

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. :

----- X

No. 16-CV-6848 (BMC)

**NOTICE OF RECEIVER’S MOTION FOR ENTRY OF AN
ORDER APPROVING A SETTLEMENT AGREEMENT
BETWEEN THE RECEIVER AND MARK A. NORDLICHT**

PLEASE TAKE NOTICE that upon the accompanying declaration and memorandum of law in support of the motion (the “*Motion*”) by Melanie L. Cyganowski, the court-appointed receiver (the “*Receiver*”) of the Receivership Entities¹, by and through her undersigned counsel, will move before the Honorable Brian M. Cogan, United States District Judge for the United States District Court for the Eastern District of New York (the “*Court*”), located at the United States District Court, 225 Cadman Plaza East, Brooklyn, New York 11201, for the entry of an Order (a) approving a settlement agreement (the “*Settlement Agreement*”) between the Receiver, on behalf

¹ The “*Receivership Entities*” are: (i) Platinum Partners Credit Opportunities Master Fund LP, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd., (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, (vii) Platinum Credit Management, L.P., (viii) Platinum Liquid Opportunity Management (NY) LLC, (ix) Platinum Partners Liquid Opportunity Fund (USA) L.P., and (x) Platinum Partners Liquid Opportunity Master Fund L.P.

of the Receivership Entities, and Mark A. Nordlicht (“*Nordlicht*”, and together with the Receiver, the “*Parties*”); (b) authorizing the Receiver to take any such necessary steps to effectuate the terms of, and fulfill her obligations under, the Settlement Agreement; and (c) granting such other and further relief as the Court deems just.

PLEASE TAKE FURTHER NOTICE that any opposition to the Motion must be: (i) made in writing; (ii) if by a party named in the above-captioned case, electronically filed with the Court; or (iii) if by a non-party, electronically mailed to the Receiver at her email address, platinumreceiver@otterbourg.com, so as to be actually received no later than **September 13, 2023**.

PLEASE TAKE FURTHER NOTICE that in the absence of any timely filed or served written opposition, the Court may grant the relief requested in the Motion without further hearing or notice.

Dated: New York, New York
August 30, 2023

OTTERBOURG P.C.

By: /s/ Erik B. Weinick
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New York, New York 10169
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eweinick@otterbourg.com

Attorneys for Melanie L. Cyganowski, as Receiver

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. :

----- X

No. 16-CV-6848 (BMC)

**DECLARATION OF MELANIE L. CYGANOWSKI, AS RECEIVER,
IN SUPPORT OF THE RECEIVER’S MOTION FOR ENTRY OF
AN ORDER APPROVING A SETTLEMENT AGREEMENT
BETWEEN THE RECEIVER AND MARK A. NORDLICHT**

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

1. I make this declaration in my capacity as the court-appointed receiver (the “*Receiver*”) of the Receivership Entities¹ in support of my motion (the “*Motion*”) for entry of an Order (a) approving a settlement agreement (the “*Settlement Agreement*”)² between me, on behalf

¹ The “*Receivership Entities*” are: (i) Platinum Partners Credit Opportunities Master Fund LP, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd., (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, (vii) Platinum Credit Management, L.P., (viii) Platinum Liquid Opportunity Management (NY) LLC, (ix) Platinum Partners Liquid Opportunity Fund (USA) L.P., and (x) Platinum Partners Liquid Opportunity Master Fund L.P.

² A copy of the Settlement Agreement is attached hereto as Exhibit A.

of the Receivership Entities, and Mark A. Nordlicht (“*Nordlicht*”, and together with the Receiver, the “*Parties*”); (b) authorizing me to take any such necessary steps to effectuate the terms of, and fulfill my obligations under, the Settlement Agreement; and (c) granting such other and further relief as this Court deems just.

I.

PRELIMINARY STATEMENT

2. Nordlicht was, among other things, the former co-Chief Investment Officer of each of the three portfolio managers, general partners and managing Members of the Platinum Funds (as defined below) until the commencement of this Receivership. Thereafter, on June 29, 2020, Nordlicht filed a Chapter 7 Petition (the “*Petition*”) in the United States Bankruptcy Court for the Southern District of New York (the “*Bankruptcy Court*”), thereby commencing the bankruptcy case titled *In re Nordlicht*, Case No. 20-22782-DSJ (the “*Bankruptcy Case*”). Following over thirty (30) months of litigation and mediation to resolve the Parties’ claims against each other in the Adversary (as defined below) in the Bankruptcy Case, on July 21, 2023, I filed a motion in the Bankruptcy Court for approval of the Settlement Agreement (Adv. Dkt. 57) (the “*BR CT Settlement Motion*”). No objections were filed to the BR CT Settlement Motion. On August 22, 2023, the Bankruptcy Court (Jones USBJ) held a hearing on the BR CT Settlement Motion and on August 23, 2023 entered an Order granting it (Adv. Dkt. 60) (the “*BR Settlement Order*”).³ Although the Bankruptcy Court approved the Settlement Agreement, one of the conditions to the Effective Date (as that term is defined in the Settlement Agreement) of the Settlement Agreement is this Court’s approval of the Settlement Agreement (Settlement Agreement, Section II.B.). By this Motion I am seeking this Court’s approval of the Settlement Agreement.

³ A copy of the BR Settlement Order is attached hereto as **Exhibit B**. A copy of the transcript of the August 22, 2023 hearing is attached hereto as **Exhibit C**.

3. I have determined in my business judgment to enter into the Settlement Agreement because the Settlement Agreement provides significant benefits to the Receivership Estate. Under the Settlement Agreement Nordlicht (i) will withdraw his objection to the Receivership’s proof of claim, or any potential objection to the Receivership’s \$154,800,000 amended proof of claim, in Nordlicht’s Chapter 7 Bankruptcy Case, resolving the only objection that has been asserted to date and thereby retaining the Receivership Estate’s right to receive its *pro rata* share of Nordlicht’s Chapter 7 estate property⁴, (ii) pay the Receivership Estate a minimum of \$350,000 and up to \$5.1 million from his non-Chapter 7 estate property based upon his future earnings⁵, and (iii) execute a non-dischargeable affidavit of judgment by confession against Nordlicht in the amount of \$5 million (minus any credits for monthly payments previously paid). Moreover, this will all occur without the costs and uncertainties of continued litigation – the Settlement Agreement resolves *all* pending claims, causes of action and disputes between the Parties’ in the Bankruptcy Case.

