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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE PLATINUM-BEECHWOOD LITIGATION,

Index No. 18-CV-6658 (JSR)

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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),

Index No. 18-CV-10936 (JSR)

Plaintiffs,

v.

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

Defendants.

**OTTENSOSER’S ANSWER TO  
SECOND AMENDED  
COMPLAINT FOR BREACH  
OF FIDUCIARY DUTY;  
BREACH OF DUTY OF  
LOYALTY; AIDING &  
ABETTING BREACH OF  
FIDUCIARY DUTIES; FRAUD;  
CONSTRUCTIVE FRAUD;  
AIDING & ABETTING FRAUD;  
AIDING & ABETTING  
BREACH OF FIDUCIARY  
DUTIES; AIDING & ABETTING  
FRAUD; CIVIL CONSPIRACY;  
AND VIOLATION OF CIVIL  
RICO**

**JURY TRIAL DEMANDED**

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Defendant David Ottensoser (“Ottensoser” or “Defendant”), by and through his undersigned counsel, hereby responds to the Second Amended Complaint (“SAC”) for Breach of Fiduciary Duty, Breach of the Duty of Loyalty, Aiding and Abetting Breach of Fiduciary Duties, Fraud, Constructive Fraud, Aiding and Abetting Fraud, Aiding and Abetting Breach of Fiduciary Duties, Aiding and Abetting Fraud, Civil Conspiracy, and Violation of Civil RICO filed by Martin Trott and Christopher Trott, as Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. and Platinum Partners Value Arbitrage Fund L.P. (“Plaintiffs”), and states as follows:

**A. ADMISSIONS AND DENIALS**

**DESCRIPTION OF THE CASE**

1. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations and, on that basis, denies the allegations in Paragraph 1 of the SAC.
2. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations and, on that basis, denies the allegations in Paragraph 2 of the SAC.
3. Defendant denies that he is part of “an interrelated and overlapping group of persons and entities” that “used their positions of trust, access and authority to either enrich themselves and certain friends and family at the expense of PPVA.” As to all other allegations in Paragraph 3 of the SAC, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations and, on that basis, denies the remaining allegations in Paragraph 3 of the SAC.
4. Paragraph 4 of the SAC contains legal conclusions to which no response is required. To the extent that a response is required, Defendant denies engaging in “conspiracy, fraud, deceit,

asset dissipation and breaches of fiduciary obligations” and denies that he “committed these tortious acts or directly aided or abetted this conduct.”

5. Defendant denies the allegations contained in Paragraph 5 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations and, on that basis, denies the allegations in Paragraph 5 of the SAC.

6. Paragraph 6 of the SAC contains legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in Paragraphs 5 and 6 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations and, on that basis, denies the allegations in Paragraph 5 and 6 of the SAC.

7. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations and, on that basis, denies the allegations in Paragraph 7 of the SAC.

8. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations and, on that basis, denies the allegations in Paragraph 8 of the SAC.

9. Paragraph 9 of the SAC contains legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 9 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations and, on that basis, denies the allegations in Paragraph 9 of the SAC.

10. Paragraph 10 of the SAC contains legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 10 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a

belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraph 10 of the SAC.

11. Paragraph 11 of the SAC contains legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 11 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraph 11 of the SAC.

12. Defendant admits that, at various times, he served as general counsel, chief compliance officer, and a member of the risk committee of PPVA, denies that "[a]s a member of the risk committee, he was responsible for assessing the risk associated with PPVA's investments," and admits that he "received a salary," and received "bonus compensation" in certain years. Defendant denies the other allegations and conclusions in Paragraph 12(ix). As to all other parts of Paragraph 12, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the remaining allegations in Paragraph 12 of the SAC.

13. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 13 of the SAC and, on that basis, denies them.

14. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 14 of the SAC and, on that basis, denies them.

15. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 15 of the SAC and, on that basis, denies them.

16. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 16 of the SAC and, on that basis, denies them, except he does



not dispute that “PPVA was placed into provisional liquidation under the supervision of the Grand Court of the Cayman Islands on August 23, 2016.”

17. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraph 17 of the SAC and, on that basis, denies them.

18. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraph 18 of the SAC and, on that basis, denies them.

