

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

In re:

PLATINUM-BEECHWOOD LITIGATION.

Civil Action 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),

Civil Action No. 18-cv-10936 (JSR)

Plaintiffs,

- against -

PLATINUM MANAGEMENT (NY) LLC, *et al.*,

Defendants.

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF A MOTION
FOR ENTRY OF A DEFAULT JUDGMENT AGAINST DEFENDANT EZRA BEREN**

Pursuant to Fed. R. Civ. P. 55 and Local Civil Rule 55, Plaintiffs Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) (the "Liquidators") and Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) (together, "Plaintiffs"), by and through their counsel, submits this memorandum of law in support of their motion for a default judgment against Defendant Ezra Beren ("Beren") for failure to plead or otherwise defend or otherwise respond to Plaintiffs' Second Amended Complaint filed in the above-captioned actions on March 29, 2019.

FACTS

On March 29, 2019, Plaintiffs filed the Second Amended Complaint (the “SAC”) in this Court naming Beren as a defendant in the actions captioned *In re Platinum-Beechwood Litigation*, No. 18-cv-6658 (JSR) (Dkt. 226) (“Consolidated Action”) and *Trott, et ano. v. Platinum Management (NY) LLC, et al.*, No. 1:18-cv-10936-JSR (Dkt. 285) (“Trott Action”, together, the “Actions”).¹ See Declaration of Warren E. Gluck, dated September 30, 2019, and the exhibits thereto (“Gluck Decl.”), ¶ 3 & Ex. 1. Plaintiffs named Beren in the SAC in Counts 1-8, 14, and 16-17 and sought damages in an amount to be determined at trial. *Id.* On or about June 25, 2019, Plaintiffs served Beren with the SAC by personal service and priority mail. *Id.* ¶¶ 4-5.

On July 24, 2019, pursuant to Fed. R. Civ. P. 55(a) and L.C.R. 55.1, Plaintiffs requested that the Clerk of Court issue a certificate of default (the “Certificate”) against Beren. Gluck Decl. ¶ 6. On July 25, 2019, the Clerk issued the Certificate pursuant to Fed. R. Civ. P. 55(b). *Id.* ¶ 7 & Ex. 2. Beren has not moved to set aside the entry of default set forth in the Certificate. *Id.* ¶ 8.

ARGUMENT

Federal Rules of Civil Procedure 55(a) provides for an entry of default “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules.”

As explained by the Second Circuit:

Rule 55 of the Federal Rules of Civil Procedure provides a two-step process for obtaining a default judgment. The first step is to obtain an entry of default. When a party against whom affirmative ... relief is sought has failed to plead or otherwise defend, a plaintiff may bring that fact to the court's attention. In such circumstances Rule 55(a) empowers the clerk of court to enter a default. The next step requires the plaintiff to seek a judgment by default under Rule 55(b). Rule 55(b)(1) allows the clerk to enter a default judgment if the

¹ Although Plaintiffs filed the SAC in both actions on April 12, 2019, the pleading is considered timely filed as of March 29, 2019. See Gluck Decl. ¶ 3 n.1.

plaintiff's claim is for a sum certain and the defendant has failed to appear. In all other cases Rule 55(b)(2) governs. It requires a party seeking a judgment by default to apply to the court for entry of a default judgment.

Priestley v. Headminder, Inc., 647 F.3d 497, 504-505 (2d Cir. 2011). *See also* L.C.R. 55.1 and 55.2 (setting forth the additional requirements to enter a default in this Court).

Once the clerk has issued entry of default, a defending party may attempt to set aside the default by motion showing good cause. Fed. R. Civ. P. 55(c). If such a motion is not made or fails on its merits, however, judgment by default may be entered by the Court. Fed. R. Civ. P. 55(b).

On July 24, 2019, Plaintiffs requested that the Clerk of the Court issue the Certificate against Beren. On July 25, 2019, the Clerk of the Court entered the Certificate. Beren has not moved to set aside the entry of default set forth in the Certificate.

Beren's conduct, or lack thereof, in the Actions merits the awarding of a default judgment in favor of the Plaintiffs in an amount to be determined at trial.

CONCLUSION

Plaintiff 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), respectfully request that the Court issue a final judgment in default against Defendant Ezra Beren in an amount to be determined at trial.

Dated: New York, New York
September 30, 2019

HOLLAND & KNIGHT LLP



By: _____
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