4. The Parties have agreed to a resolution of these disputes after considerable arm’s length negotiations in mediation conducted by the Hon. Alan Gropper (USBJ Ret.) (“*Judge Gropper*”), and based on terms (described more fully below) that I believe are fair and reasonable, and which the Bankruptcy Court has approved. The Settlement Agreement brings to conclusion

⁴ Nordlicht’s Chapter 7 estate is comprised of Nordlicht’s property, pursuant to 11 U.S.C. § 541, as of the Petition Date. During the administration of Nordlicht’s Chapter 7 estate, the Chapter 7 Trustee has settled claims against Nordlicht, his family members, and entities they control, pursuant to which the settling parties, including Nordlicht, agreed to pay \$2.5 million to the Nordlicht bankruptcy estate. *See Stadtmayer v. Nordlicht (In re Nordlicht)*, Adv. Pro. No. 20-06489 (RDD) (Bankr. S.D.N.Y. June 2, 2021), Dkt. 35, *affirmed*, No. 21-CV-5990 (KMK), 2022 WL 1591788, at *1 (S.D.N.Y. May 19, 2022), *appeal pending*, No. 22-1223 (2d Cir.). It is not clear whether or when the Nordlicht Chapter 7 estate will make distributions to creditors or what amount the Receivership Estate might receive on account of the amended proof of claim.

⁵ Amounts required to be paid by Nordlicht will be offset by any amount paid by Nordlicht as restitution pursuant to an Order and Judgment in the Criminal Action. If within three (3) years of the effective date of the Settlement Agreement, Nordlicht’s conviction is fully vacated, and/or he is granted a new trial and in such new trial, he is acquitted on all charges, and/or he is successful on any appeal of his criminal conviction resulting in acquittal of all charges against him, the Receivership Estate shall not be entitled to any further payments from Nordlicht.

the litigation in the Bankruptcy Case and resolves the pending (and potential future) litigation between the Parties, helping to bring this Receivership to conclusion.

5. For these reasons, and those more fully set forth herein and in the contemporaneously filed memorandum of law, I respectfully request that this Court grant the Motion and enter an Order approving the Settlement Agreement.

II.

FACTS

A. Parties

1. Nordlicht

6. Nordlicht was formerly the co-Chief Investment Officer (“*CIO*”) of and held an ownership interest in each of the three portfolio managers, general partners and managing members of three groups of hedge funds – the PPCO Funds⁶, the “PPVA Funds”⁷ and the PPLO Funds⁸ (collectively, the “*Platinum Funds*”).

7. On December 19, 2016, an eight-count indictment was unsealed in this Court commencing a criminal action captioned *United States v. Nordlicht*, 16-cr-00640 (BMC) (E.D.N.Y.), against Nordlicht, among others for securities fraud, investment adviser fraud,

⁶ The “*PPCO Funds*” include (i) Platinum Partners Credit Opportunities Master Fund LP, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd., (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., (vi) Platinum Partners Credit Opportunities Fund (BL) LLC.

⁷ The “*PPVA Funds*” include Platinum Partners Value Arbitrage Fund L.P. (“*PPVA Master Fund*”), Platinum Partners Value Arbitrage Fund (USA) L.P. (“*PPVA Fund USA*”), Platinum Partners Value Arbitrage Fund (International) Limited (“*PPVA Fund International*”), and Platinum Partners Value Arbitrage Fund (Intermediate) Limited. Platinum Management (NY) LLC served as the investment manager of the PPVA Funds. Platinum Partners Value Arbitrage L.P. is the general partner of the PPVA Funds.

⁸ The “*PPLO Funds*” include Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Liquid Opportunity Fund (International) Ltd, and Platinum Partners Liquid Opportunity Fund (USA) L.P.. Platinum Liquid Opportunity GP LLC is the general partner of the PPLO Fund. Platinum Liquid Opportunity Management (NY) LLC served as the investment manager of the PPLO Funds.

conspiracy to commit securities fraud, conspiracy to commit investment adviser fraud, and conspiracy to commit wire fraud, for defrauding investors (the “*Criminal Action*”).

8. Nordlicht was subsequently convicted of securities fraud, conspiracy to commit securities fraud, and conspiracy to commit wire fraud, (*See generally* Criminal Action, Dkt. No. 773 (E.D.N.Y. July 9, 2019)), and was acquitted on the remaining charges.

9. On July 12, 2023, the Court (i) granted Nordlicht’s motion for a judgment of acquittal as to his conviction for conspiracy to commit wire fraud, but denied his motion as to his securities fraud convictions; and (ii) denied Nordlicht’s renewed motion for a new trial as to the securities fraud convictions (*See* Criminal Action, Dkt. No. 1004).

2. The Receiver

10. On December 19, 2016, certain of the Receivership Entities, and certain other entities, were placed into receivership (the “*Receivership*” and all assets of the Receivership, the “*Receivership Estate*”) by orders of the Court in this Action and Bart M. Schwartz was appointed the initial receiver (the “*Prior Receiver*”).

11. Following the Prior Receiver’s resignation, on July 6, 2017, the Court appointed me, with all of the rights, duties, obligations and powers of the Receiver, as more specifically set forth in the October 16, 2017 Second Amended Order Appointing Receiver, (Dkt. 276), as thereafter amended to encompass each of the Receivership Entities and certain other entities (Receivership Dkt. 297) (collectively, the “*Receivership Order*”).

B. Nordlicht’s Bankruptcy Case, the Proof of Claim, and the Adversary

12. On June 29, 2020, Nordlicht filed the Petition in the Bankruptcy Court, thereby commencing the Bankruptcy Case. Mark S. Tulis was appointed as the Chapter 7 Trustee (the “*Chapter 7 Trustee*”) of Nordlicht’s bankruptcy estate.