19. Defendant denies the allegations contained in Paragraph 19 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraph 19 of the SAC and, on that basis, denies them.

20. Defendant denies the allegations contained in Paragraph 20 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraph 20 of the SAC and, on that basis, denies them.

21. Defendant denies the allegations contained in Paragraph 21 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraph 21 of the SAC and, on that basis, denies them.

22. Defendant denies the allegations contained in Paragraph 22 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraph 22 of the SAC and, on that basis, denies them.

23. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations and, on that basis, denies the allegations in Paragraph 23 of the SAC.

24. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations and, on that basis, denies the allegations in Paragraph 24 of the SAC.

25. Defendant denies the allegations contained in Paragraph 25 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 25 of the SAC and, on that basis, denies them.

26. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 26 of the SAC and, on that basis, denies them.

27. Defendant denies the allegations contained in Paragraph 27 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 25 of the SAC and, on that basis, denies them.

28. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraph 28 of the SAC.

29. Defendant denies the allegations contained in Paragraph 29 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 29 of the SAC and, on that basis, denies them.

30. Defendant denies the allegations contained in Paragraph 30 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 25 of the SAC and, on that basis, denies them.

31. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 31 of the SAC and, on that basis, denies them.

32. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 32 of the SAC and, on that basis, denies them.

33. Defendant denies the allegations contained in Paragraph 33 of the SAC as to himself. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 33 of the SAC and, on that basis, denies them.

34. Defendant denies the allegations contained in Paragraph 34 of the SAC as to himself. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 34 of the SAC and, on that basis, denies them.

35. Paragraph 35 of the SAC contains legal conclusions to which no answer is required. To the extent that an answer is required, Defendant denies the allegations contained in Paragraph 35 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 35 of the SAC and, on that basis, denies them.

36. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 36 of the SAC and, on that basis, denies them.

**PARTIES RELEVANT TO THE JOL'S CLAIMS**

37. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 37 of the SAC and, on that basis, denies them.

38. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 38 of the SAC and, on that basis, denies them.

39. Defendant admits that Platinum Management is a Delaware limited liability company with its principal place of business in New York, New York, and that it is the general partner of PPVA.

40-96. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 40-96 of the SAC and, on that basis, denies them.

97. Defendant admits that he is characterized in the SAC as a "Platinum Defendant as well as a Beechwood Defendant." Defendant also admits that he is a resident of Woodmere, New York. Defendant admits that he served as general counsel and Chief Compliance Officer for Platinum Management and PPVA, but denies that he did so "at *all* relevant times" to the SAC.

98. Defendant denies the allegations in Paragraph 98.

99. Defendant denies the allegations in Paragraph 99 that he: (i) “worked as general counsel for Beechwood during its initial stages”; or (ii) “provid[ed] legal services to Beechwood and PPVA even when both parties ostensibly were on opposite sides of a transaction.” Defendant admits that, with the assistance of outside counsel, he was “involved” in the “creation” of Beechwood.

100. Defendant denies the allegation in Paragraph 100 that he was the general counsel of Beechwood, denies that he was “aware of the conflicts between those entities and arising out of the transactions comprising the First and Second Schemes,” and denies that he was aware “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. Defendant admits that he attended certain meetings of PPVA’s risk committee at certain times relevant to the SAC, but denies that he was “responsible for assessing the risk associate[d] with PPVA’s assets and investments.”

102. Defendant denies each and every one of the allegations in Paragraph 102.

103-222. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraphs 103-222 of the SAC and, on that basis, denies them.

#### **JURISDICTION AND VENUE**

223-225. Paragraphs 223 through 225 of the SAC contain legal conclusions to which no answer is required. To the extent that an answer is required, Defendant denies the allegations.

#### **FACTUAL BACKGROUND**

##### **A. The PPVA Investment Structure**

226-235. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraphs 226-235 of the SAC and, on that basis, denies them.

236. Defendant denies the allegations contained in Paragraph 236 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraph 236 of the SAC.

B. Platinum Management as General Partner

237. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 237 of the SAC and, on that basis, denies them.

238. Defendant admits the allegations in Paragraph 238 of the SAC.

239. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 239.

240. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 240 of the SAC and, on that basis, denies them.

241. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 241 of the SAC and, on that basis, denies them.

