



forth herein, should be overruled because the claimant does not oppose the relief requested by the Motion but rather, raises issues which will be dealt with by the Receiver at a later date.

**The “Indemnification Objections” and Resolution Thereof**

3. Navidea Biopharmaceuticals, Inc. (“*Navidea*”), the purported holder of an indemnification claim against the Receivership estate, opposes certain of the relief requested through the Motion (the “*Navidea Objection*”) because it asserts that the Motion does not provide a sufficient mechanism for it to assert its claim given that the amount of its claim is, according to Navidea, not yet fixed. *See* Dkt. No. 425.

4. Defendant David Levy (“*Levy*,” and together with Navidea, the “*Indemnification Objectors*”) also asserts indemnification claims against the Receivership Entities which, according to Levy, continue to accrue and so, like Navidea, is concerned that the Motion does not provide an adequate procedure for him to assert his as yet-to-be-fixed claim (the “*Levy Objection*,” and together with the Navidea Objection, the “*Indemnification Objections*”). *See* Dkt. No. 431

5. To resolve the Indemnification Objections, my counsel has agreed with counsel for Levy and Navidea to insert the following provision into the proposed Order approving the Motion, a copy of which is attached hereto as **Exhibit A**:

Advancement, Indemnification and Other Non-Administrative Claims. Creditors (including but not limited to the Defendants in this action and their retained attorneys and professionals) holding claims for indemnification, advancement or reimbursement (“*Indemnification Claimants*”) based on having suffered or incurred, or who may suffer or incur, any costs, losses, damages or liabilities (including without limitation legal fees or other expenses incurred in investigating or defending against any losses, claims, or liabilities) arising from any investigation, claim, allegation, action, or proceeding, whether civil, criminal, administrative, arbitral or investigative, or any appeal in connection with any of the foregoing, that relates to their service in any office or other

capacity of, or otherwise representing or acting for or on behalf of any Receivership Entity, or based on a post-receivership agreement with a Receivership Entity (other than for professional services) are required to submit proofs of claim on or before the applicable Bar Date. Indemnification Claimants shall have the right to amend, supplement, and update any claims, provided the original proofs of claims are timely filed, to take into account costs, losses, damages, liabilities, legal fees or other expenses incurred following the Bar Date (“**Supplemental Claims**”), and all such Supplemental Claims will be deemed timely filed and not barred. The Receiver retains her right to object to any Advancement and Indemnification Claims and/or any Supplemental Claims on any other basis, and to set a final Bar Date (with not less than 14 days’ notice to the Indemnification Claimants) after which no additional Supplemental Claims may be filed.

### **The San Diego Union-Tribune Retirement Plan Objection**

6. While the San Diego Union-Tribune Retirement Plan opposes the Motion (the “**SDUTRP Objection**”), it does so by misconstruing the relief I requested.<sup>2</sup> SDUTRP asserts that so-called unpaid redeemers, as the SDUTRP claims to be, “should have priority of payment over investors who had not redeemed at the time [of] suspensions of redemptions in June 2018.” SDUTRP Par. 7. Putting aside SDUTRP’s apparent scrivener’s error as to the date of suspension of redemptions (2016 versus 2018), the Motion does **not**, as SDUTRP claims, propose any plan of distribution or priority of payment. In fact, in my declaration in support of the Motion, I specifically state that:

The goal in this case is the approval of a plan of distribution that will, among other things, provide for distributions to investors and Claimants based on the amount of their valid Claims and interests. Establishing the Bar Dates is a critical **first step** towards advancing that goal. Relevant authorities permit the use of different methodologies to calculate distributions to holders of Claims and interests arising out of investments. ***I have not yet decided*** which

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<sup>2</sup> Pursuant to the October 11, 2017 *Order Adopting Protocols for Parties In Interest To Be Heard On Receiver Motions*, Dkt. No. 271, (the “**Protocols Order**”), SDUTRP served the SDUTRP Objection on me via electronic mail. In accordance with the terms of the Protocols Order, a copy of the SDUTRP Objection is annexed hereto as **Exhibit B**.

methodology is best suited for the circumstances of this case. For my current purposes, I need to ensure that Claimants provide sufficient information to allow me to determine the amount and validity of their Claims using *whichever method this Court ultimately directs me to employ*.

Cyganowski Declaration in Support of Motion, Par. 21 (emphasis supplied).

