

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.

**PPVA PLAINTIFFS' RESPONSE TO DEFENDANT DAVID BODNER'S RULE 56.1
STATEMENT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Local Rule 56.1 requires that motions for summary judgment be accompanied by a “short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.” Local Civil Rule 56.1(a). On February 14, 2020, Defendant David Bodner (“**Bodner**”) filed a Local Rule 56.1 statement. *See Trott, et ano. v. Platinum Mgmt. (NY), LLC, et al.*, No. 1:18-cv-10936 (JSR) (S.D.N.Y.) (ECF No. 525) (the “**Trott Action**”).

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 “**JOLs**”) and Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) (“**PPVA**” and collectively with the JOLs, the “**PPVA Plaintiffs**”) by and through their attorneys Holland & Knight LLP, hereby respond to Bodner’s proffered Local Rule 56.1 statement of purportedly undisputed facts, as follows:

PRELIMINARY STATEMENT

By responding to Bodner’s proffered Local Rule 56.1 statement, PPVA Plaintiffs do not concede that any of Bodner’s assertions of fact are either relevant or material, and PPVA Plaintiffs reserve any and all objections to each of Bodner’s statements on those bases. PPVA Plaintiffs also expressly reserve and do not waive any and all objections to the use or admissibility of such statements, or the evidence cited in support, during trial in this manner. To the extent that any of PPVA Plaintiffs’ responses are deemed to admit any of the paragraphs of Bodner’s proffered Local Rule 56.1 statement, in whole or in part, such response is made solely in connection with PPVA Plaintiffs’ opposition to Bodner’s motion for summary judgment. *See* (ECF No. 523).

RESPONSE TO LOCAL RULE 56.1 STATEMENT OF FACTS

A. Bodner's Platinum Interests

RESPONSE: The PPVA Plaintiffs object to all headings as improper for purposes of a Rule 56.1 Statement.

1. In or about 2001, Bodner helped Mark Nordlicht and Murray Huberfeld launch Platinum Partners Value Arbitrage Fund L.P. ("PPVA") by providing a substantial seed investment. (Bodner 62:3–16; SanFilippo 53:18–24).

RESPONSE: Undisputed.

2. In exchange for his investment, Bodner received an interest in the management fees generated by Platinum Management (NY) LLC ("Platinum Management"). (Bodner 69:6–11, 74:2–9).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 32-53 of PPVA Plaintiffs' Statement of Material Facts.

3. This interest was held through Grosser Lane Management, LLC ("Grosser Lane"), of which Bodner and his wife are members. (Ex. 1 Sched. A).

RESPONSE: Undisputed.

4. Grosser Lane was not itself a member of Platinum Management; it was a 24.99% beneficiary of the Mark Nordlicht Grantor Trust (the "MNG Trust"). (Ex. 2 Recitals).

RESPONSE: Undisputed.

5. The MNG Trust held 65% of the membership interests of Platinum Management (which collected the management fees) and another entity, Platinum Partners Value Arbitrage, LP ("PPVALP") (which collected the incentive fees). (Exs. 3 Recitals; 4 § 10; 5 § 2.09).

RESPONSE: Undisputed.

6. The management and incentive fees were charged to the feeder funds, not the Master Fund (PPVA). (Ex. 8).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 52, 178, 569-574 of PPVA Plaintiffs' Statement of Material Facts

7. PPVA never paid a management or incentive fee to Platinum Management. (Ex. 8).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 52, 178, 569-574 of PPVA Plaintiffs' Statement of Material Facts

8. Through the MNG Trust, Grosser Lane was entitled to approximately 19% of the profits generated through the management of PPVA and the other funds managed by Platinum Management. (Ex. 9; Bodner 128:17–21).

RESPONSE: Undisputed.

9. Grosser Lane last received a distribution from the MNG Trust in March 2014, on account of incentive fees allocated to PPVALP in 2013. (Ex. 10 No. 12; Bodner 464:5–19).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 52, 178, 569-574 of PPVA Plaintiffs' Statement of Material Facts

10. Grosser Lane had no rights under the Platinum Management operating agreement: as a non-member, it had no vote on internal affairs; it could not appoint officers, directors or employees; and it could not direct or restrain any business activity. (Ex. 3 § 3.2).

