphasis added)

131. The letter from IDOI states, in pertinent part:

> The Indiana Department of Insurance ("IDOI") has reviewed the above referenced Reinsurance Agreement and related trust funds ("Trust") as part of its Confidential Target Examination of WNIC, Appointment # 3920 ("Exam").
>
> ***The Reinsurance Agreement and related Trust are not in compliance with 760 IAC 1-55-4 ("Rule 55") … At least some of the Level 3 Trust assets cannot be relied upon***. …
>
> ***Additionally, BRE is in violation of IC 27-6-10-11 (a).*** That section of the Indiana Code requires BRE to report annually to the Indiana Commissioner substantially the same information as that required to be reported by licensed insurers on the National Association of Insurance Commissioners' annual statement form. ***BRE has failed to file any such reports…***
>
> Credit for reinsurance ceded under the Reinsurance Agreement shall not be allowed WNIC, for all of the above reasons, unless corrective measures, satisfactory to the IDOI, ***are taken immediately***...
>
> WNIC, BRE, and the Trustee, are subject to potential disciplinary action, based on the above violations.
>
> (emphasis added).

132. Feuer and Taylor have advised Plaintiffs that the non-qualified assets cannot be liquidated for months or perhaps years, given that, for example, PPCO is in liquidation and

redemptions have been suspended. Hence, Plaintiffs were required by their regulators to recapture the business or else face disciplinary action, including the loss of its reinsurance credit for the ceded risks.

K. BCLIC and WNIC Terminate The Reinsurance Agreements.

133. On September 29, 2016, Plaintiffs issued a Notice of Termination to Beechwood, immediately terminating all Reinsurance Agreements between the parties. Plaintiffs terminated the Agreements due to Beechwood's numerous incurable breaches of the Reinsurance Agreements and fraud upon Plaintiffs since the inception of the relationship, among other reasons.

L. BCLIC and WNIC Exercise Their Contractual Right To Take Control Of Trust Assets.

134. On September 29, 2016, Plaintiffs issued a notice to Wilmington Trust, the trustee of the Trusts, to transfer all Trust assets to Plaintiffs. Upon information and belief, Wilmington Trust is in the process of effectuating that transfer.

M. BCLIC and WNIC Commence Arbitration and Seek Emergent Relief Before The Interim Arbitrator.

135. On September 29, 2016, Plaintiffs commenced an arbitration pursuant to the arbitration provisions of the Reinsurance Agreements. They seek damages against Beechwood, and have also sought the appointment, on an emergency and expedited basis, of an interim arbitrator to hear Plaintiffs' application for emergency relief, specifically, to obtain books, records and other information from Beechwood.

COUNT ONE

(Breach of Fiduciary Duty)

136. Plaintiffs incorporate each and every allegation above as if set forth fully and verbatim herein.

137. Beechwood, as reinsurer, owed fiduciary duties to Plaintiffs.

138. Defendants, as the three most senior officers of Beechwood, also owed Plaintiffs fiduciary duties.

139. Based on Defendants' assurances that Beechwood would invest Trust assets prudently and in the best interests of policyholders and Plaintiffs, and other representations including the ownership structure of Beechwood, Plaintiffs reposed trust and confidence in Defendants.

140. Defendants owed Plaintiffs a duty of candor and a duty of loyalty.

141. Defendants knowingly breached those fiduciary duties by the acts set forth above, including, without limitation: (a) failing to advise Plaintiffs of the true ownership structure of Beechwood and deliberately concealing such information in order to induce Plaintiffs to enter into the Reinsurance Agreements so they could misuse and pilfer assets in the Trusts to further their fraudulent scheme; (b) over a course of almost three years, deliberately concealing Platinum's many connections with Beechwood, including that Platinum employees worked directly for Beechwood, were seconded to Beechwood, and routinely advised Beechwood; (c) continually using Trust assets to benefit Platinum, its founders and the fraudulent scheme, and deliberating misleading Plaintiffs as to the true nature of Beechwood's relationship to Platinum; (d) deliberately applying false and erroneous valuations to assets of the Trusts tied to Platinum, including in quarterly reports, to create the erroneous impression that the Trusts were fully funded when in fact they not; (e) using false and erroneous valuations of Trust assets to remove more than $134 million from the Trusts as purported "surplus"; (f) advising Plaintiffs that Beechwood's ties to Platinum were cut with the departure of Levy, when in fact those ties remained and remain to this day; (g) voting the Trusts' Black Elk bonds in favor of Platinum and

to the detriment of Plaintiffs; (h) engaging in numerous other investments to benefit Platinum and not Plaintiffs; and (i) continually providing Plaintiffs with assurances that Trust assets were properly invested when in fact they were not.

142. As a result of Defendants' conduct, Plaintiffs have suffered damages of at least $50 million.

COUNT TWO

(Aiding and Abetting a Breach of Fiduciary Duty)

143. Plaintiffs incorporate each and every allegation above as if set forth fully and verbatim herein.

144. Beechwood owed Plaintiffs fiduciary duties.

145. Defendants were aware of Beechwood's breaches of fiduciary duties and knowingly participated in them and induced them.

146. As a result of Defendants' conduct, Plaintiffs have suffered damages of at least $50 million.

COUNT THREE

(Fraudulent Misrepresentation/Fraudulent Concealment)

147. Plaintiffs incorporate each and every allegation above as if set forth fully and verbatim herein.

148. Defendants knowingly made numerous false representations of material fact to Plaintiffs, knowing such statements were false when making them, as detailed above, concerning the ownership of Beechwood, Beechwood's ties to Platinum, Beechwood's supposed effort to cut ties with Platinum, and the value of trust assets, among others, with the intent of inducing

Plaintiffs into entering into the Reinsurance Agreements and not terminating the Reinsurance Agreements after they were entered into.

149. Defendants continually concealed their fraud, by repeatedly misrepresenting: (a) the true purpose of Beechwood, which was to further the Platinum fraud scheme; (b) who actually ran Beechwood, which was Platinum through its employees, seconded employees and former employees who worked at Beechwood; (c) why Beechwood was investing in Platinum's funds and Platinum-related entities, which was to benefit Platinum; and (d) the valuation of the Trust assets by providing false and erroneous quarterly reports and annual statements, which contained inflated valuations designed to lull Plaintiffs into believing that the Trusts were overfunded and served as proper collateral for the transferred liabilities, all of which is false.

150. Plaintiffs justifiably relied upon such misrepresentations to their detriment, by both entering into the Reinsurance Agreements and then not terminating them earlier.

151. As a result of Defendants' conduct, Plaintiffs have suffered damages of at least $50 million.

COUNT FOUR

(Aiding and Abetting a Fraud)

152. Plaintiffs incorporate each and every allegation above as if set forth fully and verbatim herein.

153. Beechwood knowingly made numerous false representations of material fact to Plaintiffs, knowing such statements were false when making them, as detailed above, with the intent of inducing Plaintiffs into entering into the Reinsurance Agreements and not terminating the Reinsurance Agreements after they were entered into.

154. Defendants were aware of the fraud being perpetrated on Plaintiffs by Beechwood and Platinum, and their founders, and Defendants provided substantial assistance to the fraud's commission.

155. Plaintiffs justifiably relied upon Beechwood's misrepresentations to their detriment, by both entering into the Reinsurance Agreements and then not terminating them earlier.

156. As a result of Defendants' conduct, Plaintiffs have suffered damages of at least $50 million.

COUNT FIVE

(Violation of RICO - 18 U.S.C. § 1962(c))

157. Plaintiffs incorporate each and every allegation above as if set forth fully and verbatim herein.

158. Plaintiffs are "persons" as defined in 18 U.S.C. § 1961(3).

159. Defendants are "persons," as that term is defined in 18 U.S.C. § 1961(3).

The Enterprise

160. In addition to Platinum and Beechwood being "enterprises" for purposes of RICO, at all relevant times, there was an association-in-fact between and among Feuer, Taylor, Levy, Beechwood, Huberfeld, Nordlicht and Platinum employees and entities. The association-in-fact's purpose was to fraudulently secure reinsurance arrangements with insurance companies, take control of reinsurance trust funds, use those assets to conceal and perpetuate Platinum's ongoing fraud scheme, and ultimately enrich the scheme's founders.

161. Each of these enterprises, including the association-in-fact, had an ascertainable structure and organization and existed apart from its predicate acts.

162. That the association-in-fact was an enterprise for purposes of RICO can be inferred from their shared business and familial relationships and from their common participation in the fraudulent scheme. Specifically:

a. Huberfeld and Nordlicht founded Beechwood with Feuer, Taylor, and Levy. Beechwood was largely capitalized by a $100 million note from a series of trusts owned or controlled by Nordlicht, his family and his confederates.

b. Huberfeld maintained an office at Beechwood.

c. At meetings between Plaintiffs and Beechwood, most of the purported Beechwood employees were in fact Platinum employees.

d. Numerous individuals who worked for Platinum, including Huberfeld's nephew, son, and son-in-law, worked for Beechwood, specifically directing reinsurance trust assets.

e. Beechwood's Chief Investment Officers, who directed trust fund assets were all former Platinum employees, and they directed the trusts' investments to Platinum or entities controlled by Platinum, except for the current CIO.

f. Platinum seconded employees to Beechwood to direct trust fund investments, and Platinum employees consulted with Beechwood employees on both general operations interacting with valuation firms.

g. Feuer and Taylor notified Huberfeld and Nordlicht within ten minutes of the reinsurance trust fund's arrival at Beechwood.

h. Huberfeld and Nordlicht owned much of Beechwood's equity, and without their investments, Beechwood would not have had the capital to true-up the trusts, as required by the Reinsurance Agreements, in the event of a shortfall.

163. Each of the enterprises set forth above constitutes an "enterprise" within the meaning of 18 U.S.C. § 1961(4).

164. At all relevant times, each of these Enterprises engaged in, and its activities affected, interstate commerce.

165. Each Defendant is associated with each of the three Enterprise identified above and participated, directly or indirectly, in the management or direction of the Enterprise within the meaning of 18 U.S. C. §§ 1961(4) and 1962(c). The Defendants were "employed by or associated with" the Enterprise within the meaning of 18 U.S.C. Section 1962(c).

Predicate Acts

166. In the course of conducting and participating in the scheme to defraud investors and perpetuate the Platinum fraud scheme, each of the Defendants perpetrated numerous predicate acts of racketeering activity, which are indictable under provisions of the U.S. criminal code enumerated in 18 U.S.C. § 1961(1), as more specifically alleged below.

167. Specifically, from 2013 to 2016, the Defendants engaged in repeated instances of mail and/or wire fraud in violation of 18 U.S.C. §§ 1341 and 1343.

168. In furtherance of the scheme described above, and with intent to defraud the Plaintiffs and other institutional investors, each of the Defendants participated in or induced the following conduct that actually used – or foreseeably would have used – mail or wires:

a. In 2013, Defendants Feuer and Taylor advised Plaintiffs that they were the founders of Beechwood. They omitted any mention of their co-founders, Huberfeld and Nordlicht, who had founded Platinum and who had, respectively, a criminal record and a reputation for doing business with criminals.

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b. In June 2013, Feuer and Taylor caused to be sent to Plaintiffs a document entitled "Beechwood Re/Discussion Document/June 2013." In that document, Feuer and Taylor represented to Plaintiffs that Beechwood "is capitalized with over $100 million in capital, with access and intent to fund up to $500 million additional over coming years." Feuer and Taylor did not disclose that the capitalization came from Nordlicht and that Beechwood's access to further funds depended in large part on its close relationship with Platinum.

c. Throughout June, July, August and September, 2013, Feuer and Taylor represented to Plaintiffs that Beechwood was owned by three individuals, them and Levy, with no connection to any private equity investors, and that they had initial "non-redeemable capital" of over $100 million.

d. On November 5, 2013, Hodgdon, on behalf of Beechwood and with Beechwood's approval, sent an email arranging a meeting between Plaintiffs and "Beechwood" employees. In fact, most of the employees belonged to Platinum. The email was intended to and had the effect of concealing Beechwood's deep ties to Platinum.

e. In or about November 2013, Feuer and Taylor told Plaintiffs that Beechwood was mostly owned by Feuer and Taylor, who had capitalized Beechwood themselves. In fact, undisclosed by Feuer and Taylor, Beechwood was in substantial part owned by a series of family trusts owned by Huberfeld, Nordlicht, Levy, and their family members.

f. In February 2014, Beechwood closed its reinsurance agreement with Plaintiffs, obliging it to invest Trust assets in accordance with the investment guidelines prescribed by the Reinsurance Agreements and the insurance laws of New York

and Indiana. In fact, Levy (a) invested directly in the Platinum funds, which would help Platinum meet investor redemption demands and further aid the Platinum fraud scheme; (b) voted to aid such funds even to the detriment of Beechwood's clients; (c) entered into transactions with known criminals who were friends and associates of Huberfeld and Nordlicht; and (d) loaned money to or entered into other transactions with at least a dozen entities controlled by Platinum that no reasonable investment manager would enter into because they were too risky for the reinsurance Trusts, in the collective amount of more than $150 million.

g. Between July 16, 2014 and August 13, 2014, in his capacity as Beechwood's Chief Investment Officer, Levy voted Beechwood's Black Elk bonds in favor of a consent solicitation that benefited Platinum at the expense of Plaintiffs.

h. In 2014, after Plaintiffs complained that Beechwood was making too many investments with known criminals and Platinum-related entities, Defendants Feuer and Taylor represented that the improper investments were the work of Levy, that Levy had resigned, and that the Platinum-related investments would be wound down. In fact, Levy had been fired, but he, Huberfeld, Nordlicht, and Platinum-related entities retained an aggregate 40% ownership stake in Beechwood. Beechwood went on to invest more than $200 million of insurance client funds with Platinum-linked entities. Levy, Huberfeld, and Nordlicht retained a substantial ownership stake in Beechwood.

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i. At the end of March 2016, Beechwood sent Trust assets to Platinum – which by then was unable to meet redemption demands – of $14.2 million in cash, as part of a transaction involving a $26.2 million Platinum Note balance.

j. The Defendants created, prepared, and submitted quarterly reports and annual statements falsely inflating the value of Trust assets in order to conceal their fraud and plunder an additional $134 million as "surplus." In fact, the Trusts are, and at the time of Beechwood's reports have always been, underfunded, or the assets in the Trusts are too speculative and risky to be capable of reasonable valuation.

k. Defendants continually engaged in self-dealing and fraud by investing Trust assets with Platinum-linked entities in order to provide cash to Platinum to both meet redemption demands and enrich the scheme participants.

169. In each of these instances, the Defendants acted willfully and with actual knowledge that the conduct was fraudulent.

Pattern of Racketeering Activity

170. The above acts of mail and wire fraud are part of a pattern of racketeering activity.

171. The racketeering acts are related to each other in that they have the same purpose, results, participants, victims, and methods of commission.

172. The racketeering acts are related to each of the Enterprises in that the misrepresentations enabled the Enterprises to obtain institutional investors, direct their funds to Platinum affiliates, and conceal Platinum's involvement, thus protecting the fraudulent scheme. Defendants were enabled to commit the predicate offenses solely by virtue of their positions in and control over both Beechwood and Platinum. Specifically,

a. Plaintiffs relied on Feuer and Taylor's aura of legitimacy in their decision to cede Beechwood control of assets in the Trusts.

b. Levy's control over Trust investments made it possible to direct Trust funds to Platinum assets.

c. Each Enterprise depended upon Beechwood to issue false or misleading valuation reports and annual statements, allowing further plunder of Trust assets.

d. Each Enterprise also relied on Feuer and Taylor to act as fronts in persuading Plaintiffs that, with Levy no longer working for Beechwood as of late 2014, entanglements with Platinum would cease.

173. The racketeering acts form a close-ended continuity, in that the acts targeted a wide swath of investors and extended over multiple years before the exposure of the Platinum fraud scheme finally brought them to a close

174. In addition, the racketeering acts affected thousands of policyholders whose policies are tied to the assets in the Trust, as the Trust is used to pay policyholder claims.

175. In addition, insurance departments in New York and Indiana have determined that Beechwood's use of Trust assets was improper, as Beechwood investment of such Trust assets was non-compliant with state law requirements.

RICO Injury

176. Defendants' conduct and participation in the conduct of each of the Enterprises identified above through a pattern of racketeering activity has directly and proximately caused Plaintiffs to be injured in their business and property, including the loss of the value of Trust assets and the reputation to their business.

177. By virtue of the Defendants' violations of 18 U.S.C. §1962(c), Plaintiffs are entitled to recover from them three times the damages sustained by reason of the claims submitted by them, and others acting in concert with them, together with the costs of suit, including reasonable attorney's fees.

COUNT SIX

(Violation of RICO - 18 U.S.C. § 1962(a))

178. Plaintiffs incorporate each and every allegation above as if set forth fully and verbatim herein.

179. Each Defendant has received income derived, directly or indirectly, from the pattern of racketeering set forth above and used or invested, directly or indirectly, that income or the proceeds of that income in the acquisition of an interest in, or the establishment of the operation of, each of the Enterprises identified above, in violation of 18 U.S.C. §1962(a).

180. Each Defendant's violation of 18 U.S.C. §1962(a) has directly and proximately injured Plaintiffs in their business and property by, among other things, reducing value of the assets in the Trusts through investments that are speculative, risky, or simply sham transactions, all of which were made to benefit Platinum.

181. By virtue of the Defendants' violations of 18 U.S.C. §1962(a), Plaintiffs are entitled to recover from them three times the damages sustained by reason of the claims submitted by them, and others acting in concert with them, together with the costs of suit, including reasonable attorney's fees.

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COUNT SEVEN

(RICO Conspiracy 18 U.S.C. § 1962(d))

182. Plaintiffs incorporate each and every allegation above as if set forth fully and verbatim herein.

183. In violation of 18 U.S.C. § 1962(d), Defendants and others known and unknown persons have conspired with each other to violate 18 U.S.C. §§ 1962(a) and (c).

184. The objects of the conspiracy included, without limitation, the misappropriation of funds from Plaintiffs and others by means of a scheme to defraud. By these misappropriations, Defendants gained personal benefits and supported Platinum's fraudulent scheme.

185. Defendants agreed and combined with persons known and unknown to engage in a pattern of racketeering activity. Upon information and belief, Feuer, Taylor, Levy, , through their words and actions, each agreed to commit two or more predicate acts of wire fraud and/or mail fraud, as alleged above, in furtherance of their scheme to protect the Platinum fraud scheme and enrich its founders. The Defendants knew that their predicate acts were part of a pattern of racketeering activity and agreed to the commission of those acts to further the scheme described above.

186. Defendants' agreement can reasonably be inferred from their close professional ties and from their mutually dependent, coordinated efforts in achieving the objectives of each Enterprise. Feuer and Taylor dutifully concealed Beechwood's role as a front for Platinum, and Levy directed Trust assets to Platinum investments.

187. The predicate acts of mail fraud and wire fraud, described above, constitute overt acts of the foregoing conspiracy, in violation of 18 U.S.C. § 1962(d), by reason of which Plaintiffs have suffered a loss as set forth herein.

188. Plaintiffs are entitled to recover three times the damage to their businesses or property.

COUNT EIGHT

(Civil Conspiracy to Commit Fraud)

189. Plaintiffs incorporate each and every allegation above as if set forth fully and verbatim herein.

190. Defendants, together and with others, including Platinum, conspired with each other for the unlawful objective of defrauding Plaintiffs.

191. The civil conspirators reached an agreement or understanding to commit the fraud described herein, including the objective of the fraud and the manner in which it would be carried out.

192. Defendants committed numerous overt acts in furtherance of the conspiracy, as detailed herein.

193. Plaintiffs suffered damages as a result of the overt acts, in an amount of at least $50 million.

COUNT NINE

(In the Alternative, Negligent Misrepresentation)

194. Plaintiffs incorporate each and every allegation above as if set forth fully and verbatim herein.

195. As set forth herein, Plaintiffs allege that Defendants conspired with Platinum and its principals, and others, to defraud and harm Plaintiffs, by knowingly and intentionally participating in a fraudulent scheme to induce Plaintiffs to turn over approximately $550 million to be managed by Beechwood for the benefit of Platinum and its principals, and to bolster and further Platinum's fraud scheme, which was known to Defendants.

196. Alternatively, in the event it is determined that Defendants were unaware that Platinum was a fraudulent scheme and did not conspire with others to defraud Plaintiffs in the manner set forth herein, Plaintiffs assert the following alternative claim for relief.

197. Due to the Reinsurance Agreements and privity-like relationship between Plaintiffs and Defendants, Defendants were under a duty to impart correct and truthful information to Plaintiffs concerning, among other things, Beechwood's true ownership, why Beechwood was investing in Platinum's funds and companies owned or controlled by Platinum, Platinum's connections to Beechwood through employee sharing and secondments, the actual value of assets in the Trusts, and the difficulties in actually unwinding the Trusts' Platinum-related assets.

198. Defendants did not provide Plaintiffs with correct and truthful information but instead continually misled Plaintiffs concerning the foregoing items.

199. The Platinum fraud was easily visible to Defendants, but they acted with willful blindness out of their own self-interest.

200. Plaintiffs reasonably relied upon the incorrect and untruthful information provided by Defendants, by entering into the Reinsurance Agreements and not terminating them for over two and a half years.

201. Plaintiffs have been damaged by Defendants' conduct in an amount of at least $50 million.

COUNT TEN

(In the Alternative, Negligence)

202. Plaintiffs incorporate each and every allegation above as if set forth fully and verbatim herein.

203. As set forth herein, Plaintiffs allege that Defendants conspired with Platinum and its principals, and others, to defraud and harm Plaintiffs, by knowingly and intentionally participating in a fraudulent scheme to induce Plaintiffs to turn over approximately $550 million to be managed by Beechwood for the benefit of Platinum and its principals, and to bolster and further Platinum's fraud scheme, which was known to Defendants.

204. Alternatively, in the event it is determined that Defendants were unaware that Platinum was a fraud scheme and did not conspire with others to defraud Plaintiffs in the manner set forth herein, Plaintiffs assert the following alternative claim for relief.

205. Defendants owed Plaintiffs a duty to act with reasonable care in connection with directing the Trusts' assets.

206. Defendants breached that duty of care by, among other things, making imprudent investments to benefit Platinum, failing to advise Plaintiffs of the reason for such investments, and improperly valuing such assets.

207. The inappropriateness of Beechwood's investments with Trust assets was easily visible to Defendants, but they acted with willful blindness out of their own self-interest.

208. Such negligence has actually caused and proximately caused damages to Plaintiffs, in an amount in excess of $50 million.

COUNT ELEVEN

(In the Alternative, Gross Negligence)

209. Plaintiffs incorporate each and every allegation above as if set forth fully and verbatim herein.

210. As set forth herein, Plaintiffs allege that Defendants conspired with Platinum and its principals, and others, to defraud and harm Plaintiffs, by knowingly and intentionally participating in a fraudulent scheme to induce Plaintiffs to turn over approximately $550 million to be managed by Beechwood for the benefit of Platinum and its principals, and to bolster and further Platinum's fraud scheme, which was known to Defendants.

211. Alternatively, in the event it is determined that Defendants were unaware that Platinum was a fraud scheme and did not conspire with others to defraud Plaintiffs in the manner set forth herein, Plaintiffs assert the following alternative claim for relief.

212. Defendants owed Plaintiffs a duty to act with reasonable care in connection with directing the Trust assets.

213. Defendants' conduct evinces a reckless disregard for the right of Plaintiffs and policyholders and smacks of intentional wrongdoing.

214. The inappropriateness of Beechwood's investments of Trust assets was easily visible to Defendants, but they acted with willful blindness out of their own self-interest.

215. Such gross negligence has actually caused and proximately caused damages to Plaintiffs, in an amount in excess of $50 million.

COUNT TWELVE

(In the Alternative, Unjust Enrichment)

216. Plaintiffs incorporate each and every allegation above as if set forth fully and verbatim herein.

217. As set forth herein, Plaintiffs allege that Defendants conspired with Platinum and its principals, as well as others, to defraud and harm Plaintiffs, by knowingly and intentionally participating in a fraudulent scheme to induce Plaintiffs to turn over approximately $550 million to be managed by Beechwood for the benefit of Platinum and its principals, and to bolster and further Platinum's fraud scheme, which was known to Defendants.

218. Alternatively, in the event it is determined that Defendants were unaware that Platinum was a fraudulent scheme and did not conspire with others to defraud Plaintiffs in the manner set forth herein, Plaintiffs assert the following alternative claim for relief.

219. Defendants were unjustly enriched, at Plaintiffs' expense, when Defendants received portions of the $42 million negative ceding commission and $134 million in purported "surplus" taken from Trusts, because but for their improper conduct those amounts would never have been paid to Beechwood, and then to them, and equity and good conscience militate against permitting Defendants to retain those amounts, and other amounts they have personally received as a result of the Reinsurance Agreements.

220. Plaintiffs are entitled to damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, as a result of the foregoing, Plaintiffs demand judgment in the amount of actual damages proven at trial, treble damages pursuant to 18 U.S.C. § 1964 (RICO), punitive damages under state law, plus interest, attorneys' fees, costs of suit, and such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury on all issues so triable.

Dated: New York, New York
September 29, 2016

WINSTON & STRAWN LLP

By: /s/ Adam J. Kaiser

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re PLATINUM-BEECHWOOD LITIGATION	Case No. 18-cv-6658 (JSR)
MARTIN TROTT and CHRISTOPHER SMITH, as Joint Official Liquidators and Foreign Representatives of PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (in Official Liquidation) and PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (in Official Liquidation), Plaintiffs, - against – PLATINUM MANAGEMENT (NY) LLC, MARK NORDLICHT, DAVID LEVY, ESTATE of URI LANDESMAN, MURRAY HUBERFELD, DAVID BODNER, DANIEL SMALL, JOSEPH SANFILIPPO,	Case No. 18-cv-10936 (JSR) **SECOND AMENDED COMPLAINT** **JURY TRIAL REQUESTED**

DAVID OTTENSOSER, BERNARD FUCHS, MICHAEL NORDLICHT, MICHAEL KATZ, KEVIN CASSIDY, SETH GERSZBERG, EZRA BEREN, NAFTALI MANELA, DANIEL SAKS, MOSHE M. FEUER a/k/a MARK FEUER, SCOTT TAYLOR, DHRUV NARAIN, PLATINUM PARTNERS BLACK ELK OPPORTUNITIES FUND LLC, PLATINUM PARTNERS BLACK ELK OPPORTUNITIES FUND INTERNATIONAL LTD., MORRIS FUCHS, LEON MEYERS, MN CONSULTING NY LLC, ESTATE of JULES NORDLICHT, BARBARA NORDLICHT, ESTATE OF SOLOMON ENGLANDER, ESTATE OF GERTRUDE ENGLANDER, ROCKWELL FULTON CAPITAL, L.P., DITMAS PARK CAPITAL, L.P., PLATINUM FI GROUP LLC, FCBA TRUST, AARON PARNES, SARAH PARNES, SHMUEL FUCHS FOUNDATION, SOLOMON WERDIGER, OLIVE TREE HOLDINGS LLC, HUANG LAI TSU HSIA, HUBERFELD FAMILY FOUNDATION, MIND, BODY & SOUL CO., LIMITED, TWOSONS CORPORATION, GRD ESTATES LTD., MEADOWS CAPITAL LLC, ABRAHAM C. GROSSMAN, DAVID GICHTIN, ORA GICHTIN, GOLDA WILK, THE ESTATE OF MARCOS KATZ, ADELA KATZ, BEECHWOOD CAPITAL GROUP, LLC, B ASSET MANAGER LP, B ASSET MANAGER II LP, BEECHWOOD RE INVESTMENTS, LLC, BEECHWOOD RE HOLDINGS, INC., PB INVESTMENT HOLDINGS LTD., AS SUCCESSOR IN INTEREST TO BEECHWOOD BERMUDA INVESTMENT HOLDINGS LTD., BEECHWOOD RE LTD., BEECHWOOD BERMUDA INTERNATIONAL LTD., BAM ADMINISTRATIVE SERVICES LLC, ILLUMIN CAPITAL MANAGEMENT LP, PRIVATE BANKERS LIFE ANNUITY LTC 2, AS SUCCESSOR IN INTEREST TO BBIL ULICO 2014 TRUST, WASHING NATIONAL LTC 2, AS SUCCESSOR IN INTEREST TO BRE WNIC 2013 LTC PRIMARY AND BRE WNIC 2013 LTC SUB, BANKERS CONSECO LIFE INS. CO. – LTC 2, AS SUCCESSOR IN INTEREST TO BRE BCLIC PRIMARY AND BRE BCLIC SUB, BBLN-PEDCO CORP., BHLN-PEDCO CORP., BEECHWOOD TRUST NO. 1, BEECHWOOD TRUST NO. 2, BEECHWOOD TRUST NO. 3, BEECHWOOD TRUST NO. 4, BEECHWOOD TRUST NO. 5, BEECHWOOD TRUST NO. 6, BEECHWOOD

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TRUST NO. 7, BEECHWOOD TRUST NO. 8, BEECHWOOD TRUST NO. 9, BEECHWOOD TRUST NO. 10, BEECHWOOD TRUST NO. 11, BEECHWOOD TRUST NO. 12, BEECHWOOD TRUST NO. 13, BEECHWOOD TRUST NO. 14, BEECHWOOD TRUST NO. 15, BEECHWOOD TRUST NO. 16, BEECHWOOD TRUST NO. 17, BEECHWOOD TRUST NO. 18, BEECHWOOD TRUST NO. 19, BEECHWOOD TRUST NO. 20, and JOHN DOES 1-100,

Defendants.[1]

[1] Plaintiffs' Second Amended Complaint contains causes of action and parties subject to dismissal in connection with this Court's March 15, 2019 Order. The Second Amended Complaint includes these parties and claims so as to preserve Plaintiffs' rights during the appeal period and prior to this Court's forthcoming opinion. The Plaintiffs reserve all rights.

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DESCRIPTION OF THE CASE

1. This case arises in connection with one of the most spectacular hedge fund collapses in recent memory – whereby a fund with a purported net asset value ("**NAV**") of nearly $1 billion turns out to not only be insolvent but to have liabilities, or a ***negative*** NAV, in the range of $400 to $800 million.

2. Martin Trott and Christopher Smith are the Court-appointed Joint Official Liquidators and Foreign Representatives (the "**JOLs**") of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) ("**PPVA**" and collectively with the JOLs, "**Plaintiffs**"), with authority pursuant to Orders of the Grand Court of the Cayman Islands and the United States Bankruptcy Court of the Southern District of New York to liquidate the assets of PPVA and bring litigation on its behalf.

3. The defendants in this case are an interrelated and overlapping group of persons and entities, including (i) the **Platinum Defendants** (Mark Nordlicht, David Bodner, Murray Huberfeld, Uri Landesman, David Levy, Bernard Fuchs, Naftali Manela, David Ottensoser, Joseph SanFilippo, Daniel Small, Daniel Saks, Ezra Beren and Platinum Management (NY) LLC); (ii) the **Beechwood Defendants** (Mark Nordlicht, David Bodner, Murray Huberfeld, David Levy, Mark Feuer, Scott Taylor, Naftali Manela, David Ottensoser, Daniel Saks, Ezra Beren, Dhruv Narain, Illumin Capital Management LP, and the Beechwood Entities (as defined below)); and (iii) certain other culpable entities and individuals, including the **BEOF Funds** and the **Preferred Investors of the BEOF Funds** (both as defined below), **Michael Joseph Nordlicht**, **Kevin Cassidy**, **Seth Gerszberg**, and **Michael Katz** – several of whom have been indicted and/or sued for their role in connection with certain of the acts discussed below – who used their positions of trust, access and authority to either enrich themselves or certain friends and family at the expense of PPVA.

4. The harm to PPVA resulted from actions constituting conspiracy, fraud, deceit, asset dissipation and breaches of fiduciary obligations. Defendants are among those who committed these tortious acts or directly aided and abetted this conduct.

5. Defendants "papered" their acts and transactions to make them appear legitimate when those acts and transactions actually were permeated by fraud, deceit and breach of trust.

6. As a result, Defendants are liable to PPVA in an amount to be proved at trial for the harms caused by the nine-figure schemes.

7. In large part, this case arises out of the relationship between and among PPVA, its general partner Platinum Management (NY) LLC ("**Platinum Management**"), Platinum Management's "Beechwood," "BEOF Funds" and "Huberfeld Family Foundation" alter egos, and the individuals who owned, operated and managed Platinum Management and its alter egos – Nordlicht, Landesman, Huberfeld, Bodner, Fuchs, Levy, Small, SanFilippo, Ottensoser, Manela, Saks, and Beren.

8. Beechwood, a business comprised of reinsurance companies, investment management entities, investment trusts and related entities (collectively, "**Beechwood**"), was founded, owned and managed by the very persons who founded, owned and managed Platinum Management – and originally was operated out of Platinum Management's offices.

9. From 2013 until 2015, the Platinum Defendants and Beechwood Defendants caused PPVA (and/or its subsidiaries) to engage in a series of non-commercial transactions with the Beechwood Entities (defined below) designed to:

(i) falsely inflate the net value ascribed to PPVA's assets, thereby enabling Platinum Management to collect unearned partnership shares/fees;

(ii) prioritize the interests of the Beechwood Entities over the interests of PPVA, by, *inter alia*, consistently subordinating PPVA's prior rights in common collateral to those of the Beechwood Entities, and granting the Beechwood Entities put rights against PPVA; and

(iii) enable Platinum Management insiders, friends and designated investors/creditors to take the proceeds from the sale of the assets of PPVA's largest investment, Black Elk, in contravention of the prior rights of PPVA and Black Elk's other creditors, while leaving the Black Elk investment worthless to PPVA, and PPVA liable for tens of millions of dollars of fraudulent conveyance and other claims (the "**Black Elk Scheme**");

This set of acts and transactions is referred to herein as the "**First Scheme**."

10. By late 2015, with PPVA's collapse imminent and faced with a serious investigation of the Black Elk Scheme, the Platinum Defendants – with material assistance from the other Defendants – further breached their duties to PPVA by conspiring to transfer or encumber all or nearly all of PPVA's remaining assets for the benefit of the Beechwood Defendants, select insiders, and Platinum Partners Credit Opportunities Master Fund L.P. ("**PPCO**"), another Platinum Management operated fund. This set of acts and transactions is referred to herein as the "**Second Scheme**."

11. The significant wrongful acts and transactions within the Second Scheme, addressed in detail below, include the following:

(i) a one page document dated January 13, 2016, signed by Mark Nordlicht and witnessed by Mark Feuer, which requires PPVA and any of its subsidiaries and affiliates holding the valuable proceeds from the sale of Implant Sciences Corporation ("**IMSC**") to use such proceeds to pay approximately $37 million of uncollectable debt owed to Beechwood by Golden Gate Oil, LLC, for no benefit to PPVA (the "**Nordlicht Side Letter**");

(ii) a March 2016 "restructuring" by which tens of millions of dollars were stripped from PPVA and assets were encumbered by Platinum Management for the benefit of PPCO and Beechwood;

(iii) a March 2016 "Master Guaranty Agreement" and related documents[2] between and among PPVA, certain of its subsidiaries, and Beechwood, among others, by which Beechwood was granted liens on available PPVA

[2] In addition to the Master Guaranty, the Platinum Defendants caused PPVA to execute that certain China Horizon Collateral Assignment dated March 21, 2016, that certain Turnover Agreement dated March 21, 2016, and that certain Carbon Credits Portfolio Assignment dated March 21,2016 (collectively, the "**March Beechwood Assignments**").

assets to further collateralize otherwise uncollectable debt owed to Beechwood (the "**Master Guaranty**");

(iv) the series of transactions, documents and promissory notes that the Platinum Defendants, together with Defendant Seth Gerszberg, caused PPVA to enter into with select redeeming investors and certain creditors of PPVA, by which those investors and creditors preferentially were granted security interests and liens on all assets of PPVA (and in some cases subsidiary assets) to collateralize tens of millions of dollars of equity redemption claims or otherwise unsecured debt for no additional consideration (the "**Security Lockup**"); and

(v) the June 9, 2016 transfer of one of PPVA's last valuable assets, a majority interest in Agera Energy (defined below), worth between $200-$300 million, to Beechwood and Senior Health Insurance Company of Pennsylvania ("**SHIP**"), for little to no consideration. The Agera Energy transactions was the culmination of the Second Scheme and a self-described "insider transaction" conceived of by defendant Michael Katz, the Platinum Defendants and the Beechwood Defendants (the "**Agera Transactions**") to strip PPVA of its largest asset and acquire the value of the same while dissipating the purported proceeds.

12. The persons responsible for sourcing, overseeing, managing and valuing PPVA's investments and assets, assessing and determining appropriate levels of risk, operating PPVA's business and in whom PPVA reposed confidence and trust for these purposes included, *inter alia*:

(i) **Mark Nordlicht ("Nordlicht")**, who was the co-chief investment officer of PPVA and managing member of Platinum Management, which in turn was the General Partner of PPVA. Nordlicht was chairman of the valuation committee and risk committee, had ultimate oversight of all trading, asset allocation and risk management activities; was the managing member/manager of substantially all of the subsidiaries through which PPVA's investments were held; and was responsible for sourcing investment opportunities, marketing to investors, overseeing the operation and management of PPVA (and Platinum Management's) business, hiring personnel, meeting with outside counsel and developing business strategy. Nordlicht is a founder and member of Platinum Management and was a

direct beneficiary of all of the inflated distributions, fees and other payments made to it by PPVA;

(ii) **Uri Landesman ("Landesman")**, who until spring 2015 held the title President of Platinum Management. Together with Nordlicht, he served as co-chief investment officer of PPVA, responsible for all trading, asset allocation and risk management on behalf of PPVA, and was a member of both the valuation and risk committees. Landesman was a member of Platinum Management, so was a direct beneficiary of all of the inflated distributions, fees and other payments made to it by PPVA even after he resigned in 2015. He remained involved in developing strategy for managing PPVA's liquidity issues and seeking out new investors even after his resignation in 2015;

(iii) **Murray Huberfeld ("Huberfeld")**, who, together with Nordlicht and David Bodner, founded and is an owner of Platinum Management. Huberfeld also is a founder and was at all relevant times an owner of the Beechwood Entities. Among other things, Huberfeld was involved with sourcing investment opportunities, meeting with and marketing to important investors and developing business and investment strategy for PPVA. He also was involved in the management and operation of PPVA and of Platinum Management, taking part in meetings with attorneys, interviewing new personnel, and meeting with investment partners. As an owner, Huberfeld was a direct beneficiary of all of the inflated distributions, fees and other payments made to Platinum Management by PPVA;

(iv) **David Bodner ("Bodner")** is another founder and owner of Platinum Management. Bodner also is a founder and was at all relevant times an owner of the Beechwood Entities. Like Huberfeld, Bodner was involved with sourcing investment

opportunities, meeting with and marketing to important investors and developing investment strategies for PPVA and its investments, including, for example, its investment in China Horizon/Yellow River. He also was involved in the management and operation of PPVA and of Platinum Management, taking part in meetings with attorneys, interviewing new personnel, and meeting with investment partners. As an owner, Bodner was a direct beneficiary of all of the inflated distributions, fees and other payments made to Platinum Management by PPVA;

(v) **Bernard Fuchs** was a principal of Platinum Management who benefited from the inflated distributions, fees and other amounts paid by PPVA. Bernard Fuchs was involved with meeting with and marketing to new investors, efforts to retain existing investors, sourcing and managing investments and developing business strategy for PPVA. He was involved in planning significant investments and transactions including with respect to Black Elk and the Agera Transactions. He also was involved in the management and operation of PPVA and of Platinum Management, taking part in meetings with attorneys, meeting with potential investment partners and negotiating personnel matters. During the period leading up to the Cayman Liquidation, Bernard Fuchs was tasked with communicating with investors seeking information as to the status of their unfulfilled redemption requests. He provided false and misleading information to investors about the status of PPVA's financial situation and solvency;

(vi) **David Levy ("Levy")** was a portfolio manager and beginning in 2015, co-chief investment officer of PPVA. He had direct responsibility for overseeing and managing many of PPVA's most significant investments, including, *inter alia*, Black Elk, Implant Sciences, China Broadband, China Cablecomm, China Networks, and Desert Hawk, and

was paid based on the increase in value of those investments, whether realized or unrealized, as well as the profits of the Platinum affiliated management companies, including Platinum Management. As such, he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA. He was a member of the risk and valuation committees responsible for valuing PPVA's assets and assessing risk related thereto, and was appointed as an operating officer/manager of certain subsidiaries through which PPVA's investments were held, such as DMRJ. During 2013-2014, he also was employed as the Chief Investment Officer of BAM (defined below), even when BAM ostensibly was on the opposite side of a transaction from PPVA;

(vii) non-party **David Steinberg ("Steinberg")** was at various times a portfolio manager, investment advisor and co-chief risk advisor for PPVA, and was at all relevant times a member of the valuation committee that had overall responsibility for valuing PPVA's assets. In his capacity as a member of the risk committee and co-chief risk advisor, Steinberg was responsible for assessing the risk associated with PPVA's investments, a significant issue in determining value. Steinberg had direct responsibility for overseeing and managing PPVA's investments in PEDEVCO, Navidea Biopharmaceuticals, Inc., Vistagen Therapeutics, Inc., Urigen Pharmaceuticals, Inc., and Echo Therapeutics, Inc., among other credits, was the official responsible for reviewing and negotiating the agreements and other documents relating to the March 2016 restructuring and the Agera Transactions, and was appointed as an officer/manager/authorized signatory of certain PPVA subsidiaries such as Principal Growth Strategies LLC (the entity through which PPVA held its interest in the Agera Note) and Montsant Partners LLC, as well as companies

in which PPVA invested such as PEDEVCO. During the relevant period, Steinberg was paid a base salary as well as incentive compensation that was directly tied to the increase in the value of the investments he managed, whether realized or unrealized. As such, he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA. Beginning in 2014, Steinberg, together with Ezra Beren, also was a co-investment advisor to BAM (defined below), the Beechwood entities' investment advisor, for which he was paid based on the performance of the investments he managed;

(viii) **Daniel Small ("Small")** was the managing director and portfolio manager charged with originating, managing and overseeing many of PPVA's investments, including its investments in Black Elk, Implant Sciences, China Cablecomm, Desert Hawk and Northstar until his employment was terminated in or about July 2015. Small was responsible for identifying potential investment opportunities, performing due diligence on potential investments, designing and implementing the structure of investments, negotiating the terms of investments and monitoring and monetizing investment decisions. Small was paid a base salary plus bonus compensation that was directly tied to the increase in the value of the investments he managed, whether realized or unrealized. As such, he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA;

(ix) **Joseph SanFilippo ("SanFilippo")**, chief financial officer for PPVA and a member of the valuation and risk committees who also was an officer of certain

subsidiaries through which PPVA held its investments. In his capacity as a member of the valuation and risk committees and as chief financial officer, he was, among others, responsible for determining the value of and risk associated with PPVA's investments. SanFilippo also was responsible for communicating with the third parties who routinely performed valuation, accounting and administrative services on behalf of PPVA, including calculating and reporting PPVA's NAV on a monthly basis and providing valuation reports each quarter. SanFilippo received a salary as well as bonus compensation, so he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA;

(x) **David Ottensoser ("Ottensoser")** was general counsel, chief compliance officer and a member of the risk committee. Ottensoser participated in drafting, reviewing and/or commenting on the contracts and other documents that bound PPVA to the improper transactions comprising the First and Second Schemes and without which the First and Second Scheme could not have occurred. As a member of the risk committee, he was responsible for assessing the risk associated with PPVA's investments, a significant issue in determining value. At the same time, Ottensoser provided legal services to BAM/the Beechwood Entities, even when those parties ostensibly were on opposite sides of a transaction from PPVA. Ottensoser received a salary as well as bonus compensation, so he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA;

(xi) **Naftali Manela ("Manela")** was chief operating officer, a member of the valuation committee and an officer of certain subsidiaries through which PPVA held its investments, such as DMRJ. Manela was responsible for all aspects of the administration of PPVA's business. Manela also worked closely with senior management including Nordlicht, Bodner, Huberfeld, Levy, Fuchs, and the portfolio managers such as Small and Steinberg in structuring transactions and investments on behalf of PPVA. At the same time, Manela worked for BAM/the Beechwood Entities, performing similar services, even when those parties ostensibly were on opposite sides of a transaction from PPVA. Manela received a salary as well as bonus compensation, so he directly benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA;

(xii) **Daniel Saks ("Saks")** was, until about 2014, a portfolio/investment manager with oversight and control over numerous PPVA investments. In particular, by the end of 2013, Saks became responsible for overseeing and managing PPVA's bio/pharma investments in companies including Advaxis Inc., Angiolight, Inc., Echo Therapeutics Inc., FluoroPharma, Navidea Biopharmaceuticals Inc., NewCardio Inc., Urigen Pharmaceuticals Inc., and Vistagen Therapeutics Inc., and previously was involved with overseeing the investment in Golden Gate Oil. During 2014, Saks began working for the Beechwood Entities, eventually serving as Chief Investment Officer and then President of B Asset Manager LP during and after 2015; and

(xiii) **Ezra Beren ("Beren")**, who until the end of 2015 was an investment manager with responsibility for overseeing and managing PPVA's subsidiary RJ Credit and its various investments (e.g., PEDEVCO), among other investments, as well as a required

member of the valuation committee that had responsibility for valuing all of PPVA's assets and investments and was paid a salary plus incentive compensation based on the increased value of the investments he managed, whether realized or unrealized. In 2014, Beren also entered into an investment management agreement with BAM, for which he was paid based on the performance of the investments he managed, so he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants and from the inflated distributions, fees and other payments made to Platinum Management by PPVA. Beren worked for BAM/the Beechwood Entities even when those parties ostensibly were on opposite sides of a transaction from PPVA. As of January 1, 2016, he worked at BAM full time.

13. The Platinum and Beechwood Defendants scrambled to close the Agera Transactions on June 9, 2016, the day after defendant Murray Huberfeld, a co-founder and principal of Platinum Management, was arrested in connection with the misappropriation of PPVA funds to bribe a pension official in exchange for investing in PPVA. A true and correct copy of the Superseding Information in *United States v. Murray Huberfeld*, Case No. 16-CR-467 (AKH), filed in connection with Huberfeld's guilty plea for defrauding PPVA, is attached hereto as **Exhibit 1.**

14. After Murray Huberfeld's arrest, the Federal Bureau of Investigation executed a search warrant on Platinum Management's offices in connection with multiple government investigations.

15. By June 14, 2016, Nordlicht announced that reporting as to PPVA's NAV would be suspended and PPVA would be liquidated.

16. PPVA was placed into provisional liquidation under the supervision of the Grand Court of the Cayman Islands on August 23, 2016 (the "**Cayman Liquidation**"). At that time, Platinum Management and its executives were still publicly claiming that PPVA had a NAV of nearly $1 billion.

17. In reality, as of the date the Cayman Liquidation was commenced, the First and Second Schemes had left PPVA potentially liable for as much as $400-$800 million in creditor claims and virtually no valuable assets other than litigation claims and defenses.

18. PPVA, at one time, held valuable assets.

19. But from at least 2012 until the commencement of PPVA's Cayman Liquidation, the Platinum Defendants failed to abide by the balanced investment strategies set forth in PPVA's governing documents, which were designed to maintain PPVA's liquidity and financial condition.

20. Rather, the Platinum Defendants caused PPVA's investment portfolio to be increasingly more concentrated in illiquid investments, including equity and debt positions in start-up companies, many of which were not publicly traded.

21. By the end of 2012, the Platinum Defendants caused PPVA's investments to become concentrated such that 40% of its reported NAV was represented by investments in **just two** oil and gas operations: Black Elk Energy Offshore Operations, LLC ("**Black Elk**"), a Gulf of Mexico oil platform operator, and Golden Gate Oil, LLC ("**Golden Gate**"), a California-based onshore oil operation.

22. Golden Gate was a highly speculative investment that the Platinum Defendants realized was a failure at an early stage, as Golden Gate barely produced any oil, suffered large operating losses and never made a single interest payment on loans originated by PPVA. Despite

this, Platinum Management falsely reported a five-fold increase in the value of PPVA's Golden Gate Oil investment during fiscal year 2013.

23. Black Elk was a Houston, Texas-based publicly reporting company that mostly operated offshore platforms located in the Gulf of Mexico. In November 2012, an explosion occurred on Black Elk's West Delta 32 platforms, resulting in the death of Black Elk employees and prompting numerous investigations (the "**Black Elk Explosion**"). Following the Black Elk Explosion, Black Elk's financial results, liquidity and business operations deteriorated significantly.

24. Given the impact that the Black Elk and Golden Gate Oil business losses would have had on PPVA's NAV if reported accurately, PPVA should have been liquidated in 2013. Indeed, forty percent of PPVA's total portfolio was worth far less than reported.

25. The Platinum Defendants refused to admit a loss or realize a write-down in value, declaring instead that PPVA's NAV actually *increased* during this period, in order to enrich themselves with unearned partnership shares and/or fees.

26. The Platinum Defendants' concentration of PPVA's investments in illiquid assets meant that the Platinum Defendants had significant discretion over their valuation, since there was no ready market for such investments. The lack of a ready market also meant that many of these investments could not be quickly or easily liquidated to meet the Platinum Defendants' need for cash to pay themselves, operate Platinum Management, and continue to hide the losses at PPVA.

27. To resolve this difficulty, the Platinum Defendants and the Beechwood Defendants, among others, conceived of and executed the First Scheme.

