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), Plaintiffs, - against - PLATINUM MANAGEMENT (NY) LLC, *et al.*, Defendants.	Civil Action No. 18-cv-10936 (JSR)

PLAINTIFFS' OPPOSITION TO DEFENDANT DAVID BODNER'S MOTION *IN LIMINE* TO PRECLUDE REFERENCES AT TRIAL TO PUNITIVE DAMAGES AND TO EXCLUDE PUNITIVE DAMAGES JURY INSTRUCTIONS

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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 "**Joint Official Liquidators**") and Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) ("**PPVA**" and collectively with the Joint Official Liquidators, the "**JOLs**") submit this opposition to the Motion *in Limine* to Preclude References at Trial to Punitive Damages and to Exclude Punitive Damages Jury Instructions ("**Third Motion *in Limine***") filed by Defendant David Bodner ("**Bodner**"). *See* (ECF No. 671).[1]

PRELIMINARY STATEMENT[2]

"Under New York law, whether to award punitive damages and how much to award are 'primarily questions which reside in the sound discretion of the original trier of the facts.'" *Greenbaum v. Handelsbanken*, 67 F.Supp.2d 228, 267 (S.D.N.Y. 1999) (quoting *Nardelli v. Stamberg*, 44 N.Y.2d 500, 503 (1978)). Bodner seeks to usurp the jury's role through his motion *in limine*, arguing that "[t]he JOLs' breach of fiduciary duty and other claims all have their 'genesis in' contract" and that "nothing about the alleged conduct at issue even approaches 'a pattern of similar conduct directed at the public generally.'" (ECF No. 671 at pp. 4-5) (quoting *Icebox-Scoops, Inc. v. Finanz St. Honore, B.V.*, 715 F. App'x 54, 56 (2d Cir. 2017)).

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[1] The ECF citations herein refer to the Court's docket in the *Trott* litigation. *See Trott, et al. v. Platinum Management (NY) LLC, et al.*, No. 1:18-cv-10936 (S.D.N.Y.).

[2] The JOLs note that the instant motion seeks only to exclude references to, and jury instructions concerning, punitive damages recoverable as against Bodner resulting from alleged breaches of fiduciary duties arising out of the PPVA overvaluation scheme. Bodner's motion does not seek to exclude, as against Bodner or any other defendant, evidence concerning properly recoverable consequential damages arising out of that scheme. Properly recoverable damages resulting from this overvaluation scheme — not challenged in Bodner's instant motion — include the unearned management and incentive fees paid to Platinum Management (NY) LLC and/or its partners, and all damages flowing from reasonably foreseeable insider transactions that Platinum Management (NY) LLC coordinated with its alter ego, Beechwood, arising out of the overvaluation scheme. One such transaction involved the sale of PPVA's indirect ownership interest in Agera Enery to Beechwood at an unconscionable discount. Bodner's instant motion concerning punitive damages does not address, and does not seek to exclude, such properly recoverable consequential damages.

Bodner's arguments misconstrue the claims against him. And Bodner's arguments ignore controlling New York law regarding the availability of punitive damages.

Punitive damages are allowed "where the wrong complained of is morally culpable, or is actuated by evil and reprehensible motives, not only to punish the defendant but to deter him, as well as others who might otherwise be so prompted, from indulging in similar conduct in the future." *Walker v. Sheldon*, 10 N.Y.2d 401, 403 (N.Y. 1961). As relevant here, "those who deliberately and cool[l]y engaged in a far-flung fraudulent scheme, systemically conducted for profit, are much more likely to pause and consider the consequences if they have to pay more than the actual loss suffered by an individual plaintiff." *Id.* at 499.

The evidence presented at trial will amply demonstrate Bodner's involvement in the overvaluation of PPVA's net asset value, activity which was fraudulent and in breach of the applicable fiduciary duty. As detailed below, the JOLs' claims against Bodner are distinct from, and independent of, any underlying breach of contract. Further, even if the Court were to find that Bodner's tortious conduct "has its genesis in [a] contractual relationship" — and, as explained below, that is not so — the jury will be presented with evidence demonstrating that Bodner's conduct "(1) is actionable as an independent tort; (2) was sufficiently egregious; and (3) was directed not only against [PPVA], but was part of a pattern of behavior aimed at the public generally." *Tianbo Huang v. iTV Media, Inc.*, 79 F.Supp.3d 458, 462 (E.D.N.Y. 2015) (quoting *Leviton Mfg. Co., Inc. v. Reeve*, 942 F.Supp.2d 244, 270 (E.D.N.Y. 2013); *New York Univ. v. Cont'l Ins. Co.*, 87 N.Y.2d 308, 315 (N.Y. 1995)). While Bodner pretends that Plaintiffs make no allegations, and have no evidence, to satisfy the "public generally" prong of this analysis, that is precisely what Plaintiffs have alleged, and intend to prove, here: the overvaluation scheme