RESPONSE: Undisputed as to the terms of the Platinum Management Operating Agreement, but disputed as to Grosser Lane's principal David Bodner lack of control over all

facets of Platinum Management, for the reasons set forth in paragraphs ¶¶ 178-218 of PPVA Plaintiffs' Statement of Material Facts.

11. GROSSER LANE's rights with respect to Platinum Management derived exclusively from the MNG Trust, where, under the trust instrument, it was entirely passive. (Ex. 2 Recitals, § 1.3).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 178-218 of PPVA Plaintiffs' Statement of Material Facts. The PPVA Plaintiffs further object to this proffered "fact" to the extent that it contains legal conclusions, unsubstantiated opinions, and argumentative statements that are improper in a Local Civil Rule 56.1 statement, including but not limited to Bodner's unsubstantiated opinion that the rights of GROSSER LANE Management under the Mark Nordlicht Grantor Trust Agreement were "entirely passive." *See Olin Corp. v. Lamorak Ins. Co.*, 332 F. Supp. 3d 818, 838-39 (S.D.N.Y. 2018) (Rakoff, J.) (disregarding legal conclusions and argumentative statements included in statement of facts as improper under Local Rule 56.1).

12. GROSSER LANE had no ability to control or direct the trustee, Mark Nordlicht, and Bodner was explicitly prevented from ever becoming the trustee. (Ex. 2 § 3.1).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 178-211 of PPVA Plaintiffs' Statement of Material Facts.

13. Nordlicht was at all times the Chief Investment Officer of Platinum Management. Uri Landesman was the Managing Member of Platinum Management. (Ex. 3 §§ 4.1.1, 4.1.5).

RESPONSE: Undisputed.

14. Platinum Management was the investment manager and general partner of PPVA. (Ex. 6 at 24).

RESPONSE: Undisputed.

15. The partnership agreement between Platinum Management and PPVA provides that “management of the Partnership shall be vested exclusively in the General Partner,” and the parties’ Fourth Amended and Restated Investment Management Agreement appointed Platinum Management as PPVA’s investment manager. (Exs. 4; 5).

RESPONSE: Undisputed.

16. Nordlicht and Landesman had complete, undisputed authority over all aspects of PPVA’s business. (Ex. 7 §§ 1.10, 3.4, 6.6, 7.1, 9.1.1).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 53-242 of PPVA Plaintiffs’ Statement of Material Facts. The PPVA Plaintiffs further object to this proffered “fact” to the extent that it contains legal conclusions, unsubstantiated opinions, and argumentative statements that are improper in a Local Civil Rule 56.1 statement, including but not limited to the legal conclusion that Nordlicht and Landesman had “complete, undisputed authority over all aspects of PPVA’s business.” *See Olin Corp.*, 332 F. Supp. 3d at 838-39 (disregarding legal conclusions and argumentative statements included in statement of facts as improper under Local Rule 56.1).

17. Bodner had no role at Platinum Management or PPVA. Bodner was never an officer or an employee of either entity. (SanFilippo 73:5–22, 129:12–15, 417:7–20, 418:18–419:9, Saks 350:6–10; Beren 80:4–6, 171:25–172:6; Ottensoser 97:25–98:13).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 178-211 of PPVA Plaintiffs’ Statement of Material Facts.

18. Bodner was merely an investor in PPVA. (Steinberg 371:2–6).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 178-211 of PPVA Plaintiffs’ Statement of Material Facts.

19. Prior to October 2014, Bodner had use of an office at Centurion Credit Management, which managed a fund called Centurion Credit Group LLC (“Centurion”), on West 57th Street. (Bodner 78:2–11; Fox 37:11–13; Albanese 39:14–41:3).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 182-183 of PPVA Plaintiffs’ Statement of Material Facts.

20. Nordlicht took over control of Centurion in January 2011 from Huberfeld, who was its Chief Investment Officer. (Bodner 78:2–11; Fox 37:11–13; Albanese 39:14–41:3).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 81-128 of PPVA Plaintiffs’ Statement of Material Facts.

21. Nordlicht rebranded its Platinum Partners Credit Opportunities Master Fund (“PPCO”). (SAC ¶ 177).

RESPONSE: Disputed, as ¶ 177 of the SAC makes no mention of Nordlicht rebranding it as PPCO.

