

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.

**DECLARATION OF MARTIN TROTT IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO DEFENDANT DAVID BODNER'S
MOTION PURSUANT TO NEW YORK GENERAL OBLIGATIONS LAW § 15-108**

I, **MARTIN TROTT**, a citizen of the United Kingdom of Great Britain and Northern Ireland and a resident of the Cayman Islands, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. My colleague, Christopher Smith, and I are the Court-appointed Joint Official Liquidators and Foreign Representatives (the "**JOLs**") of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) ("**PPVA**" and collectively with the JOLs, "**Plaintiffs**" or "**PPVA Parties**"), with authority pursuant to Orders of the Grand Court of the Cayman Islands and the United States Bankruptcy Court of the Southern District of New York to liquidate the assets of PPVA and bring litigation on its behalf.

2. I am familiar with the facts and circumstances underlying this dispute, and unless otherwise indicated, all statements contained herein are based upon personal knowledge.

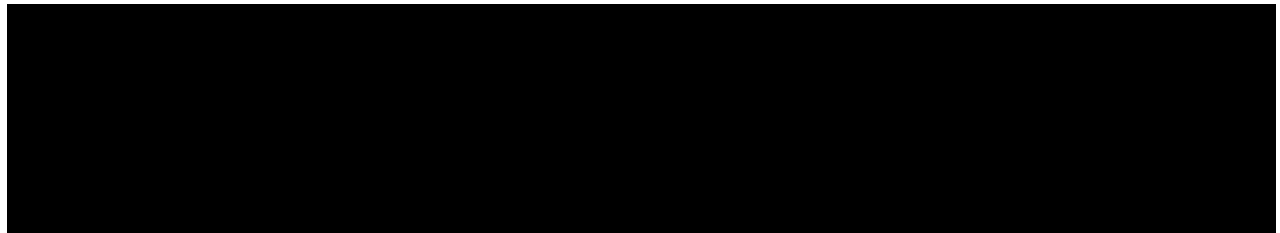
3. I make this declaration in support of Plaintiffs' Opposition to the Motion of David Bodner ("**Bodner**") pursuant to New York General Obligations Law § 15-108 ("**Section 15-108**"), seeking to offset the damages awarded by the jury on December 20, 2022 in the amount of \$8,150,601.80 (the "**Damages Verdict**") (ECF No. 789)¹ on account of settlements entered into by and among the PPVA Parties and the Settling Defendants.²

I. The Full Scope of the PPVA Parties' Claims in this Case

4. On March 29, 2019, the PPVA Parties filed their Second Amended Complaint in this case (the "**SAC**") [ECF No. 285], asserting claims including breach of fiduciary duty, fraud, and aiding and abetting against approximately ninety (90) defendants in connection with the numerous schemes and transactions that resulted in the implosion of PPVA in 2016. The 185 page SAC chronicles the various schemes and transactions orchestrated by the defendants following the November 2012 explosion on the oil rig operated by Black Elk Offshore Operations, LLC ("**Black Elk**"). The SAC categorizes these schemes as follows:

- The First Scheme: The fraudulent inflation of the net asset value ("**NAV**") of PPVA, which enabled the payment of unearned management and incentive fees as well as other damages suffered by PPVA as a result of the overvaluation (SAC at ¶ 9).
- The Second Scheme: The transfer or encumbrance of nearly all of PPVA's valuable assets for the benefit of Beechwood, select insiders, as well as Platinum Partners Credit Opportunities Master Fund L.P. ("**PPCO**") (SAC at ¶ 10)

¹ All docket citations refer to the case captioned *Trott v. Platinum Management (NY) LLC*, No. 18-cv-10936-JSR.