7. To the extent it was not made clear by the Motion, investors and purported redeemers need not submit proofs of claim in accordance with the procedures proposed in the Motion because I am already in possession of books and records that reflect their respective statuses. Of course, should any investors and/or purported redeemers have questions about how their interests are currently reflected in those books and records, they are welcome to contact a member of my team.

8. In sum, the issue raised by the SDUTRP Objection of priority of payments is not one raised by the Motion, but rather, is one to be raised when I propose my plan of distribution to the Court.

### **Conclusion**

9. For the reasons set forth in the Motion, Memorandum of Law, and my supporting Declaration, the Motion should be granted and this Court should enter an order in substantially the form annexed as **Exhibit A** hereto: (I) Establishing Claims Bar Dates and (II) Approving (A) a Proof of Claim form, (B) the Form and Manner of Notice of the Claims Bar Dates and (C) Procedures for Submitting Proofs of Claim

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of December, 2018, at New York, New York.

/s/ Melanie L. Cyganowski  
Melanie L. Cyganowski

**EXHIBIT A**

**Proposed Order**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

|                                   |   |
|-----------------------------------|---|
| -----X                            |   |
| SECURITIES AND EXCHANGE           | : |
| COMMISSION,                       | : |
| Plaintiff,                        | : |
| -v-                               | : |
|                                   | : |
| PLATINUM MANAGEMENT (NY) LLC;     | : |
| PLATINUM CREDIT MANAGEMENT, L.P.; | : |
| MARK NORDLICHT;                   | : |
| DAVID LEVY;                       | : |
| DANIEL SMALL;                     | : |
| URI LANDESMAN;                    | : |
| JOSEPH MANN;                      | : |
| JOSEPH SANFILIPPO; and            | : |
| JEFFREY SHULSE,                   | : |
| Defendants.                       | : |
| -----X                            |   |

No. 16-cv-6848 (BMC)

**[PROPOSED] ORDER (I) ESTABLISHING CLAIMS BAR DATES AND (II)  
APPROVING (A) A PROOF OF CLAIM FORM, (B) THE FORM AND MANNER  
OF NOTICE OF THE CLAIMS BAR DATES AND (C) PROCEDURES  
FOR SUBMITTING PROOFS OF CLAIM**

Upon consideration of the motion [Docket No. 424] by Melanie L. Cyganowski, as Receiver (the “*Receiver*”) for Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the “*Receivership Entities*”), for entry of an order (i) establishing dates by which all claims arising prior to December 19, 2016 must be filed and (ii) approving (a) a proof of claim form, (b) the form and manner of notice of the claims

bar dates and (c) procedures for submitting proofs of claim (the “*Motion*”), the declaration of the Receiver and memorandum of law in support of the Motion, the objections to the Motion asserted by Navidea Biopharmaceuticals, Inc., David Levy and the San Diego Union-Tribune Retirement Plan, and the supplemental declaration of the Receiver in support of the Motion, this Court finds that (i) the relief requested in the Motion is in the best interests of the Receivership Entities, potential claimants, investors and all other parties; (ii) notice of the Motion was good and sufficient under the particular circumstances and that no other or further notice need be given and (ii) based upon the record herein and after due deliberation it is hereby

**ORDERED THAT:**

1. The Motion is GRANTED in all respects.
2. All objections not withdrawn or resolved by this Order are overruled in all respects.
3. For purposes of this Order (this “*Bar Date Order*”) the following terms are defined as follows:
  - (i) “*Claim*” is defined as: (1) a claim to a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, against one or more of the Receivership Entities; or (2) a claim to a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, against one or more of the Receivership Entities.
  - (ii) “*Claimant*” is defined as and includes any person or entity (including, without limitation, individuals, partnerships, corporations, estates, trusts, and governmental units) that holds a Claim. Without limiting the generality of the foregoing, the definition of Claimant includes, but is not limited to, any person or entity holding a Claim based on the provision of goods or services to any Receivership Entity that has not been paid in whole; money loaned to any Receivership Entity that has not been paid in whole; unpaid wages, compensation, or other employment benefits; tax liabilities, including those held by federal and state governments; primary, secondary, direct, indirect, secured, unsecured, or

contingent liability; or contract, tort, indemnity, reimbursement, subrogation theories, or other legal or equitable theory. The term “Claimant” does not include any person or entity that holds an equity interest in the Receivership Entities, which interest exclusively is based upon the ownership of membership interests or partnership interests in the Receivership Entities.