22. PPCO is in receivership under Melanie Cyganowski, plaintiff in *Cyganowski* action, No. 18 Civ. 06658.

RESPONSE: Undisputed.

23. In October 2014, Nordlicht consolidated the management of the two funds in a new office on West 55th Street, and Bodner was provided use of an office in that new space. (Bodner 78:2–11; Fox 37:11–13; Albanese 39:14–41:3).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 178-211 of PPVA Plaintiffs’ Statement of Material Facts.

24. From October 2014 to April 2016, Bodner was provided an office at Platinum Management, where he visited approximately two days a week to take personal meetings with charitable institutions and religious leaders. (Bodner 81:2–82:7; Albanese 40:18– 42:5).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 178-211 of PPVA Plaintiffs’ Statement of Material Facts.

25. Bodner had use of a bookkeeper and a secretary. (Albanese 56:9–12; Fox 40:16–18).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 185 of PPVA Plaintiffs’ Statement of Material Facts.

26. Bodner occasionally took meetings with Nordlicht, Huberfeld and others, either in the office or in restaurants, in which he sought and received information about the performance of the funds managed by Platinum Management. (Albanese 71:16–20; Bodner 165:20–167:2).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 187-189, 194 of PPVA Plaintiffs’ Statement of Material Facts.

27. At one such meeting in January 2015, where Platinum Management member Bernard Fuchs was present, Bodner and Nordlicht had a disagreement, in which Bodner expressed to Nordlicht that Platinum Management should not be marking up investment positions based on unrealized gains. (Bodner 192:5–24; Fuchs 28:5–20).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶ 194 of PPVA Plaintiffs’ Statement of Material Facts.

28. At that meeting, Nordlicht told Bodner that Bodner was uninformed and that his input was unwelcome. (Bodner 192:25–193:5; Fuchs 28:5–20, 446:24–447:10).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶ 194 of PPVA Plaintiffs' Statement of Material Facts.

29. Several of the younger portfolio managers within Platinum Management occasionally sought advice from Bodner on a particular transaction or matter. (Steinberg 22:7–17, 85:23–86:15; Saks 349:12–24; Beren 62:5–19).

RESPONSE: Undisputed.

30. Bodner offered mentorship but never gave direction to those who sought his advice. (Saks 349:12–350:10, 350:18–24; Steinberg 22:18–23:4, 376:21–377:8; Beren 80:4–6).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 178-211 of PPVA Plaintiffs' Statement of Material Facts.

31. Bodner had only rare interactions with PPVA investors. (Bodner 265:25–266:26).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 204-215 of PPVA Plaintiffs' Statement of Material Facts.

32. Nordlicht occasionally requested that Bodner reach out to his contacts to seek new investors, but there is no evidence that Bodner did so. (Bodner 213:6–222:2).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 204-215 of PPVA Plaintiffs' Statement of Material Facts.

33. Michael Katz, the grandson of the longtime PPVA investor Marcos Katz, testified that Bodner occasionally met with his grandfather and sought to dissuade the grandfather from withdrawing his investments. (Katz 43:5–10).

RESPONSE: Undisputed

34. The only investors Bodner ever brought into the funds were his family members and charitable foundation. (Bodner 77:4–12, 216:3–6, 217:2–17, 266:19–24).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 204-211 of PPVA Plaintiffs’ Statement of Material Facts.

B. Bodner’s Beechwood Interests

RESPONSE: The PPVA Plaintiffs object to all headings as improper for purposes of a Rule 56.1 Statement.

35. In late 2013, the Bodner family, through Monsey Equities, LLC (“Monsey Equities”), made an investment in the Beechwood reinsurance business. (Bodner Ans. to SHIP TPC ¶ 24) (ECF No. 400 in Case No. 18-cv-12018).

RESPONSE: Undisputed.

36. Bodner had no role in the conception, structuring or running of the Beechwood business. (Feuer 22:16–18).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 412-491 of PPVA Plaintiffs’ Statement of Material Facts.

37. In 2013, Mark Feuer and Scott Taylor conceived of the reinsurance company that eventually became Beechwood Bermuda International Ltd. (“BBIL”) and Beechwood Re Ltd. (“Beechwood Re” and collectively with BBIL, the “Beechwood Reinsurance Companies”). (Feuer 40:9–25).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 412-447 of PPVA Plaintiffs’ Statement of Material Facts.

