

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 AND COUNTERSTATEMENT TO STATEMENT OF  
MATERIAL UNDISPUTED FACTS IN SUPPORT OF THE  
BEECHWOOD DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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, respectfully submit the following response and counterstatement to the Local Rule 56.1 statement of purportedly undisputed facts (dkt.# 516-2) filed by Defendants B Asset Manager LP, B Asset Manager II LP, BAM Administrative Services, LLC, Beechwood Re Investments LLC, Beechwood Holdings, Inc., Beechwood Bermuda International Ltd., Mark Feuer, Scott

Taylor, and Dhruv Narain (collectively, the “Beechwood Defendants”) in support of the Beechwood Defendants’ motion for summary judgment.

### **PRELIMINARY STATEMENT**

By responding to the Beechwood Defendants’ proffered Local Rule 56.1 statement, PPVA Plaintiffs do not concede that any of the Beechwood Defendants’ assertions of fact are either relevant or material, and PPVA Plaintiffs reserve any and all objections to each of the Beechwood Defendants’ 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 the Beechwood Defendants’ proffered Local Rule 56.1 statement, in whole or in part, such response is made solely in connection with PPVA Plaintiffs’ opposition to the Beechwood Defendants’ motion for summary judgment. *See* (ECF No. 516-1).

### **RESPONSE TO LOCAL RULE 56.1 STATEMENT OF FACTS**

#### **Platinum Partners Value Arbitrage Fund**

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

1. Platinum Partners Value Arbitrage Fund L.P. (“PPVA” or the “Master Fund”) is an exempted limited partnership domiciled in the Cayman Islands that is currently in liquidation. (Ex. C<sup>1</sup>, Second A&R Limited Partnership Agreement, Section 1.01(a); *see also* ECF No. 285 ¶ 2.)

**RESPONSE:** Undisputed.

2. Platinum Management (NY) LLC (“Platinum Management”) served as the general partner and investment manager of the Master Fund. (*See* Ex. C, Second A&R Limited Partnership Agreement, at 1; *see also* San Filippo Tr. at 34:4-6, 34:19-22.)

**RESPONSE:** Undisputed.

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<sup>1</sup> Exhibits are referring to those attached to Affirmation of Ira S. Lipsius, dated February 16, 2020 (the “**Lipsius Affirmation**”). *See* (ECF No. 536).

3. The limited partners of the Master Fund were, at various times:
- Platinum Partners Value Arbitrage Fund (USA) L.P. (the “Onshore Feeder Fund”);
  - Platinum Partners Value Arbitrage Fund (International) Limited (the “Offshore Feeder Fund” and, together with the Onshore Feeder Fund, the “Feeder Funds”); and
  - Platinum Partners Value Arbitrage Intermediate Fund Limited (the “Intermediate Fund”).

Exhibit E, Winding Up Petition at ¶ 3.

**RESPONSE:** Undisputed.

4. During the period at issue, the limited partners of the Master Fund were the Onshore Feeder Fund and the Intermediate Fund. That is because, on or around June 22, 2010, the Offshore Feeder Fund ceased to be a limited partner of the Master Fund and the Intermediate Fund took its place. *Id.*

**RESPONSE:** Undisputed.

5. The Feeder Funds and the Master Fund formed a typical master-feeder investment structure whereby:

- Offshore and U.S. tax-exempt investors invested their capital into the Offshore Feeder Fund, which in turn invested into the Intermediate Offshore Feeder Fund, which in turn invested into the Master Fund;
- Onshore investors invested into the Onshore Feeder Fund, which in turn invested into the Master Fund;
- The investment activities of the Feeder Funds and the Master Fund were managed by the general partner, Platinum Management, in its separate capacity as an investment manager, appointed pursuant to the Amended and Restated Investment Management Agreement, dated April 27, 2007.

Winding Up Petition at ¶ 5.

**RESPONSE:** Undisputed as to the first two bullet points; Disputed as to the third bullet point, which states that the investment activities of PPVA and the Feeder Funds were managed by Platinum Management pursuant to an Amended and Restated Investment Management Agreement dated **April 27, 2007**. See PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 6-25.

6. The relationship between Platinum Management, the Master Fund, the Intermediate Fund, the Feeder Funds, and investors in the Feeder Funds was governed by the following documents:

- The Second Amended and Restated Limited Partnership Agreement, dated July 1, 2008 (the “Limited Partnership Agreement”). (Ex. C.)
- The Second Amended and Restated Operating Agreement of Platinum Management (NY) LLC, dated January 1, 2011 (the “Operating Agreement”). (Ex. F.)
- The Amended and Restated Investment Management Agreement, dated April 27, 2007 (the “Investment Management Agreement”). (Ex. G.)
- Confidential Private Offering Memoranda (the “Offering Memoranda”). (*See, e.g.*, Ex. H.)
- Subscription Agreements for Limited Partnership Interests or Shares (the “Subscription Agreements”). (*See, e.g.*, Ex. I.)

Relevant portions of these documents are discussed below.

**RESPONSE:** Disputed: In particular: (i) the Platinum Management Operating Agreement and the Investment Management Agreement dated **April 27, 2007** do not govern the relationship between and among Platinum Management, PPVA, the Intermediate Fund, the Feeder Funds, and investors in the Feeder Funds; (ii) Beechwood Defendants’ paragraph 6 is not a complete list of the documents governing the relationship between and among Platinum Management, PPVA, the Intermediate Fund, the Feeder Funds, and investors in the Feeder Funds because it does not include, *inter alia*, the governing Articles of Association of the Offshore Feeder Fund, the governing Articles of Association of the Intermediate Fund, resolutions and written consents adopted by the boards of the Offshore Feeder Fund or Intermediate Fund, written policies as to valuation of assets, compliance and risk management, investor statements including net asset value statements; and (iii) does not list all of the Offering Memoranda, Subscription Agreements. *See also* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 6-25.

Platinum Management and its Principals

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

7. Platinum Management, as general partner, was vested with sole decision-making authority and responsibility for managing the Master Fund. The Limited Partnership Agreement provides, among other things, that “management of the Partnership shall be vested exclusively in the General Partner.” (Ex. C, Second A&R Limited Partnership Agreement, Section 2.02.)

**RESPONSE:** Undisputed, except that PPVA Plaintiffs refer the Court to the PPVA Second Amended Limited Partnership Agreement for a complete and accurate statement of its terms.

8. According to the Limited Partnership Agreement, the Master Fund was “organized for the purposes of realizing capital appreciation by investing and trading in U.S. and non-U.S. securities ... and to engage in all activities and transactions as the General Partner may deem necessary or advisable in connection therewith ....” (Ex. C, Second A&R Limited Partnership Agreement, Section 1.06(a).)

**RESPONSE:** Undisputed, except that the PPVA Plaintiffs state that paragraph 8 does not contain a complete recitation of all of the purposes for which PPVA was organized set forth in section 1.06(a) of the PPVA Second Amended Limited Partnership Agreement. *See also* PPVA Plaintiffs’ Statement of Material Facts at ¶ 6.

9. The Limited Partnership Agreement grants Platinum Management broad authority to pursue that goal. Indeed, it provides:

“The General Partner shall have the power by itself on behalf and in the name of the Partnership to carry out any and all of the objects and purposes of the Partnership set forth in Section 1.06, and to perform all acts and enter into and perform all contracts and other undertakings which it may deem necessary or advisable or incidental thereto ....” (Ex. C, Second A&R Limited Partnership Agreement, Section 2.03.)

**RESPONSE:** Undisputed, except that the PPVA Plaintiffs state that paragraph 9 does not contain a complete recitation of section 2.03 of the PPVA Second Amended Limited Partnership Agreement. *See also* PPVA Plaintiffs’ Statement of Material Facts at ¶ 8.

10. One of the areas where the Limited Partnership Agreement grants Platinum Management broad authority and discretion is in connection with the valuation of investments. Section 3.06 of the Limited Partnership Agreement, the section entitled “Net Asset Value,” lists a variety of scenarios in which this is the case. (Ex. C, Second A&R Limited Partnership Agreement, Section 3.06(a)-(ix).)

**RESPONSE:** Undisputed; except that the PPVA Plaintiffs state that paragraph 10 does not contain a complete recitation of section 3.06 and other sections of the PPVA Second Amended Limited Partnership Agreement, other documents and applicable law that governed Platinum Management’s authority and discretion in connection with the valuation of investments. *See also* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 6-25 and Bixter Decl. Ex. 1 at §§ 3.05, 3.06, 3.07.

11. This is particularly true for illiquid private equity investments. The Limited Partnership Agreement provides that the value of “Other Assets” — *i.e.*, assets that are not listed securities, unlisted securities, restricted securities, short positions, options, dividends, commodity interests, cash items, or assets allocated to portfolio managers — “shall be their fair value, determined in such manner as may be selected from time to time by the General Partner in its discretion.” The Limited Partnership Agreement goes on to say that “[a]ll values assigned to assets by the General Partner pursuant to this Article III [of the Limited Partnership Agreement] shall be final and conclusive as to all of the Partners.” (Ex. C, Second A&R Limited Partnership Agreement, Section 3.06(x).)

**RESPONSE:** Disputed to the extent that this proffered “fact” contains legal conclusions, unsubstantiated opinions, and argumentative statements that are improper in a Local Civil Rule 56.1 statement, including but not limited to Beechwood Defendants’ unsubstantiated characterization of “illiquid private equity investments.” *See Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

Disputed also insofar as paragraph 11 characterizes Platinum Management's authority to value illiquid private equity investments but does not contain a complete recitation of section 3.06 and other sections of the PPVA Second Amended Limited Partnership Agreement, other documents and applicable law that governed Platinum Management's authority and discretion in connection with the valuation of investments. *See also* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 6-25 and Bixter Decl. Ex. 1 at §§ 3.05, 3.06, 3.07.

12. Moreover, the Limited Partnership Agreement provides that, "if the General Partner determines that the valuation of any Securities or other property in accordance with subsection (a) does not fairly represent market value, the General Partner shall value such Securities or other property as it reasonably determines and shall set forth the basis of such valuation in writing in the Partnership's record." (Ex. C, Second A&R Limited Partnership Agreement, Section 3.06(c).)

**RESPONSE:** Disputed insofar as paragraph 12 characterizes Platinum Management's authority to value illiquid private equity investments without reference to other provisions of the PPVA Second Amended Limited Partnership Agreement, other documents and applicable law that governed Platinum Management's authority and discretion in connection with the valuation of investments. *See also* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 6-25 and Bixter Decl. Ex. 1 at §§ 3.05, 3.06, 3.07. Otherwise undisputed.

13. At bottom, under the Limited Partnership Agreement, "[a]ll matters concerning the valuation of assets of the Partnership, the allocation of profits, gains and losses among the Partners ... shall be determined by the General Partner, whose determination shall be final and conclusive as to all of the Partners." (Ex. C, Second A&R Limited Partnership Agreement, Section 3.09.)

**RESPONSE:** Disputed insofar as paragraph 13 characterizes Platinum Management's authority to value illiquid private equity investments without reference to other provisions of the PPVA Second Amended Limited Partnership Agreement, as well as other governing documents and applicable law that circumscribe Platinum Management's authority and discretion in connection with the valuation of investments. *See also* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 6-25 and Bixter Decl. Ex. 1 at §§ 3.05, 3.06, 3.07. Otherwise undisputed.

14. This was specifically disclosed to investors. The Offering Memorandum states, among other things, that “the Investment Manager has substantial discretion in determining the value of certain of the Master Fund’s Financial Instruments,” and that “[p]rivate equity investments and other illiquid investments will be valued by the Investment Manager in consultation with the Administrator.” (Ex. F, Offering Memorandum, at 56.)

**RESPONSE:** Disputed insofar as paragraph 14 characterizes the disclosures made to investors and refers to the Beechwood Defendants’ Ex. F, which is not an Offering Memorandum. *See e.g.*, SAC Exhibit 8.

15. The members of Platinum Management were, at various times: Mark Nordlicht, Uri Landesman, Ari Glass, Bernard Fuchs, David Levy and the Mark Nordlicht Grantor Trust. San Filippo Tr. at 54:18-55-6; 68:7-13.) During the time period at issue in the SAC, Ari Glass was not a member of Platinum Management. *See* (Ex. F, Second A&R Operating Agreement of Platinum Management (NY) LLC, at 1.)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 32 to 53, 71-218 of.

16. During the entire period, Mark Nordlicht was Platinum Management’s Chief Investment Officer and, as such, was delegated “such responsibilities as are customarily assigned to such office.” (*See* Ex. F, Second A&R Operating Agreement, at § 4.15.)

**RESPONSE:** Disputed. David Levy and Daniel Saks also served as Co-Chief Investment Officers of Platinum Management during the time period relevant to this action. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 57-58. In addition, other Confidential Offering Memoranda identify Uri Landesman as president of Platinum Management and state that he has “full veto power over any investment decisions.” *See, e.g.*, SAC Ex. 8 at p. 2, 23.

17. Just as Platinum Management was vested with sole decision-making authority and responsibility for managing the Master Fund, Mark Nordlicht was effectively the sole decision maker at Platinum Management. As disclosed to investors: “Mark Nordlicht oversees all operations and risk management functions for the Investment manager. Mr. Nordlicht is the Co-Chief Investment Officer and majority owner of the Investment Manager and is responsible for the day-to-day investment decisions regarding the Offshore Feeder Fund, the Intermediate Fund, the Onshore Feeder Fund, and the Master Fund.” (Ex. H, Offering Memorandum, at 2, 23.)

**RESPONSE:** Disputed. David Levy and Daniel Saks also served as Co-Chief Investment Officers of Platinum Management during the time period relevant to this action. In addition, other



Confidential Offering Memoranda identify Uri Landesman as president of Platinum Management and state that he has “full veto power over any investment decisions.” *See e.g.*, SAC Ex. 8 at p. 2, 23. *See also* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 57-58; 71-218.

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 “was the effectively the sole decision maker at Platinum Management.” *See Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

18. It was also disclosed that “[i]nvestment and trading decisions made by [Platinum Management] *ultimately are based on the judgment of Mark Nordlicht*. No assurance can be given that the Master Fund’s investment and trading methods and strategies will be successful under any market conditions. If Mr. Nordlicht were to die or become disabled or otherwise terminate his relationship with the Investment Manager, any such event could have a material adverse effect on the Fund and its performance.” (*Id.*)

**RESPONSE:** Undisputed insofar as Beechwood Defendants’ Ex. H contains the disclosure cited in paragraph 18. Disputed insofar as David Levy and Daniel Saks also served as Co-Chief Investment Officers of Platinum Management during the time period relevant to this action. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 57-58. In addition, other Confidential Offering Memoranda identify Uri Landesman as president of Platinum Management and state that he has “full veto power over any investment decisions.” *See e.g.*, SAC Ex. 8 at p. 2, 23.

19. For its part, the membership interest that the Mark Nordlicht Grantor Trust had in Platinum Management was passive, meaning that it did not come with “the right, authority or power to act for or on behalf of the Company or to take any action or do anything that would be binding on the Company, or to make any expenditures or incur any indebtedness in the name or on behalf of the Company solely by reason of being a Passive Member.” (*See* Ex. F, Second A&R Operating Agreement, at § Preamble and 3.2; *see also* BW-SHIP-00273970 at 1.)

**RESPONSE:** Disputed insofar as paragraph 19 characterizes the membership interest of the Mark Nordlicht Grantor Trust in Platinum Management and for the reasons set forth in the PPVA Plaintiffs' State of Material Facts at ¶¶ 32-53, 71-218.

20. The Mark Nordlicht Grantor Trust was created "to provide certain limited liability companies with the economic equivalent of a passive membership interest in [Platinum Management]." Ex. J (BW-SHIP-00273970 at 1.)

**RESPONSE:** Disputed insofar as paragraph 20 characterizes the membership interest of the Mark Nordlicht Grantor Trust in Platinum Management and for the reasons set forth in the PPVA Plaintiffs' State of Material Facts at ¶¶ 32-53, 71-218.

21. The trustee of the Mark Nordlicht Grantor Trust is Mark Nordlicht, and the beneficiaries of the Mark Nordlicht Grantor Trust are Manor Lane Management LLC, Grosser Lane Management LLC, and Nordlicht Management III LLC. Ex. J (BW-SHIP-00273970 at 1.)

**RESPONSE:** Undisputed.

22. Manor Lane Management LLC is an entity associated with Murray Huberfeld, Grosser Lane Management LLC is an entity associated with David Bodner, and Nordlicht Management III LLC is an entity associated with Mark Nordlicht. Ex. J (BW-SHIP-00273970 at 1; San Filippo Tr. at 68:18-24.)

**RESPONSE:** Undisputed.

23. The beneficiaries of the Mark Nordlicht Grantor Trust were not partners of Platinum Management. (SanFilippo Tr. 55:21-56:12, 56:23-58:10.)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶.32-53, 71-218.

24. Murray Huberfeld and David Bodner did not have a role at Platinum Management. (*See, e.g.*, SanFilippo Tr. 74:7-13; 92:14-23; 126:23-127:3; 417:8-419:21) But Huberfeld occasionally raised money for the Platinum funds. Ex. D (SanFilippo Tr. 105:4-17.)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 32-53, 71-218.

25. The trustee of the Mark Nordlicht Grantor Trust was the only one who had the legal right to vote or make business decisions on its behalf as partner or member of Platinum Management. Ex. D (SanFilippo Tr. 58:6:13.)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 32-53, 71-218.

26. The Mark Nordlicht Grantor Trust was selected as a vehicle for owning Platinum Management because Mark Nordlicht wanted control over the investment manager. Ex. D (SanFilippo Tr. 73:5-22.)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 32-53, 71-218.

PPVA was Limited to Sophisticated, Qualified Investors

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

27. PPVA was a hedge fund that was limited to qualified, eligible purchasers. (Ex. H, Offering Memorandum, at *iii*, 12, 48, 60, 95, 100, 102, 105.)