28. In 2013, Nordlicht, Huberfeld, Bodner (collectively the co-founders of Platinum Management), together with Levy, Scott Taylor ("**Taylor**"), and Moshe "Mark" Feuer ("**Feuer**"),

created Beechwood and, between March 2013 and late 2015, these individuals used their positions of trust, authority and control over PPVA to cause PPVA and the Beechwood Entities to engage in the fraudulent, non-commercial transactions that comprise the First Scheme.

29. During the period from 2012 through 2015, the Platinum Defendants reported that PPVA "experienced" annualized returns of between a maximum of 11.6% and a minimum of 7.15%, and reported that the ***net value*** of its assets under management for PPVA had increased steadily from $688 million until they reached $789 million as of October 1, 2015, awarding themselves partnership distributions, fees and other compensation based on these results.

30. By late 2015, the liabilities resulting from the non-commercial transactions to which the Platinum and Beechwood Defendants had caused PPVA to become a party, coupled with ongoing losses at PPVA's most significant investments, made it clear that PPVA could not continue to exist for much longer. At that time, Defendants conceived and executed the Second Scheme to encumber or strip the last valuable assets away from PPVA to benefit themselves and particularly Beechwood, PPCO, and certain insiders of the Platinum Defendants.

31. As a result of Defendants' actions, hundreds of millions of dollars were diverted from PPVA, PPVA's remaining assets lost value or were purportedly encumbered, and tort and contract claims crystalized against PPVA – all under circumstances where master funds like PPVA are supposed to hold zero or minimal debt.

32. By the time the Cayman Liquidation was commenced, most of PPVA's remaining investments (i) had little to no net value; (ii) required so much investment and were at such an early stage they effectively had no value to PPVA in liquidation; and/or (iii) were valuable but subject to significant creditor liens and/or claims.

33. Thus, rather than the positive NAV that potentially could have been salvaged in 2013, Defendants ensured a 2016 liquidation outcome with NAV of less than zero and hundreds of millions of dollars of creditor claims that PPVA could not pay.

34. Platinum Management, in its capacity as PPVA's general manager, and its principals/managers/advisors/owners, Nordlicht, Huberfeld, Bodner, Landesman, Bernard Fuchs, Levy, Beren, Saks, Manela, Ottensoser, SanFilippo, and Small (collectively, the "**Platinum Defendants**") were obligated to manage and operate PPVA in good faith, in accordance with the terms of the partnership agreement, other operating documents, marketing materials, and the representations, statements and promises made to PPVA. Unless otherwise noted, all references herein to the Platinum Defendants means that each of the persons named as such were involved in the act, omission, misstatement, or breach at issue, *provided however* that references to the Platinum Defendants for the time period after July 2015 do not include Small and provided further that references to the Platinum Defendants for the period after January 2016 do not include Beren.

35. The Platinum Defendants breached this duty, and were materially assisted in this breach by, among others: (i) Nordlicht, Huberfeld, Bodner, Saks, Levy, Beren, Manela, Ottensoser (each to the extent they were acting on behalf of the Beechwood Entities), Taylor, Feuer, Dhruv Narain ("**Narain**") and Illumin Capital Management LP ("**Illumin**") (collectively, together with the Beechwood Entities, the "**Beechwood Defendants**"); (ii) the BEOF Funds (defined below); (iii) the Preferred Investors of the BEOF Funds (defined below); (iv) Kevin Cassidy; (v) Michael Katz; (vi) Michael Nordlicht; and (vii) Seth Gerszberg (collectively, the persons identified in subparagraphs (i)–(vii) together with the Platinum Defendants, "**Defendants**").[3]

[3] Unless otherwise stated to the contrary, references herein to the Platinum Defendants and/or the Beechwood Defendants refer to a certain Defendant to the extent he was employed or otherwise affiliated with Platinum Management or Beechwood, respectively, at the given time.

36. Unless otherwise noted, all references herein to the Beechwood Defendants means that each of the persons named as such were involved in the act, omission, misstatement, or breach at issue, *provided however* that references to the Beechwood Defendants for the time period before January 2016 do not include Narain or Illumin.

PARTIES RELEVANT TO THE JOLS' CLAIMS

37. Plaintiffs Martin Trott and Christopher Smith are the duly appointed Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation).

38. Plaintiff Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) is an exempted limited partnership marketed as a multi-strategy investment fund and registered under the Exempted Limited Partnership Law, 2014, of the Cayman Islands.

39. Platinum Management is a Platinum Defendant and a Delaware limited liability company with its principal place of business in New York, New York. Platinum Management is the general partner of PPVA.

40. Defendant Mark Nordlicht is a Platinum Defendant as well as a Beechwood Defendant. Nordlicht is a resident of New Rochelle, New York.

41. Together with Huberfeld and Bodner, Nordlicht founded Platinum Management and the Platinum affiliated group of funds that includes, *inter alia*, PPVA, PPCO, PPLO and the BEOF Funds, and controlled and orchestrated the creation of Beechwood.

42. Nordlicht was the managing member of Platinum Management and, together with Landesman (at all relevant times until about first quarter 2015) then Levy (at all relevant times from and after 2015), the co-chief investment officer of PPVA.

43. Nordlicht directly or indirectly holds ownership interests in Platinum Management, and thus personally benefitted from the inflated fees and other payments made by PPVA to Platinum Management as a result of the First and Second Scheme.

44. Nordlicht was a member of the risk committee, and in that capacity was responsible for assessing the risks associated with PPVA's investments, which is a significant factor in determining the value of such investments.

45. Nordlicht also was a member of the valuation committee. In that capacity, he was responsible for assessing the actual value of PPVA's investments and reporting such values so that PPVA's NAV could be accurately determined and any fees and other charges accurately calculated.

46. Nordlicht also was an owner and controlling person for Beechwood, operating the business of Beechwood both directly and via intermediaries, including Defendants David Levy, Naftali Manela, Daniel Saks, Dhruv Narain, Taylor and Feuer

47. Indeed, from and after the period when Beechwood commenced occupying office space separate from Platinum Management through the end of 2014, Nordlicht even maintained an office within Beechwood's offices.

48. Nordlicht was involved in every aspect of the First and Second Schemes, including, *inter alia*, (i) by using his position as a member of the valuation committee to falsely inflate the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing PPVA to pay excessive fees and other amounts to the Platinum Defendants; (ii) orchestrating the Black Elk Scheme; (iii) orchestrating the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of fees and other

amounts to the Platinum Defendants, (iv) orchestrating the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) using his position to cause PPVA to engage in the transactions referred to herein as the Security Lock-Up.

49. Defendant David Levy is a Platinum Defendant as well as a Beechwood Defendant and Preferred Investor of the BEOF Funds. Levy is a resident of New York, New York and is defendant Huberfeld's nephew.

50. From and after 2015, Levy served as co-chief investment officer of PPVA alongside Nordlicht. Levy also was a portfolio manager with responsibility for overseeing and managing several of PPVA's most significant investments, including, as noted above, Implant Sciences and Black Elk. He also was appointed as an officer/manager of certain of the PPVA subsidiaries, including DMRJ, in which PPVA held its investments.

51. As a portfolio manager, Levy received a salary as well as a bonus based on the realized and/or unrealized increase in the performance of the PPVA investments that he managed. As co-chief investment officer, Levy received, among other things, a percentage of the profits of Platinum Management. As such, he personally benefitted from the inflated valuations, and excessive fees and other payments made by PPVA to Platinum Management as a result of the First and Second Scheme.

52. Levy was a member of the valuation committee. In that capacity, he was responsible for assessing the actual value of PPVA's investments and reporting such values so that PPVA's NAV could be accurately determined and any fees and other charges accurately calculated.

53. Beginning in 2013, Levy was instrumental in the creation of Beechwood and served as chief investment officer of BAM I (defined below), the Beechwood asset management entity until the end of 2014. Beechwood marketed Levy to potential clients as a member of its management team and specifically highlighted Levy's eight years of experience with Platinum Management as a key to Beechwood's future success. In late 2014/early 2015, in the wake of the Black Elk Scheme, Levy returned to work at Platinum Management. Levy remained an owner of Beechwood after his return to Platinum Management.

54. Levy was involved in every aspect of the First and Second Schemes, including, *inter alia*, (i) by using his position as a member of the valuation committee to falsely inflate the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing PPVA to pay excessive fees and other amounts to the Platinum Defendants; (ii) orchestrating the Black Elk Scheme; (iii) orchestrating the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of fees and other amounts to the Platinum Defendants, (iv) orchestrating the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) using his position to cause PPVA to engage in the transactions referred to herein as the Security Lock-Up.

55. Defendant the Estate of Uri Landesman ("**Landesman Estate**") is a Platinum Defendant. Landesman was a resident of New Rochelle, New York until his death on September 14, 2018.

56. At all relevant times until about April 2015, Landesman served as the President of Platinum Management, a Director of the Feeder Funds (defined below) and co-Chief Investment Officer of PPVA.

57. Until April 2015, Landesman shared responsibility with Nordlicht for all trading, asset allocation and risk management on behalf of PPVA.

58. Landesman was a member of the risk committee, and in that capacity was responsible for assessing the risks associated with PPVA's investments, which was a significant factor in determining value.

59. Landesman also was a member of the valuation committee. In that capacity, he was responsible for assessing the actual value of PPVA's investments and reporting such values so that PPVA's NAV could be accurately determined and any fees and other charges accurately calculated.

60. Landesman was involved with sourcing investment opportunities, meeting with and marketing to important investors and developing investment and business strategy for PPVA and its investments.

61. Landesman directly or indirectly holds ownership interests in Platinum Management, and thus personally benefitted from the inflated valuations and excessive fees and other payments made by PPVA to Platinum Management as a result of the First and Second Schemes.

62. Landesman was granted distributions and/or a salary in respect of his interest in Platinum Management after his resignation, and thus he continued to be enriched by the inflated fees and other payments made by PPVA to Platinum Management as a result of the First and Second Scheme after April 2015.

63. In connection with the First Scheme, Landesman was responsible for marketing PPVA on behalf of Platinum Management, and making representations concerning PPVA's NAV and the status of its various investments, such as Black Elk. Despite his direct knowledge of PPVA's liquidity issues and the Platinum Defendants' misrepresentation of PPVA's NAV, Landesman routinely misrepresented PPVA's financial condition.

64. Even after Landesman resigned, he continued to be involved with PPVA investor relations on behalf of Platinum Management.

65. During 2015 and 2016, Landesman was involved in discussions with Nordlicht, Bodner, Huberfeld, Levy, Fuchs and other Platinum Defendants concerning the status of PPVA, its true financial situations and liquidity issues.

66. Landesman materially misstated PPVA's financial condition and omitted information concerning the true status of its financial condition to PPVA and various third parties during 2015 and 2016. As a result, the other Platinum Defendants were able to complete the transactions comprising the Second Scheme, to PPVA's detriment.

67. Defendant Murray Huberfeld is a Platinum Defendant as well as a Beechwood Defendant. He resides in Lawrence, New York.

68. Huberfeld is a co-founder of Platinum Management and PPVA together with Nordlicht and Bodner.

69. At all relevant times, Huberfeld directly or indirectly held ownership interests in Platinum Management, and thus personally benefitted from the inflated fees and other payments made by PPVA to Platinum Management as a result of the First and Second Schemes.

70. Until his indictment on June 8, 2016, Huberfeld continued to make management decisions that directly impacted PPVA.

71. On or about May 25, 2018, Huberfeld pled guilty to federal charges of conspiracy to commit wire fraud, in connection with a bribe Huberfeld offered to Norman Seabrook, the former President of the Correction Officer's Benevolent Association of New York ("**COBA**"), in exchange for COBA's investment of $20 million with PPVA and other Platinum-affiliated funds.

72. In 2013, Huberfeld was instrumental in the creation of Beechwood and helped solicit the initial investment funds for use by Beechwood. At all relevant times, Huberfeld was a direct or indirect owner of Beechwood.

73. Huberfeld was involved in every aspect of the First and Second Schemes, including, *inter alia*, (i) using his position as a senior Platinum Management executive to participate in the false inflation of the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing PPVA to pay excessive fees and other amounts to the Platinum Defendants; (ii) orchestrating the Black Elk Scheme; (iii) orchestrating the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of fees and other amounts to the Platinum Defendants, (iv) orchestrating the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) using his position to cause PPVA to engage in the transactions referred to herein as the Security Lock-Up.

74. Defendant David Bodner is a Platinum Defendant as well as a Beechwood Defendant. Bodner is a resident of Monsey, New York.

75. Along with Huberfeld and Nordlicht, Bodner is a co-founder of Platinum Management and PPVA who helped solicit the initial investment funds for PPVA from his contacts in the New York Jewish community.

76. At all relevant times, Bodner directly or indirectly held ownership interests in Platinum Management, and thus personally benefitted from the inflated fees and other payments made by PPVA to Platinum Management as a result of the First and Second Schemes.

77. Bodner was instrumental in the creation of Beechwood. At all relevant times, Bodner directly or indirectly held ownership interests in Beechwood.

78. Bodner was involved in every aspect of the First and Second Schemes, including, *inter alia*, (i) by using his position as a senior Platinum Management executive to participate in the false inflation of the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing PPVA to pay excessive fees and other amounts to the Platinum Defendants; (ii) orchestrating the Black Elk Scheme; (iii) orchestrating the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of fees and other amounts to the Platinum Defendants, (iv) orchestrating the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) using his position to cause PPVA to engage in the transactions referred to herein as the Security Lock-Up.

79. In February 1990, Huberfeld and Bodner were arrested for sending imposters to take their Series 7 brokerage licensing exams. They eventually pled guilty to misdemeanors and were sentenced to two years of probation and paid substantial fines to the SEC.

80. Thereafter, in 1998, Huberfeld and Bodner settled civil allegations that they sold more than 513,000 shares of restricted stock in an investment company. Huberfeld and Broad Capital, the fund Bodner and Huberfeld were managing at that time, made large restitution payments to the SEC in connection with these acts.

81. Huberfeld and Bodner's checkered pasts are matters of public record. Published articles concerning Platinum Management routinely mentioned their arrests, guilty pleas and SEC fines.

82. Neither Huberfeld nor Bodner had an official title at Platinum Management. Instead, Bodner and Huberfeld generally conducted business at Platinum Management via a shared secretary, through whom the substantial majority of emails to and from Bodner and Huberfeld were exchanged. The secretary would, in turn, either print out copies of the relevant emails and attachments to show to Bodner and Huberfeld or forward the emails to Bodner and/or Huberfeld at their personal email addresses. Attached as **Exhibit 2** is a true and correct copy of a February 11, 2016 email from Bernard Fuchs to the secretary for Huberfeld and Bodner, directing the secretary to provide the email to Bodner.

83. Among other things, both Bodner and Huberfeld were involved with sourcing investment opportunities, meeting with and marketing to important investors, dealing with issues concerning liquidity and redemptions, and developing business and investment strategy for PPVA.

84. At all relevant times, Bodner and Huberfeld also were involved in the management and operation of PPVA and of Platinum Management, taking part in meetings with attorneys, interviewing new personnel, and meeting with investors. Although they did not have official titles, Bodner and Huberfeld's approval was required for all significant business, investment and personnel decisions.

85. At all relevant times Nordlicht, Levy, Bodner and Huberfeld were the concealed owners and co-lead managers of the Beechwood Entities. They wielded this power and control via intermediaries, including the outward facing Beechwood Managers, Taylor, Feuer and Narain. Their approval was required for all significant decisions including all investment decisions.

86. Both Bodner and Huberfeld also participated in improperly inflating the values of PPVA's assets in order to improperly increase PPVA's NAV, thereby causing PPVA to pay excessive distributions, fees and other payments to the Platinum Defendants.

87. Defendant Daniel Small is a Platinum Defendant and Preferred Investor of the BEOF Funds. He is a resident of New York, New York. Small was an employee of Platinum Management from 2007 until July 2015, and served as Platinum Management's Managing Director.

88. Together with Levy, Small served as portfolio manager for, *inter alia*, PPVA's investments in Black Elk, Implant Sciences, China Cablecomm, and China Horizon until he left Platinum Management in July 2015. Small's compensation as portfolio manager was based in part on increases to the value of the assets he managed, so he profited from the inflated values ascribed to those assets.

89. Small had direct knowledge of the Black Elk Explosion and the effect it had on the value of PPVA's investment in Black Elk and PPVA's overall NAV, as well as the subsequent financial issues faced by Black Elk during 2013 and 2014. He was an architect of and helped carry out the Black Elk Scheme and the transactions by which the remaining Black Elk assets were acquired to create Northstar. Both of these transactions have been challenged as fraudulent transfers by the Black Elk Trustee, resulting in tens of millions of potential liabilities to PPVA.

90. Joseph SanFilippo is a Platinum Defendant and a resident of Freehold, New Jersey. At all relevant times, SanFilippo served as Chief Financial Officer of Platinum Management and PPVA.

91. At all relevant times, SanFilippo was a member of both the valuation committee and the risk committee. As such, SanFilippo was responsible for assessing the value of PPVA's assets and determining the risk associated therewith.

92. In his capacity as chief financial officer and member of the valuation and risk committees, SanFilippo played an instrumental part in the systematic overvaluation of PPVA's assets by the Platinum Defendants and the resulting inflation of PPVA's NAV.

93. SanFilippo was responsible for, *inter alia*, the creation of false financial disclosure documents for PPVA.

94. SanFilippo also had responsibility for communicating with PPVA's auditors, third party valuation providers, and fund administrators and did so on a routine basis.

95. SanFilippo also was involved in preparing the documents and information necessary to complete the March 2016 Restructuring and particularly the transfer of assets to PPCO.

96. SanFilippo was involved in every aspect of the First and Second Schemes, including, *inter alia*, (i) by using his position as a member of the valuation and risk committees to participate in the false inflation of the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing PPVA to pay excessive distributions, fees and other amounts to the Platinum Defendants; (ii) helping to orchestrate the Black Elk Scheme; (iii) helping to orchestrate the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of distributions, fees and other amounts to the Platinum Defendants, (iv) helping to orchestrate the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable

assets; and (v) assisting in the consummation of the transactions referred to herein as the Security Lock-Up.

97. David Ottensoser is a Platinum Defendant as well as a Beechwood Defendant. He is a resident of Woodmere, New York. At all relevant times, Ottensoser served as general counsel and Chief Compliance Officer for Platinum Management and PPVA.

98. Ottensoser was one of the in house counsel responsible for documenting the transactions that comprised the First and Second Schemes and was actively involved in closing those transactions.

99. Ottensoser also was involved in creating Beechwood and worked as general counsel for Beechwood during its initial stages, providing legal services to Beechwood and PPVA even when both parties ostensibly were on opposite sides of a transaction.

100. In his capacity as general counsel of Platinum Management, PPVA and Beechwood, Ottensoser was aware of the conflicts between those entities and arising out of the transactions comprising the First and Second Schemes, and that PPVA's interests were being subordinated to those of Beechwood, the Preferred Investors of the BEOF Funds, PPCO and/or the counterparts in connection with the Security Lock Up.

101. As a member of the risk committee, Ottensoser was responsible for assessing the risk associated with PPVA's assets and investments, a significant issue in determining the value thereof.

102. Ottensoser was involved in every aspect of the First and Second Schemes, including, *inter alia*, (i) by using his position as a member of the risk committee to participate in the false inflation of the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated

during that period, causing PPVA to pay excessive distributions, fees and other amounts to the Platinum Defendants; (ii) helping to orchestrate the Black Elk Scheme; (iii) helping to orchestrate the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of distributions, fees and other amounts to the Platinum Defendants, (iv) helping to orchestrate the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) assisting in the consummation of the transactions referred to herein as the Security Lock-Up.

103. Bernard Fuchs, a/k/a Berish Fuchs, is a Platinum Defendant. Bernard Fuchs is a resident of Lawrence, New York.

104. Bernard Fuchs is the direct or indirect holder of ownership interests in Platinum Management. As such, he personally benefitted from the inflated distributions, fees and other payments made by PPVA to Platinum Management as a result of the First and Second Schemes.

105. Bernard Fuchs did not have an official title, but nevertheless had day to day involvement in the management and operations of Platinum Management and PPVA.

106. Among other things, Bernard Fuchs was involved with meeting with and marketing to important investors, dealing with issues concerning liquidity and redemptions, and developing business and investment strategy for PPVA.

107. Bernard Fuchs took part in meetings with attorneys, investors and investment partners related to the operation and management of PPVA and the transactions comprising the First and Second Schemes. He also was aware of and participated in the planning, marketing and execution of various aspects of the transactions comprising the First and Second Schemes, such as marketing to the Preferred Investors of the BEOF Funds in connection with the Black Elk Scheme and assisting in the planning of the Agera Transactions.

108. During late 2015 and the first quarter of 2016, Bernard Fuchs engaged in numerous discussions with investors seeking information concerning the status of PPVA, their investments and requests for redemption, often exchanging emails with Nordlicht, Bodner Huberfeld, Levy and/or Landesman concerning the best response to those investor inquiries and/or forwarding on such inquiries.

109. During his exchanges with investors, Bernard Fuchs misrepresented the financial status of PPVA and failed to provide information concerning PPVA's actual financial status, even encouraging investors to invest additional funds at a time when PPVA was unable to pay redemptions and potentially insolvent.

110. In one email exchange during the last week of February 2016, Bernard Fuchs even berated an investor who suggested that it would be forced to send a letter to the SEC seeking an investigation as to why investors had not been paid for long outstanding redemption requests if those redemption requests were not honored, claiming that the letter had done damage to Platinum Management's business. *See* Exhibit 2.

111. Bernard Fuchs' misrepresentations and omissions delayed and or dissuaded investors from taking steps to contact authorities, which enabled the other Defendants to complete the various transactions comprising the March 2016 Restructuring, the Agera Transactions and the Security Lock-Up, to the detriment of PPVA.

112. Defendant Ezra Beren is a Platinum Defendant as well as a Beechwood Defendant. He is a resident of New York, New York. Beren is the son-in-law of Murray Huberfeld.

113. From March 2007 until December 2015, Beren served as Vice President of Platinum Management. In January 2016, Beren was hired by BAM (defined below) as a credit analyst.

114. Due to his management role with Platinum Management and Beechwood, Beren was involved in the acts that comprise the First and Second Schemes, including the misrepresentation of PPVA's NAV, the creation of Beechwood and the series of transactions between Beechwood Entities and PPVA that are included in the Second Scheme.

115. Beren was a portfolio manager for various PPVA investments and in that capacity participated in meetings of the valuation committee. As such, he personally benefitted from the inflated asset values assigned to PPVA's assets by the Platinum Defendants, and from the inflated distributions, fees and other payments made to Platinum Management by PPVA.

116. Beren also was engaged as a portfolio manager for BAM beginning in 2014, at the same time as he was working as a portfolio manager for PPVA.

117. Defendant Naftali Manela is a Platinum Defendant as well as a Beechwood Defendant. He is a resident of Brooklyn, New York and is a relative of Aaron Elbogen, the Platinum preferred investor and close personal friend of Huberfeld.

118. Manela worked interchangeably at Platinum Management and Beechwood, assisting the Defendants in orchestrating the First and Second Schemes, including the Black Elk Scheme and the Agera Transactions.

119. Manela was a member of the valuation committee, and in that capacity was responsible for assessing the value of PPVA's assets.

120. Manela was involved in every aspect of the First and Second Schemes, including, *inter alia*, (i) by using his position as a member of the valuation committee to participate in the false inflation of the value of PPVA's assets, particularly during the period from 2012 through 2016, in order to report information that resulted in PPVA's NAV being inflated and overstated during that period, causing PPVA to pay excessive distributions, fees and other amounts to the

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Platinum Defendants; (ii) helping to orchestrate the Black Elk Scheme; (iii) helping to orchestrate the series of transactions among PPVA and the Beechwood Entities designed to mask the inflation of PPVA's NAV and the overpayment of distributions, fees and other amounts to the Platinum Defendants, (iv) helping to orchestrate the series of transactions among PPVA, Beechwood and/or affiliated entities in order to encumber or strip PPVA's remaining valuable assets; and (v) assisting in the consummation of certain of the transactions referred to herein as the Security Lock-Up.

121. Michael Joseph Nordlicht is a Defendant and the nephew of Mark Nordlicht. Michael Nordlicht resides in West Hempstead, New York. In or about 2014, Mark Nordlicht installed Michael Nordlicht as in-house counsel for Agera Energy, LLC ("**Agera Energy**"), an energy reseller managed by Platinum Management as a joint investment by PPVA and PPCO. Prior to the Agera Transactions discussed below, Michael Nordlicht held a 95.01% indirect equity interest in Agera Energy.

122. Michael Nordlicht participated in and helped facilitate the closing of the Agera Transactions, to the detriment of PPVA.

123. Michael Katz ("**Katz**") is a Defendant and a resident of New York, New York.

124. Katz is the grandson of Marcos Katz, a significant investor in PPVA.

125. In 2015, Marcos Katz sought to redeem his investment in PPVA but there was not sufficient funds to honor this request. Instead, Nordlicht, Huberfeld, Bodner and Fuchs offered Marcos Katz the opportunity to exchange his investment in PPVA for an interest in Platinum Management and certain other consideration. As part of the proposed deal, Marcos Katz was offered the opportunity to appoint a representative to oversee his interests.

126. Although a term sheet was prepared, final documents between and among Marcos Katz and the other members of Platinum Management apparently were never finalized. Despite

this, Michael Katz, Marcos Katz's grandson, began taking an active role at Platinum Management beginning in or about January 2016.

127. Michael Katz knew Nordlicht, Levy, Huberfeld, Bodner and Fuchs before he began representing his grandfather's interests in 2016. In fact, Katz and Levy previously had invested in an energy company that was merged into Agera in 2014, during the startup phase of that business.

128. By March 2016, Katz began formally advising Platinum Management in connection with the Second Scheme, and, in particular, the Agera Transactions. In March 2016, Katz conspired with Nordlicht, Levy and other Platinum Defendants to develop the plan to transfer PPVA's interest in Agera Energy to an "insider." Katz had knowledge of certain Second Scheme Transactions and exerted control over PPVA and its subsidiaries in connection with such Second Scheme Transactions.

129. Kevin Cassidy ("**Cassidy**") is a Defendant and a resident of Briarcliff Manor, New York.

130. In 2007, Optionable Inc., a fund co-founded by Cassidy and affiliated with Nordlicht, collapsed after Cassidy was arrested for deliberately misstating the value of Optionable, Inc.'s natural gas derivatives. Cassidy, who had served two prior stints in prison, was sentenced to be incarcerated for 30 months.

131. When Cassidy was released from prison in 2014, Nordlicht, Bodner and Huberfeld installed him as the *managing director* of Agera Energy.

132. Starfish Capital, Inc. ("**Starfish**"), an entity created and controlled by Cassidy, was made a party to the Agera Transactions as a means of paying Cassidy millions of dollars out of the proceeds thereof for no apparent consideration.

133. Cassidy had knowledge of certain Second Scheme Transactions and exerted control over PPVA and its subsidiaries in connection with such Second Scheme Transactions.

134. Seth Gerszberg ("**Gerszberg**") is a Defendant and a resident of Englewood, New Jersey. Beginning at the latest by about January 2016, Gerszberg served as an advisor to Platinum Management in connection with various PPVA investment positions and negotiations with PPVA's creditors. Gerszberg orchestrated and executed certain of the transactions and transfers that comprise the Second Scheme, particularly the purported encumbrance of the debt position in Implant Sciences Corporation as well as the outflow of substantially all of PPVA's cash on hand immediately following the Agera Transactions. Gerszberg had knowledge of certain Second Scheme Transactions and exerted control over PPVA and its subsidiaries in connection with such Second Scheme Transactions.

135. Defendant Platinum Partners Black Elk Opportunities Fund LLC ("**BEOF I**") is a Delaware limited liability company with its principal place of business in New York. BEOF I is not a subsidiary of PPVA, but rather an investment vehicle for the Platinum Defendants and their preferred investors and creditors. The Platinum Defendants used BEOF I to provide themselves and select insiders with the proceeds of the Renaissance Sale (defined below) to the detriment of PPVA.

136. Defendant Platinum Partners Black Elk Opportunities Fund International Ltd. ("**BEOF II**" and together with BEOF I, the "**BEOF Funds**") is a limited company domiciled in the Cayman Islands with its principal place of business in New York. BEOF II is not a subsidiary of PPVA, but rather an investment vehicle for the Platinum Defendants and their preferred investors and creditors. The Platinum Defendants used BEOF II to provide themselves and select insiders with a majority of the proceeds of the Renaissance Sale to the detriment of PPVA.

137. Defendants "**The Preferred Investors of the BEOF Funds**" are various individuals and entities, and their successors in interest and transferees (to be discovered), that were direct or indirect investors in the BEOF Funds and received capital distributions as a result of the Renaissance Sale (defined below). The Preferred Investors of the BEOF Funds were insiders of Platinum Management, were aware of the actions of the Platinum and Beechwood Defendants in furtherance of the Black Elk Scheme, as well as Beechwood's representations that it was unaffiliated with Platinum Management.

138. The Preferred Investors of the BEOF Funds include the following persons and entities: (i) Morris Fuchs; (ii) Leon Meyers; (iii) Small; (iv) Levy; (v) MN Consulting NY LLC; (vi) Estate of Jules Nordlicht; (vii) Barbara Nordlicht; (viii) Estate of Solomon Englander; (ix) Estate of Gertrude Englander; (x) Rockwell Fulton Capital; (xi) Ditmas Park Capital, LP; (xii) Platinum FI Group LLC; (xiii) FCBA Trust; (xiv) Aaron Parnes; (xv) Sarah Parnes; (xvi) Shmuel Fuchs Foundation; (xvii) Solomon Werdiger; (xviii) Olive Tree Holdings LLC; (xix) Huang Lai Tsu Hsia; (xx) Huberfeld Family Foundation; (xxi) Mind, Body & Soul Co., Limited; (xxii) Twosons Corporation; (xxiii) GRD Estates Ltd.; (xxiv) Meadows Capital LLC; (xxv) Abraham C. Grossman; (xxvi) David Gichtin; (xxvii) Ora Gichtin; (xxviii) Golda Wilk; (xxix) Estate of Marcos Katz; (xxx) Adela Katz; and (xxxi) John Does 1-100.

139. The Preferred Investors of the BEOF Funds are comprised of Platinum Defendants such as Levy and Small, as well as persons and entities who are friends and family of or otherwise personally or professionally connected to one or more of the Platinum Defendants.

140. For example, Preferred Investors of the BEOF Funds Barbara Nordlicht and, before his death on or about August 3, 2018, Jules Nordlicht, are the parents of defendant Mark Nordlicht and grandparents of defendant Michael Joseph Nordlicht.

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141. During the course of First and Second Schemes, Jules Nordlicht, with knowledge of the ongoing fraudulent conduct of his son, routinely financed transactions discussed below in connection with Black Elk and Beechwood, due to PPVA's chronic liquidity issues.

142. In the wake of the Black Elk Scheme, Jules and Barbra Nordlicht were provided with purported security interest in PPVA's assets in connection with the PPNE Notes (defined below) and the Security Lockup.

143. Preferred Investors of the BEOF Funds Gertrude and Solomon Englander, both of whom have since passed away, were long term investors in funds managed by the Platinum Defendants.

144. Preferred Investor of the BEOF Funds the Huberfeld Family Foundation is set up for the benefit of the family of defendant Murray Huberfeld, but in fact was used as a repository for assets of the Platinum Defendants and their friends and family during the course of the First and Second Schemes, and as such is the alter ego of Platinum Management and Murray Huberfeld. The Huberfeld Family Foundation's charitable grants are negligible, compared to its estimated net worth of more than $40 million.

145. Murray Huberfeld is the president, director and official signatory for the Huberfeld Family Foundation.

146. The day-to-day administration of the Huberfeld Family Foundation was handled by the Platinum Defendants and other Platinum Management employees from the offices of Platinum Management. Attached as **Exhibit 103** is a true and correct copy of an invoice for third party payroll services for the Huberfeld Family Foundation, addressed to a Platinum Management employee at Platinum Management's offices.

147. The Huberfeld Family Foundation regularly listed itself as residing in the offices of

Platinum Management. Attached as **Exhibit 104** is a true and correct copy of a February 14, 2012 promissory note issued by Howard and Janice Crosby for the benefit of the Huberfeld Family Foundation, listing Platinum Management's office as the address for the Huberfeld Family Foundation.

148. The Huberfeld Family Foundation regularly entered into transactions and agreements with Platinum insiders and certain of the Defendants in this case, such as Aaron Elbogen (discussed below), David Levy, and the Shmuel Fuchs Foundation.

149. Beyond simple cash contributions, the Huberfeld Family Foundation has a history of providing a range of "loans" to affiliated investors and friends in the Platinum circle. At year-end 2017, the foundation listed the value of loans and notes extended as more than $17.5 million.

150. The Huberfeld Family Foundation regularly provided "loans" to the Platinum Defendants and their friends and family who, due to their checkered history, could otherwise not receive financing.

151. From September-December 2016, the Huberfeld Family Foundation provided a loans in the principal amount of $3,000,000 to Hutton Ventures LLC, a company involved in a student loan scam whereby indebted students were defrauded.

152. On information and belief, Huberfeld and Nordlicht used Hutton Ventures LLC as an intermediary to provide Nordlicht with a $7.5 million in loan funds from the Huberfeld Family Foundation, in exchange for a mortgage on real estate owned by Mark Nordlicht. All funds from this transactions were used by Nordlicht in furtherance of the First and Second Schemes.

153. In April 2016, the Huberfeld Family Foundation provided a loan to the Fuchs Family Foundation in the principal amount of $325,000, at zero percent interest with a maturity date of May 2025.

154. From May 2014 to May 2017, the Huberfeld Family Foundation has provided loans to Platinum insider Moshe Oratz in the total principal amount of approximately $1,800,000.

155. Moshe Oratz is a colleague of Platinum insider Aaron Elbogen that pleaded guilty to criminal charges in connection with a racketeering conspiracy involving a Russian-American organized crime enterprise and associated illegal gambling business.

156. In May 2014, the month following Oratz's conviction, the Huberfeld Family Foundation provided a loan to Oratz in the principal amount of $750,000, which, on information and belief, was used to pay fines and other restitution owed by Oratz.

157. On information and belief, Oratz managed certain Platinum-affiliated funds at the request of Huberfeld and has entered into certain loan agreements with the Beechwood Entities.

158. Platinum Defendants Nordlicht, Levy Landesman and Bodner invested in the Huberfeld Family Foundation, regularly transferring cash and assets fraudulently acquired through the course of the First and Second Schemes.

159. From 2012 to 2014, Mark Nordlicht and his wife invested $933,333 with the Huberfeld Family Foundation, which amounts were used by the Huberfeld Family Foundation to provide loans to Platinum insiders.

160. In or about 2012, Uri Landesman invested $400,000 with the Huberfeld Family Foundation, which amounts were used by the Huberfeld Family Foundation to provide loans to Platinum insiders.

161. In or about 2014, the Huberfeld-Bodner Family Foundation, a foundation jointly managed by Huberfeld and Bodner, invested $187,500 with the Huberfeld Family Foundation, which amounts were used by the Huberfeld Family Foundation to provide loans to Platinum insiders.

162. During the course of the First and Second Schemes, the Huberfeld Family Foundation and the Huberfeld-Bodner Family Foundation made various transfers to each other and reported them as transfers between related funds.

163. David Levy is also an investor in the Huberfeld Family Foundation, with dividends being paid to Levy on account of such investments in 2015-2016.

164. Preferred Investor of the BEOF Funds Morris Fuchs is the brother of defendant Bernard Fuchs and was a long term investor in various funds managed by the Platinum Defendants.

165. Preferred Investor of the BEOF Funds the Shmuel Fuchs Foundation is set up for the benefit of the family of defendants Bernard Fuchs and Morris Fuchs.

166. Preferred Investor of the BEOF Funds Leon Meyers is a long term investor in various funds managed by the Platinum Defendants who was a personal friend of both Nordlicht and Levy.

167. Leon Meyers often had lunch and/or dinner with Levy or Nordlicht, and spent time with both men and their families away from the office during holidays and on weekends.

168. Preferred Investor of the BEOF Funds MN Consulting NY LLC is an investment vehicle owned by Mark Friedman and Neil Einhorn, who are investors in a chain of nursing homes. Einhorn and Friedman both have known Huberfeld for many years. Einhorn is active in and a significant contributor to at least one charity in which Huberfeld serves as vice president.

169. Preferred Investor of the BEOF Funds Solomon Werdiger is another close friend of Huberfeld. Solomon Werdiger is active in and a significant contributor to one or more charities in which Huberfeld serves as vice president. He also was long term investor in various funds managed by the Platinum Defendants.

170. On information and belief, Preferred Investor of the BEOF Funds Huang Lai Tsu

Hsia is a personal client of defendant Bernard Fuchs.

171. Preferred Investor of the BEOF Funds Olive Tree Holdings was a longtime client of Murray Huberfeld. Huberfeld referred to Olive Tree as one of "my people" and its managing member, Avi Schron, routinely attended lunches with Huberfeld and Bodner and also is active in a religious/political group in which Huberfeld is active.

172. Preferred Investor of the BEOF Funds FCBA Trust is a trust set up by Aaron and Chaya Elbogen, who are longtime friends of Bodner and Huberfeld and the family member of Manela. The Elbogens and their various entities are long term investors in various funds managed by the Platinum Defendants.

173. Notably, the SEC previously has charged Aaron Elbogen with aiding and abetting another fraudulent scheme. In that case, the SEC alleged that Elbogen and others employed by Datek Securities and Securities Corp. manipulated NASDAQ's small order execution system during the period from 1993 through 2001. Elbogen was chief executive officer of Datek, which was a day trading firm that subsequently sold its day trading business to Heartland, a registered broker dealer owned in part by Aaron Elbogen. Elbogen and the other parties charged in the scheme settled the charges in 2003 and paid an aggregate of $70 million in fines and penalties, including $1.4 million by Elbogen personally. Elbogen also agreed to an order barring him from associating with any broker or dealer, which remains in effect today.

174. It should be noted that during 2014, the very same time that the Preferred Investors of the BEOF Funds received the proceeds of the Black Elk Renaissance Sale as a result of the Black Elk Scheme, Preferred Investor of the BEOF Funds the Huberfeld Family Foundation, Inc., a purported charitable foundation set up by defendant Huberfeld and his family, maintained two separate loans, each in the amount of $1.5 million, to another trust apparently related to Aaron

Elbogen (the Aaron Elbogen Irrevocable Trust). A true and correct copy of the 2014 Tax Return for the Huberfeld Family Foundation is attached as **Exhibit 3**.

175. Preferred Investor of the BEOF Funds Platinum FI Group LLC, is a longtime client, and its principal, Mark (Moshe) Leben, is a close friend, of Huberfeld.

176. Preferred Investor of the BEOF Funds GRD Estates Ltd. is a longtime client of Huberfeld, and its principal, Gordon Diamond, is Huberfeld's close personal friend.

177. During a June 2-3, 2009 email exchange, Gordon Diamond and Gilad Kalter, President of Huberfeld-managed fund Centurion Credit Management LP, which was eventually renamed as PPCO and operated from Platinum Management's offices, discussed Mr. Diamond's investment in the fund. Mr. Diamond, in a follow-up email the next day, congratulated Mr. Kalter for the "super results" and asked him to "tell Murray my friend that I love him and at this moment I am at the Golden Door . . . health spa with Barry[,] my son in law." Mr. Kalter forwarded Mr. Diamond's email to Mr. Huberfeld requesting that he review the email. A true and correct copy of this email exchange is attached as **Exhibit 4.**

178. In a January 31-February 1, 2013 email exchange, Gordon Diamond raised concerns to Murray Huberfeld regarding the financial condition of Black Elk. A true and correct copy of this email exchange is attached as **Exhibit 5.**

179. Preferred Investor of the BEOF Funds Meadows Capital LLC is an investment firm located in New Jersey and managed by Robert Cohen. Mr. Cohen was an acquaintance of Mr. Huberfeld, and held several meetings with Huberfeld and Bodner leading up to the Renaissance Sale.

180. Preferred Investor of the BEOF Funds Abraham C. Grossman is a long-term investor with Murray Huberfeld and Mark Nordlicht's various funds, including the BEOF Funds

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and PPVA.

181. Preferred Investor of the BEOF Funds Golda Wilk is an investment manager located in Belgium. Ms. Wilk is one of the largest investors in the BEOF Funds, receiving a distribution of more than $4 Million in connection with the Renaissance Sale.

182. The late Marcos Katz, along with his wife, Adela Katz, are Preferred Investors of the BEOF Funds. Marcos Katz was a significant investor of the BEOF Funds, PPVA and other funds managed by Nordlicht, Huberfeld and Bodner. In March 2016, Marcos Katz was permitted to appoint Michael Katz at Platinum Management to directly oversee his investment with PPVA.

183. Preferred Investor of the BEOF Funds Ora Gichtin is the sister of Mark Nordlicht. Along with her husband, David Gichtin, Ms. Gichtin was provided an interest in the BEOF Funds at the direction of Mark Nordlicht.

184. Preferred Investor of the BEOF Funds Mind Body & Soul Co. Ltd. was a client of Huberfeld. Mind Body & Soul Co. Ltd. was represented by its agent Ezra Erani, a close friend of Huberfeld, who arranged for Mind Body & Soul Co. Ltd. to invest in the BEOF Funds among other Platinum related investments. Ezra Erani was invited to attend the celebrations following Huberfeld's daughter's wedding.

185. Preferred Investor of the BEOF Funds Aaron Parnes and his wife Sarah also are clients of Murray Huberfeld and were referred to by him as among "his people." They were long terms investors in various funds managed by the Platinum Defendants.

186. Preferred Investor of the BEOF Funds Rockwell Fulton Capital, L.P. and Ditmas Park Capital L.P., both of which have common ownership, were clients of Nordlicht.

187. Defendant Twosons Corporation ("**Twosons**") purports to be a foreign corporation authorized to do business in New York. As a Preferred Investor of the BEOF Funds, Twosons

received $15.4 million of proceeds from the Black Elk Renaissance Sale (defined below). Twosons and its principals the Harari family were good friends and clients of Huberfeld.

188. Defendant Daniel Saks is a Platinum Defendant and Beechwood Defendant and a resident of Teaneck, New Jersey. Until 2014, Saks worked as a portfolio manager at Platinum Management.

189. During 2014, Saks began working at BAM, although he was still also working for PPVA/Platinum Management.

190. In late 2014, Daniel Saks replaced Levy as chief investment officer for BAM subsequent to Levy's return to Platinum Management, and later served as its President.

191. Saks routinely received and was involved in commenting on the third party valuation reports sent to BAM that included inflated valuations of the Beechwood transactions with PPVA.

192. Saks was instrumental to Beechwood's involvement in the First Scheme and Second Scheme discussed below, and acted as signatory on behalf of various Beechwood Entities in connection with several of the transactions among Beechwood Entities and PPVA. For example, Saks was involved in orchestrating the January 2015 Montsant transaction and executed the transaction documents on behalf of BAM. Saks similarly was involved in negotiating amendments to the Golden Gate Oil transaction documents.

193. Defendant Moshe M. Feuer is a Beechwood Defendant and a resident of Lawrence, New York. Feuer, Levy and Taylor were the original public face of Beechwood and, together with Nordlicht, Bodner and Huberfeld, founded the company. Feuer remained with Beechwood at all relevant times.

194. At all relevant times, Feuer (through trusts) owned common stock in various Beechwood Entities and had managerial authority over the Beechwood Entities. Feuer also acted as signatory for Beechwood as to certain transactions comprising the Second Scheme, such as the Nordlicht Side Letter.

195. Before establishing Beechwood, Feuer was the CEO of Marsh USA Inc. and had pre-existing relationships with Nordlicht, Huberfeld and certain other Platinum Defendants. Feuer had long known the senior executives at Platinum Management, who were active in the same social community on New York's Long Island. Feuer and Huberfeld served on the board of a charity together, and Feuer's sister went to the same school as Nordlicht.

196. Feuer had knowledge of certain First Scheme Transactions and Second Scheme Transactions, and exerted control over PPVA and its subsidiaries in connection therewith.

197. For example, Feuer was the person who witnessed Nordlicht's execution of the Nordlicht Side Letter.

198. Defendant Scott Taylor is a Beechwood Defendant and a resident of New York, New York. Taylor, Feuer and Levy founded Beechwood together with Nordlicht, Bodner and Huberfeld. Taylor, Feuer and Levy were the original public face of Beechwood, and Taylor remained with Beechwood at all relevant times.

199. At all relevant times, Taylor (through trusts) owned common stock in Beechwood and had managerial authority over the Beechwood Entities.

200. Prior to forming Beechwood, Taylor had been an executive of Marsh & McLennan and COO for Merrill Lynch Wealth Management's Private Banking and Investments Group.

201. Taylor had knowledge of certain First Scheme Transactions and Second Scheme Transactions, and exerted control over PPVA and its subsidiaries in connection therewith.

202. Taylor, together with Levy, helped prepare the marketing documents by which various reinsurance clients were induced to invest funds with the Beechwood Reinsurance Companies, and which did not disclose the connections between the Beechwood entities and Platinum Management.

203. Taylor and Feuer were involved in orchestrating the various transactions comprising the First and Second Schemes.

204. Defendant Dhruv Narain is a Beechwood Defendant and a resident of Purchase, New York.

205. Narain became a senior executive at BAM (defined below) and the Beechwood Entities (defined below) no later than January 2016, and was instrumental in the execution of certain transactions comprising the Second Scheme, including the March 2016 PPVA Restructuring (including execution of the Master Guaranty), the 2016 Montsant Transaction, matters involving PEDEVCO during 2016, and the Agera Transactions.

206. Narain was one of the primary persons who orchestrated the terms of the March 2016 Transaction and the Agera Transactions, and exerted control over PPVA and its subsidiaries in connection therewith.

207. Narain was aware of the true value of Agera, having obtained third party valuation reports about that company.

208. Narain worked with Nordlicht, Levy, Steinberg, Ottensoser, Fuchs, Bodner, Huberfeld, Katz, Cassidy, Michael Nordlicht, Platinum Management and the Beechwood Defendants to transfer ownership and control of Agera to the Beechwood Entities, which were controlled and owned, at least in part, by Nordlicht, Bodner, Huberfeld and Levy.

209. Defendant Beechwood Capital Group, LLC ("**Beechwood Capital**") is a Beechwood Entity and a New York limited liability company with its principal place of business in Lawrence, New York, at the same address as Feuer's principal residence.

210. Defendant B Asset Manager LP ("**BAM I**") is a Beechwood Entity and a Delaware limited partnership, which had its principal place of business in New York, New York at all relevant times. BAM I served as an investment advisor for Beechwood and its various investments.

211. Defendant B Asset Manager II LP ("**BAM II**" and, collectively with BAM I, "**BAM**") is a Beechwood Entity and a Delaware limited partnership, which had its principal place of business in New York, New York at all relevant times. BAM II served as an investment advisor for Beechwood and its various investments. Nordlicht, Bodner, Huberfeld and Levy owned nearly 70% of the partnership interests in BAM.

212. Defendant Beechwood Re Investments, LLC ("**Beechwood Investments**") is a Beechwood Entity and a Delaware limited liability company, which had its principal place of business in New York, New York at all relevant times. Beechwood Investments was used as a vehicle by Nordlicht, Levy, Bodner and Huberfeld to purchase all the preferred shares in the Beechwood Reinsurance Companies. The managing member of Beechwood Investments was N Management, LLC, a Nordlicht-controlled entity, and the other members of Beechwood Investments were entities owned or controlled by Nordlicht, Bodner, Levy or Huberfeld through various Beechwood Trusts.

213. Defendant Beechwood Re Holdings, Inc. ("**Beechwood Holdings**") is a Delaware corporation and a Beechwood Entity. Beechwood Holdings holds all the common stock of Beechwood Re Ltd.

214. Defendant PB Investment Holdings Ltd., as successor in interest to Beechwood Bermuda Investment Holdings Ltd. ("**PB Investment**") is a Beechwood Entity organized under Bermuda law, with its principal place of business in Bermuda. Beechwood Bermuda Investment Holdings Ltd. was a reinsurance and wealth management company domiciled in Bermuda that issued wealth management products for the Beechwood Defendants.

215. Defendant Beechwood Re Ltd. ("**Beechwood Cayman**") is a Beechwood Entity and a reinsurance company domiciled in the Cayman Islands, which had its principal place of business in New York, New York at all relevant times. Nearly 70% of the common stock of Beechwood Re was held by various Beechwood Trusts created by Nordlicht, Bodner, Huberfeld and Levy. Beechwood Investments, an entity owned and controlled by Nordlicht, Bodner Huberfeld and Levy through trusts, owned all preferred shares of Beechwood Re.

216. Defendant Beechwood Bermuda International Ltd. ("**Beechwood Bermuda**" and, collectively with Beechwood Cayman, the "**Beechwood Reinsurance Companies**") is a Beechwood Entity and a reinsurance company domiciled in Bermuda which had its principal place of business in New York, New York at all relevant times.

217. Defendant BAM Administrative Services LLC ("**BAM Administrative**") is a Beechwood Entity and a Delaware limited liability company which had its principal place of business in New York, New York at all relevant times. BAM Administrative served as agent for the Beechwood Insurance Trusts and acts as agent and signatory on behalf of the Beechwood Reinsurance Companies in connection with certain transactions within the First and Second Schemes.

218. Defendants BBLN-PEDCO Corp. and BHLN-PEDCO Corp. are special purpose vehicles (collectively, the "**Beechwood SPVs**") and Beechwood Entities that, at all relevant times,

were managed by BAM Administrative or Illumin and administered in New York, New York. The Beechwood SPVs were the Beechwood Entities tasked with receiving the PEDEVCO investment from PPVA and its subsidiary, and ultimately transferred their interests in PEDEVCO back to PPVA as part of the fraudulent Agera Transactions.