5. In addition to the First Scheme overvaluation damages that were raised at trial against Bodner, the SAC seeks damages in connection with the following Second Scheme transactions, all of which were live and active claims against various Settling Defendants at the time of settlement:

- The Agera Sale: On the day following the arrest of Murray Huberfeld, the June 9, 2016 transfer of one of PPVA's last valuable assets, a majority interest in Agera Energy LLC, worth between \$200-\$300 million, to Beechwood and its insurance clients for little to no consideration. (SAC at ¶¶ 607-672). The PPVA Parties sought damages of \$93.8 million in connection with the Agera Sale. *See* November 14, 2019 Expert Report of Ronald G. Quintero [ECF No. 639 at Ex. 1] ("**Quintero Report**") at ¶ 40.
- The Black Elk Bond Subordination: The use of Beechwood to rig a proposed amendment to the indenture governing secured bonds issued by Black Elk, in order to use proceeds of the sale of Black Elk to pay insiders holding Black Elk preferred equity, rather than secured bondholders such as PPVA. (SAC at ¶¶ 440-515). The PPVA Parties sought \$18 million in damages in connection with the Black Elk scheme. *See* Quintero Report at ¶ 52.
- The Black Elk Bond Buyback: Following the sale of substantially all of Black Elk's assets, PPVA's January 30, 2015 repurchase of worthless Black Elk secured bonds temporarily held by Beechwood to effectuate the Black Elk scheme. (SAC at ¶¶ 516-528). The PPVA Parties sought \$35.5 million in damages in connection with the Black Elk Bond Buyback. *See* Quintero Report at ¶ 61.
- The Montsant Collateral Account: The use of PPVA subsidiary Montsant Partners, LLC ("**Montsant**") to provide Beechwood with security interests in various liquid and collectable assets, such as a promissory note issued by Implant Sciences Corporation ("**Implant**") and public securities issued by Navidea, Urogen and Vistagen. (SAC at ¶¶ 556-567).
- The Nordlicht Side Letter: The January 2016 side letter requiring PPVA and any of its subsidiaries and affiliates holding the valuable proceeds from the sale of Implant to use such proceeds to pay approximately \$37 million of uncollectable debt owed to Beechwood by Golden Gate Oil, LLC ("**GGO**"), for no benefit to PPVA. (SAC at ¶¶ 568-583).
- The March 2016 Restructuring: A series of March 2016 transactions among PPVA, Beechwood and PPCO, by which tens of millions of assets were stripped from PPVA and assets were encumbered by Platinum Management for the benefit of PPCO and Beechwood. (SAC at ¶¶ 584-606)

- The Security Lock-Up: The series of transactions, documents and promissory notes that PPVA entered into with select redeeming investors and certain creditors of PPVA, by which those investors and creditors preferentially were granted cash or security interests on all assets of PPVA (and in some cases subsidiary assets) to collateralize tens of millions of dollars of equity redemption claims or otherwise unsecured debt for no additional consideration (SAC at ¶¶ 673-762).

