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October 2, 2019

VIA CM/ECF

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

Re: United States Securities and Exchange Commission v. Platinum Management (NY), No. 1:16-cv-6848-BMC

Dear Judge Cogan:

We write to respectfully request a pre-motion conference in the above-referenced matter pursuant to Your Honor's Rule III.A. David Levy seeks the Court's leave to make a motion for the Receiver to honor Platinum's indemnification and payment obligations to both Mr. Levy and his counsel (the "Motion").

As the Court will recall, in October 2018, Mr. Levy brought a motion seeking advancement of his legal fees and costs pursuant to various commitments that Platinum Partners had made both to Mr. Levy and to his counsel, the law firm of Wilson Sonsini Goodrich & Rosati ("WSGR"). While the Court confirmed that Platinum had committed to advance and indemnify Mr. Levy, and had separately committed itself to pay WSGR for the fees and costs it incurred in representing Mr. Levy, the Court declined to Order advancement of fees and costs at that time finding that Mr. Levy's right to advancement of legal fees did not have priority over the claims of other unsecured creditors who had not yet been paid. Dkt. No. 417.

In the interim, the Receiver has continued to make applications for her own payment, payment of her counsel, and payment of various other professionals she has engaged in the course of the receivership. Dkt. Nos. 282, 305, 324,420, 421, 437, 438, 439, 440, 466 & 467. Those applications have all been granted by the Court. Dkt. Nos. 287, 309,340, 429, 430, 446, 447, 448, 449, 474 & 478.

The Motion we seek to make is two-fold:

First, now that Mr. Levy has been acquitted of all charges in the criminal case, his right to indemnification (as opposed to advancement) is now fully implicated. Platinum Partners obligated itself to indemnify Mr. Levy. For that obligation to have any meaning, Platinum Partners must now meet its obligations. We note that Mr. Levy's counsel was not a mere miscellaneous creditor that provided services in advance of the Receivership and has been waiting for a historical invoice to be



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paid. To the contrary, WSGR was obligated, both to Mr. Levy and the Court, to continue zealously representing Mr. Levy in the criminal matter on an ongoing basis. As such, Mr. Levy's counsel is situated no differently than the Receiver and the professionals she has engaged and agreed to pay, who, like WSGR, have provided ongoing services to Platinum.

Second, apart from its indemnification obligations to Mr. Levy, Platinum Partners entered into a separate agreement with WSGR that it would pay the fees and costs the firm incurred in its representation of Mr. Levy. Moreover, Platinum Partners specifically agreed to pay those fees and costs, on an ongoing basis, within fifteen days of receiving a monthly invoice. As such, WSGR was hired by Platinum Partners to provide ongoing professional services just like the other professionals hired through the Receivership to provide ongoing services. WSGR is thus situated no differently than the Receiver and the professionals she has engaged and agreed to pay (and who have been paid), who have provided ongoing services to Platinum Partners.

Accordingly, we respectfully request a conference with the Court to discuss the proposed Motion and to establish an appropriate briefing schedule. We note that Mr. SanFilipo has already filed a motion for indemnification, and counsel for the Receiver has requested that any schedule established by the Court apply not only to our Motion, but to Mr. SanFilipo's motion as well.

We note that counsel for Mr. Levy is not available for a conference from October 9 through October 20 due to religious observance and then a commitment on another matter in Asia.

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

s/ Michael S. Sommer

Michael S. Sommer

Morris J. Fodeman

Cc: All Counsel of Record (via CM/ECF)