

**IN THE UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

SECURITIES & EXCHANGE)	
COMMISSION)	
)	
)	
PLAINTIFF,)	Civil Action No. 16-CV-6848 (BMC)
)	
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.)	

**RICHARD STADTMAUER’S OBJECTION TO RECEIVER’S MOTION TO APPROVE
SETTLEMENT WITH FORD O’BRIEN AND JOSEPH SANFILIPPO**

Richard Stadtmauer is one of the largest creditors of this receivership estate, with a claim for over \$17 million. In 2016, Mr. Stadtmauer entered into a promissory note with Platinum Partners Credit Opportunities Master Fund Ltd. (“PPCO” or the “Master Fund”) and Platinum Partners Credit Opportunities Fund LLC (“PPCO Feeder”). After Bart Schwartz was appointed by the SEC as a monitor for PPCO and PPCO Feeder, Mr. Stadtmauer entered into a settlement of that promissory note with both funds, which was reviewed, approved, and signed by Mr. Schwartz. The settlement agreement provided for payment of the full amount of the note, legal fees, and interest, all accompanied by a confession of judgment that could be filed upon default. **Ex. A,**

Settlement Agreement with PPCO. Before the first payment came due under the settlement agreement, PPCO and PPCO Feeder were placed into receivership.

Proceedings in this case have validated Mr. Stadtmauer's clearly meritorious claim. After the claims process in this case began, the Receiver agreed to allow Mr. Stadtmauer's claim as a general unsecured claim in its full principal amount of \$12,155,072.96, and as a subordinated unsecured claim in the amount of \$4,969,759.04. To ensure his \$12.155 million claim would not be subordinated to other creditors, Mr. Stadtmauer's settlement agreement contains a promise by the Receiver that his general unsecured claim would be treated the same as all others. Until recently, it appeared that the Receiver's distribution plan would do just that. Now, however, the Receiver seeks to give a significant priority to the Ford O'Brien/Sanfilippo ("FOB/SF") general unsecured claim through an extremely generous settlement agreement. In particular, while creditors as a whole can expect single-digit pennies on the dollar, FOB/SF will (under the Receiver's proposal) receive 20% of its claim paid on a priority basis. Mr. Stadtmauer objects to that treatment, which results in better treatment of a claim with far less merit than his own, which contradicts the position the Receiver took for years, and which violates the settlement Mr. Stadtmauer made with the Receiver (requiring his claim to be treated equally to other unsecured claims).¹

BACKGROUND

The Court has repeatedly rejected FOB/SF's efforts to seek priority. In its order dated November 25, 2018, this Court held that, with respect to SanFilippo and others: "Platinum Partners may well indeed owe reimbursement to these former officers. But it owes lots of money to people

¹ As set forth below, in an ordinary liquidation proceeding following the priorities in the fund documents, Mr. Stadtmauer's claim would come ahead of nearly all creditors and ahead of equity interests. That is because he is a creditor of PPCO Master, not only PPCO Feeder. PPCO Feeder is itself an investor in PPCO Master, and all of its investors and creditors would, under ordinary circumstances, be paid behind Mr. Stadtmauer's claim.

and entities that it lacks sufficient funds to pay, which is why it is in receivership. The former officers have shown no compelling reason why they should get to jump the line.” *Sec. & Exch. Comm'n v. Platinum Mgmt. (NY) LLC*, No. 16-CV-6848 (BMC), 2018 WL 6172404, at *1 (E.D.N.Y. Nov. 25, 2018). Likewise, in a minute order dated January 22, 2020, the Court rejected the argument that SanFilippo’s acquittal entitled him to priority, ruling that the Court “still will not permit them to jump the line ahead of other deserving creditors.” 1/22/20 Minute Order. The Court further emphasized that SanFilippo and Levy were “just two unsecured creditors among many.” *Id.*

Against this background, Mr. Stadtmauer and the Receiver attended a mediation regarding Mr. Stadtmauer’s claim, during which they reached an agreement in principle. The parties then executed a settlement agreement on October 21, 2021, which provided that Mr. Stadtmauer’s claim would be (1) allowed as an unsecured claim in the full amount of the principal value of the Promissory Note; and (2) allowed as a subordinated unsecured claim in the amount of \$4,969,759.04 (which reflects interest and other charges under the Promissory Note to that date).

Ex. B, Settlement Agreement.

Of course, Mr. Stadtmauer was not only concerned with the nominal value allowed for his claim. He also wanted to ensure that, except for the portion of his claim that was expressly to be subordinated, his claim would be treated with no less than the same priority as other unsecured claims. Accordingly, he negotiated a term providing that the \$12.155 million principal amount of his note would be “classified under the Receiver’s plan of distribution in the Receivership Case *with the same priority as other general unsecured claims against PPCO.*” **Ex. B** at 2 (emphasis added). Mr. Stadtmauer further agreed he would not object to a plan of distribution that treated his claim on equal footing with other unsecured creditors. *Id.* at 3. All of this was intended to (1)

protect Mr. Stadtmayer's rights and (2) allow the Receiver to enact a distribution scheme that, consistent with the Receiver's then-stated wishes, would provide equal recoveries for all unsecured creditors.