1. The Receiver's Proof of Claim

13. On November 25, 2020, I filed a Proof of Claim in the amount of \$219,900,000 in the Bankruptcy Case (Bankruptcy Case, Claims Register at Claim No. 12-1) (the "**Original POC**"). In the Original POC, I alleged, among other things, that Nordlicht breached his fiduciary duties to the PPCO Funds, committed fraud against the PPCO Funds, and unjustly enriched himself at the expense of the PPCO Funds, by, *inter alia*, allegedly engaging in the following actions:

- causing PPCO Master Fund to enter into transactions in order to benefit and prop up the PPVA Funds, which were facing a severe liquidity crisis, at the expense of the PPCO Funds, including, without limitation, causing the PPCO Master Fund to transfer cash to the PPVA Funds, saddling the PPCO Funds with tens of millions of dollars of loans to the PPVA Funds, a portion of which has not been, and will never be, repaid, and causing PPCO Master Fund to take on toxic investments from the PPVA Funds (the "**PPVA Scheme**").
- causing PPCO Master Fund to enter into a series of transactions designed to benefit a group of affiliated companies known as "Beechwood" (collectively, "**Beechwood**") at the expense of the PPCO Funds, in which Nordlicht caused the PPCO Master Fund to purchase overvalued or worthless secured notes from Beechwood entities or entities the assets of which were managed by Beechwood, and, although he had a fiduciary duty to disclose the fact that this misconduct was undertaken for the benefit of the PPCO Funds, he failed to do so (the "**Platinum-Beechwood Restructuring Scheme**").
- transferring tens of millions of dollars of value from the PPCO Funds to preferred investors in the Platinum Funds whom he intended to favor at the expense of the PPCO Funds, through a convoluted and unlawful series of transactions involving certain bonds of Black Elk Energy Offshore Operations, LLC (the "**Black Elk Scheme**").

(Original POC at ¶¶ 15-21, 22-36, 37-61). As further discussed below, Nordlicht objected to the Original POC.

2. The Adversary

14. On December 7, 2020, prior to the expiration of a tolling agreement between the Parties, I timely filed a complaint in the Bankruptcy Court (the “**Complaint**”) against Nordlicht, thereby commencing the adversary proceeding titled *Cyganowski v. Nordlicht*, Adv. Pro. No. 20-07025-DSJ (Bankr. S.D.N.Y.) (the “**Adversary**” or “**Adv.**”). In the Complaint, I asserted a single claim objecting to Nordlicht’s bankruptcy discharge under 11 U.S.C. § 727(a)(4)(A), on the ground that Nordlicht knowingly and fraudulently made numerous false oaths or accounts by failing to disclose certain assets and transactions in his bankruptcy schedules.

15. On March 3, 2021, Nordlicht moved to dismiss (the “**MTD**”) the Complaint (Adv. Dkt. 11). I opposed the MTD, and on July 16, 2021, the Bankruptcy Court granted in part and denied in part the MTD (Adv. Dkt. 19).

16. On November 5, 2021 (Adv. Dkt. 21), over Nordlicht’s objection (which was granted in part), I filed a “First Amended Adversary Complaint Objecting to Discharge” (the “**First Amended Complaint**”), which added a new claim under 11 U.S.C. § 727(a)(2) for intentionally concealing, or permitting to conceal, his property within one-year of his Petition.

17. On November 19, 2021, with my consent, Nordlicht filed his “Answer to First Amended Complaint Objecting to Discharge” (Adv. Dkt. 30) (the “**Answer**”) generally denying the allegations of the First Amended Complaint. Thereafter, on February 1, 2022, Nordlicht filed an amended “Answer to First Amended Complaint Objecting to Discharge and Counterclaim” (Adv. Dkt. 35) (the “**Answer and Counterclaim**”), which added a Counterclaim against the Receiver (the “**Counterclaim**”), consisting primarily of an objection pursuant to 11 U.S.C. § 502

to the Original POC (the “**Claim Objection**”) (Answer and Counterclaim, ¶¶ 200-243). In the Claim Objection, Nordlicht asserts, among other things, that the Original Proof of Claim is not entitled to *prima facie* validity as it allegedly fails to (i) comply with Rule 3001 of the Bankruptcy Rules, and (ii) satisfy Federal Rule of Civil Procedure 9(b).

18. Given the litigation between the Parties, on June 7, 2022, the Bankruptcy Court entered the “Stipulation and Order Assigning Adversary Proceeding to Mediation” (Adv. Dkt. 42), which referred the disputes in the Adversary to mediation (the “**Mediation**”) and appointed Judge Gropper as mediator.

19. The Mediation was initially unsuccessful. *See* Adv. Dkt. 46. Accordingly, with the consent of the Bankruptcy Court (Adv. Dkt. 48), on March 7, 2023, I filed the “Motion for Leave to File Proposed Amended Proof of Claim and Proposed Second Amended Adversary Complaint” (Adv. Dkts. 49-51) (the “**Second Motion to Amend**”), in which I sought leave to file (a) an amended proof of claim (Adv. Dkt. 50-1) (the “**Proposed Amended POC**”), to provide further detail and particularity to the Original POC to satisfy the concerns raised by Nordlicht in the Counterclaim; and (b) a “Second Amended Adversary Complaint Objecting to Discharge” [Adv. Dkt. 50-2] (the “**Proposed Second Amended Complaint**”) to amend the First Amended Complaint including to add claims under 11 U.S.C. § 523(a)(19), to deny the discharge to Nordlicht for a debt for “common law fraud, deceit, or manipulation in connection with the purchase or sale of any security” (the added claims in Proposed Second Amended Complaint are referred to, collectively, as the “**523(a)(19) Claim**”).

20. Commencing in April of 2023, the Parties participated in renewed mediation with Judge Gropper, which resulted in a settlement in principle between the Parties, subject to approval by the Bankruptcy Court and this Court.

21. On August 23, 2023, following notice and a hearing, the Bankruptcy Court entered the BR Settlement Order granting the BR CT Settlement Motion.

III.

THE SETTLEMENT AGREEMENT

22. The material terms of the Settlement Agreement, all of which are subject to the conditions to the Effective Date (as defined in the Settlement Agreement), are summarized as follows:

- a. Nordlicht shall be deemed to have dismissed with prejudice the Initial Answer, the Answer and Counterclaim and the Claim Objection; and shall be deemed to have withdrawn, waived and released with prejudice, any asserted, unasserted or potential objection or defense to the Original POC, Proposed Amended POC and Proposed Second Amended Complaint.
- b. Nordlicht agrees that I am permitted to file the Proposed Amended POC and the Proposed Second Amended Complaint which shall be deemed to be my operative Proof of Claim and Complaint in the Bankruptcy Case and Adversary, respectively.
- c. Nordlicht shall be deemed to have waived, withdrawn and released with prejudice any objection to any distribution(s) I might receive in the Bankruptcy Case on account of the Proposed Amended POC in addition to any payments to be received under the Settlement Agreement.
- d. Nordlicht shall be deemed to have waived, withdrawn and released with prejudice any asserted, unasserted or potential claim for sanctions and

attorneys' fees against me and my counsel under Federal Rule of Bankruptcy Procedure 3001 or otherwise.