perpetrated by Bodner and others was aimed at investors drawn from the community and directly harmed fund investors who believed PPVA's assets were being fairly assessed and managed.

For these reasons, and as discussed further herein, Bodner should not be permitted to divest the jury of its "sound discretion" in deciding "whether to award punitive damages and how much to award." *Greenbaum*, 67 F.Supp.2d at 267.

LEGAL STANDARD

"A district court's inherent authority to manage the course of its trials encompasses the right to rule on motions *in limine*." *Highland Capital Mgmt., L.P. v. Schneider*, 551 F. Supp. 2d 173, 176 (S.D.N.Y. 2008). An *in limine* motion is intended to "aid the trial process by enabling the Court to rule in advance of trial on the relevance of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument at, or interruption of, the trial." *Palmieri v. Defaria*, 88 F.3d 136, 141 (2d Cir. 1996). Thus, the Court is called "to make a preliminary determination on the admissibility of evidence under Rule 104 of the Federal Rules of Evidence." *Highland Capital Mgmt., L.P. v. Schneider*, 379 F. Supp. 2d 461, 467 (S.D.N.Y. 2005) (citation omitted). "Only evidence that is 'clearly inadmissible on all potential grounds' should be excluded on a motion *in limine*." *Walsh v. Scarsdale Union Free School Dist.*, No. 16 Civ. 3558 (NSR), 2019 WL 6789581, at *3 (S.D.N.Y. Dec. 12, 2019) (quoting *United States v. Paredes*, 176 F. Supp. 2d 179, 181 (S.D.N.Y. 2001)). Generally a court should admit relevant evidence that is "of consequence in determining the action" or that tends "to make a fact more or less probable." *Thomas v. West*, NO. 14 CV 4459-LTS, 2019 WL 1206696, at *1 (S.D.N.Y. Mar. 14, 2019) (quoting Fed. R. Evid. 401, 402). Additionally, blanket requests to preclude evidence of certain damages are improperly vague and courts should reserve judgment until such evidence can be evaluated in the appropriate context at trial. *See id.* at *2 (citing *Nat'l Union Fire Ins. Co. of Pittsburgh*, 937 F. Supp. 276, 287 (S.D.N.Y. 1996)).

ARGUMENT

A. The JOLs' Claims Against Bodner Are Actionable and Independent Torts

Bodner's argument rests on the faulty premise that the Plaintiffs' fraud and breach of fiduciary duty claims against him would not exist but for the contractual relationships established by the Investment Management Agreement among Platinum Management (NY) LLC, PPVA and various feeder funds ("**IMA**") or the PPVA Limited Partnership Agreement ("**LPA**"). The fundamental flaw in this argument is that fraud and fiduciary duty claims can – and, in this case, do – arise ***outside*** of a contractual relationship.

To be clear, Plaintiffs have not asserted a breach of contract claim against Bodner; indeed, as Bodner acknowledges in his own motion, "Bodner [was] not a party to either the IMA or the LPA." (ECF No. 671 at p. 4). But Bodner suggests, nevertheless, that these contracts are the linchpin of the claims against him. That is not so. The remaining claims against Bodner all sound in fiduciary duty and fraud, not contract. As alleged by the JOLs, "[t]he harm to PPVA resulted from actions constituting conspiracy, fraud, deceit, asset dissipation and breaches of fiduciary obligations." (ECF No. 226 at ¶ 4).

And, contrary to Bodner's suggestion, there has been no finding during any point in this litigation that "[t]he JOLs' breach of fiduciary duty and other [*i.e.*, fraud] claims all have their genesis in the IMA and the LPA." (ECF No. 671 at 9). Indeed, the Court's previous analyses of these claims have turned not on contract, but instead on the nature of Bodner's relations and on the nature of the misconduct alleged against him.