219. Defendants (i) Private Bankers Life Annuity Ltc 2, as successor in interest to BBIL ULICO 2014 Trust, (ii) Washing National Ltc 2, as successor in interest to BRe WNIC 2013 LTC Primary and BRe WNIC 2013 LTC Sub and (iii) Bankers Conseco Life Ins. Co. – Ltc 2, as successor in-interest to BRe BCLIC Primary and BRe BCLIC Sub (collectively, the "**Beechwood Insurance Trusts**") are insurance trusts and Beechwood Entities that, at all relevant times, were managed by BAM Administrative and/or Illumin Capital and administered in New York, New York. The Beechwood Defendants used the Beechwood Insurance Trusts to hold investments originated by the Platinum Defendants and used these trusts as vehicles for engaging in a significant portion of the transactions comprising the First and Second Schemes. The Beechwood Insurance Trusts were used to provide PPVA and its subsidiaries with worthless debt instruments as "PGS Value" in connection with the Agera Transactions.

220. Defendants Beechwood Trust Nos. 1 through 20 (each a "**Beechwood Trust,**" and together with Beechwood Capital, Beechwood Holdings, BAM, Beechwood Investments, Beechwood Cayman, BAM Administrative, Beechwood Bermuda, the Beechwood Insurance Trusts and the Beechwood SPVs, the "**Beechwood Entities**") are Beechwood Entities created in connection with transactions that occurred in New York, New York. The Beechwood Trusts were owned and controlled by Nordlicht, Bodner, Huberfeld and Levy through their families. The Beechwood Trusts owned approximately 70 percent of the common stock of Beechwood Cayman.

221. Each of the Beechwood Trusts is an alter ego of its respective direct or indirect owner, having been dominated and controlled by Nordlicht, Bodner, Huberfeld and Levy for the purpose of concealing their ownership and control of the Beechwood Entities.

222. Defendant Illumin Capital Management LP is a Beechwood Defendant and a Delaware limited partnership, which had its principal place of business in New York, New York at all relevant times. Illumin is owned and controlled by Dhruv Narain, who joined Beechwood in January 2016. Illumin acted as an investment advisor to Beechwood during the course of the Second Scheme.

JURISDICTION AND VENUE

223. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1334 and 1367.

224. Venue of this case is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1409.

225. This court has personal jurisdiction over each of the Defendants because they: (i) are a citizen otherwise domiciled in the United States; (ii) are authorized to do business in the United States; (iii) have transacted business in the United States, including the State of New York, with respect to certain of the agreements and other matters at issue in this case and have consented to the jurisdiction of the state and federal courts in New York, New York to resolve any disputes arising out of such agreements; or (iv) have committed tortious acts within the United States, including within the State of New York.

FACTUAL BACKGROUND

A. The PPVA Investment Structure

226. PPVA was formed in 2003. It was marketed as a multi-strategy hedge fund.

227. At the time its insolvency proceeding was commenced, PPVA was operating pursuant to a Second Amended and Restated Limited Partnership Agreement, dated July 1, 2008,

registered with the Cayman Islands Registrar of Exempted Limited Partnerships (the "**PPVA Partnership Agreement**"). A true and correct copy of the PPVA Partnership Agreement is attached hereto as **Exhibit 6.**

228. The PPVA Partnership Agreement provides that Platinum Management is the general partner and certain Feeder Funds (defined below) are the limited partners of PPVA.

229. Platinum Partners Value Arbitrage Fund (USA) L.P. (the "**Onshore Feeder Fund**") is a limited partner under the PPVA Partnership Agreement, with investors within the United States serving as limited partners of the Onshore Feeder Fund.

230. Platinum Partners Value Arbitrage Fund (International) Limited (in official liquidation) (the "**Offshore Feeder Fund**") served as the vehicle to attract offshore investors and served as a limited partner of PPVA until June 22, 2010, when the Offshore Feeder Fund ceased to be a limited partner of PPVA and Platinum Partners Value Arbitrage Intermediate Fund Ltd. (in official liquidation) (the "**Intermediate Offshore Feeder Fund**" and, collectively with the Offshore Feeder Fund and the Onshore Feeder Fund, the "**Feeder Funds**") took its place as a limited partner of PPVA.

231. The Feeder Funds and PPVA form a master/feeder investment fund structure typical of Cayman Islands-based funds whereby:

- offshore and U.S. tax-exempt investors invested in the Offshore Feeder Fund, which in turn invested in the Intermediate Offshore Feeder Fund, which in turn invested in PPVA;
- onshore investors invested in the Onshore Feeder Fund, which in turn invested in PPVA;
- the investment activities of the Offshore Feeder Fund, the Onshore Feeder Fund and PPVA were managed by Platinum Management in its separate capacity as a General Partner of PPVA and as investment manager, appointed pursuant to the terms of the Investment Management Agreement (defined below);

- PPVA was marketed to these investors as a multi-strategy hedge fund that sought to achieve significant returns while attempting to minimize downside risk; and
- PPVA's operations were managed by Platinum Management from its offices in New York, New York.

232. From February 22, 2006 until June 15, 2016, two employees of DMS Offshore Investment Services, David Bree and Don Seymour (the "**DMS Directors**") served as directors for the Offshore Feeder Fund and Intermediate Offshore Feeder Fund (together, the "**Offshore Funds**"), which were limited partners under the PPVA Limited Partnership Agreement.

233. Landesman served as a director for the Offshore Feeder Fund and Intermediate Offshore Feeder Fund until April 15, 2015, at which time he was replaced by Nordlicht.

234. The DMS Directors regularly attended and participated in board meetings for the Offshore Funds, which were limited partners of PPVA, at which (i) the financial condition of PPVA was discussed; and (ii) representatives of Platinum Management confirmed that it was abiding by all applicable requirements set forth in the governing documents of PPVA and the Feeder Funds, including the Private Placement Memoranda (collectively, the "**PPMs**") and applicable law.

235. The approval of the DMS Directors was required for certain transactions entered into and disclosures made by PPVA.

236. The DMS Directors notified the Platinum Defendants of their resignation as directors of the Offshore Funds, effective as of June 15, 2016.

B. Platinum Management as General Partner

237. Platinum Management is a Delaware limited liability company organized on or about August 22, 2001. A true and correct copy of the January 1, 2011 Second Amended and Restated Operating Agreement for Platinum Management is attached hereto as **Exhibit 7.**

238. In addition to being the general partner of PPVA at all relevant times, Platinum Management managed several other funds, including PPCO and Platinum Partners Liquid Opportunities Fund L.P. ("**PPLO**").

239. The founders and, at certain times, owners of Platinum Management included Nordlicht, Huberfeld and Bodner and various trusts and entities for which they held a direct or indirect beneficial interest.

240. Landesman and Fuchs were also managers of and holders of membership interests in Platinum Management.

241. Upon information and belief, Levy held membership interests in Platinum Management.

242. Platinum Management and the individual Platinum Defendants operated out of various locations in New York, New York. From 2012 until the date of the Indictment (defined below), the office of Platinum Management and the Platinum Defendants was located at 250 West 55th Street, 14th Floor, New York, NY 10019.

243. Section 2.02 of the PPVA Partnership Agreement provides that "the management of the Partnership shall be vested exclusively in the General Partner" *i.e.*, Platinum Management.

244. According to Section 1.06 of the PPVA Partnership Agreement, the "Purposes of the Partnership" are "realizing capital appreciation by investing and trading in U.S. and non-U.S. Securities . . . and to engage in all activities and transactions as the General Partner [Platinum Management] may deem necessary or advisable in connection therewith, including, without limitation:"

> (i) to invest on margin, to engage in short sales and option writing, to enter into repurchase agreements and reverse repurchase agreements or to engage in such other investment techniques as the General Partner believes to be appropriate;

(ii) to purchase, hold, sell, exchange, transfer and otherwise acquire and dispose of and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Securities and other property, funds or rights held or owned by the Partnership including, without limitation, such property, funds or rights which constitute non-traditional investment instruments;

(iii) to allocate and invest discrete segments of the Partnership's assets to entities managed by others ("Portfolio Entities") and, pursuant to agreements granting trading authority over the segments of the Partnership's assets, to investment managers selected by the General Partner ("Managed Accounts"); provided, that the General Partner shall be responsible for monitoring the trading activities of the Partnership, the Portfolio Entities and the Managed Accounts;

(iv) to borrow or raise moneys, and to issue, accept, endorse and execute promissory notes and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of such or other obligations of the Partnership by hypothecation or pledge of all or part of the property of the Partnership, whether at the time owned or thereafter acquired;

(v) to engage personnel, including Affiliates (as defined in Section 2.05) of the General Partner, whether part-time or full-time, and do such other acts as the General Partner may deem necessary or advisable in connection with the maintenance and administration of the Partnership; and

(vi) to engage attorneys, independent accountants, consultants, investment managers, investment advisors, traders or such other persons as the General Partner may deem necessary or advisable.

245. As General Partner, Platinum Management was responsible for allocating Net Capital Appreciation and Net Capital Depreciation to the accounts of all partners, and for calculating PPVA's NAV. *See* PPVA Partnership Agreement at Sections 3.05, 3.06.

246. Although the PPVA Partnership Agreement made Platinum Management responsible for calculating PPVA's NAV, it provided criteria as to how NAV must be calculated:

(i) *Listed Securities*. Freely marketable Securities listed or admitted to trading on any U.S. or non-U.S. stock exchange or the U.S. NASDAQ National Market System or comparable non-U.S. market system ("NMS") shall be valued (A) at the last reported sale price of the Security on the primary stock exchange or the NMS, as the case may be, on the date of determination, or in case there shall have been no sale of such security on such date, then (B) at the mean between representative "bid" and "asked" prices for such security on such exchange or the NMS at the close of business on the date of determination, or if no such "bid" and "asked" prices are reported on such date, then (C) at the last reported sale or mean between representative "bid and "asked" price within the five-day period preceding such date; or, if neither such last sale price nor "bid"

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and "asked" prices are reported during such period, then (D) at such price as the General Partner deems to be fair market value.

(ii) *Unlisted Securities*. Freely marketable Securities traded over-the-counter or on another dealer market shall be valued (A) at the "last sale" price as reported by the National Association of Securities Dealers Automated Quotation System ("NASDAQ") or other primary U.S. or non-U.S. quotation system as of the date of determination or, if no such price is reported for such date, then (B) at the mean between representative "bid" and "asked" prices at the close of business on the date of determination, as reported in NASDAQ or such other system (or, if not so reported, then as reported by a recognized quotation service); or, if no such price is reported on such date, then (C) at the "last sale" or mean between representative "bid" and "asked" prices so reported within the five-day period preceding such date; or, if neither such "last sale" price nor such "bid" and "asked" prices are reported during such period, then (D) at such price as the General Partner deems to be fair market value.

(iii) *Restricted Securities*. All Securities which are not freely marketable by reason of legal restrictions ("Restricted Securities"), if readily and immediately convertible into or exercisable for freely marketable Securities, shall be valued on the basis applicable to such underlying Securities, reduced by the applicable conversion or exercise price, as the case may be, and all other Restricted Securities will be valued at their fair value, on the basis of the last representative sale price of similarly restricted Securities, or if no such sale price is available, then at such price as the General Partner deems to be fair value.

(iv) *Short Positions*. Securities held short by the Partnership will be valued as respectively provided in (i), (ii) or (iii) hereof, as applicable. The value of Securities held short by the Partnership shall be treated as a liability of the Partnership and, together with the amount of any margin or other loans on account thereof, shall be subtracted from the Partnership's assets in determining net assets of the Partnership.

(v) *Options*. Options for the purchase or sale of Securities will be valued as respectively provided in (i), (ii), (iii) or (iv) hereof, as applicable, except that options listed on an exchange will in any event be valued at the mean between the representative "bid" and "asked" prices at the close of business on the date of determination. Premiums from the sale of options written by the Partnership shall be included in the assets of the Partnership and the market value of such options shall be included as a liability of the Partnership.

(vi) *Dividends*. Dividends declared but not yet received, and rights in respect of Securities which are quoted ex-dividend or ex-rights, shall be included at the fair value thereof, less any applicable taxes thereon, as determined by the General Partner, which may, but need not, be the fair market value so determined on the day the particular Securities are first quoted ex-dividend or ex-rights.

(vii) *Commodity Interests*. Positions in commodities, commodity futures contracts, options on such futures contracts or other interests in commodities traded on an exchange, through a clearing firm or a bank or other financial institution shall be valued at their most recent settlement price, or closing market quotation, as appropriate, on the applicable exchange or with such firm or institution on the applicable determination date. If such contract cannot be liquidated,

due to the operation of daily limits or otherwise, as of such determination date, the liquidating value on the first subsequent day on which the contract would be liquidated may be used or such other value as the General Partner may deem fair and reasonable.

(viii) *Cash Items*. Short-term money market instruments and bank deposits shall be valued at cost (together with accrued and unpaid interest) or market, depending on the type of investment, as the General Partner shall deem appropriate.

(ix) *Assets Allocated to Portfolio Managers*. All assets of the Partnership that are allocated to an independent portfolio manager (through a Portfolio Entity or Managed Account) for management shall be valued by the portfolio manager at their market value.

(x) *Other Assets*. The value of any other assets of the Partnership (or the value of the assets mentioned in this subsection (a) in situations not covered thereby, or in the event of any other happening determined by the General Partner in its discretion to make another method of valuation advisable) shall be their fair value, determined in such manner as may be selected from time to time by the General Partner in its discretion. All values assigned to assets by the General Partner pursuant to this Article III shall be final and conclusive as to all of the Partners.

See PPVA Partnership Agreement at Section 3.06.

247. PPVA was required to reimburse Platinum Management for any expenses it incurred on its behalf in its capacity as General Manager, including overhead/salaries. *See* PPVA Partnership Agreement at Section 2.09.

248. The partners of PPVA, including Platinum Management, also were entitled to distributions from their capital accounts as determined by the General Partner, Platinum Management. *See* PPVA Partnership Agreement at Article 4.

249. Platinum Management, PPVA and the Feeder Funds also were parties to that certain investment management agreement initially dated as of March 9, 2007 (as at any time amended and restated, the "**Investment Management Agreement**"). In addition to any fees and capital amounts due to it as General Partner, Platinum Management charged PPVA certain management and incentive fees in its capacity as investment manager, calculated using as their base the NAV of the realized and unrealized value of PPVA's assets. *Id*.

250. Between January 1, 2013 and August 23, 2016, PPVA paid the Platinum Defendants, either directly or indirectly, distributions and/or fees totaling at least $95,112,245.00, based on the Platinum Defendants' calculation of PPVA's purported net asset value.

C. Platinum Defendants' Valuation and Risk Assessment Process and Representations Concerning Investments and NAV

251. At all relevant times, Platinum Management maintained a valuation committee and a risk committee to assess the value of and risk associated with PPVA's investments.

252. Platinum Management tasked the valuation committee with reviewing the values of all of PPVA's significant investments, and Platinum Management's valuation methodology could not be altered without the express written consent of the valuation committee. The risk committee was tasked with setting investment strategy for Platinum Management and analyzing new investment opportunities.

253. The members of the valuation and risk committees shifted over time as personnel changes occurred.

254. Nordlicht and SanFilippo were members of the valuation committee throughout the relevant period. Landesman was a member of the valuation committee until he resigned as President of Platinum Management in April 2015. Levy, Steinberg and Manela also were members of the valuation committee.

255. Nordlicht and Ottensoser were members of the risk committee. Landesman was a member of the risk committee until he resigned as President of Platinum Management in April 2015. Steinberg was a member of the risk committee and later became co-chief risk officer.

256. The portfolio managers, such as Small, Beren, Levy and Steinberg also contributed to valuation and risk determinations.

257. Huberfeld, Bodner and Fuchs also had input into determinations as to the value of

and risk associated with PPVA's investments.

258. In addition to the valuation and risk committees, which met on a monthly basis, SanFilippo, Nordlicht and other Platinum Management staff routinely communicated valuation information to PPVA's external fund administrator, SS&C Technologies, Inc., which, in turn would use that information to perform the calculations necessary to prepare PPVA's monthly NAV statements.

259. During the period from 2012 through 2015, the Platinum Defendants reported to PPVA that it had annualized returns of 11.58% (2012) to 8.76% (2015), with the lowest annualized return during that time period being 7.11% for FY 2013. *See* Platinum Management's March 2016 Tear Sheet for PPVA, a true and correct copy of which is attached as **Exhibit 8**.

260. PPVA further reported to PPVA that PPVA had a return of 2.6% for the first three months of 2016, and a cumulative return since PPVA's inception of 687.40%. *Id.*

261. The Platinum Defendants represented to PPVA that the value of PPVA's assets under management had increased steadily from $688 million on January 1, 2012 to $789 million as of October 1, 2015. *See* September 2015 Due Diligence Questionnaire ("**DDQ**"), a true and correct copy of which is attached as **Exhibit 9**.

262. The Platinum Defendants paid themselves distributions, fees and other compensation based on these reported financial results.

263. The Platinum Defendants were required to manage PPVA as a liquid fund.

264. The PPMs for the Feeder Funds, consistent with their respective limited partnership agreements and governing articles, set out a fixed, orderly redemption process for all investors: quarterly redemptions, upon 60 or 90 days' advance notice (depending on the version of the PPM), with the fund "intend[ing] to pay" to the investor at least 90% of the amount

requested within 30 days, with the remaining 10% potentially held back for completion of the fund's audit. A true and correct copy of a November 2012 PPM for the Offshore Feeder Fund is attached hereto as **Exhibit 10**.

265. The Platinum Defendants represented to PPVA that PPVA's investments would be and were allocated across a variety of different investment strategies, including short-term relative value, event-driven, and asset-based finance. *See* September 2015 Due Diligence Questionnaire.

266. A December 2015 Presentation created by the Platinum Defendants stated that the Platinum Defendants would cause PPVA to target "30% risk allocation to short term trading and relative value strategies, 30% to event driven strategies and 40% to asset based finance strategies." A true and correct copy of the December 2015 Presentation is attached hereto as **Exhibit 11**.

267. The September 2015 DDQ stated, in part:

> How long does it take to exit the most liquid positions in the portfolio?
>
> The Fund's most liquid positions could, under normal market conditions, typically be liquidated in less than a week, including assets in the Energy and Power Arbitrage, Long/Short Fundamental Equity, Event Driven, Quantitative and Asia Based Arbitrage strategies.

See September 2015 DDQ at p. 17.

268. According to the Platinum Defendants' representations, investments in the listed liquid investment strategies represented as much as 61% of PPVA's portfolio. *See* March 2016 Tear Sheet at p. 2.

269. As the general partner and/or the persons or entities who exercised day-to-day management over PPVA, its subsidiaries and its assets, the Platinum Defendants had fiduciary duties of due care and loyalty to PPVA and were obligated to manage and operate PPVA in good

faith, in accordance with its operating documents. Those fiduciary duties included investing PPVA's assets in accordance with PPVA's investment parameters, assessing the net value of its assets at their market or fair value (depending on the asset), maintaining adequate liquidity, not acting in their own interests to the detriment of the interests of PPVA, not paying themselves unearned fees and stripping or causing liens to be placed on PPVA assets for the benefit of themselves, the Beechwood Defendants, PPCO and other "friends and family."

270. Instead, the Platinum Defendants reneged on their obligations and breached their duties of due care and loyalty to PPVA, and acted in bad faith and with blatant disregard for the terms of PPVA's operating documents.

271. The Beechwood Defendants, together with Defendants Katz, Gerszberg, Cassidy, Michael Nordlicht, Illumin, the BEOF Funds and the Preferred Investors of the BEOF Funds, among others, materially and knowingly aided and abetted the Platinum Defendants' breach of their fiduciary duties to PPVA.

D. The Collapse and Liquidation of PPVA

272. By December 2015, cash redemption payments to PPVA's investors had ceased, with the notable exception of select redemption payments to insiders of Platinum Management and the Defendants.

273. During the first six months of 2016, PPVA's financial condition continued to worsen. PPVA was unable to comply with its ongoing obligations to its investments, which caused the value of those investments to deteriorate significantly. It also faced numerous demands and lawsuits from creditors.

274. For example, on January 8, 2016, Levy received an email from the operator of Desert Hawk Gold Corp. ("**Desert Hawk**") – a gold mining operation and a company in which a PPVA subsidiary had invested – claiming that Desert Hawk was "an absolute living hell … It is

not possible to run … without proper capitalization." A true and correct copy of the January 8, 2016 Desert Hawk email is attached hereto as **Exhibit 12**.

275. On February 18, 2016, a Desert Hawk representative emailed Levy that the company could not complete its audit because of insufficient funding. A true and correct copy of the February 18, 2016 Desert Hawk email is attached hereto as **Exhibit 13.**

276. Likewise, PPVA repeatedly failed to meet its lending obligations to Urigen Pharmaceuticals, Inc. ("**Urigen**"), a pharmaceutical startup in which it had invested.

277. In a series of emails from March 29-April 1, 2016, the president of Urigen informed Nordlicht and Levy that, as a result of PPVA's failure to provide the agreed-upon financing, Urigen had missed payroll and monthly overhead and had failed to pay creditors. True and correct copies of the Urigen emails are attached hereto as **Exhibit 14.**

278. Similarly, on June 15-22, 2016, a Platinum Management representative exchanged a series of email with a representative of Golden Gate Oil (an investment marketed at various times as worth more than $100 million according to the Platinum Defendants), whereby Golden Gate Oil complained that, due to PPVA's inability to fund working capital, Golden Gate Oil was unable to meet payroll expenses for the second month in a row. True and correct copies of the Golden Gate Oil emails are attached hereto as **Exhibit 15.**

279. PPVA's financial distress was exacerbated by the events of June 2016, which culminated in the commencement of the Cayman Liquidation.

280. On June 8, 2016, the United States Attorney's Office for the Southern District of New York filed criminal charges against Huberfeld in connection with a bribery scheme by which Huberfeld used PPVA funds to pay kickbacks to a New York City Correction Officer's Union official (the "**Huberfeld Arrest**").

281. On June 14, 2016, Nordlicht announced on an investor call that Platinum Management had decided that PPVA would stop taking in new investors and all PPVA investments would be unwound and liquidated. Attached hereto as **Exhibit 16** is a true and correct copy of Nordlicht's June 30, 2016 letter to investors, confirming the suspension of NAV reporting for PPVA and the Feeder Funds.

282. Following Nordlicht's announcement that PPVA would be liquidated, PPVA's brokerage firms began to declare events of default, made margin calls, demanded additional collateral, and sought the immediate unwinding of their relationships with PPVA.

283. On or about June 22, 2016, the Federal Bureau of Investigation executed a search warrant at Platinum Management's offices in connection with a broad, multi-agency federal investigation of PPVA's business practices (the "**Search Warrant**").

284. On July 8, 2016, when PPVA was facing margin calls by its securities transaction counterparties, PPVA had less than $100 cash on hand. Attached as **Exhibit 17** is a true and copy of an email from Mark Nordlicht containing Platinum Management's July 8, 2016 cash report for PPVA.

285. On July 28, 2016, Parris Investment Limited, an investor in the Offshore Funds, filed an involuntary petition against the Offshore Feeder Fund in the Grand Court of the Cayman Islands (the "**Grand Court**"), seeking commencement of an involuntary liquidation proceeding and appointment of the JOLs' predecessors as joint official liquidators for the Offshore Feeder Fund.

286. On August 23, 2016, the Grand Court entered a winding up order, commencing the liquidation of the Offshore Feeder Fund and appointing Christopher Kennedy and Matthew Wright as joint official liquidators.

287. On August 23, 2016, Platinum Management, as general partner of PPVA, filed a voluntary petition seeking the liquidation of PPVA and the appointment of Christopher Kennedy and Matthew Wright as joint provisional liquidators (the "**Cayman Petition**"). A true and correct copy of the Cayman Petition is attached hereto as **Exhibit 18.**

288. Accompanying the Cayman Petition was the August 23, 2016 Second Affidavit of Mark Nordlicht (the "**Nordlicht Affidavit**"). A true and correct copy of the Nordlicht Affidavit is attached hereto as **Exhibit 19.**

289. In the Nordlicht Affidavit, Nordlicht states that the value of PPVA's assets as of August 23, 2016 is approximately $1.1 billion, provided that PPVA was able to wind down its operations in the ordinary course of business pursuant to a proposed restructuring plan. *See* Nordlicht Affidavit at ¶ 33.

290. On August 25, 2016, the Grand Court entered an order (the "**August 25, 2016 Order**") directing the provisional liquidation of PPVA and appointing Matthew Wright and Christopher Kennedy as its joint provisional liquidators (the "**Cayman Liquidation**"). A true and correct copy of the August 25, 2016 Order is attached hereto as **Exhibit 20.**

291. After their appointment as liquidators for PPVA, Messrs. Wright and Kennedy began learning that Nordlicht's assertions as to the value of PPVA's assets were false and that there would be insufficient funds coming in from PPVA's investments to fund the restructuring plan proposed in the Nordlicht Affidavit.

292. Messrs. Wright and Kennedy also learned that significant claims would be made against PPVA in connection with the Black Elk Scheme and the acts of the Platinum Defendants and Beechwood Defendants, but did not have full access to PPVA's documents and records, so as to learn the extent of the schemes, until the Spring of 2018.

293. On October 26, 2016, the litigation trustee for the Black Elk bankruptcy estate (the "Black Elk Trustee") filed an adversary complaint against, among others, PPVA, seeking recovery of more than $90 million in fraudulent transfers in connection with the Black Elk Scheme and other relief, in a case styled, *Schmidt v. Platinum Partners Value Arbitrage Fund LP et al.*, Adv. No. 16-03237, pending in the United States Bankruptcy Court for the Southern District of Texas (the "**Black Elk Adversary Complaint**").

294. On October 18, 2016, the predecessors of the JOLs filed petitions and accompanying Declarations of Christopher Kennedy (respectively, the "**Chapter 15 Petitions**" and "**Kennedy Chapter 15 Declarations**") seeking recognition of the Cayman liquidations of PPVA and the Offshore Feeder Fund as foreign main proceedings and the JOLs as foreign representatives and certain other relief under chapter 15 of the Bankruptcy Code (the "**Chapter 15 Bankruptcy**") in the United States Bankruptcy Court for the Southern District of New York, jointly administered as Case No. 16-12925 (the "**Chapter 15 Court**").

295. On October 27, 2016, the Grand Court entered an order directing that PPVA's Cayman Liquidation be converted to an official liquidation and, after determining that PPVA and the Offshore Feeder Fund should not share the same liquidators, appointing Messrs. Wright and Kennedy as Interim Joint Official Liquidators until a final hearing in December 2016 (the "**October 27, 2016 Order**"). A true and correct copy of the October 27, 2016 Order is attached hereto as **Exhibit 21**.

296. On November 23, 2016, the Chapter 15 Court entered an order recognizing the Cayman Liquidation and Messrs. Kennedy and Wright as a foreign main proceeding, and as foreign representatives, respectively, pursuant to 11 U.S.C. 1501 *et seq.* (the "**Chapter 15**

Recognition Order"). A true and correct copy of the Chapter 15 Recognition Order is attached hereto as **Exhibit 22**.

297. On December 16, 2016, the Grand Court entered an order appointing Messrs. Wright and Kennedy as Joint Official Liquidators of PPVA the (the "**December 16, 2016 Order**"). A true and correct copy of the December 16, 2016 Order is attached hereto as **Exhibit 23**. In connection with their appointment as Joint Official Liquidators, Messrs. Wright and Kennedy resigned as liquidators of the Offshore Feeder Fund.

298. Martin Trott and Christopher Smith are the current Joint Official Liquidators of PPVA. Attached hereto as **Exhibit 24** are true and correct copies of Orders entered by the Grand Court reflecting: (i) the September 29, 2017 appointment of Martin Trott and corresponding release of Matthew Wright as a Joint Official Liquidator; and (ii) the July 6, 2018 appointment of Christopher Smith and corresponding release of Christopher Kennedy as a Joint Official Liquidator.

299. On December 19, 2016, a Grand Jury for the Eastern District of New York returned a criminal indictment, pending as Case No. 16-cr-00640, against, among others, Nordlicht, Levy, Landesman and Small, stating charges including Securities Fraud, Investment Advisor Fraud and Wire Fraud (the "**Indictment**").

300. On December 19, 2016, the Securities and Exchange Commission filed a parallel civil action against, among others, Nordlicht, Levy, Small, Landesman and Platinum Management (the "**SEC Action**"), in the United States District Court for the Eastern District of New York as Case No. 16-cv-06848, alleging civil damages for violations of, among other things, the Investment Advisors Act of 1940, 15 U.S.C.§ 80b-1 *et seq.*, the Securities Act of 1933, 15 U.S.C. § 77a *et seq*. and the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq*. A true and

correct copy of the December 19, 2016 civil complaint filed by the Securities and Exchange Commission is attached hereto as **Exhibit 25**.

301. Since their appointment, the JOLs have continued their investigation into the assets and liabilities of PPVA, and have been engaged in the process of liquidating PPVA's assets.

302. Among other things, as of the date of this complaint, the JOLs have realized $73,719,174 in connection with the liquidation of PPVA and its subsidiaries, and estimate that the gross, total realization in connection with PPVA's assets will be between $75,719,174 and $88,294,174, less encumbrances, claims, fees and litigation claims to the recovery – at the subsidiary level – and not including any amounts recovered as a result of litigation against third parties commenced by the JOLs.

303. The aggregate amount of proofs of debt filed in the Cayman Liquidation is $1,156,949,339, with at least $132,000,000 of such debt being on account of purported secured creditors.

304. The aggregate amount of proofs of debt filed in the Cayman Liquidation by parties affiliated with Beechwood is $79,146,350.64.

305. On November 20, 2018, the Grand Court entered an Order permitting the JOLs to file this complaint against the Defendants ("**Sanction Order**").

E. Concentration in Illiquid Investments

306. By about the end of 2012, the Platinum Defendants' statements to PPVA concerning the amount of and purported growth in PPVA's NAV, as well as their claims regarding the allocation of PPVA's investments and the liquidity thereof were false.

307. Notwithstanding the representations made to PPVA, the Platinum Defendants had concentrated PPVA's investments in certain highly illiquid investments, including equity and debt positions in start-up companies, many of which were not publicly traded.

308. As of December 31, 2012, approximately 37-43% of PPVA's reported NAV consisted of its investments in Black Elk and Golden Gate Oil. A true and correct copy of selected portions of the 2012 4th Quarter Valuation Report commissioned by Platinum Defendants and prepared by Sterling Valuation Group, Inc. is attached hereto as **Exhibit 26.**

309. Under the terms of the PPVA Partnership Agreement, the value of assets of the partnership for which a valuation method was not prescribed or where the Platinum Management believed other methods were advisable, was to be their "fair value" as determined in Platinum Management's discretion. *See* PPVA Partnership Agreement at Section 3.06(x).

310. PPVA's PPMs required that the Platinum Defendants exercise their discretion in determining net asset value so that the results represent "fair value." *See* November 2012 PPM for the Offshore Feeder Fund.

311. The Platinum Defendants stated in its DDQs that valuations of PPVA's assets were verified and finalized by an internal valuation committee. *See* September 2015 DDQ, at p. 26.

312. The Platinum Defendants, however, routinely engaged in the practice of adjusting NAV subsequent to valuation committee meetings, in order to continue the illusion of a steadily increasing NAV, in order to award themselves fees. For example, attached as **Exhibit 27** is a true and correct copy of a January 21-22, 2015 email exchange among Platinum Management employees discussing Nordlicht's readjustment of NAV subsequent to a valuation committee meeting.

F. Misrepresentation of PPVA's NAV in the Wake of the Black Elk Explosion

313. As of the fourth quarter of 2012, PPVA's investment in Black Elk was its single biggest position.

314. As noted above, the Black Elk Explosion occurred in November 2012. The Black Elk Explosion caused the deaths of Black Elk employees and a serious devaluation in PPVA's investment in Black Elk.

315. In the wake of the Black Elk Explosion, Black Elk faced increasing liquidity problems throughout 2013.

316. Nevertheless, the Platinum Defendants actually increased their valuation of PPVA's investment in Black Elk during this same period.

317. At the time of the Black Elk Explosion, approximately 40% of PPVA's total portfolio was worth significantly less than reported to PPVA by the Platinum Defendants, and the remaining "assets" were speculative and early-stage investments that would have required significant capital unavailable to PPVA for any hope of profitability.

318. Instead of winding down in the face of these events, the Defendants conceived and executed the First Scheme and then the Second Scheme to award fees to Platinum Defendants and eventually to strip PPVA of its remaining valuable assets.

319. Keeping a substantial majority of PPVA's assets concentrated in illiquid positions, most of them categorized for accounting purposes as "Level 3" assets[4] that were not publicly traded and for which there were no readily available market prices, enabled the Platinum

[4] Level 3 assets are assets whose fair value cannot be determined by using observable inputs or measures, such as market prices or models. Level 3 assets are typically very illiquid, and fair values can only be calculated using estimates or risk-adjusted value ranges.

Defendants to retain control over how those assets would be valued for purposes of determining PPVA's NAV.

320. The Platinum Defendants' control over the valuation of PPVA's illiquid positions in turn enabled them to ensure that PPVA's "performance," which was largely composed of unrealized gains, steadily increased, thereby ensuring that there would always be distributions and fees due to Platinum Management and its members, Nordlicht, Bodner, Huberfeld, Landesman, Fuchs and Levy, and bonuses due and payable to the individuals, such as David Levy, Dan Small, David Steinberg, Ezra Beren and others whose compensation was directly tied to such increases.

321. The lack of liquidity in PPVA's investments as well as the misrepresented NAV created problems when investors sought to redeem their investments on the short timeline provided for in the PPMs and the applicable limited partnership agreements, and when the Platinum Defendants sought to pay themselves.

322. Despite the financial reports and the PPMs representing PPVA as a liquid fund, the Platinum Defendants routinely relied upon funds invested by new investors in order to pay redemptions, as a significant amount of PPVA's assets were concentrated in illiquid "Level 3" assets that were grossly overvalued by the Platinum Defendants and did not provide PPVA with a source of liquidity.

G. <u>Misrepresentation of Value for Golden Gate Oil</u>

323. An example of the Platinum Defendants misrepresenting the value of PPVA's assets concerns PPVA's debt and equity position in Golden Gate Oil.

324. At the end of 2012, PPVA held 48% of the equity in Golden Gate via a wholly owned subsidiary, Precious Capital LLC ("**Precious Capital**"). *See* Exhibit 26 at pp. 143-146.

325. Precious Capital also had extended a working capital loan to Golden Gate that was secured by all of Golden Gate's assets (the "**Golden Gate Oil Loan**"). At the end of 2012, the principal and interest outstanding on the Golden Gate Oil Loan totaled $12,893,000. *See id.*

326. At the end of 2012, the Platinum Defendants valued PPVA's 48% equity investment in Golden Gate Oil at $37 million, which implied a total value for the company of approximately $78 million, and valued the Golden Gate Oil Loan at par. *Id*.

327. One year later, the Platinum Defendants reported that the value of PPVA's 48% investment in Golden Gate Oil had risen sharply, to as much as $173 million. The Platinum Defendants once again valued the Golden Gate Oil Loan, which by then had grown to $24,392,489, at par. True and correct copies of selected portions of Sterling Valuation's 4th Quarter 2013 Valuation Report are attached hereto as **Exhibit 28**.

328. The Golden Gate Oil equity interests and Golden Gate Oil Loan constituted approximately 19% of PPVA's reported NAV as of the end of 2013, and other than Black Elk was one of PPVA's largest investments.

329. The value ascribed to PPVA's investment in Golden Gate Oil by the Platinum Defendants, including the value of the Golden Gate Oil Loan, was significantly inflated.

330. Golden Gate's first stage of operations involved the drilling of seven wells (the "**Golden Gate Oil Wells**"), but it encountered large drilling cost overruns, as well as delays in obtaining needed permits.

331. As a result, Golden Gate Oil had utilized the $18 million borrowed from PPVA by the end of 2013.

332. More problematic than the delays and cost overruns was the fact that the Golden Gate Oil Wells that eventually were completed produced mostly water and many were shut in (*i.e.*, not producing).

333. During 2013, the revenue realized from the only consistently-producing Golden Gate Oil Well was less than 10% of initial projections.

334. As a result, far from generating the millions in present cash flow that had been expected to pay for future drilling, Golden Gate Oil suffered $6 million in *net losses* in 2013.

335. The Platinum Defendants did not disclose any of this information in its valuation reports when valuing PPVA's investment in Golden Gate Oil.

336. In November 2013, Black Elk reported in a public filing that it had obtained an option to purchase all membership interests in Golden Gate Oil for $60 million. True and correct copies of the relevant pages from the Form 10-Q filed with the Securities and Exchange Commission by Black Elk are attached hereto as **Exhibit 29**.

337. This disclosure demonstrated that the value the Platinum Defendants placed on Golden Gate Oil was inflated.

338. On May 23, 2014, Ari Hirt, a Platinum Management portfolio manager for Golden Gate Oil, told Nordlicht, Levy, Saks and Steinberg that a potential third-party lender had brought up Black Elk's SEC filing, saying "the issue is that it publicly discloses the value of the option and therefore pegs GGO [Golden Gate Oil]'s value to $60M. This is ultimately a marketing issue that could be dealt with but something we should all be aware of." A true and correct copy of this May 23, 2014 email is attached hereto as **Exhibit 30**.

339. Internal emails indicate that Nordlicht and the other Platinum Defendants were well aware that the values ascribed to Golden Gate Oil were inflated as early as 2012.

340. For example, in early 2012, Nordlicht scoffed at his portfolio manager's optimistic projections concerning Golden Gate Oil's performance: "I cringe at the 1 billion PV-10 number [a measure of the present value of the oil reserves] as it doesn't mean anything . . . . when u have billion pv 10 on fields that are worth 15 [$15 million] in sale now, it doesn't really mean much..." A true and correct copy of this April 3, 2012 Nordlicht email is attached hereto as **Exhibit 31.**

341. Likewise, in late 2012, one of Platinum Management's project managers for Golden Gate Oil wrote to Nordlicht that once Golden Gate Oil, as a first step, had the first seven Golden Gate Oil Wells producing at its two fields, the value of Golden Gate Oil would rise to $45 million. A true and correct copy of this email is attached hereto as **Exhibit 32.**

342. Yet, at the end of 2013, when Golden Gate Oil's drilling program had fallen far short even of that goal and Golden Gate Oil was deeply in debt, the Platinum Defendants increased their valuation of PPVA's equity interest in Golden Gate Oil to $173 million.

343. The Platinum Defendants also continuously valued the Golden Gate Oil Loan at par, even though it appears that Golden Gate Oil never made a single interest payment to the holder of the debt during the entire period the Golden Gate Loan was outstanding.

H. Creation of Beechwood

344. In order to justify charging PPVA for increasing partnership distributions and other fees, the Platinum Defendants had to keep up the pretense that PPVA's NAV was steadily increasing.

345. As a corollary, the Platinum Defendants had to keep pace with ongoing requests for investor redemptions, or risk disclosure of the liquidity issues and true NAV of PPVA.

346. The Platinum Defendants had caused PPVA's assets to be invested in illiquid investments, however, which made this difficult.

347. Nordlicht, Huberfeld, Levy and Bodner, together with Feuer and Taylor, developed a scheme to create Beechwood as a way to generate capital in a new business venture that they could use for their personal benefit to, among other things, allocate to themselves an ever increasing share of PPVA assets.

348. The majority ownership in and ultimate control of Beechwood was in fact held by Nordlicht, Huberfeld, Bodner and Levy, while Taylor and Feuer maintained ostensible and nominal management authority, with Levy.

349. The Platinum Defendants established Beechwood while working out of Platinum Management's offices. The effort was coordinated by Nordlicht, Levy, Huberfeld, Taylor, Feuer and Bodner.

350. Beechwood's investment professionals were simply a revolving door of Platinum Management personnel, including Levy, Saks, Manela, Ottensoser, Beren, and others.

351. The Platinum Defendants and individual Beechwood Defendants used a portion of the funds entrusted to the Beechwood Entities to enrich themselves, as the Beechwood Entities provided Platinum Management with transaction partners that could be used to justify the First Scheme and PPVA's inflated NAV, while ultimately causing significant harm to PPVA.

352. The Beechwood Entities were conceived of and functioned as the alter ego of Platinum Management for this wrongful purpose.

353. David Bodner himself confirmed that Platinum Management and the Beechwood Entities are alter egos and that the connections between the entities were hidden from third parties in order to serve the purposes of the Platinum and Beechwood Defendants.

354. In a July 29, 2015 email that Bodner apparently asked his secretary to type and send to his personal email and which was sent two years after the framework for Beechwood was

first conceived, Bodner expressed concern that a Beechwood client not discover that the funds it had entrusted to Beechwood for investment actually were invested in illiquid investments at PPVA, which did not fit the client's investment parameters.

355. In the same email, Bodner stated that he did not want the client to find out that the Beechwood Defendants "weren't exactly honest" about the fact that Beechwood and Platinum Management "really were integrated."

356. If this information came out, Bodner cautioned that the client might seek to pull all of its money out, which could result in Beechwood having to dissolve. A true and correct copy of this July 29, 2015 email is attached hereto as **Exhibit 33**.

357. The scheme began in about February 2013, when Bodner, Huberfeld, Nordlicht and Levy commenced working with Taylor and Feuer to create the Beechwood Entities.

358. By February 28, 2013, Levy and Nordlicht were advising Beechwood Capital and designating Taylor as Beechwood Capital's manager.

359. On February 26-28, 2013, writing from "beechwoodcapitalgroup.com" email domains, Taylor and Feuer, copying Levy at his Platinum Management email address, discussed the execution of an NDA between Beechwood Capital and Alpha Re Limited, another reinsurance company. A true and correct copy of this February 26-28, 2013 email exchange is attached hereto as **Exhibit 34**.

360. On March 28, 2013, Steinberg sent an email to Huberfeld forwarding a list of wire transfers.[5] Included among them is a transfer between Platinum Management and Beechwood

[5] The list also appears to reflect investments connected to certain of the Preferred Investors of the BEOF Funds.

Capital as well as a number of related party transfers. A true and correct copy of this email is attached hereto as **Exhibit 35.**

361. On or around April 17, 2013, Taylor drafted a memorandum intended to provide Beechwood's captive managers with an overview of Beechwood's corporate structure (the "**Beechwood Overview Memorandum**"). A true and correct copy of a cover email from Taylor to Levy, attaching the Beechwood Overview Memorandum, is attached hereto as **Exhibit 36**.

362. On or about May 15, 2013, Levy executed initial due diligence documents for Beechwood Cayman as required by the Cayman Islands Monetary Authority. True and correct copies of April-May 2013 correspondence between Levy and Crystal O'Sullivan concerning the Beechwood questionnaire are attached hereto as **Exhibit 37**.

363. On or about May 30, 2013, Levy emailed Nordlicht a draft term sheet for Beechwood Cayman. A true and correct copy of this email together with the draft term sheet is attached hereto as **Exhibit 38**.

364. On or about May 31, 2013, Crystal O'Sullivan sent Levy an invoice for $25,000 for filing, licensing, legal, and administrative services in connection with the creation of the Beechwood Reinsurance Companies, so that Platinum Management could pay such fees on behalf of Beechwood. A true and correct copy of the cover email from Crystal O'Sullivan, together with the invoice, is attached hereto as **Exhibit 39**.

365. On June 4, 2013, Taylor emailed Levy under the subject "when you have a set of sample investment guidelines, please send them." The text of the email states "I am creating our Beechwood Re [Beechwood Cayman] 'document.'" A true and correct copy of this June 4, 2013 email is attached hereto as **Exhibit 40**.

366. On June 12, 2013, Taylor emailed Nordlicht, seeking Nordlicht's approval in

regard to several potential "deal" opportunities for the Beechwood Reinsurance Companies. A true and correct copy of this June 12, 2013 email correspondence between Taylor and Nordlicht is attached hereto as **Exhibit 41**.

367. Also on June 12, 2013, Taylor sent Levy a general management and strategy document to assist Levy in drafting an unspecified "investment document." *See id.*

368. On June 16, 2013, Taylor emailed Levy a PowerPoint Presentation that he prepared entitled "Beechwood Re Investment Strategy & Guidelines Discussion Document" (the "**Beechwood Re Presentation**"). A true and correct copy of the June 16, 2013 cover email from Taylor to Levy, together with the attached Beechwood Re Presentation, is attached hereto as **Exhibit 42**.

369. The Beechwood Re Presentation identifies Levy as a key member of the management team, and touts his 8 years of experience with Platinum Management as a strategy for Beechwood's future success. *See id.* at 12. The presentation did not, however, indicate that Levy would continue to work at Platinum Management while working at Beechwood.

370. Platinum Management engaged the law firm of Bryan Cave LLP ("**Bryan Cave**") as outside counsel to assist in the creation of the Beechwood Entities. True and correct copies of emails dated June 20, 2013, between Andrew E. Auerbach of Bryan Cave, Levy and David Ottensoser, discussing the opening of a new matter for creation of "Beechwood Re Investment LLC," are attached hereto as **Exhibit 43**. A true and correct copy of the Bryan Cave engagement letter, directed to "David Levy at Beechwood Re, c/o Platinum Partners," is attached hereto as **Exhibit 44**.

371. By July 3, 2013, Bryan Cave prepared the initial corporate documents, including an LLC agreement for Beechwood Reinvestment LLC and subscription documents for

investment in the membership interests in that entity.

372. These documents were sent to the Platinum Defendants and used by them to grant Nordlicht, Bodner, Huberfeld and Levy majority ownership and control over Beechwood. A true and correct copy of an email from Laurel A. Durham of Bryan Cave to Levy and Ottensoser, attaching a draft of the Beechwood Reinvestment LLC Operating Agreement and subscription documents is attached hereto as **Exhibit 45**.

I. Structure and Ownership of Beechwood

373. As a result of the foregoing actions by the Platinum Defendants acting in concert with the Beechwood Defendants, by February 26, 2014, the Beechwood Reinsurance Companies were established and had received significant funds for investment from insurance investors, including SHIP.

374. The common stock of Beechwood Cayman was held by Beechwood Holdings.

375. Beechwood Holdings' equity, and the share capital of Beechwood Bermuda, was in turn owned by Feuer, Taylor, Levy, Nordlicht, Bodner and Huberfeld.

376. Nordlicht, Bodner and Huberfeld together owned nearly **70%** of the common stock in Beechwood Holdings and Beechwood Bermuda, and held their shares through Beechwood Trusts No. 1-19, in which each of their children were the beneficiaries.

377. Levy held his common stock in Beechwood Holdings and Beechwood Bermuda as the beneficiary of Beechwood Trust No. 20.

378. The Platinum Defendants and Beechwood Defendants also created BAM to manage and invest the assets obtained through reinsurance agreements with the Beechwood Reinsurance Companies.

379. Nordlicht, Bodner, Huberfeld and Levy owned a controlling interest in BAM.

380. To attract reinsurance business and also satisfy the requirements of regulators, Beechwood required a source of capital.

381. In the materials used to market the Beechwood Reinsurance Companies, the Beechwood Defendants indicated that they were capitalized with cash provided by Feuer, Taylor, Levy and certain investors.

382. For example, Levy, Feuer and Taylor created and showed potential clients an "Unaudited Balance Sheet September 1, 2013," which stated that the Beechwood Reinsurance Companies held assets totaling $114,801,585, including over $37 million in shares issued by a publicly traded company and over $10 million in "cash and cash equivalents," but no liabilities. A true and correct copy of the September 1, 2013 Balance Sheet is attached hereto as **Exhibit 46**.

383. Nordlicht, Huberfeld, Bodner, Levy, Feuer and Taylor caused the creation of another Delaware limited liability company, Beechwood Investments.

384. The managing member of Beechwood Investments was N Management LLC, an entity controlled by Nordlicht.

385. The other nine members of Beechwood Investments were denominated as Beechwood Re Investments, LLC Series A through Beechwood Re Investments, LLC Series I, with each of these "series" corresponding to the beneficial interests held by Nordlicht, Bodner, Huberfeld, Levy and their families.

386. From the time they were formed and at all relevant times thereafter, Feuer was Chief Executive Officer and Taylor was President of the Beechwood Reinsurance Companies.

387. Levy served as BAM's Chief Financial Officer and Chief Investment Officer until the end of 2014, when he was replaced by Saks, another Platinum Management executive.

388. Narain became a senior executive of BAM no later than January 2016. On information and belief, Narain held ownership interests and/or control in certain of the Beechwood Entities.

389. At all relevant times, the management teams of the Beechwood Entities served and worked at the sole discretion of Beechwood's ultimate beneficial owners – Nordlicht, Bodner, Huberfeld and Levy -- and functioned as the alter ego of Platinum Management to PPVA's detriment.

390. The management team of the Beechwood Entities largely was comprised of personnel employed by or otherwise connected to Platinum Management.

391. For example, the Beechwood team included, from time to time, the following persons: (i) Levy, as "Chief Investment Officer"; (ii) Will Slota, as "Chief Operations Officer"; (iii) Paul Poteat, as "Chief Technology Officer"; (iv) David Ottensoser, as "General Counsel"; and (v) Daniel Small, as the "Senior Secured Collateralized Loans PM."

392. Although each of the foregoing persons had titles at Beechwood, they also were full-time officers or employees of Platinum Management.

393. During the following two years, additional Platinum Management employees also worked at Beechwood or otherwise directed the activities of the Beechwood Entities.

394. Stewart Kim, a former Platinum Management employee, was hired by Feuer and Taylor as the Beechwood Reinsurance Companies' Chief Risk Officer.