38. To find capital for the new business, Feuer approached Huberfeld. (Feuer 41:13–19).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 382-447 of PPVA Plaintiffs' Statement of Material Facts.

39. Huberfeld introduced Feuer and Taylor to Nordlicht. (Feuer 23:8–24:24).

RESPONSE: Undisputed.

40. Feuer and Huberfeld negotiated how Beechwood's capital stack would function and how the ownership and economic shares would be divided with Feuer and Taylor. (Feuer 25:2–14, 26:20–25).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 412-419 of PPVA Plaintiffs' Statement of Material Facts.

41. From the outset, Bodner had no involvement in the conception or development of Beechwood. (Feuer 22:16–18).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 412-419 of PPVA Plaintiffs' Statement of Material Facts.

42. Bodner himself did not have any ownership interest in any Beechwood entity. (Feuer 22:16–18; Bodner 302:19–21; Thomas 106:5–16).

RESPONSE: Undisputed as to Bodner willfully concealing his Beechwood interests through trusts and entities in his family's name, disputed as to the remaining facts, for the reasons set forth in paragraphs ¶¶ 360-361 of the PPVA Plaintiffs' Statement of Material Facts.

43. Monsey Equities made its capital contribution through Beechwood Re Investments, LLC ("BRILLC") Series C, in return for certain minority common and preferred stock in the Beechwood capital structure, certain of which was issued to Beechwood Trusts Nos. 7 through 14 ("Trusts 7–14"), settled by Mrs. Bodner for each of her eight children as beneficiaries. (Bodner Ans. to SHIP TPC ¶ 24, ECF No. 400 in Case No. 18-cv-12018).

RESPONSE: Undisputed as to Bodner willfully concealing his Beechwood interests through trusts and entities in his family's, name, disputed as to the remaining facts, for the reasons set forth in paragraphs ¶¶ 360-361 of the PPVA Plaintiffs' Statement of Material Facts.

44. At all times, Mark Feuer and Scott Taylor controlled the voting within the Beechwood structure. (Feuer 73:24–74:5).

RESPONSE: Undisputed to the extent that Feuer and Taylor collectively held the majority of the class A voting common stock of Beechwood Re Holdings, Inc. Otherwise, disputed for the reasons set forth in paragraphs ¶¶ 353-491 of PPVA Plaintiffs' Statement of Material Facts..

45. The Bodner family lost millions of dollars through their investment in Beechwood. (Bodner 382:19–383:11).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 372-381 of PPVA Plaintiffs' Statement of Material Facts.

46. Bodner had no physical presence at Beechwood and no authority: he did not maintain an office there, he was not involved in decision-making and his opinion was not treated with deference or given any particular weight. (Bodner 102:18–23; Kim 232:9–233:11; Feuer 550:11–16, 804:7–805:20; Thomas 104:13–17, 200:4–11, 458:15–24; Northwood 293:15– 22; Steinberg 71:25–72:14; Narain 578:9–580:2).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 353-491 of PPVA Plaintiffs' Statement of Material Facts.

47. No one at Beechwood reported to or took direction from Bodner. (Narain 578:9–15; Kim 232:4–8; Feuer 804:15–805:20; Sweetin 196:6–24; Saks 350:9–22; Northwood 293:15–22).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 455-458, 473-474 of PPVA Plaintiffs’ Statement of Material Facts.

48. In August 2016, the Bodner family, together with the Nordlicht and Huberfeld families, sold their interests in Beechwood to entities controlled by Feuer and Taylor. (Feuer 246:19–247:16).

RESPONSE: Undisputed.

49. In exchange, the sellers received a promissory note, which remains unpaid to this date, and which has no value. (Bodner 508:24–510:13; Ex. 11; *see also* Feuer 248:2–3; Taylor 192:14–193:11).

RESPONSE: Disputed, and the PPVA Plaintiffs further object to this proffered “fact” to the extent that it contains legal conclusions, unsubstantiated opinions, and argumentative statements that are improper in a Local Civil Rule 56.1 statement, including but not limited to the legal conclusion that “a promissory note, which remains unpaid to this date, and which has no value.” *See Olin Corp. v. Lamorak Ins. Co.*, 332 F. Supp. 3d 818, 838-39 (S.D.N.Y. 2018) (Rakoff, J.) (disregarding legal conclusions and argumentative statements included in statement of facts as improper under Local Rule 56.1).