When ruling on Bodner's motion for summary judgment, this Court held as follows:

> [A]lthough Bodner did not have a title at Platinum or contractually-defined control over Platinum, other evidence creates a genuine dispute over whether Bodner owed a fiduciary duty to PPVA. "It is fundamental that fiduciary liability is not dependent solely upon an agreement or contractual relation between the fiduciary and beneficiary but results from the relation." *EBC I, Inc. v. Goldman, Sachs & Co.*, 5

> N.Y.3d 11, 20 (N.Y. 2005).[[3]] "The existence of a fiduciary relationship is often a fact intensive inquiry appropriate for a jury." *Faulkner v. Arista Records LLC*, 602 F. Supp. 2d 470, 482 (S.D.N.Y. 2009).

(ECF No. 624 at p. 24). The Court then proceeded to cite the following evidence – none of which arises from or pertains to any underlying contract – which "shows that Bodner exerted significant influence over the affairs of Platinum, based upon which the jury may find that he owed a fiduciary duty to PPVA, Platinum's biggest fund":

> First, in a chain of emails, Nordlicht notes that Platinum is being run by "decisions by committee" of "3 people," referring to himself, Huberfeld, and Bodner. ECF No. 577, Ex. 40. On January 11, 2016, Platinum Management employees made a presentation discussing various ways to address financial and liquidity issues that Platinum faced; the last slide, entitled "David and Murray" (referring to Bodner and Huberfeld), asked "What do we need from David and Murray? Help us figure out short-term liquidity issues, Help us close investment into PPCO and the management share class, [and] renegotiate the Beechwood note." ECF No. 577, Ex. 49.
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> Second, Michael Katz, an advisor to Platinum Management, testified in his deposition that Bodner and Huberfeld operated as the senior partners of Platinum, and Nordlicht as more of a junior partner. See Katz Dep. 34:22-35:24; see also Fuchs Dep. 63:2-10. Katz also testified that Bodner was considered the "leader of the [Platinum Management] organization" because, during Platinum Management meetings, "if there was any disagreement as to what had to be done, [Bodner] was consulted and he had the last word." Katz Dep. 266:10-267:20.
>
> Third, according to Fuchs' deposition testimony, at a dinner meeting in January 2015 Bodner told Nordlicht "that the valuations were not right, that Mark Nordlicht wasn't properly marking the fund, and [that] he has to redo the fund because he . . . doesn't like the way the valuations were doing." Fuchs Dep. 28:8-13. Indeed, at the same meeting, Bodner demanded that "[u]ntil we straighten out this fund properly, no partner's taking any money out." Fuchs Dep. 27:8-10.

(*Id.* at pp. 24–25).

[3] The New York Court of Appeals in *EBC I* went on to observe that a fiduciary duty claim exists where, as here, the "complaining party sets forth allegations that, apart from the terms of the contract," demonstrate "a relationship of higher trust." *Id.*

Likewise, the Court's prior analyses of the JOLs' fraud claims against Bodner do not turn on, or arise from, any underlying contract breach. When addressing Bodner's motion to dismiss, this Court held that Plaintiffs adequately pled "facts that give rise to a strong inference of fraudulent intent for each of the moving Platinum Defendants." (ECF 290 at p. 50). Specifically, as to Bodner, the Court stated as follows, without any reference to the IMA or LPA:

> Bodner and Huberfeld, for example, are alleged to be the founders and owners of Platinum Management who stood to benefit from the inflation of PPVA's NAV. They are also alleged to be founders and owners of the Beechwood Entities, which were created for the express purpose of "provid[ing] Platinum Management with transaction partners that could be used to justify . . . PPVA's inflated NAV.". . . These facts are only a portion of those alleged in the FAC, but they are sufficient by themselves to "give rise to a strong inference of fraudulent intent." Shields, 25 F.3d at 1128. Moreover, since there is no dispute that PPVA justifiably relied on Platinum Management's misstatements of its NAV, or that PPVA was damaged by the payment of inflated performance fees, plaintiffs have stated a claim for fraud against the Platinum Defendants.

(*Id.* at 50-51).[4]

The allegations and evidence previously cited by the Court are sufficient to demonstrate that the JOLs' fraud and fiduciary duty claims are distinct from, and not dependent upon, any underlying breach of contract. This alone should end the question of whether punitive damages are properly considered by the jury here. *Cf. Deng v. 278 Gramercy Park Group LLC*, 2014 U.S. Dist.