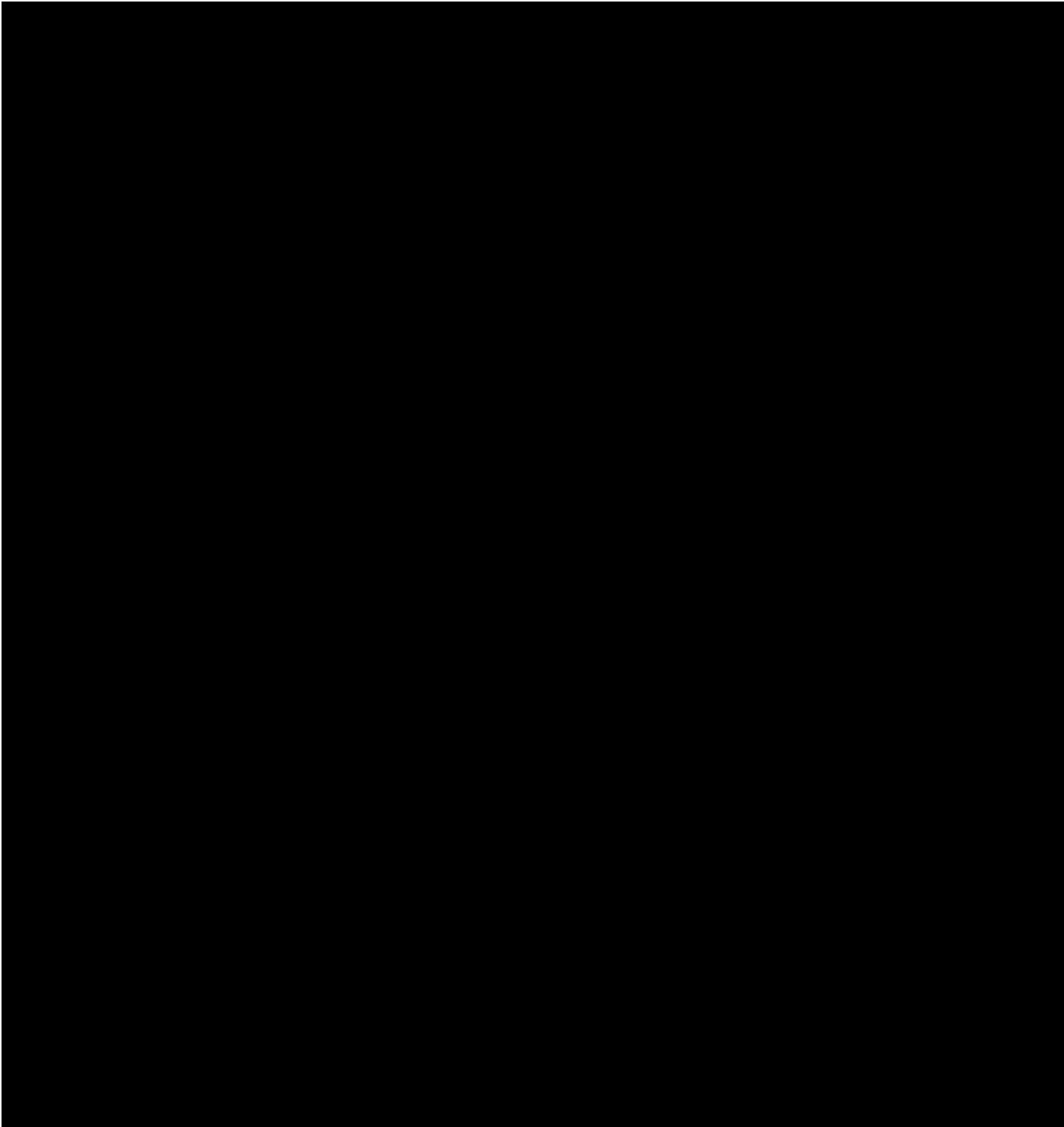
The following summarizes **the \$494.4 million** in damages sought by the PPVA Parties in connection with the various schemes and transactions set forth in the SAC:

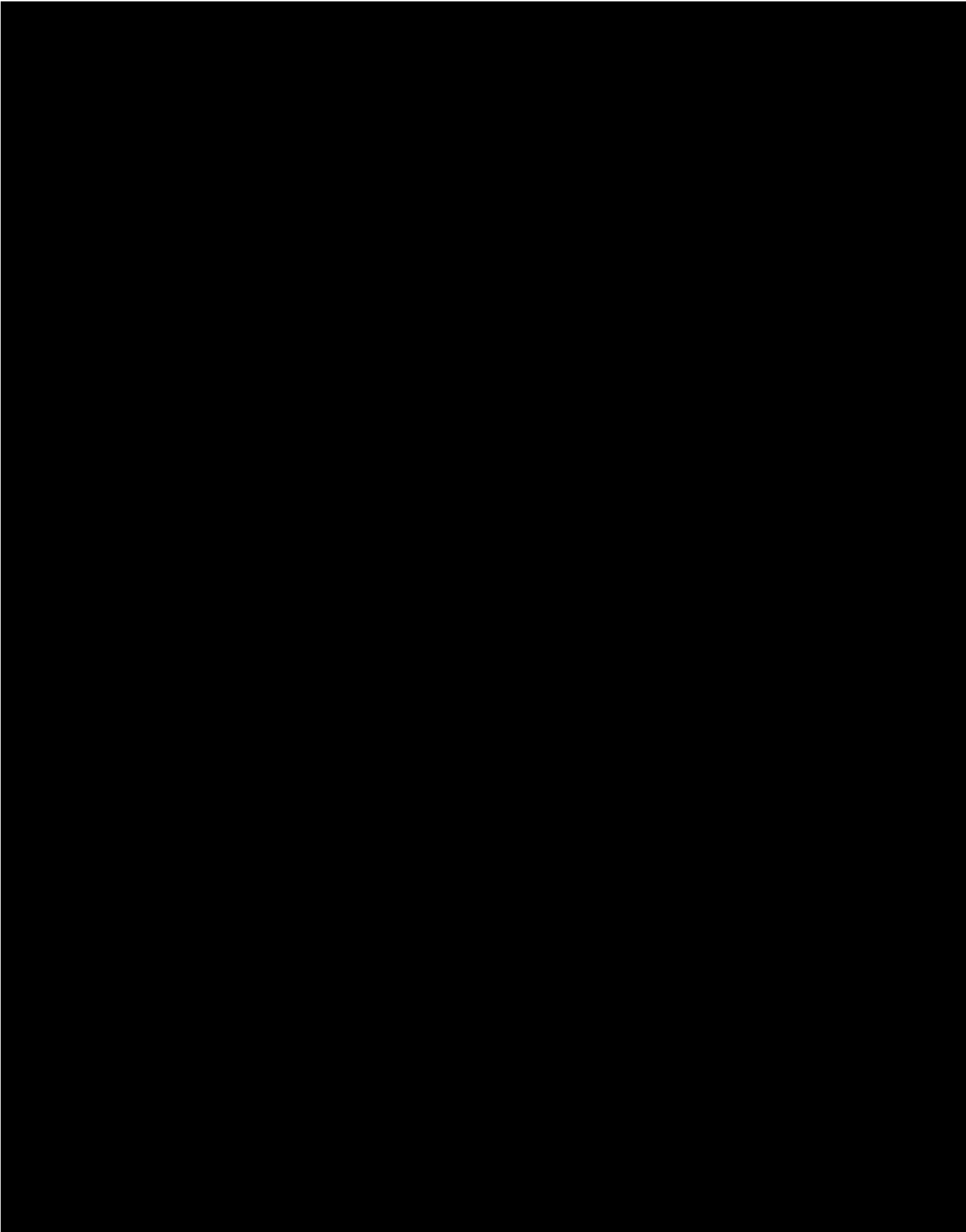
<u>Damages Category</u>	<u>Damages Alleged</u>
Management Fees	\$15 million
Incentive Fees	\$31 million
Black Elk Bond Subordination	\$18 million
Black Elk Bond Buyback	\$35.5 million
Montsant Encumbrances	\$35 million
Nordlicht Side Letter	\$37 million
March 2016 Restructuring	\$97.9 million: <ul style="list-style-type: none"> • 3.1 million (Navidea) • \$20 million (Master Guaranty) • \$4.8 million (Carbon Credits) • \$70 million (PPCO transfers)
Security Lockup (PPNE, Kismetia, Twosons, Gerszberg, West Loop/Epocs)	\$127 million: <ul style="list-style-type: none"> • \$80 million (PPNE) • \$450,000 (Kismetia) • \$14 million (Twosons) • \$7.5 million (West Loop/Epocs) • \$15 million (Gerszberg)
Agera	\$93.8 million
JOLs' Attorney Fees in Connection with non-SDNY Litigation	\$4.2 million
Total Damages Sought in the SAC:	\$494.4 million