Unfortunately, that is not what has happened. Though the Receiver stated for years that she intended to pursue such a distribution scheme, and although the Court twice held that the FOB/SF claim was simply one of many unsecured claims, at the eleventh hour the Receiver has changed course and now seeks to elevate unsecured claims over Mr. Stadtmayer's claim. That position violates Mr. Stadtmayer's settlement agreement with the Receiver.

ARGUMENT

I. The Receiver and the Court Have Both Concluded that the FOB/SF Claim Is a General Unsecured Claim.

For years, the Receiver has taken the position that all unsecured creditors should be treated equally, including with respect to the FOB/SF claim. For example, in opposition to FOB/SF's motion to compel advancement of legal fees, the Receiver argued on October 30, 2018, that "claims for advancement of legal fees by directors and officers under pre-receivership agreements are not entitled to any priority over the pre-receivership claims of any other creditors or investors." Doc. No. 410 at 21. The Court agreed, holding that "[t]he former officers have shown no compelling reason why they should get to jump the line." *SEC v. Platinum*, 2018 WL 6172404, at *1. Then, on October 30, 2019, the Receiver took this same position again, arguing (in response to another motion for indemnification) that FOB/SF's "indemnification claims are nothing more than unsecured receivership obligations that are not entitled to priority." Doc. No. 497 at 9. Again, the Court agreed, ruling that the Court "still will not permit them to jump the line ahead of other deserving creditors." 1/22/20 Minute Order.

This was the state of affairs when the Receiver filed her schedule of allowed and disallowed claims on March 9, 2021. Doc. No. 564-1. That document contained only two classifications for creditors: secured and unsecured. *See id.* Consistent with all of the Receiver's positions through that date, it did not include a favored class of "priority" creditors.

II. The Receiver Seeks Approval for a Settlement That Would Violate Mr. Stadtmayer's Settlement Agreement and Lacks Legal Basis.

To resolve Mr. Stadtmayer's claim, the Receiver entered into a binding settlement agreement. As set forth above, that settlement agreement promised that Mr. Stadtmayer's claim would be treated the same as all other "general unsecured claims." It was Mr. Stadtmayer's intent and understanding, based on all of the Receiver's positions through that time, that this meant what it said: that his claim should receive "the same priority as other general unsecured claims against PPCO."

Despite having promised Mr. Stadtmayer that his claim would have the same priority as other unsecured claims, and despite multiple rulings by this Court that FOB/SF hold unsecured claims, the Receiver now seeks approval of a settlement with FOB/SF that elevates their claim over Mr. Stadtmayer's. That is not permitted under Mr. Stadtmayer's settlement agreement.

As background to the FOB/SF settlement, on November 12, 2021, the Receiver filed an Omnibus Motion to, *inter alia*, disallow the FOB/SF claim (asserted in the amount of \$2,686,426.31) in its entirety because it failed to allocate fees allegedly incurred to the specific Platinum entities to which the work related. Doc. No. 597 at 2, 55-56. The motion sought to disallow other claims seeking indemnity on similar grounds. *E.g., id.* at 56-57. FOB/SF opposed the omnibus motion. In that opposition, SanFilippo made an "equitable" argument that, in effect, his claim should have priority because he had been acquitted and was entitled to indemnity. Doc. No. 609 at 8-9. This is the same argument that the Court rejected explicitly in January 2020, when

it ruled that although the acquittal meant SanFilippo was entitled indemnity, he remained one unsecured creditor among many and would not be allowed to “jump the line ahead of other deserving creditors.” 1/22/20 Minute Order. Notably, FOB/SF did not (and could not, in light of the Court’s prior rulings) make any argument that there was a legal basis for treating their claims with priority over other unsecured creditors. Instead, they emphasized Delaware law on indemnification that does not speak to the either the equities or priorities of distribution in an SEC receivership.²

The Receiver nonetheless entered into a settlement that gives FOB/SF priority payment of 20% of their claim, roughly 7-8 times what other unsecured creditors will receive. That is directly contrary to the treatment the Receiver agreed would be accorded to Mr. Stadtmayer’s claim.

Elevating the 20% portion of FOB/SF’s claim—which was reduced to account for the need to allocate between entities—should not be allowed unless Mr. Stadtmayer’s claim is given, at a minimum, the same priority given to the FOB/SF claim. Priorities in receivership should not be “based on arbitrary factors.” *See S.E.C. v. Byers*, 637 F. Supp. 2d 166, 176 (S.D.N.Y. 2009). Here, Mr. Stadtmayer’s claim, at a bare minimum, is at least as meritorious and deserving as FOB/SF’s.

Multiple independent fiduciaries, including the SEC-appointed monitor and the Receiver, have affirmed this. Also, Mr. Stadtmayer is a creditor not merely of PPCO Feeder, but also of the Master Fund, meaning that in a traditional liquidation he would come before other claimants including the PPCO Feeder in its entirety and its creditors. Likewise, his claim is one on which a member of PPCO, Mark Nordlicht, has liability, as he signed a personal guaranty of the note.

² FOB/SF also argued that, without priority, their indemnity claim will receive only a small distribution. But this is also true for Mr. Stadtmayer. Without being given priority, and particularly if priority is given to others, Mr. Stadtmayer will receive pennies on the dollar for claims against the Master Fund and PPCO Feeder that have been recognized by both Bart Schwartz (as SEC monitor), complete with a confession of judgment, and by the Receiver in her settlement with Mr. Stadtmayer while another unsecured creditor receives more.