23. Additionally, the terms of the Settlement Agreement provide that Nordlicht shall make certain payments to the Receivership Estate, in satisfaction of the 523(a)(19) Claim, as follows:

- a. On the first business day following the Effective Date (as defined in the Settlement Agreement), Nordlicht shall pay me, on behalf of the Receivership Estate, the amount of \$50,000 (the "*Initial Payment*").
- b. Within ninety (90) calendar days of the Effective Date, Nordlicht shall pay me, on behalf of the Receivership Estate, the amount of \$50,000 (the "*Subsequent Payment*").
- c. Upon my timely receipt and indefeasible collection of both the Initial Payment and the Subsequent Payment, I shall submit a proposed order to the Bankruptcy Court dismissing the Proposed Second Amended Complaint with prejudice and closing the Adversary.
- d. In addition to the Initial Payment and the Subsequent Payment, beginning within five (5) business days of the first day of the month following Nordlicht's bankruptcy discharge, Nordlicht shall make payments to me, on behalf of the Receivership Estate, based on Nordlicht's future income paid over time in monthly payments (the "*Monthly Payments*") in the minimum amount of \$250,000 and the maximum amount of \$5,000,000 and in the event of default I may file a non-dischargeable affidavit of judgment by confession against Nordlicht in the amount of \$5,000,000, minus any credits for Monthly Payments previously paid. Any amounts required to be paid by Nordlicht for Monthly Payments will be offset by any amount paid by Nordlicht as restitution pursuant to an Order and Judgment in the Criminal Action.

24. The Parties shall exchange general releases of one another except that the releases do not release the Receiver's right to assert the Proposed Amended POC against Nordlicht's bankruptcy estate or to receive restitution and/or disgorgement payments from Nordlicht.

25. The above is intended to be only a summary of the Settlement Agreement. I respectfully refer the Court and all parties to the Settlement Agreement attached hereto as **Exhibit A** for its complete terms and conditions.

26. As stated above, the terms of the Settlement Agreement provide that a condition precedent to the Effective Date of the Settlement Agreement is the approval of the Settlement Agreement by this Court. Pursuant to the Receivership Order, I must obtain approval from the Court to enter into certain types of transactions that the Receivership Order identifies as “outside of the ordinary course of business.” Specifically, the Receivership Order provides:

The Receiver may engage in transactions outside of the ordinary course of business of the Receivership Entities’ orderly wind down only upon motion and approval of the Court. For purposes of this paragraph, a transaction outside of the ordinary course of business is any transaction that involves (i) the expenditure of Receivership cash in excess of \$3 million, or *the disposition of the Receivership Estate’s interest in Receivership Property in exchange for cash or property of value in excess of \$3 million*, and/or (ii) any “carrying on” of a business within the meaning of 28 U.S.C. § 959.

Receivership Order, ¶ 30 (emphasis added).

27. Because entry of the Settlement Agreement may be deemed outside of the ordinary course of business as it involves the “disposition” of Receivership Property “in exchange for cash or property of value in excess of \$3 million,” I believe it appropriate to seek this Court’s approval of the Settlement Agreement. Therefore, by its terms, the Effective Date of the Settlement Agreement is conditioned upon final non-appealable orders from the Bankruptcy Court and this Court.

28. In my business judgment, I believe that the Settlement Agreement is fair and reasonable. The Settlement Agreement, was the product of arm’s length negotiations in the Mediation that was commenced over one year ago and which was conducted by Judge Gropper, a former bankruptcy judge for the Southern District of New York. The Settlement Agreement resolves all litigation involving the Parties pending before the Bankruptcy Court, including the Claim Objection, the First Amended Complaint, and the Second Motion to Amend, in an efficient, fair, and practical manner. Approval greatly outweighs the motion practice, the litigation, and the

attendant cost, delay, and inconvenience to the Receivership Estate that would surely result if the Settlement Agreement is not approved.

29. Specifically, discovery in the Adversary is in its preliminary stages because it was stayed while the Parties participated in Mediation before Judge Gropper. Pre-trial proceedings will likely involve significant discovery, forensic accounting and additional motion practice. Moreover, given the allegations of fraudulent intent asserted in the First Amended Complaint, the 523(a)(19) Claim and the Proposed Amended POC, trial will likely be lengthy with multiple witnesses. The Adversary has been hard-fought and highly litigious, with Nordlicht vehemently opposing the relief I have requested, including filing the MTD, opposing the First Motion to Amend, and filing the Counterclaim objecting to the Original POC. I have no reason to believe that any future litigation will not be similarly hard-fought and protracted, including appeals.

30. The Settlement Agreement provides several benefits to the Receivership Estate, including (i) withdrawal of Nordlicht's potential objections to the Proposed Amended POC, which I will continue to assert against Nordlicht's bankruptcy estate thereby retaining the chance to receive the Receivership Estate's *pro rata* share of the Chapter 7 estate property, (ii) the payments by Nordlicht to the Receivership Estate, from non-bankruptcy estate assets; (iii) in the event of default under the Settlement Agreement, I have the right to file a non-dischargeable affidavit of judgment by confession against Nordlicht in the amount of \$5,000,000, minus any credits for Monthly Payments previously paid; and (iv) the resolution of the Parties' disputes without further litigation.

IV.

CONCLUSION

31. For the reasons set forth herein and in the memorandum of law in support of the Motion, I respectfully request entry of an Order, substantially in the form attached hereto as **Exhibit D** (a) approving the Settlement Agreement; (b) authorizing me to take any such necessary steps to effectuate the terms of, and fulfill my obligations under, the Settlement Agreement; and (c) granting such other and further relief as this Court (the “*Court*”) deems just.

Executed this 30th day of August 2023, at New York, New York.

/s/ Melanie L. Cyganowski
Melanie L. Cyganowski

EXHIBIT A
SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

This Settlement Agreement (“*Agreement*”) is entered into as of July 21, 2023, by and among Mark A. Nordlicht (“*Nordlicht*” or the “*Debtor*”), and Melanie L. Cyganowski, as Receiver (the “*Receiver*”) for (i) Platinum Partners Credit Opportunities Master Fund LP, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd., (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, (vii) Platinum Liquid Opportunity Management (NY) LLC, (viii) Platinum Partners Liquid Opportunity Fund (USA) L.P., and (ix) Platinum Partners Liquid Opportunity Master Fund L.P (collectively, the “*Receivership Entities*”). (For purposes of this Agreement, Nordlicht and the Receiver are together referred to as the “*Parties*” and each is sometimes referred to as a “*Party*”).