242. Defendant admits that he and certain of the individuals and entities named in the SAC as "Platinum Defendants" "operated out of various locations in New York, New York", and that "the office of Platinum Management . . . was located at 250 West 55<sup>th</sup> Street, 14<sup>th</sup> Floor, New York, NY 10019."

243-249. Defendant refers the Court to the referenced documents and provisions for a full and accurate statement of their contents.

250. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 250 of the SAC and, on that basis, denies them.

C. Platinum Defendants' Valuation and Risk Assessment Process and Representations Concerning Investments and NAV

251. Defendant admits the allegations in Paragraph 251 of the SAC.

252. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 252 of the SAC and, on that basis, denies them.

253. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 253 of the SAC and, on that basis, denies them.

254. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 254 of the SAC and, on that basis, denies them.

255. Defendant admits that he attended certain meeting of the "risk committee" at certain times relevant to the SAC, and Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' remaining allegations in Paragraph 255 of the SAC and, on that basis, denies them.

256-258. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 256-258 of the SAC and, on that basis, denies them.

259. Defendant denies the allegations contained in Paragraph 259 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraph 259 of the SAC.

260. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 260 of the SAC and, on that basis, denies them.

261-266. Defendant denies the allegations contained in Paragraphs 261 through 266 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 261-266 of the SAC.

267-268. Defendant refers the Court to the referenced documents for a full and accurate statement of their contents.

269-271. Paragraphs 269 through 271 of the SAC contain legal conclusions to which no answer is required. To the extent that an answer is required, Defendant denies the allegations contained in Paragraphs 269 through 271 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies them.

D. The Collapse and Liquidation of PPVA

272-305. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 272-305 of the SAC and, on that basis, denies them. To the extent those Paragraphs reference certain documents and provisions in those documents, Defendant refers the Court to the referenced documents and provisions for a full and accurate statement of their contents.

E. Concentration in Illiquid Investments

306-312. Defendant denies the allegations contained in Paragraphs 306-312 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 306-312 of the SAC and, on that basis, denies them. To the extent those Paragraphs reference certain documents and provisions in those documents, Defendant refers the Court to the referenced documents and provisions for a full and accurate statement of their contents.

F. Misrepresentation of PPVA's NAV in the Wake of the Black Elk Explosion

313-322. Defendant denies the allegations contained in Paragraphs 313-322 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 313-322 of the SAC and, on that basis, denies them.

G. Misrepresentation of Value for Golden Gate Oil

323-343. Defendant denies the allegations contained in Paragraphs 323-343 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 323-343 of the SAC and, on that basis, denies them. To the extent those Paragraphs reference certain documents and provisions in those documents, Defendant refers the Court to the referenced documents and provisions for a full and accurate statement of their contents.

H. Creation of Beechwood

344-346. Defendant denies the allegations contained in Paragraphs 344-346 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 344-346 of the SAC and, on that basis, denies them.

347-349. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 347-349 of the SAC and, on that basis, denies them.

350-351. Defendant denies the allegations contained in Paragraphs 350-351 as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 350-351 of the SAC, and, on that basis, denies them.

352-369. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 352-369 of the SAC and, on that basis, denies them. To the extent those Paragraphs reference certain documents and provisions in those documents, Defendant refers the Court to the referenced documents and provisions for a full and accurate statement of their contents.

370. Defendant admits the allegations in Paragraph 370. Defendant refers the Court to the referenced documents for a full and accurate statement of their contents.



371. Defendant admits the allegations in Paragraph 371, except lacks information sufficient to form a belief as to the truth of Plaintiffs' allegation as to the date by which those documents were prepared.

372. Defendant admits receiving the draft operating agreement and subscription documents attached to the SAC as Exhibit 45, but denies the remaining allegations contained in Paragraph 372 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 372 of the SAC and, on that basis, denies them. Defendant refers the Court to the referenced documents for a full and accurate statement of their contents.

I. Structure and Ownership of Beechwood

373. Defendant denies the allegations contained in Paragraph 373 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 373 of the SAC and, on that basis, denies them.

374-377. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 374-377 of the SAC and, on that basis, denies them.

378. Defendant denies the allegations contained in Paragraph 378 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 378 of the SAC and, on that basis, denies them.