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[4] Similarly, when addressing the JOLs' claims for constructive fraud, the Court made no mention of claims arising from a contract, and found as follows:

> Because plaintiffs have plausibly alleged that the moving Platinum Defendants owed PPVA a fiduciary duty, they have also stated a claim for constructive fraud. See Brown, 432 N.Y.S.2d at 193-94 ("The elements of a cause of action to recover for constructive fraud are the same as those to recover for actual fraud with the crucial exception that the element of scienter upon the part of the defendant . . . is replaced by a requirement that the plaintiff prove the existence of a fiduciary or confidential relationship . . . .").

(*Id.* at pp. 52-54).

LEXIS 33724, *50 (S.D.N.Y. 2014) (noting that "under New York law. . . fraud claims *trigger* imposition of punitive damages"). The fundamental premise of Bodner's motion — that all of Plaintiffs' claims against him have their "genesis in" contract — is flatly incorrect.

For this reason, and others, Bodner's primary reliance on the unpublished summary order from the Second Circuit in *Icebox-Scoops, Inc. v. Finanz St. Honore, B.V., et al.*, 715 F. App'x 54 (2d Cir. 2017) is misplaced. *Icebox-Scoops* presents a scenario where the harm animating the plaintiff's breach of contract and fraud claims flowed directly from an alleged breach of an exclusive contract between the plaintiff and the defendant. That is far from the situation presented here. There was no relevant contract in place with Bodner, and there is no breach of contract claim asserted against him. While the IMA and LPA established Platinum Management as the investment manager and general partner for PPVA and set forth certain duties of Platinum Management, such as the calculation of PPVA's net asset value, the fiduciary duties Bodner owed to PPVA, and his fiduciary breaches and fraudulent misconduct in connection with the overvaluation scheme, arose outside of and wholly apart from those agreements.[5]

B. The Claims Against Bodner Are Based Upon Egregious Conduct that Harmed the Public

Icebox-Scoops is inapposite for another reason critically important to Bodner's argument: unlike here, there was no showing of "public harm" arising from the fraudulent misconduct alleged, all of which pertained to the alleged breach of a single exclusive contract between two private parties. This distinction is of central importance, particularly given Bodner's repeated reliance upon the fiction that no public-directed conduct is at issue here.

[5] Indeed, Bodner's non-participation in these agreements was by his own design and part of the fraudulent operation of Platinum. By hiding behind a "grantor trust" set up for the benefit of several companies indirectly connected to him, Bodner tried to write himself out of the picture. It should be noted that this is not the first time Bodner has tried to hide his participation. *See* Bixter Decl. Ex. 32.

Punitive damages are properly recoverable on claims having a "genesis" in contract where the conduct alleged "(1) is actionable as an independent tort; (2) was sufficiently egregious; and (3) was directed not only against [PPVA], but was part of a pattern of behavior aimed at the public generally." *Tianbo Huang*, 79 F.Supp.3d at 462 (E.D.N.Y. 2015). Bodner's motion takes issue only with the third prong of this analysis, arguing "[t]he JOLs have made no allegation, and there is no evidence in the case, to support the exacting 'public harm' standard with respect to Bodner." (ECF No. 671 at p. 4). Bodner's argument is wrong on the law and wrong on the facts.

The Second Circuit recently highlighted an important distinction recognized by the New York Court of Appeals with respect to the "public harm" standard for punitive damages in claims having their "genesis" in contract. In *Pyskaty v. Wide World of Cars, LLC*, 856 F.3d 216, 226 (2d Cir. 2017), the Second Circuit observed that "[i]n determining whether the [public harm] requirement is satisfied, the New York Court of Appeals has invoked a distinction between a gross and wanton fraud upon the public and an isolated transaction incident to an otherwise legitimate business, the latter of which does not constitute conduct aimed at the public generally." *Pyskaty v. Wide World of Cars, LLC*, 856 F.3d 216, 226 (2d Cir. 2017) (quotation marks and citations omitted). Alternatively stated, punitive damages are unavailable under New York law where torts having their "genesis in contract" involved only "an isolated transaction incident for an otherwise legitimate business." *Tianbo Huang*, 79 F.Supp.3d 462 (E.D.N.Y. 2015); *Pyskaty*, 856 F.3d at 226.