Indeed, in an arbitration proceeding on that same guaranty as it applied to another Platinum fund, PPVA, Hon. Bernard Fried (Ret.) ruled in a final, binding arbitration award that Mr. Nordlicht was liable for approximately \$15 million.³ Thus it is also true of Mr. Stadtmayer's claim, as it was for FOB/SF, that the fund documents would provide priority to his claim in an ordinary liquidation. There is simply no legal, contractual, equitable, or logical basis to pay FOB/SF's claim ahead of Mr. Stadtmayer's, and in fact the inverse is true. If FOB/SF are to receive a priority, Mr. Stadtmayer's claim, at bare minimum, should be given no less than the same treatment.

III. The FOB/SF Settlement Would Violate Equitable Principles Governing Distributions in this Proceeding.

As set forth above, the FOB/SF settlement, by placing an unsecured creditor like FOB/SF ahead of Mr. Stadtmayer, violates Mr. Stadtmayer's settlement agreement and lacks any legal basis. It also violates the equitable principles governing distributions in this SEC Receivership. Case law in this circuit generally holds that "*pro rata* distributions are the most fair and most favored in receivership cases." *S.E.C. v. Byers*, 637 F. Supp. 2d 166, 176 (S.D.N.Y. 2009). And where priorities are given, they cannot be based on "arbitrary factors." *Id.*

Even more to the point, numerous cases have held that *Defendants* in an SEC Receivership, like SanFilippo, should, far from receiving priority, be excluded from recovery entirely. *See Byers*, 637 F. Supp. 2d at 184 citing *SEC v. Basic Energy & Affiliated Res.*, 273 F.3d 657, 660 (6th Cir.2001) (affirming distribution plan that prohibited defendants from recovering at all, and reduced recovery of employees based on level of involvement in fraudulent scheme); *SEC v. Enter. Trust Co.*, No. 08 Civ. 1260, 2008 WL 4534154, at *3 (N.D.Ill. Oct. 7, 2008) ("Disqualifying those who took the business over the edge is the most common feature, and the least contested aspect, of distribution plans."); *SEC v. Merrill Scott & Assocs.*, No. 02 Civ. 39, 2006 WL 3813320, at

³ *Stadtmayer v. Nordlicht*, Case No. 7:20-cv-00347-CS (S.D.N.Y.), Doc. No. 3-2.

**6–7 (D. Utah Dec. 21, 2006) (excluding from distribution party who referred clients to defendant). Though Mr. SanFilippo was acquitted in his criminal matter, no determination has yet been made regarding his civil liability in this SEC enforcement case, and he remains a defendant in this matter.

Mr. Stadtmauer is not aware of a single decision holding that the defendants in an enforcement matter giving rise to an SEC receivership should be given a *priority* over other stakeholders, especially other unsecured creditors, as the FOB/SF settlement seeks. Accordingly, the equitable considerations that apply in this proceeding do not militate in favor of the FOB/SF settlement. They counsel against it.

CONCLUSION

For the reasons set forth above, the Receiver’s proposed treatment of the FOB/SF claim in its proposed settlement violates Mr. Stadtmauer’s settlement agreement, and it is legally and equitably meritless. Either Mr. Stadtmauer’s claim should be afforded no less than the same priority as FOB/SF’s, or the motion to approve the settlement should be denied.⁴

Respectfully submitted,

/s/ Nathaniel J. Kritzer
Nathaniel J. Kritzer
Steptoe LLP
1114 Avenue of the Americas
New York, New York 10036

*Counsel for Richard and Marisa
Stadtmauer*

Dated: May 3, 2024
New York, New York

⁴ There is also a third option, albeit one that the Receiver has not to date accepted. At the hearing on March 13, 2024, the Court indicated that if there were no objections to the proposed FOB/SF settlement, it “might provide a template for settling some of the other claims.” 3/13/23 Hr’g Tr. at 39:22-23. Mr. Stadtmauer is open to using this agreement as a template for settling his claim, but to date the Receiver has not agreed to do so.

EXHIBIT A

EXECUTION VERSION

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** (along with the Exhibits hereto, the “Agreement”) is made and entered into by and among (a) Platinum Partners Credit Opportunities Master Fund LP (“PPCO Master”) and Platinum Partners Credit Opportunities LLC (“PPCO Feeder,” and together with PPCO Master, “Debtors”), and (b) Richard Stadtmauer (“Claimant,” and together with PPCO, the “Parties”), with respect to the matter Stadtmauer, Richard et al. v. Platinum Partners Value Arbitrage Fund (USA) L.P., et al., JAMS Ref. No. 1425021832 (the “Arbitration”).

RECITALS

1. On May 27, 2016, PPCO Master and PPCO Feeder executed a promissory note (“Note”) in favor of Claimant in the amount of \$12,155,072.96 (the “Principal Amount”), plus interest and reimbursement of certain costs as provided for by the Note.

2. Debtors did not make an interest payment to plaintiff when such payment was due under the Note on June 30, 2016. Claimants properly noticed Debtors’ defaults under the Note and, on July 18, 2016, Debtors’ obligations under the Note were accelerated due to Claimant’s notice of certain Events of Default including, among other things, Debtors’ failure to pay interest on June 30, 2016.

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3. On August 16, 2016, Claimant and two other parties commenced the Arbitration against Debtors and others to collect on the Note and certain other debt obligations.