379-390. Defendant denies the allegations contained in Paragraph 379-390 to the extent they apply to him, and as to all others, lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraph 379-390 of the SAC and, on that basis, denies them. Defendant refers the Court to the referenced document in Paragraph 382 for a full and accurate statement of their contents.

391. Defendant denies the allegation in Paragraph 391 that he served as “General Counsel” of Beechwood. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraph 391 of the SAC and, on that basis, denies them.

392. Defendant denies the allegation in Paragraph 392 that he “had [a] title[.]” at Beechwood. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraph 392 of the SAC and, on that basis, denies them.

393-399. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraphs 393-399 of the SAC and, on that basis, denies them.

#### J. Beechwood and the First Scheme

400-412. Defendant denies the allegations contained in Paragraphs 400-412 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraphs 400-412 of the SAC and, on that basis, denies them.

##### 1. Golden Gate Oil

413-423. Defendant denies the allegations contained in Paragraphs 413-423 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraphs 413-423 of the SAC and, on that basis, denies them. To the extent documents are referenced in Paragraphs 413-423, Defendant refers the court to those documents for a full and accurate statement of their contents.

##### 2. PEDEVCO

424-435. Defendant denies the allegations contained in Paragraphs 424-435 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs’ allegations in Paragraphs 424-435 of the SAC and, on that basis, denies

them. To the extent documents are referenced in Paragraphs 424-435, Defendant refers the court to those documents for a full and accurate statement of their contents.

3. Implant Sciences

436-439. Defendant denies the allegations contained in Paragraphs 436-439 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 436-439 of the SAC and, on that basis, denies them. Defendant refers the court to the document referenced in Paragraph 439 for a full and accurate statement of its contents.

K. Black Elk Scheme

440-515. Defendant denies the allegations contained in Paragraphs 440-515 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 440-515 of the SAC and, on that basis, denies them. To the extent documents are referenced in Paragraphs 440-515, Defendant refers the court to those documents for a full and accurate statement of their contents.

L. Creation of Montsant and Repurchase of Black Elk Bonds

516-528. Defendant denies the allegations contained in Paragraphs 516-528 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 516-528 of the SAC and, on that basis, denies them. To the extent documents are referenced in Paragraphs 516-528, Defendant refers the court to those documents for a full and accurate statement of their contents.

M. Northstar

529-550. Defendant denies the allegations contained in Paragraphs 529-550 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 529-550 of the SAC and, on that basis, denies

them. To the extent documents are referenced in Paragraphs 529-550, Defendant refers the court to those documents for a full and accurate statement of their contents.

N. The Second Scheme

551-555. Defendant denies the allegations contained in Paragraphs 551-555 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 551-555 of the SAC and, on that basis, denies them. To the extent documents are referenced in Paragraphs 551-555, Defendant refers the court to those documents for a full and accurate statement of their contents.

1. Use of Monsanto to Hide Beechwood Encumbrance of PPVA Assets

556-567. Defendant denies the allegations contained in Paragraphs 556-567 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 556-567 of the SAC and, on that basis, denies them. Defendant refers the court to the document referenced in Paragraph 566 for a full and accurate statement of their contents.

2. The Nordlicht Side Letter

568-583. Defendant denies the allegations contained in Paragraphs 568-583 of the SAC as to himself, except lacks sufficient information to form a belief as to whether he received the Nordlicht Side Letter. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 568-583 of the SAC and, on that basis, denies them. To the extent documents are referenced in Paragraphs 568-583, Defendant refers the court to those documents for a full and accurate statement of their contents.

3. March 2016 "Restructuring" of PPVA/PPCO/Beechwood Transactions

584-606. Defendant denies the allegations contained in Paragraphs 584-606 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth

or meaning of Plaintiffs' allegations in Paragraphs 584-606 of the SAC and, on that basis, denies them. To the extent documents are referenced in Paragraphs 584-606, Defendant refers the court to those documents for a full and accurate statement of their contents.

O. The Agera Transactions

607-610. Defendant denies the allegations contained in Paragraphs 607-610 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 607-610 of the SAC and, on that basis, denies them. To the extent documents are referenced in Paragraphs 607-610, Defendant refers the court to those documents for a full and accurate statement of their contents.

1. Agera Energy

611-626. Defendant denies the allegations contained in Paragraphs 611-626 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 611-626 of the SAC and, on that basis, denies them. To the extent documents are referenced in Paragraphs 611-626, Defendant refers the court to those documents for a full and accurate statement of their contents.