**RESPONSE:** Disputed. Investment in the Offshore Feeder Fund and Onshore Fund was limited to qualified, eligible investors and subject to the other terms and conditions contained in applicable Offering Memoranda. *See, e.g.*, SAC Ex. 8; Beechwood Defendants’ Ex. H.

28. The Offering Memoranda set a minimum investment level at \$1 million per subscriber. (*Id.* at 1.)

**RESPONSE:** Undisputed.

29. PPVA’s investors represented that they had adequate means of providing for all their current needs and possible contingencies, the ability to bear the economic risk of losing their entire investment, and had *no need for liquidity* with respect to their investment into the Master Fund. (*See, e.g.*, Ex. K, CTRL7528448, at 1.)

**RESPONSE:** Disputed insofar as statement 29 seeks to characterize the representations made by investors in to the Offshore and Onshore Feeder Funds, particularly in light of the redemption rights granted to investors and outlined in the Offering Memoranda. *See, e.g.*, Beechwood Defendants’ Ex. H at pp. 62-63. *See also* Response to Statement 27.

30. PPVA’s investors represented that they were “Accredited Investors.” (*See, e.g.*, Ex. K, CTRL7528448, at 9.)

**RESPONSE:** Disputed. *See* Response to Statements 27, 29.

31. PPVA's investors represented that they were qualified purchasers." (*See, e.g.*, Ex. K, CTRL7528448, at 12.)

**RESPONSE:** Disputed. *See* Response to Statements 27, 29.

32. PPVA's investors represented that they read and understood the Offering Memoranda and the Limited Partnership Agreement. (*See, e.g.*, Ex. K, CTRL7528448, at 1.

**RESPONSE:** Disputed. *See* Response to Statement 27, 29.

PPVA Investors Understood they Were Taking on a High Degree of Risk

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

33. The Offering Memorandum provides that "THE SHARES ARE A SPECULATIVE INVESTMENT AND THIS OFFERING INVOLVES SUBSTANTIAL RISK OF LOSS AS DESCRIBED HEREIN." It further provides that "THE SHARES OFFERED HEREIN ARE SUITABLE FOR [eligible investors] WHO DO NOT REQUIRE IMMEDIATE LIQUIDITY FOR THEIR INVESTMENTS, FOR WHOM AN INVESTMENT IN THE FUND DOES NOT CONSTITUTE A COMPLETE INVESTMENT PROGRAM AND WHO FULLY UNDERSTAND AND ARE WILLING TO ASSUME THE RISKS INVOLVED IN THE FUND'S INVESTMENT PROGRAM." (Ex. H, Offering Memorandum, at 4-5.)

**RESPONSE:** Undisputed that Beechwood Defendants' H contains some of the language quoted at statement 33. Disputed insofar as statement 33 seeks to characterize the representations made to investors in to the Offshore Feeder Fund, particularly in light of the redemption rights granted to investors and outlined in the Offering Memorandum. *See, e.g.*, Beechwood Defendants' Ex. H at pp. 62-63.

34. The Offering Memorandum provides that "[a]n investment in the Fund is speculative and involves a high degree of risk, including the risk of loss of the entire investment of a Shareholder." (*Id.* at 4.)

**RESPONSE:** Undisputed that Beechwood Defendants' H contains the language quoted at statement 34. Disputed insofar as statement 34 seeks to characterize the representations made to investors in to the Offshore and Onshore Feeder Funds, particularly in light of the redemption

rights granted to investors and outlined in the Offering Memoranda. *See, e.g.*, Beechwood Defendants' Ex. H at pp. 62-63.

35. The Offering Memorandum provides that: “[t]he Master Fund’s investment program is speculative and entails substantial risks. Because risks are inherent to varying degrees in all Financial Instruments and investment strategies employed by the Investment Manager, there can be no assurance that the investment objectives of the Master Fund will be achieved. Some investment practices that may or will be employed by the Master Fund can, in certain circumstances, substantially increase the risks to which the Master Fund’s investment portfolio is subject and potentially results in a loss of capital.” (*Id.* at 23.)

**RESPONSE:** Undisputed that Beechwood Defendants’ H contains the language quoted at statement 35.

36. The Offering Memorandum provides that “[t]here is a high degree of risk associated with the purchase of Shares of the Fund, and any such purchase should be made only after consultation with independent qualified sources of investment, legal and tax advice. No investor should consider subscribing for more than such investor can comfortably afford to lose.” (*Id.* at 32.)

**RESPONSE:** Undisputed that Beechwood Defendants’ H contains the language quoted at statement 36.

37. The Offering Memorandum disclosed that PPVA would be investing in early-stage companies, private equity investments, and highly-leveraged companies, which involved a high-degree of business and financial risk. (*Id.* at 42-44.)

**RESPONSE:** Disputed insofar as statement 37 seeks to characterize the types of investments to be made by PPVA or all categories of PPVA’s potential investments that were disclosed in the Offering Memoranda provided to investors. *See, e.g.*, Beechwood Defendants’ Ex. H at pp. 19-22.

38. The Offering Memorandum disclosed that PPVA was dependent on the Investment Manager and that “[i]nvestment and trading decisions made by the Investment Manager ultimately are based on the judgment of Mark Nordlicht. No assurance can be given that the Master Fund’s investment and trading methods and strategies will be successful under any market conditions.” (*Id.* at 46.)

**RESPONSE:** Undisputed that Beechwood Defendants’ H contains the language quoted at statement 38.

39. The Offering Memorandum disclosed that “[p]rivate equity investments and other illiquid investments will be valued by the Investment Manager in consultation with the Administrator. Securities that the Investment Manager believes are fundamentally undervalued or overvalued may not ultimately be valued in the markets at prices and/or within the time frame that the Investment Manager and the Administrator anticipate.” (*Id.*)

**RESPONSE:** Undisputed that Beechwood Defendants’ H contains the language quoted at statement 39.

40. The Offering Memorandum disclosed that an investment in PPVA came with the risk of limited liquidity and that “[a]n investment in the Fund is suitable only for sophisticated investors who have no need for liquidity in this investment.” (*Id.* at 48.)

**RESPONSE:** Undisputed that Beechwood Defendants’ H contains the language quoted at statement 40. Disputed insofar as statement 40 seeks to characterize the representations made to investors in to the Offshore Feeder Fund, particularly in light of the redemption rights granted to investors and outlined in the Offering Memorandum. *See, e.g.*, Beechwood Defendants’ Ex. H at pp. 62-63. *See also* Response to Statement 27.

41. The Offering Memorandum disclosed that “[t]he Investment Manager and its Affiliates are not restricted from entering into other investment advisory relationships or engaging in other business activities, even though such activities may be in competition with the Master Fund and/or may involve substantial amounts of the Investment Manager’s time and resources.” (*Id.* at 53.)

**RESPONSE:** Undisputed that Beechwood Defendants’ H contains the language quoted at statement 41. .

42. More specifically, the Offering Memorandum disclosed that “The ***principals of the Investment Manager may*** from time to time ***hold direct or indirect ownership interests in one or more other investment management companies***, including those that ***share resources with the Investment Manager*** and/or ***co-invest with the Investment Manager.***” (*Id.* (emphasis added).)

**RESPONSE:** Undisputed that Beechwood Defendants’ H contains the language quoted at statement 42.

43. The Offering Memorandum disclosed that [c]ertain of the Portfolio Managers are not restricted from entering into other investment advisory relationships or engaging in other business activities, even though such activities may be in competition with the Master Fund and/or may involve substantial amounts of such Portfolio Manager’s time and resources. (*Id.* at 55.)

**RESPONSE:** Undisputed that Beechwood Defendants' H contains the language quoted at statement 43.

44. According to the Offering Memorandum, “[n]either the Investment Management Agreement nor the Memorandum and Articles of Association of the Fund and the Intermediate Fund ... restricts the Investment Manager or its members, principals, officers, employees and affiliates ... from entering into other investment advisory relationships or engaging in other business activities with other investment funds. (Id. at 24.)

**RESPONSE:** Undisputed that Beechwood Defendants' H contains the language quoted at statement 44.

45. The Offering Memorandum disclosed that

The Investment Manager has substantial discretion in determining the value of certain of the Master Fund's Financial Instruments. While the value of most marketable Financial Instruments is based on prices reported in the public markets, at times, the size of a block of Financial Instruments held by the Master Fund or temporary restrictions on resale may justify imposing a discount on the market-determined value. *Whether and how much to reduce the value of Financial Instruments in any of these circumstances is subject to the Investment Manager's sole discretion in accordance with the Master Fund's valuation process.* In addition, a significant portion of the Master Fund's assets may be invested in restricted securities. To the extent that the Master Fund makes such investments, *the value of those investments will be determined in the Investment Manager's sole discretion in accordance with the Master Fund's valuation process.* The Investment Manager will face a conflict of interest in making any of these valuation decisions. Application of a discount to the value of marketable securities in the Master Fund's portfolio may reduce, or eliminate, any Incentive Allocation to which PPVA LP, an affiliate of the Investment Manager, would otherwise be entitled for the period ending on a Valuation Date (as defined below) or increase the amount of loss carryforward to be recovered before an Incentive Allocation would be allocable. The Investment Manager will face similar conflicts of interest in assigning values to nonmarketable securities.

(Id. at 56.)

**RESPONSE:** Undisputed that Beechwood Defendants' H contains the language quoted at statement 45. .

Specific Disclosures Regarding Beechwood on Platinum Investor Calls

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



46. In 2014, after Beechwood begin operations, Platinum Management held an investor call to discuss the funds' Q2 2014 performance. Ex. L (Audio Trans. of CTRL\_PPCO\_0000004).

**RESPONSE:** Undisputed.

47. The audio recording was made available to investors through Platinum's website.

**RESPONSE:** Undisputed.

48. During the quarterly investor call, Nordlicht disclosed the fact that he was acting as an advisor to a new reinsurance company." Ex. L (Audio Trans. of CTRL\_PPCO\_0000004 at 34:17-19)

**RESPONSE:** Undisputed that Nordlicht made the cited statement on the call. *But see* Plaintiffs' Statement of Material Facts at ¶¶ 353-494.

49. Later on the call, Nordlicht disclosed the fact that he had an economic interest in the new company, stating "I have a partial ownership in the overall reinsurance company." Ex. L (Audio Trans. of CTRL\_PPCO\_0000004 at 35:9-11)

**RESPONSE:** Undisputed that Nordlicht made the cited statement on the call. *But see* Plaintiffs' Statement of Material Facts at ¶¶ 353-494.

50. Nordlicht also informed investors that the reinsurance company had invested some money in PPVA, stating that "[a] small portion of that money is actually invested in the fund." (Audio Trans. of CTRL\_PPCO\_0000004 at 34:19-21) And that he "expect[s] them to grow as an investor in the funds." (Audio Trans. of CTRL\_PPCO\_0000004 at 35:14-15) Ex. L

**RESPONSE:** Undisputed that Nordlicht made the cited statement on the call. *But see* Plaintiffs' Statement of Material Facts at ¶¶ 353-494.

51. Additionally, Nordlicht told PPVA investors that he expected to do additional transactions with Beechwood going forward, which would be helpful to PPVA from a "liquidity standpoint." Ex. L (Audio Trans. of CTRL\_PPCO\_0000004 at 34:9-12)

**RESPONSE:** Undisputed that Nordlicht made the cited statement on the call. *But see* Plaintiffs' Statement of Material Facts at ¶¶ 353-494..

52. Specifically, Nordlicht explained to PPVA investors: "[G]oing forward ... if we see from a liquidity standpoint ... if the fund has the opportunity and we want to maybe lay off one of our lower yielding funds. Based on their mandate, that's something that ... if it fits their particular mandate ... that could be an opportunity for us to take advantage [of]." Ex. L (Audio Trans. of CTRL\_PPCO\_0000004 at 34:10-36:15).



**RESPONSE:** Undisputed that Nordlicht made the cited statement on the call. *But see* Plaintiffs' Statement of Material Facts at ¶¶ 353-494.

53. No PPVA investors asked questions about Platinum's relationship with Beechwood on the Q2 2014 investor call or on any subsequent calls. Ex. L

**RESPONSE:** Disputed. The Beechwood Defendants provide no evidence for their assertion that no PPVA investors "asked about Platinum's relationship with Beechwood ... on any subsequent calls."

54. One quarter later, Platinum Management held an investor call to discuss the funds' Q3 2014 performance. Ex. M (Audio Trans. of CTRL\_PPCO\_0000007).

**RESPONSE:** Undisputed.

55. The audio recording was made available to investors through Platinum's website.

**RESPONSE:** Undisputed.

56. During the quarterly investor call, Nordlicht disclosed the fact that Platinum's principals owned approximately fifty percent of Beechwood. Ex. M (Audio Trans. of CTRL\_PPCO\_0000007 at 44:7-9)

**RESPONSE:** Undisputed that Nordlicht made the cited statement on the call. *But see* Plaintiffs' Statement of Material Facts at ¶¶ 353-494.

57. During the quarterly investor call, Nordlicht also disclosed several personnel changes concerning Beechwood and PPVA. Ex. M (Audio Trans. of CTRL\_PPCO\_0000007 at 44:7-14)

**RESPONSE:** Undisputed that Nordlicht made the cited statement on the call. *But see* Plaintiffs' Statement of Material Facts at ¶¶ 353-494.

58. Nordlicht informed PPVA investors that David Levy was going to returning to PPVA from BAM, stating, "I want to inform everyone of David Levy is going to be returning to us as co-chief investment officer. David was previously-- had gone to our reinsurance company, in which our principals own fifty percent of the reinsurance company." Ex. M (Audio Trans. of CTRL\_PPCO\_0000007 at 44:4-9)

**RESPONSE:** Undisputed that Nordlicht made the cited statement on the call. *But see* Plaintiffs' Statement of Material Facts at ¶¶ 353-494.

59. Nordlicht informed PPVA investors that Danny Saks was going to be leaving PPVA to take on a new position at BAM, stating that Levy was “going to switch places with Danny Saks who is going to become chief investment officer of [B Asset Manager] our reinsurance, the reinsurance vehicle that we have an ownership position in.” Ex. M (Audio Trans. of CTRL\_PPCO\_0000007 at 44:10-14)

**RESPONSE:** Undisputed that Nordlicht made the cited statement on the call. *But see* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

60. Nordlicht explained that Platinum and Beechwood were separate companies, but that Platinum had provided some assistance to Beechwood during the startup phase, noting, for example, that it had helped out Beechwood with financial reporting. Ex. M (Audio Trans. of CTRL\_PPCO\_0000007 at 44:15-22)

**RESPONSE:** Undisputed to the extent that Nordlicht broadly discussed Platinum Management and Beechwood on this investor call. Otherwise disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

61. Nordlicht explained that, although Platinum and Beechwood were being run separately and had different investment mandates, he expected to do transactions with Beechwood going forward:

“B [A]sset really has a different kind of mandate where they have to invest a lot more in [liquid] fixed income trading, but we do view this as a very, very beneficial development for Platinum investors, as well in terms of it increases the maneuverability that I have here at Platinum and our two funds because, to the extent I see better risk-adjusted opportunities, maybe higher yielding type of loans for PPCO, for example, I have an outlet where I can go to Danny, who I cannot convince Danny what to do, but I know how he thinks. I know the mandate of Basset and if I have a lower yielding type of loan, I would have the maneuverability and the opportunity to show it to Danny and potentially sell him the aged paper with the lower yielding loan and reallocate to something that’s more current and better fit for our overall book.”

Ex. M (Audio Trans. of CTRL\_PPCO\_0000007 at 44:23-45:16)

**RESPONSE:** Undisputed that Nordlicht made the cited statement on the call. *But see* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494,

62. Nordlicht informed investors that he had done some of these types of transactions with David Levy when he was CIO at Beechwood and that he anticipated doing more of these types of transactions with Danny Saks going forward. Ex. M (Audio Trans. of CTRL\_PPCO\_0000007 at 45:17-20)

**RESPONSE:** Undisputed that Nordlicht made the cited statement on the call. *But see* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

63. No PPVA investors asked questions about Platinum’s relationship with Beechwood on the Q3 2014 investor call or on any subsequent calls. Ex. M (CTRL\_PPCO\_0000007)

**RESPONSE:** Disputed. The Beechwood Defendants provide no evidence for their assertion that no PPVA investors “asked about Platinum’s relationship with Beechwood ... on any subsequent calls.”

Disclosures in Platinum’s Audited Financial Statements

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

64. For 2013, the audited financial statements for the Master Fund and the Feeder Funds were prepared by prepared by the professional accounting firm BDO. Ex. N-P (*See* CTRL6437951, CTRL6437952, CTRL6437953.)

**RESPONSE:** Undisputed.

65. The audited financial statements were completed on February 11, 2015. Ex. P (*See, e.g.*, CTRL6437953, at 3.)

**RESPONSE:** Undisputed, except that PPVA Plaintiffs note that only the audited financial statements for **2013** were completed on February 11, 2015.

66. The audited financial statements include a disclosure regarding “Off-Balance Sheet Risk,” that is, that “some of the Master Fund’s financial instruments contain off-balance sheet risk. Generally, these financial instruments represent future commitments to purchase or sell other financial instruments at specific terms at specific future dates. The changes in the fair value of the financial instruments underlying derivatives and the obligation to purchase securities sold short may be in excess of the amounts recognized in the consolidated statement of financial condition.” Ex. P (*See, e.g.*, CTRL6437953, at 32.)

**RESPONSE:** Undisputed that the 2013 audited financial statements for PPVA contain the language quoted in statement 66.

67. The audited financial statements include a disclosure regarding “Limited Diversification,” which focused specifically on investments in “early stage enterprises” and

“concentration related to energy industry assets, primarily, but not limited to oil and gas assets.” (*Id.*) Black Elk and Golden Gate were highlighted as two such investments that [*sic*]. (*Id.*)

**RESPONSE:** Undisputed that the 2013 audited financial statements for PPVA contain the language quoted in statement 67.