395. Beren, Huberfeld's son-in-law, was hired by Feuer and Taylor in January 2016 to be a portfolio manager at Beechwood after serving in a similar capacity at Platinum Management from 2011 through 2015.

396. After Levy left Beechwood to return to Platinum Management full time, Feuer and Taylor hired Saks to replace Levy as CIO and president of BAM

397. Manela and Eli Rakower, both employees of Platinum Management, provided extensive and regular consulting services to the Beechwood Entities while also employed by Platinum Management.

398. BAM and the other Beechwood Entities operated out of Platinum Management's office space until at least the end of February 2014.

399. Even after separate office space was set up, Nordlicht maintained an office at Beechwood through at least 2014, and Huberfeld took over Nordlicht's office at Beechwood when Nordlicht moved out.

J. Beechwood and the First Scheme

400. Immediately after the Beechwood Entities gained access to the first reinsurance trust assets, the Platinum Defendants and the individual Beechwood Defendants caused PPVA to enter into numerous non-commercial transactions with the Beechwood Entities and, in some cases, to co-invest with the Beechwood Entities in third-party companies.

401. The prices at which assets/loans were bought and sold were used to support the Platinum Defendants' valuations of the relevant equity, debt or investment.

402. These were not real market transactions in which prices are established as a result of arm's-length negotiations.

403. To the contrary, the transactions between and among the Beechwood Entities and their clients, on the one hand, and PPVA and its subsidiaries/affiliates on the other, were insider transactions, orchestrated by the Platinum Defendants and the Beechwood Defendants, including the Platinum Management executives that owned the Beechwood Entities, which transactions harmed PPVA.

404. The prices and the terms of these transactions were set without regard to the actual value of the underlying asset or the likelihood that principal or interest on a loan ever would be repaid, but rather to further the goal to enrich the Platinum Defendants and Beechwood by increasing the fees payable to Platinum Management and BAM (the "**First Scheme Transactions**")

405. In some cases the First Scheme Transactions were used to justify ever-increasing valuations of the underlying assets as reported by Platinum Management.

406. In other cases, the First Scheme Transactions were used to mask the performance failures at the underlying operating companies.

407. In all cases, the First Scheme Transactions were used as a basis to pay the Platinum Defendants unearned partnership shares and/or fees.

408. Platinum Defendants used First Scheme Transactions in which significant loans were extended/purchased or investments made by a "third party," *i.e.*, the Beechwood Entities, as evidence of the validity of the Platinum Defendants' "estimate" as to the true enterprise value of the underlying company.

409. These were insider transactions, however. Also, in most cases, any investment or loan made by the Beechwood Entities was backed by a guarantee from or a put right back to PPVA, and thus was not a valid basis upon which to assess the merits of the underlying business.

410. In other cases, PPVA's prior rights in collateral were made subordinate to the rights of the Beechwood Entities.

411. The Platinum and Beechwood Defendants damaged PPVA because they favored the rights of the Beechwood Entities – which were owned by Nordlicht, Huberfeld, Levy, Bodner, Feuer and Taylor – over those of PPVA, by causing PPVA to grant guarantees and put rights in

favor of the Beechwood Entities, and to subordinate its rights in collateral in favor of the Beechwood Entities.

412. These inflated valuations enabled the Platinum Defendants to report to PPVA a steady rise in the NAV of the assets they managed, which in turn enabled the Platinum Defendants to pay themselves excessive partnership shares, investment management and performance fees, to the detriment of PPVA.

1. **Golden Gate Oil**

413. An example of a First Scheme Transaction used to artificially inflate the reported value of PPVA's investments is the sale of Precious Capital's interest in the Golden Gate Oil Loan to the Beechwood Entities.

414. Given Golden Gate Oil's ongoing operational issues, steep losses and the serious questions concerning the true value of its business, it would be difficult to find an arm's length lender willing to purchase its debt, and certainly not for anything close to par.

415. On February 3, 2014, Nordlicht sent an email to Platinum Management executives complaining about Golden Gate Oil's lack of performance and increased need for financing. A true and correct copy of Nordlicht's February 3, 2014 email is attached hereto as **Exhibit 47.**

416. On February 26, 2014, the Platinum Defendants and Beechwood Defendants caused BAM I, acting as agent for certain Beechwood reinsurance trusts, to purchase the Golden Gate Oil Loan from Precious Capital.

417. As of February 26, 2014, the total amount of principal and interest outstanding on the Golden Gate Oil Loan was in excess of $28 million.

418. The Platinum Defendants and Beechwood Defendants caused BAM Administrative, on behalf of its clients, to buy the Golden Gate Oil Loan at par. A copy of the February 26, 2014 Note Purchase Agreement by and among Precious Capital and BAM

Administrative (the "**GGO Note Purchase Agreement**") is attached hereto as **Exhibit 48.**

419. This transaction provided the Platinum Defendants with a basis upon which to justify their valuation of that investment as reported to PPVA.

420. However, the GGO Note Purchase Agreement contained a hidden failsafe for the benefit of Beechwood.

421. The GGO Note Purchase Agreement specifically provided that BAM I could put the Golden Gate Oil Loan it had purchased to PPVA and that PPVA would guarantee payment of that debt in full (the "**GGO Put Option and Guaranty**"). *See* GGO Note Purchase Agreement at ¶ 8.

422. The Platinum Defendants and Beechwood Defendants used BAM I's purchase of the Golden Gate Oil Loan as a way to justify their then-current valuation of PPVA's investment in Golden Gate Oil, which had inexplicably risen from $37 million to $173 million during 2013, and to justify their management fees, but nevertheless left PPVA liable to pay the Beechwood Entities in the event that the underlying operating company failed to repay the Golden Gate Loan, which all parties knew would likely occur.

423. The GGO Put Option and Guaranty protected Beechwood's investment in Golden Gate Oil at the expense of PPVA.

2. PEDEVCO

424. During the following months, the Platinum Defendants and Beechwood Defendants caused PPVA and the Beechwood Entities to engage in a series of additional transactions whereby PPVA was required to subordinate, willfully and improperly, its interests to those of Beechwood.

425. By such transactions, the Platinum Defendants breached their fiduciary duties to PPVA, and such breaches were aided and abetted by the Beechwood Defendants.

426. Although the Platinum Defendants directed PPVA and its subsidiaries to enter into certain multi-party agreements with certain Beechwood Entities as co-lenders, the Platinum Defendants did not ensure that the interests of PPVA were protected.

427. Instead, the Platinum Defendants, with the assistance of the Beechwood Defendants, acted to protect the interests of the Beechwood Entities at the expense and to the detriment of the interests of PPVA.

428. For example, on March 7, 2014, Platinum Defendants, and Beechwood Defendants caused a subsidiary of PPVA – RJ Credit LLC ("**RJ Credit**") – as well as certain Beechwood Entities to purchase certain senior secured notes (the "**PEDEVCO Notes**") issued by PEDEVCO Corp. ("**PEDEVCO**"), a publicly traded oil and gas company based in Texas. A true and correct copy of the Note Purchase Agreement by which RJ Credit obtained its interest in PEDEVCO is attached hereto as **Exhibit 49**.

429. Under the terms of the PEDEVCO Notes, RJ Credit was the only lender obligated to make continuing loans to PEDEVCO, such that the Platinum Defendants and Beechwood Defendants favored the interests of the Beechwood Entities and its clients over PPVA with this transaction.

430. The PEDEVCO Notes held by PPVA's subsidiary were also subordinated in priority to those held by the Beechwood Entities and its clients such that no interest could be paid on the PEDEVCO Notes held by RJ Credit unless and until all interest due to Beechwood's clients was paid in full.

431. In addition, no principal could be paid on the PEDEVCO Notes held by RJ Credit until all principal on the PEDEVCO Notes held by the Beechwood investors was paid in full.

432. In May 2016, the PEDEVCO Notes were restructured due to the falling price of oil and other operational issues that had caused a significant revenue shortfall at the company, as a result of which PEDEVCO was unable to pay interest on the notes and its other liabilities.

433. Beechwood Defendant Dhruv Narain caused certain affiliates of the Beechwood Entities to make a further investment in PEDEVCO. The monies invested by these affiliates of the Beechwood Entities in May 2016 were made senior in priority to the monies invested by certain Beechwood Entities in March 2014, however, further subordinating the PEDEVCO Notes held by RJ Credit.

434. Despite the fact that they were aware that the PEDEVCO Notes held by RJ Credit were now subordinated to two layers of financing and that, by spring 2016, PEDEVCO was unable to pay interest on its secured debt and that PEDEVCO's ability to pay the note and other liabilities was in significant doubt, the Platinum Defendants nevertheless claimed that the net asset value of PPVA indirect interests in PEDEVCO still were worth approximately $28 million.

435. The Beechwood Defendants had direct knowledge of this misrepresented valuation and participated in misleading PPVA as to the value of this asset.

3. <u>Implant Sciences</u>

436. Also in March 2014, the Platinum Defendants and Beechwood Defendants caused BAM Administrative, on behalf of its clients, to refinance $20 million of the revolving loan issued by PPVA's subsidiary, DMRJ Group, LLC ("**DMRJ**"), to Implant Sciences Corporation ("**IMSC**").

437. The revolving loan and certain existing term loans also held by DMRJ were secured by liens on and security interests in all of the assets of IMSC and its affiliates.

438. The Platinum Defendants could have arranged for IMSC to issue a new term note to Beechwood that would be *pari passu* with the existing IMSC debt held by DMRJ, as had been done previously when IMSC revolver debt was refinanced.

439. Instead the Platinum Defendants and Beechwood Defendants caused DMRJ to subordinate all of its liens on IMSC's assets, including the lien securing DMRJ's revolving loan to IMSC – even though that lien secured future loans to that company – to the liens securing repayment of BAM Administrative' s term loan. The intercreditor agreement between DMRJ and BAM Administrative also ceded to BAM I significant rights in the event of an IMSC bankruptcy, even though DMRJ held much larger loans to that company. A true and correct copy of the March 2014 Intercreditor Agreement by and between BAM Administrative and DMRJ is attached hereto as **Exhibit 50**.

K. Black Elk Scheme

440. The Platinum Defendants also conspired with the Beechwood Defendants, as well as the BEOF Funds and the Preferred Investors of the BEOF Funds, to help the Platinum Defendants and the Preferred Investors of the BEOF Funds cash out their investment in a rapidly deteriorating Black Elk ahead of the interests of PPVA. The Platinum Defendants returned the favor by causing PPVA to cash out the Beechwood Entities, leaving PPVA holding the bag.

441. As noted above, Black Elk was an oil and gas company headquartered in Houston, Texas. Most of its producing assets were located offshore in the Gulf of Mexico.

442. In 2009, the Platinum Defendants caused PPVA to acquire ownership of a majority of Black Elk's common equity in connection with a loan made to the company. The original loan was repaid in December 2010, with a portion of the proceeds realized by Black Elk through the private placement of $150 million in 13.75% Senior Secured Notes.

443. In August 2011, Black Elk completed an exchange offer by which the original Black Elk 13.75% Senior Secured Notes were exchanged for new notes with substantially the same terms, except that the new notes were publicly listed and did not contain trading restrictions (the "**13.75% Senior Secured Notes**").

444. PPVA and/or its subsidiaries held a significant portion of the 13.75% Senior Secured Notes, while the remainder were publicly held.

445. The indenture governing the 13.75% Senior Secured Notes (the "**Indenture**") did not permit Black Elk to use the proceeds of an asset sale to make a dividend to or otherwise redeem its preferred equity. A true and correct copy of the Indenture is attached hereto as **Exhibit 51**.

446. The Black Elk Explosion occurred in November 2012.

447. The Platinum Defendants represented that, as of the end of 2012, PPVA's investment in Black Elk's common and preferred equity was worth between $208 to 286 million. *See* Exhibit 26.

448. PPVA's investment in Black Elk constituted approximately 35% of PPVA's total reported net asset value at the end of 2012 and was by far the largest position held by PPVA.

449. The Black Elk Explosion was followed by a series of investigations and litigation and a significant deterioration in Black Elk's financial condition and liquidity that worsened throughout 2013.

450. During the first quarter of 2013, the Platinum Defendants caused PPVA, via its subsidiary PPVA Black Elk (Equity) LLC, to buy $10 million of Series E preferred equity units and additional class B equity units, and to exchange class D preferred units that PPVA already held for more Series E preferred equity from Black Elk. The agreements between Black Elk (Equity) LLC and Black Elk were signed by David Levy.

451. In addition, the Platinum Defendants set up the BEOF Funds. The BEOF Funds were not PPVA subsidiaries.

452. Rather, the BEOF Funds were a standalone mechanism by which Platinum Management personnel, their family and friends, and certain preferred investors were offered the opportunity to invest in Black Elk "outside of the regular funds." *See, e.g.,* February 1, 2013 Email from Murray Huberfeld to Fabrice Harari of Twosons describing opportunity to invest in BEOF Funds, a true and correct copy of which is attached as **Exhibit 52**.

453. The key persons managing the BEOF Funds included Mark Nordlicht, Uri Landesman, Naftali Manela, David Levy and Daniel Small. In addition, Nordlicht, Fuchs, Huberfeld, Landesman and Bodner were heavily involved in marketing the investment to potential investors and were aware of and involved in the planning of all aspects of the transactions between and among the BEOF Funds and PPVA.

454. Twosons was one of the "important client[s] and good friend[s]" to which Murray Huberfeld pitched an investment in Black Elk via the BEOF Funds during the first quarter of 2013. A true and correct copy of a February 7, 2013 email from Huberfeld to Fabrice Harari, copying David Levy, is attached hereto as **Exhibit 53.** Others included Jules and Barbara Nordlicht, Mark Nordlicht's parents, and the Huberfeld Family Foundation, an investment vehicle related to Murray Huberfeld that regularly invested in companies owned or managed by the Platinum Defendants or their friends and family.

455. Collectively, the Preferred Investors of the BEOF Funds purchased an aggregate of $40 million of the Series E preferred equity pursuant to contribution agreements executed between Black Elk and BEOF I during the first quarter of 2013.

456. Daniel Small and David Levy each signed one or more contribution agreements between BEOF I and Black Elk on behalf of BEOF I.

457. The first round of BEOF Fund investment in Black Elk occurred during the first quarter of 2013, before the full extent of Black Elk's financial difficulties arising out of the Black Elk Explosion was fully known.

458. Nevertheless, the onerous terms of the series E preferred clearly indicate that Black Elk was having difficulty obtaining financing even as early as the beginning of 2013.

459. Pursuant to the Third Amendment to the Second Amended and Restated Operating Agreement of Black Elk, which is dated January 25, 2013 and which set the terms of the series E preferred equity, Black Elk was obligated to pay 20% interest per annum on that security through March 24, 2014, with such interest to be capitalized each quarter and added to the balance to the extent not distributed, plus additional class B shares. If the total principal and interest due with respect to the series E preferred equity was not repaid by March 24, 2014, interest would increase to *36% per annum*.

460. During 2013, Black Elk accrued significant unsecured liabilities in addition to its secured obligations, because it was not paying its trade creditors on a timely basis. As a result, Black Elk may even have been insolvent by the end of 2013.

461. The facts concerning Black Elk's deteriorating financial condition, were reported clearly and in detail by Black Elk in its public filings.

462. In addition, during 2013, the rating agencies downgraded Black Elk, first in June and then in September 2013. On June 7, 2013, Moody's downgraded Black Elk because of "the significant deterioration in [Black Elk's] liquidity position since the third quarter of 2012." On September 17, 2013, Reuters published an article titled "S&P cuts Black Elk Energy Offshore

rating to 'CCC+'," reporting a downgrade in both Black Elk's credit rating and Note rating. That article stated: "The outlook is negative" and explained its rationale that "[t]he rating on Black Elk reflects our view of its 'vulnerable' business risk and 'highly-leveraged' financial risk, incorporating the company's small reserve and production base, high operating costs, and acquisitive growth strategy."

463. Black Elk's second quarter 2013 10-Q, issued on August 14, 2013, discussed at length the legal effects of the Black Elk explosion and again showed that total liabilities exceeded total assets, accounts payable and accrued expenses growing to $160.1 million, a members deficit of $186.0 million, and acknowledged "restricted credit availability." Black Elk also reported that it was evaluating other credit sources, including Platinum.

464. Black Elk reported in its public filings that, as of December 31, 2013, entities affiliated with Platinum Management beneficially owned approximately 85% of its outstanding voting membership interests and approximately 66% of total outstanding membership interests. A true and correct copy of relevant pages from Black Elk's 10-K for FY 2013 is attached hereto as **Exhibit 54**.

465. As a result, Black Elk stated that "for as long as [the Platinum entities] hold a membership interest in us, Platinum has the ability to remove and appoint key personnel, including all of our managers, and to determine and control our company and management policies, our financing arrangements, the payment of dividends or other distributions, and the outcome of certain company transactions or other matters submitted to our members for approval, including potential mergers or acquisitions, asset sales and other significant corporate transactions. As a controlling member, Platinum could make decisions that may conflict with noteholders' interests." *Id.*

466. The Platinum Defendants aggressively exercised this power, through Nordlicht, as well as through Levy and Small who were the portfolio managers for Black Elk. However, the other individual Platinum Defendants, including Bodner, Huberfeld, Landesman, Saks, Manela, SanFilippo, Ottensoser, Beren and Fuchs were aware of and participated in the actions and transactions with respect to Black Elk and the Black Elk Scheme as set forth below.

467. Nordlicht, Levy and Small exercised this power by, *inter alia*, appointing a majority of Black Elk's Board of Managers, appointing Jeffrey Shulse ("**Shulse**") as CFO of Black Elk, repeatedly forcing the Black Elk CEO to rescind his firing of Shulse as CFO and otherwise usurping the CEO's authority. True and correct copies of a collection of these communications are attached hereto as **Exhibit 55.**

468. In early 2014, at the direction of the Platinum Defendants, Black Elk entered into negotiations to sell a significant portion of its prime assets (the "**Renaissance Sale**") to Renaissance Offshore, LLC ("**Renaissance**").

469. The Indenture required that unless the proceeds of such a sale were to be used to purchase replacement assets, Black Elk was required to use the sale proceeds to repay the holders of the 13.75% Senior Secured Notes, a significant portion of which were held by PPVA or its subsidiaries.

470. In addition to the 13.75% Senior Secured Notes that were held by PPVA and its affiliates, a significant number of such Notes were then held by public bondholders.

471. By 2014, Black Elk had tens of millions of unsecured debt in addition to the amounts it owed with respect to the 13.75% Senior Secured Notes.

472. If the proceeds of the Renaissance Sale were to be distributed to the bondholders, it was unlikely that there would be any recovery for holders of Black Elk's preferred and equity

interests, a substantial portion of which were held by the Preferred Investors of the BEOF Funds such as Twosons, Jules and Barbara Nordlicht, the Huberfeld Family Foundation and other friends and family of the Platinum Defendants.

473. Certain of the investors in the BEOF Funds raised concerns as to the status of their investment by the beginning of 2014.

474. As a result, Platinum Management's statements concerning the value of PPVA's investment in Black Elk's equity would be exposed as a lie, and the Preferred Investors of the BEOF Funds would lose their investment.

475. The Platinum Defendants and Beechwood Defendants developed the Black Elk Scheme to divert the proceeds from the Renaissance Sale to redeem the series E preferred shares in Black Elk for the benefit of the Preferred Investors of the BEOF Funds and to hide Platinum Management's false valuations of the Black Elk equity.

476. An amendment to the Indenture governing the 13.75% Senior Secured Notes was needed to allow Black Elk to use the proceeds of the Renaissance Sale to redeem its series E preferred shares and accomplish their goal.

477. The Indenture required a majority vote of the holders of the 13.75% Senior Secured Notes to amend the Indenture.

478. While Platinum Management and affiliates controlled a significant portion of the 13.75% Senior Secured Notes by that time, they could not vote in favor of an amendment to the Indenture, because the consent solicitation (the "**Consent Solicitation**") specifically provided that "Notes owned by [Black Elk] or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with [Black Elk] shall be disregarded for purposes of determining the majority."

479. Therefore, the Platinum Defendants, led by Nordlicht, Levy and Small, needed to obtain the necessary consents in a manner that deceived independent noteholders.

480. To that end, Nordlicht, Landesman, Small, Levy and the other managers of the BEOF Funds, working with Huberfeld and Platinum Defendants, caused PPVA to transfer a portion of the 13.75% Senior Secured Notes it held to the BEOF Funds, partly in exchange for series E preferred equity held by the BEOF Funds.

481. The debt for equity swaps were made pursuant to a March 2014 offering by the BEOF Funds, by which investors were offered the opportunity to roll over their existing investment in the BEOF Funds and/or invest additional capital, which purportedly would be used to purchase 13.75% Senior Secured Notes from PPVA or its affiliates, the open market or from Black Elk in the event it issued additional Notes (none were issued).

482. The Preferred Investors of the BEOF Funds each agreed to participate in the March 2014 offering, either by rolling over their existing investment in the BEOF Funds (and thus in Black Elk) and/or by investing additional capital. For example, Twosons invested $10 million in connection with the March 2014 offering.

483. Given Black Elk's precarious financial condition, the Preferred Investors of the BEOF Funds clearly were aware of and agreed to participate in the March 2014 offering in order to aid Nordlicht, Levy, Small, Landesman, Manela and the other Platinum Defendants and the Beechwood Defendants in their scheme to ensure that those Preferred Investors would not lose their investment in Black Elk, with actual knowledge that Beechwood was affiliated with the Platinum Defendants.

484. The true purpose of the swaps was to create the appearance that independent entities, *i.e.*, the BEOF Funds, were the owners of the 13.75% Senior Secured Notes,

notwithstanding that the same people, including Nordlicht, Levy, Small, Landesman, Manela, Huberfeld, Bodner and SanFilippo, were managing both PPVA and the BEOF Funds.

485. Platinum Management thereafter caused PPVA to sell approximately $24.5 million worth of the 13.75% Senior Secured Notes to Beechwood Entities managed by BAM at prices solely designated by Nordlicht.

486. Levy and the other Beechwood Defendants also caused certain Beechwood Entities to purchase 13.75% Senior Secured Notes on the "open market," and through allegedly independent noteholders, including but not limited to friends and family of Platinum executives.

487. Numerous emails reflect the involvement of Nordlicht, Levy, Small, and other Platinum Defendants and Beechwood Defendants in this scheme. For example, in a May 13, 2014 email, Nordlicht instructed that "Beechwood is buying 8 million black elk from PPVA. What is the best way to cross? Can we do it today please."

488. Similarly, on June 23, 2014, Nordlicht emailed: "I want to move/sell 10 million of black elk bonds to bbil the nomura account. Please take care of it."

489. After confirming that "BBIL" (a Beechwood reinsurance trust) was buying 13.75% Senior Secured Notes from PPVA, Nordlicht emailed instructions on July 1, 2014, to sell $7 million in 13.75% Senior Secured Notes from PPVA to a Beechwood reinsurance trust. True and correct copies of these emails are attached hereto as **Exhibit 56.**

490. Levy's position as CIO for BAM (along with the fact that many other Platinum Management employees also worked at Beechwood) assured Nordlicht that the Beechwood Entities would support the scheme by purchasing the required amount of 13.75% Senior Secured Notes and supporting amendment of the Black Elk Note Indenture.

491. Similarly, the BEOF Funds supported the amendment to the Black Elk Notes Indenture.

492. By July 2014, Platinum Management, Beechwood and their affiliates managed or controlled approximately 66% of the 13.75% Senior Secured Notes.

493. The Beechwood Defendants worked with their own counsel and with counsel for Black Elk to draft the Consent Solicitation to be circulated to the holders of the 13.75% Senior Secured Notes, which contained two closely related parts.

494. The first part was a tender offer, which included an offer by Black Elk to buy back the 13.75% Senior Secured Notes at par.

495. The second part was a request that noteholders consent to certain amendments to the Indenture. The most notable proposed amendment provided that, after payment of any tendered 13.75% Senior Secured Notes, the proceeds of the Renaissance Sale could be used to redeem Black Elk preferred shares.

496. The final Consent Solicitation contained this false representation:

> As of the date hereof, there are $150 million aggregate principal amount of Notes issued and outstanding under the Indenture. Platinum Partners Value Arbitrage Fund, L.P. and its affiliates, which own approximately 85% of our outstanding voting membership interests, own approximately $18,321,000 principal amount of the outstanding Notes.
>
> Otherwise, neither we, nor any person directly or indirectly controlled by or under direct or indirect common control with us, nor, to our knowledge, any person directly or indirectly controlling us, hold any Notes. (Emphasis added.)

497. The $18 million figure was a vast understatement, as it failed to disclose the $72 million in 13.75% Senior Secured Notes held by other funds managed by the Platinum Defendants and the Beechwood Defendants.

498. The Platinum Defendants and Beechwood Defendants were aware that the Consent Solicitation contained this falsehood, that the vote was rigged, and the result would be a massive loss to PPVA to the benefit of the BEOF Funds and their equity interests.

499. Despite this, Small signed as a manager and directed the CEO to sign the Black Elk Board of Managers' authorization for Black Elk to conduct the Consent Solicitation, and to implement the solicitation should the requisite number of consents be obtained. A true and correct copy of this authorization is attached hereto as **Exhibit 57.**

500. The Platinum Defendants and Beechwood Defendants caused all of the 13.75% Senior Secured Notes held by the other funds managed by the individual Platinum Defendants (including the BEOF Funds) and the Beechwood Entities to vote in favor of the Consent Solicitation.

501. On August 21, 2014, Black Elk issued a Form 8-K announcing that it had received "the requisite consents" of noteholders to, among other things, apply the proceeds from the recently-concluded Renaissance Sale to retire the tendered notes and use the remaining proceeds to repurchase preferred equity issued by Black Elk. A true and correct copy of the August 21, 2014 Black Elk 8-K, exhibits excluded, is attached hereto as **Exhibit 58.**

502. On August 18, 2014, Small sent an email from his Platinum Management email address that purported to speak for the Black Elk Board of Managers directing Shulse to wire $70 million in partial payment of series E preferred shareholders. Levy also sent Shulse specific wire instructions for sending the designated parties most of the proceeds from the Renaissance Sale. After Nordlicht emailed Shulse to "send these wires out already," Shulse complied with the directions and caused the wire transfers to be sent out. A true and correct copy of the August 18, 2014 email is attached hereto as **Exhibit 59**.

503. Between August 18 and 21, 2014, Black Elk wired approximately $98 million in Renaissance Sale proceeds to holders of its series E preferred equity.

504. Included in this amount was approximately $47 million that was transferred to a Sterling Bank Account in the name of PPVA (the "**Sterling Bank Deposit**"). A true and correct copy of PPVA's Sterling Bank account statement for the month of August 2014 is attached hereto as **Exhibit 60**.

505. In the days following the Sterling Bank Deposit, the Platinum Defendants caused PPVA to transfer approximately $36 million of the Sterling Bank Deposit to bank accounts in the name of the BEOF Funds at North Fork Bank. A true and correct copy of wire records evidencing wire transfers from PPVA's Sterling Bank account to the BEOF Funds' bank account is attached hereto as **Exhibit 61**.

506. The BEOF Funds subsequently distributed the amounts they received to the Preferred Investors of the BEOF Funds. The following is a list detailing the date[s] and amount of the distributions to each of the Preferred Investors of the BEOF Funds, along with their investment positions at critical points:

	Investment		Final Capital Distribution	Date
	As of 31 December 13	As at 1 August 14		
Platinum Partners Black Elk Opporutnities Fund LLC				
Jules Nordlicht	$ 7,000,000	$ 7,000,000	$ 7,187,005	21-Aug-14
Jules and Barbara Nordlicht Foundation Inc	$ 500,000	$ 500,000	$ 513,357	21-Aug-14
Morris Fuchs	$ 3,000,000	$ 2,000,000	$ 2,053,430	21-Aug-14
Shmuel Fuchs Foundation Inc	$ 1,500,000	$ 1,000,000	$ 1,026,715	21-Aug-14
David Levy	$ 250,000	$ 250,000	$ 256,679	21-Aug-14
Dan Small	$ 100,000	$ 100,000	$ 102,672	21-Aug-14
Leon Meyers	$ 3,250,000	$ 3,250,000	$ 3,433,002	21-Aug-14
GRD Estates Ltd	$ 2,000,000	$ 1,898,000	$ 1,948,705	21-Aug-14
Olive Tree Holdings LLC	$ 500,000	$ 500,000	$ 513,357	21-Aug-14
Solomon and Gertrude Englander	$ 500,000	$ 500,000	$ 513,357	21-Aug-14
Platinum F.I Group LLC	$ 750,000	$ 750,000	$ 770,036	21-Aug-14
Aaron Parnes	$ 1,000,000	$ 1,000,000	$ 1,026,715	21-Aug-14
Sol Werdiger	$ 1,000,000	$ 2,000,000	$ 2,053,430	21-Aug-14
Rockwell Fulton Capital, L.P.	$ 550,000	$ 550,000	$ 564,693	21-Aug-14
Ditmas Park Capital L.P.	$ 500,000	$ 500,000	$ 616,029	21-Aug-14
FCBA Trust	$ 1,500,000	$ 1,000,000	$ 1,026,715	21-Aug-14
MN Consulting NY LLC	$ -	$ 250,000	$ 256,679	21-Aug-14
Meadows Capital LLC	$ 500,000	$ 500,000	$ 508,329	21-Aug-14
Abraham C. Grossman	$ 250,000	$ 500,000	$ 508,329	August-14
David and Ora Gichtin	$ 500,000	$ 500,000	$ 508,329	21-Aug-14
Platinum Partners Black Elk Opporutnities Fund Internaitonal LLC				
Huberfeld Family Foundation	$ 1,000,000	$ 1,000,000	$ 1,026,677	21-Aug-14
Twosons Corp.	$ -	$ 15,000,000	$ 15,400,152	21-Aug-14
Mind, Body and Soul Co. LTD	$ -	$ 1,000,000	$ 1,026,677	21-Aug-14
Huang Lai Tsu Hsia	$ -	$ 500,000	$ 513,338	21-Aug-14
Golda Wilk	$ 300,000	$ 4,002,145	$ 4,068,741	21-Aug-14
Marcos and Adela Katz	$ 4,000,000	$ 4,000,000	$ 4,066,560	21-Aug-14

507. An involuntary bankruptcy petition was filed against Black Elk in August 2015 in the United States Bankruptcy Court for the Southern District of Texas, which subsequently was converted to a voluntary chapter 11 case in September 2015 (the "**Black Elk Bankruptcy**").

508. At the time of the Black Elk Bankruptcy, PPVA held approximately $22 Million of 13.75% Senior Secured Notes, which remained unpaid.

509. During the Black Elk Bankruptcy, the creditors' committee commenced an investigation of the events surrounding the 13.75% Senior Secured Notes Consent Solicitation.

510. The investigation of the Black Elk Scheme, orchestrated by the Platinum Defendants and Beechwood Defendants, resulted in the commencement of litigation against PPVA by the Black Elk post-confirmation litigation trustee in which the trustee has asserted millions of dollars of claims against PPVA. Among other things, the trustee sought to avoid and recover all

transfers to PPVA and to equitably subordinate PPVA's claims in connection with its 13.75% Senior Secured Notes.

511. The Black Elk Scheme also forms one of the primary bases for the Criminal Action and the SEC Action, which had the effect of further devaluing PPVA's assets. A true and correct copy of the Black Elk Adversary Complaint against, among others, PPVA, is attached hereto as **Exhibit 62**.

512. The Platinum Defendants, under Nordlicht's direction, generated certain reports to PPVA regarding PPVA's performance, such as financial statements that reported fund performance based, in part, on the outcome of the Black Elk Scheme.

513. These reports omitted the material fact that the proceeds initially paid to PPVA on account of its Black Elk Class E preferred shares were based on the above-referenced conduct and for the benefit of the BEOF Funds and **not** PPVA.

514. If the Platinum and Beechwood Defendants had not engaged in the Black Elk Scheme, the proceeds of the Renaissance Sale likely would have been used to pay off the Black Elk 13.75% Senior Secured Notes in full, a portion of which would have gone to PPVA in respect of the Notes it held, including the Notes it sold to the Beechwood Entities.

515. Instead, as a result of the actions of the Platinum and Beechwood Defendants, the Black Elk Scheme enabled the Preferred Investors of the BEOF Funds to unjustly recoup their equity investment ahead of the higher priority bonds held by PPVA, render those bonds and re-acquired bonds worthless, and enabled the Platinum Defendants to pay themselves inflated distributions and/or fees, while leaving PPVA vulnerable to millions of dollars of claims by the Black Elk Litigation Trustee.

L. Creation of Montsant and Repurchase of Black Elk Bonds

516. In connection with the Black Elk Scheme, the Platinum Defendants and Beechwood Defendants caused the Beechwood Entities to purchase approximately $25 million worth of 13.75% Senior Secured Notes from PPVA and its subsidiaries.

517. In addition, Platinum Defendants and Beechwood Defendants caused the Beechwood Entities to purchase additional 13.75% Senior Secured Notes on the open market, such that the total amount of 13.75% Senior Secured Notes ultimately held by the Beechwood Entities was approximately $37 million.

518. Once the Platinum Defendants diverted the proceeds from the Renaissance Sale to themselves and their insider friends and family at the BEOF Funds, the 13.75% Senior Secured Notes held by the Beechwood Entities for purposes of the Black Elk Scheme were worth significantly less than they had been before the Renaissance Sale.

519. Moreover, the Platinum Defendants and Beechwood Defendants were aware that and acknowledged that any recovery Beechwood received with respect to the 13.75% Senior Secured Notes would be subject to a claim for equitable subordination once the Black Elk Scheme was inevitably disclosed in connection with Black Elk's bankruptcy.

520. Black Elk's quarterly report for the third quarter of 2014 indicates that, after the Black Elk bond solicitation described above was completed and the proceeds of the Renaissance Sale distributed to the holders of Black Elk series E preferred and the few non-consenting bondholders, Black Elk was left with $138 million of outstanding bonds, approximately $100 million of accounts payable as well as significant other liabilities, but limited assets or sources of revenue with which to pay such liabilities. A true and correct copy of the Black Elk 2014 Third Quarter 10-Q Report is attached hereto as **Exhibit 63.**

521. Due to these public reports and their own inside knowledge of Black Elk, the Platinum Defendants and Beechwood Defendants were well aware that Black Elk would be unable to meet its obligations under the 13.75% Senior Secured Notes.

522. Despite this, on or about January 31, 2015, the Platinum Defendants and Beechwood Defendants caused a wholly-owned subsidiary of PPVA, Montsant Partners LLC ("**Montsant**"), to purchase all of the 13.75% Senior Secured Notes held by the Beechwood Entities at 93.5% of par, and to pay interest on the Golden Gate Oil Loan.

523. To finance these transactions, Platinum Defendants and Beechwood Defendants caused Montsant to "borrow" $35.5 million at 12% interest from SHIP, a Beechwood client, via a loan administered by Beechwood (the "**2015 Montsant Loan**").

524. Although the 2015 Montsant Loan initially was made on an unsecured basis, the transaction documents required that collateral be posted to secure the loan post-closing. A true and correct copy of the promissory note evidencing the 2015 Montsant Loan ("**2015 Montsant Note**") is attached hereto as **Exhibit 64**.

525. David Steinberg, listed as an "authorized signatory" executed the transaction documents related to the 2015 Montsant Loan on behalf of Montsant. Steinberg also negotiated the terms of the 2015 Montsant Loan in his capacity as a fiduciary of this wholly owned PPVA subsidiary.

526. Thereafter, Platinum Management transferred equity securities and notes belonging to PPVA and DMRJ to an account pledged as collateral to secure amounts due under the 2015 Montsant Loan (the "**Montsant Collateral Account**"), under transactions and circumstances that are the subject of continuing investigation. A true and correct copy of the May 13, 2015 Pledge Agreement by and between Montsant and BAM Administrative, as agent (the "**Montsant Pledge**

Agreement" and along with the 2015 Montsant Loan, the "**Montsant Loan Documents**") is attached hereto as **Exhibit 65.**

527. SanFilippo and Levy, among other Platinum Defendants, were involved with and responsible for transferring the PPVA and DMRJ assets and securities to the Montsant Collateral Account.

528. As a result, the Platinum Defendants caused PPVA assets to be pledged to secure a debt to benefit Beechwood, the Platinum Defendants' new business venture, which debt was only incurred in order to repay Beechwood for its corrupt participation in the Black Elk Scheme for the BEOF Funds' benefit and to PPVA's detriment. Additional details related to this transaction are set forth below.

M. Northstar

529. In May 2014, Platinum Defendants and Beechwood Defendants entered into negotiations to invest in certain oil and gas properties located in the Gulf of Mexico and owned by a predecessor to Northstar Offshore Group, LLC ("**Northstar**").

530. Northstar's initial acquisition of assets in 2014 was financed in part by the issuance of $80 million of notes (the "**Northstar Notes**"), of which $50 million subsequently were purchased by Beechwood Entities. The initial Northstar acquisition was completed in Fall 2014. True and correct copies of the Northstar Notes issued to Beechwood Entities are attached hereto as **Exhibit 66.**

531. The Northstar Notes were supposed to be fully secured by all of the assets of Northstar.

532. The Platinum Defendants and Beechwood Defendants nevertheless took additional steps to protect the interests of Beechwood over those of PPVA by granting certain Beechwood Entities a lien on PPVA's interests in Agera Energy, one of PPVA's most significant assets, as

additional collateral to secure repayment of the Northstar Notes (the "**Agera Security Agreement**"). A true and correct copy of the Agera Security Agreement is attached hereto as **Exhibit 67.**

533. In or around Spring 2015, the Platinum Defendants caused Northstar to purchase certain remaining assets of Black Elk, with the consideration for such purchase being the assumption by Northstar of the obligation to pay approximately $65 million worth of Black Elk 13.75% Senior Secured Notes held by PPVA and funds affiliated with Platinum Management, which the Platinum Defendants subsequently caused to be converted to equity in the parent company of Northstar.[6]

534. The Platinum Defendants represented to investors that PPVA's equity interests in its oil and gas investments (including Northstar, Black Elk and Golden Gate Oil) were worth approximately $240 million as of the end of 2014.

535. By the first quarter of 2015, the Platinum Defendants claimed that PPVA's interests in the preferred equity of Northstar's parent separately were worth an additional $26-28 million. True and correct copies of the selected portions of PPVA's 4th Quarter 2014 and 1st Quarter 2015 Valuations are attached hereto as **Exhibit 68** and **Exhibit 69** respectively.

536. By June 2016, the Platinum Defendants valued PPVA's equity interests in Northstar as approximately $200 million, or 21.3% of PPVA's NAV. A true and correct copy of the June 30, 2016 Indicative NAV Report shared with PPVA's investors is attached hereto as **Exhibit 70**.

537. The Platinum Defendants consistently valued PPVA's approximately $8 million of unsecured loans to Northstar at par.

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[6] Even after this transaction, PPVA still held a portion of Black Elk 13.75% Senior Secured Notes.

538. By June 30, 2016, the Platinum Defendants and Beechwood Defendants had caused PPVA to engage in a series of transactions with the Beechwood Entities and PPCO that resulted in PPVA holding $22 million worth of the Northstar Notes, which it reported as being secured by a second priority interest in all of Northstar's assets and also valued at par.

539. Throughout the first six months of 2016, the equity, preferred equity and debt investment in Northstar was the largest portion of PPVA's reported net asset value. A true and correct copy of portions of PPVA 1st Quarter 2016 Valuation is attached hereto as **Exhibit 71**.

540. The Platinum Defendants' valuation of Northstar was inflated, false and omitted material information.

541. For example, the Platinum Defendants' claim that PPVA's interest in $22 million of Northstar Notes was secured by liens on all of Northstar's assets was materially false.

542. No mortgages or financing statements were filed on behalf of the holders of the Northstar Notes with respect to the properties acquired from Black Elk.

543. At all relevant times, Platinum Defendants controlled P Administrative Services LLC, the entity serving as trustee for the Northstar Notes, but failed to ensure that the necessary filings to perfect the security interests and liens of holders of the Northstar Notes were ever made.

544. By 2016, Northstar was experiencing significant challenges managing operations and expenses due to the reduction in revenue resulting from falling oil prices.

545. As a result, Northstar had accumulated millions of dollars in unpaid trade payables and accrued and unpaid interest on the Northstar Notes, with Platinum Management largely financing Northstar's day-to-day operations by allowing it to draw on unsecured credit lines from PPVA and PPCO.

546. Moreover, the Northstar transactions detailed above, which were engineered by the Platinum Defendants, were the subject of claims for breach of fiduciary duty, usurpation of a corporate opportunity and other allegations against PPVA and potential fraudulent conveyance claims against Northstar by the Black Elk Trustee. *See* Black Elk Adversary Complaint, Exhibit 62.

547. A Platinum Management employee served on the Northstar board of directors and thus the Platinum Defendants were well aware of Northstar's financial condition.

548. On August 12, 2016, certain of Northstar's creditors filed an involuntary chapter 7 bankruptcy petition against the company. Northstar subsequently moved to convert the case to a case under chapter 11 of the Bankruptcy Code, and an order for relief was entered on December 2, 2016.

549. Northstar's assets eventually were sold pursuant to a transaction effected under 11 U.S.C. § 363 for $13,250,000 in cash, a $19 million working capital facility in order to pay assumed liabilities, replacement of certain plugging & abandonment bonds and up to $150,000 to fund a post-confirmation litigation trust (the "**Northstar Sale**"). A true and correct copy of the Order of the United States Bankruptcy Court for the Southern District of Texas approving the Northstar Sale, exhibit excluded, is attached hereto as **Exhibit 72**.

550. Holders of the Northstar Notes and Northstar's preferred and common equity, including PPVA and its subsidiaries, received no recovery from the proceeds of the Northstar Sale.

N. The Second Scheme

551. Despite the actions of the Defendants set forth above, by mid-2015 PPVA still held assets worth approximately $300 million, a significant portion of which was comprised of PPVA's investment positions in IMSC and Agera Energy (the "**Remaining PPVA Assets**").

552. Beginning in late 2015, the Defendants conspired to commence the Second Scheme, engaging in an intentional scheme to transfer or encumber nearly all of the Remaining PPVA Assets to or for the benefit of the Platinum Defendants, the Beechwood Defendants, PPCO and select insiders of the Platinum Defendants, and to the detriment of PPVA.

553. Throughout the course of the Second Scheme, the Platinum Defendants deliberately granted the Beechwood Entities, PPCO and other insiders/friends/preferred investors liens on PPVA's investments at the subsidiary level, and the Platinum Defendants would consistently report PPVA's NAV without taking into account the encumbrances provided to these insider parties, thereby inflating the total amount of fees and other compensation due to them. *See* Exhibit 71.

554. The Second Scheme was executed successfully by the Defendants, such that by the time the Cayman Liquidation of PPVA had commenced, PPVA had hundreds of millions in liabilities and minimal assets.

555. Certain of the transactions comprising the Second Scheme ("**Second Scheme Transactions**") are set forth below.

1. <u>Use of Montsant to Hide Beechwood Encumbrance of PPVA Assets</u>

556. As noted above, the Platinum Defendants used Montsant to provide subsidiary level liens on certain of the Remaining PPVA Assets to or for the benefit of the Beechwood Defendants by way of the Montsant Collateral Account.

557. At the direction of the Platinum Defendants and Beechwood Defendants, Montsant was a party to a series of transactions whereby Beechwood was granted liens on certain of the Remaining PPVA Assets that held actual value.

558. Notably, Beechwood was not granted liens on PPVA's oil and gas investments, which the Platinum Defendants and Beechwood Defendants knew had little or no value.

559. Instead, interests in oil and gas companies such as Golden Gate Oil and PEDEVCO were used as illusory consideration to offload assets and security interests to Beechwood during the course of the Second Scheme.

560. As noted above, the Beechwood Entities held liens against PPVA's assets via the Montsant Collateral Account.

561. The Platinum Defendants transferred assets held by PPVA into the Montsant Collateral Account at will and generally with no consideration.

562. Although the assets within the Montsant Collateral Account were still included in calculations of PPVA's NAV as though they held value to PPVA, the assets were wholly encumbered, at the subsidiary level, for the benefit of Beechwood and its clients in connection with the First and Second Schemes.

563. The existence of these subsidiary level encumbrances were not incorporated in the PPVA NAV calculations by SanFilippo, Manela or the other Platinum Defendants.

564. The assets that the Platinum Defendants caused PPVA and its subsidiaries to transfer into the Montsant Collateral Account included equity securities in Navidea Biopharmaceuticals, Inc. ("**Navidea**") and equity securities and debt instruments issued by Vistagen Therapeutics, Inc. ("**Vistagen**").

565. The Navidea and Vistagen shares transferred into the Montsant Collateral Account were previously directly held by PPVA and/or another of its subsidiaries.

566. Similarly, on May 4, 2015, DMRJ and Montsant entered into an agreement (the "**Montsant Assignment Agreement**") by which DMRJ assigned to Montsant its rights, title, and interest in that certain December 2008 Term Note issued by IMSC with an original principal

amount of $5.6 million (the "**December 2008 Note**"). A true and correct copy of the Montsant Assignment Agreement is attached hereto as **Exhibit 73.**

567. The Platinum Defendants and Beechwood Defendants thereafter caused Montsant to deposit the December 2008 Note into the Montsant Collateral Account, as part of the collateral securing Montsant's obligations under the 2015 Montsant Loan.

2. Nordlicht Side Letter

568. In January 2016, the Platinum Defendants and Beechwood Defendants faced a crisis at Beechwood.

569. The Beechwood Entities were saddled with the approximately $37 million due and owing under the Golden Gate Oil Loan, with, as they were aware, no prospect for Golden Gate Oil to repay this debt. They also had purchased shares of Navidea stock from Montsant on or about October 25, 2015 at the then market price of $6,137.215.50, but by January the value of the stock had dropped significantly.

570. Until January 2016, the Platinum Defendants caused PPVA to pay the interest on the Golden Gate Oil loan to Beechwood. At that time, however, PPVA no longer was able to do so because it was facing margin calls of more than $1.5 million and had only $16,700.00 in available cash. A true and correct copy of PPVA's January 13, 2016 cash report is attached hereto as **Exhibit 74.**

571. The Beechwood Entities were facing questions from regulators due to the significant drop in the share price of the Navidea stock they had purchased from PPVA only a few months before.

572. To help his Beechwood interests, but to the detriment of PPVA, on or about January 13, 2016, Nordlicht apparently executed the Nordlicht Side Letter.

573. The Nordlicht Side Letter states that it is made on behalf of Nordlicht, PPVA, PPCO "and each of their affiliates" and provides:

> To the extent not otherwise in violation of applicable law, *upon the sale of the assets and/or equity (collectively, the "Sale") of Implant Sciences, Inc. and/or any of its subsidiaries (collectively, the "Company"), the proceeds of such Sale that inure, directly or indirectly, to the benefit of Platinum, shall immediately upon consummation of such Sale be applied and remitted to B Asset Manager, LP ("BAMLP"), in such amount necessary to purchase and/or repay in full all indebtedness owing by Golden Gate Oil Inc. to BAMLP and each of its investment advisory clients at such time (collectively, "BAM")*; provided, that, nothing herein shall modify the obligations of the Company herein to first repay all indebtedness owing by the Company to BAM with proceeds of a Sale ("Implant Repayment").

A true and correct copy of the Nordlicht Side Letter is attached hereto as **Exhibit 75.**

574. The Nordlicht Side Letter further states that Nordlicht agrees "to take or cause to be taken all additional actions deemed by BAM to be reasonably necessary in furtherance of the foregoing, as well as to create a perfected security interest in the obligations described above to the extent requested by BAM." *Id.*

575. The Nordlicht Side Letter is purportedly signed by Beechwood Defendant Mark Feuer as a witness.

576. Neither PPVA nor any of its subsidiaries received any consideration whatsoever for the Nordlicht Side Letter.

577. At the time of execution of the Nordlicht Side Letter, IMSC was being marketed for sale.

578. By executing the Nordlicht Side Letter, Nordlicht purported to grant the Beechwood Entities an interest in the proceeds of a separate investment held by another PPVA subsidiary, that otherwise would not have been available to them to pay off the Golden Gate Oil Loan, to the detriment of PPVA.

579. At the time the Nordlicht Side Letter was executed, approximately $37 million was due and owing under the Golden Gate Oil Loan.

580. The Nordlicht Side Letter benefits the Beechwood Entities, owned by Nordlicht, Huberfeld, Bodner, Levy, Feuer and Taylor, at the expense of PPVA.

581. The executed Nordlicht Side Letter was circulated among the executives and lawyers employed by Platinum Management, including Ottensoser and Manela. Despite this, the Nordlicht Side Letter was not considered when determining the value of the PPVA assets to which it ostensibly applied, thereby inflating the value of those assets.

582. The existence of the Nordlicht Side Letter also was not disclosed in the Nordlicht Affidavit or any of the supporting documents submitted in connection with the Cayman Liquidation.

583. BAM subsequently has asserted a claim that the Nordlicht Side Letter was a valid and binding encumbrance upon the proceeds of PPVA's subsidiary DMRJ's interest in IMSC, and has asserted a claim to recover up to the full amount of the Golden Gate Oil debt out of the proceeds that DMRJ received from IMSC pursuant to the terms of the Nordlicht Side Letter.

3. March 2016 "Restructuring" of PPVA/PPCO/Beechwood Transactions

584. A few weeks later, in March 2016, Platinum Defendants and Beechwood Defendants orchestrated a series of transactions in connection with a "restructuring" of all of the transactions previously entered into between and among PPVA, PPCO and the Beechwood Entities, whereby all the benefits flowed directly to certain Beechwood Entities and PPCO, and thus to the individual Platinum and Beechwood Defendants who owned and managed those entities and were entitled to charge them for partnership shares and fees, to the detriment of PPVA.