2. The Agera Energy Valuation

627-629. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 627 through 629 of the SAC.

3. The Agera Sale Process

630-642. Defendant denies the allegations contained in Paragraphs 630-642 of the SAC as to himself, except lacks sufficient information to form a belief as to whether he helped to prepare the documents "by which the various parts of the Agera transaction was accomplished. (636).

As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning

of Plaintiffs' allegations in Paragraphs 630-642 of the SAC and, on that basis, denies them. To the extent documents are referenced in Paragraphs 630-642, Defendant refers the court to those documents for a full and accurate statement of their contents.

4. The Agera Sale

643-659. Defendant denies the allegations contained in Paragraphs 643-659 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 643-659 of the SAC and, on that basis, denies them. To the extent documents are referenced in Paragraphs 643-659, Defendant refers the court to those documents for a full and accurate statement of their contents.

5. The Redemption of the Class C Portion of the Note Purchase Price

660-672. Defendant denies the allegations contained in Paragraphs 660-672 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations in Paragraphs 660-672 of the SAC and, on that basis, denies them. To the extent documents are referenced in Paragraphs 660-672, Defendant refers the court to those documents for a full and accurate statement of their contents.

P. The Security Lockup

673-676. Defendant denies the allegations in Paragraphs 673 through 676 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 673 through 676 of the SAC.

1. PPNE Notes

677-687. Defendant denies the allegations in Paragraphs 677 through 687 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth

or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 677 through 687 of the SAC.

2. Kismetia

688-695. Defendant denies the allegations in Paragraphs 688 through 695 of the SAC as to himself. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 688 through 695 of the SAC.

3. Twosons

696-725. Defendant denies the allegations in Paragraphs 696 through 725 of the SAC as to himself. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 696 through 725 of the SAC.

4. Seth Gerszberg and West Loop/Epocs

726-762. Defendant denies the allegations in Paragraphs 726 through 762 of the SAC as to himself. Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 726 through 762 of the SAC.

**CLAIMS FOR RELIEF**

Q. First Count: Breach of Fiduciary Duty (Platinum Defendants)

763-773. Defendant denies the allegations contained in Paragraphs 763 through 773 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 763 through 773 of the SAC.

R. Second Count: Breach of Duty of Loyalty (Platinum Defendants)

774-781. Defendant denies the allegations contained in Paragraphs 774 through 781 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 774 through 781 of the SAC.

S. Third Count: Aiding and Abetting Breach of Fiduciary Duties (Platinum Defendants)

782-791. Defendant denies the allegations contained in Paragraphs 782 through 791 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 782 through 791 of the SAC.

T. Fourth Count: Fraud (Platinum Defendants)

792-813. Defendant denies the allegations contained in Paragraphs 792 through 813 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 792 through 813 of the SAC.

U. Fifth Count: Constructive Fraud (Platinum Defendants)

814-837. Defendant denies the allegations contained in Paragraphs 814 through 837 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 814 through 837 of the SAC.

V. Sixth Count: Aiding and Abetting Fraud (Platinum Defendants)

838-845. Defendant denies the allegations contained in Paragraphs 838 through 845 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to



the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 838 through 845 of the SAC.

W. Seventh Count: Aiding and Abetting Breach of Fiduciary Duties (Platinum Defendants) 846-857. Defendant denies the allegations contained in Paragraphs 846 through 857 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 846 through 857 of the SAC.

X. Eighth Count: Aiding and Abetting Fraud (Beechwood Defendants) 858-868. Defendant denies the allegations contained in Paragraphs 858 through 868 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 858 through 868 of the SAC.

Y. Ninth Count: Aiding and Abetting Breach of Fiduciary Duties (BEOF Funds and Preferred Investors) 869-885. Defendant denies the allegations contained in Paragraphs 869 through 885 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 869 through 885 of the SAC.

Z. Tenth Count: Aiding and Abetting Fraud (BEOF Funds and Preferred Investors) 886-899. Defendant denies the allegations contained in Paragraphs 886 through 899 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 886 through 899 of the SAC.