68. The audited financial statements include a disclosure regarding “liquidity risk.” (*Id.* at 33.)

**RESPONSE:** Undisputed that the 2013 audited financial statements for PPVA contain the referenced disclosure referred to in statement 68.

69. The audited financial statements include a detailed description of the Level 3 valuation processes and procedures employed by Platinum Management. (*Id.* at 36-37.)

**RESPONSE:** Undisputed that the 2013 audited financial statements for PPVA contain descriptions of valuation methods for level 3 assets at the referenced pages as referred to in statement 69.

70. The Master Fund and both Feeder Funds described “Beechwood Asset Management” as a “related party of the General Partner” in their audited financial statements, which were prepared by the professional accounting firm BDO. (*See, e.g.*, Ex. P CTRL6437953, at 41.) BAM is specifically referenced in connection with the Golden Gate, Implant, and Black Elk transactions. (*See, e.g., id.* at 41-42, 59.)

**RESPONSE:** Undisputed that the 2013 audited financial statements for PPVA contain the language quoted in statement 70.

#### Beechwood

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

71. The Beechwood Entities are a group of reinsurance companies and asset managers, separate from Platinum, that were formed in 2013 by Mark Feuer and Scott Taylor Ex. Q (Feuer Tr. 40:9-25). Mark Feuer was the Chief Executive Officer at Beechwood. Feuer Tr. 267:25-268:3. Before founding Beechwood, he served as the Chief Operating Officer of Merrill Lynch Americas and the Chief Executive Officer of Marsh USA. Ex. Q, Feuer Tr. 33:20-21.

**RESPONSE:** Undisputed that Feuer was the Chief Executive Officer of Beechwood and that he served as the Chief Operating Officer of Merrill Lynch Americas and the Chief Executive Officer of March USA. Otherwise, disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

72. Scott Taylor was the President at Beechwood. Ex. R Taylor Tr. 123:9-10. Before founding Beechwood, he served as a Managing Director with Merrill Lynch & Co. and with Marsh & McLennan. Ex. R Taylor Tr. 11:15-25.

**RESPONSE:** Undisputed.

73. In 2012, Feuer and Taylor had known each other for nearly twenty years, having worked together at Merrill Lynch & Co. and with Marsh & McLennan. Ex. R Taylor Tr. 11:15-25.

**RESPONSE:**

Undisputed.

74. They saw an opportunity to launch a new business in the reinsurance space. Ex. R Taylor Tr. 13:12-14; Ex. Q Feuer Tr. 40:20-25, 42:23-43:5.

**RESPONSE:** Disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

75. At or around that time, the market for long-term care (“LTC”) insurance in the U.S. was experiencing a high-level of dislocation. The factors contributing to this location included the continued low-interest-rate environment and the regulatory environment in which additional capital and surplus were required to fund long-tail LTC lines. These factors led insurers to reinsure blocks of in-force business and allocate their capital to other, more attractive areas. Ex. S (ST00000443)

**RESPONSE:** Undisputed that statement 75 summarizes certain language in the first paragraph of Beechwood Defendants’ Ex. S. Otherwise disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

76. Feuer and Taylor believed that their contemplated new company could be more profitable than other insurers if it brought a unique focus on claims management. Insurance companies often use third-party administrators to process LTC claims. The insurance companies then wait until the processed claims exceed a certain threshold before beginning to actively manage them. Feuer and Taylor believed that it would be more efficient to invest in actively managing these LTC claims from the outset. This was a contrarian approach. Ex. Q, Feuer Tr. 39:15-40:18

**RESPONSE:** Undisputed that statement 76 seeks to summarize certain of Mark Feuer's testimony. Otherwise disputed. *See* Plaintiffs' Statement of Material Facts at ¶¶ 353-494.

77. Based on advice from industry experts that it would be advisable to raise capital before pursuing any reinsurance deals, Feuer reached out to several individuals to see whether they could contribute capital. One of the individuals he contacted was Murray Huberfeld. Ex. Q Feuer Tr. 26:13-25

**RESPONSE:** Disputed. *See* Plaintiffs' Statement of Material Facts at ¶¶ 353-494.

78. Huberfeld agreed that he and two business partners, Mark Nordlicht and David Bodner, would help contribute capital for the business. Feuer had no previous relationship with Nordlicht or Bodner. Ex. Q Feuer Tr. 22:23-23:6; 23:8-13; 27:8-16; 41:22-42:19.

**RESPONSE:** Undisputed that Huberfeld, Bodner, and Nordlicht are business partners. Otherwise, disputed. *See* Plaintiffs' Statement of Material Facts at ¶¶ 353-494.

79. Beyond just capital, there was another perceived advantage to doing business with Huberfeld and his colleagues. Huberfeld and his colleagues possessed investment expertise, having helped found Platinum, at the time a well-respected and successful hedge fund. In 2013, Platinum had a record of strong performance. However, unbeknownst to Feuer or Taylor, Platinum was beginning to have liquidity issues. Ex. Q, Feuer Tr. 43:18-23; 44:5-20; 106:25108:9.

**RESPONSE:** Disputed. *See* Plaintiffs' Statement of Material Facts at ¶¶ 353-494.

80. Huberfeld and his colleagues introduced Feuer and Taylor to Huberfeld's nephew David Levy. At the time, Levy was the Deputy Chief Investment Officer for one of the Platinum funds. Levy eventually became Beechwood's first Chief Investment Officer. Ex. Q, Feuer Tr. 41:11-21; 45:22-46:4; 65:2.

**RESPONSE:** Undisputed.

81. Beechwood never operated out of Platinum's offices. Ex. D, (SanFilippo Tr. 190:6-9.) But Beechwood held meetings with potential clients, like CNO Financial Group, Inc., at Platinum's offices, before the company officially launched. Ex. D, (SanFilippo Tr. 192:1416.)

**RESPONSE:** Undisputed that Beechwood held meetings at the offices of Platinum Management. Otherwise, disputed. *See* Plaintiffs' Statement of Material Facts at ¶¶ 353-494.

82. Huberfeld and his colleagues agreed to provide \$100 million worth of capital for the new business. That capital would come in the form of partnership interests from two Platinum funds and private shares of an energy company that were subsequently converted for shares of a publicly-traded company. KPMG LLP performed a valuation on these assets, valuing them at between \$100 million and \$130 million. Ex. Q, Feuer Tr. 732:10-18 Exhibit 365

**RESPONSE:** Undisputed that Beechwood Investments engaged KPMG to value certain interest of Beechwood Investments. Otherwise, disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

83. The capital was placed in Beechwood Re Investments LLC, a Delaware Series LLC, and ultimately structured using demand notes that provided the Beechwood reinsurance entities with the irrevocable right, at their sole discretion, to draw down capital from the demand notes as need. (*See, e.g.*, Ex. T, SPR00021855.)

**RESPONSE:** Undisputed that Beechwood Re Investments is a Delaware Series LLC and that it issued certain demand notes to Beechwood reinsurance entities. Otherwise, disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

84. The Beechwood family of companies consisted of three groups of entities: (1) a Cayman Islands-based reinsurance structure, (2) a Bermuda-based reinsurance structure; and (3) a domestic asset manager. [Ex. U, Beechwood Org. Charts]

**RESPONSE:** Undisputed that Beechwood included Cayman Islands and Bermuda based reinsurance entities and asset managers. Otherwise, disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

85. B Asset Manager II LP was formed on September 23, 2014 and did not exist prior to this formation date. Declaration of Christian R. Thomas submitted herewith (“Thomas Decl.”) ¶ 3.

**RESPONSE:** Undisputed that the paragraph 85 restates paragraph 3 of the Thomas Declaration, and alleges that B Asset Manager II LP was formed on September 23, 2014. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 85.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in

compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 85 contains inadmissible hearsay.

86. B Asset Manager II LP served as an investment advisor to (i) Beechwood Bermuda International Ltd. from October 4, 2014 until February 1, 2017, (ii) Beechwood Omnia Ltd. (formerly Old Mutual (Bermuda) Ltd.) from January 1, 2016 until February 1, 2017, and (iii) Beechwood Bermuda Investment Holdings Ltd. from January 1, 2016 until February 1, 2017, where in each case B Asset Manager II, LP provided advice with respect to the purchase from other lenders of existing indebtedness (and not in respect to direct loan originations with borrowers). Thomas Decl. ¶ 4.

**RESPONSE:** Undisputed that statement 86 restates paragraph 4 of the Thomas Declaration, and purports to allege the dates when B Asset Manager II LP served as investment advisor to the listed entities. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 86.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikoy, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 86 contains inadmissible hearsay.

87. Since their founding, and at all times relevant to this action, B Asset Manager LP, B Asset Manager II LP, Beechwood Re Holdings, Inc., Beechwood Bermuda International Ltd., and BAM Administrative Services, LLC followed applicable corporate formalities. Thomas Decl. ¶ 5.

**RESPONSE:** Undisputed that statement 87 restates paragraph 4 of the Thomas Declaration, and alleges that the entities listed have “at all relevant time to this action . . . followed applicable corporate formalities.” The allegations in statement 87 are disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494. The Beechwood Defendants also have not provided or cited to any documentary evidence to support statement 87.



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 these entities “followed applicable corporate formalities.” *See Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 86 contains inadmissible hearsay.

88. Since their founding, and at all times relevant to this action, the boards of directors for those Beechwood entities that maintained boards of directors held periodic board meetings and/or entered into board consents in lieu of meetings. Thomas Decl. ¶ 6.

**RESPONSE:** Undisputed that statement 88 restates paragraph 6 of the Thomas Declaration and alleges that “and at all times relevant to this action, the boards of directors for those Beechwood entities that maintained boards of directors held periodic board meetings and/or entered into board consents in lieu of meetings.” The allegations in statement 88 are disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494. The Beechwood Defendants also have not provided or cited to any documentary evidence to support statement 88.

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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 88 contains inadmissible hearsay.

89. Minutes from those meetings and/or board resolutions were routinely prepared and maintained in corporate minute books maintained in Bermuda, in the case of Beechwood Bermuda International Ltd. or in New York, in the case of Beechwood Re Holdings Inc.

**RESPONSE:** Disputed. Statement 89 cites no documentary or other evidence supporting such statement. disputed. *See also* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 89 contains inadmissible hearsay.

90. Beechwood and Platinum operated separately. (Ex. R, *Taylor Tr.* at 303:13-15; at 327:10-15, at 323:8-18; Ex. W, *Beren Tr.* at 126:21-23, at 134:12-135:19, at 146:20-24, at 190:6-10; Ex. X, *Trott Tr.* at 877:2-889:25, at 895:20-25; Ex D, *SanFilippo Tr.* at 198:22-200:24, at 201:7-20; *Saks Tr.* Ex. Y, at 45:9-23, at 55:23-56:16, at 115:6-23, at 196:6-9)

**RESPONSE:** Disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

91. Beechwood was not involved in Platinum’s investment decision-making. (Ex. Q, *Feuer Tr.* at 502:4-504:25; Ex. R, *Taylor Tr.* at 593:4-5)

**RESPONSE:** Disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

92. Taylor and Feuer ran Beechwood. (*Taylor Tr.* at 32:17-19, at 33:25-34:23, at 255:8-15; *Steinberg Tr.* at 72:9-73:7; *N. Bodner Tr.* at 112:12-20; *Feuer Tr.* 60:19-61:6; *Saks Tr.* 97:25-98:7; *SanFilippo Tr.* at 168:21-25; *McGovern Tr.* at 238:23-239:3.)

**RESPONSE:** Disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

93. Levy reported to Taylor and Feuer. Ex. CC, *Sweetin Tr.* 96:10-14

**RESPONSE:** Disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

94. Beechwood was appropriately capitalized. (*See, e.g., Ex., T, SPR00021855.*)

**RESPONSE:** Disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

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 Beechwood

was “appropriately capitalized.” *See Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

95. Nordlicht, Bodner and Huberfeld were not owners or employees of Beechwood, rather their family members provided capital to Beechwood had ownership interests through trusts.(Ex. Q, *Feuer Tr.* at 20:9-22:22; Ex. R, *Taylor Tr.* at 18:17-19:9, at 532:14-533:17, 535:35; Ex. AA, *N. Bodner Tr.* at 53:7-9, at 113:19-21; Ex. Y, *Saks Tr.* at 110:8-13; Ex. DD, *Kim Tr.* at 79:17-25, at 197:4-5, at 232:13-233:11)

**RESPONSE:** Disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

96. Nordlicht, Huberfeld, or Bodner never had any authority with respect to Beechwood’s investment or management decisions. (Ex. R, *Taylor Tr.* at 32:22-33:2, at 33:25-34:23, at 77:18-22, at 112:12-15; at 122:14-24, at 417:7-11, at 418:10-13, at 532:14-533:17, at 534:2-19, at 535:3-5; Ex. EE, *D. Bodner Tr.* at 148:7-21; Ex. T, *Steinberg Tr.* at 72:9-73:7; Ex. FF, *Thomas Tr.* at 76:23-77:2, 87:12-17, 143:21-144:4, 146:2-5; Ex. W, *Beren Tr.* at 249:11-18; Ex. AA, *N. Bodner Tr.* at 112:21-23; Ex. Q, *Feuer Tr.* at 62:18-21, 63:18-64:12, at 273:2-13, at 761:21-767:24; Ex. DD, *Kim Tr.* at 48:16-17, at 76:17-77:14, at 232:13-233:11; Ex. Y, *Saks Tr.* at 56:17-22, at 102:19-22, at 330:2-3, at 349:4-8; Ex. D, *SanFilippo Tr.* 214:23-215:2)

**RESPONSE:** Disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

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, Huberfeld, or Bodner “never had any authority with respect to Beechwood’s investment or management decisions.” *See Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

97. Nordlicht and Huberfeld and Bodner occasionally offered advice to Beechwood, but no one at Beechwood had or felt an obligation to accept it. In fact, their advice was rejected on many occasions. (*Feuer Tr.* at 279:16-280:2, at 770:21-771:4, at 773:2-14, at 775:17-22, at 805:3-15; *Thomas Tr.* 189:20-190:6, at 325:3-8; *Saks Tr.* at 120:9-16, at 182:9-24, *Taylor Tr.* at 597:8-14) *Beren Tr.* 69-70 ; 75; 84-86; 159; 161; 164; 166; 194) ) *Sweetin Tr.* 196:6-24

**RESPONSE:** Disputed. *See* Plaintiffs’ Statement of Material Facts at ¶¶ 353-494.

Golden Gate Oil, LLC

98. Golden Gate Oil, LLC (“Golden Gate”) is a company that was formed for the purpose of acquiring and developing interests in certain oil and gas properties. Ex. GG, CTRL5549920 at 106.

**RESPONSE:** Undisputed.

99. During the relevant period, the Master Fund held approximately 48 percent of Golden Gate’s outstanding Membership Units, as well as an option to purchase all outstanding Membership Units in the Company. (*Id.* at 106.)

**RESPONSE:** Disputed. PPVA Plaintiffs’ further state that PPVA, through its subsidiary Precious Capital LLC (“Precious Capital”) was the holder of 48% of the outstanding membership units of Golden Gate from April 10, 2012 through August 14, 2014; that Precious Capital was the holder of an option to purchase the remaining membership units from and after October 29, 2013 except during the period when such option was assigned to Black Elk Energy Offshore Group LLC, and that Precious purchased the remaining Golden Gate membership units pursuant to agreements dated August 14 and September 2, 2014. *See also* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 272, 279-280, 293-295, 336-338, 343.

100. On or about April 10, 2012, Golden Gate entered into a contract with Precious Capital, LLC (“Precious Capital”), for a \$25.0 million Senior Secured Promissory Note. Ex GG, CTRL5549920 Appendix XIX at 1 Precious Capital was a subsidiary of the Master Fund. (Ex. P, CTRL6437953, at 32.)

**RESPONSE:** Undisputed.

101. Under the Senior Secured Promissory Note, Golden Gate Oil received an initial advance of \$6.5 million and was entitled to subsequent advances as needed. At origination, the loan carried interest at a rate of 24.996% per annum, payable as 15% on the first business day of each month, and 9.996% per annum payable on the maturity date of April 10, 2015. (Ex. GG, CTRL5549920 Appendix XIX at 1)

**RESPONSE:** Undisputed, except disputed that under the terms of the April 12, 2012 Note Purchase Agreement and related documents, Golden Gate was entitled to additional advances “as

needed,” but rather those agreements provided that additional draws were subject to Golden Gate meeting certain milestones. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 245-250.

102. As of December 31, 2013, Sterling Valuation Group, Inc. valued the Master Fund’s 100 percent interest in the Membership Units in the range of \$150,617,190 to \$173,139,777. (Ex. GG, CTRL5549920 Appendix XIX at 5)

**RESPONSE:** Undisputed, except disputed that either PPVA or Precious Capital owned 100% of the Golden Gate membership interests as of December 31, 2013. *See* Response to Statement 99.

103. On February 26, 2014, Precious Capital sold to BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB all of its right, title and interest in the Senior Secured Promissory Note for 100% of the amount of outstanding principal and accrued interest of \$21.8 million and \$6.6 million, respectively, for a total purchase price of \$28.4 million. BAM Admin served as collateral agent for BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB in connection with the transaction. (Ex. HH, Trott SAC, Exhibit 48.)

**RESPONSE:** Undisputed that BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB were the buyers under the February 26, 2014 Note Purchase Agreement, and that Precious sold its interests in approximately \$21.8 million and \$6.6 million, respectively, of principal and accrued monthly interest then due to it from Golden Gate. Disputed that BAM Administrative LLC (“**BAM Administrative**”) served as collateral agent as of February 26, 2014, that the listed entities purchased 100% of the outstanding principal owed and further state that at all relevant times, BAM Administrative and other Beechwood entities had control over and directed all of the investments of funds held by BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 281-281;       .

104. BAM, BAM II, BRILLC, BRE Holdings and BBIL were not parties to the deal. BAM II had not yet been formed until September 2014 and BBIL had not yet begun operating. (*See* Ex. HH, Trott SAC, Exhibit 48.)