585. For example, on March 21, 2016, Montsant and BAM entered into a series of agreements (the "**2016 Montsant Transactions**" and collectively with the 2015 Montsant Loan

Documents, the "**Montsant Transactions**") by which the 2015 Montsant Loan was amended and restated, and Montsant purportedly borrowed an additional $6,137,215.50 from BAM client and Beechwood Entity BBIL ULICO 2014 to fund Montsant's purported re-purchase of certain Navidea shares.

586. The 2016 Montsant Transactions reversed the October 25, 2015 sale by which Montsant had sold equity securities in Navidea from the Montsant Collateral Account to certain Beechwood Entities for $6,137.215.50. The October 2015 sale was made for the then market price of $1.95 per share. Attached as **Exhibit 76** is the stock ticker price reflecting the October 26, 2015 share price for Navidea on the open market.

587. The actual closing price for Navidea stock as of March 21, 2016 was approximately $1 per share. True and correct copies of stock ticker reports evidencing the March 21, 2016 share price for Navidea are attached hereto as **Exhibit 77.**

588. Nevertheless, pursuant to the 2016 Montsant Transactions, Montsant re-purchased the Navidea shares from the Beechwood Entities at $1.95 per share.

589. Nothing in the original October 25, 2015 transaction documents granted the Beechwood Entities the right to put the Navidea stock back to PPVA at the October 2015 sale price.

590. Rather than purchase the Navidea stock at the market price, the Platinum Defendants and Beechwood Defendants conspired for Montsant to purchase the Navidea shares at **double the market price**, in order to boost the Beechwood Entities' secured claim against Montsant and PPVA and further enrich the Beechwood Entities at PPVA's expense.

591. The assets in the Montsant Collateral Account, including the December 2008 Note and the Navidea shares that were re-purchased by Montsant pursuant to the 2016 Montsant

Transactions, were pledged for the repayment of both the original amounts owing to SHIP under the 2015 Montsant Loan as well as the additional amounts purportedly borrowed from BBIL ULICO 2014 by Montsant in March 2016.

592. Also on March 21, 2016, Precious Capital, BAM Administrative, Golden Gate Oil and certain Beechwood Entities entered into the Sixth Omnibus Amendment to the Golden Gate Oil Loan (the "**Sixth Omnibus Amendment**"), by which notes evidencing the Golden Gate Oil Loan were reissued in the following amounts (the "**GGO Notes**"):

- Fifth Amended and Restated Senior Secured Promissory Note, dated March 21, 2016, in the initial principal amount of $11,249,414.40, originally issued to SHIP;
- Fifth Amended & Restated Senior Secured Promissory Note, dated March 21, 2016, in the initial principal amount of $551,147.03, originally issued to BRe BCLIC Sub;
- Fifth Amended and Restated Senior Secured Promissory Note, dated March 21, 2016, in the initial principal amount of $20,405,749.26, originally issued to BRe WNIC 2013 LTC Primary; and
- Fifth Amended and Restated Senior Secured Promissory Note, dated March 21, 2016, in the initial principal amount of $999,370.23, originally issued to BRe WNIC 2013 LTC Sub.

593. Also on or about March 21, 2016, Montsant, PPVA, Golden Gate Oil and BAM Administrative entered into the Master Guaranty, by which, inter alia, Montsant agreed to guaranty amounts owed to various Beechwood Entities and SHIP by Golden Gate Oil, to the extent of the assets contained in the Montsant Collateral Account. A true and correct copy of the Master Guaranty is attached hereto as **Exhibit 78.**

594. The Master Guaranty further purported to provide BAM Administrative, as agent for certain Beechwood Entities and SHIP, with a non-recourse guaranty from PPVA of amounts owed by Golden Gate Oil and amounts owed by Montsant.

595. The guaranty was limited to certain amounts to be received by PPVA from the anticipated future sale of IMSC. As stated in the Master Guaranty:

> Immediately following PPVA's receipt of any payments, proceeds, distributions and/or other amounts arising in any manner whatsoever from any right, title and/or interest, PPVA may have in and to Implant Sciences Corporation (the "Proceeds"), PPVA shall immediately following such receipt remit such Proceeds in immediately available funds as follows:
>
> (a) First, PPVA shall make or cause to be made a payment to BAM [BAM Administrative] in an amount equal to Twenty-Million Dollars ($20,000,000.00) to prepay the principal amount owed by GGO to the Investors, as such term defined in that certain Note Purchase Agreement, (as same may be amended, restated, modified and or supplemented from time to time), dated as of April 10, 2012, by and between GGO and BAM (as successor agent to Precious); and
>
> (b) Second, PPVA shall make or cause to be made a payment of any remaining Proceeds to pay in full all outstanding obligations and liabilities under that certain Note Purchase Agreement, dated as of March 19, 2014, by and between Implant Sciences Corporation, each of the investors party thereto, and the Agent [BAM Administrative].

Master Guaranty at ¶ 1.

596. The Master Guaranty was further secured by collateral assignments from PPVA to Beechwood Entities of: (i) amounts owed under certain promissory notes issued by China Horizon Investment Group ("**China Horizon**") to PPVA, in the original principal amount of $4,764,872; and (ii) carbon credits, emission reductions and related assets due and payable to PPVA under certain carbon credit portfolio agreements. True and correct copies of the Collateral Assignment and Turnover Agreement assigning PPVA's interests in the China Horizon promissory note to BAM Administrative are attached as **Exhibit 79** and **Exhibit 80**, respectively. A true and correct copy of the Collateral Assignment of carbon credits from PPVA to BAM Administrative is attached as **Exhibit 81**.

597. Also on March 21, 2016, the Montsant Pledge Agreement in favor of BAM was amended to provide that the Montsant Collateral Account would secure all of Montsant's obligations under the March 2016 Guaranty and the 2016 Montsant Transactions.

598. The Master Guaranty in no way benefitted PPVA.

599. Rather, the Master Guaranty benefited Beechwood by providing it with additional collateral to secure the non-performing Golden Gate Oil Loan, comprised of a significant portion of PPVA's remaining valuable assets.

600. In connection with the Master Guaranty, several of the transactions entered into during the prior two years among PPVA and its subsidiaries and Beechwood were effectively reversed for Beechwood's benefit and to PPVA's detriment via a $70 million "loan" to PPCO, by which certain Platinum positions were transferred from certain Beechwood reinsurance trusts to PPCO, which was thought to be solvent (unlike PPVA), and then, in a classic insider and undervalue transaction, valuable assets of PPVA, then worth in excess of $20-$80 Million, were transferred to PPCO without valuable consideration.

601. On March 22, 2016, various documents were executed among various Beechwood Entities and PPCO, by which PPCO became indebted to these Beechwood Entities in the original principal amount of $70,000,000 (the "**PPCO Indebtedness**").

602. Thereafter, the Platinum Defendants caused PPCO to transfer approximately $20 million in uncollectable Northstar debt to PPVA at par, in exchange for certain known "good and collectable" assets of PPVA, including PPVA's equity and debt interests in certain investments, such as Navidea, Urigen, and Airdye Solutions, LLC, among others.

603. The Platinum Defendants and PPCO were aware that the Northstar notes had no value, while the assets transferred to PPCO were believed to have significant value at the time they were transferred to PPCO. In fact, the Navidea note ultimately was paid at par.

604. The net effect of this March 2016 "restructuring" was to prop up Beechwood and PPCO to PPVA's substantial detriment, under circumstances where Beechwood and PPCO were

chosen as the "good funds" to continue onward, while PPVA was left heading towards liquidation with the Platinum Defendants' insiders largely paid out for their actual investments.

605. The transaction documents evidencing the March restructuring were signed by Mark Nordlicht on behalf of PPVA, Montsant and Golden Gate Oil. Notably, David Steinberg is listed as the notice party in the documents.

606. The terms of and specific steps by which the various transactions comprising the March 2016 restructuring were accomplished were developed, coordinated and accomplished by Nordlicht, Huberfeld, Bodner, Levy, Bernard Fuchs, Steinberg, SanFilippo and Ottensoser, working together with Narain, Taylor, and Feuer.

O. The Agera Transactions

607. As early as March 2016, the Platinum Defendants and Beechwood Defendants had conspired to transfer the rest of the Remaining PPVA Assets by way of a series of "insider" transactions in order to clear out the uncollectable debt obligations owed to Beechwood by companies such as Golden Gate Oil and PEDEVCO, leaving PPVA with little to nothing in exchange for the transactions.

608. The scheme was initiated by Defendant Katz, who, by email on March 13, 2016, suggested to Mark Nordlicht a "potential sale to an insider" as a "solution" in order to keep PPVA's interest in Agera with the Platinum Defendants' friends and family. Attached as **Exhibit 82** is a true and correct copy of the March 13, 2016 email from Katz to Nordlicht.

609. Katz is an advisor to Platinum Management and the grandson of Platinum investor Marcos Katz.

610. In March 2016, Nordlicht introduced Katz as an advisor to Platinum Management to oversee the final stages of the Second Scheme. A true and correct copy of Nordlicht's March

21, 2016 email introducing Katz to certain Platinum Management employees is attached hereto as **Exhibit 83.**

1. Agera Energy

611. Agera Energy is a Delaware limited liability company and a leading energy reseller to the consumer and business markets.

612. Agera Energy maintains a principal place of business in Briarcliff Manor, New York.

613. Agera Energy was formed through the combination of Agera Energy LLC, an entity formed at the direction of the Platinum Defendants, and the assets of Glacial Energy Holdings LLC, which were purchased pursuant to a June 17, 2014 sale order entered by the United States Bankruptcy Court for the District of Delaware pursuant to Section 363 of the Bankruptcy Code (the "**Glacial Energy Purchase**").

614. PPVA and PPCO owned a controlling interest in Agera Energy through a jointly-owned subsidiary, Principal Growth Strategies, LLC ("**PGS**"). Before June 8, 2016, PPVA held 55% of the membership interests in PGS, and PPCO held 45% of the PGS membership interests.

615. At all relevant times before the Agera Sale, PGS was the holder of a May 19, 2014 promissory note convertible into approximately 95% of the equity in Agera Energy (the "**Agera Note**"). A true and correct copy of the Second Amended and Restated Agera Note is attached hereto as **Exhibit 84.**

616. Shortly after the Glacial Energy Purchase, at the direction of Nordlicht, Kevin Cassidy was hired by Agera Energy as a senior executive.

617. Cassidy, who had served two prior stints in prison, was arrested a third time in 2007 for deliberately misstating the value of natural gas derivatives held by one of Nordlicht's previous funds, Optionable Inc., which had collapsed amid scandal in 2007.

618. Nordlicht or other persons employed by Platinum Management caused Cassidy to be hired as a senior executive by Agera Energy upon Cassidy's release from prison, despite the fact that he had no prior experience in the energy sector.

619. Despite Cassidy's multiple convictions, Nordlicht vouched for Cassidy's integrity when questioned by a reporter. A true and correct copy of a March 21, 2016 email from Nordlicht to a reporter for Thomson Reuters, attached as **Exhibit 85.**

620. Agera Energy is a wholly owned subsidiary of Agera Holdings, LLC, a Delaware limited liability company ("**Agera Holdings**").

621. Agera Holdings' sole business is to act as a holding company and control the business of its wholly owned subsidiaries. Those subsidiaries are Agera Energy, Utility Recovery LLC and Agera Solutions LLC.

622. Immediately prior to the Agera Sale, Agera Holdings was owned 95.01% by Michael Joseph Nordlicht and 4.99% by MF Energy Holdings, LLC ("**MF Holdings**"). Feuer held all of the membership interests in MF Holdings.

623. Michael Joseph Nordlicht is Nordlicht's nephew.

624. According to his LinkedIn profile, he graduated from Georgetown University Law Center in 2012 and then he worked a few months as a law clerk for the Public Defender's office in Baltimore, Maryland. He also was an associate attorney for about eight months at the Maryland Attorney General's office in the Department of Public Safety and Correctional Services.

625. In or about late 2013, Nordlicht installed his nephew as the general counsel of Agera Energy, despite the fact that he appears to have had no prior experience in private practice or in the energy sector.

626. Michael Nordlicht did not pay anything for the equity he held in Agera Holdings.

2. The Agera Energy Valuation

627. Based on its December 31, 2015 financial statements, Agera Energy achieved FYE 2015 revenues of $301.4 million and EBITDA of $20.2 million.

628. Agera Energy's value as of March 31, 2016 was estimated to be between $225,533,000 and $283,553,000. *See* PPVA 1st Quarter 2016 Valuation, Exhibit 71 at p. 128. This valuation report was issued on the same day as the Agera Sale.

629. In a July 15, 2016 investment memorandum sent to BAM, Narain stated that due to Agera Energy's profitable financial performance, the true valuation of Agera Energy was closer to the high end of available estimates. A true and correct copy of this investment memorandum from Narain to BAM is attached as **Exhibit 86.**

3. The Agera Sale Process

630. By March 27, 2016, Nordlicht, Bodner, Huberfeld, Levy, Bernard Fuchs and Katz began planning an insider sale of Agera to a "[B]eechwood led consortium." A true and correct copy of this email is attached hereto as **Exhibit 87**.

631. Between May 1, 2016 and June 9, 2016, the specific terms by which the Agera Sale was effected were put in place by Steinberg, Ottensoser, Taylor and Narain, all operating with the knowledge of and in conjunction with the Platinum Defendants, Katz, the Beechwood Defendants, SHIP, Cassidy and Michael Nordlicht. Steinberg and Michael Nordlicht, together with help from Cassidy, also worked together to create the schedules and back up for the deal documents.

632. Steinberg also worked directly with Cassidy and his counsel to create the mechanism by which 8% of the Agera purchase price was paid to an entity set up by Cassidy to avoid having taxes withheld from such payment.

633. Platinum Management portfolio managers typically were compensated with a bonus calculated as a percentage of the profits earned on the PPVA investments they managed.

Between 2014 and June 2016, Platinum Management had alleged in responses to SEC inquiries that Cassidy was not employed as a portfolio manager at Platinum Management. Cassidy also did not have a written contract with Platinum Management, PPVA or PGS that would entitle him to any payment in connection with the sale of the Agera Note.

634. During the period between 2014 and June 2016, Cassidy was paid a salary of $135,000 per year and Starfish was paid approximately $2.5 million by Agera in connection with Cassidy's work at Agera.

635. Steinberg, Ottensoser, Michael Nordlicht, Narain and Cassidy, worked together to prepare the documents by which the various parts of the Agera transaction were accomplished.

636. Michael Nordlicht and Kevin Cassidy actively participated in the negotiation and closing of the Agera Transactions, with actual knowledge of the deflated sale price and that Beechwood would be paid substantial fees from the closing.

637. The insider transaction was intended to be substantially below fair value and was the product of the insider relationship between Beechwood and Platinum Management. The transaction was executed, performed, overseen and then managed by Narain and Illumin.

638. The Platinum Defendants did not attempt to market the Agera Note and actively dissuaded potential buyers from inquiring into the purchase of the Agera Note.

639. For example, on May 11, 2016, in response to an inquiry by a non-investor potential purchaser, Nordlicht stated that PPVA's interest in Agera Energy was off the market. A true and correct copy of this May 11, 2016 email is attached hereto as **Exhibit 88.**

640. The Platinum Defendants also did not obtain a fairness opinion in connection with the Agera Sale.

641. IMSC, PPVA's other remaining investment of significant value, was being marketed for sale at the same time as the Platinum Defendants and Beechwood Defendants were "negotiating" the Agera Sale.

642. By contrast to their actions in connection with the sale of the Agera Note, the Platinum Defendants arranged for IMSC to hire an investment banker to openly market IMSC for sale and took all necessary due diligence actions customary for the legitimate sale of an operating company.

4. <u>The Agera Sale</u>

643. On June 9, 2016, the day after the arrest of Huberfeld, the Platinum Defendants, working in concert with the Beechwood Defendants and SHIP, caused PGS to transfer its interest in the Agera Note to AGH Parent LLC ("**AGH Parent**") – an entity not affiliated with PPVA, but at that time controlled directly by the Platinum Defendants and Beechwood Defendants, and for the benefit of SHIP (the "**Agera Sale**").

644. SHIP, with full knowledge of the insider nature of the Agera Sale and the detriment it caused to PPVA, contributed approximately $50 million for the closing of the Agera Sale to benefit and enrich itself, working in tandem with Beechwood to the detriment of PPVA, just weeks before SHIP would publicly distance themselves from Beechwood for fraud, and while litigation was anticipated.

645. On June 9, 2016, AGH Parent amended its Limited Liability Company Agreement (the "**AGH Parent Amended Operating Agreement**") and entered into a series of related transactions, resulting in AGH Parent admitting SHIP and certain Beechwood Entities as new

members of AGH Parent. A true and correct copy of the AGH Parent Amended Operating Agreement is attached hereto as **Exhibit 89.**

646. Narain executed the AGH Parent Amended Operating Agreement on behalf of both AGH Parent and certain Beechwood Entities. Only the AGH entities were advised by outside counsel in connection with the Agera Transactions, which was hurriedly closed the day after Huberfeld's arrest.

647. Simultaneous with the execution of the AGH Parent Amended Operating Agreement, PGS and AGH Parent entered into the Purchase Agreement (the "**Agera Purchase Agreement**"), by which PGS sold the Agera Note to AGH Parent. A true and correct copy of the Agera Purchase Agreement is attached hereto as **Exhibit 90.**

648. Even though the Platinum Defendants and Beechwood Defendants had evidence and believed that the market value for the Agera Note was between $225-285 million, the stated purchase price for the Agera Note was only $170 million (the "**Note Purchase Price**").

649. The Note Purchase Price also was significantly below the $213,256,350-$269,356,350 million valuation of the Agera Note that Platinum Management had commissioned on March 31, 2016, just two months prior to the transaction, which valuation was delivered to SanFilippo on behalf of Platinum Management on the same day the Agera Sale closed. *See* PPVA 2016 First Quarter Valuation at Exhibit 71. Copies of that report, in both draft and final form, were circulated among the Platinum Defendants.

650. Even then, at least **two-thirds** of the Note Purchase Price was paid in the form of uncollectable, valueless debt instruments that were transferred at par value, as well as membership interests in AGH Parent that were subject to redemption at the sole discretion of the Beechwood Defendants and Beechwood Entities in exchange for worthless debt and equity interests.

651. Altogether, approximately $115 million of the purported $170 million Note Purchase Price was paid or payable in a combination of Beechwood "debt forgiveness" and worthless debt and equity assignments, which assignments benefited the Defendants, and in no way benefitted PPVA.

652. A significant portion of the $43,666,460 of the Note Purchase Price attributed to debt transfers was comprised of highly distressed debt, including debt owed by China Horizon and under the PEDEVCO Notes, which were transferred to AGH Parent by certain Beechwood Entities and SHIP at the direction of Narain and Illumin, and which had little or no actual value.

653. Documents drafted by the Platinum Defendants in connection with the Agera Transactions evidence that only $55 million of the Note Purchase Price was paid in cash to PGS, with approximately $10 million still remaining unaccounted for. True and correct copies of these closing documents are attached hereto as **Exhibit 91**.

654. In connection with the Agera Sale, all of the equity and voting interests in Agera Holdings were transferred from Michael Nordlicht and MF Holdings to AGH Parent.

655. As noted above, Cassidy was not an employee of Platinum Management, PPVA or PGS. Nevertheless, Nordlicht, Steinberg, Narain and Ottensoser conspired with Cassidy to pay Cassidy 8% of the **gross** proceeds from the sale of Agera.

656. To effect the payment, Steinberg, Cassidy and his counsel prepared an amendment to the PGS operating agreement that granted Starfish, Cassidy's alter ego, 8% of the membership interests in PGS on the day before the Agera Sale closed. The grant was made for no consideration.

657. Thereafter, on June 9, 2016 (concurrent with the Agera Sale and Huberfeld's arrest), PGS entered into a Purchase Agreement with Starfish by which PGS purported to "repurchase" Starfish's membership interests in PGS for $13,552,000 (the "**Starfish Purchase**

Agreement"), consisting of: (i) $7,000,000 in cash; (ii) $2,000,000 of Class B-2 Preferred Interests in AGH Parent; and (iii) $4,552,000 in Class C Preferred Interests in AGH Parent. Cassidy's Class C Preferred Interests were not subject to redemption in exchange for "PGS Value." A true and correct copy of the Starfish Purchase Agreement is attached hereto as **Exhibit 92.**

658. The payoff to Cassidy was structured as a grant and repurchase of membership interests in PGS by Starfish so that Cassidy could avoid the payment of any withholding taxes with respect to the transfer.

659. Immediately after the Agera Sale, the Platinum Defendants transferred substantially all of the remaining cash proceeds of the Agera Sale to insiders of Platinum Management, including $15 million for the benefit of Seth Gerszberg, as discussed below.

5. The Redemption of the Class C Portion of the Note Purchase Price

660. Approximately $59 million of the Note Purchase Price was paid to PGS via Class C Units in AGH Parent. In fact, these units had little or no value.

661. The Amended AGH Parent Operating Agreement provided that $35.4 million of the Class C Portion was subject to being redeemed in exchange for $35.4 million (the "**PGS Value**") of debt or partnership interests held by Beechwood Entities or SHIP.

662. On October 28, 2016, the Beechwood Defendants caused AGH Parent to deliver a letter to PGS (the "**AGH Redemption Notice**"), indicating its intent to exercise the redemption rights set forth in Section 9.06(a)(i) of the Amended AGH Parent Operating Agreement "with respect to the portion of Class C Preferred Units held by PGS that may be redeemed with the full amount of PGS Value." A true and correct copy of the AGH Redemption Notice is attached hereto as **Exhibit 93.**

663. Thereafter, on January 26, 2017, the Beechwood Defendants and Illumin caused AGH Parent to deliver a letter to PGS enclosing an Assignment (the "**PGS Assignment**"),

executed by AGH Parent, transferring to PGS all of AGH Parent's interest in the debt obligations set forth on Schedule A thereto. A true and correct copy of the PGS Assignment is attached hereto as **Exhibit 94.**

664. Together, the investments listed on Schedule A of the PGS Assignment have a face value equal to the PGS Value ($35.4 million).

665. However, the investments listed in the PGS Assignment consist of distressed debt obligations transferred to AGH Parent by various Beechwood Entities and SHIP at the direction of the Beechwood Defendants and Illumin.

666. The distressed debt obligations listed in the PGS Assignment include: (i) $14.1 million owed by Golden Gate Oil under the GGO Notes (ii) $5.7 million owed by PEDEVCO under the PEDEVCO Notes; and (iii) $15.6 owed by Montsant under the 2015 Montsant Loan.

667. As a result of the purported AGH Redemption Notice and purported PGS Assignment, AGH Parent redeemed 336,928.93 Class C Preferred Units held by PGS and recorded satisfaction relative to PGS of $1,707,107 in accretive Class C Preferred Return related to such redeemed units, leaving PGS with approximately 207,970 Class C Preferred Units.

668. In or about December 2016, six months after the Agera Sale, the Beechwood Defendants, led by Narain and Illumin, which had taken over management of the Beechwood Entities from BAM beginning in 2017, were marketing and negotiating the sale of AGH Parent to a third party investor for approximately $315 million in cash.

669. The Beechwood Defendants thereafter sold their interests in Agera to an affiliate of Eli Global (the "**Eli Global Proceeds**").

670. AGH Parent continues to hold the Agera Note, and Eli Global has acquired Beechwood's interests in AGH Parent.

671. The Agera Transactions were the culmination of the Second Scheme and, standing alone, resulted in the dissipation of as much as $150 million of value to the Beechwood Entities, at a time when PPVA was known to be insolvent. The loss of PPVA's interest in Agera has caused substantial consequential damages in an amount to be determined at trial.

672. PGS has not received any further distributions with respect to its Class C membership interests in AGH Parent.

P. The Security Lockup

673. As PPVA's financial condition worsened throughout 2015 and 2016, the Platinum Defendants, orchestrated increasingly brazen transactions between PPVA and its subsidiaries and insiders in order to maintain control of such assets in the eventual liquidation of PPVA.

674. At the same time, they conspired with certain friends, family and preferred investors to cash out, prioritize and secure their investments to the significant detriment of PPVA.

675. To that end, in addition to the security interests and liens granted to the Beechwood Entities, the Platinum Defendants caused PPVA and its subsidiaries to enter into a series of agreements and transactions for the purpose of providing certain insiders and preferred investors and creditors with security interests in and liens on PPVA's Remaining Assets.

676. These security interests and liens were designed to provide those insiders and preferred investors and creditors a priority debt position, to the detriment of other similarly situated creditors and investors.

1. PPNE Notes

677. Beginning in or about September 2014, the Platinum Defendants caused PPVA to issue a promissory note with a maximum principal amount of $36 million and an interest rate of 1.333% per month, and which subsequently was reissued in or about May 2015 (the "**16% PPNE Note**").

678. The 16% PPNE Note is not payable to a particular person, but rather "to the order of each Lender."

679. The 16% PPNE Note is signed by Nordlicht, as "CIO of PPVA." A true and correct copy of a certain version of the 16% PPNE Note is attached as **Exhibit 95.**

680. Thereafter, on or about August 12, 2015, the Platinum Defendants caused PPVA to execute a promissory note with a maximum principal amount of $150 million and an interest rate of 1% per month (the "**12% PPNE Note**" and together with the 16% PPNE Note, the "**PPNE Notes**").

681. Like the 16% PPNE Note, the 12% PPNE Note is payable "to the order of each Lender" rather than to a particular person. The August 2015 PPNE Note also is signed by Nordlicht, as "CIO of PPVA." A true and correct copy of the August 2015 PPNE Note is attached as **Exhibit 96.**

682. Paragraph 2 of each of the PPNE Notes provides that the following collateral would secure PPVA's obligations under the PPNE Notes:

> As collateral security for all indebtedness, obligations and other liabilities of [PPVA] to [the PPNE Lenders] now or hereafter arising evidenced by this [PPNE Notes], [PPVA] hereby transfers, grants and pledges a continuing perfected security interest in all of [PPVA's] right, title and interest in and to the assets held by [PPVA] on the date hereof, all options and other rights, contractual or otherwise, in respect thereof and all distributions, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such assets, and all proceeds of any and all of the foregoing (collectively, the "**Collateral**").

PPNE Notes at ¶ 2.

683. The PPNE Notes do not identify the Lenders on the face of the document, nor did Platinum Management regularly annex an attachment listing the parties that are Lenders.

684. Instead, from time to time, the Platinum Defendants caused PPVA to enter into side agreements with certain preferred insiders. Under the terms of those agreements, the insider would

be permitted to exchange its investment interest or its unsecured debt for ostensibly secured debt as a PPNE "lender."

685. Certain of the Preferred Investors of the BEOF Funds were granted an interest in the PPNE Notes.

686. Platinum Management did not disclose the existence or terms of, or amounts due under the PPNE Notes.

687. Platinum Management also did not include the amount due under the PPNE Notes in calculating the net value of PPVA's assets.

2. Kismetia

688. Offshore Feeder Fund investor Kismetia Ltd. ("**Kismetia**") likewise was given preferential treatment by the Platinum Defendants.

689. In or about June 30, 2015, Kismetia sought to redeem its investment in the Offshore Feeder Fund.

690. At that time, PPVA was under severe liquidity constraints. Although Platinum Management directed a partial payment of the amounts due to Kismetia, it did not cause the full payment of the amount owed to Kismetia in respect of Kismetia's redemption request.

691. On or about March 16, 2016, the Platinum Defendants caused PPVA to issue a promissory note dated as of that date but effective as of December 31, 2015 (the "**Kismetia Note**") to Kismetia for the balance of the redemption payment due to it.

692. Like the PPNE Notes, paragraph 2 of the Kismetia Note provides that the following collateral would secure PPVA's obligations under the Kismetia Note:

> As collateral security for all indebtedness, obligations and other liabilities of [PPVA] to [Kismetia] now or hereafter arising evidenced by this [Kismetia Note], [PPVA] hereby transfers, grants and pledges a continuing perfected security interest in all of [PPVA's] right, title and interest in and to the assets held by [PPVA] on the date hereof (including without limitation all assets now or in the

> future held in the Special Investments also known the "Side Pocket" whereby the Platinum Partners Value Arbitrage Fund L.P. may invest part of its assets in investments that the General Partner believes are illiquid, lacking a readily assessable market value or should be held until the resolution of a special event or circumstances) all options and other rights, contractual or otherwise, in respect thereof and all distributions, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such assets, and all proceeds of any and all of the foregoing. (collectively, the "**Collateral**"). In addition, [PPVA] shall pledge [Kismetia's] redeemed equity interest in the [Offshore Fund] to Kismetia as additional security for [PPVA's] obligations under this Note and shall deliver any certificates reflecting such redeemed interest to [Kismetia] to secure such pledge.

Kismetia Note at ¶ 2.

693. The Kismetia Note was amended on June 14, 2016, six days after the Huberfeld Arrest and the same day Nordlicht announced that PPVA would stop taking redemption requests and its assets would be liquidated.

694. Among other changes, the amendment provides that $484,338.36 in accrued interest was due by August 31, 2016, that all principal and interest would be due as of August 31, 2016 or potentially earlier dates, and that if all amounts were not paid in full, interest would triple, from 1% per month to 3% per month.

695. As a result of the Kismetia Note, as amended, Kismetia exchanged worthless interests in the Offshore Feeder Fund and a worthless redemption claim for a claim secured by all the assets of PPVA that purports to accrue interest at *3% per month* or *36% per year*, to the detriment of PPVA.

3. <u>Twosons</u>

696. Defendant Twosons Corporation ("**Twosons**") is a Panamanian corporation authorized to do business in New York. Twosons was an investor in the BEOF Funds that received $15.4 million of proceeds from the Black Elk Renaissance Sale. Nordlicht subsequently executed a promissory note dated September 18, 2014 on behalf of PPVA as borrower in the original

maximum principal amount of $14 million dollars for the benefit of Twosons that accrued interest at a rate of 1.333% per month (the "**Twosons Note**"). A true and correct copy of the Twosons Note is attached hereto as **Exhibit 97**.

697. Twosons is owned principally and managed by members of the Harari family and their agents/employees, including, *inter alia*, Fabrice Harari, Raphael Harari, and Benjamin Uzan.

698. The Hararis are a family from France and Geneva, Switzerland with an estimated net worth of 400 - 500 million Swiss francs (about $400 - $500 million USD).

699. The Hararis made a fortune in France from a pharmaceutical company called Negma Laboratories, which they owned for 35 years and sold in 2007 for a reported $250 million.

700. The Hararis also own Steba Biotech, which they created in 1996 to begin developing a new prostate cancer drug called Tookad. Tookad reached Phase II trials in 2008, and completed its Phase III trials in 2016. Mexico approved the use of Tookad for early-stage prostate cancer in 2016, and the European Medicines Agency approved Tookad in November 2017.

701. Steba Biotech is a private company. The Hararis financed Steba Biotech themselves, investing hundreds of millions of dollars into that company.

702. There are significant business and personal connections between the Harari family and certain of the Platinum Defendants. Raphael Harari and Twosons invested in PPCO as early as 2011.

703. In a February 7, 2013 email to Fabrice Harari regarding David Levy's cell phone number on which David Levy is copied, Murray Huberfeld writes "David -- I had a call today with fabrice. Harari regarding black elk. Told him to reach out to u next week with any questions or concerns Please respond to him and give him any information he requires. **Fabrice is an important client as well as a close friend.** I told him that u will be in London on Feb 12 in case

he or someone from his team will be there as well Thx Murray." *See* Exhibit 53 (emphasis supplied).

704. The Hararis'/Twosons' involvement with Black Elk had begun the week before when, on February 1, 2013, Murray Huberfeld emailed Fabrice Harari to offer him the opportunity to participate in a "one off deal" for Black Elk and provided a short description of the terms of the deal, including an initial interest rate of 16% net to investor, paid quarterly, which would increase to 36% if not paid on time, plus equity grants depending on the total amount invested. The term of the investment was 14 months.

705. As noted, the original Twosons investment was in PPCO, which provided a return of 9.5%. By February 18, 2013, Twosons' principals were looking to redeem that investment in favor of something "more aggressive," such as the returns provided in connection with an investment in Black Elk that Murray Huberfeld had described the week before to Fabrice Harari.

706. On information and belief, the Hararis' self-financing of Steba Biotech may explain in part the Twosons / Hararis' involvement with the Platinum Defendants and their efforts to lock in unusually high rates of return in 2013 and 2014, which was about seven years after the Hararis' initial investment in Steba Biotech, and two years before Steba Biotech received approvals for Tookad from Mexico and the European Union.

707. Twosons eventually purchased $10 million of Black Elk series E preferred in 2013 from a PPVA subsidiary. Under the terms of a side letter executed by Nordlicht in connection with the purchase, PPVA was obligated to repurchase the series E preferred that Twosons had bought at Twosons' request. The side letter also required the payment of cash interest to Twosons even though other holders of the series E preferred would receive payment in kind "PIK" interest.

708. Thereafter, in 2014, Twosons and its principals knowingly acted to further aid and

abet Nordlicht, Huberfeld, Levy, Small, Bodner, Manela, Landesman and the other Platinum Defendants to maintain the pretense that PPVA was a liquid fund with high net asset values thereby justifying the excessive fees charged.

709. In return, the Platinum Defendants agreed to continue to provide Twosons and its principals the Hararis with special rights, privileges and rates of return not available to other investors and lenders.

710. For example, in connection with Twosons' agreement to roll over their existing investment in the BEOF Funds in spring 2014 and invest an additional $10 million, Nordlicht executed a "side letter" dated April 1, 2014 on behalf of PPVA, BEOF II and certain related parties (the "**Side Letter**"). A true and correct copy of the Side Letter is attached hereto as **Exhibit 98.**

711. The Side Letter provided that Twosons would receive its quarterly 20% dividends in cash, even though the BEOF Funds documents permitted such dividends to be paid in kind and all other investors received their payments in kind.

712. Likewise, the Side Letter provided that Twosons could put their shares back to BEOF II at par, irrespective of certain events that would permit that fund to decline to redeem other investors' shares.

713. Nordlicht, Landesman, Levy, Manela, Small, Fuchs and the other Platinum Defendants also caused the BEOF Funds to repurchase Twosons' series E preferred equity on or about April 1, 2014 at par.

714. Within days after the Black Elk Renaissance Sale closed and the proceeds thereof purportedly were used to redeem the series E preferred equity,[7] Nordlicht, Small, Levy, Manela,

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[7] It should be noted that, although the funds purportedly were supposed to redeem the series E preferred equity, corporate formalities were not fully observed in making such payments, nor were the series E preferred equity redeemed pro rata. Rather, the Platinum Defendants directed how and to whom the proceeds of the Renaissance Sale should be paid out.

Fuchs, Huberfeld, Landesman worked together to cause PPVA to transfer approximately $36 Million of those proceeds to bank accounts in the name of the BEOF Funds at North Fork Bank, which in turn were distributed to the Preferred Investors of the BEOF Funds, among others.

715. On August 21, 2014, Twosons received $15,400,152.42 of those proceeds in respect of its remaining position as a Preferred Investor of the BEOF Funds. *See* Exhibit 61.

716. Within weeks after Twosons cashed out its investment via the Black Elk Scheme, Twosons once again agreed to aid and abet Huberfeld, Nordlicht, and the other Platinum Defendants and maintain the ongoing fraud regarding PPVA's inflated net asset value and liquidity, by loaning them $14 million of those proceeds to use in their operation, which was structured as secured "loan" to PPVA.

717. Once again, Nordlicht rewarded Twosons and its principals for helping to maintain the Platinum Defendants' fraud concerning the true status of PPVA's asset values, liquidity and business by binding PPVA to a transaction that provided Twosons with special protections and incentives not generally available to other investors and not disclosed when calculating PPVA's NAV.

718. Among other things, the Twosons Note required PPVA to pay Twosons interest on the loan at the exorbitant rate of 1.33% per month or 16% per year, and also purported to grant Twosons a security interest in and lien on all of "[PPVA's] right, title and interest in and to the assets held by [PPVA] on the date hereof, all options and other rights, contractual or otherwise, in respect thereof and all distributions, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such assets, and all proceeds of any and all of the foregoing" as collateral to secure the repayment of the loan.

719. Nordlicht signed and executed the Twosons Note in his capacity as Chief Investment Officer of PPVA on or about September 18, 2014, approximately one month after the proceeds of the Black Elk Scheme were disbursed.

720. The original principal amount of the Twosons Note was $14 million.

721. Between October 2014 and June 2016, the Platinum Defendants caused PPVA to pay Twosons monthly interest totaling $2.15 million.

722. In addition, PPVA repaid $8 million in principal to Twosons during that period.

723. The Platinum Defendants caused PPVA to pay Twosons its monthly interest every month through June 2016, even when Platinum Management caused PPVA not to fund payments necessary to preserve the value of its investments, pay redemption payments to investors or pay other creditors.

724. Nordlicht, SanFilippo, Steinberg and the other members of the valuation committee did not include the amount due to Twosons in communicating to SS&C information required to calculate the net value of PPVA's assets.

725. Platinum Management also did not include the amount due to Twosons in communicating to SS&C information required to calculate the fees payable to Platinum Management or in determining the amounts payable to the individual Platinum Defendants.

4. <u>Seth Gerszberg and West Loop/Epocs</u>

726. For certain preferred investors and creditors, the Platinum Defendants provided even greater illicit protection by purporting to grant security interests and liens at the subsidiary level, while at the same time failing to include these subsidiary encumbrances when calculating PPVA's NAV.

727. A prime example of a subsidiary level security interest was that provided to Beechwood and SHIP is with respect to the Montsant Collateral Account.

728. Another example is the series of transactions and collateral grants engaged in by Nordlicht and the other Platinum Defendants for the benefit of Nordlicht's close friend, Seth Gerszberg and Gerszberg's relatives, to the detriment of PPVA.

729. In or about 2009, Defendant Seth Gerszberg began to form a collection of entities to operate his apparel wholesale and retail businesses ("**The Collective**") and utilize an exclusive license of the Mark Ecko apparel brands, a company he co-founded in 1993.

730. On September 8, 2014, Atlantic Growth Capital, LLC ("**Atlantic Growth**"), a PPVA subsidiary, entered into a loan agreement with certain entities comprising The Collective, in order to provide The Collective with a $30 million line of credit for The Collective's working capital needs (the "**Collective Loan**") and loaned it funds thereunder.

731. In connection with its apparel operations, The Collective also entered into a series of sub-licensing and supply agreements with West Loop, South, LLC ("**West Loop**") a company owned and managed by Steven and Alan Finkelman (together, the "**Finkelmans**"), who were cousins of Gerszberg.

732. The Finkelmans and Gerszberg had a longstanding business relationship due to the Finkelmans' position in the apparel importing industry and The Collective's retail and wholesale operations.

733. By the summer of 2015, The Collective was unable to make payments to PPVA or Atlantic Growth under the Collective Loan.

734. By the summer of 2015, The Collective also was in debt to West Loop for an amount of more than $2.4 million, and West Loop refused to ship additional apparel to The Collective unless Gerszberg found a way to pay West Loop for the outstanding debt.

735. Faced with a failing business and the prospect of no apparel for the critical holiday season, Gerszberg approached Nordlicht for financial assistance.

736. The Platinum Defendants failed to take steps to protect PPVA's interests by declaring a default on the loans owed to PPVA by Seth Gerszberg and his companies and seeking to foreclose on the collateral securing such loans.

737. Instead, in August 2015, the Platinum Defendants caused PPVA to enter into a series of transactions with West Loop and Epocs Real Estate Partnership Ltd. ("**Epocs**" and together, "**West Loop/Epocs**") over the coming months that would solely benefit West Loop/Epocs, Gerszberg and The Collective, to the detriment of PPVA.

738. These transactions included: (i) PPVA assuming approximately $2.5 million of debt owed by The Collective to West Loop and granting West Loop a corresponding interest in the 12% PPNE Note; (ii) PPVA incurring a sham "loan" obligation to Epocs of approximately $2.5 million, where the loan proceeds were in fact provided to The Collective and providing Epocs with a corresponding interest in the 12% PPNE Note; and (iii) PPVA guarantying an apparel buyback obligation of approximately $2.5 million owed by The Collective to West Loop (collectively, the "**Purported Underlying West Loop/Epocs Obligations**").

739. Instead of foreclosing on the non-performing Collective Loan and the guarantees by its shareholders, *i.e.* Gerszberg and his wife, the Platinum Defendants caused PPVA to enter into the Purported Underlying West Loop/Epocs Obligations although they knew The Collective had no ability to pay its debts to West Loop, as The Collective had been running at a substantial loss for months, its retail locations were in disrepair, and the Mark Ecko trademark license held by The Collective and West Loop was set to expire in September 2015.

740. At the direction of the Platinum Defendants and Gerszberg, West Loop and Epocs were purportedly granted an interest as "lenders" under the 12% PPNE Note in the principal amount of approximately $5 million, even though they never provided any loan funds to PPVA or any company affiliated with PPVA.

741. Once The Collective was unable to pay the Purported Underlying West Loop/Epocs Obligations, the Platinum Defendants made no effort to enforce PPVA's rights and collect from Gerszberg or The Collective on the Underlying West Loop/Epocs Obligations or the Collective Loan.

742. To compound these breaches, on or around January 1, 2016, Nordlicht began to consult with Gerszberg with respect to business decisions concerning PPVA.

743. From January 1, 2016, until commencement of the Cayman Liquidation, Gerszberg advised the Platinum Defendants with respect to PPVA's investments and provided substantial assistance in the formulation and execution of the Second Scheme.

744. At this time, Gerszberg was provided with information concerning PPVA's financial condition, its ongoing liquidity issues and the misrepresentation of its NAV by the Platinum Defendants.

745. Gerszberg also substantially assisted the Platinum Defendants with certain of the transactions comprising the Security Lockup.

746. On July 4, 2016, Nordlicht informed Gerszberg that PPVA would be commencing the Cayman Liquidation and the Chapter 15 Bankruptcy, leaving creditors of PPVA, such as West Loop/Epocs, with claims in PPVA's insolvency proceedings. A true and correct copy of Nordlicht's July 4, 2016 email to Gerszberg is attached hereto as **Exhibit 99.**

747. On July 6, 2016, as Gerszberg demanded and the Platinum Defendants agreed, a

Forbearance and Security Agreement, dated July 5, 2016, was entered into among PPVA, DMRJ, West Loop and Epocs (the "**Forbearance and Security Agreement**"). A true and correct copy of the Forbearance and Security Agreement is attached hereto as **Exhibit 100**.

748. The Forbearance and Security Agreement purports to provide West Loop/Epocs with a security interest in DMRJ's rights to certain proceeds from the sale of IMSC, specifically from one of the IMSC Notes owned by DMRJ.

749. With direct knowledge of PPVA's imminent liquidation, Gerszberg, as agent or representative of West Loop/Epocs, drafted the Forbearance and Security Agreement for the sole benefit of West Loop/Epocs, and to the detriment of PPVA, knowing the alleged forbearance was wholly illusory.

750. The Forbearance and Security Agreement orchestrated by Gerszberg and the Platinum Defendants sought to encumber PPVA's assets at the subsidiary level for the benefit of Gerszberg's family members, at a time when Platinum Management already had engaged counsel to prepare the filings in connection with PPVA's liquidation and the commencement of an insolvency proceeding was a certainty.

751. In addition, the Platinum Defendants conspired with Gerszberg to effectuate the transfer of $15 million from the Agera proceeds to a Gerszberg-controlled entity for no consideration.

752. On or about June 3, 2016, Gerszberg and Franky Zapata ("**Zapata**") entered into that certain Master Agreement for the Unification of Zapata and Gerszberg Businesses (the

"**Zapata Master Agreement**"). A true and correct copy of the Zapata Master Agreement is attached hereto as **Exhibit 101.**

753. Zapata is the principal of the French company Zapata Industries SAS ("**Zapata Industries**") and the inventor of a water-based flyboard device.

754. The Zapata Master Agreement provides for the rights and duties of Gerszberg, Zapata and their affiliates upon the occurrence of a proposed merger between Zapata Industries and IMSC (the "**Proposed Zapata/IMSC Merger**").

755. As a condition of the Zapata Master Agreement becoming effective, Gerszberg-controlled entity Spectrum30, LLC ("**Spectrum30**") was required to deposit €10,000,000 into Zapata's bank accounts by June 10, 2016.

756. On June 9, 2016, day the Agera Transaction closed, the Platinum Defendants caused PPVA subsidiary Huron Capital LLC ("**Huron**") to transfer $15 million from the Agera proceeds to or on behalf of Gerszberg and Spectrum30 (the "**Spectrum30 Loan**"). Of that amount, a total of $11 million was wired directly to Zapata. A true and correct copy of documents evidencing that $15 million of the Agera proceeds were used for the "Zapata" transaction and that $11 million was wired directly to Zapata are attached hereto as **Exhibit 102.**

757. PPVA had no obligation under the Zapata Master Agreement to provide funds to Gerszberg, Spectrum30, or Zapata in connection with the Proposed Zapata/IMSC Merger, and received no valuable consideration in return.

758. The Platinum Defendants and Gerszberg caused PPVA to transfer a substantial portion of the limited cash PPVA received from the Agera Sale to Gerszberg and Zapata, to the detriment of PPVA.

759. Thereafter, the Platinum Defendants and Gerszberg took steps in an attempt to protect Gerszberg and Spectrum from any claim in connection with the Spectrum30 Loan, regardless of whether or not the Proposed Zapata/IMSC Merger occurred.

760. On August 23, 2016, the same day PPVA filed its winding up petition in the Grand Court of the Cayman Islands, the Platinum Defendants and Gerszberg caused the promissory note evidencing the Spectrum30 Loan to be amended (the "**Amended Spectrum30 Note**").

761. The Amended Spectrum30 Note provides that if the Proposed Zapata/IMSC Merger occurs, Spectrum30 is released from any and all obligations in connections with the Spectrum30 Loan.

762. The Amended Spectrum30 Note provides that if the Proposed Zapata/IMSC Merger *does not* occur, any amount owed to Huron under the Spectrum Loan is offset by claims of The Collective against Atlantic Growth and "the Finkelman Debt."

CLAIMS FOR RELIEF

First Count: Breach of Fiduciary Duty (Duty of Care and Good Faith) Against the Platinum Defendants

763. The Plaintiffs repeat and re-allege paragraphs 1-762 as if fully set forth herein.

764. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties to PPVA.

765. The Platinum Defendants were obligated and bound to act in a responsible and lawful manner, in good faith, so as not to cause injury to PPVA.

766. The Platinum Defendants were obligated to exercise due care and diligence to preserve, invest, value, manage, operate, and administer PPVA, its subsidiaries, its property and its assets.

767. The Platinum Defendants also owed PPVA duties of full and candid disclosure of all material facts relevant to PPVA, to deal fairly and honestly with PPVA, and not to omit any material facts.

768. The Platinum Defendants were obligated to ensure that they did not engage in any fraudulent, unsafe, unlawful or unsound investment, operational, administrative or management practices.

769. In engaging in the First and Second Schemes described herein, including: (i) the systematic misrepresentation and overvaluation of PPVA's NAV for the purpose of paying the Platinum Defendants unearned fees (First Scheme); (ii) the Black Elk Scheme, Black Elk bond devaluation, and the significant creditor claims that resulted therefrom (First Scheme); and (iii) the transfer or encumbrance of nearly all of PPVA's Remaining Assets for the sole benefit of Beechwood, PPCO and other select insiders and to the detriment of PPVA (Second Scheme), the Platinum Defendants repeatedly breached their fiduciary obligation of due care to PPVA.

770. As set forth in the SEC Action, the Platinum Defendants managed PPVA in an unlawful manner and failed to manage PPVA in good faith.

771. As a direct and proximate result of the Platinum Defendants' breaches of their fiduciary duties, PPVA was injured and suffered damages.

772. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

773. In addition, because the Platinum Defendants acted knowingly, intentionally, purposefully, maliciously, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Second Count: Breach of Fiduciary Duty
(Duty of Loyalty/Self-Dealing) Against the Platinum Defendants

774. The Plaintiffs repeat and re-allege paragraphs 1-773 as if fully set forth herein.

775. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed PPVA fiduciary duties of loyalty and good faith.

776. The Platinum Defendants were duty bound to act in a responsible and lawful manner, in good faith, so as not to cause injury to PPVA.

777. In engaging in the First and Second Schemes described herein, including: (i) intentionally engaging in certain acts for the purpose of artificially inflating PPVA's NAV, in order to generate unearned fees, bonuses, salaries, and other payments to enrich themselves at the expense of PPVA (First Scheme); (ii) intentionally engaging in the Black Elk Scheme, to enable the Preferred Investors of the BEOF Funds to take the proceeds from the Black Elk Renaissance Sale in contravention of the prior rights of PPVA, leaving PPVA with significant losses and claims (First Scheme); and (iii) the transfer or encumbrance of nearly all of PPVA's Remaining Assets for the sole benefit of Beechwood, PPCO and other select insiders and to the detriment of PPVA (Second Scheme), the Platinum Defendants breached their duties of loyalty and good faith to PPVA.

778. For these reasons and others set forth herein, the Platinum Defendants engaged in a consistent pattern of self-dealing and breaches of their duty of loyalty throughout the course of the First and Second Schemes.

779. As a direct and proximate result of the Platinum Defendants' self-dealing and breaches of their duty of loyalty to PPVA, PPVA was injured and suffered damages.