C. **Bodner’s Separation from Platinum Management and Release by PPVA**

RESPONSE: The PPVA Plaintiffs object to all headings as improper for purposes of a Rule 56.1 Statement.

50. On March 20, 2016, Bodner and Huberfeld entered into a Release Agreement with Platinum Management (the “Release Agreement”). (Ex. 12).

RESPONSE: Undisputed that Bodner, Huberfeld and Platinum Management are purported to be signatories to the Release Agreement.

51. From Platinum Management's perspective, the purpose of the Release Agreement was to make available Bodner's and Huberfeld's interests in the MNG Trust so that Platinum Management could offer those interests as an incentive to a potential new investor in the Platinum funds. At the time, Nordlicht was negotiating a substantial new investment from Marcos Katz, a prominent longtime investor in PPVA. (Exs. 13; 14).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 652-664 of PPVA Plaintiffs' Statement of Material Facts.

52. The Release Agreement caused Bodner, and also Huberfeld, to forfeit their interests in the MNG Trust and to subject their families' limited partnership interests in the Platinum feeder funds to a two-year lockup period, as opposed to the 90-day redemption terms provided in the funds' subscription agreement. (Exs. 12 ¶ 4(c); 15).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 652-664 of PPVA Plaintiffs' Statement of Material Facts.

53. At the time, the Bodner and Huberfeld families held approximately \$80 million in limited partnership interests in the funds. (Exs. 12 ¶ 4(c); 16).

RESPONSE: Undisputed that the Bodner and Huberfeld families held limited partnership interests valued by Platinum Management in the range of approximately \$80 million.

54. Bodner and Huberfeld also gave general releases to the Platinum entities. (Ex. 12 ¶ 3(a)).

RESPONSE: Undisputed.

55. Bodner and Huberfeld waived certain rights with respect to distribution of 2015 accrued management fees. (Ex. 12 ¶ 4(b)).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 652-664 of PPVA Plaintiffs’ Statement of Material Facts.

The PPVA Plaintiffs further object to this proffered “fact” to the extent that it contains legal conclusions, unsubstantiated opinions, and argumentative statements that are improper in a Local Civil Rule 56.1 statement, including but not limited to the legal conclusion that Huberfeld and Bodner “waived” certain rights. *See Olin Corp.*, 332 F. Supp. 3d at 838-39 (disregarding legal conclusions and argumentative statements included in statement of facts as improper under Local Rule 56.1).

56. In exchange, the Release Agreement granted each of Bodner and Huberfeld a general release by the Platinum affiliates and funds, including PPVA. (Ex. 12 ¶¶ 3(b), 3(c)).

RESPONSE: Disputed for the reasons set forth in paragraphs ¶¶ 652-664 of PPVA Plaintiffs’ Statement of Material Facts.

The PPVA Plaintiffs further object to this proffered “fact” to the extent that it contains legal conclusions, unsubstantiated opinions, and argumentative statements that are improper in a Local Civil Rule 56.1 statement, including but not limited to the legal conclusion that the Release Agreement granted “Each of Bodner and Huberfeld a general release.” *See Olin Corp.*, 332 F. Supp. 3d at 838-39 (disregarding legal conclusions and argumentative statements included in statement of facts as improper under Local Rule 56.1).

57. The release states that PPVA and the other releasing parties released Bodner and Huberfeld from:

[A]ny and all manner of actions, causes of actions, suits ... whether in law or in equity, whether known, unknown, or hereafter becoming known, foreseen or unforeseen, suspected or unsuspected ... existing or hereafter arising ... that are based in whole or in part on any act or omission, transaction, or event in connection in any manner

whatsoever with Platinum, from the beginning of the world to the Effective Date.

(Ex. 12 ¶ 3(b), *see also* Recital ¶ A (defining “Platinum” to include PPVA)).

RESPONSE: Disputed, and the PPVA Plaintiffs further object to this proffered “fact” to the extent that it contains legal conclusions, unsubstantiated opinions, and argumentative statements that are improper in a Local Civil Rule 56.1 statement. *See Olin Corp.*, 332 F. Supp. 3d at 838-39 (disregarding legal conclusions and argumentative statements included in statement of facts as improper under Local Rule 56.1).