**RESPONSE:** Undisputed that the entities listed in statement 104 were not parties to the February 26, 2014 purchase agreement between Precious and BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB as buyers and BAM Admin and that BAM II was not yet formed, and otherwise disputed. *See* Beechwood Defendants' Ex. HH. Beechwood has not provided any documentary evidence that BBIL was not operating as of February 26, 2014. PPVA Plaintiffs further state that at all relevant times, BAM Administrative and other Beechwood entities had control over and directed all of the investments of funds held by BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 281-282; [REDACTED].

105. To induce BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB to extend this credit to Golden Gate Oil, the Master Fund agreed to provide them with a put option that allowed BAM Admin, in the event of a default on the note, to require the Master Fund to repurchase the right, title, and interest held by BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB in the Senior Secured Promissory Note (the "Put"). (Ex. HH, Trott SAC, Exhibit 48, at § 8(a).)

**RESPONSE:** Disputed. *See* Plaintiffs' Statement of Material Facts at ¶¶ 353-494.

106. As consideration for the Put, BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB agreed to pay the Master Fund a payment equal to 50% of the deferred interest at maturity. (Ex. HH, Trott SAC, Exhibit 48, at § 8(b).)

**RESPONSE:** Undisputed that the February 26, 2014 Note Purchase Agreement provides at § 8(b) that Buyers would pay PPVA up to 50% of the deferred interest paid by Golden Gate upon maturity, but disputed that such agreement was "consideration" for the put insofar as no deferred interest was accrued as of February 26, 2014, Golden Gate did not make any interest payments to Precious Capital or PPVA during the period before or after February 26, 2014, PPVA, via Precious, funded all interest payments made to the Beechwood buyers and no such deferred interest ever was paid. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 252, 254, 256, 292, 303-310.

107. As of March 31, 2014, Sterling valued the Master Fund's 100 percent interest in the Membership Units in the range of \$144,033,690 to \$176,000,000. (Ex. II, CTRL5659829 Platinum Exhibit A)

**RESPONSE:** Undisputed, except disputed that either PPVA or Precious Capital owned 100% of the Golden Gate membership interests as of March 31, 2014. *See* Response to Statement 99.

108. The methodology for valuing the Master Fund's 100 percent interest in the Membership Units was the same both before and after Golden Gate transaction at issue — namely, the Master Fund performed an analysis of comparable companies and, based on this analysis, applied a range of Enterprise Value/PV-10 of reserves multiples to an adjusted PV-10 value of Golden Gate's reserves. Ex. II, CTRL5659829 Appendix XVIII at 4

**RESPONSE:** Undisputed that the Sterling Report states that the methodology applied by Platinum Management to valuing the equity interests in Golden Gate was the same before and after the February 26, 2014 transaction. Otherwise disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 93, 250-278, 284-311, 629-638 *See also* Response to Statement 99..

109. This methodology is consistent with the market approach for valuing oil and gas companies that is set forth in the Offering Memoranda, which states that “[i]n addition to the typical valuation multiples (i.e. revenue, EBITDA), consideration will be given to the following acceptable valuation multiples in the Oil and Gas industry: *Enterprise value to proven reserves*, proven barrels, etc.” (Ex. H, Offering Memorandum, at 68.)

**RESPONSE:** Undisputed that Beechwood Defendants' Ex. H contains the quoted language. Otherwise disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 93, 250-278, 284-311, 629-638.

110. The price at which the Senior Secured Promissory Notes were purchased by BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB is irrelevant to this methodology. *See* Ex. II, CTRL5659829 Appendix XVIII at 4.

**RESPONSE:** Disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 93, 250-278, 284-311, 629-638. 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 unsubstantiated



opinion that the purchase of the note was “irrelevant” to a valuation methodology. *See Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

111. The Master Funds and both Feeder Funds disclosed the transaction as a Related Party Transaction in the Notes to its Consolidated Financial Statements for the Year Ended December 31, 2013. Specifically, they provided:

On February 26, 2014, Beechwood Asset Management (“BAM”), a related party of the General Partner, purchased approximately \$28 million of Golden Gate senior secured debt owned by Precious Capital, a majority-owned subsidiary of the Master Fund. The purchased amount included principal and interest. Precious Capital retained approximately \$3.2 million of its debt and was appointed as BAM’s “Agent” over the total debt facility to GGO. The Master fund sold and assigned the right, title and interest to an aggregate \$21,805,500 of the principal amount the Note and \$6,584,830 of interest, including deferred interest, due from Golden Gate. Ex. LL, CTRL7705170 Note 4 to Onshore Feeder Fund’s Consolidated Financial Statements, Year Ended December 31, 2013, at 52; Note 4 to Offshore Feeder Fund’s Consolidated Financial Statements, Year Ended December 31, 2013, at 57) Ex JJ, CTRL7705278

**RESPONSE:** Undisputed that the quoted language appears in the Notes to PPVA’s Consolidated Financial Statements for the Year Ended December 31, 2013, which were issued on *February 11, 2015*. Otherwise disputed that the quoted language discloses all of the terms of the February 26, 2014 transaction, including, inter alia, the put. *See PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 281-282; Beechwood Defendants’ Ex. JJ at 57.*

112. The Master Fund also disclosed the transaction as a Related Party Transaction in the Notes to its Consolidated Financial Statements for the Year Ended December 31, 2014. (Note 12 to Consolidated Financial Statements, Year Ended December 31, 2014 at 53., Ex MM.

**RESPONSE:** Disputed. Note 12 to the PPVA Consolidated Financial Statements for year ended December 31, 2014 does not contain any specific disclosure concerning the February 26, 2014 transaction or the put and does not mention the word Golden Gate. *See Note 12 of Beechwood Defendants’ Ex. MM at p. 53. See also PPVA Plaintiffs’ Statement of Material Facts at ¶ 281-282.*



113. Golden Gate was a performing asset that had value. (Ex. D, SanFilippo Tr. 341:9-23.)

**RESPONSE:** Disputed. See PPVA Plaintiffs' Statement of Material Facts at ¶¶ 93, 243-311, 337-344, 350, 619-626, 629-638.

Pedevco Corp.

114. Pedevco Corp. ("Pedevco") is a publicly-traded energy company engaged in the acquisition and development of strategic, high-growth energy projects, including shale oil and gas assets, in the U.S. and Asia. Ex. II, CTRL5659829 at 165

**RESPONSE:** Undisputed as of the time Beechwood Defendants' Ex. II was prepared.

115. On March 7, 2014, Pedevco entered into a transaction with BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB, and RJ Credit LLC. RJ Credit is a subsidiary of the Master Fund. Ex. II, CTRL5659829 at 165

**RESPONSE:** Undisputed, except further state that the transaction at issue was arranged on behalf of the listed entities by BAM Administrative and other Beechwood entities. See PPVA Statement of Material Facts at ¶ [redacted].

116. The transaction included: (a) a \$34,500,000 loan to facilitate the purchase of approximately 28,000 net acres in Colorado; (b) the establishment of a \$15,500,000 drilling facility for the development of the new acreage; and (c) the establishment of a joint venture with RJ Resources, a subsidiary of RJ Credit, for a 50% working interest on the project going forward. (Ex. NN, CTRL6053784; see also Ex. OO, CTRL5147098.)

**RESPONSE:** Undisputed.

117. The \$34,500,000 loan was funded by BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB, and RJ Credit LLC through the issuance of Senior Secured Promissory Notes. These lenders contributed funds in the following amounts:

- BRE BCLIC Primary committed \$11,800,000;
- BRE BCLIC SUB committed \$423,530;
- BRE WNIC 2013 LTC Primary committed \$17,522,941;
- BRE WNIC 2013 LTC SUB committed \$803,529; and
- RJ Credit committed \$3,950,000 CTRL5659829 at 166

**RESPONSE:** Undisputed. except further state that the transaction at issue was arranged by BAM Administrative and other Beechwood entities on behalf of the listed entities. *See* PPVA Statement of Material Facts at § [redacted].

118. BAM Admin served as collateral agent for BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB, and RJ Credit in connection with the transaction. (*See* Ex. PP, Trott SAC, Exhibit 49, at § 7.1.)

**RESPONSE:** Undisputed that BAM Administrative served as collateral agent for the named entities. Disputed that the role of BAM Administrative was limited to collateral agent, but rather it and other Beechwood entities directed the transaction with PEDEVCO on behalf of BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB.

119. BAM, BAM II, BRILLC, BRE Holdings and BBIL were not parties to the deal. (*See* Ex. PP, Trott SAC, Exhibit 49.) BAM II had not yet been formed until September 2014 and BBIL had not yet begun operating. (Thomas Decl.)

**RESPONSE:** Undisputed that the listed entities were not party to the March 7, 2014 transactions involving PEDEVCO and that BAM II was not yet formed as of that date. Beechwood Defendants have not provided any documentary support showing that BBIL was not yet operating.

120. As noted above, Pedevco used the loan proceeds to fund the “acquisition of an interest in 40 wells and approximately 28,000 net acres in the DJ Basin, Colorado from an independent U.S. oil and gas company.” The acreage acquired in the Niobrara Shale Formation [was] located in Weld County, Colorado, including some acreage in the prolific Wattenberg Area.” (Ex. NN, CTRL6053784; *see also* Ex. II, CTRL5659829.)

**RESPONSE:** Undisputed.

121. In connection with the transaction, the Master Fund received an “equity kicker,” which the other lenders did not receive. As consideration for investing through the note and funding the drilling facility, the Master Fund received a “50% [working interest] in PEDEVCO’s assets in the Niobrara, Mississippian, [and] Kazakhstan.” (Ex. OO, CTRL5147098)

**RESPONSE:** Undisputed that a subsidiary of RJ Credit received an interest in certain of PEDEVCO’s assets in the specified locations in connection with the loan to PEDEVCO.

122. The “equity kicker” is described in Sterling’s valuation report:

As additional consideration for [RJ Credit] providing the loan described above and committing to fund subsequent Notes, RJ Resources (“RJR”), an affiliate of the Fund and a wholly owned subsidiary of [RJ Credit], acquired from Red Hawk Petroleum, LLC (i) an equal 50 percent 13,995 net acre position (out of approximately 27,900 total acres) in the assets acquired from Continental in March 2014 comprising oil and gas working interests in the Wattenberg and Wattenberg Extension in the DJ Basin, Colorado (the “Continental Assets”), (ii) 50 percent of the Company’s pending interest in the Kazakhstan asset (the “Asia Sixth Assets”), and (iii) 50 percent of the Company’s ownership interest in (a) Pacific Energy Development MSL, LLC, which holds the Mississippian Asset, thereby making RJR a 50 percent working interest partner with the Company in the development of the Wattenberg Asset, (b) the Kazakhstan Asset, which the Company is in the process of acquiring, and (c) the Mississippian Asset, allowing the Company to undertake a more aggressive drilling and development program in 2014 and beyond (the “Mississippian Assets” and, together with the Continental Assets and the Asia Sixth Assets, the “Equity Interest”).

(Ex. II, CTRL5659829 at 165-166)

**RESPONSE:** Disputed that the Sterling valuation contains any reference to an “equity kicker.” Otherwise, undisputed.

123. As Pedevco explained in the press release announcing the deal:

In order to finance the acquisition and provide the Company with sufficient capital to immediately commence a meaningful development program covering this new acreage, the Company entered into a 3-year term debt facility with RJ Resources, a subsidiary of a NY-based investment management group with more than \$1.3 billion in assets under management specializing in resource investments. As part of the transaction, RJ Resources, will be a 50% working interest partner with the Company in the development of its assets going forward, allowing the Company to undertake a more aggressive drilling program, in 2014. As a result, the Company has an interest in 14,000 net acres after closing. The Company has drawn down \$34.5 million of a \$50 million dollar debt facility, and can draw down the remaining \$15.5 million for drilling capital to develop this new acreage. (Ex. NN, CTRL6053784.)

**RESPONSE:** Undisputed

124. BRE BCLIC Primary, BRE BCLIC SUB, BRE WNIC 2013 LTC Primary, BRE WNIC 2013 LTC SUB—which lent the vast majority of the money used to purchase the Colorado, and which did not receive an equity kicker—instead received a first position lien on all assets of the company. *Id.*

**RESPONSE:** Undisputed that the listed entities did not receive working interest in PEDEVCO's fields and were granted a first priority lien upon all of PEDEVCO's assets, including the fields as to which RJ Resources received a 50% working interest.

125. In 2015 and 2016, the price of oil fell from \$140 to \$40. (Ex., QQ, Narain Tr. 79:19-80:8.)

**RESPONSE:** Disputed. The price of oil fell from a high of \$112 per barrel and \$105 per in June 2014, crude oil benchmarks Brent and West Texas Intermediate (WTI) fell to \$62 per barrel of oil and \$59 per barrel of oil in December 2014, respectively. *See* US Energy Inf. Admin. Today in Energy Jan. 2015, <https://www.eia.gov/todayinenergy/detail.php?id=19451> (last accessed March 7, 2020). The price per barrel of oil did not rise above approximately \$62 per barrel of oil between January 2015 and December 31, 2016. *See* Index Mundi, <https://www.indexmundi.com/commodities/?commodity=crude-oil&months=180> (last accessed March 7, 2020).

126. The price of oil falling from \$140 to \$40 put pressure on oil and gas companies everywhere and created liquidity issues. (*Id.*)

**RESPONSE:** Disputed as to the range of prices and timing for the drop in the price per barrel of oil. *See* Response to Statement 125. Otherwise undisputed.

127. PEDEVCO was one such oil and gas company, and, in January 2016, PEDEVCO requested a standstill from its lenders. (Ex. QQ, Narain Tr. 51:5-12.)

**RESPONSE:** Undisputed.

128. The PEDEVCO loan was restructured in 2016 and, after the restructuring it was paying interest and performing. (Ex. QQ, Narain Tr. 262:4-13; 443:3-6)

**RESPONSE:** Undisputed

Implant Sciences Corp.

129. Implant Sciences Corp., together with its subsidiaries, develops, manufactures, and sells technology being developed by the company for use in trace explosives detection. [Ex. RR, Sterling]

**RESPONSE:** Undisputed.

130. The Master Fund, through its subsidiary DMRJ Group LLC, began investing in Implant in December 2008. By 2014, the Master Fund had invested in a series of senior secured notes, a convertible note, and a revolving loan. The Master Fund also held certain warrants to purchase the company's common stock. [Ex. RR, Sterling]

**RESPONSE:** Undisputed.

131. On March 19, 2014, the Master Fund refinanced. Implant issued a \$20 million Senior Secured Promissory Note, bearing interest at 15% per annum, with a stated maturity date of March 31, 2015. [Ex. SS, Notes, Ex. TT, Implant 8-K]

**RESPONSE:** Disputed that the "Master Fund refinanced" on March 19, 2014, otherwise undisputed that Implant issued a \$20 million principal senior secured promissory note that bore interest at 15% per annum to BAM. *See* Beechwood Defendants' Ex. SS.

132. Implant used all of the proceeds from the Senior Secured Promissory Note to repay \$20 million of its outstanding indebtedness to DMRJ, thereby replenishing Implant's borrowing capacity under its revolving note with DMRJ. [*See* Ex. LL, CTRL7705170 at 55]

**RESPONSE:** Undisputed that Implant Sciences used the proceeds from the Senior Secured Promissory Note to repay a portion of the amounts then due to DMRJ Group under the revolving loan, which provided Implant with additional borrowing availability under such loan.

133. To induce BAM Admin to enter into the Senior Secured Promissory Note, DMRJ and BAM Admin entered into an Intercreditor Agreement. [*See* Ex. UU, Trott Sac Ex. 50]

**RESPONSE:** Disputed as to the characterization of the motivation for the Intercreditor Agreement, and undisputed that DMRJ and BAM Admin. entered into an Intercreditor Agreement. *See* Beechwood Defendants' Ex. SS.

134. The Master Fund and both Feeder Funds disclosed the transaction as a Related Party Transaction in the Notes to their Consolidated Financial Statements for the Year Ended December 31, 2013. [*See e.g.* Ex. LL, CTRL7705170 at 55]

**RESPONSE:** Undisputed.

135. Specifically, they provided:

On March 19, 2014, Implant Sciences entered into a note purchase agreement with BAM pursuant to which the company issued senior secured promissory notes in the aggregate principal amount of \$20,000,000. The notes bear interest at 15% per annum and mature on March 31, 2015. The company used all of the proceeds from the sale of the notes to repay (i) \$17,624,000 of indebtedness to a majority owned subsidiary of the Master Fund under the amended and restated revolving promissory note (ii) \$1,809,000 of interest outstanding under that facility, and (iii) \$567,000 of interest outstanding under the senior secured convertible promissory note. Ex. LL, CTRL7705170 at 55

**RESPONSE:** Undisputed.

136. Between March 19, 2014 and December 31, 2015, Implant paid interest on the BAM notes by using the DMRJ credit line. [See Ex. UU, Trott Sac Ex. 50] Implant reported in its public filings that it required additional capital to fund operations, and that there was no assurance that DMRJ would continue to make advances under its revolving line of credit. (See e.g., Ex. VV, Form 10-Q, 12/31/15]

**RESPONSE:** Undisputed.

Black Elk, Northstar GOM Holdings Group LLC, and Montsant

[sic] Black Elk was a Houston-based oil and natural gas company engaged in the exploration, development, production and exploration of oil and natural gas properties. [Audited Financials] Ex. LL, CTRL7705170 ; Ex. JJ, CTRL7705278

**RESPONSE:** Undisputed

137. As of December 31, 2013, the Master Fund had investments in Black Elk consisting of both common and preferred unites, notes receivable and participation securities. The Master Fund owned approximately 75% of Black Elk's common equity. Id.