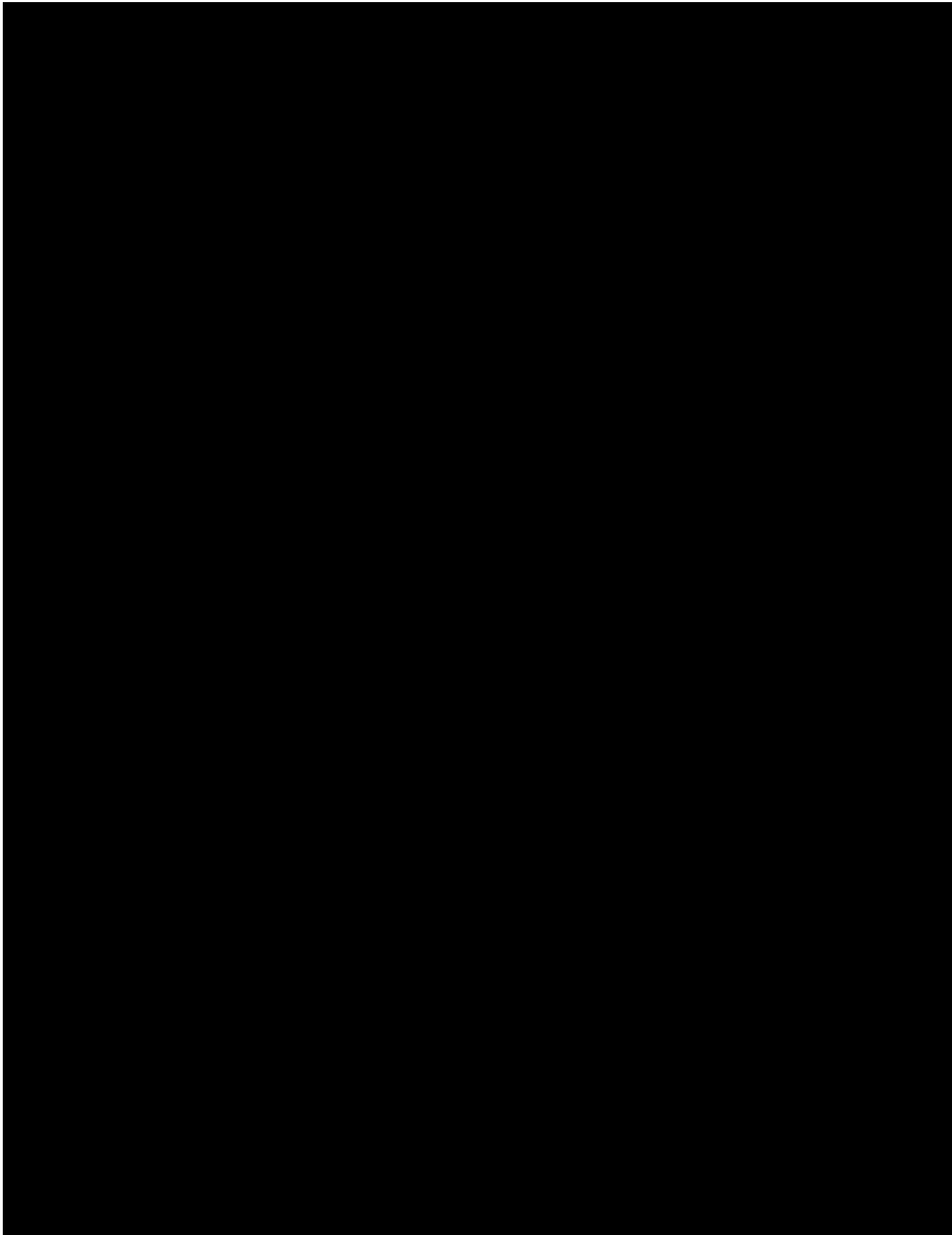
II. The PPVA Parties' Claims Against and Settlements with the Settling Defendants