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780. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

781. In addition, because the Platinum Defendants acted knowingly, intentionally, purposefully, maliciously, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Third Count: Aiding and Abetting Breach of
Fiduciary Duties against the Individual Platinum Defendants

782. The Plaintiffs repeat and re-allege Paragraphs 1-781 as if fully set forth herein.

783. Platinum Management, the General Partner of PPVA, owed fiduciary duties of due care, loyalty and good faith to PPVA.

784. As set forth above, Platinum Management breached its fiduciary duties to PPVA by its actions in connection with the First and Second Schemes.

785. Platinum Defendants Nordlicht, Huberfeld, Bodner, Landesman, Saks, Bernard Fuchs, Levy, Beren, Manela, Ottensoser, SanFilippo, and Small (collectively, the "**Individual Platinum Defendants**") used their positions as owners, executives and managers of Platinum Management to cause Platinum Management to breach its fiduciary duties to PPVA.

786. In addition, the Individual Platinum Defendants substantially assisted, aided and abetted, and participated in Platinum Management's breaches of its fiduciary obligations in connection with the First and Second Schemes by, *inter alia*, (i) orchestrating transactions among PPVA and various insiders designed to support the inflated NAV ascribed to PPVA's assets by the Platinum Defendants, so as to enable Platinum Management to charge PPVA for unearned fees and expenses; (ii) causing PPVA and its subsidiaries to engage in transactions to benefit the Platinum Defendants, BEOF Funds and the Beechwood Defendants to the detriment of PPVA; (iii)

participating in the Black Elk Scheme; and (iv) engaging in transactions which purposefully transferred or encumbered the assets of PPVA and its subsidiaries, designed to benefit the Beechwood Defendants and other insiders to the detriment of PPVA.

787. The Individual Platinum Defendants had actual knowledge that Platinum Management was breaching its fiduciary obligations to PPVA by engaging in the actions and transactions comprising the First and Second Schemes.

788. As a direct and proximate result of the Individual Platinum Defendants' actions and substantial participation, PPVA was damaged.

789. The actions of the Individual Platinum Defendants caused the harm on which the primarily liability of breach of fiduciary duties is predicated.

790. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

791. In addition, because the Individual Platinum Defendants acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

<u>Fourth Count: Fraud against the Platinum Defendants</u>

792. The Plaintiffs repeat and re-allege paragraphs 1-791 as if fully set forth herein.

793. As detailed herein, the Platinum Defendants intentionally engaged in the First and Second Schemes by communicating material representations to PPVA in various forms and by omitting to state material facts.

794. These material representations occurred by way of the Platinum Defendants making, and causing to be made, written and oral representations concerning the financial

condition of PPVA and the acts in furtherance of the Platinum Defendants' administration and management of PPVA's assets and investments.

795. These material representations included statements concerning the nature and characteristics of the investments of PPVA, the method of valuation of PPVA assets, including NAV, and the management and other fees earned by Platinum Defendants and subsequently paid by or charged to PPVA.

796. At all relevant times, the Platinum Defendants knew that such representations were material to PPVA.

797. At all relevant times, the Platinum Defendants knew that their omissions and the representations they individually or collectively made, caused to be made, or knew were being made with their consent, were false when made.

798. At all relevant times, the Platinum Defendants misrepresented to PPVA that PPVA's NAV was steadily increasing, despite PPVA's assets being increasingly concentrated in speculative and unproven start-up companies, many of which were not publicly traded and for which there were no readily available market prices.

799. The Platinum Defendants represented to PPVA that asset valuations for PPVA's investment positions would be initially set by an internal valuation committee. Such initial valuations, however, were arbitrarily adjusted by Nordlicht, with the consent of the other Platinum Defendants, in order to increase NAV and increase management fees paid to the Platinum Defendants.

800. The Platinum Defendants caused PPVA and its subsidiaries to engage with the Beechwood Entities and the Beechwood Defendants in insider investments, loans and other transactions including, among others, Golden Gate Oil, PEDEVCO, Black Elk, Northstar,

Montsant/Navidea and Implant Sciences, at non-market prices, at terms unconnected to the actual value of the transaction, and with improper guaranty and put arrangements, by which the Platinum Defendants misrepresented the risk of loss to PPVA and placed the interests of the Beechwood Entities ahead of PPVA's interests.

801. The Platinum Defendants intentionally did not include the liabilities arising from the guaranties and put agreements that they caused PPVA to grant to the Beechwood Entities when they calculated the PPVA NAV and determined the amount of partnership share, fees and expenses owed to them by PPVA even though those guaranties placed PPVA at significant risk of loss.

802. At all times after the Black Elk Explosion, the Platinum Defendants falsely inflated PPVA's total net investment in Black Elk even though they well knew that Black Elk was experiencing significant deterioration in performance and had accrued significant unsecured liabilities and secured obligations.

803. The Platinum Defendants schemed to, and did, divert from PPVA and misappropriate to themselves and the Preferred Investors of the BEOF Funds proceeds from the Renaissance Sale, by engaging in the Black Elk Scheme, which resulted in significant claims against PPVA.

804. The Platinum Defendants falsely reported and inflated the valuation of Northstar, based in part on the false claim that PPVA's claims against Northstar were secured by liens on all of Northstar's assets even though they well knew mortgages and financing statements had not been filed with respect to any of the leases and other assets that Northstar purchased from Black Elk, the company was struggling to pay its obligations, and Platinum Management was causing PPVA and PPCO to fund Northstar's operations.

805. The Platinum Defendants falsely inflated the NAV of PPVA's assets, in order to generate for themselves tens of millions of dollars in fraudulent fees and payments – to which they were not entitled – all to the detriment of PPVA.

806. The Platinum Defendants knowingly and intentionally made numerous false representations of material fact and omitted to state material facts to PPVA concerning the Platinum Defendants' intent to manage and administer PPVA, its subsidiaries and its assets in compliance with the terms of PPVA's governing documents, including but not limited to the PPVA Partnership Agreement.

807. The Platinum Defendants also knowingly and intentionally defrauded PPVA by causing it to engage in transactions with and involving the Beechwood Entities that were designed to benefit the Beechwood Entities to the detriment of PPVA.

808. The Platinum Defendants caused PPVA and its subsidiaries to engage with the Beechwood Defendants, PPCO and other insiders in insider investments, loans and other transactions at non-market prices and terms unconnected to the actual value of the transaction, such as the Nordlicht Side Letter, the Master Guaranty, creation of the Montsant Collateral Account and the Agera Transactions, without disclosing the purpose of these transactions to encumber or transfer PPVA's assets for the benefit of insiders.

809. The Platinum Defendants intentionally withheld from PPVA the nature of the Second Scheme Transactions, purposefully omitting the encumbrances that the Platinum Defendants had granted upon PPVA's assets for the benefit of insiders and the significant loss to PPVA that resulted from the Second Scheme Transactions.

810. PPVA justifiably relied on the foregoing false representations, omissions and fraudulent actions of the Platinum Defendants.

811. PPVA has been damaged as a proximate result of each of the Platinum Defendants' fraudulent misrepresentations, omissions and actions to defraud PPVA during the First and Second Schemes in at least the following ways: (i) PPVA paid the Platinum Defendants tens of millions of dollars in unearned distributions and/or fees, expenses, bonuses and other payments; (ii) PPVA incurred tens of millions of dollars in creditor claims arising out of the Black Elk Scheme; (iii) the Preferred Investors of the BEOF Funds improperly received priority payments ahead of PPVA and its subsidiaries due to the Black Elk Scheme; and (iv) PPVA and its subsidiaries were made parties to numerous non-commercial transactions with the Beechwood Entities, PPCO and other Platinum Management insiders that subordinated PPVA's interests and depressed or encumbered the value of PPVA's assets.

812. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

813. In addition, because the Platinum Defendants acted knowingly, intentionally, purposefully, maliciously, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Fifth Count: Constructive Fraud against the Platinum Defendants

814. The Plaintiffs repeat and re-allege paragraphs 1-813 as if fully set forth herein.

815. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties of due care, loyalty and good faith to PPVA.

816. As detailed herein, the Platinum Defendants intentionally engaged in the First and Second Schemes by communicating material representations to PPVA in various forms and by omitting to state material facts.

817. These material representations occurred by way of the Platinum Defendants making, and causing to be made, written and oral representations concerning the financial condition of PPVA and the acts in furtherance of the Platinum Defendants' administration and management of PPVA's assets.

818. These material representations included statements concerning the nature and characteristics of the investments of PPVA, the method of valuation of PPVA assets, including NAV, and the management and other fees earned by Platinum Defendants and subsequently paid by or charged to PPVA.

819. At all relevant times, the Platinum Defendants knew that such representations were material to PPVA.

820. At all relevant times, the Platinum Defendants knew that their omissions and the representations they individually or collectively made, caused to be made, or knew were being made with their consent, were false when made.

821. At all relevant times, the Platinum Defendants misrepresented to PPVA that PPVA's NAV was steadily increasing, despite PPVA's assets being increasingly concentrated in speculative and unproven start-up companies, many of which were not publicly traded and for which there were no readily available market prices.

822. The Platinum Defendants represented to PPVA that asset valuations for PPVA's investment positions would be initially set by an internal valuation committee. Such initial valuations, however, were arbitrarily adjusted by Nordlicht, with the consent of the other Platinum Defendants, in order to increase NAV and increase management fees paid to the Platinum Defendants.

823. The Platinum Defendants caused PPVA and its subsidiaries to engage with the Beechwood Entities and the Beechwood Defendants in insider investments, loans and other transactions including, among others, Golden Gate Oil, PEDEVCO, Black Elk, Northstar, Montsant/Navidea and Implant Sciences, at non-market prices, at terms unconnected to the actual value of the transaction, and with improper guaranty and put arrangements, by which the Platinum Defendants misrepresented the risk of loss to PPVA and placed the interests of the Beechwood Entities ahead of PPVA's interests.

824. The Platinum Defendants intentionally did not include the liabilities arising from the guaranties and put agreements that they caused PPVA to grant to the Beechwood Entities when they calculated the PPVA NAV and determined the amount of partnership share, fees and expenses owed to them by PPVA even though those guaranties placed PPVA at significant risk of loss.

825. At all times after the Black Elk Explosion, the Platinum Defendants falsely inflated PPVA's total net investment in Black Elk even though they well knew that Black Elk was experiencing significant deterioration in performance and had accrued significant unsecured liabilities and secured obligations.

826. The Platinum Defendants schemed to, and did, divert from PPVA and misappropriate to themselves and the Preferred Investors of the BEOF Funds proceeds from the Renaissance Sale, by engaging in the Black Elk Scheme, which resulted in significant claims against PPVA.

827. The Platinum Defendants falsely reported and inflated the valuation of Northstar, based in part on the false claim that PPVA's claims against Northstar were secured by liens on all of Northstar's assets even though they well knew mortgages and financing statements had not been filed with respect to any of the leases and other assets that Northstar purchased from Black Elk,

the company was struggling to pay its obligations, and Platinum Management was causing PPVA and PPCO to fund Northstar's operations.

828. The Platinum Defendants falsely inflated the NAV of PPVA's assets, in order to generate for themselves tens of millions of dollars in fraudulent fees and payments – to which they were not entitled – all to the detriment of PPVA.

829. The Platinum Defendants knowingly and intentionally made numerous false representations of material fact and omitted to state material facts to PPVA concerning the Platinum Defendants' intent to manage and administer PPVA, its subsidiaries and its assets in compliance with the terms of PPVA's governing documents, including but not limited to the PPVA Partnership Agreement.

830. The Platinum Defendants also knowingly and intentionally defrauded PPVA by causing it to engage in transactions with and involving the Beechwood Entities that were designed to benefit the Beechwood Entities to the detriment of PPVA.

831. The Platinum Defendants caused PPVA and its subsidiaries to engage with the Beechwood Defendants, PPCO and other insiders in insider investments, loans and other transactions at non-market prices and terms unconnected to the actual value of the transaction, such as the Nordlicht Side Letter, the Master Guaranty, creation of the Montsant Collateral Account and the Agera Transactions, without disclosing the purpose of these transactions to encumber or transfer PPVA's assets for the benefit of insiders.

832. The Platinum Defendants intentionally withheld from PPVA the nature of the Second Scheme Transactions, purposefully omitting the encumbrances that the Platinum Defendants had granted upon PPVA's assets for the benefit of insiders and the significant loss to PPVA that resulted from the Second Scheme Transactions.

833. PPVA reposed trust and confidence in the Platinum Defendants, based on the Platinum Defendants' assurances that they would invest PPVA's assets prudently and in PPVA's best interest, in accordance with all relevant investment guidelines.

834. Because of the nature of the fiduciary relationship, PPVA justifiably relied upon the Platinum Defendants' misrepresentations and omissions or concealments to its detriment, by permitting the Platinum Defendants to continue management of PPVA's assets and by paying the Platinum Defendants unearned fees and bonuses based off of the Platinum Defendants' misrepresentations and omissions.

835. PPVA has been damaged as a proximate result of each of the Platinum Defendants' fraudulent misrepresentations, omissions and actions to defraud PPVA during the First and Second Schemes in at least the following ways: (i) PPVA paid the Platinum Defendants tens of millions of dollars in unearned distributions and/or fees, expenses, bonuses and other payments; (ii) PPVA incurred tens of millions of dollars in creditor claims arising out of the Black Elk Scheme; (iii) the Preferred Investors of the BEOF Funds improperly received priority payments ahead of PPVA and its subsidiaries due to the Black Elk Scheme; and (iv) PPVA and its subsidiaries were made parties to numerous non-commercial transactions with the Beechwood Entities, PPCO and other Platinum Management insiders that subordinated PPVA's interests and depressed or encumbered the value of PPVA's assets.

836. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

837. In addition, because the Platinum Defendants acted knowingly, intentionally, purposefully, maliciously, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Sixth Count: Aiding and Abetting Fraud against the Individual Platinum Defendants

838. The Plaintiffs repeat and re-allege paragraphs 1-837 as if fully set forth herein.

839. As set forth above, Platinum Management defrauded PPVA in connection with the actions comprising the First and Second Schemes.

840. The Individual Platinum Defendants substantially assisted and participated in Platinum Management's material misrepresentations, omissions and actions to defraud PPVA in connection with the First and Second Schemes by, *inter alia*, (i) engaging in transactions with the Beechwood Defendants and other insiders designed to support the inflated net asset values ascribed to PPVA's assets by Platinum Management, so as to enable Platinum Management to cause PPVA to pay it unearned distributions, fees, expenses and other payments; (ii) engaging in transactions to benefit the Platinum Defendants, Beechwood Defendants and other insiders to the detriment of PPVA; and (iii) participating in the Black Elk Scheme, including, among other things, the amendment of the Black Elk Indenture; and (iv) engaging in transactions which purposefully transferred or encumbered the assets of PPVA and its subsidiaries, designed to benefit the Platinum Defendants, Beechwood Defendants, the BEOF Funds and the Preferred Investors of the BEOF Funds, PPCO and other insiders to the detriment of PPVA.

841. The Individual Platinum Defendants had actual knowledge that Platinum Management was defrauding PPVA by engaging in the acts and transactions and making the material misrepresentations and omissions comprising the First and Second Schemes.

842. As a direct and proximate result of the Individual Platinum Defendants' actions and substantial participation, PPVA was damaged.

843. The actions of the Individual Platinum Defendants caused the harm on which the primary liability of fraud is predicated.

844. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

845. In addition, because the Individual Platinum Defendants acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Seventh Count: Aiding and Abetting Breach of
Fiduciary Duties against the Beechwood Defendants

846. The Plaintiffs repeat and re-allege paragraphs 1-845 as if fully set forth herein.

847. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties of due care, loyalty and good faith to PPVA.

848. As set forth above, the Platinum Defendants breached their fiduciary duties to PPVA by their actions in connection with the First and Second Schemes as detailed above.

849. At all relevant times, Nordlicht, Levy, Huberfeld and Bodner, together with Feuer and Taylor, created, owned, managed, controlled and operated the Beechwood Entities.

850. Beechwood and Platinum Management initially shared offices and several senior staff members of the Beechwood Entities were current or seconded employees of Platinum Management, including Levy, who was named as BAM's initial CIO and was marketed as part of the Beechwood Entities' senior executive team.

851. The Beechwood Defendants and Platinum Defendants communicated with one another regularly by email and in person regarding the statements and transactions comprising the First and Second Schemes.

852. The Beechwood Defendants substantially assisted and participated in the Platinum Defendants' breaches of their fiduciary obligations in connection with the First and Second Schemes by, *inter alia*, (i) engaging in transactions with PPVA designed to support the inflated NAV ascribed to PPVA's assets by the Platinum Defendants, so as to enable the Platinum Defendants to charge and pay themselves unearned fees and expenses; (ii) engaging in transactions to benefit the Platinum Defendants, BEOF Funds and the Beechwood Defendants to the detriment of PPVA; (iii) participating in the Black Elk Scheme; and (iv) engaging in transactions which purposefully transferred or encumbered the assets of PPVA and its subsidiaries, designed to benefit the Beechwood Defendants and other insiders to the detriment of PPVA.

853. The Beechwood Defendants had actual knowledge that the Platinum Defendants were breaching their fiduciary obligations to PPVA by engaging in the actions and transactions comprising the First and Second Schemes.

854. As a direct and proximate result of the Beechwood Defendants' actions and substantial participation, PPVA was damaged.

855. The actions of the Beechwood Defendants caused the harm on which the primarily liability of breach of fiduciary duties is predicated.

856. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

857. In addition, because the Beechwood Defendants acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Eighth Count: Aiding and Abetting Fraud
<u>against the Beechwood Defendants</u>

858. The Plaintiffs repeat and re-allege paragraphs 1-857 as if fully set forth herein.

859. As set forth above, the Platinum Defendants defrauded PPVA in connection with the actions comprising the First and Second Schemes.

860. At all relevant times, Nordlicht, Levy, Huberfeld and Bodner, together with Feuer and Taylor, created, owned, managed, controlled and operated the Beechwood Entities.

861. The Beechwood Entities and Platinum Management initially shared offices and several senior staff members of the Beechwood Entities were current or seconded employees of Platinum Management, including Levy, who was named as BAM's initial CIO and was marketed as part of the Beechwood Entities' senior executive team.

862. The Beechwood Defendants and Platinum Defendants communicated with one another regularly by email and in person regarding the statements and transactions comprising the First and Second Schemes.

863. The Beechwood Defendants substantially assisted and participated in the Platinum Defendants' material misrepresentations, omissions and actions to defraud PPVA in connection with the First and Second Schemes by, *inter alia*, (i) engaging in transactions with PPVA designed to support the inflated net asset values ascribed to PPVA's assets by the Platinum Defendants, so as to enable the Platinum Defendants to charge and pay themselves unearned fees and expenses; (ii) engaging in transactions to benefit the Platinum Defendants, Beechwood Defendants and other insiders to the detriment of PPVA; and (iii) participating in the Black Elk Scheme, including,

among other things, the amendment of the Black Elk Indenture; and (iv) engaging in transactions which purposefully transferred or encumbered the assets of PPVA and its subsidiaries, designed to benefit the Beechwood Defendants and other insiders to the detriment of PPVA.

864. As a result, the Beechwood Defendants had actual knowledge that the Platinum Defendants were defrauding PPVA by engaging in the acts and transactions and making the material misrepresentations and omissions comprising the First and Second Schemes.

865. As a direct and proximate result of the Beechwood Defendants' actions and substantial participation, PPVA was damaged.

866. The actions of the Beechwood Defendants caused the harm on which the primary liability of fraud is predicated.

867. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

868. In addition, because the Beechwood Defendants acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Ninth Count: Aiding and Abetting Breach of Fiduciary Duties against the BEOF Funds and the Preferred Investors of the BEOF Funds

869. The Plaintiffs repeat and re-allege paragraphs 1-868 as if fully set forth herein.

870. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties of due care, loyalty and good faith to PPVA.

871. As set forth above, the Platinum Defendants breached their fiduciary duties to PPVA by their actions in connection with the Black Elk Scheme.

872. As described herein, the Platinum Defendants orchestrated the Black Elk Scheme so as to divert the proceeds of the Renaissance Sale for the benefit of themselves, the BEOF Funds and the Preferred Investors of BEOF, resulting in significant losses to and claims against PPVA.

873. Both BEOF Funds were formed, managed and marketed by the Platinum Defendants, including Nordlicht, Landesman, Levy, Manela, Huberfeld, Bodner, Fuchs, Small, SanFilippo, Beren and other persons employed Platinum Management.

874. Both BEOF Funds share overlapping investors with the funds managed by Platinum Management by way of the Preferred Investors of the BEOF Funds.

875. Both BEOF Funds were formed in the offices of Platinum Management and operated until their conclusion by Platinum Management from the same offices.

876. That being said, the Preferred Investors of the BEOF Funds made a conscious choice to participate in the Platinum Defendants' actions with respect to Black Elk and eventually the Black Elk Scheme. In spring 2014, each of the Preferred Investors of the BEOF Funds agreed to exchange their existing investments in the BEOF Funds for new investments and in some cases to invest additional funds, which agreements substantially assisted the Platinum Defendants in making it possible to effect the Black Elk Scheme.

877. The spring 2014 agreements by the Preferred Investors of the BEOF Funds to exchange their existing investments in the BEOF Funds for new investments and/or to invest additional funds were made notwithstanding the fact that by Spring 2014, Black Elk's public filings indicated that it likely was insolvent.

878. Both BEOF Funds and the Preferred Investors of the BEOF Funds substantially assisted and participated in the Platinum Defendants' breaches of their fiduciary obligations in connection with the Black Elk Scheme by, *inter alia*, (i) participating in the Black Elk Scheme;

and (ii) engaging in transactions to benefit the Platinum Defendants, the BEOF Funds and the Preferred Investors of the BEOF Funds to the detriment of PPVA.

879. The BEOF Funds and the Preferred Investors of the BEOF Funds had actual knowledge that the Platinum Defendants were breaching their fiduciary obligations to PPVA by engaging in the acts and transactions comprising the Black Elk Scheme.

880. Preferred Investor of the BEOF Funds Huberfeld Family Foundation, the alter ego of Platinum Management and Murray Huberfeld, provided substantial assistance to the Platinum Defendants in implementing the First and Second Schemes.

881. In addition to its role in the Black Elk Scheme, the Huberfeld Family Foundation acted as a repository for assets illicitly gained by the Platinum Defendants by way of the First and Second Schemes.

882. As a direct and proximate result of the actions and substantial participation of both BEOF Funds and the Preferred Investors of the BEOF Funds, PPVA was damaged.

883. The actions of the BEOF Funds and the Preferred Investors of the BEOF Funds caused the harm on which the primarily liability of breach of fiduciary duties is predicated.

884. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

885. In addition, because the BEOF Funds and the Preferred Investors of the BEOF Funds acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Tenth Count: Aiding and Abetting Fraud against
the BEOF Funds and the Preferred Investors of the BEOF Funds

886. The Plaintiffs repeat and re-allege paragraphs 1-885 as if fully set forth herein.

887. As set forth above, the Platinum Defendants defrauded PPVA in connection with the actions comprising the Black Elk Scheme.

888. As described herein, the Platinum Defendants orchestrated the Black Elk Scheme so as to divert the proceeds of the Renaissance Sale for the benefit of themselves, the BEOF Funds and the Preferred Investors of the BEOF Funds, resulting in significant losses and claims against PPVA.

889. Both BEOF Funds were formed, managed and marketed by the Platinum Defendants, including Nordlicht, Landesman, Levy, Manela, Huberfeld, Bodner, Fuchs, Small, SanFilippo, Saks, Beren and other persons employed Platinum Management.

890. Both BEOF Funds share overlapping investors with the funds managed by Platinum Management by way of the Preferred Investors of the BEOF Funds.

891. Both BEOF Funds were formed in the offices of Platinum Management and operated until their conclusion by Platinum Management from the same offices.

892. That being said, the Preferred Investors of the BEOF Funds made a conscious choice to participate in the Platinum Defendants actions with respect to Black Elk and eventually the Black Elk Scheme. In spring 2014, each of the Preferred Investors of the BEOF Funds agreed to exchange their existing investments in the BEOF Funds for new investments and in some cases to invest additional funds, which agreements substantially assisted the Platinum Defendants in making it possible to effect the Black Elk Scheme.

893. The spring 2014 agreements by the Preferred Investors of the BEOF Funds to exchange their existing investments in the BEOF Funds for new investments and/or to invest

additional funds were made notwithstanding the fact that by Spring 2014, Black Elk's public filings indicated that it likely was insolvent.

894. The BEOF Funds and the Preferred Investors of BEOF Funds substantially assisted and participated in the Platinum Defendants' material misrepresentations, omissions and actions to defraud PPVA in connection with the Black Elk Scheme by, *inter alia*, (i) engaging in transactions with PPVA designed to support the inflated NAV ascribed to PPVA's investment in Black Elk by the Platinum Defendants, so as to enable the Platinum Defendants to charge and pay themselves unearned fees and expenses; (ii) engaging in transactions to benefit the Platinum Defendants, the BEOF Funds and the Preferred Investors of BEOF Funds to the detriment of PPVA; and (iii) participating in the Black Elk Scheme.

895. The BEOF Funds and the Preferred Investors of the BEOF Funds had actual knowledge that the Platinum Defendants were defrauding PPVA by engaging in the acts and transactions and making the material misrepresentations and omissions comprising the Black Elk Scheme.

896. As a direct and proximate result of the actions and substantial participation of the BEOF Funds and the Preferred Investors of the BEOF Funds, PPVA was damaged.

897. The actions of the BEOF Funds and the Preferred Investors of the BEOF Funds caused the harm on which the primary liability of fraud is predicated.

898. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

899. In addition, because the BEOF Funds and the Preferred Investors of the BEOF Funds acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's

rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Eleventh Count: Aiding and Abetting Breach of
Fiduciary Duties against Michael Katz

900. The Plaintiffs repeat and re-allege paragraphs 1-899 as if fully set forth herein.

901. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties of due care, loyalty and good faith to PPVA.

902. As set forth above, the Platinum Defendants breached their fiduciary duties to PPVA by, among other things, causing PPVA and its subsidiaries to enter into the Agera Transactions.

903. Beginning at least in March 2016, Katz served as an advisor to Platinum Management, and assisted in orchestrating the scheme whereby the Platinum Defendants caused PPVA's interest in Agera Energy to be transferred to an "insider" to the detriment of PPVA, which was thereafter effectuated by way of the June 2016 Agera Transactions.

904. The Platinum Defendants communicated with Katz regularly by email and in person regarding the Agera Transactions.

905. Katz substantially assisted and participated in the Platinum Defendants' breaches of their fiduciary obligations in connection with the Agera Transactions by, *inter alia*, orchestrating the Agera Transactions in order to transfer PPVA's interest in Agera Energy to the Beechwood Defendants at a significant loss to PPVA.

906. Katz had actual knowledge that the Platinum Defendants were breaching their fiduciary obligations to PPVA by engaging in the Agera Transactions.

907. As a direct and proximate result of Katz's actions and substantial participation, PPVA was damaged.

908. The actions of Katz caused the harm on which the primary liability of breach of fiduciary duty is predicated.

909. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

910. In addition, because Michael Katz acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Twelfth Count: Aiding and Abetting Breach of
Fiduciary Duties against Kevin Cassidy and Michael Nordlicht

911. The Plaintiffs repeat and re-allege paragraphs 1-910 as if fully set forth herein.

912. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties of due care, loyalty and good faith to PPVA.

913. As set forth above, the Platinum Defendants breached their fiduciary duties to PPVA by, among other things, causing PPVA and its subsidiaries to enter into the Agera Transactions.

914. When Cassidy was released from prison in 2014, Nordlicht, Bodner and Huberfeld installed him as the managing director of Agera Energy.

915. Also in 2014, Michael Nordlicht was installed by Mark Nordlicht, his uncle, as in-house counsel for Agera Energy

916. Cassidy and Starfish, an entity dominated and controlled by Cassidy, were parties to the Agera Transactions, and received millions of dollars in Agera Sale proceeds in exchange for nothing.

917. Michael Nordlicht willfully consented to and actively participated in the Agera Transactions and the transfer of his voting and equity interests in Agera Holdings to AGH Parent.

918. The Platinum Defendants communicated with Cassidy and Michael Nordlicht regularly by email and in person regarding the Agera Transactions, as both Cassidy and Michael Nordlicht were deeply involved in the negotiation of the Agera Transactions.

919. Cassidy substantially assisted and participated in the Platinum Defendants' breaches of their fiduciary obligations in connection with the Agera Transactions by, *inter alia*, (i) orchestrating the Agera Transactions in order to transfer PPVA's interest in Agera Energy to the Beechwood Defendants; and (ii) receiving $13,552,000 in cash and interests in AGH Parent from the corrupt Agera Transactions by way of his entity, Starfish.

920. Michael Nordlicht substantially assisted and participated in the Platinum Defendants' breaches of their fiduciary obligations in connection with the Agera Transactions by, *inter alia*, (i) orchestrating the Agera Transactions in order to transfer PPVA's interest in Agera Energy to the Beechwood Defendants; and (ii) consenting to the transfer of his voting and equity interests in Agera Energy's parent company to AGH Parent.

921. Cassidy and Michael Nordlicht had actual knowledge that the Platinum Defendants were breaching their fiduciary obligations to PPVA by engaging in the Agera Transactions.

922. As a direct and proximate result of Cassidy and Michael Nordlicht's actions and substantial participation, PPVA was damaged.

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923. The actions of Cassidy and Michael Nordlicht caused the harm on which the primary liability of breaches of fiduciary duty is predicated.

924. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

925. In addition, because Cassidy and Michael Nordlicht acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Thirteenth Count: Aiding and Abetting Breach of Fiduciary Duties against Seth Gerszberg

926. The Plaintiffs repeat and re-allege paragraphs 1-925 as if fully set forth herein.

927. The Platinum Defendants, who are comprised of the General Partner of PPVA and the individuals who oversaw the management, operation, valuation and administration of PPVA and its subsidiaries, owed fiduciary duties of due care, loyalty and good faith to PPVA.

928. As set forth above, the Platinum Defendants breached their fiduciary duties to PPVA by, among other things, causing PPVA and its subsidiaries to enter into the certain transactions constituting the Security Lockup.

929. On January 1, 2016, Nordlicht brought on Gerszberg as an informal advisor to Platinum Management.

930. From January 1, 2016 until commencement of the Cayman Liquidation, Gerszberg advised the Platinum Defendants and provided substantial assistance in the formulation and execution of the Second Scheme.

931. The Platinum Defendants communicated with Gerszberg regularly by email and in person regarding the Second Scheme.

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932. Gerszberg substantially assisted and participated in the Platinum Defendants' breaches of their fiduciary obligations in connection with the Second Scheme by, *inter alia*, (i) causing PPVA to allegedly incur significant liabilities due to the Purported Underlying West Loop/Epocs Obligations; (ii) negotiating certain Second Scheme Transactions on behalf of the Platinum Defendants; (iii) negotiating and drafting the Forbearance and Security Agreement on behalf of West Loop/Epocs; and (iv) directing the transfer of $15 million in Agera Sale proceeds to himself (via Spectrum30) and Franky Zapata, all of which actions were a detriment to PPVA and its subsidiaries.

933. Gerszberg had actual knowledge that the Platinum Defendants were breaching their fiduciary obligations to PPVA by engaging in the Second Scheme.

934. As a direct and proximate result of Gerszberg's actions and substantial participation, PPVA was damaged.

935. The actions of Gerszberg caused the harm on which the primary liability of breaches of fiduciary duty is predicated.

936. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

937. In addition, because Gerszberg acted willingly, grossly, recklessly and wantonly negligent, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Fourteenth Count: In the Alternative, Unjust Enrichment
against the Beechwood Defendants, Kevin Cassidy and Seth Gerszberg

938. The Plaintiffs repeat and re-allege paragraphs 1-937 as if fully set forth herein.

939. In connection with the Second Scheme and as described herein, the Platinum Defendants intentionally engaged in certain acts for the purpose of transferring or encumbering

PPVA's assets for the sole benefit of insiders of the Platinum Defendants, including the Beechwood Defendants, Kevin Cassidy and Seth Gerszberg.

940. The Platinum Defendants orchestrated the Second Scheme for the intentional purpose of diverting the remaining assets of PPVA and its subsidiaries to insiders such as the Beechwood Defendants, Cassidy and Gerszberg.

941. In connection with the Second Scheme and as described herein, the Platinum Defendants did not seek fair market terms in connection with the Second Scheme Transactions, and instead set transaction terms that knowingly caused significant damage to PPVA and would unjustly benefit insiders such as the Beechwood Defendants, Cassidy and Gerszberg.

942. Platinum Management caused PPVA and its subsidiaries to have a direct relationship with the Beechwood Defendants, Cassidy and Gerszberg.

943. The Beechwood Defendants would be unjustly enriched at the expense of PPVA if they were permitted to receive full benefit from the Second Scheme Transactions and related transfers.

944. PPVA would suffer an unjust detriment if the Beechwood Defendants were permitted to receive the full benefits of the Second Scheme Transactions.

945. Permitting the Beechwood Defendants, Cassidy and Gerszberg to receive full benefit of the Second Scheme Transactions at the expense of PPVA would be against equity and good conscience.

946. By reason of the foregoing, and pled in the alternative pursuant to Fed. R. Civ. P. 8(d)(2), the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

947. In addition, because the Beechwood Defendants, Cassidy and Gerszberg acted knowingly, intentionally, purposefully, maliciously, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Fifteenth Count: In the Alternative, Unjust Enrichment against the BEOF Funds and the Preferred Investors of the BEOF Funds

948. The Plaintiffs repeat and re-allege paragraphs 1-947 as if fully set forth herein.

949. In connection with the Black Elk Scheme and as described herein, the Platinum Defendants intentionally engaged in certain acts that resulted in the improper conveyance and transfer of $36 million in cash and other capital distributions to the BEOF Funds and the Preferred Investors of the BEOF Funds to the detriment of PPVA and its subsidiaries.

950. The Platinum Defendants orchestrated the Black Elk Scheme in part to divert the proceeds of the Renaissance Sale away from PPVA for the benefit of the BEOF Funds and the Preferred Investors of the BEOF Funds.

951. Platinum Management caused PPVA and its subsidiaries to have a direct relationship with the BEOF Funds and the Preferred Investors of the BEOF Funds.

952. The BEOF Funds and the Preferred Investors of the BEOF Funds would be unjustly enriched at the expense of PPVA if they were permitted to receive and retain the capital distributions they received as a result of the Black Elk Scheme.

953. PPVA would suffer an unjust detriment if the BEOF Funds and the Preferred Investors of the BEOF Funds are permitted to receive the full benefits of the Black Elk Scheme and the transfers related thereto.

954. The result of the Black Elk Scheme was to unjustly subordinate PPVA's interest in Black Elk to that of the BEOF Funds and the Preferred Investors of the BEOF Funds, to the detriment of PPVA.

955. The Black Elk Scheme further resulted in significant creditor claims against PPVA, including without limitation claims brought by the Black Elk Trustee against PPVA.

956. The Black Elk Scheme further resulted in payment of unearned fees to the Platinum Defendants and permitted the Platinum Defendants to continue PPVA as an ongoing fund in order to dissipate assets by way of the Second Scheme.

957. Permitting the BEOF Funds and the Preferred Investors of the BEOF Funds to retain the full benefit of the Black Elk Scheme and the transfers related thereto at the expense of PPVA would be against equity and good conscience.

958. By reason of the foregoing, and pled in the alternative pursuant to Fed. R. Civ. P. 8(d)(2) the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

959. In addition, because the BEOF Funds and the Preferred Investors of the BEOF Funds acted knowingly, intentionally, purposefully, maliciously, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Sixteenth Count: Civil Conspiracy against the Platinum Defendants and the Beechwood Defendants

960. The Plaintiffs repeat and re-allege paragraphs 1-959 as if fully set forth herein.

961. As set forth herein, Defendants, acting in concert and as a conspiracy, engaged in various tortious conduct against PPVA in connection with the First and Second Schemes, including breach of fiduciary duties, fraud, constructive fraud and/or aiding and abetting of the same.

962. At all relevant times, each Defendant was a knowing and intentional participant in the conspiracy and agreed to pursue its aims, namely, to transfer or encumber PPVA's assets for the benefit of the Defendants.

963. Defendants were closely related entities or individuals, with close corporate relationships and common control, that entered into various agreements among themselves and conspired to intentionally damage PPVA.

964. Each Defendant committed one or more overt acts in furtherance of the conspiracy, including, but not limited to: (i) engaging in transactions designed to support the inflated NAV ascribed to PPVA's assets by the Platinum Defendants, so as to enable the Platinum Defendants to charge and pay themselves unearned fees and expenses; (ii) engaging in transactions to benefit the Platinum Defendants, Preferred Investors of the BEOF Funds and the Beechwood Defendants to the detriment of PPVA; (iii) participating in the Black Elk Scheme; and (iv) engaging in transactions which purposefully transferred or encumbered the assets of PPVA and its subsidiaries, designed to benefit the Beechwood Defendants and other insiders to the detriment of PPVA.

965. PPVA has been injured as a proximate result of the wrongful acts committed by Defendants in furtherance of the conspiracy, as set forth in this Amended Complaint.

966. By reason of the foregoing, the Plaintiffs are entitled to a judgment awarding them compensatory damages in an amount to be determined at the trial of this action, together with interest at the statutory rate.

967. In addition, because Defendants acted willingly, grossly, recklessly and wantonly negligent, and without regard for PPVA's rights and interests, the Plaintiffs are further entitled to punitive damages for the misconduct alleged herein.

Seventeenth Count: Violation of Civil RICO against the Platinum Defendants and the Beechwood Defendants

968. The Plaintiffs repeat and re-allege paragraphs 1-967 as if fully set forth herein.

969. The RICO scheme has common participants and a common victim. Each of the Platinum Defendants and Beechwood Defendants violated RICO, and PPVA was injured as a result.

970. Each of the Platinum Defendants and Beechwood Defendants is a "person" capable of holding legal or beneficial interest in property within the meaning of 18 U.S.C. Section 1961(3).

971. Each of the Platinum Defendants and Beechwood Defendants violated 18 U.S.C. § 1962(c) by means of the acts described in the preceding paragraphs and as further described below.

972. Each of the Platinum Defendants and Beechwood Defendants, whether as an owner or employee of, or otherwise associated with, the Beechwood Entities, conducted the affairs of each of the Beechwood Entities through illegal acts as they individually and collectively directly or indirectly participated in managing, directing or operating each separate entity of the Beechwood Entities.

973. The Enterprise. The Platinum Defendants, Beechwood Defendants, and Beechwood Entities form an association-in-fact for the common and continuing purpose described herein and constitute an "enterprise," under 18 U.S.C. Section 1961(4) engaged in the conduct of their affairs through a continuing pattern of racketeering activity. The members of the enterprise functioned as a continuing unit with an ascertainable structure separate and distinct from that of the conduct of the pattern of racketeering activity. Each one was an ongoing association with a shared purpose and relationships among the individual Platinum Defendants and Beechwood Defendants associated with the enterprise, and each entity of association endured with sufficient longevity so as to permit, encourage and support the individual associates in their efforts and actions in pursuing and advancing the purpose(s) of the enterprise. There may be other members of the enterprise who are unknown at this time.

974. Pattern of Racketeering Activity. The Platinum Defendants and Beechwood Defendants, each of whom is a person associated with, or employed by the enterprise, did knowingly, willfully, and unlawfully conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. Sections 1961(1), 1961(5), and 1962(c). The racketeering activity was made possible by the Platinum Defendants and Beechwood Defendants' regular and repeated use of the facilities and services of the enterprise. The Platinum Defendants and Beechwood Defendants had the specific intent to engage in the substantive RICO violations alleged herein.

975. Predicate acts of racketeering are acts that are indictable under provisions of the United States Code enumerated in 18 U.S.C. Section 1961(1)(B), as more specifically alleged below. The Platinum Defendants and Beechwood Defendants each committed at least two such acts or else aided and abetting such acts.

976. The acts of racketeering were not isolated. Rather, the acts of the Platinum Defendants and Beechwood Defendants were related in that they had the same or similar purpose and result, participants, victims, and method of commission. Further, the acts of racketeering have been continuous. There was repeated conduct during a period of time beginning in approximately February 2014 and continuing through June 2016.

977. Predicate Acts: Use of Mails and Wires to Defraud in Violation of 18 U.S.C. Sections 1341 and 1343. Each of the Platinum Defendants and Beechwood Defendants, through the association-in-fact enterprise, engaged in two or more acts constituting indictable offenses under 18 U.S.C. Sections 1341 and 1343 in that they devised or intended to devise a scheme or artifice to defraud PPVA, and to obtain money and property from PPVA, through false pretenses, representations, and promises. To execute their scheme or artifice, the Platinum Defendants and

Beechwood Defendants caused delivery of various documents and things by the U.S. mails or by private or commercial interstate carriers, or received such therefrom and transmitted or caused to be transmitted by means of wire communications in interstate or foreign commerce various writings, signs, and signals. The acts of the Platinum Defendants and Beechwood Defendants were done with knowledge that the use of the mails or wires would follow in the ordinary course of business, or that such use could have been foreseen, even if not actually intended. These acts were done intentionally and knowingly with the specific intent to advance the scheme or artifice.

978. The predicate acts of racketeering include: (i) Wire Fraud - the bribery scheme admitted to by Murray Huberfeld in which he was convicted of conspiracy to commit wire fraud for defrauding Platinum of certain funds that were used to bribe a union official to invest approximately $20 million; (ii) Wire Fraud – an email, dated July 30, 2015, describing how the Platinum and Beechwood Defendants used Beechwood to disguise that Beechwood and Platinum were actually integrated and co-conspirators in multiple frauds; (iii) Wire Fraud - an email, dated March 11, 2014, to further the Black Elk Scheme to secure the votes to amend the Indenture through the fraudulent use of Beechwood as an unauthorized proxy; (iv) Wire Fraud - emails dated May 13, 2014, June 23, 2014, and July 1, 2014, furthering the fraudulent scheme to cause PPVA to sell loan interests to Beechwood Entities at artificial and inflated prices; (v) Wire Fraud - email communication containing false representations in the final Consent Solicitation published prior to amended of the Indenture; (vi) Wire Fraud - email communications to the Indenture Trustee consenting to the Indenture amendment; (vii) Wire Fraud - an email, dated August 18, 2014, directing wire of tens of millions of dollars in funds to designated parties from proceeds of the Renaissance Sale; (viii) Wire Fraud - email communications concerning Platinum Defendants and Beechwood Defendants' causing Montsant, a PPVA subsidiary, to purchase remaining 13.75%

Senior Secured Noted Beechwood Entities held at 93.5% of par; (ix) Wire Fraud - email communications from April through June 2016 concerning the sale by PGS, of which PPVA held a 55% interest, of PGS's only asset, the Agera Note, to an insider for a fraction of its fair market value; and (x) Wire Fraud - the Nordlicht Side Letter, dated January 14, 2016, signed by Mark Nordlicht and Mark Feuer, purportedly providing the proceeds owed to DMRJ from sale of IMSC to repay debts of Golden Gate Oil owed to Beechwood Entities. Each of these communications by or on behalf of the Platinum Defendants and Beechwood Defendants constitutes a distinct and separate offense.

979. The aforementioned predicate acts of racketeering activity involve distinct and independent criminal acts. They were neither isolated nor sporadic event but rather involve regular and repeated violations of law to accomplish the Platinum Defendants' and Beechwood Defendants' desired ends in the course of the business of the association-in-fact enterprise. These acts were related to one another and to the objects of the fraudulent schemes and of obtaining money and property through the First and Second Schemes, and the Platinum Defendants and Beechwood Defendants have perpetrated and engaged in the predicate acts to further their fraudulent schemes and obtain money and property. The predicate acts of racketeering activity have in common: (i) objectives (to divert PPVA's funds and assets for their own personal and financial benefit); (ii) participants (Platinum Defendants and Beechwood Defendants); (iii) victims (PPVA and its investors and creditors); (iv) methods of executing the schemes to defraud and to obtain money and property (using false and fraudulent representations regarding liquidity and fair market values of PPVA's assets to induce investment and regarding the independence of the Platinum Defendants and Beechwood Defendants and co-schemers); and (v) installing PPVA

insiders to manage the Beechwood Entities in violation of their fiduciary duties and in furthering the First and Second Schemes.

980. The Platinum Defendants and Beechwood Defendants' predicate acts of racketeering were conducted in furtherance of the schemes to defraud and to obtain money and property and were continuous since February 2014 until June 2016. The predicate acts of racketeering continue formed an integral part of the enterprises' *modus operandi*.

981. Accordingly, the Platinum Defendants and Beechwood Defendants have engaged in a pattern of racketeering activity, pursuant to 18 U.S.C. Section 1961(5).

982. At all relevant times, each enterprise engaged in, and its activities affected, interstate commerce.

983. Each of the Platinum Defendants and Beechwood Defendants has therefore violated 18 U.S.C. Section 1962(c) by conducting or participating in the conduct of the enterprises' affairs through a pattern of racketeering activity.

984. PPVA has been injured in its business and property as a proximate result of each of the Platinum Defendants and Beechwood Defendants' violations of 18 U.S.C. Section 1962(c), in at least the following ways: (i) defrauding PPVA through the falsely inflated net asset value of the assets of PPVA; (ii) the Black Elk Scheme, which resulted in claims of more than $100 million against PPVA and the diversion of the Renaissance Sale proceeds away from PPVA; and (iii) the transactions comprising the Second Scheme, where PPVA's assets of approximately $300 million were offloaded to Beechwood Entities or insiders of Platinum Defendants and Beechwood Defendants, to the detriment of PPVA.

985. All of these facts, in addition to others stated above, make it clear that Platinum Management and its executives dominated and controlled the Beechwood Entities in furtherance

of the First and Second Schemes. Accordingly, the Beechwood Entities are liable for all amounts owed by Platinum Management to PPVA in connection with the First and Second Schemes.

Eighteenth Count: (For Relief Only) Alter Ego against the
Beechwood Entities in respect of Counts One, Two, Four and Five

986. The Plaintiffs repeat and re-allege paragraphs 1-985 as if fully set forth herein.

987. This count is pleaded as additional allegations for relief against the Beechwood Entities as alter egos of Platinum Management in respect of Counts One, Two, Four and Five and not as a separate cause of action.

988. The Beechwood Entities were formed and conceived as the alter-ego of Platinum Management for the purpose of inflicting harm upon PPVA.

989. The Beechwood Entities and Platinum Management have overlapping ownership, in particular, Nordlicht, Huberfeld, Levy and Bodner.

990. The Beechwood Entities and Platinum Management have overlapping management, founders and officers, including Huberfeld, Nordlicht, Bodner, Levy, Ottensoser, Small, Saks, Manela, Beren and the other persons listed herein.

991. The Beechwood Entities were founded in and initially operated from the offices of Platinum Management.

992. The Beechwood Entities were capitalized by the Platinum Defendants with assets controlled by Platinum Management. The Beechwood Entities and Platinum Management were inadequately capitalized relative to their business and investment risks at all relevant times.

993. The Beechwood Entities were financed and created by Platinum Management and assets controlled by Platinum Management were used to finance the Beechwood Entities.

994. The individual Platinum Defendants and Beechwood Defendants, including Levy and Manela, used email addresses at both Beechwood and Platinum Management interchangeably in furtherance of their efforts in connection with the First and Second Schemes.

995. As set forth in detail herein, Platinum Management and the Beechwood Entities used the property of PPVA in furtherance of a fraud, in order to siphon fees off of inflated NAVs. The Beechwood Entities and Platinum Management caused PPVA and Beechwood to make joint investments, often to the detriment of PPVA and its creditors and investors. Beechwood and Platinum Management entered into informal and unreported loan agreements and terms, put-back agreements, and guarantees including the GGO Put Option and Guaranty, cross collateralization of assets, and the Nordlicht Side Letter, all of which were not reported to PPVA.

996. The ultimate decision making for both Platinum Management and the Beechwood Entities rested with the same controlling minds: Nordlicht, Huberfeld, Levy and Bodner.

997. Platinum Management often caused PPVA to commit acts which benefited the Beechwood Entities at PPVA's expense, including but not limited to the Black Elk Scheme, the Nordlicht Side Letter, the Master Guaranty, the PEDEVCO subordination, and the Agera Transactions.

998. By virtue of the Master Guaranty and the Agera Transactions, PPVA assets were transferred to the ownership and control of the Beechwood Defendants and Beechwood Entities without formal marketing or other market-based controls, by way of corrupt and wrongful insider transactions.

999. Beechwood and Platinum Management engaged in a corrupt enterprise to pursue fraudulent, wrongful, and illicit purposes, which directly harmed PPVA. This enterprise and plan

is summarized herein as the First Scheme and the Second Scheme, wherein Platinum Management formed and created the Beechwood Entities for the corrupt and wrongful purposes of inflating PPVA's asset values and taking fees based upon these values, engaging in the Black Elk Scheme for the benefit of the BEOF Funds and to the detriment of PPVA, and then forming and executing the Second Scheme for the purpose of dissipating PPVA's remaining valuable assets to Beechwood, most notably its interests in IMSC and Agera Energy.

1000. By reason of the foregoing, the Beechwood Entities are alter egos of Platinum Management and are liable to the same extent as Platinum Management in connection with the Plaintiffs' Counts One, Two, Four and Five.

Nineteenth Count: (For Relief Only) Alter Ego against the BEOF Funds in respect of Counts One, Two, Four and Five

1001. The Plaintiffs repeat and re-allege paragraphs 1-1000 as if fully set forth herein.

1002. This count is pleaded as additional allegations for relief against the BEOF Funds as alter egos of Platinum Management in respect of Counts One, Two, Four and Five and not as a separate cause of action.