**RESPONSE:** Undisputed.

138. Black Elk had outstanding 13.75% Senior Secured Notes. (Id.)

**RESPONSE:** Undisputed that in 2013, Black Elk had outstanding 13.75% Senior Secured Notes.

139. The interest rates on the Notes was 13.75%. (Id.)

**RESPONSE:** Undisputed.

140. Black Elk also issued preferred equity. (Id.)

**RESPONSE:** Undisputed.

141. One class of preferred equity was Black Elk Series E preferred equity. (*Id.*)

**RESPONSE:** Undisputed.

142. The Black Elk Series E preferred equity accrued interest at a rate of 20%—higher than the 13.75% rate on the Notes. (*Id.*)

**RESPONSE:** Undisputed.

143. The Master held Black Elk bonds, had preferred shares in Black Elk, and held equity interest in Black Elk. (Ex. D, SanFilippo Tr. 352:3-7.)

**RESPONSE:** Undisputed.

144. The Master Fund sold more than 52 million shares of Black Elk Series E preferred equity at a price of \$1.00 per share during 2013. In connection with those sales, the Master Fund provided purchasers with a put option to repurchase all of the shares for an aggregate repurchase price of \$1.00 per share. *Id.*

**RESPONSE:** Undisputed.

145. The Master Fund’s audited financials identify BAM as a related party of the General Partner and expressly disclose that:

During 2014, the Master Fund sold short [Black Elk] corporate bonds with an aggregate face value of \$24,987,000 to BAM for total proceeds of \$24,497,130. The prices of the short sales ranged from \$96 to \$99. The securities were borrowed from PPBE in order to effectuate the short sale transaction.

Ex. LL, CTRL7705170; Ex. JJ, CTRL7705278 (Note 5 to Offshore Feeder Fund’s Consolidated Financial Statements, Year Ended December 31, 2013, at 53; Note 5 to Offshore Feeder Fund’s Consolidated Financial Statements, Year Ended December 31, 2013, at 58.)

**RESPONSE:** Undisputed that the quoted language is set forth in PPVA’s 2013 audited financial statements, which were issued on February 11, 2015.

146. The Master Fund did, in fact, borrow Black Elk notes from PPBE and sell them short to BAM at prices close to par. *Id.*

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 312-352; 495-546.

147. Nordlicht viewed paying back the Black Elk Series E preferred equity holders as an existential issue for the Master Fund. Ex. HHHH, CTRL6126026 (“This is also the week I need



to figure out how to restructure and raise money to pay back 110 million of preferred which if unsuccessful, wd be the end of the fund.”)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at 312-352, 495-546.

148. At the time of the Renaissance Sale, Feuer or Taylor were: (1) not aware that BAM clients had purchased Black Elk bonds from the Master Fund; (2) did not know anything about Black Elk’s operations, including the Renaissance Sale; (3) did not know about the consent solicitation; (4) did not know how BAM’s clients voted or intended to vote on the consent solicitation; (5) did not know how Black Elk planned to use the proceeds of the Renaissance Sale; or (6) did not know how the Master Fund distributed the proceeds of the Renaissance Sale. Ex. R, Taylor Tr. 397:21-22; 398:2-5; 399:3-10; 402:22-24; 403:18-20; 404:6-7; 405:21-24; 407:13-15 and Ex. Q, Feuer Tr. 33:11-12, 565:4-11, 568:23-25; 569:4; 570:8-13; 576; 577:7-18; 578:9, 22-25; 579:2-10; 587:15-25; 588-590; 610.

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at 495-546.

149. Feuer or Taylor did not play any part in purchasing Black Elk bonds from the Master Fund, voting in the consent solicitation, or distributing the proceeds of the Renaissance Sale. Ex. X, Trott:609-615

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at 312-352, 495-546.

150. Northstar GOM Holdings Group LLC (“Northstar Holdings”) was an oil and gas exploration and production company headquartered in Houston, Texas. It was a wholly-owned subsidiary of Platinum Partners Value Arbitrage Oil & Gas LLC and, as such, an indirect subsidiary of the Master Fund. [Ex. XX, D&P]

**RESPONSE:** Undisputed, except that the operating company name was Northstar Offshore Group LLC. *See* PPVA Plaintiffs Statement of Material Facts at ¶ 349.

151. Northstar Holdings was formed in June 2014 to complete the acquisition of Northstar Offshore Group, LLC (“Northstar Offshore”) from prior private equity owners. [Ex XX, D&P]

**RESPONSE:** Undisputed.

152. In June 2014, the price of a barrel of oil was \$102 to \$106 per barrel. [<https://markets.businessinsider.com/commodities/oil-price?type=wti>]

**RESPONSE:** Disputed. By way of example, according to the link set forth in the Statement, the price of oil on June 16, 2014 was \$114.21.

153. According to Mark Nordlicht, Northstar Offshore was an attractive acquisition target because it had significant reserves in the Gulf of Mexico and a strong management team. There were substantial synergies with the Master Fund's existing oil and gas holdings. (Ex. L, CTRL PPCO 000004, 07)

**RESPONSE:** Undisputed that Nordlicht makes the statements attributed to him in statement 153.

154. According to Nordlicht, purchasing Northstar as part of an effort to replace some of the offshore reserves that had been divested during the Renaissance Sale, to consolidate the Master Fund's oil and gas holdings, and to upgrade the team that was managing the Master Fund's oil and gas holdings. (Ex. L, CTRL PPCO 000004, 07)

**RESPONSE:** Undisputed that Nordlicht makes the statements attributed to him in statement 154.

155. To complete the Northstar Offshore transaction, in September 2014, Northstar Holdings issued \$80 million of the second-priority senior secured notes, which paid interest at a rate of 12%. [YY, Ex. 66 to SAC; Docket Entry 285-5)

**RESPONSE:** Undisputed.

156. In September 2014, the price of a barrel of oil was \$91 to \$95 per barrel. [<https://markets.businessinsider.com/commodities/oil-price?type=wti>]

**RESPONSE:** Undisputed.

157. BRE WNIC 2013 LTIC Primary and SHIP participated in this financing by funding 62.5% of the loan through a principal contribution of \$50 million. [Ex. XX, D&P]

**RESPONSE:** Undisputed, except state that Beechwood caused the listed entities to purchase \$50 million of Northstar notes. *See* PPVA Statement of Facts at ¶¶ [REDACTED].

158. To induce BRE WNIC 2013 LTIC Primary and SHIP to purchase \$50 million of second-priority senior secured notes, Principal Growth Strategies, LLC, the Platinum Partners Credit Opportunities Master Fund, L.P. ("PPCO"), and Agera Holdings, LLC entered into a Note and Equity Pledge Agreement through which they pledged certain equity interests in Agera as additional collateral for the investment. [*See* Ex. ZZ, Securities Purchase and Put Agreement, CTRL7035009, at 1.]

**RESPONSE:** Undisputed that Platinum Management caused Principal Growth Strategies, LLC (“**PGS**”), the Platinum Partners Credit Opportunities Master Fund, L.P. (“**PPCO**”), and Agera Holdings, LLC to enter into a Note and Equity Pledge Agreement by which PGS granted Beechwood a lien on and security interest in the Agera Note, and Agera Holdings granted Beechwood a lien on and security interest in its equity in Agera Energy, and that neither PGS nor Agera Holdings received any consideration for pledging their assets as collateral for the benefit of Beechwood and its clients. *See* Beechwood Defendants’ Statement of Undisputed Facts at Ex. ZZ.

159. At the time, Agera was a company that had just been purchased out of bankruptcy.

**RESPONSE:** Undisputed that PPVA’s nominee purchased the assets of Glacial Energy in a sale pursuant to § 363 of the Bankruptcy Code in June 2013, and contributed those assets to the entity that became Agera Energy, and otherwise disputed. *See* SAC at ¶ 613.

160. At or around the same time, the Master Fund purchased from Northstar Holdings \$30 million in principal of the second-priority senior secured notes, *i.e.*, the balance of the Northstar Offshore issuance. [*See* Ex. ZZ, Securities Purchase and Put Agreement, CTRL7035009, at 1.]

**RESPONSE:** Undisputed that Platinum Management caused PPVA to purchase \$30 million of Northstar Notes in September 2014.

161. The Master Fund then entered into a Securities Purchase and Put Agreement, through which it sold to New Mountain Finance Holdings Ltd. the \$30 million second-priority senior secured notes that it had purchased from Northstar Holdings. [*See Id.*]

**RESPONSE:** Undisputed that Platinum Management caused PPVA to enter into a Securities Purchase and Put Agreement, through which it sold to New Mountain Finance Holdings Ltd. the \$30 million second-priority senior secured notes that it had purchased from Northstar Holdings.

162. To induce New Mountain to enter into the agreement to purchase \$30 million of second-priority senior secured notes, the Master Fund agreed to provide New Mountain with an option to require the Master Fund to repurchase from New Mountain all of the second-priority senior secured notes being purchased (the “Put Option”). [*See Id.*]

**RESPONSE:** Undisputed.

163. As stated in Securities Purchase and Put Agreement, New Mountain “would not enter into [the] Agreement without the protections afforded by, among other things, the Put Option. [See Ex. ZZ, Securities Purchase and Put Agreement, CTRL7035009, at 2.]

**RESPONSE:** Undisputed.

164. In August 2016, the price of a barrel of oil was \$39 to \$48 per barrel. [<https://markets.businessinsider.com/commodities/oil-price?type=wti>]

**RESPONSE:** Undisputed.

165. The loan provided a subsidiary of the Master Fund with \$50 million to purchase an oil and gas company with oil reserves in the Gulf of Mexico and a strong management team. (Ex. L, CTRL PPCO 000004, at 30:10-31:15, 45-46.)

**RESPONSE:** Undisputed that Nordlicht made the statements on the investor call transcribed at Beechwood Defendants’ Statement of Undisputed Material Facts Ex. L..

166. The lien on Agera was ultimately extinguished as part of the consideration exchanged during the March 2016 restructuring—something that was specially requested by Platinum. See, Ex. AAA, CTRL7622245; Ex. BBB, CTRL8246010.

**RESPONSE:** Disputed. See PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 650-654. 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 concerning any “consideration exchanged.” See *Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

167. Following the Northstar acquisition, Nordlicht wanted to consolidate the Master Fund’s offshore oil and gas assets under Northstar and needed to purchase 13.75% Senior Secured Notes in order to effectuate the transaction. (Ex. CCC, CTRL4961343, Ex. DDD, CTRL4971389, Ex. EEE, CTRL4971425, Ex. FFF, CTRL5011186, Ex. GGG, CTRL5691730, Ex. HHH, CTRL5721850, Ex. III, CTRL5734796, Ex. JJJ, CTRL5765034, Ex. KKK, CTRL7684839, Ex. LLL, CTRL6415594.)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 349, 556-569.

168. Using 13.75% Senior Secured Notes was necessary because the assets that were being sold to Northstar were subject to the Black Elk bond Indenture. (Ex. MMM, CTRL7410595, at 1.)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 349, 556-569.

169. Pursuant to § 4.10(a)(2) of the Indenture at least 75% of consideration received by Black Elk in connection with an asset sale needed to be in the form of “Cash” or “Additional Assets.” (Ex. MMM, CTRL7410595, at 1.)

**RESPONSE:** Undisputed.

170. The definition of Cash under the indenture included “Liabilities assumed by a transferee pursuant to a customary novation agreement that releases the company from further liability.” (Ex. MMM, CTRL7410595, at 1.)

**RESPONSE:** Undisputed.

171. Black Elk’s position was that transferring the 13.75% Senior Secured Notes and then retiring them would fit within this definition of Cash. (Ex. MMM, CTRL7410595, at 6; see also Ex. NNN, CTRL7684837.)

**RESPONSE:** Undisputed that Jeffery Shulse sent Zach Weiner a copy of letter addressed to the Indenture Trustee for the Black Elk Bonds on or about January 28, 2015 (Beechwood Defendants’ Ex. MMM) and that Zach Weiner forwarded the documents attached as Beechwood Defendants’ Exhibit NNN on or about February 9, 2015, and otherwise denied. Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 349, 556-569. *See also* SAC Ex. 61 at ¶¶ 94-98.

172. BAM’s clients owned a large block of bonds, which allowed them to negotiate a slight premium when the bonds were repurchased. (*See* Ex. OOO, BW-SHIP-00730322.)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 49, 556-569.

173. Platinum did not enter into the Montsant loan for the purpose of buying back the Black Elk bonds. Ex. D, (SanFilippo Tr. 355:2:5.)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 49, 556-569.

174. There is no evidence that Beechwood knew how the Master Fund planned to use the \$35.5 million. Ex. R, Taylor Tr. 390:22-392:6.

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 49, 556-569.

175. Montsant has not paid back a single cent on the loan. Ex. X, Trott.709

**RESPONSE:** Disputed. Beechwood assigned interests in the Montsant loan to PGS in connection with the January 2017 redemption of PGS’ interests in AGH Parent LLC. *See* PPVA Statement of Facts at ¶¶ 804-805.

176. Montsant has not distributed any collateral. Ex. X, Trott 304-306

**RESPONSE:** Undisputed.

177. SanFilippo testified on behalf of Platinum that “Beechwood provided a benefit to Montsant and Montsant, in turn, gave them additional collateral.” (Ex. D, SanFilippo Tr. 338:13-15.)

**RESPONSE:** Undisputed that SanFilippo offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 49, 556-569.

Nordlicht Side Letter

178. By December 2015, Implant had maxed out its DMRJ credit line and reported that it had cash and cash equivalents of \$776,000 – less than half of what was necessary to pay the outstanding interest on the notes. Ex. VV, 10Q

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 639-649.

179. The Master Fund was experiencing major liquidity issues. (Ex., III, CTRL8009309; Ex. D, SanFilippo Tr. 382:6:10)

**RESPONSE:** Undisputed that PPVA faced significant liquidity issues in December 2015.

180. If BAM Admin allowed Implant to default on the notes, it would give BAM Admin right the right to enforce its remedies under the BAM Notes and Intercreditor Agreement, which included potentially forcing a sale of Implant's assets. Ex., PPP, Trott. SAC Ex. 75

**RESPONSE:** Disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 639-649.

181. To avoid this, BAM required that any proceeds PPVA/DMRJ received from a sale of Implant's assets or equity be remitted to BAM in such amount necessary to satisfy Golden Gate's indebtedness to BAM. (*See* Ex. PPP, Trott Sac Ex. 75; Ex. Q, Feuer Tr. 213:22-214:3)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 639-649.

182. On January 13, 2016, Nordlicht wrote to colleagues, "tomorrow is a crisis...I need the team to be at beechwood first thing in the morning...I am not asking anyone to take responsibility...I just need my money freed up so we can save both businesses." *Id.*

**RESPONSE:** Undisputed that Nordlicht sent the January 13, 2016 email containing the quoted language.

183. Steinberg and Katz testified that Nordlicht was counting on being able to monetize Implant to address part of the Master Fund's liquidity concerns.

**RESPONSE:** Undisputed that Steinberg and Katz testified that Nordlicht was counting on being able to monetize Implant. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 639-649.

184. This cross-collateralization deal was memorialized on January 13, 2016 when Nordlicht signed a one-page pledge agreement, which the Liquidators have referred to in the SAC as the Nordlicht Side Letter. Ex. PPP, Trott. SAC Ex. 75

**RESPONSE:** Disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 639-649.

185. Feuer testified that the Nordlicht Side Letter was a "memorialization of an agreement that [he] reached with Mr. Nordlicht, in [his] office around ... January 13, 2016." (Ex. Q, Feuer Tr. 213:17-20.)

**RESPONSE:** Undisputed that Feuer offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 639-649.



186. Feuer testified that “Nordlicht came over to my office, which was very unusual, and suggested that he wasn’t going to leave until he could convince me not to default on a company called Implant Sciences” and that the Nordlicht Side Letter was executed in furtherance of Nordlicht’s effort to avoid a default. (Ex. Q, Feuer Tr. 213:22-214:3.)

**RESPONSE:** Undisputed that Feuer offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 639-649.

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 Nordlicht Side Letter was “executed in furtherance of Nordlicht’s effort to avoid a default.” *See Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

187. Feuer testified that “Nordlicht ... said he was not going to leave until he got my assurance that I wasn’t going to default on Implant Sciences.” (Ex. Q, Feuer Tr. 628:7-13.)

**RESPONSE:** Undisputed that Feuer offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 639-649.

188. Feuer testified that the Nordlicht Side Letter is “a document in which I didn’t default on a loan that I was going to, and this is what we got in return for me not defaulting on that loan. (Ex. Q, Feuer Tr. 628:16-20.)

**RESPONSE:** Undisputed that Feuer offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 639-649.

189. Pursuant to the Note Sale Agreement, dated February 26, 2014, in the event of a Golden Gate default, BAM Admin had the right to put Golden Gate back to the Master Fund at an amount equal to the outstanding principal plus any accrued and unpaid interest. (Note, at § 8(a).) Ex. HH, SAC Exhibit 48.

**RESPONSE:** Undisputed.

190. Pursuant to the Note Sale Agreement, dated February 26, 2014, in the event of a Golden Gate default, BAM Admin had the right to enforce its rights against Platinum under the contract guarantee (*Id.*, at § 9.)

**RESPONSE:** Undisputed.

191. The Master Fund has not paid BAM Admin or Beechwood's investor clients any money pursuant to the terms of the Nordlicht side letter.

**RESPONSE:** Disputed. Among other things, Beechwood assigned interests in the Golden Gate loan to PGS in connection with the January 2017 redemption of PGS' interests in AGH Parent LLC. *See* PPVA Statement of Facts ¶¶ 804-805.

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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

192. On October 10, 2016, Implant and certain of its affiliates filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. Delaware Bankruptcy Court, Case No. 1:16-bk- 12338; 12239, 12240, 12241; Dkt. No. 1

**RESPONSE:** Undisputed.

193. On June 5, 2017, the Delaware Bankruptcy Court entered an order permitting DMRJ to receive \$55 million from the Implant debtors in satisfaction of the claims of DMRJ and Montsant. Delaware Bankruptcy Court, Case No. 1:16-bk- 12338; Docket Entry 752.

