Warren E. Gluck, Esq.
Barbra R. Parlin, Esq.
Mitchell J. Geller, Esq.
John Brownlee, Esq. (*pro hac vice*)
Richard A. Bixter Jr., Esq. (*pro hac vice*)
Megan M. Jeschke, Esq. (*pro hac vice*)
HOLLAND & KNIGHT LLP
31 West 52nd Street
New York, New York 10019
Telephone: 212-513-3200
Facsimile: 212-385-9010
Email: warren.gluck@hklaw.com
barbra.parlin@hklaw.com
mitchell.geller@hklaw.com
john.brownlee@hklaw.com
richard.bixter@hklaw.com
megan.jeschke@hklaw.com

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)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

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.

----------x

ANSWER TO COUNTERCLAIM OF DEFENDANT BERNARD FUCHS

Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives (the "JOLs") of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) ("PPVA") for their Answer to the Counterclaim against PPVA filed by defendant Bernard Fuchs in his Amended Answer, dated August 28, 2020, to the Second Amended Complaint, allege as follows:

1. In response to the allegations set forth in paragraph 54 of the Counterclaim, the JOLs, on behalf of PPVA: (a) admit that the PPVA Limited Partnership Agreement (a copy of which is attached as Exhibit 6 to the Second Amended Complaint (the "PPVA LPA")) contains an indemnification provision at section 2.07; (b) admit that pursuant to section 2.07 of the PPVA LPA, PPVA is not obligated to indemnify any person for liabilities or losses suffered with respect to actions or omissions that violate either the PPVA LPA or the Platinum Management Operating Agreement (a copy of which is attached as Exhibit 7 to the Second Amended Complaint (the "PMNY LLC Agreement")); (c) admit that PPVA is not obligated to indemnify any person for liabilities or losses suffered with respect to actions or omissions constituting fraud, gross negligence or willful misconduct; (d) refer the Court to the PPVA LPA and the PMNY LLC Agreement for a complete and accurate statement of their terms; and (e) otherwise deny the allegations in paragraph 54 of the Counterclaim.

2. In response to the allegations sets forth in paragraph 55 of the Counterclaim, the JOLs admit that Fuchs became a member of Platinum Management (NY) LLC [sic], the general partner of PPVA, during the time period at issue in the Second Amended Complaint.

3. Deny the allegations in paragraph 56 of the Counterclaim.

4. Deny the allegations in paragraph 57 of the Counterclaim.

5. Deny the allegations in paragraph 58 of the Counterclaim.

AFFIRMATIVE DEFENSES TO COUNTERCLAIM

The JOLs allege and assert the following defenses in response to the Counterclaim against PPVA filed by defendant Bernard Fuchs in his Amended Answer ("Fuchs' Counterclaim"), undertaking the burden of proof only as to those defenses deemed affirmative defenses as a matter of law, regardless of how such defenses are denominated herein. The JOLs reserve the right to amend their Answer, and to assert additional or different defenses, based upon information or evidence developed in discovery or otherwise.

FIRST AFFIRMATIVE DEFENSE

Fuchs' Counterclaim fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Fuchs' Counterclaim should be dismissed because it violates the automatic stay imposed pursuant to the Bankruptcy Court's chapter 15 Order and the stay imposed by the Grand Court of the Cayman Islands to the extent that it asserts an affirmative claim for relief against PPVA in a court outside the Cayman Liquidation.

THIRD AFFIRMATIVE DEFENSE

Fuchs' Counterclaim should be dismissed pursuant to Fed. R. Civ. P. 12(b)(3) on the grounds that all claims against PPVA must be asserted in the Cayman Liquidation.

FOURTH AFFIRMATIVE DEFENSE

Fuchs' Counterclaim is barred, in whole or in part, because all claims asserted against Fuchs in the Second Amended Complaint assert that he committed actions or omissions constituting fraud, gross negligence or willful misconduct, breached his fiduciary obligations to PPVA, and knowingly aided and abetted PMNY and the other Platinum Defendants and

Beechwood Defendants in connection with the breaches of fiduciary duty, fraud and other misconduct, alleged in the Second Amended Complaint.

FIFTH AFFIRMATIVE DEFENSE

Fuchs' Counterclaim is barred, in whole or in part, because the losses or expenses that Fuchs may sustain or suffer in connection with the above captioned cases will not result from "a mistake of judgment" by Fuchs or "from action or inaction" by Fuchs that Fuchs "reasonably believed to be in the best interests" of PPVA, as required to qualify for indemnification under section 2.07 of the PPVA LPA.

SIXTH AFFIRMATIVE DEFENSE

Fuchs' Counterclaim is barred, in whole or in part, by the doctrine of unclean hands.

DEMAND FOR TRIAL BY JURY

On behalf of PPVA, the JOLs demand a trial by jury on all issues so triable with respect to Fuchs' Counterclaim.

WHEREFORE, the JOLs demand judgment dismissing Fuchs' Counterclaim and such other and further relief as this Court may deem just and proper.

Dated: September 17, 2020
New York, New York

HOLLAND & KNIGHT LLP

By:_____
Warren E. Gluck, Esq.

Warren E. Gluck, Esq.
Barbra R. Parlin, Esq.
Mitchell J. Geller, Esq.
John Brownlee, Esq. (*pro hac vice*)
Richard A. Bixter Jr., Esq. (*pro hac vice*)
Megan M. Jeschke, Esq. (*pro hac vice*)

HOLLAND & KNIGHT LLP

31 West 52nd Street
New York, New York 10019
Telephone: 212-513-3200
Facsimile: 212-385-9010

Email: warren.gluck@hklaw.com
barbra.parlin@hklaw.com
mitchell.geller@hklaw.com
john.brownlee@hklaw.com
richard.bixter@hklaw.com
megan.jeschke@hklaw.com

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)