4. Debtors agree that the Note is a valid, binding, and enforceable obligation of Debtors and that Debtors do not have, and have never had, any defense to payment of the Note.

5. The parties wish to avoid the cost, burdens, and risks of litigating the Arbitration as to PPCO and to reach a consensual resolution and payment of the Note that reflects the resolution that the Parties would expect from litigating the Arbitration and the anticipated benefits. Specifically, this Agreement is intended to give Claimant the benefit of an arbitration award and judgment in his favor, and to give PPCO a period of time before judgment is entered against it that it could reasonably expect to gain through litigating the claims in the Arbitration. Further, this Agreement is intended to provide a full release to Debtors of their obligations for principal and interest payments under the Notes after making all payments required under this Agreement.

SETTLEMENT TERMS

6. The Debtors have executed the attached Affidavit of Confession of Judgment (the “PPCO Confession”), provided with original signatures. Claimant

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agrees not to file or otherwise use the PPCO Confession (or April or July Confession, defined below) unless the Debtors breach their obligations under this Agreement or commit further uncured defaults under the Note. If the Debtors commit any such breaches or uncured defaults, then Claimant may immediately and without further notice take any and all actions to use the PPCO Confession, the April Confession, or the July Confession to collect and satisfy the obligations owing under the Note. Debtors further agree, without prejudice to any of Claimant's other rights, that Claimant may enforce the PPCO Confession, the April Confession, and the July Confession in the same manner as a final, non-appealable, binding arbitration award.

7. The Debtors agree to make the following payments to Claimant:
 - (i) on or before April 10, 2017, the Debtors shall pay to Claimant \$3,570,052.03 representing 25 percent of the Principal Amount, 25% of the total interest to be paid on the Principal Amount at 5%, plus \$300,000, representing legal fees that PPCO confesses to be owed to plaintiff (the "April Payment");
 - (ii) on or before July 10, 2017, the Debtors shall pay to Claimant \$3,270,052.03 representing 25 percent of the Principal Amount, and 25% of the total interest to be paid on the Principal Amount at 5% (the "July Payment");
 - (iii) on or before October 10, 2017, the Debtors shall pay to Claimant \$6,540,105.06, representing the remaining 50 percent of the Principal Amount, and 50% of the total interest to be paid on the Principal Amount at 5% (the "October Payment," and

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together with the April Payment and the July Payment, the “Future Payments”).

The Debtors shall be jointly and severally liable for all payments and other obligations herein. Upon receipt of the April Payment, Claimant will exchange the PPCO Confession for a revised confession of judgment from Debtors (the “April Confession”), which shall be in the same form as the PPCO Confession but which shall be reduced by the amount of the April Payment. Upon receipt of the July Payment, Claimant will exchange the April Confession for a revised confession of judgment from Debtors (the “July Confession”), which shall be in the same form as the April Confession but which shall be reduced by the amount of the July Payment. Upon receipt of the October Payment, Claimant shall destroy the July Confession or return it to Debtors.

8. Debtors acknowledge and agree that the PPCO Confession and any other further confessions of judgment issued pursuant to this agreement fully comply with CPLR 3218. In the event that any court, clerk, or other government official finds that any of the PPCO Confession, April confession, or July Confession are in any respect deficient or unenforceable, Debtors agree to work in good faith with Claimant to expeditiously execute a revised confession of judgment that results in entry of an enforceable judgment in equal amount to the relevant confession of judgment.

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9. If Debtors make each of the Future Payments, Claimant agrees that no default interest shall be owed on the Note and that the Note's applicable rate of interest shall be 5%. In the event that Debtors default on any of the Future Payments, then default interest at the rate of 9% shall be owed under the Note from April 1, 2016 until such date as the Note is paid in full.

10. Debtors agree that they will not make distributions to their equity holders until the Future Payments have been made in full. To the extent Debtors make any payments to any unsecured creditors, Claimant shall be paid, in addition to the Future Payments, a distribution *pari passu* with any such creditor on the same date as such creditor is paid; provided, however, that the subsequent Future Payment shall be adjusted to reflect a credit equal to any such *pari passu* payments made; and provided further that Claimant shall not be entitled to be paid *pari passu* with respect to any payments made in the ordinary course of Debtors' business to Debtors' trade creditors, employees, attorneys, accountants, or other similar parties. Debtors represent that their aggregate liabilities to former limited partners who have redemptions pending, and to any other non-redemption creditors (except for liabilities incurred in the ordinary course of Debtors' business to trade creditors, current or former employees, attorneys, accountants, or other similar parties) do not exceed \$25 million.

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11. Within seven (7) business days of the execution of this Agreement, Claimant agrees to ask JAMS to dismiss the Arbitration as against Debtors. The dismissal shall be without prejudice to Claimant's commencement of an arbitration proceeding as permitted under the Note if Debtors fail to make any of the payments required hereunder. In the event of any such default and subsequent arbitration, Debtors further agree that the JAMS expedited procedures shall apply.

12. Debtors have agreed to reimburse legal fees actually incurred by Claimant before the date of this Agreement in the amount of \$300,000. To the extent that Claimant, Marisa Stadtmauer, or the National Society of Hebrew Day Schools incur additional legal fees in their efforts to collect from PPCO or other parties ("Future Collection Costs"), the Parties shall retain their rights under the terms and conditions of the Note regarding reimbursement of Future Collection Costs from the Debtors.