I. Recitals

A. The Receiver is the duly appointed Receiver of the Receivership Entities pursuant to orders of the United States District Court for the Eastern District of New York (the “*Receivership Court*”) dated December 19, 2016, July 6, 2017, October 16, 2017, and December 28, 2017 (ECF Nos. 6, 216, 276 and 297) (the “*Receivership Orders*”) in the action styled *Securities & Exch. Comm’n v. Platinum Mgmt. (NY) LLC, et al.*, 16 Civ. 06848 (BMC) (the “*Receivership Action*”).

B. On June 29, 2020, Nordlicht filed a voluntary Chapter 7 Petition (the “*Petition*”) in the United States Bankruptcy Court for the Southern District of New York (the “*Bankruptcy Court*”), thereby commencing a bankruptcy case 20-22782-DSJ (the “*Bankruptcy Case*”).

C. On November 25, 2020, the Receiver timely filed a Proof of Claim in the Bankruptcy Case (Claims Register at Claim No. 12-1) (the “**Original POC**”).

D. On December 7, 2020, the Receiver timely filed a complaint in the Bankruptcy Court against Nordlicht (the “**Complaint**”), which asserted a single claim objecting to Nordlicht’s bankruptcy discharge under 11 U.S.C. § 727(a)(4)(A), thereby commencing the adversary proceeding styled *Cyganowski v. Nordlicht*, Adv. Pro. No. 20-07025-DSJ (Bankr. S.D.N.Y) (the “**Adversary**” or “**Adv.**”).

E. Extensive motion practice followed the filing of the Complaint.

F. On November 5, 2021, the Receiver filed the “First Amended Adversary Complaint Objecting to Discharge” (Adv. Dkt. 29) (the “**First Amended Complaint**”), which, among other things, added a claim under 11 U.S.C. §§ 727(a)(2)(A) and (B) against Nordlicht.

G. On November 19, 2021, Nordlicht filed his “Answer to First Amended Complaint Objecting to Discharge” (Adv. Dkt. 30) (the “**Initial Answer**”) and on February 1, 2022, Nordlicht filed an “Answer to First Amended Complaint Objecting to Discharge and Counterclaim” (Adv. Dkt. 35) (the “**Answer and Counterclaim**”), which added a Counterclaim against the Receiver (the “**Counterclaim**”) consisting primarily of an objection pursuant to 11 U.S.C. § 502 to the Original POC (the “**Claim Objection**”).

H. On March 17, 2022, the Receiver filed an Answer to the Counterclaim (Adv. Dkt. 37) (the “**Answer to Counterclaim**”).

I. On March 7, 2023, the Receiver filed the “Motion for Leave to File Proposed Amended Proof of Claim and Proposed Second Amended Adversary Complaint” (Adv. Dkts. 49-51) (the “**Second Motion to Amend**”), in which the Receiver sought leave to file (a) a proposed amended proof of claim (Adv. Dkt. 50-1) (the “**Proposed Amended**

POC"); and (b) the proposed "Second Amended Adversary Complaint Objecting to Discharge" [Adv. Dkt. 50-2] (the "***Proposed Second Amended Complaint***"), in each instance to add claims to the First Amended Complaint for common law fraud, and seeking, pursuant to 11 U.S.C. § 523(a)(19), to deny the discharge to Nordlicht for a "debt" for "common law fraud, deceit, or manipulation in connection with the purchase or sale of any security" (collectively, the "***Receiver's 523(a)(19) Claim***").

J. Now, solely in order to save the expense and uncertainty of litigation, the Parties desire to resolve their disputes on the terms and conditions set forth herein.

II. Terms

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

A. Recitals. The recitals set forth above form an integral part of this Agreement, are agreed to and are incorporated fully herein.

B. Effectiveness of this Agreement. This Agreement and the settlement provided for herein are expressly subject to and conditioned on the execution and delivery by each Party of this Agreement and the approval of this Agreement by orders of both the Receivership Court and the Bankruptcy Court. Within five (5) business days of the Parties' execution of this Agreement, the Receiver shall file a motion pursuant to Federal Rule of Bankruptcy Procedure 9019 and 7041 in the Bankruptcy Court seeking approval of this Agreement (the "***9019 Motion***"). Within five (5) business days of the Bankruptcy Court's entry of an order approving the 9019 Motion, the Receiver shall file a motion before the Receivership Court seeking approval of this Agreement (the "***Receivership Approval Motion***"). If the Bankruptcy Court enters an order approving the 9019 Motion (the "***9019 Order***") and the Receivership Court enters an order approving the Receivership Approval Motion (the "***Receivership Approval Order***"), this Agreement shall become effective

immediately and without further act or notice by or to either Party or any other person or entity upon the expiration of the time in which to appeal the 9019 Order and the Receivership Approval Order, or if an appeal is taken, the 9019 Order or the Receivership Approval Order, respectively, has not been reversed, stayed, modified, amended, or revoked (the “*Effective Date*”).

C. As of the Effective Date, without further act or notice by or to either Party or any other person or entity, Nordlicht personally and on behalf of any persons or entities acting for him or on his behalf:

1. shall be deemed to have dismissed with prejudice the Initial Answer, the Answer and Counterclaim and the Claim Objection;
2. shall be deemed to have withdrawn, waived and released with prejudice, any asserted, unasserted or potential objection or defense to the Receiver’s Original POC, Proposed Amended POC and Proposed Second Amended Complaint;¹
3. agrees not to take steps to support any claim in the Receivership Case asserted by him or on his behalf or that could be asserted by him or on his behalf (excluding any such claim that is property of the Debtor’s estate in the Bankruptcy Case);
4. agrees that:
 - a. the Receiver is permitted to file the Proposed Amended POC and the Proposed Second Amended Complaint;

¹ Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to suggest that the Debtor believes that the specific claims in the Proposed Second Amended Complaint are meritorious.

- b. that any asserted, unasserted or potential objection by Nordlicht to the filing or the terms of the Proposed Amended POC and/or the Proposed Second Amended Complaint shall be deemed withdrawn with prejudice, waived, withdrawn and released;
 - c. that the Proposed Amended POC and the Proposed Second Amended Complaint shall supersede and replace the Initial POC and the First Amended Complaint, respectively, and be deemed to be the Receiver's operative Proof of Claim and Complaint in the Bankruptcy Case and Adversary, respectively;
5. shall be deemed to have waived, withdrawn and released with prejudice any objection to any distribution(s) the Receiver might receive in the Bankruptcy Case on account of the Proposed Amended POC and agrees that the Receiver may receive a distribution on account of the Proposed Amended POC in addition to any payments received under this Agreement; and
6. shall be deemed to have waived, withdrawn and released with prejudice any asserted, unasserted or potential claim for sanctions and attorneys' fees against the Receiver and her counsel under Federal Rule of Bankruptcy Procedure 3001 or otherwise.