58. Nordlicht executed the Release Agreement for Platinum Management, the general partner of PPVA. (Ex. 12).

RESPONSE: Undisputed.

D. The Albanese Email – SAC Ex. 33

59. The JOLs contended that Exhibit 33 of the SAC, an email written to Bodner in July 2015 from an email account used by his secretary, Angela Albanese, showed Bodner as an “insider” for group pleading purposes, and at oral argument, called it a “confession” by Bodner. (Mar. 7, 2019 Hear’g Tr. 13:9) (ECF No. 293).

RESPONSE: Undisputed.

60. On September 11, 2019, Albanese and Bodner entered into a written agreement in which Albanese agreed to testify truthfully about Exhibit 33, and Bodner agreed not to sue her in connection with her forged email. Albanese provided a written statement regarding Exhibit 33, which was appended as Exhibit C to the agreement. (Albanese 163:18–168:25; Ex. 17).

RESPONSE: Undisputed that, on September 11, 2019, Albanese and Bodner entered into a written agreement under a threat of lawsuit from Bodner. Disputed as to the rest, for the reasons set forth in paragraphs ¶¶190 of PPVA Plaintiffs’ Statement of Material Facts.

The PPVA Plaintiffs further object to this proffered “fact” to the extent that it contains legal conclusions, unsubstantiated opinions, and argumentative statements that are improper in a Local Civil Rule 56.1 statement, including but not limited to the legal conclusions that the Albanese email was “forged,” and that, by signing the written agreement, Albanese agreed to testify “truthfully.” *See Olin Corp.*, 332 F. Supp. 3d at 838-39 (disregarding legal conclusions and argumentative statements included in statement of facts as improper under Local Rule 56.1).

61. Under oath, Albanese testified that *she* (not Bodner) was the sole author of Exhibit 33; she wrote it of her own volition without any input or direction from Bodner or anyone else; and that she did it on her last day at Platinum with the intent to pressure Platinum Management to improve her severance pay. She swore to the accuracy of her written statement at her deposition. (Albanese 262:12–16, 163:18–196:9).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 190 of PPVA Plaintiffs’ Statement of Material Facts.

62. Albanese admitted that she had no information as to whether or if Bodner knew about the matters in her email, and that she fabricated its contents based on conversations she overheard in the office—conversations *not* involving Bodner—and on press releases she found on the internet regarding CNO Group’s earlier investment with Beechwood. (Albanese 259:7–260:4; Ex. 17 exhibit C).

RESPONSE: Disputed for the reasons set forth in paragraphs ¶ 190 of PPVA Plaintiffs’ Statement of Material Facts.

E. The Platinum Valuation Process

RESPONSE: The PPVA Plaintiffs object to all headings as improper for purposes of a Rule 56.1 Statement.

63. As the general partner and investment manager of PPVA, Platinum Management had discretion over and final determination of the valuation of PPVA's assets. (Johnston Decl. Exs. 10; 11).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶ 3-7 of the PPVA Plaintiffs' Statement of Material Facts.

64. In 2012 and 2013, BDO Cayman Ltd. ("BDO") was PPVA's independent auditor. (Johnston Decl. Exs. 1; 3).

RESPONSE: Undisputed.

65. In 2014 and 2015, CohnReznick LLP ("CohnReznick") was PPVA's independent auditor. (Johnston Decl. Ex. 4).

RESPONSE: Undisputed.

66. Platinum Management engaged independent valuers at Sterling Valuation Group ("Sterling") to help calculate PPVA's NAV from the first quarter of 2012 until the second quarter of 2015. (Johnston Decl. Exs. 36-46).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 1-7 of PPVA Plaintiffs' Statement of Material Facts.

67. On June 30, 2015, Platinum Management engaged Alvarez & Marsal ("Alvarez") as an independent valuator. (Johnston Decl. Ex. 48).

RESPONSE: Undisputed.

68. Alvarez valued certain PPVA assets beginning in the first quarter of 2015 through March 2016, at which time it was preparing PPVA's fourth quarter 2015 valuation report. (Johnston Decl. Exs. 48; 49).

RESPONSE: Undisputed.