**RESPONSE:** Undisputed that the Bankruptcy Court entered an Order approving a settlement of claims entered into between the Official Committee of Implant Sciences Equity Holders, the Implant Sciences debtors and DMRJ, Montsant, and PPVA. *See In re Secure Point, Inc. et al.*, Case No. 1:16-bk- 12338 at Docket Entry 752 (Bankr. D. Del.)

March 2016 Restructuring and Master Security Guaranty

194. By 2016, PPVA's investment portfolio had grown increasingly "unbalanced" with a growing concentration of illiquid, private-equity-style investments. As a result, the fund tried to clean up their balance sheet; restructure various loans with Beechwood to reduce interest rates, defer interest payments, extend maturities, release encumbrances on certain assets, and sell certain companies in an effort to increase liquidity, attract new investors, and prolong the life of the fund. Ex. Z, Steinberg Tr. 363:19-365:4

**RESPONSE:** Disputed. See PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

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 *Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

195. The March 2016 restructuring was an effort to address the Master Fund's liquidity issues and keep the fund alive. Ex. Z, Steinberg Tr. 361:9-17; 361:9-17; 368:22-369:13.

**RESPONSE:** Disputed. See PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

196. To ease the pressure on the Master Fund, Platinum Management sought to reduce interest rates, to defer interest payments, to eliminate certain encumbrances, and to clean up the Master Fund's balance sheet. Ex. Z, Steinberg Tr. 358-359

**RESPONSE:** Disputed. See PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

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 *Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

197. Whereas things like interest rate reduction and deferred interest payments provided short term liquidity relief, the elimination of encumbrances on companies like Agera were designed to allow the Master Fund to go out and borrow money, and balance sheet cleanup was designed to attract investors into a new management share class. *Id.*

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

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 concerning the “elimination of encumbrances on companies like Agera.” *See Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

198. Nordlicht hoped that by bringing in new investors he could rebalance the portfolio, which would make the Master Fund more sustainable. *Id.*

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

199. The Master Fund received a number of tangible benefits via the March 2016 restructuring.

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

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 concerning the “number of tangible benefits” received via the March 2016 Restructuring. *See Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

200. Among other things, the lien on the Master Fund's interest in Agera was released; Northstar debt, which had a high monthly interest rate, was exchanged for PPCO debt, which paid interest in kind; interest rates on the Golden Gate and Montsant loans were lowered substantially; the maturity dates on the Golden Gate and Montsant loans were extended; BAM returned certain Navidea shares to the Master Fund; the Master Fund negotiated the right to remove certain Implant loans from the Montsant collateral account; and BAM agreed to release \$2.3 million in collateral it was holding against timely interest payments. Ex. RRR, CTRL8246012

**RESPONSE:** Disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

201. Steinberg testified that, through the restructuring, the Master Fund "wanted to reduce the interest payments that it would have to make. So ... there was an interest rate reduction in terms of the actual rate that it was going to apply to some of these notes; and, also, there was going to be a deferral period when the interest was just going to accrue for a certain period of time." (Ex. Z, Steinberg Tr. 358:7-14.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

202. Steinberg testified that this interest rate reduction was "part of ... this plan that Nordlicht had of somewhat cleaning up the Platinum balance sheet. He was working very hard towards raising money as part of this management share class, which I don't know if it's been discussed in this litigation before – but he was trying to raise money by selling a piece of the management company." (Ex. Z, Steinberg Tr. 358:15-359:2.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

203. Steinberg testified that it seemed to him that "there were actually a couple of serious suitors for [the management share class]. There was some – one party particularly – I forgot his name – that seemed to be spending a lot of money on his side in terms of having lawyers and accountants to do due diligence on Platinum." (Ex. Z, Steinberg Tr. 359:3-14.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 617-654, 698-791.

204. Steinberg testified that, among other things, the restructuring “reduced interest rates,” “deferred interest payments,” and “freed up Agera from its encumbrances.” (Ex. Z, Steinberg Tr. 360:2-8.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

205. Steinberg testified that “having the interest rate[s] reduced and deferring the interest payments and some other benefit that PPVA and PPCO got out of the transaction would help them in furthering this objective,” *i.e.*, raising money through a new management share class. (Steinberg Tr. 359:10-14.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

206. Steinberg testified that liquidity from the new management share class would have gone to the Master Fund: “The money would have gone into – what I understood was that the investors’ money would have gone in as a limited partner into the fund .... But because he had invested such a large [amount of] money in that period of time, he would have also been granted a piece of the management company.” (Ex. Z, Steinberg Tr. 391:10-19.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

207. Steinberg testified that Nordlicht “had two objectives, really, in what he was trying to accomplish with his management share class, as least as far as I understood it .... One was obviously for current liquidity, but [he] also very much wanted to put the fund back into – what he called back into balance, which was having a significant liquid portfolio.” (Ex. Z, Steinberg Tr. 361:9-17.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

208. Steinberg testified that when he joined Platinum “a significant amount of the AUM was dedicated towards liquid trading strategies” and that “[Nordlicht] wanted to get back to that

balance where part of the funds['] AUM would still be in level three .... He felt he was strong in level three, but also part of it would be level one assets.” (Ex. Z, Steinberg Tr. 361:18362:8)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

209. With respect to rebalancing the Master Fund’s portfolio, Steinberg testified “[t]hat’s – that’s what his – that’s what he needed. That’s where he knew he needed to get to – for the fund to, in his mind, be successful again.” (Ex. Z, Steinberg Tr. 362:8-11.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

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 unsubstantiated opinion that Nordlicht intended to “rebalance the Master Fund’s portfolio.” *See Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

210. Steinberg testified that his understanding was that rebalancing the Master Fund’s portfolio would make the funds more sustainable.” (Ex. Z, Steinberg Tr. 364:25-365:4.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

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 unsubstantiated opinion that Nordlicht intended to “rebalance the Master Fund’s portfolio.” *See Congregation Rabbinical Coll.*



of *Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

211. Steinberg testified that “Platinum was structured as a traditional hedge fund, which allows redemptions on some kind of notice period. And the liquidity profile of the assets that it held did not match those redemption terms. And that is something that’s not sustainable long-term. (Ex. Z, Steinberg Tr. 363:22-364:4)

**RESPONSE:** Undisputed.

212. Steinberg testified that Nordlicht did not think that adopting a private equity model “was a viable structure for his investors, and he didn’t want to start from scratch again; so he figured: ‘My best bet here is to bring in cash that I could start up my liquid book again, and then my liquidity terms to investors would be more aligned with the liquidity profile of [the] assets. (Ex. Z, Steinberg Tr. 364:14-22)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

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 unsubstantiated opinion that Nordlicht thought about “adopting a private equity model.” *See Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1).

213. Steinberg explained that the restructuring was, therefore, “a classic asset-liability matching exercise.” (Ex. Z, Steinberg Tr. 364:23-24.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

214. Steinberg testified that the restructuring “reduced interest” and “took away the encumbrances on Agera at that time, which there was the collateral enhancement in favor of

Beechwood or whoever the – whichever trust or underlying insurance company held [it].” (Ex. Z, Steinberg Tr. 360:2-8.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

215. Steinberg also testified that “the Northstar Note had, like, a collateral enhancement against PGS’s ownership of Agera. And so there was a bunch of pieces that he needed to be cleaned up so [Nordlicht] could go out and raise money.” (Ex. Z, Steinberg Tr. 360:25-361:3.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

216. Steinberg testified that “the biggest negating factor why [the rebalancing] never came to fruition was, in my opinion, because [Nordlicht] wasn’t able to raise the management share class.” (Ex. Z, Steinberg Tr. 391:3-6.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

#### Agera Sale

217. David Steinberg negotiated the Agera Sale on behalf of Platinum. (Ex. D, SanFilippo Tr. 270:21-25; 276:24-277:2; 301:6-9.)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 698-791.

218. Platinum valued Agera at approximately \$200 million at the time of the Agera Sale. (Ex. D, SanFilippo Tr. 271:2-5.)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

219. The purchase price for the Agera Sale was \$170 million. Ex. SSS, SHIP0036135 at Section 2.4

**RESPONSE:** Undisputed to the extent that the document referenced in this Statement sets forth in Section 2.4 that “[t]he aggregate consideration to be paid at the Closing ... will be \$170,000,000.00[.]” *See* Ex. SSS, SHIP0036135 at Section 2.4.

Otherwise, disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

220. The purchase price reflected 95% of: enterprise value (\$208 million) minus debt of Agera Holdings LLC and each of its direct and indirect subsidiaries plus cash on the consolidated balance sheet of the Agera Group. *See* Ex. TTT, April 1, 2016 Re-Purchase Agreement, Annex B]

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

221. On March 2, 2016 Steinberg emailed Nordlicht that he was “at Beechwood now asking for \$20mm for prime.” Ex. UUU, CTRL8296461.

**RESPONSE:** Undisputed that Steinberg sent the cited email.

222. The Master Fund needed to borrow money for a margin call. Ex. QQ, Narain Tr. 91:12-23; 94:19-25

**RESPONSE:** Disputed that PPVA required money for a margin call. As noted in statement 221, Steinberg purportedly sought funding for “prime, ” *i.e.* Prime Capital (Bermuda) Limited., an entity managed and controlled by Randy Katzenstein of Interactive Brokers/OBEX.

223. On March 2, 2016, Thomas emailed “a draft assignment of note and liens (with repurchase right) in respect of the Agera-PGS convertible note.” Ex. VVV, CTRL8298985

**RESPONSE:** Undisputed that Thomas emailed the referenced documents.

224. On March 2, 2016, Steinberg summarized the transaction: “repo agreement. BAM gives us \$20mm and we are assigning them the convertible notes we own in Agera Holdings. We have 10 days to buy the convertible notes back from BAM for \$20.2mm. If we fail to repurchase within 10 days. They get to keep the convertible notes.” Ex. VVV, CTRL8298985

**RESPONSE:** Undisputed that Steinberg made the quoted statement in the cited email.

225. On March 3, 2016, Thomas emailed executed copies of the assignment of notes and liens. Ex. WWW, BW-SHIP-00170477

**RESPONSE:** Undisputed that Thomas emailed the referenced documents.

226. B Asset Manager sent Platinum \$20 million upon execution of the assignment of notes and liens. Ex. XXX, BW-SHIP-00170485

**RESPONSE:** Disputed. On March 3, 2016, Senior Health Insurance Company of Pennsylvania, c/o B Asset Manager, sent Principal Growth Strategies LLC \$20 million. (See Ex. XXX; BW-SHIP-001704085).

227. Platinum repurchased the convertible notes within 10 days.

**RESPONSE:** For purposes of summary judgment only, undisputed.

228. On March 13, 2016, Katz emailed Nordlicht to “share some thoughts on Agera and a potential sale to an insider.” (Ex. YYY, CTRL8328958.)

**RESPONSE:** Undisputed that Katz sent Nordlicht the March 13, 2016 email cited and that it contains the quoted language.

229. Katz testified that by “insider” he meant “some[one] from the industry that understands the industry” and by industry he meant “the retail energy industry ... which is a very specific industry.” Ex. ZZZ, (Katz Tr. 102:14-23.)

**RESPONSE:** Undisputed that Katz offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. See PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

230. In his March 13, 2016 email, Katz explained that macro-economic trends in the retail energy market favored selling Agera in the short term. (Ex. YYY, CTRL8328958.)

**RESPONSE:** Undisputed that the March 13, 2016 email from Katz cited contains language similar to that stated above. Any further implication as to the truth of the statements is disputed. See PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

231. In his March 13, 2016 email, Katz raised certain issues with the Master Fund’s alternate exit strategies, including the following: “(1) an initial public offering, even one at a higher multiple, would not “generate a full liquidity event,” leaving the Master Fund “cash ... strapped for some time; cash that could be put into much higher multiple opportunities; (2) the market would require Agera to bring in a new CEO and finding one who could “successfully work with Kevin [Cassidy]” would take time and would be “slow and painful to implement”; and (3) there were

likely to be changes in the marketplace over a longer time horizon that would make it harder to sell Agera. (Ex. YYY, CTRL8328958.)

**RESPONSE:** Undisputed that the March 13, 2016 email from Katz cited contains the quoted statements. Any further implication as to the truth of the statements is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

232. In his March 13, 2016 email, Katz explained that, in his view, Nordlicht could replace the potential upside from Agera with new investments in the oil and gas sector:

[E]ven in the best case scenario the amount of money potentially left on the table with a sale of Agera today (let's say 2-3X more than the current valuation) is significantly lower than any potential upside in heavily re-investing the proceeds from the sale of Agera into the Oil&Gas sector (+5-10x). This sector represents the greatest opportunity in a generation, a smart play can return the entire fund(s) several times over. Having insider knowledge and expertise in the oil & gas sector increases the handicap for success.

**RESPONSE:** Undisputed that the March 13, 2016 email from Katz cited contains the quoted statement. Any further implication as to the truth of the statements is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

233. In his March 13, 2016 email, Katz summarized the benefits of selling Agera in the short term to a strategic buyer who was capable of acting quickly. (Ex. YYY, CTRL8328958.) "To summarize," he wrote, "a sale today to the strategic would:

- Bypass market headwinds that are around the corner
- Have a clean and full liquidity event now, bypassing complexities of a future exit with either an IPO, or with an unhealthy sector that will struggle to purchase an asset of that size
- Capitalize on an insider's willingness to purchase now
- Solve together with the sale of Implants our liquidity problem
- Create an amazing marketing story now that can help us push (alongside the reforms we've discussed) in building the AUM asp
- Free up cash to re-invest in the oil & gas sector which is a much higher multiple potential upside opportunity today than the energy retail sector

**RESPONSE:** Undisputed that the March 13, 2016 email from Katz cited contains the quoted statement. Any further implication as to the truth of the statements is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

234. Katz testified that the Master Fund needed "a buyer that could – they could buy this asset in a relatively short time because this is driven by the liquidity crisis. So you know, generate

cash. This is just 101 look at what you could sell and try and sell it. So this is an area I more or less understood, so that's why I was advocating for it." (Ex. ZZZ, Katz Tr. 107:18108:2.)

**RESPONSE:** Undisputed that Katz offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

235. Katz testified that, as of March 2016, he knew that PPVA was in distress and lacked liquidity. (Katz Tr. 223:11-14.) He also testified that "there were investments that came through the door, but they didn't really have money until they had a liquidity event." (Ex. ZZZ, Katz Tr. 227:5-10.)

**RESPONSE:** Undisputed that Katz offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

236. Katz testified that "it made sense for Platinum to divest [itself] of assets so they could generate liquidity and reinvest and pay the redemptions. That's it. It's that simple." (Ex. ZZZ, Katz Tr. 178:19-22)

**RESPONSE:** Undisputed that Katz offered the quoted testimony Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

237. Katz testified that he wanted to see Platinum survive. (Ex. ZZZ, Katz Tr. 250:1112) ("Absolutely.")

**RESPONSE:** Undisputed that Katz offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

238. Katz testified that he was providing this advice to Nordlicht:

As part of my oversight and the commitment of or what I understood to be the commitment from Platinum to have open book and full transparency on the state of affairs of the various assets, they welcomed my kind of scrutiny and opinions and they were also seeking additional investment from my grandfather as part of that. So I was looking and expressing my opinion. So this was my opinion on Agera. (Ex. ZZZ, Katz Tr. 224:20-225:5.)

**RESPONSE:** Undisputed that Katz offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

239. Steinberg testified that, at or around this time, that Nordlicht "was trying to recapitalize Platinum's balance sheet" and "was focused very much on bringing liquidity and unencumbering the balance sheet." And that this effort included raising money from investors. (Ex. Z, Steinberg Tr. 163:7-23.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶617-654, 698-791.

240. On March 21, 2016, Mark Nordlicht sent an email to various Beechwood employees and investors, including Katz. (Ex. AAAA, CTRL7754044.) In the email, he referenced certain near-term liquidity events and his desire to attract new investors:

It has been a long run but we are nearing the end of the placement of our management share class and are also very close to disposing of Implant. Those two alone will over the next few months get us very close to our long term goals but to be healthy, we really need marketing team to deliver on attracting new investors so we can now take advantage of opportunities which are plentiful to us after having been playing defense for so long. IT IS TIME TO START PLAYING OFFENSE. I hope each and every person in marketing group can work collaboratively, brainstorm and take initiatives to bring in significant new capital into the firm."

We have some great products to sell. They are unique and despite all the stress of last 9 months, we should remind ourselves we are offering unique, non correlated products that investors really cant find elsewhere. I want to thank entire marketing group for their patience thus far and for all the hand holding that will be required over the next few months as we await implant proceeds.

**RESPONSE:** Undisputed that the March 21, 2016 email from Nordlicht cited contains the quoted statement.

241. In his March 21, 2016 email, Nordlicht also introduced Katz:

I also want to take this opportunity to introduce Michael Katz who is long term investor in Fund as an LP and now part of the family with an interest in the GP. Michael is very interested in rebranding our image, improving our infrastructure, and helping craft marketing strategies going forward. Please take the time to meet him if you haven't already and share ideas as to how we can make the firm better.



**RESPONSE:** Undisputed that the March 21, 2016 email from Nordlicht cited contains the quoted statement.

242. In his March 21, 2016 email, Nordlicht also described the recently-restructured Master Fund:

PPVA- Now new and improved, back to the strategy mix that produced 17 percent annualized over a 13 year track record. We obviously left strong positions in vehicle that would travel with the track record and after taking in 100 m of 3 yr locked money, we are now poised to deliver very healthy risk adjusted returns. There are no funds I know [out] there with our track record. Yes, side pocket is challenge but keep in mind, all the investments in side pocket came from gains, are well positioned to bring more gains going forward, and were acquired for little to no value. Going forward, we have great mix of liquid strategies along with equity optionality. One possible initiative we [should] pursue is white label program.