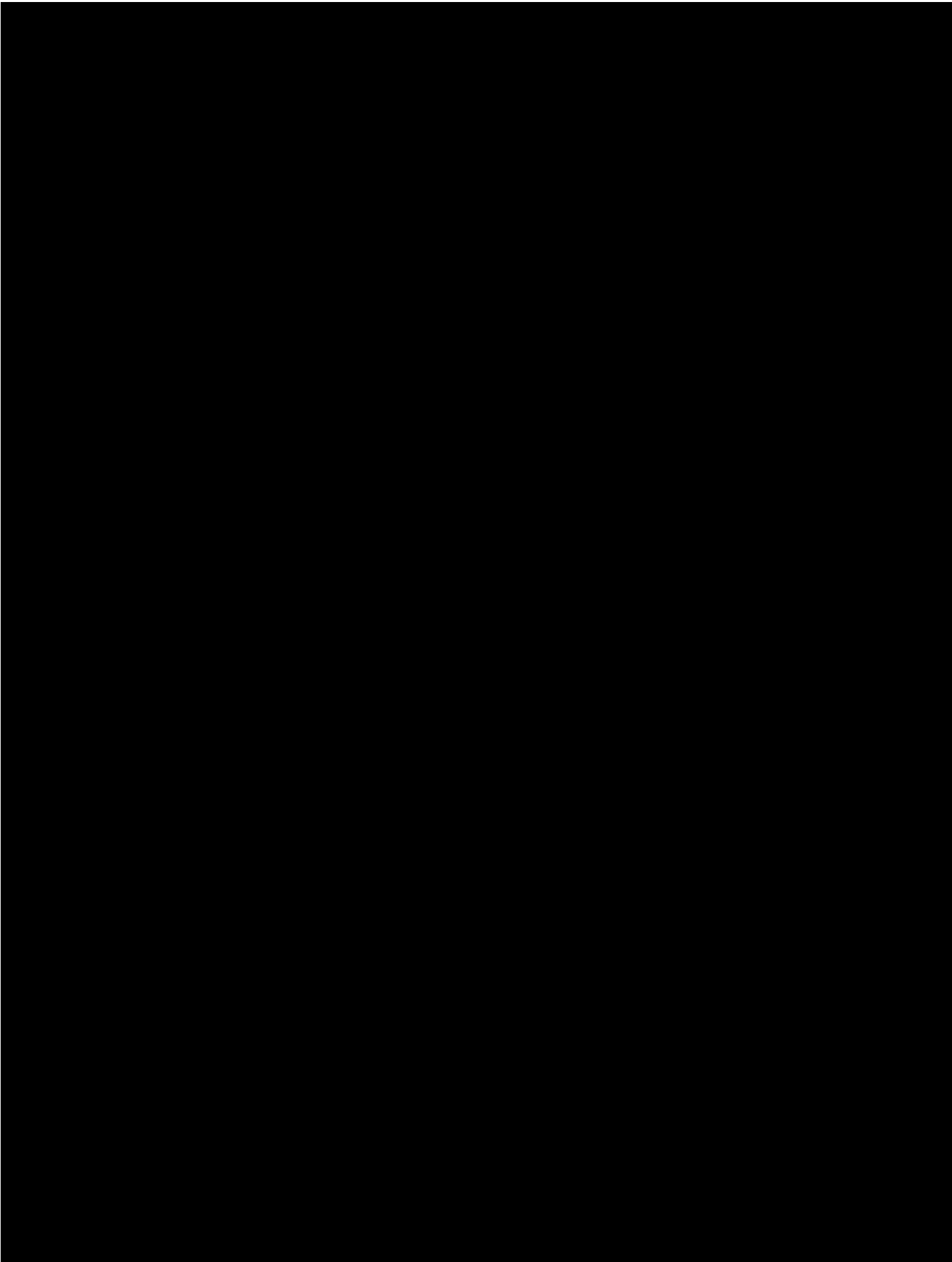
6. Prior to trial, the PPVA Parties entered into settlements with various defendants in this broad action as well as other actual or contemplated defendants in other matters. The