1003. Platinum Management formed the BEOF Funds for the corrupt and wrongful purpose of siphoning nearly $100 million in funds out of Black Elk in connection with the Renaissance Sale, all the while allowing PPVA and its subsidiaries to face the consequences in the form of substantial creditor claims and the total devaluation of the Black Elk bonds that would be repurchased by PPVA via Montsant.

1004. Both BEOF Funds were formed by the same persons and counsel that formed Platinum Management.

1005. Both BEOF Funds have overlapping ownership, management and control with Platinum Management, and were formed by a corrupt group of the Platinum Defendants for the purpose of covering their Black Elk investment losses in the wake of the Black Elk Explosion.

1006. Platinum Management directed the capitalization of both BEOF Funds.

1007. Both BEOF Funds share overlapping investors with the funds managed by Platinum Management.

1008. Both BEOF Funds were formed in the offices of Platinum Management and operated until their conclusion by Platinum Management from the same offices.

1009. Both BEOF Funds were named similar to other funds managed by Platinum Management, which other funds shared overlapping investments in Black Elk.

1010. Ultimate decision making for both Platinum Management and the BEOF Funds rested in the same controlling minds: Nordlicht, Huberfeld, Small, Levy and Bodner.

1011. Both BEOF Funds were formed and conceived to execute a fraud that harmed PPVA and benefited both BEOF Funds, to wit – the diversion of the Renaissance Sale proceeds.

1012. By reason of the foregoing, the BEOF Funds are alter egos of Platinum Management and are liable to the same extent as Platinum Management in connection with Plaintiffs' Counts One, Two, Four and Five.

Twentieth Count: Declaratory Judgment
The Nordlicht Side Letter Is Void and Unenforceable as Contrary to Public Policy

1013. The Plaintiffs repeat and re-allege paragraphs 1-1012 as if fully set forth herein.

1014. On or about January 14, 2016, Nordlicht executed the Nordlicht Side Letter purportedly on behalf of himself, PPVA, PPCO "and each of their affiliates."

1015. The Nordlicht Side Letter is purportedly signed by Feuer as a witness.

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1016. Neither PPVA nor any of its subsidiaries received any consideration whatsoever in return for executing the Nordlicht Side Letter.

1017. The intended and direct result of the Nordlicht Side Letter was to provide the Beechwood Entities with a right to obtain payment of the Golden Gate Oil Loan, which at that time totaled approximately $37 million, from the proceeds of the sale of IMSC and the repayment of IMSC's loan obligations to DMRJ and Montsant, irrespective of whether such amounts were held by PPVA or one of its affiliates.

1018. The Nordlicht Side Letter constituted a furtherance of the corrupt and fraudulent First and Second Schemes, whereby the Platinum Defendants and Beechwood Defendants siphoned off hundreds of millions of dollars in assets from PPVA for their own benefit.

1019. As the Nordlicht Side Letter is permeated with fraud and in violation of applicable law, the dictates of public policy and justice warrant a finding that the Nordlicht Side Letter is void and unenforceable.

1020. By reason of the foregoing, the Plaintiffs are entitled to a judgment declaring that the Nordlicht Side Letter cannot be enforced by any of the Beechwood Defendants in any capacity, as the Nordlicht Side Letter is void and unenforceable as against public policy.

Twenty-First Count: Declaratory Judgment that the
<u>Master Guaranty Is Void and Unenforceable as against Public Policy</u>

1021. The Plaintiffs repeat and re-allege paragraphs 1-1020 as if fully set forth herein.

1022. On or about March 21, 2016, Montsant, PPVA, Golden Gate Oil and BAM Administrative entered into the "Master Guaranty", by which, *inter alia*, (i) Montsant agreed to guaranty amounts owed to various Beechwood Entities and SHIP by Golden Gate Oil, to the extent of the assets contained in the Montsant Collateral Account; and (ii) BAM Administrative, as agent

for certain Beechwood Entities and SHIP, was provided with a non-recourse guaranty from PPVA of amounts owed by Golden Gate Oil and amounts owed by Montsant.

1023. The Master Guaranty amounted to a significant encumbrance of the remaining assets of PPVA which solely benefited the interests of the Beechwood Defendants.

1024. The intended result of the Master Guaranty was to provide the Beechwood Entities holding the Golden Gate Oil debt with a claim to IMSC proceeds, the Montsant Collateral Account, and various other PPVA assets.

1025. As a result of the Master Guaranty, the Platinum Defendants and Beechwood Defendants were able to continue their misrepresentation as to the value of the Golden Gate Oil investment, as the anticipated sale proceeds from IMSC and the assets in the Montsant Collateral Account could be used to pay the Golden Gate Oil Loan in full.

1026. The Master Guaranty constituted a furtherance of the corrupt First and Second Schemes, whereby the Platinum Defendants and Beechwood Defendants siphoned off hundreds of millions of dollars in assets from PPVA for their own benefit.

1027. As the Master Guaranty is permeated with fraud and in violation of applicable law, the dictates of public policy and justice warrant a finding that the Master Guaranty is void and unenforceable.

1028. By reason of the foregoing, the Plaintiffs are entitled to a judgment declaring that the Master Guaranty cannot be enforced by the Beechwood Entities in any capacity, as the Master Guaranty is void and unenforceable as against public policy.

Twenty-Second Count: (For Relief Only) Alter Ego against the
Huberfeld Family Foundation in respect of Counts One, Two, Three, Four, Five and Six

1029. The Plaintiffs repeat and re-allege paragraphs 1-1028 as if fully set forth herein.

1030. This count is pleaded as additional allegations for relief against the Huberfeld Family Foundation as an alter ego of both Platinum Management and Murray Huberfeld in respect of Counts One, Two, Three, Four, Five and Six and not as a separate cause of action.

1031. The Huberfeld Family Foundation was formed for the corrupt and wrongful purpose of acting as a clearing house for assets acquired by Murray Huberfeld and certain other Platinum Defendants in connection with the First and Second Schemes, namely, David Bodner, Mark Nordlicht, Bernard Fuchs, Uri Landesman and David Levy.

1032. At the direction of Murray Huberfeld and Platinum Management, the Huberfeld Family Foundation was one of the Preferred Investors of the BEOF Funds in connection with the siphoning of nearly $100 million in funds out of Black Elk in connection with the Renaissance Sale, all the while allowing PPVA and its subsidiaries to face the consequences in the form of substantial creditor claims and the total devaluation of the Black Elk bonds that would be repurchased by PPVA via Montsant.

1033. The Huberfeld Family Foundation regularly provided "loans" and otherwise transacted with Platinum insiders who, due to their checkered history, could not seek financing through PPVA or other regulated investment firms.

1034. The Huberfeld Family Foundation and Platinum Management were formed by the same persons and counsel that formed Platinum Management.

1035. The Huberfeld Family Foundation and Platinum Management have overlapping ownership, management and control with Platinum Management, namely Huberfeld as well as investments by other Platinum executives, and was formed for the corrupt purpose of the Black Elk Scheme as well as providing a clearing house for assets illicitly seized through the First and Second Schemes.

1036. Platinum Management and Murray Huberfeld directed the capitalization of the Huberfeld Family Foundation.

1037. The Huberfeld Family Foundation shares overlapping investors with Platinum Management.

1038. The Huberfeld Family Foundation was operated by Platinum Management from the same offices.

1039. Ultimate decision making for both Platinum Management and the Huberfeld Family Foundation rested, in part, with Huberfeld.

1040. The Huberfeld Family Foundation was formed and conceived by Platinum Management and Murray Huberfeld to execute a fraud that harmed PPVA and benefited the Huberfeld Family Foundation, to wit – the diversion of the Renaissance Sale proceeds and the creation of a repository for the illicit gains derived from the First and Second Schemes.

1041. By reason of the foregoing, the Huberfeld Family Foundation is the alter ego of Platinum Management and Murray Huberfeld and is liable to the same extent as Platinum Management and Murray Huberfeld in connection with Plaintiffs' Counts One, Two, Three, Four, Five and Six.

WHEREFORE, the Plaintiffs pray that this Court enter judgment against Defendants as follows:

a) on the Plaintiffs' first count, awarding compensatory damages against the Platinum Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Platinum Defendants in an amount to be determined at trial;

b) on the Plaintiffs' second count, awarding compensatory damages against the Platinum Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Platinum Defendants in an amount to be determined at trial;

c) on the Plaintiffs' third count, awarding compensatory damages against the Individual Platinum Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Individual Platinum Defendants in an amount to be determined at trial;

d) on the Plaintiffs' fourth count, awarding compensatory damages against the Platinum Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Platinum Defendants in an amount to be determined at trial;

e) on the Plaintiffs' fifth count, awarding compensatory damages against the Platinum Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Platinum Defendants in an amount to be determined at trial;

f) on the Plaintiffs' sixth count, awarding compensatory damages against the Individual Platinum Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Individual Platinum Defendants in an amount to be determined at trial;

g) on the Plaintiffs' seventh count, awarding compensatory damages against the Beechwood Defendants in an amount to be determined at trial plus interest at

the statutory rate, plus punitive damages against the Beechwood Defendants in an amount to be determined at trial;

h) on the Plaintiffs' eight count, awarding compensatory damages against the Beechwood Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Beechwood Defendants in an amount to be determined at trial;

i) on the Plaintiffs' ninth count, awarding compensatory damages against the BEOF Funds and the Preferred Investors of the BEOF Funds in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the BEOF Funds and the Preferred Investors of the BEOF Funds in an amount to be determined at trial;

j) on the Plaintiffs' tenth count, awarding compensatory damages against the BEOF Funds and the Preferred Investors of the BEOF Funds in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the BEOF Funds and the Preferred Investors of the BEOF Funds in an amount to be determined at trial;

k) on the Plaintiffs' eleventh count, awarding compensatory damages against Michael Katz in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against Michael Katz in an amount to be determined at trial;

l) on the Plaintiffs' twelfth count, awarding compensatory damages against Kevin Cassidy and Michael Nordlicht in an amount to be determined at trial plus

interest at the statutory rate, plus punitive damages against Kevin Cassidy and Michael Nordlicht in an amount to be determined at trial;

m) on the Plaintiffs' thirteenth count, awarding compensatory damages against Seth Gerszberg in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against Seth Gerszberg in an amount to be determined at trial;

n) on the Plaintiffs' fourteenth count, compensatory damages against the Beechwood Defendants, Seth Gerszberg and Kevin Cassidy in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Beechwood Defendants, Seth Gerszberg and Kevin Cassidy in an amount to be determined at trial;

o) on the Plaintiffs' fifteenth count, compensatory damages against the BEOF Funds and the Preferred Investors of the BEOF Funds in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against BEOF Funds and the Preferred Investors of the BEOF Funds in an amount to be determined at trial;

p) on the Plaintiffs' sixteenth count, compensatory damages against the Platinum Defendants and Beechwood Defendants in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Platinum Defendants and Beechwood Defendants in an amount to be determined at trial;

q) on the Plaintiffs' seventeenth count, treble damages against the Platinum and Beechwood Defendants in an amount to be determined at trial plus interest at the statutory rate;

r) on the Plaintiffs' eighteenth count, awarding compensatory damages against the Beechwood Entities as the alter ego of Platinum Management in respect of counts one, two, four and five, in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Beechwood Entities in an amount to be determined at trial, to the same extent that the Platinum Defendants are liable on the Plaintiffs' first, second, fourth and fifth counts;

s) on the Plaintiffs' nineteenth count, awarding compensatory damages against the BEOF Funds as the alter ego of Platinum Management in respect of counts one, two, four and five, in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the BEOF Funds in an amount to be determined at trial, to the same extent that the Platinum Defendants are liable on the Plaintiffs' first, second, fourth and fifth counts;

t) on the Plaintiffs' twentieth count, a judgment declaring that the Nordlicht Side Letter cannot be enforced by the Beechwood Entities in any capacity as the Nordlicht Side Letter is void and unenforceable as against public policy;

u) on the Plaintiffs' twenty-first count, a judgment declaring that the Master Guaranty cannot be enforced by the Beechwood Entities in any capacity as the Master Guaranty is void and unenforceable as against public policy; and

v) on the Plaintiffs' twenty-second count, awarding compensatory damages against the Huberfeld Family Foundation as the alter ego of Platinum Management and Murray Huberfeld in respect of counts one, two, three, four, five and six, in an amount to be determined at trial plus interest at the statutory rate, plus punitive damages against the Huberfeld Family Foundation in an amount to be determined

at trial, to the same extent that the Platinum Defendants are liable on the Plaintiffs' first, second, third, fourth, fifth and sixth counts.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury on all issues so triable.

Dated: March 29, 2019
New York, New York

HOLLAND & KNIGHT LLP

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Attorneys for Plaintiffs Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation), and for Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation)

INDEX OF EXHIBITS

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5	January 31 - February 1, 2013 Email Re Black Elk Financial Condition
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7	Platinum Management Second Amended & Restated Operating Agreement
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97	Twosons Note
98	Twosons Side Letter
99	July 4, 2016 Email from Nordlicht to Gerszberg RE PPVA liquidation
100	Forbearance & Security Agreement
101	Zapata and Gerszberg Master Agreement for Unification of Businesses
102	Spectrum30 Flow of Funds Letter
103	Huberfeld Family Foundation Payroll Invoice
104	Huberfeld Family Foundation Promissory Note

EXHIBIT 5

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **PLATINUM MANAGEMENT (NY) LLC;** **PLATINUM CREDIT MANAGEMENT, L.P.;** **MARK NORDLICHT;** **DAVID LEVY;** **DANIEL SMALL;** **URI LANDESMAN;** **JOSEPH MANN;** **JOSEPH SANFILIPPO; and** **JEFFREY SHULSE;** **Defendants.**	**Civil Case No.** **Complaint** **Jury Trial Demanded**

Plaintiff Securities and Exchange Commission (the "Commission"), for its Complaint against Defendants Platinum Management (NY) LLC ("Platinum Management"), Platinum Credit Management, L.P. ("Platinum Credit"), Mark Nordlicht ("Nordlicht"), David Levy ("Levy"), Daniel Small ("Small"), Uri Landesman ("Landesman"), Joseph Mann ("Mann"),

Joseph SanFilippo ("SanFilippo") (collectively the "Platinum Defendants"), and Jeffrey Shulse ("Shulse") (all collectively "Defendants"), alleges as follows:

SUMMARY

1. This case involves a multi-pronged fraudulent scheme by Platinum Management and Platinum Credit, the managers of hedge funds Platinum Partners Value Arbitrage Fund L.P.(together with its feeder funds, "PPVA") and Platinum Credit Opportunities Master Fund L.P. (together with its feeder funds, "PPCO"), respectively, led by Nordlicht, the co-Chief Investment Officer ("CIO") of PPVA and PPCO.

2. To existing and prospective investors, Platinum Management projected stability and confidence, reporting steady, positive returns every year that averaged 17% annually from 2003-15. It also guaranteed its investors liquidity, as they were permitted to redeem on 60 or 90 days' notice (depending on when they invested) and receive payment of 90% of their redemption request within 30 days thereafter. Marketing materials likewise stressed the fund's ready capacity to liquidate positions.

3. Behind the scenes, however, PPVA faced a growing liquidity crisis, which Platinum Management, Nordlicht, Landesman, Mann and SanFilippo in various ways concealed from existing and prospective investors for years. In fact, PPVA's growing concentration in illiquid positions made it ever-more difficult for Platinum Management to pay investor redemptions on time each quarter. Internal documents discussing redemptions are replete with references such as "Hail Mary time," and of hoping that new subscriptions would prove sufficient to pay current redemptions. As early as November 2012, Nordlicht and Landesman complained that redemptions were "daunting " and "relentless," and in June 2014 Nordlicht wrote Landesman that "It can't go on like this or practically we will need to wind down. . . . this

is code red . . . We can't pay out 25 million in reds [redemptions] per quarter and have 5 come in." Nonetheless, existing and prospective investors were kept in the dark for years about PPVA's liquidity crisis; to the contrary, Platinum Management continued to market the fund's flexible redemption terms even as it struggled to pay redemptions.

4. Platinum Management also deceived investors by vastly overvaluing its interest in a small oil production company, Golden Gate Oil LLC ("Golden Gate"). This position, valued at times by Platinum Management at around $170 million, purported to represent more than 19% of PPVA's total assets at the end of 2013. In fact, it was worth a fraction of that. Golden Gate consumed more than $20 million in PPVA loans and yet barely produced any oil, suffered large operating losses and never made a single interest payment on PPVA's loans. Tellingly, when Platinum Management engaged in transactions involving Golden Gate, including buying or selling options to buy interests in the company, they were at values much lower than what it carried on its books. Indeed, it eventually purchased the remaining 52% of Golden Gate for a mere $3.2 million, and yet it was still touting an enterprise valuation of at least $170 million. Platinum Management's inflation of Golden Gate's valuation by itself led to an overstatement of PPVA's AUM by as much as 13% at the end of 2014.

5. Platinum Management also orchestrated a fraudulent scheme in connection with its other major oil investment, Black Elk Energy Offshore Operations LLC ("Black Elk"). In part to cope with the fund's deepening liquidity crisis, Nordlicht, two of his colleagues, Levy and Small, and Black Elk CFO Shulse, schemed to divert almost $100 million – proceeds of a forthcoming asset sale – out of Black Elk to benefit preferred shares held mostly by PPVA and its affiliates. The problem was that Black Elk noteholders, some of whom were independent of Platinum Management, had priority over preferred shares, and Platinum Management and its

affiliates, which dominated Black Elk's management, could not participate in any vote among noteholders to change this priority. Thus, Nordlicht and others created a deceptive consent solicitation process and rigged the vote. They secretly transferred a large block of notes from PPVA and its affiliates to various entities advised by two other entities, B Asset Manager and B Asset Manager II (together, "BAM"), for whom Levy served as CIO. They drafted a solicitation document that falsely stated that PPVA and its affiliates only held $18 million in notes, when in fact they controlled almost $100 million. BAM affiliates then joined PPVA and its affiliated funds in casting its controlling block of notes for the consent solicitation. Once the votes were counted, and Platinum Management's fraudulent scheme prevailed, Nordlicht, Levy and Small directed Shulse to wire almost $100 million out of Black Elk for the benefit of PPVA and its affiliates.

6. Meanwhile, in 2014-15, PPVA's liquidity crisis worsened, and Platinum Management resorted to other schemes to keep the fund afloat. For example, faced with relying on heavy short-term borrowing at annual interest rates as high as 19%, Platinum Management and PPVA CFO SanFilippo told PPVA's auditor that the loans were done to complete "investment transactions" — a false explanation provided to investors in the fund's audited financials, when they were finally released to investors months later than they were supposed to be. Platinum Management's internal documents confirmed that the real purpose for the high-interest borrowing was to ease the fund's liquidity constraints.

7. In mid-March 2015, Nordlicht, Landesman and other senior Platinum Partners officials schemed to meet a sudden wave of over $70 million in redemptions by pressing redeeming investors to cancel those redemptions or at least defer them one quarter, and to launch an aggressive push for new investment money, all while concealing PPVA's liquidity

crisis. Their pitch focused on anticipated investment gains in the following month, while omitting mention of the firm's significant liquidity crisis, which would obviously scare new investors and people looking to redeem.

8. Nordlicht also treated investor monies held in separate funds under the Platinum Partners umbrella as fungible, transferring money between funds as needed to meet liquidity demands, contrary to promises made to investors in each fund and representing an obvious conflict of interest. In particular, Platinum Management schemed with Platinum Credit to have PPCO make over $30 million in loans to PPVA in least in part to help PPVA make payments that were coming due. On one occasion, $7 million in new subscriptions to PPCO was diverted to PPVA within 24 hours to pay off an overdue short-term loan owed by PPVA. Also, certain preferred redeeming PPVA investors were allowed to transfer interests worth millions of dollars to PPCO, but no cash moved from one fund to the other. The amount was merely added to the principal owed by PPVA on its outstanding loan from PPCO, and PPCO got nothing more than a promise to pay by a fund that couldn't pay its redemptions.

9. Along the way, Platinum Management and Nordlicht also repeatedly paid redemptions in a preferential manner, even as they continued to market redemption rules that promised investors equal treatment.

10. Eventually, in late November 2015, Platinum Management placed a majority of PPVA's assets, all highly illiquid, in a "side pocket", from which no redemptions were possible for three years. Even then, however, few redemptions were paid from the supposedly more liquid original PPVA fund.

11. In June 2016, after the FBI executed a search warrant on Platinum Management's premises, as well as the filing of criminal charges against a co-owner of Platinum Partners (the

umbrella entity for the Platinum companies), Nordlicht announced to investors that PPVA and PPCO would stop taking in new money and would look to monetize current investments in an orderly fashion.

12. The PPVA fund is currently in liquidation in the Cayman Islands, while the PPCO fund and another Platinum Partners affiliated fund (the Platinum Partners Liquid Opportunity Fund ("PPLO")) have contractually retained an independent monitor. By way of this action, the Commission seeks to have a court-appointed receiver installed over the domestic PPCO and PPLO funds and their respective advisers (together, the "Receivership Entities"), in order to protect investor assets and secure a fair and orderly process by which assets are liquidated and distributions are made to investors.

VIOLATIONS

13. By virtue of the conduct alleged herein, Platinum Management, Platinum Credit and Nordlicht, directly or indirectly, singly or in concert, have engaged and are engaging in transactions, acts, practices and courses of business that constitute violations of Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act"), 15 U.S.C. §§ 80b-6(1), (2), and (4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

14. By virtue of the conduct alleged herein, Nordlicht, in the alternative, aided and abetted Platinum Management's and Platinum Credit's violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1), (2), and (4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8; and Landesman, Levy, Mann, SanFilippo and Small aided and abetted Platinum Management's violations of Section 206(4) of the Advisers Act, 15 U.S.C. §80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8 .

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15. By virtue of the conduct alleged herein, Platinum Management violated Section 206(4) of the Advisers Act, 15 U.S.C. §80b-6(4), and Rule 206(4)-2 thereunder, 17 C.F.R. § 275.206(4)-2.

16. By virtue of the conduct alleged herein, Platinum Management, Platinum Credit Nordlicht, Landesman, Levy and SanFilippo, directly or indirectly, singly or in concert, have engaged and are engaging in transactions, acts, practices and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a), and Mann, directly or indirectly, singly or in concert, has engaged and is engaging in transactions, acts, practices and course of business that constitute violations of Securities Act Section 17(a)(1) and (3), 15 U.S.C. § 77q(a)(1) and (3).

17. By virtue of the conduct alleged herein, Platinum Management, Platinum Credit Nordlicht, Landesman, Levy, SanFilippo and Small, directly or indirectly, singly or in concert, have engaged and are engaging in transactions, acts, practices and courses of business that constitute violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5, and Mann and Shulse, directly or indirectly, singly or in concert, have engaged and are engaging in transactions, acts, practices and courses of business that constitute violations of Exchange Act Section 10(b), 15 U.S.C. § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17 C.F.R. §240.10b-5(a) and (c).

18. By virtue of the conduct alleged herein, Nordlicht and Levy, in the alternative, aided and abetted Platinum Management's and Platinum Credit's violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5; Landesman, Mann and SanFilippo, in the alternative, aided and abetted Platinum Management's violations of Section 17(a) of the

Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5; Small, in the alternative, aided and abetted Platinum Management's violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5; and Shulse, in the alternative, aided and abetted Platinum Management, Nordlicht, Levy and Small's violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

19. The Commission brings this action pursuant to the authority conferred upon it by Section 209 of the Advisers Act, 15 U.S.C. § 80b-9, Section 20 of the Securities Act, 15 U.S.C. § 77t, and Section 21 of the Exchange Act, 15 U.S.C. § 78u, seeking to permanently enjoin Defendants from engaging in the acts, practices and courses of business alleged herein and for such other relief as set forth below.

20. In addition, the Commission brings an emergency action seeking: (1) a temporary restraining order and preliminary injunction against Defendant Platinum Credit enjoining it from future violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1), (2), and (4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8; Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5; (2) appointing a receiver over the Receivership Entities; (3) prohibiting the Receivership Entities from destroying or altering any documents; and (4) permitting the Commission to conduct expedited discovery.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Section 214 of the Advisers Act, 15 U.S.C. § 80b-14; Sections 20(b), 20(d) and 22(a)

of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a) and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

22. Defendants, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the transactions, acts, practices, or courses of business alleged herein, certain of which occurred in this District.

23. For example, various investors and portfolio managers were located in Brooklyn, New York, and communications in furtherance of the fraudulent schemes and other violations alleged herein were sent to them through the means or instruments of communication in interstate commerce.

DEFENDANTS

24. **Platinum Management** is an investment adviser registered with the Commission since September 2, 2011. It is a Delaware limited liability company headquartered in New York, New York, and is the adviser to various funds, including PPVA. Platinum Management's March 30, 2016 Form ADV ("ADV") reported that it had approximately $1 billion in assets under management ("AUM").

25. **Platinum Credit,** a Delaware limited partnership headquartered in New York, New York, is a relying adviser of Platinum Management, *i.e.*, it is included within Platinum Management's umbrella adviser registration with the Commission. Platinum Credit is the adviser to the PPCO. Platinum Management's March 30, 2016 ADV reported that Platinum Credit had approximately $590 million in AUM in PPCO. .

26. **Nordlicht**, 48, resides in New Rochelle, New York. He is chairman of Platinum Partners, the umbrella organization for the various funds, co-chief investment officer or CIO of

Platinum Management and Platinum Credit, and CIO of Platinum Liquid Opportunity Management (NY) LLC ("Platinum Liquid"), a relying adviser of Platinum Management. He also owns, directly and indirectly, between a 20% and 33% beneficial interest in Platinum Management, Platinum Credit and Platinum Liquid, and he, his relatives and/or related trusts are also investors in certain of the funds managed by the above-named advisers. Nordlicht also was a member of the managing member of Platinum Partners Black Elk Opportunities Fund LLC ("PPBE"). From 1998-99, he held Series 7 and Series 63 licenses and was registered with FINRA.

27. **Levy**, 41, resides in New York, New York. He is an owner and co-CIO of Platinum Management and Platinum Credit. He previously served as a PPVA portfolio manager from 2006 to approximately the end of 2013, including with respect to PPVA's investment in Black Elk. He also was chairman and CIO and general partner of the managing member of PPBE. At the end of 2013, Levy purported to leave Platinum Partners, and he became the CIO and 10% owner of B Asset Manager LP and B Asset Manager II LP (together, "BAM"), the CIO, CFO, and 49.99% owner of Beechwood Re Ltd., and the CIO and 49.99% of Beechwood Bermuda Ltd. (the latter two, together, "Beechwood").

28. **Small**, 45, resides in New York, New York. From 2007 to at least 2014, he was a managing director and portfolio manager at PPVA, and a portfolio manager of, among other things, Black Elk. He also was a managing director and portfolio manager of PPBE. From July 2009 to at least 2014, he served as a Platinum Management-appointed member of Black Elk's board of managers.

29. **Landesman**, 55, lives in New Rochelle, New York. He was managing general partner of PPVA and PPLO until approximately April 2015, and formerly held a percentage of

Platinum Management's ownership. Thereafter, he continued to have substantial responsibility for investor communications for PPVA. He also supervised PPVA's Chief Marketing Officer.

30. **Mann**, 24, resides in Brooklyn, New York. At times pertinent to this Complaint, he worked in the investor relations department of Platinum Management.

31. **SanFilippo**, 38, resides in Freehold, New Jersey. At times pertinent to this Complaint, he was the CFO of PPVA. He is licensed as a CPA in New York.

32. **Shulse**, 46, resides in Houston, Texas. He was the CFO of Black Elk from approximately January to September 2014, and the CEO thereafter until early 2015. His Texas CPA license expired in 2014 and was suspended thereafter due to Shulse's failure to complete his mandatory continuing professional education, or CPE.

RELATED ENTITIES

33. **PPVA** is a Cayman Islands exempted limited partnership managed directly by Platinum Management. PPVA has the following feeder funds: Platinum Partners Value Arbitrage (International) LTD; Platinum Partners Value Arbitrage Fund (USA) L.P.; and, Platinum Partners Value Arbitrage Intermediate Fund LTD. The PPVA feeder funds were offered only to qualified purchasers, as that term is defined in the Investment Company Act of 1940 (the "Company Act"). PPVA was marketed as a multi-strategy fund that includes long/short fundamental equity trading; asset-based financing in energy, mining, and other industries; energy-related and Asia-based arbitrage opportunities; and event-driven investing in corporations.

34. **PPCO** is a Delaware limited partnership managed by Platinum Credit. It has the following feeder funds: Platinum Partners Credit Opportunities Fund (TE) LLC; Platinum Partners Credit Opportunities Fund International (A) LTD.; Platinum Partners Credit

Opportunities Fund International LTD.; Platinum Partners Credit Opportunities Fund LLC; and, Platinum Partners Credit Opportunity Fund (BL) LLC. The PPCO feeder funds were offered only to qualified purchasers, as that term is defined in the Company Act. PPCO was marketed as a single-strategy fund that invests in asset-based loans in areas such as natural resources, energy litigation, life insurance settlements, and receivables.

35. **Platinum Liquid** is a Delaware limited liability company that serves as the investment manager to Platinum Partners Liquid Opportunity Fund (USA) L.P. ("PPLO USA"); Platinum Partners Liquid Opportunity Fund (International) LTD,; Platinum Partners Liquid Opportunity Intermediate Fund L.P. and Platinum Partners Liquid Opportunity Master Fund L.P. (the "PPLO Master Fund") (such funds, together, "PPLO"). It is a relying adviser of Platinum Management. Platinum Management's March 30, 2016 ADV reported that Platinum Liquid had approximately $27 million in AUM in PPLO. At times pertinent to this Complaint, Nordlicht was the CIO for Platinum Liquid and was "responsible for oversight of all trading, asset allocation and risk management on behalf of the Platinum-managed funds." At times pertinent to this Complaint, Nordlicht was the majority owner of Platinum Liquid. Landesman became President of Platinum Liquid in April 2010 and became the managing member of Platinum Liquid effective January 1, 2011.

36. **B Asset Manager LP and B Asset Manager II LP** (together, "BAM"), headquartered in New York, are operationally integrated unregistered investment advisers that manage assets primarily obtained by their controlled affiliates through reinsurance contracts with domestic insurance companies and under investment management agreements made directly with domestic insurance companies. Nordlicht, Levy, and two other close associates collectively

owned 68.9% of BAM through at least August 2016. BAM claims to have approximately $2 billion in AUM and is an affiliate of the Beechwood reinsurance entities.

37. **PPBE** is a special purpose vehicle through which other Platinum funds and individual investors obtained interests in Black Elk Class E preferred shares.

FACTS

Background

38. Platinum Partners had two principal funds – PPVA, created in 2003, and PPCO, formed in 2005. PPVA, the flagship, was billed as a multi-strategy hedge fund, ranging from long/short equity fundamental strategies and arbitrage to asset-based finance. Meanwhile, a primary investment strategy of PPCO was "to originate a variety of high yield, fixed income instruments."

39. PPVA was billed as a liquid fund. Its domestic and foreign feeder fund PPMs, consistent with their respective limited partnership agreement ("LPA") and governing articles, set out a fixed, orderly redemption process for all investors: quarterly redemptions, upon 60 or 90 days advance notice (depending on the version of the PPM), with the fund "intend[ing] to pay" to the investor at least 90% of the amount requested within 30 days, with the remaining 10% potentially held back for completion of the fund's audit. Nothing elsewhere in the PPMs or their respective formative documents granted broad discretion to pay some redemption requests but not others, particularly those submitted in the same cycle.

40. Platinum Management's Due Diligence Questionnaires for PPVA ("DDQs") confirmed the fund's liquidity. From September 2013 through September 2015, they stated, in part,

> How long does it take to exit the most liquid positions in the portfolio?
> The Fund's most liquid positions could, under normal market conditions, typically be liquidated in less than a week, including assets in the Energy and Power Arbitrage,

Long/Short Fundamental Equity, Event Driven, Quantitative and Asia Based Arbitrage strategies.

The listed liquid strategies represented more than half of the portfolio during that same period, according to monthly "tear sheets" sent to investors, as well as marketing presentations provided principally to prospective investors. For example, a May 2016 presentation stated the fund was targeting "42% risk allocation to short term trading and relative value strategies, 26% to event driven strategies and 32% to asset based finance strategies."

41. Fund documents also carefully delineated the separation between the finances of the PPVA and PPCO funds. For example, the March 2015 PPCO and April 2015 PPVA PPMs stated, as a risk factor, that they permitted loans to or from affiliated funds, but only in narrow circumstances: "in the event that an affiliate fund, such as one of the Platinum-managed funds, requires additional funds on a short-term basis in order <u>to make an investment</u>, the Master Fund may loan such affiliate fund any amounts <u>to facilitate such investment</u>"; likewise, "in the event the Master Fund requires additional funds on a short-term basis in order <u>to make an investment</u>, the Managing Member, the Loan Portfolio Manager or their Affiliates and/or an affiliate fund, such as one of the Platinum-managed funds, may loan the Master Fund any amounts <u>to facilitate such investment</u>" (quoting PPCO Onshore March 2015 PPM; emphasis added.).

42. On the surface, PPVA and PPCO were highly successful funds. As of March 2016, Platinum Management reported that PPVA had almost $1.1 billion in AUM, and PPCO had almost $600 million in AUM. Also, PPVA reported a virtually unbroken string of strong and steady reported performance, with its NAV going up each year from 2003 to 2015, for an average annual return of 17%, with typically small gains reported for 85% of the months throughout this period.

43. Beneath the surface, however, lurked serious problems, which defendants kept from investors for years. In fact, from at least 2012, PPVA faced recurring liquidity crises. There was a growing liquidity mismatch, as the fund became increasingly concentrated in illiquid investments, including equity and debt positions in start-up companies, many of which were not publicly traded. And yet, many investors could and did demand their money back every quarter. Although the liquidity crisis extended for years, Platinum Management did not – for whatever reason – sell enough of its illiquid portfolio to overcome this crisis. Instead, it took cash out of more liquid strategies, thus skewing the balance of the portfolio toward greater illiquidity even while the liquidity pressures remained.

44. For example, in a November 6, 2012 email entitled "Current Redemptions Nov 5, 2012," a Platinum Partners employee advised Nordlicht that there were "$27 million total," apparently referring to outstanding redemption requests. Nordlicht forwarded this email to Landesman and stated: "If we don't exceed this in subs [new subscriptions] from dec 1 and jan 1 we are probably going to have to put black elk [one of the fund's illiquid investments] in side pocket. I also need to pay back [a loan from an individual] and an additional 4 million oct 31 and nov 30 so we are talking 40" – apparently indicating they needed to get $40 million in new subscriptions to cover pending redemption requests and other obligations. Landesman responded by saying he would try his best, and that he thought "…we could sweep the table here, so far, think Jan. 1st is a possibility for some, if not all." Nordlicht replied that "it's just very daunting. It seems like we make some progress and then reds [redemptions] are relentless almost. It's tough to get ahead in subs [subscriptions] if u have to replace 150-200 a year…." Landesman replied: "Didn't take it as complaining, it is my job. Redemptions very daunting."

45. That said, illiquid positions, most of them categorized for accounting purposes as "Level 3" assets, which represented almost 80% of fund assets at the end of 2014, had one virtue for Platinum Management: since they were not publicly traded and there were no other readily available market prices, they were valued by Platinum Management itself, "determined in such manner as may be selected from time to time by the Investment Manager in its discretion."

46. To be sure, the PPVA PPMs limited this discretion by requiring that the result represent "fair value." Platinum Management reassured investors by noting in its DDQs that its valuations were verified by an internal valuation committee. And the DDQs, tear sheets, and marketing presentations touted that Platinum Management used the services of an independent valuation agent. In reality, however, Nordlicht often instructed his staff to adjust the values of various positions up or down, with the staff left to flesh out the rationales for those adjustments.

47. Platinum Management's external auditor in early 2015 reported to it that "a material weakness exists in the Master Fund's investment valuation process related to its Level 3 investments." Platinum Management did not disclose to its investors this important information. The auditor also identified a "very material" misstatement that required a large markdown of the valuation of one large, illiquid position, triggering a restatement of the fund's year-end 2013 AUM.

48. Platinum Management terminated that auditor. Still, the replacement auditor included in its 2014 opinion, which it did not issue until September 2015, an "emphasis-of-matter" stating that management's estimated values for investments representing over $800 million rested on unobservable inputs, and that the amounts that might be realized in the near-term could differ materially from management's valuations.

49. Platinum's substantial control over the valuations of its illiquid positions helped ensure that fund performance, which was largely composed of unrealized gains, remained steady. This was essential, because shortfalls in performance could be expected to trigger more redemptions, and so deepen the liquidity crisis.

Overvaluation of Golden Gate Oil LLC Investment

50. A principal example of PPVA's growth in AUM through unrealized gains is Platinum Management's manipulation of the valuation of its disastrous investment in Golden Gate, a start-up oil production company it helped create in 2012. In 2013 through 2014, PPVA's reported AUM of approximately $900 million to $1 billion rested heavily on the valuation of this single investment. Whereas Platinum Management valued Golden Gate at approximately $78 million at the end of 2012 (when PPVA's equity interest in Golden Gate was 48% of the company, or $37 million), the value rose sharply to $173 million at the end of 2013 (when PPVA owned or had the option to buy a 100% interest).

51. At the end of 2013, the Golden Gate equity and loan constituted approximately 19% of PPVA's AUM, the fund's largest position. At the end of 2014, even after the price of oil had plummeted 60%, from $100 to $40 per barrel, PPVA valued its equity in Golden Gate at $140 million, less than 20% below its 2013 year-end valuation. It also continuously valued at par its loans to Golden Gate, which reached $18 million in principal by the end of 2013, even though Golden Gate never made a single interest payment to PPVA.

52. Throughout this period, Nordlicht was principally responsible for setting the valuation of Golden Gate for PPVA. Golden Gate was vastly overvalued, for multiple reasons.

53. First, PPVA sharply increased its valuation of Golden Gate while in fact the company's performance was falling far below initial projections, with minuscule oil production

and heavy operating losses. Golden Gate's first stage involved the drilling of seven wells, but it encountered large drilling cost overruns, consuming $18 million borrowed from PPVA by the end of 2013, as well as delays in obtaining needed permits. Moreover, the wells produced mostly water and many were shut in (*i.e.*, not producing). The only consistently-producing well provided revenue representing less than 10% of initial projections. As a result, far from generating the expected millions in cash flow to pay for future drilling, Golden Gate generated $6 million in net losses in 2013.

54. Second, several transactions with third parties concerning the sale of some or all of Golden Gate's assets were for a mere fraction of the valuation that PPVA carried on its books for the same assets.

55. For example, in October 2013, PPVA granted its partner an option to buy one of the two main Golden Gate oil fields for a mere $6.2 million, barely one-tenth of the value touted by PPVA for the same fields.

56. At the same time, the partners granted each other an option to buy the other party's share for $60 million, effectively meaning that the whole company was worth roughly $120 million (rather than $173 million).

57. One month later, though, Black Elk (another PPVA investment) reported in a public filing that it had obtained an option to buy the <u>whole</u> company for $60 million. This posed a problem for Platinum Management; Months later, a PPVA portfolio manager for Golden Gate told Nordlicht and Levy that a potential third party lender had brought up Black Elk's filing, saying "the issue is that it publicly discloses the value of the option and therefore pegs GGO [Golden Gate]'s value to $60M. This is ultimately a marketing issue that could be dealt with but something we should all be aware of."

58. Then, in August and September of 2014, PPVA in fact bought out its partner's 52% interest in Golden Gate not for $60 million, or $30 million, but a mere $3.2 million, with an additional $5.9 million contingent on achievement of production levels that Golden Gate had not come close to achieving. These actual option and sales prices belie Platinum Management's far higher valuations, including an enterprise valuation of at least $170 million it touted as of September 30, 2014. Third, even internally Platinum Management personnel frequently acknowledged Golden Gate was worth much less than claimed. In early 2012, Nordlicht initially scoffed at his portfolio manager's optimistic projections: "I cringe at the 1 billion PV-10 number [a measure of the present value of the oil reserves] as it doesn't mean anything . . . . when u have billion pv10 on fields that are worth 15 [$15 million] in sale now, it doesn't really mean much . . . ." Likewise, in late 2012, one of Platinum's project managers for Golden Gate wrote to Nordlicht that once Golden Gate, as a first step, had about seven wells producing at its two fields, the value would rise to $45 million. Nonetheless, at the end of 2013, when the drilling program had fallen far short even of that goal and Golden Gate was deeply in the red, Platinum Management increased PPVA's valuation of its interest to $173 million.

59. Tellingly, in early 2014, Nordlicht did not grant discretionary compensation to the portfolio managers responsible for Golden Gate based on the valuation that was on PPVA's books.

60. Fourth, Platinum Management took steps to mislead third parties who evaluated Golden Gate's reserves and the value of PPVA's interest in the company. Those third parties were largely at Platinum Management's mercy, for they relied upon Platinum Management and Golden Gate for virtually all of the inputs used in their calculations. For example, Platinum Management retained an independent valuation expert to buttress its own ultimate valuations, but

the valuation expert's quarterly reports repeatedly contained multiple false statements, obtained from Platinum Management, overstating the number of producing wells and the volume of oil production.

61. When Platinum Management considered having Black Elk buy PPVA's interest in Golden Gate, an independent engineering firm chosen by Black Elk made preliminary estimates that valued Golden Gate's reserves at about 10% of the estimates made by the engineering firm retained by Golden Gate. In particular, Black Elk's engineering firm found that most of the reserves should be characterized as merely "probable" rather than as "proven" – a critical difference since classifying reserves as proven rather than probable would have a positive effect on PPVA's interest in Golden Gate. Nordlicht ordered that those lower estimates be ignored.

62. Although Golden Gate's chosen engineering firm was willing to characterize more reserves as proven, that firm ultimately determined that it could no longer produce reserve reports for Golden Gate based on the company's pattern of making unrealistic projections of future well completions and production.

63. Overall, Platinum Management and Nordlicht's words and conduct, including the exceedingly small consideration paid to obtain a larger equity stake in Golden Gate, and the decision to hold on to the Golden Gate asset in the throes of deep liquidity crises, reflect that Nordlicht understood that the valuations he was continuing to use for PPVA's balance sheet did not accurately reflect the lesser realizable value reflected by Platinum Management's negative experiences in attempting to develop profitable wells.

64. Platinum Management's and Nordlicht's recklessly or knowingly inflated valuation of PPVA's interest in Golden Gate was material to the fund's overall valuation. For example, the $3.2 million PPVA paid for the remaining 52% interest in Golden Gate in

September 2014 implied an enterprise value of about $6.2 million for the whole company. Meanwhile, as of December 31, 2014, PPVA valued Golden Gate at $140 million. Deducting the difference of $134 million from the fund's overall $872 million in "investments in securities" as of the end of 2014 would reduce that line item on its balance sheet by 16%. Likewise, the $134 million represented approximately 13% of PPVA's overall AUM of $1.04 billion as of the end of 2014.

65. By failing to adjust Golden Gate's valuation to match reality, Nordlicht and Platinum Management inflated the management and incentive fees they received based on that inflated valuation.

66. Meanwhile, Platinum Management responded to investor skepticism about Golden Gate by misleading at least one investor who raised repeated concerns about PPVA's energy positions and their valuation. On March 28, 2014, investor relations official Mann provided this investor with a report about Golden Gate and Black Elk "that we have just created for investors who would like to know more about the two positions." In fact, however, the report was replete with misstatements exaggerating Golden Gate's performance. It included charts, not labeled as either actual or projected, showing Golden Gate's first quarter revenues as $4.6 million. In fact, information readily available to Platinum showed that Golden Gate's revenue for the first quarter (then almost entirely concluded) was less than 5% of the reported figure: $229,000.

67. Moreover, focusing just on revenues was misleading, because due to high operating costs Golden Gate had a net operating loss of $100,000 for Q1 2014. The same report reported Q1 2014 production as 508 barrels per day, when in fact net production for the quarter was less than 30 barrels per day. The report also vastly overstated probable reserves, pegging

them at 16 million barrels, when the most recent engineering reserve report then available showed only 6 million barrels of probable reserves. The report also said that "Overall PPVA has lent less than $18 million to GGO." In fact, as of December 31, 2013, the amount lent was $18.4 million, and after further lending in January and February of 2014 the total outstanding stood at $21.8 million.

68. These misstatements built upon Mann's statement to the same investor two days earlier, after speaking with Nordlicht, that Nordlicht had changed his mind about combining Golden Gate with Black Elk "since Golden Gate has been doing very well since then" – at a time when the project was in fact losing money and producing almost no oil.

2014: Growing Liquidity Crises and the Ensuing Black Elk Fraud

69. By 2014, PPVA's liquidity crisis had worsened. SanFilippo sent Nordlicht and Landesman an email on February 5, 2014, attaching a chart entitled "December 31 Redemption Summary" that highlighted approximately $14 million in redemptions and other monies still owing to investors based on their December 31 redemption requests. Indeed, under the PPMs, payment was required within 30 days and so this amount was overdue. The same chart indicated that other, apparently preferred, investors, had been paid over $22,325,000 in connection with the same quarterly redemption period.

70. Likewise, in a board meeting of the Directors of PPVA International held on March 12, 2014, in which Nordlicht and Landesman participated, Platinum Management acknowledged that the fund had experienced a greater number of redemptions than net capital contributions during 2013. Platinum Management also represented to the Board that 40% of the fund could be liquidated in 30 days, but it also represented that it was focusing on making the portfolio more liquid.

71. Despite these promises, when an investor emailed Landesman on April 29, 2014 asking when the wires would go out for the April 1 redemptions, payments for which were due no later than the next day, Landesman could not answer and instead forwarded the email to SanFilippo, asking: "What can I tell Jacques?"

72. Later on April 29, 2014, Nordlicht sent an email to San Filippo stating: "Start paying down reds [redemptions] as u can. Between Blake and ppbe (additional 10 million), shd have decent short term infusion. Hopefully some may 1 subs [subscriptions] show up as well. Have a few more outflows to discuss but this is obviously the priority." As indicated in Nordlicht's stated hope about subscriptions showing up, PPVA was heavily dependent on the infusion of new money from both subscriptions and other sources to meet its ongoing redemption obligations and lacked sufficient liquid assets in its portfolios to meet its redemption obligations.

73. A June 3, 2014 email from a Platinum employee to Nordlicht and others entitled "Cash Sheet" listed cash on hand of $96,000; "Pending Inflows" totaling $20,000,000; "Pending Outflows" totaling $16,750,000 and Redemptions of $500,000 for May and $9,500,000 for June, which resulted in a "Projected Cash" of negative $6,154,000. Nordlicht forwarded this email to another employee instructing him to: "Take June reds off the list," suggesting that they were unable to meet the pending June redemptions of $9,500,000 due to cash flow problems.

74. On June 16, 2014, Nordlicht emailed Landesman that the firm was in "code red" due to its inability to match redemptions with quarterly inflows of investor funds. Nordlicht stated:

> It can't go on like this or practically we will need to wind down. This is not a rhetoric thing, it's just not possible to manage net outflows of this magnitude. I think we can overcome this but this is code red, we can't go on with the status quo. … We can't pay out 25 million in reds per quarter and have 5 come in…."

Landesman responded: "We are pushing hard, illiquidity a bigger hurdle than energy concentration...Need monetization/liquidity events in the fund..." Nordlicht replied: "....We just need to short term go crazy, get everyone focused, and long term try to come up with marketing pitches where we can raise even when we are illiquid."

75. In early 2014, these same liquidity problems caused Nordlicht to focus on Black Elk, PPVA's other large, illiquid energy investment.

76. Black Elk operated oil wells in the Gulf of Mexico, and PPVA was its principal lender. Platinum Management officials once considered the Black Elk position one of the strongest in PPVA's portfolio. At the end of 2012, Platinum Management's valuation of Black Elk represented 24% of PPVA's total assets. However, Black Elk's ambitious expansion plans ran into problems after a deadly 2012 explosion on an offshore rig prompted numerous official investigations. By 2014 its economic performance was mixed and it was struggling to pay its bills.

77. Meanwhile, as of early 2014, PPVA owned the vast majority of Black Elk's preferred shares, and a large portion of Black Elk's $150 million face value of outstanding senior secured notes. PPVA also had the power to control Black Elk's management, as admitted by Black Elk in its Form 10-K, as PPVA owned about 85% of the outstanding voting membership interests and had the authority to appoint and remove all Black Elk key personnel and determine management policies.[1]

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[1] "As of December 31, 2013, Platinum beneficially owned approximately 85% of our outstanding voting membership interests and approximately 66% of our total outstanding membership interests. As a result, and for as long as Platinum holds a membership interest in us, Platinum has the ability to remove and appoint key personnel, including all of our managers, and to determine and control our company and management policies, our financing arrangements, the payment of dividends or other distributions, and the outcome of certain company transactions or other matters submitted to our members for approval, including potential mergers or acquisitions,

78. Moreover, PPVA aggressively exercised this power, through Nordlicht, as well as through Levy and Small who were also PPVA portfolio managers for Black Elk. They did so by appointing a majority of Black Elk's Board of Managers, appointing Shulse as CFO, repeatedly forcing the CEO to rescind his firing of that CFO and otherwise usurping the CEO's authority, making prolonged, almost weekly visits to Black Elk's Houston office, and controlling which of Black Elk's vendors were paid (if at all) and when. As the CEO later testified in Black Elk's bankruptcy proceeding, "Platinum was calling all of the financial shots. I would say as of February [2014], they were in complete control of, you know, essentially almost every daily activity and most certainly stayed on top on every penny in and every penny out."