AA. Eleventh Count: Aiding and Abetting Breach of Fiduciary Duties (Michael Katz)  
900-910. Defendant denies the allegations contained in Paragraphs 900 through 910 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 900 through 910 of the SAC.

BB. Twelfth Count: Aiding and Abetting Breach of Fiduciary Duties (Kevin Cassidy and Michael Nordlicht)  
911-925. Defendant denies the allegations contained in Paragraphs 911 through 925 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 911 through 925 of the SAC.

CC. Thirteenth Count: Aiding and Abetting Breach of Fiduciary Duties (Seth Gerszberg)  
926-937. Defendant denies the allegations contained in Paragraphs 926 through 937 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 926 through 937 of the SAC.

DD. Fourteenth Count: Unjust Enrichment (Beechwood Defendants, Kevin Cassidy, and Seth Gerszberg)  
938-947. Defendant denies the allegations contained in Paragraphs 938 through 947 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 938 through 947 of the SAC.

EE. Fifteenth Count: Unjust Enrichment (BEOF Funds and Preferred Investors)  
948-959. Defendant denies the allegations contained in Paragraphs 948 through 959 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to

the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 948 through 959 of the SAC.

FF. Sixteenth Count: Civil Conspiracy (Platinum Defendants and Beechwood Defendants) 960-967. Defendant denies the allegations contained in Paragraphs 960 through 967 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 960 through 967 of the SAC.

GG. Seventeenth Count: Violation of Civil RICO (Platinum Defendants and Beechwood Defendants) 968-985. Defendant denies the allegations contained in Paragraphs 968 through 985 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 968 through 985 of the SAC.

HH. Eighteenth Count: (For Relief Only) Alter Ego (Beechwood Entities) 986-1000. Defendant denies the allegations contained in Paragraphs 986 through 1000 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 986 through 1000 of the SAC.

II. Nineteenth Count: (For Relief Only) Alter Ego (BEOF Funds) 1001-1012. Defendant denies the allegations contained in Paragraphs 1001 through 1012 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 1001 through 1012 of the SAC.

JJ. Twentieth Count: Declaratory Judgment (Nordlicht Side Letter)

1013-1020. Defendant denies the allegations contained in Paragraphs 1013 through 1020 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 1013 through 1020 of the SAC.

KK. Twenty-First Count: Declaratory Judgment (Master Guaranty)

1021-1028. Defendant denies the allegations contained in Paragraphs 1021 through 1028 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 1021 through 1028 of the SAC.

LL. Twenty-Second Count: (For Relief Only) Alter Ego (Huberfield Family Foundation)

1029-1041. Defendant denies the allegations contained in Paragraphs 1029 through 1041 of the SAC as to himself. As to all others, Defendant lacks information sufficient to form a belief as to the truth or meaning of Plaintiffs' allegations and, on that basis, denies the allegations in Paragraphs 1029 through 1041 of the SAC.

**B. AFFIRMATIVE DEFENSES**

For his affirmative defenses, Ottensoser states below the separate and independent additional defenses to the Second Amended Complaint and the purported cause of action and allegations thereof. Ottensoser reserves the right to assert additional affirmative and other defenses and otherwise to supplement this Answer and Affirmative Defenses upon discovery of facts or evidence rendering such action appropriate. By designating these matters "defenses," Ottensoser does not intend to suggest either that Plaintiffs do not bear the burden of proof as to such matters or that such matters are not elements of Plaintiffs' *prima facie* case against Ottensoser.

**FIRST AFFIRMATIVE DEFENSE**

The Second Amended Complaint fails to state a claim against Ottensoser on which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrine of waiver.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrines of laches.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to mitigate, minimize or avoid its alleged damages, if any.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the applicable statute of limitations.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' declaratory judgment claim, and any request for injunctive or equitable relief, fails because Plaintiffs have failed present a justiciable controversy between the parties and therefore the Court lacks jurisdiction to enter the declaratory relief sought.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by agency in that to the extent Plaintiffs' allege wrongdoing by Ottensoser, those actions were done at the direction of others with the full disclosure to those allegedly wronged that Ottensoser was an agent at the time the wrongful acts occurred.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' alleged damages, if any, are too speculative and too remote.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by ratification.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' lack standing to pursue their claims against Ottensoser.