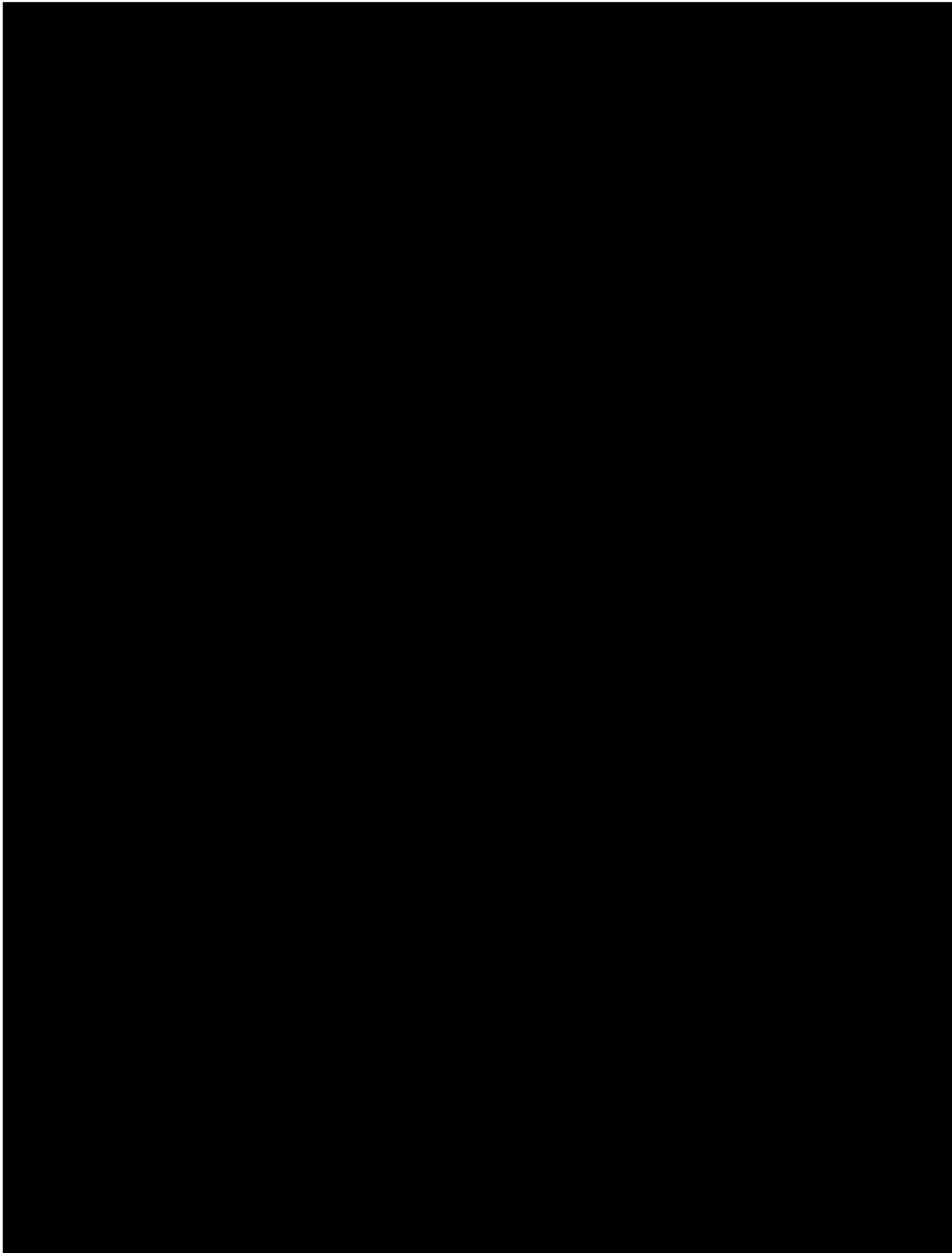
following is a summary of PPVA’s claims against the Settling Defendants as well as the settlements entered into among the parties.