RELEASES

13. Upon receipt of the October Payment, and if all other payments required hereunder have been made, Claimant shall be deemed to fully release Debtors from all of their obligations under the Notes, except obligations for attorney fees as provided herein; provided, however, that if any payments made hereunder become the subject of a claim for clawback, preference, fraudulent

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transfer, or other similar theory, then the release provided herein shall be void and of no further effect.

14. This Agreement shall not affect Claimant's rights concerning the Note as against any obligors other than Debtors.

REPRESENTATIONS AND WARRANTIES OF THE PARTIES

15. Each of the Parties hereby represents and warrants that it has entered into this Agreement voluntarily and of its own volition. Each Party acknowledges that no other Party, nor any agent or attorney of any other Party, has made any promise, representation, or warranty whatsoever, express or implied, not expressly contained in this Agreement concerning the subject matter hereof, or any other matter whatsoever, to induce said Party to execute or authorize the execution of this Agreement. Each Party acknowledges that it has not executed or authorized the execution of this instrument in reliance upon any such promise, representation or warranty not contained herein.

16. Each individual executing this Agreement directly and expressly represents and warrants that he or she has been given and has received and accepted authority to so sign and execute this Agreement on behalf of the Party for whom it is indicated he or she has signed, and further has been expressly given and received and accepted authority to enter into a binding agreement on behalf of such

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Party with respect to the matters contained herein and as stated herein, and that the consent of no other party is required to bind such party.

17. Debtors represent that they are solvent and neither this Agreement nor any of the payments or rights provided herein will render either of them insolvent, that they expect to pay all of their creditors in full, and that they anticipate providing distributions to their equity holders.

CONFIDENTIALITY

18. The Parties agree to keep the terms and conditions of this Agreement and the subject matter of this Agreement confidential and not disclose the existence or terms of this Agreement to third parties, unless a Party (a) reasonably believes that such disclosure is required by applicable law, (b) is compelled to disclose by judicial or administrative process, or (c) makes such disclosure in any action or legal proceeding in pursuit of its rights in any matter; provided, however, in the case of disclosure pursuant to (a) or (b) above, the Parties shall only disclose such information that they believe they are required to disclose and after they give other Parties advance written notice of such intended disclosure so that such Parties may seek a protective order. Notwithstanding the preceding sentence, the Parties may disclose on a confidential basis the existence and terms of this Agreement to their administrators, financial advisors, attorneys, accountants,

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lenders, prime brokers, and actuaries as is necessary in the normal course of business.

MISCELLANEOUS

19. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, inducements, or conditions, oral or written, express or implied, except for the Note, which shall remain binding and in full effect until the release granted in Section 13 becomes effective.

20. This Agreement may not be amended nor any of its provisions waived except by a writing signed by each of the Parties.

21. This Agreement, and any dispute arising out of or relating in any way to this Agreement, shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to conflicts of law principles.

22. This Agreement may be executed in one or more original, facsimile or PDF counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

23. All representations, warranties and agreements set forth in this Agreement shall be deemed continuing and shall survive the date as of which this Agreement has been executed.

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24. The Parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement.


25. Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof, and those portions shall remain in full force and effect so long as that invalidation does not deprive a Party of a material component of its bargained for consideration.

26. This Agreement has been in all respects voluntarily and knowingly executed by the Parties, without undue influence, and with each of them having had the opportunity to obtain advice from legal counsel. Each of the Parties agrees that the rule of construction providing that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement and that each of the Parties is deemed to have participated in the drafting of this Agreement.

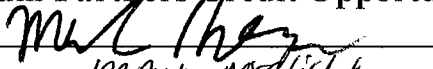
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IN WITNESS WHEREOF, the Parties, acting through their duly authorized representatives (where applicable), have caused this Agreement to be executed this 23rd day of November, 2016.

Platinum Partners Credit Opportunities Master Fund LP

By: 
Name: Mark Nordlicht
Title: Chief Investment Officer
Date: 11/28/2016

Platinum Partners Credit Opportunities LLC

By: 
Name: Mark Nordlicht
Title: Chief Investment Officer
Date: 11/28/2016

REVIEWED AND APPROVED BY:



Bart Schwartz

Guidepost Solutions LLC

Solely in his Capacity as Advisor to Platinum Partners Credit Opportunities Master Fund LP and Platinum Partners Credit Opportunities LLC, pursuant to limitations in Engagement Agreement

Richard Stadtmauer

Date: _____

EXHIBIT B

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement (this “**Agreement**”) is hereby entered into this [--] day of October, 2021 (the “**Effective Date**”), by and between (1) Melanie L. Cyganowski, in her capacity as the court appointed receiver (the “**Receiver**”) for Platinum Credit Management, L.P. (“**Credit Management**”), Platinum Partners Credit Opportunities Master Fund L.P. (“**PPCO**”), Platinum Partners Credit Opportunities Fund (TE) LLC (“**PPCO TE**”), Platinum Partners Credit Opportunities Fund LLC (“**PPCO Fund**”), Platinum Partners Credit Opportunities Fund (BL) LLC (“**PPCO Blocker**”), Platinum Partners Credit Opportunities Fund International Ltd. (“**PPCO International**”), Platinum Partners Credit Opportunities Fund International (A) Ltd. (“**PPCO International (A)**”)¹, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., (collectively, the “**Receivership Entities**,” the “**Platinum Entities**” or “**Platinum**”) and (2) Richard Stadtmauer (“**Stadtmauer**”) and Marisa Stadtmauer (collectively the “**Stadtmayers**” and collectively with the Receiver, the “**Parties**” and each a “**Party**”).

