

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

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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. :
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No. 16-cv-6848 (BMC)

**DECLARATION OF MELANIE L. CYGANOWSKI, AS RECEIVER,
IN OPPOSITION TO: (I) DEFENDANT JOSEPH SANFILIPPO’S
MOTION FOR THE SEC RECEIVER TO INDEMNIFY HIM PROMPTLY
FOR HIS REASONABLE ATTORNEYS’ FEES AND DEFENSE COSTS; AND
(II) DEFENDANT DAVID LEVY’S MOTION TO COMPEL INDEMNIFICATION**

I, Melanie L. Cyganowski, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I make this reply declaration in opposition to: (i) Defendant Joseph SanFilippo’s (“SanFilippo”) Motion to Compel the SEC Receiver to Indemnify Him Promptly for His Reasonable Attorneys’ Fees and Defense Costs, Dkt. No. 490, (the “SanFilippo Motion”) and (ii) David Levy’s (“Levy” and collectively with SanFilippo, the “Defendants”) Motion to Compel Indemnification, Dkt. No. 494, (the “Levy Motion” and together with the SanFilippo Motion, the “Motions”).

2. As set forth in the accompanying Omnibus Memorandum of Law in Opposition to the Motions (the “Opposition”), I do not believe that the Defendants are entitled to the immediate indemnification of their legal fees and costs as sought in their Motions.¹ In connection with my Opposition, I note the following:

(i) On December 19, 2018, I commenced the Senior Lien Litigation, seeking, among other relief, the avoidance of certain liens which may otherwise adversely impact potential distributions to investors and creditors, as well as damages for claims arising from a fraudulent scheme perpetrated to the detriment of Platinum. Senior Lien Litigation Complaint ¶1.

(ii) The defendants in the Senior Lien Litigation have presented documentation purporting to grant them security interests in all or certain of Platinum’s assets, which exceeds the total value of Receivership Entities. *Id.*

(iii) As of September 30, 2019, the Receivership Entities have approximately \$37.7 million in cash. Receiver’s Ninth Status Report at 12, Dkt. No. 495 (the “Status Report”). Such amount is less than the secured debt at issue in the Senior Lien Litigation, meaning that if I lose that litigation, there may not be any cash available for distribution to unsecured creditors, such as the Defendants.

3. For these reasons, as well as those set forth in my Opposition, the Motions should be denied.

Executed this 30th day of October, 2019, at New York, New York.

/s/ Melanie L. Cyganowski
Melanie L. Cyganowski

¹ All capitalized terms not defined herein shall have the meanings ascribed in the Opposition.