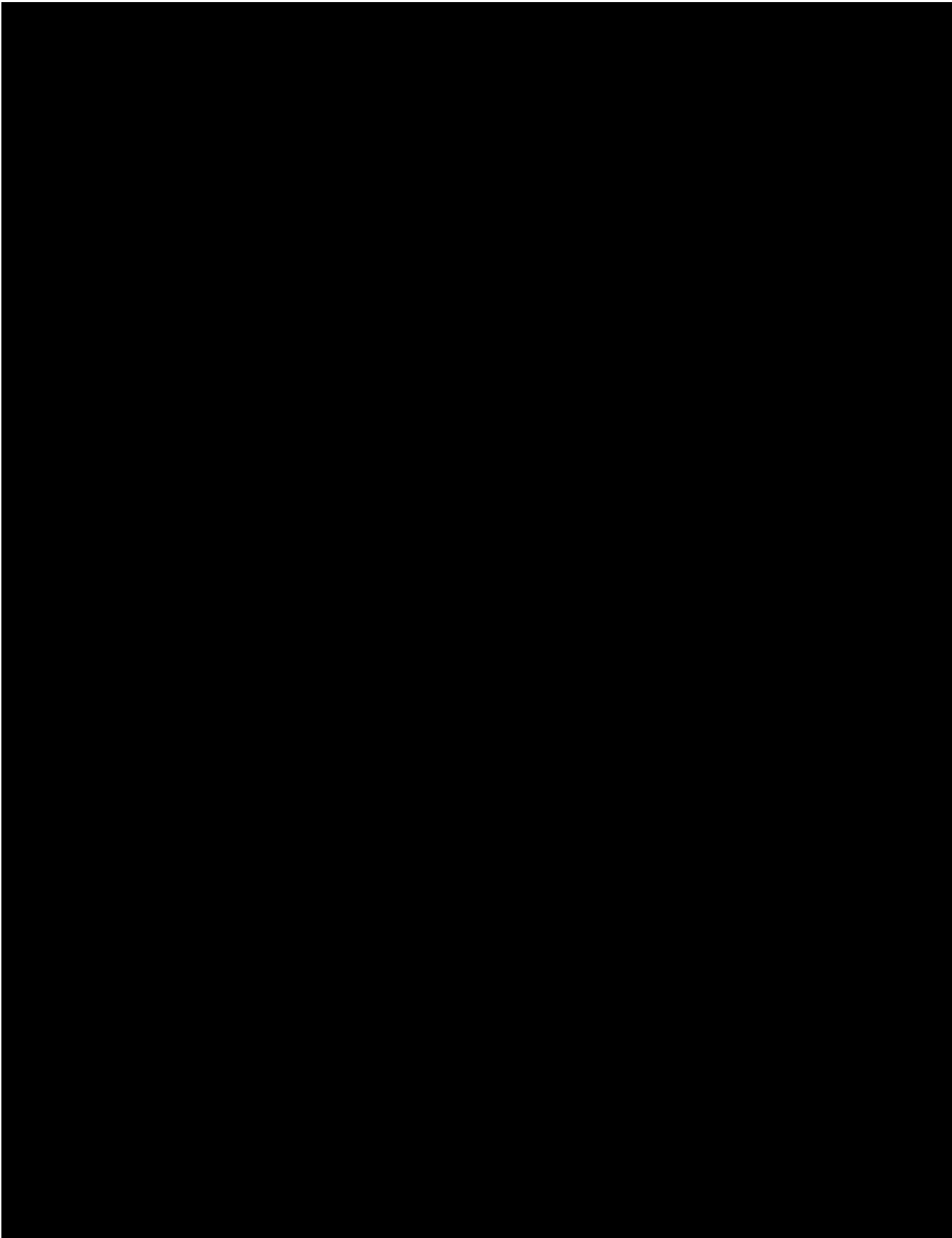












26. The primary reason for the comparatively low settlement payments from [REDACTED] is because it was learned through discovery that while these individuals had purported positions of authority, the ultimate decision making authority for PPVA was held by the three Platinum Partners: David Bodner, Murray Huberfeld and Mark Nordlicht.

27. As identified above, the PPVA Parties have sought **\$597.2 million** in separate and distinct damages from the Settling Defendants in the aggregate, and \$494.4 million in this case alone. The following provides the full scope of damages sought against the Settling Defendants:

Damages Category	Damages Alleged by PPVA Plaintiffs (Without Interest)
<u>Damages Alleged in SDNY</u>	
<u>Litigation</u>	
Management Fees	\$15 million
Incentive Fees	\$31 million
Black Elk Bond Subordination	\$18 million (not permitted in Bodner Trial)
Black Elk Bond Buyback	\$35.5 million (not permitted in Bodner Trial)
Montsant Encumbrances	\$35 million (not permitted in Bodner Trial)
Nordlicht Side Letter	\$37 million (not permitted in Bodner Trial)
March 2016 Restructuring	\$97.9 million (not permitted in Bodner Trial): <ul style="list-style-type: none"> • 3.1 million (Navidea) • \$20 million (Master Guaranty) • \$4.8 million (Carbon Credits) • \$70 million (PPCO transfers)
Security Lockup (PPNE, Kismetia, Twosons, Gerszberg, West Loop/Epocs)	\$127 million (not permitted in Bodner Trial): <ul style="list-style-type: none"> • \$80 million (PPNE) • \$450,000 (Kismetia) • \$14 million (Twosons) • \$7.5 million (West Loop/Epocs) • \$15 million (Gerszberg)
Agera	\$93.8 million (not permitted in Bodner Trial)
JOLs' Attorney Fees in Connection with non-SDNY Litigation	\$4.2 million (not sought other than in Bodner trial)
Sub-Total:	\$494.4 million

<u>Additional Damages only Alleged in Non-SDNY Litigation Against Settling Defendants</u>	
Redemption Damages	\$18 million
Additional Black Elk Scheme Damages	\$25 million
Additional Fees Damages	\$47.2 million
Fees Paid to [REDACTED]	\$2 million
Enven Settlement	\$4.6 million
[REDACTED] Fees	\$6 million
Sub-Total:	\$102.8 million
Total Damages Sought:	\$597.2 million
Total Amount Collected From Settling Defendants	\$34,736,500

28. On account of these claims for damages in the amount of \$597.2 million, the PPVA Parties have collected approximately \$35 million in cash settlement payments from the Settling Defendants.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 2, 2023
Grand Cayman, Cayman Islands