In a similar vein, this Court has also noted that "'[i]t is not essential that the plaintiff allege a pattern of conduct directed at the public in general to assert a claim for punitive damages.'" *Koch v. Greenberg*, 14 F.Supp.3d 247, 273 (S.D.N.Y. 2014) (quoting *Pure Power Boot Camp v. Warrior Fitness Boot Camp*, 813 F.Supp.2d 489, 526 (S.D.N.Y. 2011)). What is necessary is "'to allege fraud that is founded upon such moral indifference as to be aggravated by evil or to be

demonstrative of a criminal indifference to civil obligations.'" *Id.* at 273 (quoting *Rush v. Oppenheimer & Co., Inc.*, 596 F. Supp. 1529, 1532 (S.D.N.Y. 1984)).

Bodner's "public harm" argument seeks, in effect, to recast the claims against him as milquetoast torts arising from legitimate transactions and private contracts, without consequences beyond the parties to the underlying contract. But even a brief perusal of Plaintiffs' allegations, and of the evidence that Plaintiffs will present to the jury, shows this to be very, very far from the case. At no point was the overvaluation scheme incident to "an otherwise legitimate business"; this was a scheme meant to unjustly enrich Bodner and others through management and incentive fees that were unearned. And the harm caused by the overvaluation scheme on which the JOLs' claims against Bodner are premised was intended to be — and indisputably was — far-reaching in scope, leading directly to PPVA's collapse and to enrichment of its perpetrators at the expense of PPVA's investors.

No defendant in this case disputes that PPVA was a master fund domiciled in the Cayman Islands, which functioned as an investment vehicle for investors drawn to the lucrative returns in the hedge fund industry. PPVA's investors were comprised of independently wealthy individuals, Hebrew day schools, and police unions, among others. The fraudulent scheme perpetrated against the public by Platinum Management and those operating it was not unlike Bernard Madoff's well-known Ponzi scheme. Madoff's scheme involved an entity — Bernard L. Madoff Investment Securities LLC ("**BLMIS**") — that fronted as a legitimate securities broker-dealer while operating a fraudulent investment advisory business. As detailed by the Second Circuit:

> [BLMIS] collected funds from brokerage customers and purported to invest those fund on behalf of the customers, but in fact never invested the money. Instead, it sent its customers fabricated monthly or quarterly account statements showing fictitious trading activity and returns that had never actually been generated. When customers sought to withdraw money, including fictitious profits reflected on their account statements, from their accounts, BLMIS satisfied those requests or

> demands with the proceeds of other customers' investments. The scheme collapsed in December 2008, when infusions of new capital were insufficient to support the withdrawals that customers sought.

In re: Bernard L. Madoff Investment Securities LLC, No. 19-0429 (2d Cir. Sept. 24, 2020) (ECF No. 185-1 at 6-7). Platinum Management's overvaluation scheme operated in a similar manner — it recruited individual investors from the community with promises of lucrative returns while its partners failed to disclose liquidity issues and valued its assets at levels that could never be supported by the actual value of those assets. Accordingly, once investors grew suspicious of delayed redemptions and demanded their money, PPVA suffered the same fate as Madoff's investment advisory business, as there was insufficient capital to support the withdrawals investors were demanding.

The overvaluation scheme perpetrated by Bodner and others had far-reaching, but foreseeable consequences, to PPVA and its aforementioned investors. On August 23, 2016, Mark Nordlicht — as the Chief Investment Officer of Platinum Management — executed an affidavit in connection with the Cayman liquidation filed on behalf of PPVA ("**Nordlicht Affidavit**"). *See* October 19, 2020 Declaration of Richard A. Bixter, Jr. in Opposition to Defendant David Bodner's Motions in *Limine* ("**Bixter Decl.**") at Ex. 29. The Nordlicht Affidavit proceeds to detail "[t]he assets of the Master Fund . . . as at 30 May 2016" and states "[i]t is notable that the approximate value of the Master Fund's assets is close to US $1,093,000,000." *Id.* at ¶¶ 32-33. However, and as Mr. Trott will testify at trial, when the JOLs proceeded to investigate PPVA's financial condition, they learned this alleged billion dollar hedge fund was insolvent with creditor claims exceeding $400 million. As has been previously briefed for this Court, Bodner was at the heart of the overvaluation scheme and the management of Platinum Management and PPVA. *See* Dkt. No. 576 at ¶ 2 (Bodner as a founder of PPVA); ¶¶ 178-218 (Bodner's role and presence at Platinum

Management and participation in partner meetings, with a corner office at Platinum Management until at least May 2016); ¶¶ 353-411 (creation of Beechwood and Bodner's ownership in Beechwood); ¶ 433 (Bodner being provided position limits for Beechwood and walking through private deal summaries).