69. PPVA's third-party administrator was SS&C Technologies, Inc. ("SS&C"). (Johnston Decl. Exs. 1; 2; 3; 4).

RESPONSE: Undisputed.

70. SS&C sent NAV reports and statements directly to investors in the Funds. (Johnston Decl. Ex. 50).

RESPONSE: Undisputed.

71. Platinum Management's valuation policy (the "Valuation Policy") provides explicit valuation guidelines and describes the valuation methodologies for various asset classes, asset classification levels and the party responsible for the valuation process for each asset, among other items. (Johnston Decl. Ex. 12).

RESPONSE: Undisputed.

72. The Valuation Policy contains the Charter of Platinum's internal valuation committee (the "Valuation Committee"). (Johnston Decl. Ex. 12).

RESPONSE: Undisputed.

73. The Valuation Policy states that the Valuation Committee "is responsible for assessing and resolving any exceptions or revisions to the valuation methodology, policies and procedure, as well as assessing the preliminary portfolio Net Asset Value (NAV)." (Johnston Decl. Ex. 13).

RESPONSE: Undisputed.

74. The Valuation Committee approved valuation methodology, policy and procedures; approved revisions to the valuation methodology; approved the engagement of any third party to conduct valuations; and assessed the adequacy of PPVA's independent valuation. (Johnston Decl. Ex. 12).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 243-352, 591 of PPVA Plaintiffs' Statement of Material Facts.

75. The Valuation Committee met each month. The individual portfolio managers would review the assets under their oversight and update those in attendance on any major changes in "fundamentals, structure, or strategy" of that asset within the last two or three months. (Johnston Decl. Ex. 14).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 243-352, 591 of PPVA Plaintiffs' Statement of Material Facts.

76. The Valuation Committee reviewed and revised the Valuation Policy periodically. (Johnston Decl. Exs. 15–33).

RESPONSE: Undisputed

77. Platinum Management personnel held quarterly calls with Sterling and Alvarez to discuss PPVA's assets in preparation for a quarterly valuation letter. (Johnston Decl. Ex. 15).

RESPONSE: Undisputed.

78. Bodner had no contact with or influence on the valuation process. (SanFilippo 417:25–418:13). There is no evidence to the contrary.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶ 193-196 of PPVA Plaintiffs' Statement of Material Facts.

79. Expert witness Leon Metzger maintains that Platinum Management’s valuation process was appropriate and consistent with industry best practices. He also observes that Platinum Management’s valuations were always within the high-low range set independently by Sterling and Alvarez. (Metzger 163:3–12, 170:14–22).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶ 591 of PPVA Plaintiffs’ Statement of Material Facts. The PPVA Plaintiffs further object that Bodner paraphrases and mischaracterizes the cited Metzger testimony. As just one example, Metzger did not testify that Platinum Management’s valuation process was “appropriate” nor that Platinum Management acted “consistent with industry best practices.” (See Metzger 163:3–12, 170:14–22).

80. [intentionally omitted]

RESPONSE: No response required.

F. The Transactional Fraud Alleged in the SAC

RESPONSE: The PPVA Plaintiffs object to all headings as improper for purposes of a Rule 56.1 Statement.

1. Black Elk

81. The SAC’s 76 paragraphs describing the Black Elk-related allegations (and the 12 exhibits referenced therein) did not connect Bodner to the Black Elk Scheme. (SAC ¶¶ 453, 466, 484).

RESPONSE: Disputed. See SAC at ¶ 3, 440-515.

82. There is no evidence connecting Bodner to the amendment of the indenture or any other aspect of the scheme, and no evidence that Bodner raised a nickel for the BEOF Funds. Neither Bodner nor his family invested in the BEOF Funds. (Bodner 133:7–20).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 193, 492-566 of PPVA Plaintiffs’ Statement of Material Facts.

83. In March 2014, Uri Landesman suggested that Bodner should contact his friends Aaron Elbogen, Bob Collins and Bob Cohen. (Ex. 18).

RESPONSE: Undisputed.

84. The JOLs deposed Aaron Elbogen, and he confirmed that Bodner did not ask him to invest in the BEOF Funds. (Elbogen 31:10–12). The JOLs did not depose Collins or Cohen.

RESPONSE: Undisputed.

85. Grosser Lane earned a distribution of fees from the management of the BEOF Funds in 2013. (Exs. 19; 20).

RESPONSE: Undisputed.