D. Upon the Receiver's timely receipt and collection of both the Initial Payment and the Subsequent Payment (each as defined below), without further act or notice by or to either Party or any other person or entity and without in any way affecting the allegations and claims in the Proposed Amended POC, the Receiver personally and on behalf of any persons or entities acting for her or on her behalf:

1. shall be deemed to have dismissed with prejudice the Complaint, the First Amended Complaint, and the Proposed Second Amended Complaint, and all claims asserted therein;
2. shall waive, withdraw and release with prejudice, and shall not take any steps to assert, claims contained in the Complaint, the First Amended Complaint, and the Proposed Second Amended Complaint; and
3. shall submit a proposed order to the Bankruptcy Court (the form of which is annexed hereto as Exhibit 1) dismissing the Proposed Second Amended Complaint and the claims therein with prejudice, but without prejudice to the Proposed Amended POC as shall be set forth in the proposed order, and closing the Adversary with prejudice.

E. **Settlement Payments.** In satisfaction of the Receiver's 523(a)(19) Claim, Nordlicht shall make the payments to the Receiver set forth in this Agreement (collectively, the "***Settlement Payments***").

1. On the first business day following the Effective Date, Nordlicht shall pay the Receiver the amount of \$50,000 (the "***Initial Payment***").
2. Within ninety (90) calendar days of the Effective Date, Nordlicht shall pay the Receiver the amount of \$50,000 (the "***Subsequent Payment***").
3. The Receiver's timely receipt and collection of both the Initial Payment and the Subsequent Payment are condition precedents to the issuance of a discharge in Nordlicht's Bankruptcy Case (the "***Discharge***").
4. Within five (5) business days of the first day of the month following the Discharge, and continuing on the fifth (5th) business day of each of the next fifty-nine (59) successive months (unless the fifth (5th) day of any such

month is a weekend or a federal holiday, in which event the day in issue shall be the next business day) (the “*Five-Year Period*”), Nordlicht shall pay the Receiver 50% of his gross income for the immediately prior month, accompanied by a certification executed by Nordlicht, in substantially the form annexed hereto as Exhibit 2, attesting to his gross income for the immediately prior month, or if no such gross income was received during the immediately prior month, and calculating the amount to be paid by him to the Receiver for such month (the “*Monthly Payments*”). The aggregate amount of all Monthly Payments shall not be less than \$250,000 or more than \$5,000,000. If the total Monthly Payments for the first thirty-six (36) months following the Discharge total less than \$100,000, Nordlicht shall on the fifth (5th) business day of the thirty-seventh (37th) month following Discharge pay the Receiver \$100,000 less the amount of Nordlicht’s Monthly Payments to the Receiver, if any, paid in the prior thirty-six (36) months. If the total Monthly Payments for the Five-Year Period total less than \$250,000, Nordlicht shall on the fifth (5th) business day of the sixty-first (61st) month following Discharge pay the Receiver \$250,000 less the amount of Nordlicht’s prior payments to the Receiver under this paragraph, if any.

5. Each of the Settlement Payments shall be (a) indefeasible and made without offset, defense or counterclaim unless otherwise expressly set forth in this Agreement; (b) made by certified check payable to “Melanie Cyganowski, as Receiver”; (c) drawn on a bank that is licensed by or subject to the regulation of an agency of the United States; and (d) delivered by hand to

the Receiver c/o Otterbourg P.C. 230 Park Avenue, NY, NY 10169 on the date that the payment is due, time being of the essence.

F. For each calendar year that is all or part of the Five-Year Period, commencing with the tax year in which the Effective Date occurs and for each subsequent tax year during the Five-Year Period, Nordlicht shall within thirty (30) days of filing thereof, deliver to the Receiver true and correct copies of his annual federal and state income tax returns (including if applicable, joint returns) in the form filed with the applicable taxing authority(ies). This requirement shall cease, however, from such date, if any, of a Successful Acquittal (as defined below).

G. Any amounts required to be paid by Nordlicht under Section II.E.4. will be offset by any amount paid by Nordlicht as restitution pursuant to an Order and Judgment in the criminal action styled *United States v. Nordlicht*, 16-cr-00640 (BMC) (E.D.N.Y.), (the "***Criminal Action***"). Nordlicht shall not be entitled to any offset to any amount due pursuant to this Agreement on account of restitution made by any other defendant in the Criminal Action.

H. If within three (3) years of the Effective Date, Nordlicht's conviction is fully vacated, and/or he is granted a new trial and in such new trial, he is acquitted on all charges, and/or he is successful on any appeal of his criminal conviction resulting in acquittal of all charges against him (the "***Successful Acquittal***") the Receiver shall not be entitled to any further payments from Nordlicht required by Section II.E.4 of this Agreement, *it being agreed* that notwithstanding a Successful Acquittal, the Receiver shall be entitled to receive, collect and retain the Initial Payment, the Subsequent Payment, and all payments made by Nordlicht in accordance with this Agreement prior to the Successful Acquittal (including any restitution payments received by the Receiver) ("***Prior Payments***"), and

Nordlicht shall not be entitled to require the Receiver to disgorge any Prior Payments. Nothing in this Section II.H. shall be deemed to authorize Nordlicht to defer or delay payments or certifications required under this Agreement prior to the Successful Acquittal and the Receiver shall be entitled to seek payment for any missed payments that should have been made prior to the Successful Acquittal.

I. Simultaneously with the execution of this Agreement, Nordlicht will execute and deliver to the Receiver a non-dischargeable affidavit of judgment by confession in favor of the Receiver in the amount of \$5,000,000 (the “**Judgment by Confession**”) (the form of which is attached as Exhibit 3), which the Receiver shall hold in escrow and not enforce unless and until the occurrence of an Event of Default (as defined herein). Nordlicht shall re-execute and deliver to the Receiver the Judgment by Confession three (3) months prior to the 3-year anniversary of the initial delivery of the executed Judgment by Confession, and three (3) months prior to the 6-year anniversary of the initial delivery of the executed Judgment by Confession. Upon Nordlicht paying the Receiver all amounts due under the terms of this Agreement, the Receiver shall return the Judgment by Confession to Nordlicht.