As the investigation into PPVA's collapse continued, the actions taken by Bodner and the other Defendants became the subject of other legal actions initiated by the U.S. Securities and Exchange Commission and U.S. Attorneys' Offices for the Southern and Eastern Districts of New York. Each one of these actions made clear the fraud committed by Bodner and others was directed at public investors and entities.

> On the surface, PPVA and PPCO were highly successful funds. As of March 2016, Platinum Management reported that PPVA had almost $1.1 billion in AUM, and PPCO had almost $600 million in AUM. Also, PPVA reported a virtually unbroken string of strong and steady performance, with its NAV going up each year from 2003 to 2015, for an average annual return of 17%, with typically small gains reported for 85% of the months throughout this period. Beneath the surface, however, lurked serious problems, which defendants kept from investors for years. In fact, from at least 2012, PPVA faced recurring liquidity crises. There was a growing liquidity mismatch, as the fund became increasingly concentrated in illiquid investments, including equity and debt positions in start-up companies, many of which were not publicly traded. And yet, many investors could and did demand their money back every quarter. Although the liquidity crisis extended for years, Platinum Management did not – for whatever reason – sell enough of its illiquid portfolio to overcome this crisis. Instead, it took cash out of more liquid strategies, thus skewing the balance of the portfolio towards greater illiquidity even while the liquidity pressures remained.

S.E.C. v. Platinum Management (NY) LLC, et al., No. 1:16-cv-6848 (E.D.N.Y.) (ECF No. 1 at ¶¶ 42-43).

> In or about and between 2011 and 2016, the defendants Mark Nordlicht and David Levy, together with others, engage in two separate schemes: (i) a scheme to defraud investors and prospective investors in funds managed by Platinum; and (ii) a scheme to defraud third-party holders of the [Black Elk] bonds.

United States v. Nordlicht, et al., No. 1:16-cr-640 (E.D.N.Y.) (ECF No. 1 at ¶ 41).

> It was part and an object of the conspiracy that Norman Seabrook and Murray Huberfeld, the defendants, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme to defraud and to deprive members of COBA of their intangible right to honest services of Seabrook, its President, would and did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice . . . to wit, Huberfeld agreed to pay kickbacks to Seabrook in exchange for Seabrook's agreement to direct write transfer of millions of dollars of COBA funds to a Manhattan hedge fund operated by Huberfeld and others.

United States v. Seabrook, et al., No. 1:16-cr-467 (S.D.N.Y.) (ECF No. 10).

Lastly, Bodner and others were able to maintain their overvaluation scheme by purposefully concealing information from the public that would have raised investor suspicion and led to investigation. *See, e.g.*, Bixter Decl. Ex. 30 at pp. 53-56 (2014 Audited Financial Statements failing to mention Beechwood by name or as an affiliate, referring to Beechwood instead as only "an investor in the Feeder Funds"); *Id*. at Ex. 31 (Platinum Management (NY) LLC's 2014 Form ADV to the SEC – failing to list Bodner, Huberfeld, and Fuchs as investment advisors and listing Mark Nordlicht as owning 75% or more of Platinum Management in his personal capacity).

Under these circumstances, even if Plaintiffs' tort claims are viewed as having their "genesis" in contract — and they do not — the fraudulent overvaluation scheme perpetrated by Bodner and the other Defendants was part of a pattern of behavior aimed at the public generally and a jury should be permitted to consider whether an award of punitive damages is appropriate.

CONCLUSION

For the reasons set forth above, Plaintiffs request this Court issue an Order denying Bodner's Third Motion *in Limine*. The fraud and breach of fiduciary duty claims that remain against Bodner arise outside any contractual relationship and Bodner should not be permitted to divest the jury of its role in determining whether an award of punitive damages is appropriate.

Dated: October 19, 2020
New York, New York

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