**ELEVENTH AFFIRMATIVE DEFENSE**

Ottensoser is not liable for aiding and abetting any wrongdoing alleged by Plaintiffs because he did not (a) affirmatively assist to conceal information that allowed any alleged fraud to proceed (or fail to act to prevent the fraud), and (b) any actions he took was not the proximate cause of any harm alleged by Plaintiffs.

**TWELFTH AFFIRMATIVE DEFENSE**

Ottensoser is not liable for civil conspiracy or Civil RICO claims because he was not part of any corrupt agreement between any other party or non-party to the is matter, did not act to further such non-existent agreement, and never intentionally participated in any conspiracy alleged by Plaintiffs.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' breach of fiduciary duty, fraud and constructive fraud claims against Ottensoser fail because they have not been pleaded with the requisite particularity and Plaintiffs cannot establish Ottensoser knowingly misrepresented any fact relevant to Plaintiffs' fraud claims with the intent of defrauding anyone.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims must be dismissed for failure to join indispensable parties.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' request for alter-ego relief from Ottensoser fail because Ottensoser did not knowingly or intentionally participate or benefit from any scheme to utilize the Beachwood Entities as an alter-ego of Platinum Management.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims for fraud, aiding and abetting, civil conspiracy, Civil RICO, and breach of fiduciary duties all fail because PPVA did not reasonably rely upon any statement or conduct by Ottensoser.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims for fiduciary duties against Ottensoser all fail because PPVA has not established the existence of a fiduciary relationship between PPVA and Ottensoser.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the *in pari delicto* doctrine.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims for breach of fiduciary duty, fraud, and aiding and abetting are barred in whole or in part because Ottensoser at all times acted in good faith.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' claims against Ottensoser are all barred, in whole or in part, because the parties whom Plaintiffs' represent and the parties in whose shoes Plaintiffs stand have sustained no injury or damages as a result of any act or omission by Ottensoser.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' claims against Ottensoser are barred because any damages claimed against the parties whom Plaintiffs' represent and the parties in whose shoes Plaintiffs stand were caused due to the acts or omissions of other parties over whom Ottensoser had no control.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' RICO claims are barred because they are based on securities transactions, which is impermissible under RICO.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' claims against Ottensoser are all barred, in whole or in part, based on the doctrines of assumption of the risk and/or culpable conduct on the part of the Plaintiffs, the parties whom Plaintiffs represent, and the parties in whose shoes Plaintiffs stand.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims against Ottensoser are all barred by the doctrine of estoppel.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims against Ottensoser are barred, in whole or in part, by the limitations on liability in the Platinum Management Operating Agreement.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims against Ottensoser are all barred by the doctrine of unclean hands.

**C. COUNTERCLAIMS**

**COUNTERCLAIM FOR INDEMNIFICATION  
AGAINST PPVA**

To the maximum extent permitted by applicable law, Plaintiffs and Counterclaim Defendants PPVA is liable to indemnify Defendant and Counterclaim Plaintiff David Ottensoser against all liabilities and losses, including amounts paid in respect of judgments, fines, penalties or settlement of litigation, and legal fees and expenses reasonably incurred in connection with any pending or threatened litigation or proceeding, including liabilities and losses incurred in the instant litigation pursuant to Section 2.07 of the Second Amended and Restated Limited Partnership Agreement of Platinum Partners Value Arbitrage Fund L.P. (Exhibit 6 to the SAC).



**D. CROSS-CLAIMS**

**CROSSCLAIM FOR INDEMNIFICATION AGAINST  
CO-DEFENDANT PLATINUM MANAGEMENT (NY) LLC**

To the maximum extent permitted by applicable law, Co-Defendant Platinum Management (NY) LLC is liable to indemnify David Ottensoser against all liabilities and losses, including amounts paid in respect of judgments, fines, penalties or settlement of litigation, and legal fees and expenses reasonably incurred in connection with any pending or threatened litigation or proceeding, including liabilities and losses incurred in the instant litigation pursuant to Section 2.07 of the Second Amended and Restated Operating Agreement of Platinum Management (NY) LLC (Exhibit 7 to the SAC).

**CONCLUSION**

For all the foregoing reasons, David Ottensoser respectfully requests the Court enter an order dismissing the Second Amended Complaint in its entirety as against him, with prejudice.

Dated: April 22, 2019

/s/ Eric M. Creizman  
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