- (iii) “**Governmental Unit**” is defined as and includes the United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States, a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

4. Bar Dates.

- (i) This Court hereby establishes **5:00 p.m. (prevailing Eastern Time) on the date that is forty-five (45) days from the date of entry of this Order** as the deadline for Claimants *other than Governmental Units* to submit Proofs of Claim against the Receivership Entities (the “**General Bar Date**”); and
- (ii) This Court hereby establishes **5:00 p.m. (prevailing Eastern Time) on the date that is sixty (60) days from the date of entry of this Order** as the deadline for Governmental Units to submit Proofs of Claim against the Receivership Entities (the “**Governmental Bar Date**,” and together with the General Bar Date, the “**Bar Dates**”).

5. Claims Procedures. The following Claims Procedures, including the Bar Date Notice and Proof of Claim Form (each defined below), are approved:

- (i) Eligibility to Submit Proofs of Claim. Proofs of Claim (defined below) shall be filed by all persons or entities (including, without limitation, individuals, partnerships, corporations, joint ventures, estates, trusts, and Governmental Units) that are Claimants and believe that they are owed any money by, or have a right to distribution from, any of the Receivership Entities, regardless of whether the Claim at issue has been acknowledged by the Receiver or whether the Claim at issue is held with or through any person or entity or based on primary, secondary, direct, indirect, secured, unsecured, or contingent liability. **Notwithstanding the forgoing, any person or entity that holds an equity interest in the Receivership Entities, which interest exclusively is based upon the ownership of membership interests or partnership interests, is not required to, and should not, file a Proof of Claim; provided,** that if any such holder asserts a Claim (as opposed to an ownership interest) against a Receivership Entity (including a Claim relating to an interest or the purchase or sale of such interest), a Proof of Claim must be filed on or before the General Bar Date pursuant to the Claims Procedures.



- (ii) Administrative and Professional Claims. Creditors holding claims based on the provision of goods or services to the Receivership Entities or the Receiver after December 19, 2016 (“*Administrative Claims*”) are not be required to submit proofs of claim on or before the applicable Bar Date and will not be subject to the Bar Dates. For the avoidance of doubt, the Receiver and her retained professionals are not required to submit proofs of claim on or before the General Bar Date and all claims of the Receiver and her professionals will be addressed in accordance with orders of this Court.
- (iii) Advancement, Indemnification and Other Non-Administrative Claims. Creditors (including but not limited to the Defendants in this action and their retained attorneys and professionals) holding claims for indemnification, advancement or reimbursement (“*Indemnification Claimants*”) based on having suffered or incurred, or who may suffer or incur, any costs, losses, damages or liabilities (including without limitation legal fees or other expenses incurred in investigating or defending against any losses, claims, or liabilities) arising from any investigation, claim, allegation, action, or proceeding, whether civil, criminal, administrative, arbitrate or investigative, or any appeal in connection with any of the foregoing, that relates to their service in any office or other capacity of, or otherwise representing or acting for or on behalf of any Receivership Entity, or based on a post-receivership agreement with a Receivership Entity (other than for professional services) are required to submit proofs of claim on or before the applicable Bar Date. Indemnification Claimants shall have the right to amend, supplement, and update any claims, provided the original proofs of claims are timely filed, to take into account costs, losses, damages, liabilities, legal fees or other expenses incurred following the Bar Date (“*Supplemental Claims*”), and all such Supplemental Claims will be deemed timely filed and not barred. The Receiver retains her right to object to any Advancement and Indemnification Claims and/or any Supplemental Claims on any other basis, and to set a final Bar Date (with notice to the Indemnification Claimants) after which no additional Supplemental Claims may be filed.
- (iv) Notice by Mail. The Receiver shall serve, within five (5) business days of entry of this Bar Date Order:
- (I) a notice of the Bar Dates and the procedures for submitting proofs of claim, substantially in the form of the notice attached as Exhibit A to the Cyganowski Dec. and incorporated herein by reference (the “*Bar Date Notice*”); and
- (II) a proof of claim form substantially in the form of the document attached as Exhibit B to the Cyganowski Dec. and incorporated herein by reference (the “*Proof of Claim Form*”)

on (1) all creditors and other known holders of claims at the address set forth in the Receivership Entities’ books and records or as updated pursuant to a request

by the creditor or by returned mail from the post office with a forwarding address; (2) all parties actually known to the Receiver as having potential claims against any of the Receivership Entities; (3) all parties to pending litigation against the Receivership Entities (as of the date of entry of this Bar Date Order); (4) all applicable Governmental Units; and (5) such additional persons and entities deemed appropriate by the Receiver.