WHEREAS, on December 19, 2016, the United States District Court for the Eastern District of New York (the “**Court**”) placed certain of the Receivership Entities under receivership and in connection therewith, appointed Bart M. Schwartz as receiver. *See SEC v. Platinum Management (NY) LLC, et al.*, Case No. 16-06848 (BMC) (the “**Receivership Case**”);

WHEREAS, on July 6, 2017, Melanie L. Cyganowski replaced Bart M. Schwartz as receiver pursuant to an order of the Court, and the Receiver is now administering the receivership estate pursuant to the October 16, 2017 [Dkt. No. 276] and the December 29, 2017 [Dkt. No. 297] Orders of the Court (collectively, the “**Receivership Order**”);

WHEREAS, on March 29, 2019, Stadtmauer filed two proofs of claim in the Receivership Case: one against PPCO Fund in the amount of \$17,124,832, identified on the claims register as claim number 311; and one against PPCO in the amount of \$17,124,832, identified on the claims register as claim number 312 (collectively the “**Stadtmauer Claims**”);

WHEREAS, on December 1, 2020, the Court entered its *Order Establishing Claims and Interests Reconciliation and Verification Procedures* [Dkt. Item 554] (the “**Claims Verification Order**”);

WHEREAS, on March 9, 2021, in accordance with the Claims Verification Order, the Receiver filed her *Notice of Claims Analysis Report* [Dkt. Item 564] (the “**Claims Analysis Report**”);

WHEREAS, in the Claims Analysis Report, the Receiver published her determinations that PPCO Fund and PPCO do not have any liability to Stadtmauer on account of the Stadtmauer Claims, and that Stadtmauer holds an investor claim that will be treated in the same manner as

¹ “**PPCO Funds**” means, collectively, Credit Management, PPCO, PPCO TE, PPCO Fund, PPCO Blocker, PPCO International, and PPCO International (A).

other Interests² in accordance with the Claims Verification Order. *See* Claims Analysis Report, Schedule E, PPCO Denied Claims, 7; Claims Verification Order, 5;

WHEREAS, on April 23, 2021, Stadtmauer submitted an objection to the Receiver (the “*Objection*”) to the Claims Analysis Report, disputing the determinations as to the Stadtmauer Claims set forth in the Claims Analysis Report, and asserting that the Stadtmauer Claims are valid creditor claims in the amounts asserted;

WHEREAS, the Claims Verification Order authorizes the Receiver in her sole discretion, to settle and compromise any disputed claim on terms and for reasons that she deems, in her business judgment, to be appropriate, and the allowed claim, and the respective allowed amount and classification, shall form the basis upon which distributions will be calculated in the Receivership Case, in accordance with a plan of distribution, without further Order of the Court. *See* Claims Verification Order, 7;

WHEREAS, the Claims Verification Order authorizes the Receiver, in her discretion and subject to agreement with a claimant, to utilize a disinterested mediator to seek to resolve a claim which is subject to dispute, without further order of the Court. *See* Claims Verification Order, 7;

WHEREAS, on August 24, 2021, the Receiver and Stadtmauer participated in a mediation before a disinterested mediator (the “*Mediator*”), during which the Receiver and Stadtmauer reached an agreement; and

WHEREAS, solely to avoid further litigation and expense, and after good-faith arms’ length negotiations and discussions, the Parties have agreed to resolve all disputes and claims by and between the Parties, including, but not limited to the validity, amount, and classification of the Stadtmauer Claims, but in doing so, do not concede to the other Party’s factual or legal allegations with respect to the Stadtmauer Claims.

NOW, THEREFORE, the Parties, each intending to be legally bound, and in exchange for the mutual covenants and promises set forth herein, agree as follows:

1. **Incorporation of WHEREAS Clauses**. The “WHEREAS” clauses set forth above are expressly incorporated in and form part of the terms of this Agreement.

2. **The Allowance of the Stadtmauer Claims**. As of the Effective Date, the Stadtmauer Claims shall be fixed and finalized as follows: (i) one general unsecured claim in the Receivership Case against PPCO in the amount of \$12,155,072.96, which shall be classified under the Receiver’s plan of distribution in the Receivership Case with the same priority as other general unsecured claims against PPCO, provided, however, that if any person or entity that held or holds in Interest in one or more of the PPCO Funds that made a redemption request prior to PPCO suspending redemptions that remained unpaid as of the commencement of the Receivership Case (an “*Unpaid Redemption*”) receives a greater percentage recovery on account of its Unpaid Redemption than allowed general unsecured claims against PPCO, then this \$12,155,072.96

² In accordance with the Claims Verification Order, an “*Interest*” is defined as an equity interest in any of the Receivership Entities, which interest is based exclusively upon the ownership of membership interests or partnership interests in any of the Receivership Entities.