79. Nordlicht decided to use this control over Black Elk not to try to turn around the company's business, but to plunder its assets for the benefit of PPVA and its affiliates, by getting repayment of most or all of approximately $110 million in Black Elk preferred shares held by those entities. A key reason was to stave off PPVA's liquidity crisis. Nordlicht acknowledged the liquidity crisis in vivid terms in an email to Small on March 17, 2014:

> This is also a week I need to figure out how to restructure and raise money to pay back 110 million of preferred which if unsuccessful, wd be the end of the fund. This 'liquidity' crunch was caused by our mismanagement –yours David and I – of the black elk position so I will multitask and also address your concerns but forgive me if I am a little distracted. I have been up until 3 am for the last two weeks working through this issue.

80. In 2014, Black Elk agreed to sell much of its prime assets to Renaissance Offshore, LLC. Platinum Management, Nordlicht, Levy and Small schemed to divert the proceeds from that sale to redeem preferred shares, most of which were held by PPVA and affiliated funds. However, the Black Elk note indenture required that such proceeds be paid first

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asset sales and other significant corporate transactions. As a controlling member, Platinum could make decisions that may conflict with noteholders' interests."

to the noteholders, and many of the notes were held by non-Platinum parties. So the Platinum parties thus devised a scheme to amend the note indenture to authorize that proceeds of the Renaissance sale be paid to holders of Black Elk Class E preferred shareholders, mostly PPVA, PPCO and two other affiliated funds.

81. The problem for Platinum was that a majority vote of noteholders was required to amend the indenture. Platinum controlled a majority of the notes, but it could not vote. As the consent solicitation later recited, "Notes owned by the Company or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded for purposes of determining the majority." Moreover, independent noteholders would have no reason to vote for such an amendment, as it would divert the proceeds of the sale of key Black Elk assets to parties junior to themselves.

82. Therefore, Platinum personnel devised a scheme to obtain the necessary consents in a manner that deceived independent noteholders. Specifically, Nordlicht, Small and Levy worked to transfer the Black Elk notes held by PPVA to parties he and Small called "friendlies."

83. In a March 11, 2014 email, Nordlicht wrote to Shulse, Levy, Small and another individual, that "We are likely to have friendlies buy the bonds as of tomorrow."

84. Two days later, Shulse sought to benefit from his support for this effort, asking for "a substantial bonus, 1% of the amount of preferred's actually paid back to Platinum." He added, "Platinum getting its money out of Black Elk is a good thing for Platinum and it should be a good thing for me as well."

85. At one point, the plan was to quietly get pro-Platinum parties representing a majority of the notes to sign consents, without consulting independent noteholders. However, the note indenture trustee resisted, insisting on a formal consent solicitation process. As Shulse

explained in an email to Nordlicht, Small and Levy: "they don't trust our consents are valid because we have received a default notice in the past 60 days and we have the behind the scenes process with various dates on our consents."

86. Nordlicht's response to the idea of an open consent solicitation was a vehement no.

87. Shulse, showing a complete understanding of and support for Platinum's scheme to control a majority of the notes, supported the solicitation: "the quickest way is to do the formal solicitation . . . get our 51% in order . . . vote it through the DTC/BNY agents and end it." He added, "why are we afraid of an open solicitation? Probably going to avoid a lawsuit and if we have the bonds we say we do, the process ends as soon as we get over the number?"

88. On May 12, 2014, Shulse sent an email to Levy, Small, and Nordlicht suggesting they slip an announcement regarding the amendment to the indenture "in with the 10Q filing so it has a chance to get lost and not seem like such a big deal."

89. Nordlicht, Levy and Small eventually decided to pursue a formal consent solicitation, albeit a rigged one. Crucial to this effort was the transfer of a large number of notes from PPVA and its affiliates to BAM and its Beechwood affiliates. BAM was closely affiliated with Platinum Management through majority ownership by Nordlicht and other owners of Platinum Management, and through Nordlicht's influence over the entity thanks to the installation of Levy as CIO and many other Platinum officials in key positions at BAM. Indeed, in early 2014 Nordlicht told a third party that he planned to leave Platinum for BAM as of January 1, 2015.

90. All told, prior to the consent solicitation, PPVA transferred over $37 million in Black Elk notes to BAM and two related entities, BBIL SHIP and BBIL ULICO 2014 Trust, at

prices Nordlicht designated.

91. Numerous emails reflect Nordlicht's involvement: In a May 13, 2014 email, Nordlicht instructed that "Beechwood is buying 8 million black elk from PPVA. What is the best way to cross? Can we do it today please." Similarly, on June 23, 2014, he emailed: "I want to move/sell 10 million of black elk bonds to bbil the nomura account. Please take care of it." After confirming that BBIL was buying the bonds from PPVA, Nordlicht emailed instructions on July 1, 2014, to sell $7 million in Black Elk bonds from PPVA to BBIL SHIP at a price of 99.

92. Levy's position as BAM's CIO (along with the fact that many other Platinum Partners officials were also BAM officials) assured Nordlicht that the BAM-related entities would support the scheme. By July 3, the Platinum Partners-related funds and BAM-related entities held almost $100 million out of the $150 million in Black Elk notes, as reflected on a list shared by Nordlicht, Levy and Small.

93. Meanwhile, Nordlicht, Small, Shulse and Levy participated in the drafting of a document to be circulated to all noteholders, which contained two closely related parts. The first was a tender offer, which offered to buy back notes at par. The second part was a solicitation to consent to note indenture amendments, most notably including that the proceeds of the Renaissance sale would, after payment of any tendered notes, be payable to holders of preferred shares, who were disclosed to be mostly Platinum Partners-related entities.

94. During the drafting process, on July 3, Small circulated to Black Elk counsel a disingenuous deceptive hypothetical question about whether $5 million in notes owned by an affiliate had to be excluded from voting – in fact, PPVA and its affiliates held more than $98 million in notes. Still, counsel confirmed that even Small's hypothetical $5 million in affiliate-held notes would have to be disregarded in the vote, and Small forwarded this finding to

Nordlicht and Levy.

95. Despite their knowing this key principle, the final consent solicitation contained this false representation:

> As of the date hereof, there are $150 million aggregate principal amount of Notes issued and outstanding under the Indenture. Platinum Partners Value Arbitrage Fund, L.P. and its affiliates, which own approximately 85% of our outstanding voting membership interests, own approximately $18,321,000 principal amount of the outstanding Notes. Otherwise, neither we, nor any person directly or indirectly controlled by or under direct or indirect common control with us, nor, to our knowledge, any person directly or indirectly controlling us, hold any Notes. (Emphasis added.)

The $18 million figure was a vast understatement, as it failed to disclose the $72 million in other notes held by PPVA affiliates and BAM-related related entities. Knowing the consent solicitation contained this falsehood, and that the vote was rigged, Small signed the Black Elk Board of Managers' authorization for Black Elk to conduct the consent solicitation, and to implement it should it be approved.

96. Also, while formally the solicitation preserved the priority of tendering noteholders, in reality the offer discouraged tenders by its unattractive terms. Because the notes were callable months later at par, tendering meant foregoing months of interest for no gain.

97. However, not tendering would be a mistake if the consent solicitation were approved. In the end, $11 million in notes were tendered by independent noteholders.

98. Platinum caused all of the notes held by its PPVA and its undisclosed affiliates, including PPCO and PPLO, and the Beechwood entities to vote in favor of the consent solicitation but without tendering. Levy was copied on the document by which Beechwood entities cast their votes in that manner, against their own interests as noteholders but in favor of the interests of preferred shares held by PPVA and affiliated funds.

99. Small signed the consent of Black Elk's board of managers which falsely recited that "the Company has received sufficient consents" to amend the indenture. On August 14, 2014, Black Elk falsely claimed in a press release that "holders of $110,565,000 principal amount of the Notes, or 73.71% of the Notes, had validly consented to the Consent Solicitation." (Emphasis added.) On August 21, Black Elk issued a Form 8-K announcing that it had received "the requisite consents" of noteholders' to, among other things, apply the proceeds from the recently-concluded Renaissance sale to retire the tendered notes and use the remaining proceeds to repurchase preferred equity issued by Black Elk.

100. On August 18, Small, from his Platinum email address, but purporting to speak for the Black Elk board of managers, directed Shulse to wire $70 million in partial payment of Class E preferred shareholders. Levy meanwhile sent Shulse specific wire instructions for sending to PPVA and other designated parties most of the proceeds from Black Elk's sale of assets to Renaissance. This included three other Platinum Partners funds, and one third party to which Platinum had sold preferred shares and was subject to a put repurchase obligation. The $20 million of Black Elk sale proceeds sent to that party extinguished that obligation. After Nordlicht pressed Shulse to "send these wires out already," Shulse complied with the directions.

101. All told, from August 18 to 21, 2014, Black Elk wired approximately $98 million in Renaissance sale proceeds for the benefit of PPVA and its affiliated funds, including PPCO and PPLO. One other such fund, PPBE, set up specifically to invest in Black Elk notes, distributed its share of those proceeds to its investors. Among those investors were Levy and Small, who received $256,678 and $102,671, respectively, thus benefiting directly from the Black Elk fraud.

102. PPVA investors received various communications from Platinum Management under Nordlicht's direction, such as financial statements, marketing materials and monthly reports that reported fund performance based, in part, on the Black Elk fraudulent note scheme. However, they omitted the material fact that the proceeds paid to PPVA on account of its Black Elk Class E preferred shares were derived based on the above-referenced fraudulent conduct.

Late 2014: Misleading Investors about PPVA's Borrowing to Cope with Liquidity Constraints

103. Obtaining the Black Elk proceeds by itself was not enough to stanch PPVA's liquidity problems. Accordingly, starting at least in July 2014, the fund began incurring short-term loans, a principal purpose of which to ease liquidity constraints, including paying redemptions.

104. On July 1, PPVA borrowed $10 million from a group of insiders for six months, at a 19% annual interest rate. ("July 2014 Loan"). This wasn't enough, and in September, PPVA borrowed another $50 million, at 16% interest. The vehicles were two notes by PPVA in favor of over 40 lender-participants investors, again including many insiders. The notes had a three-year term, but in fact each participating lender could elect to get back its principal after six months. These notes were marketed and referred to internally as the "PPNE Loan," *i.e.*, Platinum Partners Northstar Energy, creating the impression that the funds were to be used to invest in Northstar, a recent addition to PPVA's energy portfolio which was in the process of acquiring the remaining assets of Black Elk.

105. All told, PPVA borrowed $95 million from various parties during 2014 at 16-19% annual interest, including the July 2014 Loan and the PPNE Loan, and as of the end of 2014 more than $40 million in overall loan principal remained outstanding. PPVA also paid over $3

million in interest on these loans, draining value from the fund and further squeezing its capacity to pay redemptions.

106. In late 2014, Platinum Management continued to market PPVA to prospective investors and to make reports to existing investors. However, it misled prospective and existing investors by not revealing that PPVA was engaged in heavy short-term borrowing.

107. Still, the issue of disclosure was forced upon Platinum Management toward the end of the year. PPVA's auditor was still working on its audit of the fund's 2013 financial statements – the same audit that would conclude with a markdown of one of PPVA's large illiquid positions and a finding that Platinum Management's valuation process represented a material weakness. In preparing the section on subsequent events, the auditor asked about loans incurred by the funds. When the July 2014 Loan and PPNE Loan were produced, the auditor inquired as to their purpose. PPVA CFO SanFilippo misled the auditor, as well as investors who received the resulting audited financial statements, about the purpose of those loans, in order to conceal PPVA's pressing liquidity needs.

108. All internal Platinum Management documents addressing auditor questions and draft disclosures said that these loans were incurred for liquidity needs. When Levy explained the PPNE Loan internally to SanFilippo, he first wrote its purpose was "liquidity to complete a transaction," but he changed this a minute later to "Ppne is a general obligation of PPVA taken for liquidity." SanFilippo ignored this change and used the more benign first version, telling the auditor it was for "liquidity to complete a specific transaction."

109. Even worse, PPVA's later submission to the auditor of a financial statement disclosure about the loans – sent by an assistant and copying SanFilippo – eliminated <u>any</u> reference to liquidity. The initial draft, not sent to the auditor, listed the two loans separately and

in each case said the loan "dealt with liquidity restraints." The version sent to the auditor, however, which appeared in the final financial statement notes, combined the loans into a single disclosure, saying that PPVA "entered into multiple financial transactions . . . in order to complete multiple investment transactions."

110. In this manner, SanFilippo helped to misstate the purpose of these sizable short-term, high-interest loans and conceal the fund's significant liquidity constraints – which would have been a major red flag for PPVA investors.

111. In addition, PPVA's 2013 audited financials were not released until February 11, 2015, 287 days following the April 30, 2014 due date. This prolonged delay caused Platinum Management to violate the custody rule promulgated under the Advisers Act (the "Custody Rule"). Under the Custody Rule, Platinum Management was required to either engage an independent public accountant to conduct a surprise examination once per year, or to circulate audited financial statements to investors within 120 days of the end of its fiscal year. Platinum Management did neither for the fiscal years 2013, 2014 and 2015.

2015: PPVA's Liquidity Crisis Deepens, as does the Misleading of Investors

112. Even after having unlawfully extracted nearly $100 million out of its Black Elk holding, and having borrowed heavily at high interest rates, PPVA's liquidity troubles continued, as current investors sought to redeem investments and Platinum Management scrambled for new investor money to replace the amounts being withdrawn.

113. In addition to trying to raise new money to keep their fund going, Platinum Management and Nordlicht embarked on a concerted effort to persuade people not to go through with their redemption requests.

114. Multiple people at Platinum Management participated in that effort, including Landesman, who had substantial responsibility for investor communications for PPVA, and Mann, who worked in Platinum Management's investor relations department.

115. For example, in a January 23, 2015 email chain discussing an upcoming redemption request for the end of the first quarter, a Platinum employee told Landesman that he had just gotten a $19 million full redemption request from an investor. Landesman replied that he would "try to avert, directly tied into lack of November statements."

116. As of January 30, 2015, a PPVA spreadsheet reflected that Landesman himself had made a $6,000,000 redemption request in the prior quarter (12/31/2014), and was waiting to get paid.

117. On March 3, 2015, Nordlicht forwarded an investor's contact information to Landesman, saying, "I don't trust myself, I feel I came off really defensive with Leon. I think u give us best possibility to try and keep him." Nordlicht provided positive talking points, including "tremendous optionality that cd produce some lumpy positive monthly returns in any one month," but did not mention any disclosures regarding liquidity problems or their difficulties in meeting redemption obligations. Landesman replied, "I'll handle it."

118. By mid-March 2015, Nordlicht, Landesman and other senior Platinum Partners officials schemed to meet a sudden wave of over $70 million in redemptions by pressing redeeming investors to cancel those redemptions or at least defer them one quarter, and to launch an aggressive push for new investment money, all while concealing PPVA's liquidity crisis. Their pitch focused on anticipated investment gains in the following month, while omitting the firm's significant liquidity crisis, which would obviously scare new investors and people looking to redeem.

119. The plan to mislead investors is illustrated by an email exchange that same month in which Nordlicht and another employee, copying Landesman, were crafting a response to an investor who had made a redemption request. The draft response stated: "By the way, we have significant interest on the subscription side for April which we expect to be our best month since the fund was founded. Therefore, we are limiting net inflows to 5% of the fund in April. On the off chance you decided to recant or defer your withdrawal to June 30, please let us know by April 1st so that we can process the subscriptions in a timely manner. Regards…"

120. Given the fund's financial straits, capping new investments does not appear to have been a sound management strategy. Instead, it appears to have been a stock marketing ploy to make the fund appear more desirable. This is particularly so because subscriptions effective on January 1, February 1 and March 1, 2015 totaled only approximately $14 million, making the possibility of reaching 5% on April 1 (let alone having to implement the cap) remote.

121. Landesman himself called investors in an attempt to obtain deferrals of March 31, 2015 redemptions. At the time of those calls, he was aware that there wasn't even enough cash to finish paying the December 31, 2014, redemptions that had been made, including by having been on emails in which a Platinum employee pressed Nordlicht with respect to an overdue redemption and Nordlicht eventually replied: "Working on it." After speaking with Landesman, one investor canceled half its redemption, telling Landesman that it was based on "your message of the April rebalancing of PPVA."

122. On March 31, 2015, Landesman hosted Platinum Partners' quarterly investor conference call. In introducing the call, Landesman provided a materially misleading explanation for why the call had been moved up to March 31 – an odd date for a quarterly conference call as the quarter-end performance data, usually the main purpose for such calls,

was still unavailable. Landesman told investors that the call had been moved up because Passover fell in early April. However, as Landesman knew, the real reason for the early conference call was that Platinum Management had decided to meet the liquidity crisis by spreading word of their expected April performance gain early enough to induce deferrals of redemptions and new subscriptions by early April, when they still could count as effective as of March 31.

123. During the same quarterly investor call, Nordlicht falsely claimed "we have not really gone out and tried to market aggressively based on the month that we're having," touted their expected April gain, and omitted any mention of PPVA's liquidity crisis. Finally, Nordlicht repeated the marketing ploy that net subscriptions would be capped at 5% of the fund.

124. On April 2, 2015, Nordlicht emailed others at Platinum Partners asking if any new "subs" [subscriptions] cleared today, instructing that "[n]ext uses of capital for ppva" should be to pay back individuals who had lent money to the fund, including insiders such as Landesman. For Landesman, the promised payment was $1 million. When he learned that he would be one of the persons getting repaid when new money came in, Landesman replied, "Back at ya."

125. Five days later, on April 7, 2015, Nordlicht and Landesman learned of another investor who, despite another employee's efforts to reach the investor to try to change his mind, was redeeming his group's PPVA investment. Later that day, Landesman sent the investor an email saying he was sorry that the investor was "still redeeming," and adding that he hoped that they would one day be worthy of "your reinvestment." Landesman forwarded this email to Nordlicht with the words "Hail Mary time."

126. Meanwhile, PPVA's monthly marketing materials for April 2015 continued to represent that there was no lockup and withdrawals were "Quarterly, 60 day notice required,"

without disclosing the fund's struggles paying redemptions and the resulting efforts to dissuade investors from redeeming.

127. Despite the various Platinum Defendants' efforts to reduce the amount of redemptions that would be effective March 31, 2015 and payable April 30, 2015, most of PPVA's redemptions that became effective on March 31, 2015 were not paid on April 30 as required, nor were they paid as a group at any one time. Rather, they were paid selectively, from April through July.

128. In late May, an investor who was still waiting to receive payment of his redemption pointedly asked: "To address our concerns, I ask that you be fully transparent with respect to timing of the redemption, including why PPVA does not simply sell some liquid securities to fund the redemption." Nordlicht responded: "There are good reasons we do not liquidate trading positions but that is another story and doesn't excuse what happened. It was really Murphy's law in terms of a few closings getting postponed or dragged out at the same time. In any event, I am hopeful for tomorrow." Nordlicht's response omitted material information, such as that the fund had been having trouble paying redemptions for more than one quarter, and that one of its large portfolio company holdings was overvalued.

129. As the end of the next quarter approached in June, Platinum once again worked to execute on its continued scheme to stave off redemptions. Almost $50 million in June 30, 2015 redemptions came due by July 31. But payments were made at various times from late-August until mid-October, with some redeeming investors not being paid at all.

130. Landesman persuaded several investors to postpone their redemptions to September 2015, without disclosing PPVA's liquidity crisis. Indeed, he assured one investor,

who expressed hope for a 12% annual return for 2015 and 15% for 2016-19, "all of that is doable," without mentioning that in fact PPVA was essentially out of cash.

131. On July 1, 2015, PPVA started the day with $1,010,000 and had scheduled outflows totaling $991,000, leaving a net of $20,000. The scheduled outflows did not include any redemption obligations.

132. PPVA's financial condition at the time was so perilous that Platinum Management principals made loans to allow PPVA to meet certain of its financial obligations. For example, as of July 24, 2015, the PPVA master fund bank account was overdrawn $1.5 million. That day, a Platinum Management principal wired $1.65 million into the Platinum Management bank account, and that $1.65 million was transferred that same day into the PPVA master fund account. From there, the money was used for various PPVA obligations, including $50,000 that was transferred to the PPVA (USA) account to fund payments to two investors.

133. In other words, in July 2015, Platinum Management was resorting to obtaining short-term loans from its principals even to selectively fund $50,000 worth of redemption obligations while other redemption requests remained unpaid.

134. Consistent with prior months' marketing materials, PPVA's July 2015 marketing materials made no mention of any liquidity or redemption issues and instead represented that there was no lockup and that withdrawals were "Quarterly, 60 days' notice required."

135. Even as unpaid redeeming investors pressed for explanations, Platinum employees held back on revealing the whole truth. For example, in mid-August 2015, one investor who was still waiting for payment on his June 30, 2015, redemption asked in an email received by Landesman and Mann whether any outstanding redemptions have been paid. He

received a misleading response from another Platinum employee, on which both Landesman and Mann were copied: "We endeavor to treat all investors equally. We are open to providing priority to investors who show severe hardship, but very much prefer to make simultaneous payments to all investors at the same time." By the time of that response, however, twelve redemptions for June 30 had been paid out, at least in part.

136. Throughout this period, Mann was aware of PPVA's liquidity problems because he prepared internal reports on, among other things, dates and amounts of redemptions and subscriptions, and was also aware of investor complaints about late redemptions and pointed questions about PPVA's liquidity. Despite that knowledge, he continued to communicate with investors about processing new redemptions and deferrals without disclosing the full picture of the fund's troubles.

137. Mann also followed Platinum Management's practices of selective redemptions, pressing Nordlicht to provide payment to an investor on hardship grounds while ignoring emails of another investor who inquired about the status of his own pending redemption request.

PPVA Borrows from PPCO, Violating the Funds' Rules Made Known to Investors

138. As PPVA's liquidity crisis deepened, Platinum Management turned to yet another source for desperately needed cash: PPCO. The PPMs of both PPVA and PPCO prohibited the lending or borrowing of funds from one to the other for any purposes other than to facilitate an investment. Starting in October 2014, however, the two funds ignored this restriction, and PPCO frequently extended large loans at least in part to help ease PPVA's cash crisis. Nordlicht readily executed this scheme, since he was the co-CIO of both funds and essentially controlled their affairs, treating their funds as a single "stew."

139. In October 2014, PPVA borrowed $10 million from PPCO at 16% interest. This principal was paid back by the end of 2014. In 2015 the two funds entered into a $25 million revolving credit arrangement. The note evidencing this was dated as of January 1, 2015, and on or about that date PPVA borrowed another $18 million. The outstanding principal declined and then rose again, so that by late August, it exceeded $12 million.

140. From August 1 to August 20, 2015, alone, a net $3.35 million flowed from PPCO to PPVA.

141. Toward the end of August 2015, however, Nordlicht briefly reversed course. From August 21 to August 31, 2015, with PPCO facing its own unpaid redemption requests, PPVA transferred $2.275 million from its master fund account to PPCO (and PPCO transferred back only $15,000). During that same period, PPCO paid outstanding June 30, 2015 redemptions totaling approximately $3.7 million. At the same time that PPVA was helping PPCO pay its outstanding redemptions, PPVA as of the end of September 1 had at least fourteen overdue redemptions of its own totaling at least $10 million. It was not until mid-October that Platinum Management completed paying those fourteen redemptions.

142. Nordlicht then reversed course again. From September 9 through 30, PPVA's ability to pay redemptions was aided by $3.7 million in new funding from PPCO to PPVA.

143. Still, the September quarter brought continued redemption strains. Of the approximately 57 redemptions that became effective on September 30, 2015, most have never been paid, although 17 investors did receive preferential payments for some or all of their redemptions, in one form or another.

144. On September 30, 2015, PPVA's principal bank accounts were again nearly empty and the fund faced approximately $20 million in new net redemptions and repayment of a short-term loan of $7.2 million.

145. That same day, two related foreign funds subscribed to PPCO by wiring $6.5 million and $1.2 million, respectively, into a PPCO account.

146. The next day, October 1, 2015, those subscribers' funds were transferred to a PPCO Master Fund account at the same bank. From there, $7.3 million of the new PPCO investors' money was wired to the PPVA Master Fund bank account at a different bank. PPVA used that money to repay its outstanding loan.

147. Thus, within 24 hours of investing $7 million in PPCO, these investors' monies had, without their knowledge or consent, been diverted to a separate fund, PPVA, to pay off a short-term loan.

148. The $7 million was then added to the outstanding principal owed by PPCO to PPVA on its revolving loan. This "loan" contradicted representations made in the PPMs of both funds because PPVA was borrowing, and PPCO was lending, money to handle a short-term cash crunch rather than for the permitted purposes of making investments.

149. Meanwhile, PPVA's monthly marketing materials for September 2015 again provided no information on liquidity problems, and repeated that there was no lockup provision and that withdrawals were "Quarterly, 60 days' notice required."

150. On September 16, 2015, PPVA finally provided investors with audited financials for the 2014 audit year, 139 days following the April 30, 2014 due date. This prolonged delay once again violated Platinum Management's obligations under the Custody Rule. Even worse, although the audited financials disclosed that PPVA had borrowed approximately $95 million

during 2014, they repeated the misleading statement from the prior year's audit that the purpose of those loans was to complete "investment transactions."

Investors Transfer Interests from PPVA to PPCO, But PPCO Gets No Cash

151. In October and November 2015, Platinum Management, Platinum Credit and Nordlicht also misused PPCO to help PPVA by engaging in preferential, cashless redemptions of some PPVA investors and cashless transfers of those investors' interests into PPCO.

152. In an attempt to redeem certain PPVA investors without having to pay out cash, Platinum Management caused them to execute PPCO subscription agreements, together, in most cases, with detailed wire instructions to Platinum Management's fund administrator authorizing that the proceeds of their PPVA redemptions be wired to a designated PPCO bank account. One other investor did not submit wire instructions, but nonetheless gave the direction to "sell/redeem" $500,000 from PPVA and "invest the redemption proceeds" into PPCO.

153. In fact, however, the signed wire instructions that had been provided to the fund administrator were not followed: no transfers of funds ever occurred. Instead, the amounts – totaling over $3 million – were simply added to the balance of PPVA's outstanding revolving line of credit owed to PPCO.

154. Such cashless redemptions harmed, and were a breach of fiduciary duty to, both PPCO and PPVA. This new PPCO "loan" to PPVA clearly was not a loan for purposes of investment, as narrowly permitted by PPCO's fund documents, and thus contradicted representations in PPCO's PPMs. And PPCO received no cash for these new subscriptions, merely a promise to pay by an affiliated fund that lacked sufficient funds to meet its own redemption obligations. This left PPCO investors exposed to the risk presented by PPVA's illiquidity.

155. PPVA, too, was harmed, as it was forced to incur the obligation to pay high interest merely to facilitate redemptions from its own fund. Remaining PPVA investors were also harmed by what in effect were preferential redemptions, which allowed certain redeeming investors to escape from PPVA to the relatively healthier PPCO. Nonetheless, Platinum Management, Platinum Credit, Nordlicht and others ignored the blatant conflict of interest between PPCO and PPVA. Further, Nordlicht as co-CIO of the advisers to both PPVA and PPCO, caused PPCO and PPVA to act in a way that was potentially contrary to each of their own interests.

156. These were not the first cashless transfers from PPVA to PPCO. As early as October 2014, an investor wired instructions to redeem $15 million from PPVA and "use the proceeds of the redemption to subscribe" to PPCO "for the same amount of $15,000,000" effective December 31, 2014. Later, this was changed to a cashless transfer, which Platinum officials first thought to add to the PPNE Loan, and then decided to use as the basis for what became the new $25 million revolving note by PPVA to PPCO. The effect was the same: PPVA was shed of a $15 million investment interest and PPCO gained a $15 million investment interest for no cash, and just a promise to pay by PPVA.

157. In this earlier case, the failure to deal with the obvious conflict of interest between the two funds was blatant. PPCO's CFO wrote that "since the borrower is PPVA no need for risk and valuation to sign off as the CIO is obviously comfortable with the risk. David Levy can just approve the deal sheet and memo."

Late 2015 and 2016 – the Peaking of the Liquidity Crisis, New Misleading Communications with Investors and New Diversions of Funds

158. By the late fall of 2015, Platinum Management decided to address PPVA's liquidity problems by placing certain assets in a "side-pocket" that would prevent them from

being used as a basis for calculating the amount of redemptions an investor would be entitled to until the assert was sold. Still investors continued to be misled, and funds improperly diverted, even after this change occurred.

159. Nordlicht issued a letter dated November 23, 2015 stating that PPVA USA, via its investment in the PPVA Master Fund, "still holds substantial investments in the remaining illiquid assets which require additional time before the Master Fund can realize the value of those investments. Accordingly, the Investment Manager has a plan to segregate certain illiquid assets (and related liabilities) from the remainder of the assets in the portfolio (the 'Special Investments') in the interest of protecting investors and maximizing returns. …The Special Investments structure protects the Fund investors from being left holding a disproportionately high percentage of illiquid assets when redemptions are made by some investors." Nordlicht asked for the investors' consent to this "Special Investments" modification of the fund.

160. In a conference call in late November 2015 explaining this shift, Nordlicht stated that the existing fund "should quickly become very very liquid" and "I expect it to have ample liquidity," and "liquidity-wise, we're getting things back to normal and we expect to run it with ample liquidity . . . ." In the same investor call, Nordlicht also minimized the significance of the redemptions crisis PPVA was facing, saying, "this was not a redemption-driven type of move that we've made, and in fact we've had less redemptions than you would expect in a fund of our size. This was really a situation where it got to a point where we just had too many private equity positions. I don't feel comfortable paying out in cash at this time."

161. This was misleading, given that the fund was cash-strapped and had substantial past-due redemptions, a fact he omitted.

162. Moreover, contrary to Nordlicht's promise that the fund "should quickly become very very liquid" after illiquid assets were moved to the side-pocket, most investors were not paid redemptions even out of the existing fund. With a few selective exceptions, cash redemption payments ceased from late 2015 forward.

163. Meanwhile, on November 11, 2015, an investor who was waiting to receive payment on his September 2015 redemption of approximately $394,000 sent an email to Mann asking when his redemption would be paid. Mann replied: "[w]e hope to send it to you soon." However, during that same month another Platinum employee told the investor that Platinum could not return his investment because of liquidity issues, since liquidating their liquid holdings in order to pay him would leave remaining investors with too high a portion of the illiquid investments. Mann subsequently ignored a January 12, 2016, email from the investor asking when his redemption would be paid. To date, the investor has not received any portion of his PPVA investment back.

164. In mid-January 2016, one unpaid PPVA and PPCO investor emailed Platinum complaining: "I have asked already about a dozen times about money due to me from PPVA. …you have not paid me money that is due for 75 days. Every time I ask I am told a few more days. … Also PPNE [note interest payment] is supposed to pay at the start of the month and we are now at Jan 15 with no money. This was supposedly guaranteed by the fund." In a reply email from a Platinum Management employee, the investor was told that the PPNE interest payments would be made the following week and that they would have an answer for him on Monday when the overdue September 30 redemption would be paid.

165. The investor responded in part: "Nothing makes investors more jittery than not paying in a timely fashion. I told you that in my opinion holding up the PPCO payment in light

of the changes that you wanted to implement at PPVA was a big mistake. If in fact PPCO has nothing to do with PPVA than (sic) why was the PPCO delayed for 2 months."

166. The investor's email reflects Platinum Management's and Platinum Credit's failure to disclose the extensive intermingling of funds between the two funds to deal with both funds' liquidity problems.

167. In May 2016, with liquidity problems still not solved, Platinum Management, Platinum Credit, Nordlicht and Levy used BAM to essentially steal investor money to obtain cash needed for PPVA expenses.

168. Among its many transactions BAM made with Platinum Partners affiliates, was a $25 million participation interest in a term secured loan to a wholly-owned PPCO portfolio company named Credit Strategies LLC. The loan requires that Credit Strategies in effect apply proceeds either to its own debt obligations or to general corporate purposes.

169. In May, a Platinum portfolio manager (copying Nordlicht and Levy) emailed a request for $1.5 million in funding under the note for purposes of "working capital." The request was signed by Levy, as co-CIO for Credit Strategies. On May 11, BAM approved the funding instructed its bank to wire the money to Credit Strategies' bank account.

170. However, the money was not used by Credit Strategies for working capital as required, but was diverted to a separate fund, PPVA.

171. First, Credit Strategies wired approximately $1.5 million to the parent PPCO fund's account. From there, PPCO wired the money to its investment manager, Platinum Credit. Platinum Credit, in turn, wired approximately the same amount to Platinum Management.

172. Platinum Management then wired the money to a PPVA bank account that at the time was overdrawn by about $1.54 million because of payments the funds that had been made to prime brokers.

173. Furthermore, in June 2016, with PPVA's liquidity crisis peaking, SanFilippo helped Nordlicht break Platinum Management's oft-repeated promise to investors that overdue redemptions would be paid once several illiquid positions were monetized. As an example of this promise, Mann told one investor in May 2016 that "we anticipate paying/wiring the whole 12/31 redemption class their funds (minus 10% audit holdback) together sometime at the end of June or beginning of July (or maybe earlier). This is based on our current liquidity and the anticipated sale of two companies."

174. Meanwhile, Nordlicht helped to close a transaction involving one portfolio company. As a result, on June 9, 2016, PPVA received $37 million in proceeds. But one of those funds were paid that month to investors. Instead, $11 million of these proceeds were invested in a different private company – the same type of illiquid investment that had gotten PPVA into a liquidity crisis in the first place. And, among other uses of the funds, Nordlicht emailed SanFilippo and directed him to make various payments totaling approximately $900,000 to a handful of parties, mostly insiders. By the end of the month, there was $31,000 left in the PPVA Master Fund account. This use of the proceeds contradicted the repeated promises by Platinum Management that such major monetizing events would fund large-scale redemption payments.

PPVA and PPCO Cease Taking on New Investors

175. In June 2016, the FBI executed a search warrant at Platinum Management's offices, and the U.S. Attorney's Office for the Southern District of New York filed criminal charges against one of Platinum Partners' co-owner, in connection with a bribery scheme in

which he is alleged to have paid kickbacks to a New York City Correction Officer's Union official to obtain the union's retirement fund investments in PPVA during the time it was experiencing its liquidity crisis.

176. In the wake of those events, Nordlicht announced to investors that the PPVA fund would stop taking in new money and fund investments would gradually be monetized. .

177. On July 18, 2016, following consultations between Commission staff and counsel for Platinum Partners and its affiliates, the PPVA, PPCO, and PPLO funds retained Guidepost Solutions LLC ("Guidepost") as an "Independent Oversight Advisor," giving the firm access to information and employees and advance notice of major transactions concerning all of Platinum Partners' funds.

178. On July 20, 2016, Platinum circulated to investors Guidepost's letter announcing its appointment "to assist the Managers with the development and implementation of a plan for the orderly liquidation of the Funds under management."

179. On July 28, 2016, a petition was filed in the Grand Court of the Cayman Islands, commencing an involuntary liquidation proceeding and seeking the appointment of Matthew Wright ("Wright") and Christopher Kennedy ("Kennedy") of RHSW (Cayman Limited) as Joint Official Liquidators for the PPVA International feeder fund.

180. On August 25, 2016, the Cayman Court appointed Wright and Kennedy as joint provisional liquidators of the PPVA master fund. An involuntary liquidation proceeding was commenced against PPVA in the Cayman Islands, where the PPVA master fund and international feeder fund are incorporated. Those PPVA funds are now under the supervision of a court-appointed liquidator. On October 19, 2016, the Cayman liquidator commenced an

ancillary bankruptcy proceeding in the United States, pursuant to Chapter 15 of the United States Bankruptcy Code.

181. The PPCO and PPLO funds remained under the informal monitoring of Guidepost.

182. On October 26, 2016, the Litigation Trustee for Black Elk, a Debtor in Bankruptcy, commenced an Adversary Proceeding against PPVA, PPCO, and PPLO, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, based on claims arising from the fraudulent consent scheme alleged above. On the same day, the Bankruptcy Court issued a TRO imposing certain restrictions on PPCO and PPLO's assets. A hearing for a related application for injunctive relief has been set for January 12, 2017.

183. In November 2016, in connection with the Black Elk trustee's request for preliminary relief in its adversary proceeding, the testimony of various individuals was taken.

184. On November 29, 2016, Levy was deposed by the Trustee and asserted his Fifth Amendment right against self-incrimination, refusing to answer any questions concerning the Black Elk note transactions and any other Platinum matters.

185. On November 30, 2016, Nordlicht was deposed by the Trustee and asserted his Fifth Amendment right against self-incrimination, refusing to answer any questions regarding the Black Elk note transactions and any other Platinum matters.

186. On November 30, 2016, PPCO's auditor advised PPCO that it had suspended work on all outstanding engagements and that PPCO should retain a new accounting firm to replace it.

FIRST CLAIM FOR RELIEF
(Against Platinum Management, Platinum Credit and Nordlicht)
Violations of Sections 206(1) and 206(2) of the Advisers Act
and Rule 206(4)-8 thereunder

187. The Commission realleges and incorporates paragraphs 1 to 186 by reference as if fully set forth herein.

188. From at least 2012 through the present, Defendants Platinum Management, Platinum Credit and Nordlicht, investment advisers, directly or indirectly, singly or in concert, by the use of the means and instruments of transportation or communication in interstate commerce, and of the mails, employed and are employing devices, schemes and artifices to defraud investors, and have engaged and are engaging in transactions, practices and courses of business which operate as fraud and deceit upon these investors.

189. By engaging in the conduct described above, Defendants Platinum Management, Platinum Credit and Nordlicht have violated, are violating and, unless restrained and enjoined, will continue to violate Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. 80b-6(1) and 80b-6(2).

SECOND CLAIM FOR RELIEF
(Against Nordlicht)
Aiding and Abetting Violations of Section 206(1) and 206(2) of the Advisers Act

190. The Commission realleges and incorporates paragraphs 1 to 189 by reference as if fully set forth herein.

191. From at least 2012 through the present, by engaging in the conduct described above, and pursuant to Section 209(f) of the Advisers Act, 15 U.S.C. § 80b-9(f), Defendant Nordlicht, in the alternative, singly or in concert, directly or indirectly, knowingly or recklessly aided, abetted, counseled, commended, induced or procured Defendant Platinum Management's

and Platinum Credit's violations of Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. 80b-6(1) and 80b-6(2).

192. Unless restrained and enjoined, Defendant Nordlicht will again aid and abet violations of Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. 80b-6(1) and 80b-6(2).

THIRD CLAIM FOR RELIEF
(Against Platinum Management, Platinum Credit and Nordlicht)
Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder

193. The Commission realleges and incorporates paragraphs 1 to 192 by reference as if fully set forth herein.

194. From at least 2012 through the present, Platinum Management, Platinum Credit and Nordlicht also served as investment advisers to a pooled investment vehicle, and (a) made untrue statements of material fact or omitted to state a material fact, necessary to make the statements made, in the light of circumstances under which they were made, not misleading, to an investor in the pooled investment vehicle; and (b) engaged in an act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

195. By engaging in the foregoing conduct, Defendants Platinum Management, Platinum Credit and Nordlicht have violated, are violating and, unless restrained and enjoined, will continue to violate 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

FOURTH CLAIM FOR RELIEF
(Against Levy, Small, Landesman, Mann, SanFilippo and Nordlicht)
Aiding and Abetting Violations of Section 206(4)
of the Advisers Act and Rule 206(4)-8 Thereunder

196. The Commission realleges and incorporates paragraphs 1 to 195 by reference as if fully set forth herein.

197. From at least 2012 through the present, by engaging in the conduct described above, and pursuant to Section 209(f) of the Advisers Act [15 U.S.C. § 80b-9(f)], Defendants Levy, Small, Landesman, Mann, SanFilippo, and Nordlicht in the alternative, singly or in concert, directly or indirectly, knowingly or recklessly aided, abetted, counseled, commended, induced or procured Defendant Platinum Management's violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder and Defendant Nordlicht, in the alternative, singly or in concert, directly or indirectly, knowingly or recklessly aided, abetted, counseled, commended, induced or procured Defendant Platinum Credit's Management's violations of Sections 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

198. Unless restrained and enjoined, Defendants Levy, Small and Nordlicht will again aid and abet violations of Sections 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

FIFTH CLAIM FOR RELIEF
(Against Platinum Management)
Violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 Thereunder

199. The Commission realleges and incorporates paragraphs 1 to 198 by reference as if fully set forth herein.

200. By engaging in the conduct described above, Platinum Management willfully violated Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), which prohibits a registered investment adviser from engaging in fraudulent, deceptive or manipulative conduct, and Rule 206(4)-2 thereunder, 17 C.F.R. § 275.206(4)-2, which requires an adviser to take certain enumerated steps to safeguard client assets over which it has custody.

201. By reason of the foregoing, Platinum Management violated, is violating and, unless restrained and enjoined, will continue to violate Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-2 thereunder, 17 C.F.R. § 275.206(4)-2.

SIXTH CLAIM FOR RELIEF
(Against Platinum Management, Platinum Credit, Nordlicht, Levy, Landesman and SanFilippo)
Violations of Section 17(a) of the Securities Act

202. The Commission realleges and incorporates paragraphs 1 to 201 by reference as if fully set forth herein.

203. Interests in PPVA and PPCO are securities within the meaning of Section 2(1) of the Securities Act, 15 U.S.C. § 77b(1), and Section 3(a)(10) of the Exchange Act, 15 U.S.C. § 78c(a)(10).

204. By engaging in the conduct described above, Defendants Platinum Management, Platinum Credit, Nordlicht, Levy, Landesman and SanFilippo, directly or indirectly, singly or in concert, in the offer or sale of securities, knowingly, recklessly or negligently, by the use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails, (a) have employed, are employing, or are about to employ, devices, schemes, or artifices to defraud; (b) have made untrue statements of material fact, or have omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) have engaged, are engaging, or are about to engage in transactions, practices, or courses of business which operate, operated, or would operate as a fraud or deceit upon the purchasers of securities.

205. By reason of the foregoing, Defendants Platinum Management, Platinum Credit, Nordlicht, Levy, Landesman and SanFilippo have violated, are violating, and unless restrained and enjoined will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SEVENTH CLAIM FOR RELIEF
(Against Mann)
Violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act

206. The Commission realleges and incorporates paragraphs 1 through 205 by reference as if fully set forth herein.

207. Shares of PPVA and PPCO are securities within the meaning of Section 2(1) of the Securities Act, 15 U.S.C. § 77b(1), and Section 3(a)(10) of the Exchange Act, 15 U.S.C. § 78c(a)(10).

208. By engaging in the conduct described above, Defendant Mann, directly or indirectly, singly or in concert, in the offer or sale of securities, knowingly, recklessly or negligently, by the use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails, (a) has employed, are employing, or are about to employ, devices, schemes, or artifices to defraud; and/or (b) has engaged, are engaging, or are about to engage in transactions, practices, or courses of business which operate, operated, or would operate as a fraud or deceit upon the purchasers of securities.

209. By reason of the foregoing, Defendant Mann has violated, is violating, and unless restrained and enjoined will again violate, Sections 17(a)(1) and 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(1) and 15 U.S.C. § 77q(a)(3).

EIGHTH CLAIM FOR RELIEF
(Against Nordlicht and Levy ,Landesman, Mann and SanFilippo)
Aiding and Abetting Violations of Section 17(a) of the Securities Act

210. The Commission realleges and incorporates paragraphs 1 through 209 by reference as if fully set forth herein.

211. By engaging in the conduct described above, and pursuant to Section 15(b) of the Securities Act, 15 U.S.C. § 77o(b), Defendants Nordlicht, Levy, Landesman, Mann and

SanFilippo, in the alternative, singly or in concert, directly or indirectly, aided and abetted, and are therefore also liable for Defendant Platinum Management's, and Defendants Nordlicht and Levy, in the alternative, singly or in concert, directly or indirectly, aided and abetted, and are therefore also liable for Platinum Credit's, primary violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], because they knowingly or recklessly provided substantial assistance to Defendants Platinum Management's, and Defendants Nordlicht and Levy knowingly and recklessly provided substantial assistance to Platinum Credit's, violations of the Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

212. Unless restrained and enjoined, Defendants Nordlicht, Levy, Landesman, Mann and SanFilippo will again aid and abet violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a) .

NINTH CLAIM FOR RELIEF

(Against Platinum Management, Platinum Credit, Nordlicht, Levy, Small, Landesman and SanFilippo)

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

213. The Commission realleges and incorporates paragraphs 1 through 212 by reference as if fully set forth herein.

214. By engaging in the conduct described above, Defendants Platinum Management, Platinum Credit, Nordlicht, Levy, Small, Landesman and SanFilippo directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce or by the use of the mails, in connection with the purchase or sale of securities, knowingly or recklessly: a) employed, are employing or are about to employ devices, schemes and artifices to defraud; b) have obtained, are obtaining or are about to obtain money and property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the

circumstances under which they were made, not misleading; and/or c) have engaged, are engaging or are about to engage in transactions, practices or courses of business which have operated, operate or will operate as a fraud and deceit upon investors.

215. By engaging in the foregoing conduct, Defendants Platinum Management, Platinum Credit, Nordlicht, Levy, Small, Landesman, and SanFilippo have violated, are violating, and unless restrained and enjoined will again violate Section 10(b) of the Exchange Act, 15 U.S.C. §§78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5.

TENTH CLAIM FOR RELIEF
(Against Mann and Shulse)
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

216. The Commission realleges and incorporates paragraphs 1 through 215 by reference as if fully set forth herein.

217. By engaging in the conduct described above, Defendants Mann and Shulse, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce or by the use of the mails, in connection with the purchase or sale of securities, knowingly or recklessly: a) employed, are employing or are about to employ devices, schemes and artifices to defraud; and/or b) have engaged, are engaging or are about to engage in transactions, practices or courses of business which have operated, operate or will operate as a fraud and deceit upon investors.

218. By engaging in the foregoing conduct, Defendants Mann and Shulse have violated, are violating, and unless restrained and enjoined will again violate Section 10(b) of the Exchange Act, 15 U.S.C. §§78j(b), and Rules 10b-5(a) and 10b-5(c) thereunder, 17 C.F.R. §240.10b-5(a) and 17 C.F.R. §240.10b-5(c).

ELEVENTH CLAIM OR RELIEF
(Against Small , Landesman, Mann, SanFilippo and Shulse)
Aiding and Abetting Violations of Section 10(b)
of the Exchange Act and Rule 10(b)-5 Thereunder

219. The Commission realleges and incorporates paragraphs 1 through 218 by reference as if fully set forth herein.

220. By engaging in the conduct described above, and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Defendants Small, Landesman, Mann, SanFilippo and Shulse, in the alternative, singly or in concert, directly or indirectly, aided and abetted, and are therefore also liable for Defendant Platinum Management's primary violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10(b)-5 thereunder 17 C.F.R. § 240.10b-5, because they each knowingly or recklessly provided substantial assistance to Defendant Platinum Management's violations of Section 10b of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10(b)-5 thereunder, 17 C.F.R. § 240.10b-5.

221. Unless restrained and enjoined, Defendants Small Landesman, Mann, SanFilippo and Shulse will again aid and abet violations of Section 10b of the Exchange Act and Rule 10(b)-5 thereunder, 17 C.F.R. § 240.10b-5.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court grant the following relief:

I.

A Final Judgment finding that the Defendants violated the securities laws and rules promulgated thereunder as alleged herein.

II.

An Order temporarily, and preliminarily through a final judgment, restraining and enjoining Platinum Credit, its agents, servants, employees and attorneys and all persons in

active concert or participation with it who receive actual notice of the injunction by personal service or otherwise, and each of them, from directly or indirectly committing, or aiding and abetting or controlling, future violations of Sections 206(1), 206(2), 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1), (2), and (4), and Rule 206(4)-8, 17 C.F.R. § 275.206(4)-8, thereunder; Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); and Section 10(b) of the Exchange Act 15 U.S.C. § 78j(b), Rule 10(b)-5 thereunder, 17 C.F.R. § 240.10b-5.

III.

An order temporarily, and preliminarily through a final judgment, appointing a Receiver over the Receivership Entities.

IV.

An Order permanently restraining and enjoining Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from directly or indirectly committing, or aiding and abetting or controlling, future violations of Sections 206(1), 206(2), 206(4) of the Advisers Act,15 U.S.C. §§ 80b-6(1), (2), and (4), and Rule 206(4)-2 [17C.F.R. § 275.206(4)-2] and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8]; Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10(b)-5 thereunder 17 C.F.R. § 240.10b-5.

V.

A Final Judgment ordering all Defendants, except Shulse, to disgorge, on a joint and several basis, all ill-gotten gains and unjust enrichment, plus prejudgment interest thereon.

VI.

A Final Judgment ordering Defendants to pay civil penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e).

VII.

An Order temporarily, and preliminarily through a final judgment, appointing a receiver over the Receivership Entities.

VIII.

An Order temporarily, and preliminarily through a final judgment, freezing the assets of X and Y, including their bank and brokerage accounts pending a final judgment, pursuant to the Court's equitable power and Section 21(d)(5) of the Exchange Act, 15 U.S.C. § 78u(d)(5).

IX.

An Order granting expedited discovery.

X.

An Order temporarily, and preliminarily through a final judgment, restraining and enjoining Defendants and any person or entity acting at their direction or on their behalf, from destroying, altering, concealing, or otherwise interfering with the access of the Commission to relevant documents, books and records.

XI.

Granting such other and further relief as this Court deems just, equitable, or necessary in connection with the enforcement of the federal securities laws and for the protection of investors.

JURY DEMAND

Pursuant to Rule 39 of the Federal Rules of Civil Procedure, Plaintiff demands that this case be tried to a jury.

Dated: December 19, 2016
New York, New York

Respectfully submitted,

By: ______________________

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