With respect to the Claimants that meet the above requirements for notice by mail, the Receiver shall serve (a) those located within the United States by United States first class mail and (b) those located outside the United States by any method reasonably calculated to provide notice to potential Claimants.

- (v) Notice by Electronic Mail. In addition to notice by mail (if required pursuant to the previous paragraph), where potential Claimants have provided an electronic mail address to the Receiver, the Receiver shall serve, within five (5) business days of entry of this Bar Date Order, the Bar Date Notice and the Proof of Claim Form on such potential Claimants via the electronic mail address provided by them.
- (vi) Notice by Publication. The Bar Date Notice and the Proof of Claim Form shall be posted, within five (5) business days of entry of this Bar Date Order, on the Receiver's website. In addition, within fourteen (14) calendar days of entry of this Bar Date Order, a notice of the Bar Dates and the procedures for submitting proofs of claim, substantially in the form of the notice attached as **Exhibit C** to the Cyganowski Dec. and incorporated herein by reference (the "**Bar Date Publication Notice**"), will be published in The Wall Street Journal, and other such publications that in the Receiver's sole and absolute discretion are reasonably calculated to provide notice to potential Claimants.
- (vii) Notice Upon Inquiry. The Receiver shall promptly provide the Bar Date Notice and the Proof of Claim Form to any Claimant who makes a written request for such documents to the e-mail address [platinumreceiver@otterbourg.com](mailto:platinumreceiver@otterbourg.com) or to the physical address Platinum Claims c/o Otterbourg P.C., 230 Park Avenue, New York, New York 10169-0075.
- (viii) Procedure for Submitting Proofs of Claim. Except as otherwise ordered by this Court or provided below, each Claimant must submit a completed and signed Proof of Claim Form under penalty of perjury and evidencing such Claimant's Claim, together with supporting documentation (a "**Proof of Claim**") with the Receiver's agent in the manner indicated below, so that such Proof of Claim is actually received on or before the applicable Bar Date. Proofs of Claim may be submitted to the Receiver's agent by (1) first class mail addressed to Platinum Receivership c/o Epiq, PO Box 10667, Dublin, OH 43017-9367; (2) overnight courier or in-person delivery addressed to Platinum Receivership c/o Epiq, 5151 Blazer Parkway, Suite A, Dublin, OH 43017; or (3) by electronic mail, as an attachment in portable document format (.pdf), to [PTMInfo@epiqglobal.com](mailto:PTMInfo@epiqglobal.com).

**Proofs of Claim should not be filed with this Court, and any Proof of Claim so filed will not be considered properly submitted.**

- (ix) Prior Submissions by Claimants. A Claimant that has previously submitted a proof of claim asserting a Claim may, but is not required to, submit a new Proof of Claim with respect to such Claim in accordance with the Claims Procedures. If such a Claimant does not submit a new Proof of Claim, the previously filed proof of claim shall be treated as a timely filed Proof of Claim. However, at the request of the Receiver, the Claimant may be required to submit additional supporting documentation in order for the Claim asserted in the previously filed proof of claim to be evaluated.
- (x) Supporting Documentation for Proof of Claim. Each Claimant should attach to each Proof of Claim copies of all documents available to the Claimant that could support such Proof of Claim. Such documentation may include but is not limited to: copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, evidence of perfection of lien and other documents evidencing the amount and basis of the claim. If such supporting documentation is not available, the Claimant must attach to the Proof of Claim an explanation of why the documentation is unavailable.
- (xi) Proof of Claim Must Identify Receivership Entity. Any Claimant holding Claims against more than one Receivership Entity must submit a separate Proof of Claim against each such Receivership Entity and identify on each Proof of Claim the Receivership Entity against which the Proof of Claim is asserted.
- (xii) **Effect of Failure to Submit Proof of Claim Before Applicable Bar Date.** Any Claimant who is required to submit a Proof of Claim, but fails to do so in a timely manner or in the proper form, shall be forever barred, estopped, and enjoined to the fullest extent allowed by applicable law from asserting, in any manner, such Claim against the Receivership Entities and their respective property or estates; shall not be permitted to object to any distribution plan proposed by the Receiver on account of such Claim; shall be denied any distributions under any distribution plan implemented by the Receiver on account of such Claim; and shall not receive any further notices on account of such Claim. Further, the Receivership Entities and their respective property or estates will be, and hereby are, discharged from any and all indebtedness or liability with respect to such Claim.
- (xiii) Proofs of Claim Processing and Verification. The Receiver is authorized to employ any procedures she deems necessary, in her sole and absolute discretion, for processing, reconciling, and verifying Proofs of Claim.
- (xiv) Reservation of Rights. Nothing herein shall prejudice the rights of the Receiver to dispute, or assert offsets or defenses as to the nature, amount, liability,