portion of the Stadtmauer Claims will receive treatment equal to the most favorable treatment accorded to any such Unpaid Redemption; and (ii) one subordinated unsecured claim in the Receivership Case against PPCO in the amount of \$4,969,759.04, which shall be classified under the Receiver's plan of distribution in the Receivership Case with a distribution priority subordinate to all general unsecured claims against, and Interests in, the PPCO Funds, and Unpaid Redemptions (collectively, the "**Allowed Claims**"). All distributions in the Receivership Case on account of the Allowed Claims will be subject to the terms and conditions of a plan of distribution ("**Plan**"), subject to approval by the Court, including the availability of funds to make distributions on account of the Allowed Claims, and as such this Agreement in no way guarantees a cash payment in whole or in part of the Allowed Claims or any other cash payment to Stadtmauers. Stadtmauers shall not object to any terms of a Plan that are consistent with this Agreement or that treat general unsecured claims, Interests, and Unpaid Redemptions with the same priority of distribution. For the avoidance of doubt, any Interest Stadtmauers may have held, or hold, in any Receivership Entity shall be deemed waived with prejudice as of the Effective Date, subject to the full reservation of rights below to proceed against third parties, including but not limited to the Nordlicht Parties, the Huberfeld Parties, and the Bodner Parties (each as defined below) and the Stadtmauers will not be entitled to a distribution in the Receivership Case on account of any Interest in any Receivership Entity.

3. **Releases.**

a. As of the Effective Date, Stadtmauers, for themselves and on behalf of their agents, representatives, employees, attorneys, successors and assigns, release, acquit, and forever discharge each of (i) the Receivership Entities, their agents, representatives, officers, directors, employees, attorneys, successors and assigns; and (ii) the Receiver, her agents, representatives, employees, attorneys, successors and assigns (collectively, the "**Stadtmauer Released Parties**") from any and all claims, demands, debts, liabilities, causes of action, obligations, and liabilities of any kind, which Stadtmauers could have had, claim to have had or could ever have, whether at law or in equity, whether known or unknown, whether anticipated or unanticipated, arising from the beginning of time through and including the Effective Date of this Agreement. Notwithstanding any other provision in this Agreement, and for avoidance of doubt, the Stadtmauers preserve and expressly do not release their rights against all parties other than the Stadtmauer Released Parties, including but not limited to (1) Mark Nordlicht, the Mark Nordlicht bankruptcy estate, Dahlia Kalter, Barbara Nordlicht, and any of their children (together, the "**Nordlicht Parties**"); (2) any entity owned, controlled, or operated by, on behalf of, or for the benefit of any of the Nordlicht Parties, whether directly or indirectly, and whether such ownership or control is legal or equitable in nature; (3) Murray Huberfeld, Laura Huberfeld, and each of their children (together, the "**Huberfeld Parties**"); (4) any entity owned, controlled, or operated by, on behalf of, or for the benefit of any of the Huberfeld Parties, whether directly or indirectly, and whether such ownership or control is legal or equitable in nature; (5) David and Naomi Bodner, and each of their children (together, the "**Bodner Parties**"); or (6) any entity owned, controlled, or operated by, on behalf of, or for the benefit of any of the Bodner Parties, whether directly or indirectly, and whether such ownership or control is legal or equitable in nature.

b. As of the Effective Date, (i) the Receiver and (ii) the Receivership Entities (collectively, the "**Platinum Releasers**") release, acquit, and forever discharge Stadtmauers their agents, representatives, employees, attorneys, successors and assigns, solely in their capacity as

such (collectively, the “*Platinum Released Parties*”), from any and all claims, demands, debts, liabilities, causes of action, obligations, and liabilities of any kind, which the Platinum Releasers could have had, claim to have had or could ever have, whether at law or in equity, whether known or unknown, whether anticipated or unanticipated, arising from the beginning of time through and including the Effective Date of this Agreement. Notwithstanding any other provision in this Agreement, and for avoidance of doubt, the Platinum Releasers preserve and expressly do not release their rights against all parties other than the Platinum Released Parties, including but not limited to (1) the Nordlicht Parties; (2) any entity owned, controlled, or operated by, on behalf of, or for the benefit of any of the Nordlicht Parties, whether directly or indirectly, and whether such ownership or control is legal or equitable in nature; (3) the Huberfeld Parties; (4) any entity owned, controlled, or operated by, on behalf of, or for the benefit of any of the Huberfeld Parties, whether directly or indirectly, and whether such ownership or control is legal or equitable in nature; (5) the Bodner Parties; or (6) any entity owned, controlled, or operated by, on behalf of, or for the benefit of any of the Bodner Parties, whether directly or indirectly, and whether such ownership or control is legal or equitable in nature.

c. For the avoidance of doubt, the foregoing releases do not release any obligations of any Party under a Plan, as approved by the Court, or any document, instrument or agreement executed to implement a Plan or this Agreement.

