

MORVILLO ABRAMOWITZ GRAND IASON & ANELLO P.C.

ELKAN ABRAMOWITZ
RICHARD F. ALBERT
ROBERT J. ANELLO*
LAWRENCE S. BADER
BENJAMIN S. FISCHER
CATHERINE M. FOTI
PAUL R. GRAND
LAWRENCE IASON
BRIAN A. JACOBS
JUDITH L. MOGUL
JODI MISHER PEIKIN
ROBERT M. RADICK*
JONATHAN S. SACK**
EDWARD M. SPIRO
JEREMY H. TEMKIN
RICHARD D. WEINBERG

565 FIFTH AVENUE
NEW YORK, NEW YORK 10017
(212) 856-9600
FAX: (212) 856-9494

www.maglaw.com

WRITER'S CONTACT INFORMATION

bfischer@maglaw.com
(212) 880-9585

October 19, 2018

COUNSEL
JASMINE JUTEAU
CURTIS B. LEITNER
DANIEL F. WACHTELL

ROBERT G. MORVILLO
1938-2011
MICHAEL C. SILBERBERG
1940-2002
JOHN J. TIGUE, JR.
1939-2009

*ALSO ADMITTED IN WASHINGTON, D.C.
**ALSO ADMITTED IN CONNECTICUT

VIA ECF

The Honorable Brian M. Cogan
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *SEC v. Platinum Management (NY) LLC, et al.*, No. 1:16-cv-06848-BMC

Dear Judge Cogan:

We represent Defendant Joseph Mann in the above-referenced action and in the related criminal action, *United States v. Nordlicht, et al.*, No. 16 Cr. 640 (BMC) (the "Criminal Action"). On behalf of Mr. Mann, we write to join in and adopt by reference the arguments contained in Defendant Joseph SanFilippo's Motion to Compel the SEC Receiver to Continue Advancing Reasonable Attorney's Fees and Defense Costs, Dkt. No. 392 (the "SanFilippo Motion"), and Defendant David Levy's Motion to Compel Advancement of Legal Fees, Dkt. Nos. 402-04 (the "Levy Motion").

As set forth in detail in the Levy Motion, Mr. Mann possesses an unequivocal right to the advancement of his attorneys' fees and defense costs by the Receiver for his defense of the Criminal Action under the Third Amended and Restated Agreement of Limited Partnership of Platinum Partners Credit Opportunities Master Fund (hereafter, the "Master Fund" or "Master Fund Agreement"). The Master Fund is a Receivership Entity. This right to advancement rests on the fact that Mr. Mann was both (a) an employee of (i) the Master Fund's General Partner (Platinum Credit Holdings LLC) and (ii) the Master Fund's Portfolio Manager (Platinum Credit Management LP); and (b) a "Person who serve[d] at the request of [Platinum Credit Holdings LLC] or [Platinum Credit Management LP] . . . as an . . . employee of any other Person." *See* Levy Mem. of Law (Dkt No. 403) at 4-5, 10-12.

MORVILLO ABRAMOWITZ GRAND IASON & ANELLO P.C.

The Honorable Brian M. Cogan
October 19, 2018
Page 2

Pursuant to the Master Fund Agreement, employees and other persons who served at the request of the General Partner or Portfolio Manager are defined as “Protected Persons” and are entitled to mandatory advancement of their defense costs. *See id.* Mr. Mann is a Protected Person insofar as a significant portion of his work at Platinum was devoted to work relating to PPCO, and he regularly worked at the direction of officers, members, managers or employees of the General Partner and Portfolio Manager of PPCO. Moreover, Mr. Mann served at the request of the General Partner and Portfolio Manager for PPCO when he performed such work specifically for that fund.

Similarly, for the reasons discussed in the SanFilippo and Levy Motions, Mr. Mann is also entitled to advancement of his defense costs under the PPCO Fund LLC Fourth Amended and Restated LLC Agreement (the “PPCO Fund Agreement”) because he was an “employee, agent, or other applicable representative” of those same two entities discussed above: Platinum Credit Holdings LLC and Platinum Credit Management LP. *See* SanFilippo Mem. of Law (Dkt. No. 392-8) at 11-17; Levy Mem. of Law (Dkt. No. 403) at 5-6. The PPCO Fund LLC also is a Receivership Entity.

Consistent with the advancement obligations set forth in the Master Fund and PPCO Fund Agreements, in July 2016, after Mr. Mann received a grand jury subpoena in connection with the Eastern District’s criminal investigation of Platinum Partners, he was assured by members of Platinum’s management as well as senior internal lawyers in Platinum Partners’ legal department that Platinum Partners (a term which included PPCO) would advance Mr. Mann’s legal fees, if insurance funds were unavailable to fund his defense.

Mr. Mann has deferred formally pursuing his right to advancement because legal fees for Mr. Mann, and the other defendants, have been, to date, paid from the proceeds of a series of Director and Officer liability insurance policies, as described further in the SanFilippo and Levy Motions. These insurance proceeds are now virtually exhausted. Mr. Mann, who was one of the most junior employees at Platinum Partners, does not have the resources to fund his own defense.

For the foregoing reasons, Mr. Mann joins in the SanFilippo and Levy Motions, and requests that the Court direct the Receiver to advance his reasonable attorneys’ fees and defense costs in connection with the Criminal Action.

Respectfully submitted,

/s/

Benjamin S. Fischer

cc: All Counsel of Record by ECF