classification, or otherwise against, any amounts asserted in any Proof of Claim. Nothing contained herein is intended to preclude the Receiver from objecting to any Proof of Claim on any grounds.

Dated: \_\_\_\_\_, 2018  
Brooklyn, New York

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THE HON. BRIAN M. COGAN  
UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF NEW YORK

**EXHIBIT B**

**San Diego Union-Tribune Retirement Plan Objection**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE  
COMMISSION,

Civil Case No. 16-cv-6848

Plaintiff,

v.

PLATINUM MANAGEMENT (NY) LLC, et al.;  
Defendants.

**SAN DIEGO UNION-TRIBUNE RETIREMENT PLAN’S OBJECTION TO  
RECEIVER’S MOTION FOR ENTRY OF AN ORDER ESTABLISHING  
CLAIMS BAR DATES AND APPROVING A PROOF OF CLAIM FORM**

San Diego Union-Tribune Retirement Plan (“SDUT”), through undersigned counsel, objects to the Receiver’s Motion for Entry of an Order Establishing Claims Bar Dates and Approving a Proof of Claim Form (the “Motion”).<sup>1</sup>

1. SDUT does not object to establishing a proof of claim process, but objects to the Motion, and the proposed order submitted as Exhibit D to the Motion (the “Proposed Order”), which excludes unpaid redeemers from the claims process.

2. Unpaid redeemers, such as SDUT, who redeemed and should have been paid, pursuant to the terms of the Confidential Private Placement Memorandum (“Placement Memorandum”), before the suspension of redemptions in June 2018, but were not paid before June 2018, should receive priority of payment over other

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<sup>1</sup> Docket No. 424.

investors. SDUT timely submitted a request for redemption, the redemption was acknowledged by Platinum Partner Credit Opportunities Fund (“PPCO”), and should have been paid before redemptions were suspended in June 2018.

3. As a result, SDUT and other unpaid redeemers who should have been paid before June 2018 should be considered a Claimant for purposes of the proof of claim process, and allowed to submit a proof of claim.

4. The Receiver, in the Memorandum of Law in Support of the Motion (the “Memorandum”)<sup>2</sup> excluded unpaid redeemers from the definition of Claimant so that unpaid redeemers cannot submit a proof of claim.

5. The unpaid redeemers should not be treated differently than other redeemers who previously received funds after their redemption pursuant to the terms of the Placement Memorandum. SDUT, and other unpaid redeemers, followed the process and are owed funds by PPCO just like any other creditor.

6. Courts have the discretion to approve any receiver's plan that is “fair and reasonable.” *SEC v. Wang*, 944 F.2d 80, 81, 85 (2d Cir. 1991) (holding that a distribution plan should be “reviewed under [the district] court's general equitable powers to ensure it is fair and reasonable”).

7. Unpaid redeemers who timely redeemed and should have been paid should have priority of payment over investors who had not redeemed at the time suspensions of redemptions in June 2018. Unpaid redeemers who timely submitted

redemptions and were unpaid should be considered a Claimant and allowed to submit a proof of claim as part of the claims process.

8. For these reasons, SDUT objects to the Motion and the Proposed Order and respectfully requests that the Court modify the Proposed Order to treat unpaid redeemers who redeemed but were unpaid at the time the redemptions ceased in June 2018, as a Claimant and allowed to submit a proof of claim.

Dated: December 17, 2018

*/s/ Tiffany D. Downs*  
Tiffany D. Downs  
FordHarrison LLP  
271 17<sup>th</sup> Street NW, Suite 1900  
Atlanta, GA 30363  
[tdowns@fordharrison.com](mailto:t downs@fordharrison.com)  
Counsel for San Diego Union-Tribune  
Retirement Plan



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent electronically to the Receiver on December 17, 2018 via email at [platinumreceiver@otterbourg.com](mailto:platinumreceiver@otterbourg.com).

/s/ Tiffany D. Downs

Tiffany D. Downs