4. **Representations and Warranties.**

a. As of the Effective Date of this Agreement, Stadtmauers represent and warrant that except as described in this Agreement, in the Stadtmauer Claims, and in the JAMS arbitration previously asserted against, *inter alia*, certain Receivership Entities, they have not filed, asserted, nor hold, either directly or indirectly, any other claims against, or Interests in, the Receivership Entities in the Receivership Case or otherwise. Though the following actions are not against any Receivership Entity, in the interest of full disclosure the Stadtmauers further represent that they have asserted claims against the Huberfeld Parties, the Bodner Parties, and Mark Nordlicht in arbitration, as well as claims against the Huberfeld Parties and the Nordlicht Parties in New York State Court. To the extent any such other claims or Interests have been asserted or exist in the Receivership Case, regardless of whether Stadtmauers filed a proof of claim, the same are hereby waived in their entirety, with prejudice.

b. Each Party represents and warrants that: (i) they have been represented by counsel in connection with this Agreement and are executing this Agreement with full knowledge and understanding of its terms; (ii) their signatory has full authority to execute this Agreement on their behalf and to bind themselves to this Agreement by execution hereof; (iii) each Party has obtained all necessary legal approvals to enter into this Agreement, except as otherwise specifically stated herein; (iv) the execution and delivery of this Agreement will not violate any agreement, court order, administrative order of any governmental entity, or any law or governmental regulation; and (v) they have not sold, assigned or otherwise transferred to any third party any of their rights with respect to the claims released in this Agreement.

5. **Miscellaneous.**

a. **Notices.** All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, or (b) when sent by confirmed electronic mail if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day.

If to the Receiver

Otterbourg P.C.
Attn: Erik B. Weinick, Esq.
230 Park Avenue
New York, NY 10169
eweinick@otterbourg.com

If to Stadtmauers

Steptoe & Johnson LLP
Attn: Nathaniel Kritzer, Esq.
1114 Avenue of the Americas
New York, NY 10036
nkritzer@steptoe.com

b. **Venue and Choice of Law.** The Parties consent and submit to the exclusive jurisdiction of the Court over any actions or proceedings relating to the enforcement or interpretation of this Agreement, and any Party bringing such action or proceeding shall do so in the Court. This Agreement and all claims and disputes arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the State of New York, except to the extent federal law applies, without regard to choice of law principles to the extent such principles would apply a law other than that of the State of New York. Each of the Parties hereto hereby waives any right to a trial by jury in any action, proceeding or counterclaim based upon or arising out of this Agreement or any of the transactions related hereto, and agrees that any such action, proceeding or counterclaim shall be tried before a court and not before a jury.

c. **Entire Agreement.** This Agreement constitutes the entire and only agreement of the Parties concerning the subject matter hereof. This Agreement supersedes and replaces any and all prior or contemporaneous verbal or written agreements between the Parties concerning the subject matter hereof. The Parties acknowledge that this Agreement is not being executed in reliance on any verbal or written agreement, promise or representation not contained herein.

d. **No Oral Modifications.** This Agreement may not be modified or amended orally. This Agreement may be modified or amended only by a writing signed by a duly authorized representative of each of the Parties. No waiver of any breach of any term of this Agreement shall be construed as a waiver of any subsequent breach.

e. **Construction.** This Agreement constitutes a fully negotiated agreement among commercially sophisticated parties and therefore shall not be construed or interpreted for or against any Party, and any rule or maxim of construction to such effect shall not apply to this Agreement.

f. **Headings.** The heading of any section of this Agreement is intended only for convenience and shall not be construed to be or interpreted as a part, or limitation on the scope, of any such section.

g. **Binding Effect; Successor and Assigns.** This Agreement shall inure solely to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. No Party may assign its rights or obligations under this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any assignment not in accordance with the terms hereof shall be null and void *ab initio*.

h. **Costs.** Each Party shall bear its own costs in connection with the negotiation, execution and implementation of this Agreement, except that fees and expenses of the Mediator shall be shared equally among the Receiver and Stadtmauer.

i. **Severability.** If any part of this Agreement is held by a court of competent jurisdiction to conflict with any federal, state or local law, and as a result such part is declared to be invalid and of no force or effect in such jurisdiction, all remaining terms of this Agreement shall otherwise remain in full force and effect and be construed as if such invalid portion or portions has not been included herein.

j. **Further Assurances and Cooperation.** The Parties each agree to execute such further and additional documents, instruments and writings as may be necessary, proper, required, desirable or convenient for the purpose of fully effectuating the terms of this Agreement. Each Party agrees to cooperate with reasonable requests by the other Party for documents and information concerning rights asserted in other proceedings, except where a Party's interests are, or might be, adverse to the interests of the other Party.

k. **Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Parties need not appear on the same counterpart.

l. **PDFs as Originals.** This Agreement may be executed using PDF signatures, with the same effect as if the signatures were original. Electronic copies of this Agreement shall be deemed for all purposes to have the same force and effect of the original thereof.

m. **No Third Party Beneficiaries.** Neither this Agreement, nor any negotiations or proceedings in connection herewith, may be used and shall not be admissible in any proceeding against any Party to this Agreement for any purpose, except to enforce the terms of this Agreement, including but not limited to any proceeding involving Mark Nordlicht or the Nordlicht Bankruptcy Estate.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

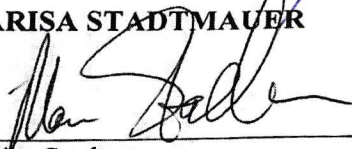
**MELANIE L. CYGANOWSKI, in
her capacity as the court-appointed
receiver for the Receivership Entities**

By: Melanie L. Cyganowski
Melanie L. Cyganowski as Receiver
as Receiver

RICHARD STADTMAUER

By: 
Richard Stadtmauer

MARISA STADTMAUER

By: 
Marisa Stadtmauer