**RESPONSE:** Undisputed that the March 21, 2016 email from Nordlicht cited contains the quoted statement, but otherwise denied. Any further implication as to the truth of the statements is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

243. On March 21, 2016, Katz responded to Nordlicht’s email and told him that he had “[a]lready started meeting with the team,” and that he “should have a short term plan (parallel to the long term plan) ready in the coming days.” (Ex. BBBB, CTRL7754665)

**RESPONSE:** Undisputed that the March 21, 2016 email from Katz cited contains the quoted statement.

244. On March 27, 2016, Nordlicht emailed Katz about the aforementioned plan, “which include[d] potentially selling agera besides implant and setting up [debt] facility besides so we have war chest. In this scenario we would really clean everything up. I am very excited.” Ex. CCCC, CTRL7772338

**RESPONSE:** Undisputed that the March 27, 2016 email from Nordlicht cited contains the quoted statement. Any further implication as to the truth of the statement is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

245. In his March 13, 2016 email, Nordlicht wrote, “I was reluctant on agera at first but I have idea how to replace that upside in the fund and the liquidity is just too transformative for us to ignore. I also recognize your point on the right time in ‘cycle’ to exit and it appear we might get [satisfactory] type of bid from a beechwood led consortium.”

**RESPONSE:** Disputed insofar as it references a March 13, 2016 email from Nordlicht, which is not attached as an exhibit.

246. Katz testified that he understood Nordlicht to mean that he was “going to turn things around [at the Master Fund] . . . he’s going to sell assets, he’s going to bring in capital. That’s what he’s saying.” (Ex. ZZZ, Katz Tr. 119:5-11.)

**RESPONSE:** Undisputed that Katz offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

247. Steinberg testified that, as part of Nordlicht’s effort to raise capital, he “wanted to bring in hundreds of millions of dollars of cash that would have been liquidity, whether from investors, selling investments, and then un-encumber[ing] the balance sheet. And that’s how he felt the path forward for the fund would be.” (Ex. Z, Steinberg Tr. 163:7-23.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

248. Steinberg testified that “getting cash from the Agera sale ... would have fulfilled one of the objectives” and that “getting debt reduction would have been the other objective.” He explained that “Platinum owed various Beechwood-related parties money. And so the \$70 million, \$80 million of noncash consideration we, the Platinum side, wanted to go to reduce the balance of that debt.” (Ex. Z, Steinberg Tr. 163:25-164:9.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

249. Regarding the noncash consideration for the Agera transaction, Steinberg testified that Platinum “took money from Beechwood” and “owed it back to Beechwood. [P]art of this transaction was to reduce that debt.” (Ex. Z, Steinberg Tr. 166:25-167:7.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶617-654, 698-791.

250. Steinberg testified regarding the value of the noncash consideration. Regarding the China Horizon notes Steinberg testified that he “may have understood at the time that China Horizon was still a business, a viable business -- although China Post wasn’t willing to continue its relationship into new stores, but the existing stores, and there were like 200 or 300 of them, would still be in existence ....” (Ex. Z, Steinberg Tr. 248:15-249:12.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

251. Regarding the Golden Gates notes Steinberg testified that, in his opinion, “[i]t’s very possible that the notes could have been repaid. I mean, you’re talking about something that, as far as I recall, had reserve reports of, like, \$800 million or something like that. So I would think that \$30 million is plausible. . . .” (Ex. Z, Steinberg Tr. 259:12-25.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 93, 250-278, 284-311, 617-654, 698-791.

252. Steinberg testified that liquidity situation at the Master Fund in May 2016 created a sense of urgency surrounding the Agera transaction: “[T]he urgency towards closing Agera, for sure what I knew and based on what I actually knew to be occurring at PPVA at the time, was liquidity-based. (Ex. Z, Steinberg Tr. 170:20-171:7.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

253. Steinberg testified that “Platinum was getting margin calls on a daily basis for significant amounts of money” and that Nordlicht had called him and said, ‘You need to get Agera to close as fast as possible. We can’t wait until August to get this money. We need to close as quickly as possible.’” (Steinberg Tr. 171:3-7.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed.

254. Steinberg testified that Agera was sold “out of necessity,” explaining that Platinum “needed to sell Agera to generate the cash. And so when you’re selling something in a distressed

state, you know, you're not going to get 100 percent of what you thought you were going to get when -- before you started the sales process." (Ex. Z, Steinberg Tr. 200:5-201:5.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 617-654, 698-791.

255. Feuer described the negotiation as "very tough." Ex. Q, Feuer Tr. 648:4-13

**RESPONSE:** Undisputed that Feuer offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 617-654, 698-791.

256. On April 1, 2016, during the next turn of the Assignment of Notes and Liens, Steinberg struck the language "as selected by such Purchasers in their sole discretion[]." Ex. DDDD, BW-SHIP-00763011, Ex. EEEE, BW-SHIP-00763012, at 6.

**RESPONSE:** Disputed. (*See* Ex. DDDD, BW-SHIP-00763011, Ex. EEEE, BW-SHIP-00763012, at 6). The document attached as Ex. DDDD contains no such deletion.

257. Later that same day, Thomas sent an email to Steinberg, which included Steinberg's deletion. Ex. FFFF, BW-SHIP-01219005, at 6

**RESPONSE:** Disputed. (*See* Ex. FFFF, BW-SHIP-01219005, at 6). The document attached as Ex. EEEE contains no such deletion.

258. The Assignment of Note and Liens, dated April 1, 2016, Ex. JJJJ, identified the purchase price for the Agera transaction:

A purchase price equal to the product of (i) (a) the enterprise value of Agera Holdings LLC of US\$208,400,000 less (b) all indebtedness of Agera Holdings LLC and each of its direct and indirect subsidiaries (collectively, the "Agera Group") plus (c) all cash on the consolidated balance sheet of the Agera Group multiplied by (ii) 0.95 (the "Purchase Price")

**RESPONSE:** Undisputed that the Assignment of Notes and Liens, dated April 1, 2016, states that: "A purchase price equal to the product of (i) (a) the enterprise value of Agera Holdings LLC of US\$208,400,000 less (b) all indebtedness of Agera Holdings LLC and each of its direct and indirect subsidiaries (collectively, the "Agera Group") plus (c) all cash on the consolidated

balance sheet of the Agera Group multiplied by (ii) 0.95 (the “Purchase Price”).” Otherwise, disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

259. Thomas testified he would look to the Assignment of Notes and Liens regarding the method for calculating value. Ex. FF, Thomas Tr. 258-262

**RESPONSE:** Undisputed that Thomas testified as stated in Statement 259. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

260. The Assignment of Note and Liens, dated April 1, 2016, stated that noncash consideration would be calculated using the “aggregate face value” of \$90 million. Ex. JJJJ.

**RESPONSE:** Undisputed that the cited documents contains the quoted language. Any further implications of Beechwood Defendants’ Ex. JJJJ is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

261. Steinberg testified that “[Platinum] needed to transact. The transaction needed to occur .... Platinum needed to transact. That’s how Mark felt ... he needed to transact at that price.” (Ex. Z, Steinberg Tr. 268:17-269:3.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

262. Steinberg testified, “I don’t think [Nordlicht] would have sold Agera had it not been for the liquidity problem.” (Ex. Z, Steinberg Tr. 200:5-201:5.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

263. Steinberg testified that liquidity situation at the Master Fund in June 2016 created a sense of urgency surrounding the Agera transaction: I recall that ... from Platinum’s side, there was an urgency to make sure the transaction stays on track .... Because Platinum needed the liquidity ... we were expecting whatever was left of the liquidity. It was only 20, 30 million dollars that was left from the \$55 million we were going to get. Platinum needed it, and they were depending on that cash coming from this transaction ....” (Ex. Z, Steinberg Tr. 215:21216:10.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

264. The Agera transaction was done for liquidity. (Ex. Z, SanFilippo Tr. 323:21-24.)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

265. SanFilippo testified on behalf of Platinum Management that “we were in desperate need of cash at the time, I think. That had to factor into the decision” to close the Agera transaction.” (Ex. Z, SanFilippo Tr. 283:24-284:3.)

**RESPONSE:** Undisputed that SanFilippo offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

266. SanFilippo testified on behalf of Platinum Management that “it was important [to close the Agera deal] because Platinum was in need of liquidity at the time. (Ex. Z, SanFilippo Tr. 309:10-11.)

**RESPONSE:** Undisputed that SanFilippo offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

267. According to its unaudited financial statements, the Master Fund had access to only \$68,530 of cash assets on May 30, 2016. Ex. E, Winding Up Petition

**RESPONSE:** Undisputed.

268. Platinum used the Agera proceeds for liquidity purposes. (Ex. Z, SanFilippo Tr. 309:12-15.)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

269. Steinberg testified about the effect of the liquidity from the Agera transaction:

Q In connection with this transaction that closed in June of 2016, PPVA benefited by getting cash as a result of this closing, correct?

A PPVA definitely got cash as part of this closing.

Q And it benefited from that cash, correct?

A . . . there are pros and cons to the transaction. But PPVA needed that cash and benefited from the cash that it got.

Q Well, it got a liquidity boost from having that cash come in in early June of 2016, correct?

A I believe it was probably at least a month, maybe even more, where the proceeds from the Agera sale were the only cash that Platinum had . . . available to it.

Q And that allowed PPVA to continue on for that month or maybe more, correct?

A Correct . . . PPVA, the -- Platinum operated with that cash . . . probably until the liquidators came on board.

Q Which was the end of August –

A Correct. . . . I recall no other inflows came in .... for the entire month of June and maybe parts of July, the only source of liquidity that Platinum had was from the Agera transaction.

Q Okay. So that was over two months, from June 9 until the end of August of 2016, correct?

A If I recall correctly.

(Ex. Z, Steinberg Tr. 336:2-337:23.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs' Statement of Material Facts at ¶¶ 617-654, 698-791.

270. Steinberg testified that "I think that what [Nordlicht] was hoping for was a smooth Agera closing, a smooth Implant closing. He wasn't counting on this guy filing his petition in the Cayman Islands for liquidation, hoping to close the management share class, Murray not getting arrested, and raising money; and then there would have been, you know, a big Kumbaya by, you know, a lot of money coming into the fund. I think that was his plan. [But] a lot of things went wrong within a period of probably three or four weeks." (Ex. Z, Steinberg Tr. 368:22-369:9.)



**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

271. Steinberg testified that “[Nordlicht] certainly was hoping the funds would survive.” (Ex. Z, Steinberg Tr. 369:10-13.)

**RESPONSE:** Undisputed that Steinberg offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654, 698-791.

272. Agera was a complex, hard-to-value asset.

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 698-791.

273. Beechwood was uniquely well-positioned to purchase the asset because it was familiar with the company and was, therefore, able to move quickly.

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 698-791.

274. The noncash component of the transaction was akin to debt reduction for the Master Fund (Ex. Z, Steinberg Tr. 163:25-164:9; 166:25-167:7).

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 698-791.

275. The noncash component was also akin to debt reduction for PPCO, which owned roughly half of the Agera convertible note. (Ex. D, SanFilippo Tr. 290:18-291:2; SanFilippo Tr. 291:10-292:2)

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 698-791.

276. SanFilippo testified “the fact of the matter is [PPCO] got a benefit here.” (Ex. D, SanFilippo Tr. 292:14-15.)

**RESPONSE:** Undisputed that SanFilippo offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 698-791.

277. SanFilippo testified “the forgiveness of debt in this transaction is a benefit to PPCO.” (Ex. D, SanFilippo Tr. 292:14-15.)

**RESPONSE:** Undisputed that SanFilippo offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 698-791.

278. The purchase option agreement provided that the noncash component of the transaction would be valued using the face value of the securities.

**RESPONSE:** Disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 698-791.

279. Steinberg, who negotiated on behalf of the Master Fund, believed that there was sufficient collateral coverage for companies like China Horizon and PEDEVCO to cover the loans. Ex. D, Steinberg Tr. 248:15-249:12; 259:12-25

**RESPONSE:** Undisputed that Steinberg testified as concerning the issues described in statement 278. . Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 698-791.

280. SanFilippo testified regarding the China Horizon Note that “PPVA [and] Platinum Management believed that it was at fair value,” agreeing it was a “full value asset on June 9, 2016.)

**RESPONSE:** Undisputed that SanFilippo offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 698-791.

281. SanFilippo testified regarding PEDEVCO that it was not a bad deal for Platinum. (Ex. D, SanFilippo Tr. 305:21-306:3.)

**RESPONSE:** Undisputed that SanFilippo offered the quoted testimony. Any further implication as to the truth of the testimony is disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 698-791.

282. Agera declared bankruptcy in October 2019. United States Bankruptcy Court for the Southern District of New York, Case No. 19-23802

**RESPONSE:** Undisputed that Agera Energy and certain subsidiaries thereof filed a petition for relief under chapter 11 in the United States District Court for the Southern District of New York more than three years after the Agera Sale closed on August 9, 2016.

PPVA Eventually Failed

283. On June 30, 2016, the Master Fund suspended withdrawals in accordance with its limited partnership agreement. SAC; §§281-290

**RESPONSE:** Undisputed.

284. On June 30, 2016 the Feeder Funds provided notice that they had resolved that determination of the net asset value of shares would be suspended, along with their ability to redeem shares. SAC; §§281-290

**RESPONSE:** Undisputed.

285. On July 18, 2016, the General Partner retained Guidepost Solutions LLC as an Independent Oversight Management to assist with the development and implementation of a plan for the orderly realization of the Master Fund's assets. SAC; §§281-290

**RESPONSE:** Undisputed.

286. On July 28, 2016, an investor petitioned the Grand Court of the Cayman Islands to wind up the Offshore Feeder Fund on the basis of an unpaid redemption. SAC; §§281-290

**RESPONSE:** Undisputed.

287. On August 23, 2016, the Master Fund filed a "Winding Up Petition" in the Grand Court of the Cayman Islands. SAC; §§281-290

**RESPONSE:** Undisputed.

288. The "Winding Up Petition" explained that the Master Fund's financial position had deteriorated due to a combination of factors, including (a) the growing concentration of illiquid private equity-style investments in the Master Fund, which caused an imbalance between the fund's liquid and illiquid assets; (b) a decline in the price of oil, damaging the fund's oil and gas investments; (c) a delay in the availability of audited financial statements; (d) delayed monetization events in relation to the Master Fund's assets, which postponed the planned rebalancing of the Master Fund's liquidity position; (e) investor redemptions remaining unpaid; and (f) necessary borrowing to fund certain investments. SAC; §§281-290

**RESPONSE:** Undisputed that the Winding Up Petition that Platinum Management caused PPVA to file cites certain factors for PPVA's financial position.

289. The "Winding Up Petition" explained that the Master Fund's financial position had also been negatively impacted by various regulatory issues and investigations. Because these issues had been reported in the press, the Master Fund found it nearly impossible to monetize its existing positions to benefit the Master Fund and its ultimate investors. SAC; §§281-290

**RESPONSE:** Undisputed that the Winding Up Petition that Platinum Management caused PPVA to file cites certain factors for PPVA's financial position.

290. The Liquidators were thereafter appointed.

**RESPONSE:** Undisputed.

291. The Liquidators filed their Complaint on November 21, 2019 (Docket Entry, 1).

**RESPONSE:** Disputed. The Liquidators filed their Complaint on November 21, 2018. *See Trott, et ano. v. Platinum Management (NY), LLC*, No. 1:18-cv-10936 (S.D.N.Y.) (ECF No. 1).

292. After the Court granted the Beechwood Parties Partial Motion to Dismiss, the Liquidators filed their First Amended Complaint.

**RESPONSE:** Disputed. On January 25, 2019, the PPVA Plaintiffs filed their First Amended Complaint. *See Trott, et ano. v. Platinum Management (NY), LLC*, No. 1:18-cv-10936 (S.D.N.Y.) (ECF No. 159). On March 15, 2019, the Court granted in part and denied in part certain of the Beechwood Parties' motions to dismiss. *See Trott, et ano. v. Platinum Management (NY), LLC*, No. 1:18-cv-10936 (S.D.N.Y.) (ECF No. 276).

293. The Liquidators Filed their Second Amended Complaint on March 29, 2019. Docket Entry 285.

**RESPONSE:** Undisputed.

294. Paragraphs 793-845 contain the allegedly false statements by the Platinum Defendants.

**RESPONSE:** Disputed. All prior allegations are repeated and re-alleged in paragraphs 793-845, as stated in paragraphs 792, 814 and 838 of the SAC.

#### China Horizon

295. In or around March 2016, representatives of Platinum Partners Value Arbitrage Fund L.P. ("PPVA"), including Chief Legal Officer Suzanne Horowitz, General Counsel David Ottensoser and lead project manager David Steinberg, negotiated a Collateral Assignment, dated March 21, 2016, between PPVA and BAM Administrative Services LLC ("BAM") with respect to (1) a certain Demand Promissory Note, dated July 1, 2015, issued by China Horizon Investments Group ("China Horizon") to PPVA in the original principal amount of \$2,499,788 (the "China

Horizon Demand Note”), and (2) a certain Promissory Note, dated July 1, 2015, issued by China Horizon to PPVA in the original principal amount of \$2,265,084 (the “China Horizon Promissory Note” and together with the China Horizon Demand Note, the “China Horizon Notes”), as well as certain other assets. Thomas Decl. ¶ 8.

**RESPONSE:** Undisputed that statement 295 restates paragraph 8 of the Thomas Declaration and that a Collateral Assignment concerning the cited China Horizon Notes was prepared in connection with the March 2016 Restructuring and Master Guaranty. Otherwise disputed. *See* PPVA Plaintiffs’ Statement of Material Facts at ¶¶ 617-654.

PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 295 contains inadmissible hearsay.