86. Grosser Lane received a portion of the fees because Bodner's initial agreement with Nordlicht and Huberfeld from 2001 provided that Bodner would share *pari passu* in profits in any new fund created by Platinum Management. (Bodner 259:18–262:5).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 193, 492-566 of PPVA Plaintiffs' Statement of Material Facts.

87. Grosser Lane received management fees from BEOF not because Bodner managed BEOF (he indisputably did not) but because he was entitled to his share of the profits based on this 2001 agreement. (Bodner 259:18–262:5).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 193, 492-566 of PPVA Plaintiffs' Statement of Material Facts.

2. *Agera Transaction*

88. David Steinberg negotiated the Agera transaction on the Platinum side, and he never took direction from or discussed the matter with Bodner. (Steinberg 381:14–24, *see also* 185:7–12; Narain 104:7–11)

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 681-694, 723-724 of PPVA Plaintiffs’ Statement of Material Facts.

89. Dhruv Narain negotiated the transaction on the Beechwood side, and he did not take direction from or discuss the matter with Bodner. (Narain 579:16–580:2).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 681-694, 723-724 of PPVA Plaintiffs’ Statement of Material Facts.

90. Bodner helped his son get a job there as sales agent, and Bodner occasionally took business meetings at Agera’s offices in Westchester, close to his home in nearby Rockland County. (Bodner 355:6–11; Exs. 21; 22).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 681-694, 723-724 of PPVA Plaintiffs’ Statement of Material Facts.

91. Later, Bodner helped his son structure an \$18 million loan to Agera through a fund, Bainbridge Partners LLP (“Bainbridge”), in which Bodner participated. (Bodner 375:19–22, 427:12–432:24; Thomas 236:5–7).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 681-694, 723-724 of PPVA Plaintiffs’ Statement of Material Facts. of PPVA Plaintiffs’ Statement of Material Facts.

92. Bernard Fuchs recalled at his deposition that Bodner once gave him a tour of the Agera offices. (Fuchs 329:8–331:24).

RESPONSE: Undisputed.

93. In December 2015, with the Platinum funds under increasing liquidity constraints, Bodner floated an idea to David Levy that Agera could borrow money and lend it to the funds; the idea went nowhere. (Ex. 23).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 681-694, 723-724 of PPVA Plaintiffs’ Statement of Material Facts. of PPVA Plaintiffs’ Statement of Material Facts.

The PPVA Plaintiffs further object to the proffered “fact” that “the idea went nowhere” to the extent that it contains unsubstantiated opinions and argumentative statements that are improper in a Local Civil Rule 56.1 statement. *See Olin Corp.*, 332 F. Supp. 3d at 838-39 (disregarding legal conclusions and argumentative statements included in statement of facts as improper under Local Rule 56.1).

94. The Agera transaction was a nine-figure transaction, heavily negotiated by multiple professionals on both sides, with voluminous agreements and term sheets exchanged over email over a course of weeks or months. (Exs. 24; 25; 26).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 665-788 of PPVA Plaintiffs’ Statement of Material Facts.

The PPVA Plaintiffs further object to this proffered “fact” to the extent that it contains legal conclusions, unsubstantiated opinions, and argumentative statements that are improper in a Local Civil Rule 56.1 statement, including the unsubstantiated opinions that the Agera transaction was “heavily negotiated by multiple professionals on both sides ... over a course of weeks or months.” *See Olin Corp.*, 332 F. Supp. 3d at 838-39 (disregarding legal conclusions and argumentative statements included in statement of facts as improper under Local Rule 56.1).

95. There is no testimony or evidence connecting Bodner to any of the other transactions alleged in the SAC to be fraudulent: Golden Gate Oil (SAC ¶¶ 413–23); Implant Sciences (SAC ¶¶ 436–39); PEDEVCO (SAC ¶¶ 424–35); Montsant (SAC ¶¶ 516–28, 556–67); Northstar (SAC ¶¶ 529–50); Nordlicht Side Letter (SAC ¶¶ 568–83); March 2016 restructuring (SAC ¶¶ 584–606); Security Lockup (SAC ¶¶ 673–762).

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 178-218 of PPVA

Plaintiffs' Statement of Material Facts.

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New York, New York

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