296. Under the terms of the Collateral Assignment, PPVA agreed to assign all of its rights, title and interest in the China Horizon Notes to BAM, for the ratable benefit of the noteholders identified in that certain Amended and Restated Agency Agreement, dated as of March 21, 2016 (the “Noteholders”), who are each intended beneficiaries of that certain Master Guaranty Agreement, dated as of March 21, 2016 by each of Montsant Partners LLC (“Montsant”), Golden Gate Oil LLC (“GGO”), PPVA, and Mark A. Nordlicht, as guarantors, as collateral security for all debts, liabilities and obligations of PPVA, Montsant, and GGO owing to BAM and the Noteholders. Thomas Decl. ¶ 9.

**RESPONSE:** Undisputed that statement 296 restates paragraph 9 of the Thomas Declaration, and that the cited Collateral Assignment states that PPVA assigned its interests in the cited China Horizon Notes to the “Noteholders.”

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in

compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 296 contains inadmissible hearsay.

297. Specifically, on or about March 2, 2016, during negotiations between PPVA and BAM about a restructuring of Montsant and GGO debt, PPVA General Counsel David Ottensoser sent to me and BAM's outside counsel copies of the China Horizon Notes as a means to provide details regarding proposed new collateral. On or about March 11, 2016, PPVA through Ariel Berkowitz again provided BAM with copies of these same China Horizon Notes so that they could be accurately identified in the Collateral Assignment. Thomas Decl. ¶ 10.

**RESPONSE:** Undisputed that statement 297 restates paragraph 10 of the Thomas Declaration, which relates to information that Mr. Thomas purportedly received concerning the China Horizon Notes identified in the cited Collateral Assignment. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 296.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 297 contains inadmissible hearsay.

298. Under the Collateral Assignment, PPVA expressly granted to BAM a security interest in the following Collateral:

(a) all of [PPVA's] right, title and interest to (but not its obligations under) that certain Demand Promissory Note in the original principal amount of \$2,499,788.00, dated July 1, 2015 (as amended, restated, or otherwise modified from time to time, the "China Horizon Demand Note") issued by China Horizon Investments Group ("China Horizon") to [PPVA], together with all of [PPVA's] right, title and interest in and to all documents, instruments and agreements entered into in connection with the transactions contemplated thereby and all attendant liens, rights, claims, title, assignments and interests (including security interests) pertaining to or arising therefrom,

(b) all of [PPVA's] right, title and interest to (but not its obligations under) that certain Promissory Note in the original principal amount of \$2,265,084.00, dated July 1, 2015 (as amended, restated, or modified from time to time, the "China Horizon Promissory Note" and together with the China Horizon Demand Note, each a "Note" and collectively the "Notes")

issued by China Horizon to [PPVA], together with all of [PPVA's] right, title and interest in and to all documents, instruments and agreements entered into in connection with the transactions contemplated thereby and all attendant liens, rights, claims, title, assignments and interests (including security interests) pertaining to or arising therefrom; and

(c) all indemnity rights and all moneys and claims for moneys due and/or to become due to [PPVA] under or in respect of each item of Collateral.

Thomas Decl. ¶ 11.

**RESPONSE:** Undisputed that statement 298 restates paragraph 11 of the Thomas Declaration and quotes a portion of the cited Collateral Assignment.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 298 contains inadmissible hearsay.

299. The Collateral Assignment further grants BAM express rights to demand and receive amounts which may become due to PPVA from China Horizon, as follows:

[PPVA] hereby (i) irrevocably authorizes and directs China Horizon, and its respective successors and assigns, to make all payments and distributions due to [PPVA] under or arising under any item of Collateral directly to [BAM Admin] and (ii) irrevocably authorizes and empowers [BAM Admin] (a) to ask, demand, receive, receipt and give acquittance for any and all amounts which may be or become due or payable, or remain unpaid at any time and times to [PPVA] by China Horizon under and pursuant to any item of Collateral, (b) to endorse any checks, drafts or other orders for the payment of money payable to [PPVA] in payment thereof, and (c) in [BAM Admin's] discretion to file any claims or take any action or institute any proceeding, either in its own name or in the name of [PPVA] or otherwise, which [BAM Admin] may deem necessary or advisable to effectuate the foregoing. It is expressly understood and agreed, however, that [BAM Admin] shall not be required or obligated in any manner to make any demand or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or take any other action to collect or enforce the payment of any amounts which may have been assigned to [BAM Admin] or to which [BAM Admin] may be entitled hereunder at any time or times.

Thomas Decl. ¶ 12.



**RESPONSE:** Undisputed that statement 299 restates paragraph 12 of the Thomas Declaration and quotes a portion of the cited Collateral Assignment.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 299 contains inadmissible hearsay.

300. In January 2018, I learned through review of the PPCO Receiver’s Second Status Report to the Court that was made publicly available, that China Horizon had recovered approximately \$15 million in connection with a lawsuit it had filed against China Post. Thereafter, BAM took steps through counsel to enforce its rights under the Collateral Assignment to have certain of those proceeds applied as repayment of the China Horizon Notes. To date, BAM has been unsuccessful in its efforts to recover any amounts with respect to the China Horizon Notes. Thomas Decl. ¶ 13.

**RESPONSE:** Undisputed that statement 300 restates paragraph 13 of the Thomas Declaration and a statement as to the reported amount of a settlement of litigation by China Horizon against China Post, and certain efforts by Mr. Thomas with respect to recovery from China Horizon under the cited China Horizon Notes. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 300.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 300 contains inadmissible hearsay.

301. On March 16, 2018 I was informed via email by Alan Clingman, the CEO of China Horizon, that the China Horizon Notes that PPVA had pledged to BAM under the Collateral Assignment did not exist at March 21, 2016 when PPVA purported to pledge them, and that China Horizon was unaware of the existence of the Collateral Assignment. According to Alan Clingman, the China Horizon Notes that PPVA represented in March 2016 to BAM as valid had actually been previously cancelled with new notes issued to PPVA on or about January 1, 2016. Thomas Decl. ¶ 14.

**RESPONSE:** Undisputed that statement 301 restates paragraph 14 of the Thomas Declaration and describes representations purportedly made to Mr. Thomas by Alan Clingman. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 301.

PPVA Plaintiffs note that the Collateral Assignment referred to in paragraphs 295-301 of the Beechwood Defendants' Statement of Material Facts defines each of the referenced China Horizon Notes in its original form and "as amended, restated, or otherwise modified from time to time." See Statement 298(a) and (b) above.

The PPVA Plaintiffs 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 *Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 301 contains inadmissible hearsay.

#### VistaGen Therapeutics

302. BAM is collateral agent for the senior secured creditors to Montsant, which is a wholly-owned subsidiary of PPVA. A portion of BAM's collateral supporting Montsant debt consists of certificated equity securities of VistaGen Therapeutics, Inc. ("VistaGen"), which certificates and underlying securities are maintained in a brokerage account over which BAM has perfected control. Thomas Decl. ¶ 15.

**RESPONSE:** Undisputed that statement 302 restates paragraph 15 of the Thomas Declaration, and alleges that BAM was appointed as collateral agent for the lenders in connection

with the Montsant Loan and that certain VistaGen securities are listed as having been deposited in the Montsant Collateral Account. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 302.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 302 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 302 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 302 of the Beechwood Defendants’ Statement of Material Undisputed Facts be stricken as irrelevant.

303. Original stock certificate No. 35 issued by VistaGen is one of these securities held in the controlled account, and it states that Montsant is the rightful owner of 1,087,339 of Series B Preferred Shares of VistaGen (“Cert. 35”). Thomas Decl. ¶ 16.

**RESPONSE:** Undisputed that statement 303 restates paragraph 16 of the Thomas Declaration, and alleges that certain VistaGen securities are listed as having been deposited in the Montsant Collateral Account. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 303.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in

compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 303 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 303 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 303 of the Beechwood Defendants' Statement of Material Undisputed Facts be stricken as irrelevant.

304. Original stock certificate No. 4 issued by VistaGen is another one of these securities held in the controlled account, and it states that Montsant is the rightful owner of 490,000 of Series B Preferred Shares of VistaGen ("Cert. 4"). Thomas Decl. ¶ 17.

**RESPONSE:** Undisputed that statement 304 restates paragraph 17 of the Thomas Declaration, and alleges that certain VistaGen securities are listed as having been deposited in the Montsant Collateral Account. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 304.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 304 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 304 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 304 of the Beechwood Defendants' Statement of Material Undisputed Facts be stricken as irrelevant.

305. Original stock certificate No. 9 issued by VistaGen is another one of these securities held in the controlled account, and it states that Montsant is the rightful owner of 500,000 of Series A Convertible Preferred Shares of VistaGen ("Cert. 9"). Thomas Decl. ¶ 18.

**RESPONSE:** Undisputed that statement 305 restates paragraph 18 of the Thomas Declaration, and alleges that certain VistaGen securities are listed as having been deposited in the Montsant Collateral Account. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 305.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 305 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 305 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 305 of the Beechwood Defendants’ Statement of Material Undisputed Facts be stricken as irrelevant.

306. On December 16, 2016, I received an email from Jerry Dotson, the Chief Financial Officer of VistaGen, which attached a list of the VistaGen collateral as annotated by Mr. Dotson to indicate the then current status of those listed VistaGen securities. Thomas Decl. ¶ 19.

**RESPONSE:** Undisputed that statement 306 restates paragraph 19 of the Thomas Declaration, and purports to describe certain correspondence Thomas exchanged with Jerry Dotson, the Chief Financial Officer of VistaGen. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 306.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in

compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 306 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 306 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 306 of the Beechwood Defendants' Statement of Material Undisputed Facts be stricken as irrelevant.

307. Mr. Dotson in his annotated notes indicated that in May 2016 and June 2016, VistaGen initiated an automatic conversion of certain of its shares of its outstanding Series B Preferred Stock (which public filings of VistaGen support having happened) as well as honored a voluntary conversion initiated by Montsant of certain of its other outstanding Series B Preferred Stock. Thomas Decl. ¶ 20.

**RESPONSE:** Undisputed that statement 307 restates paragraph 20 of the Thomas Declaration, and purports to describe certain correspondence Thomas exchanged with Jerry Dotson, the Chief Financial Officer of VistaGen. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 307.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 307 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 307 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 307 of the Beechwood Defendants' Statement of Material Undisputed Facts be stricken as irrelevant.

308. Mr. Dotson further indicated in his annotated notes that as relates to Cert. 35 and Cert. 4, 60,000 shares of Series B Preferred Shares under Cert. 4 had automatically converted into an unspecified number of unregistered common shares, as well as 676,746 of Series B Preferred Shares under Cert. 35 had also automatically converted into an unspecified number of unregistered common shares. Thomas Decl. ¶ 21.

**RESPONSE:** Undisputed that statement 308 restates paragraph 21 of the Thomas Declaration, and purports to describe certain correspondence Thomas exchanged with Jerry Dotson, the Chief Financial Officer of VistaGen. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 308.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 308 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 308 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 308 of the Beechwood Defendants’ Statement of Material Undisputed Facts be stricken as irrelevant.

309. Furthermore, Mr. Dotson confirmed in his annotated notes that Montsant had also initiated a voluntary conversion of 87,500 Series B Preferred Shares under Cert. 35 on August 18, 2016, one week before PPVA was put into provisional liquidation in the Cayman Islands. Thomas Decl. ¶ 22.

**RESPONSE:** Undisputed that statement 309 restates paragraph 22 of the Thomas Declaration, and purports to describe certain correspondence Thomas exchanged with Jerry Dotson, the Chief Financial Officer of VistaGen. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 309.



The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 309 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 309 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 309 of the Beechwood Defendants’ Statement of Material Undisputed Facts be stricken as irrelevant.

310. On June 28, 2016, PPVA, through its representative Ariel Berkowitz (with a copy to David Steinberg), misrepresented to me that all 1,087,339 of Series B Preferred Shares under Cert. 35 had been converted into common shares. Thomas Decl. ¶ 23.

**RESPONSE:** Undisputed that statement 310 restates paragraph 23 of the Thomas Declaration, and that Mr. Thomas purports to recount certain correspondence he exchanged with Ariel Berkowitz, a former employee of Platinum Management, on June 28, 2016, before the JOLs were appointed. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 310.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 310 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 310 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 310 of the Beechwood Defendants' Statement of Material Undisputed Facts be stricken as irrelevant.

311. Based on Mr. Dotson's annotated notes, 87,500 of these allegedly converted shares under Cert. 35 were only voluntarily converted six weeks later in mid-August 2016 and even following this voluntary conversion, 323,093 Series B Preferred Shares under Cert. 35 remained unconverted. Thomas Decl. ¶ 24.

**RESPONSE:** Undisputed that statement 311 restates paragraph 24 of the Thomas Declaration, which recites a calculation made by Mr. Thomas based on information he claims was provided to him by Jerry Dotson, the Chief Financial Officer of VistaGen. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 311.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 311 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 311 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 311 of the Beechwood Defendants' Statement of Material Undisputed Facts be stricken as irrelevant.

312. Furthermore, Mr. Berkowitz represented as part of an inducement for BAM to release additional collateral that even without including the alleged "converted" 1,087,339 Series B Preferred Shares under Cert. 35, there still remained in the collateral account an aggregate amount of 1,955,915 Series B Preferred Shares ("Represented Shares"). Thomas Decl. ¶ 25.

**RESPONSE:** Undisputed that statement 312 restates paragraph 25 of the Thomas Declaration, and purports to describe certain correspondence Thomas exchanged with Ariel Berkowitz, a former employee of Platinum Management before the JOLs were appointed. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 312.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 312 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 312 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 312 of the Beechwood Defendants’ Statement of Material Undisputed Facts be stricken as irrelevant.

313. The schedule of collateral as annotated by Mr. Dotson, only however evidences 1,131,669 Series B Preferred Shares (“Scheduled Shares”), and when I apply the per share factor of \$3.67 (the then current trading price of VistaGen common stock) to the difference between the Represented Shares and the Scheduled Shares, it implies a imputed collateral value overstatement by Mr. Berkowitz of \$3,024,982.82, which collateral value overstatement was intended to be used as part of the collateral testing. Thomas Decl. ¶ 26.

**RESPONSE:** Undisputed that statement 313 restates paragraph 26 of the Thomas Declaration, and purports to describe a calculation made by Mr. Thomas based on information he claims was provided to him by Jerry Dotson, the Chief Financial Officer of VistaGen. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 313.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 313 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 313 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 313 of the Beechwood Defendants’ Statement of Material Undisputed Facts be stricken as irrelevant.

314. Through my further review of Mr. Dotson’s annotated notes to the collateral schedule as compared against Mr. Berkowitz’s June 29, 2016 email, I also discovered that PPVA, through Mr. Berkowitz, also overstated the collateral value of pledged Series A Preferred Shares by an amount equal to \$1,192,750 (using the same per share factor referenced above and multiplying this factor by the difference in the number of Series A Preferred Shares listed on the collateral schedule vs. the number of Series A Preferred Shares represented by Mr. Berkowitz to exist as part of the collateral pool). Thomas Decl. ¶ 27.

**RESPONSE:** Undisputed that statement 314 restates paragraph 27 of the Thomas Declaration, which describes calculation made by Mr. Thomas based on information he claims was provided to him by Jerry Dotson, the Chief Financial Officer of VistaGen. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 314.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 314 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 314 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 314 of the Beechwood Defendants' Statement of Material Undisputed Facts be stricken as irrelevant.

315. On September 23, 2016, in an effort to track down collateral missing from the Montsant collateral account, I contacted the then liquidators of PPVA, Barry Lynch and Matthew Wright, via email to raise the issue referenced above that certain VistaGen securities that formed part of the Montsant collateral pledged to BAM had been automatically converted into an unknown number of common shares without a redeposit of those common shares into the Montsant collateral account. Thomas Decl. ¶ 28.

**RESPONSE:** Undisputed that statement 315 restates paragraph 28 of the Thomas Declaration, which purports to describe certain correspondence he exchanged with the JOLs on September 23, 2016. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 315.

The PPVA Plaintiffs 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 *Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 315 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 315 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 315 of the Beechwood Defendants' Statement of Material Undisputed Facts be stricken as irrelevant.

316. On Monday September 26, 2016, both Barry Lynch and Matthew Wright attended a live meeting at the offices of Beechwood Re Holdings Inc. in New York with myself and Dhruv Narain to discuss my email, during which meeting it was disclosed to Mr. Narain and I that the VistaGen common shares that had been issued as part of the automatic conversion referenced

above had been sold thereafter in a market trade with the proceeds of that trade distributed to PPVA and presumably expended to fund PPVA operating expenses. Thomas Decl. ¶ 29.

**RESPONSE:** Undisputed that statement 316 restates paragraph 29 of the Thomas Declaration, and purports to describe a meeting between Mr. Thomas, one of the persons who was acting as a JOL at that time, and the JOL's colleague on September 26, 2016. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 316.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 316 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 316 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 316 of the Beechwood Defendants' Statement of Material Undisputed Facts be stricken as irrelevant

317. To date no proceeds of the conversions of the pledged VistaGen securities referenced above, whether in the form of common stock proceeds or cash proceeds from the sale of such common stock proceeds, have been redeposited into the Montsant collateral account, nor has PPVA undertaken to otherwise segregate and/or replace any such proceeds pending the resolution of claims by the Beechwood Entities and PPVA against each other. Thomas Decl. ¶ 30.

**RESPONSE:** Undisputed that statement 317 restates paragraph 30 of the Thomas Declaration, and purports to describe the status of certain VistaGen securities and the Montsant Collateral Account. The Beechwood Defendants have not provided or cited to any documentary evidence to support statement 317.

The PPVA Plaintiffs 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 Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 393-96 (S.D.N.Y. 2015) (disregarding portions of statement not in compliance with Local Rule 56.1). PPVA Plaintiffs further object on the grounds that statement 317 contains inadmissible hearsay.

PPVA Plaintiffs further note that paragraph 317 is not related to any matter alleged in the SAC, and that Beechwood has not asserted a claim in this action relating to any VistaGen securities. Under the circumstances, PPVA Plaintiffs respectfully request that paragraph 317 of the Beechwood Defendants’ Statement of Material Undisputed Facts be stricken as irrelevant



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New York, New York

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