J. **Default**

1. Nordlicht shall be in default (“**Default**”) under this Agreement in the event that Nordlicht does not comply with any terms of this Agreement, including, without limitation, failing to (i) comply with the payment and certification terms under Section II.E; (ii) execute and re-execute the Judgment by Confession under Section II.I; and/or (iii) timely submit tax returns to the Receiver under Section II.F,

2. Upon the occurrence of a Default, the Receiver will provide Nordlicht with a written “Notice of Default,” and Nordlicht shall have the opportunity to cure such Default (“*Cure*”) within thirty (30) days from the date of receipt of the Notice of Default.
3. If Nordlicht fails to cure the Default in accordance with Section II.J.2, then without further notice, an event of default shall occur (an “*Event of Default*”).
4. Forbearance by the Receiver from pursuing any remedy or relief available to her under this Agreement shall not constitute a waiver of rights under this Agreement.

K. Upon the occurrence of an Event of Default, the Receiver may immediately, and without notice except as may be required under law, file the Judgment by Confession in any court of competent jurisdiction, including, without limitation, the clerk of the court of any county in New York State, and obtain a non-dischargeable judgment against Nordlicht in the amount of \$5,000,000 less any Monthly Payments that Nordlicht has made to the Receiver under Section II.E.4., if any, prior to the Event of Default. Upon entry of the judgment, the Receiver shall be entitled to enforce the judgment against Nordlicht and his property and as otherwise permitted under applicable law.

L. Releases.

1. **Release by the Debtor.** On the Effective Date, Nordlicht, on behalf of himself, and any legal entities owned and/or controlled by him and any other persons or entities acting by or through Nordlicht, including, but not limited to, all entities and persons referred to in the Proposed Second Amended Complaint as family members of Debtor or entities purportedly owned

and/or controlled by Debtor, including the individuals and entities identified on Exhibit 4 (the “*Debtor Releasors*”), to the fullest extent permitted by law, hereby waives, releases and discharges (i) the Receiver, the Receivership Entities, and their present and former affiliates, parents, subsidiaries, divisions, officers, directors, trustees, partners, stockholders, members, certificate holders, employees, attorneys, accountants, financial advisors, agents, representatives, successors and assigns (the “*Receiver Released Parties*”), from all present and future actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, obligations, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity which the Debtor Releasors ever had, now have or hereafter can, shall or may have, from the beginning of the world to the Effective Date against the Receiver Released Parties, (ii) any equity or ownership interest a Debtor Releasor may have held, or holds, in any Receivership Entity, (iii) a distribution in the Receivership Action on account of any equity or ownership interest in any Receivership Entity, and (iv) any claims a Debtor Releasor may have against any Receivership Entity, either directly or derivatively, on account of any equity or ownership interest it may have in any other entity. To the extent the Debtor does not have the power or authority to grant the releases in this Section II.L.1 on behalf of any of the Debtor Releasors, the Debtor shall take reasonable steps to deliver to the Receiver a release in the form attached hereto as Exhibit 5 executed by the respective Debtor Releasor.

Notwithstanding the foregoing, nothing in this Section II.L.1 or in this Agreement shall waive, release or discharge any right of the Debtor to enforce the terms of this Agreement.

2. **Release by Receiver.** Upon the Effective Date, the Receiver, in such capacity only, and on behalf of the Receivership Entities, (collectively, the “*Receiver Releasers*”), hereby waives, releases and discharges the Debtor, any legal entities owned and/or controlled by him and any other persons or entities acting by or through Nordlicht, including, but not limited to, all entities and persons referred to in the Proposed Second Amended Complaint as family members of Debtor or entities purportedly owned and/or controlled by Debtor, including the individuals and entities identified on Exhibit 4 and their successors and assigns (collectively, the “*Debtor Released Parties*”), from all present and future actions, causes of action, suits, debits, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, obligations, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity which the Receiver Releasers ever had, now have or hereafter can, shall or may have, from the beginning of the world to the Effective Date as against the Debtor Released Parties. The releases by the Receiver Releasers in this Section II.L.2 shall not be effective as to a respective Debtor Released Party, except for the Debtor, until such respective Debtor Released Party executes a form of release attached hereto as Exhibit 5 and delivers such release to the Receiver. Notwithstanding the foregoing, nothing in this Agreement shall

waive, release or discharge any right of the Receiver to (i) take all action permitted or required under the Receivership Order, including without limitation, to reconcile, resolve and adjudicate claims in the Receivership Action and/or to propose a plan of distribution in the Receivership Action; (ii) enforce the terms of this Agreement; (iii) assert the Proposed Amended POC against the Nordlicht bankruptcy estate, receive a distribution from the Nordlicht bankruptcy estate on account of the Receiver's Proposed Amended POC, or exercise the Receiver's rights as a creditor in Nordlicht's Bankruptcy Case; or (iv) receive restitution payments from Nordlicht pursuant to an Order and Judgment in the Criminal Action or receive disgorgement from Nordlicht pursuant to an Order and Judgment in the Receivership Action and to assert such amounts owed for restitution and/or disgorgement were not discharged in the Bankruptcy Case.

M. Representations, Warranties and Additional Covenants.

1. **Representation by Counsel and Authority.** As of the Effective Date, each Party represents and warrants, that: (i) he or she has been represented by counsel in connection with the negotiation, drafting and execution of this Agreement, and is executing this Agreement with full knowledge and understanding of its terms; (ii) this Agreement is binding on the Party; (iii) the Party is executing this Agreement in his or her own name; (iv) the Party has obtained any necessary legal approvals to enter into this Agreement, to the extent required; (v) the execution and delivery of this Agreement does not violate any agreement, court order, administrative order of any governmental entity, or any law or governmental regulation; and (vi) the

Party has not sold, assigned, hypothecated or otherwise transferred, and, thus, owns and/or controls, the rights and claims being waived and released by that Party in this Agreement.

N. Miscellaneous.

1. **Notices.** All notices and other communications given and made pursuant to this Agreement shall be in writing, shall be given to the individuals set forth below, and shall be deemed delivered (a) upon personal delivery to the Party to be noticed, (b) upon delivery by electronic mail when confirmed by the recipient, if sent during normal business hours of the recipient, and if not so confirmed or sent during normal business hours of the recipient, then on the next business day (except that, if the intended recipient of electronic mail intentionally blocks the sender from sending an email to the intended recipient, then any notice or communication made pursuant to that electronic mail shall be deemed given upon the sender’s attempt to cause a delivery by electronic mail), or (c) when sent by Federal Express or comparable overnight courier, one business day after delivering the letter or package to Federal Express or comparable overnight courier service:

<p>If to Nordlicht:</p> <p>Mark A. Nordlicht c/o Quinn Emanuel Urquhart & Sullivan, LLP Attn.: Anil Makhijani 51 Madison Avenue, 22nd Floor, New York, New York 10010 Email: anilmakhijani@quinnemanuel.com</p>	<p>If to the Receiver:</p> <p>Melanie L. Cyganowski, Esq. c/o Otterbourg P.C. 230 Park Avenue New York, New York 10169 Email: mcyganowski@otterbourg.com</p> <p>-and-</p> <p>Otterbourg P.C. Attn.: Erik B. Weinick, Esq. 230 Park Avenue</p>
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	New York, New York 10169 eweinick@otterbourg.com
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2. **Jurisdiction, Venue and Choice of Law.** The Parties consent and submit to the exclusive jurisdiction of, and venue in, the Bankruptcy Court over any actions or proceedings relating to the enforcement or interpretation of this Agreement and any Party bringing such action or proceeding shall bring such action or proceeding in the Bankruptcy Court. This Agreement and all claims and disputes arising out of, in connection with, or related to this Agreement, shall be governed by and construed in accordance with the internal laws of the State of New York, without regard to choice of law principles. **EACH OF THE PARTIES 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.**
3. **Entire Agreement.** The Parties acknowledge that this Agreement is not being executed in reliance on any verbal or written agreement, promise or representation not contained herein. This Agreement, and the documents to be delivered pursuant hereto, constitute the entire and only agreement of the Parties, supersede and replace all prior or contemporaneous verbal or written agreements or understandings, written or oral, with respect thereto, and are made without reliance on any statement or representation not

contained herein, the making of any such statements or representations being specifically denied. Any amendment to, or waiver of, any provision of this Agreement must be agreed to in writing by each of the Parties.

4. **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.
5. **Headings.** The headings in this Agreement are intended only for convenience and shall not be construed to be or interpreted as a part, or limitation on the scope, of any term in this Agreement.
6. **Binding Effect; Successor and Assigns.**
 - a. 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 or provision of this Agreement shall be construed as a waiver of any other or subsequent breach.
 - b. Neither Party has the right to sell, assign or transfer this Agreement and/or the Party's rights and duties hereunder except that notwithstanding anything in this Agreement (including without limitation in this Section II.N.6.b) that may be to the contrary, (i) the Receiver shall be permitted to sell, assign or transfer this Agreement or her rights and duties hereunder, without the consent of the Debtor, to a successor receiver, liquidating trust (or trustee) or other third party who by order or

operation of law has or is granted authority over any of the Receivership Entities or their property, including their claims, and (ii) this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the respective heirs, personal representatives, successors and assigns of each Party.

7. **Titles and Headings.** Any titles or headings used in this Agreement are for convenience only and shall not affect the substantive meaning of any provision.
8. **Costs.** Each Party shall bear her, his or its own costs in connection with the negotiation and execution of this Agreement and any transactions contemplated hereunder, as well as any litigation with respect to the provisions hereof, except Nordlicht shall reimburse the Receiver for all reasonable costs and attorneys' fees incurred by the Receiver in connection with the enforcement or protection of her rights in connection with this Agreement, including all reasonable costs and attorneys' fees incurred in asserting a Default or Event of Default under Section II.J or filing and enforcing the Judgment by Confession under Section II.K..
9. **Severability.** If any portion or portions of this Agreement or any document executed in connection herewith are determined by a court of competent jurisdiction to conflict with any federal, state or local law, and as a result such portion or portions are declared to be invalid and of no force or effect in such jurisdiction, all remaining provisions of this Agreement or any document executed herewith shall otherwise remain in full force and effect

and be construed as if such invalid portion or portions has not been included herein.

10. Further Assurances. Each of the Parties agrees to execute such further and additional documents, instruments and writings as may be reasonably necessary, proper, required, desirable or convenient for the purpose of fully effectuating the terms and provisions of this Agreement.

11. Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. This Agreement shall become effective when it has been signed by duly authorized representatives of each of the Parties. The signatures of all of the Parties need not appear on the same counterpart.

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

13. Survival of Representations and Warranties. The representations and warranties made in this Agreement shall survive the execution and consummation of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first above written.

Dated: July 21, 2023

MARK A. NORDLICHT

By: 
Mark A. Nordlicht

Dated: July __, 2023

MELANIE L. CYGANOWSKI, SOLELY IN HER
CAPACITY AS RECEIVER FOR THE
RECEIVERSHIP ENTITIES

By: _____
Melanie L. Cyganowski, solely in her capacity as
Receiver of the Receivership Entities

Dated: July ___, 2023

MARK A. NORDLICHT

By: _____
Mark A. Nordlicht

Dated: July 21, 2023

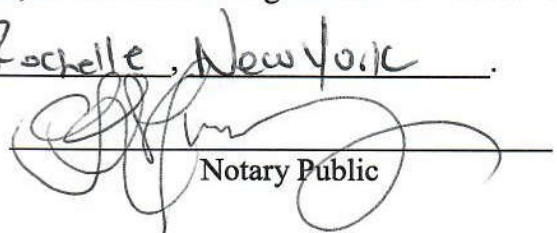
MELANIE L. CYGANOWSKI, SOLELY IN HER
CAPACITY AS RECEIVER FOR THE
RECEIVERSHIP ENTITIES

By: /s/ Melanie L. Cyganowski, as Receiver
Melanie L. Cyganowski, solely in her capacity as
Receiver of the Receivership Entities

ACKNOWLEDGEMENT

STATE OF New York)
COUNTY OF Westchester)

On July 21, 2023, before me personally appeared the undersigned Mark A. Nordlicht, personally known to me or proved to me on the basis of satisfactory evidence to be Mark A. Nordlicht, and acknowledged to me that he executed the same and that by his signature on the within Agreement, he executed the Agreement. Mr. Nordlicht made such appearance before me in New Rochelle, New York.


Notary Public

Kadia Evans
Notary Public State of New York
Registration No. 01EV6437430
Qualified in Bronx County
My Commission Expires August 1, 2026

Exhibit 1 to Settlement Agreement

Proposed Order Dismissing Second Amended Complaint

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	X
In re:	: Chapter 7
	: :
MARK A. NORDLICHT,	: Case No. 20-22782-DSJ
	: :
Debtor,	: :
-----	X
MELANIE L. CYGANOWSKI, AS RECEIVER, BY	: Adv. Pro. No. 20-07025-DSJ
AND FOR 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 INTERNATIONAL	: :
LTD., PLATINUM PARTNERS CREDIT	: :
OPPORTUNITIES FUND INTERNATIONAL (A)	: :
LTD., and PLATINUM PARTNERS CREDIT	: :
OPPORTUNITIES FUND (BL) LLC,	: :
	: :
Plaintiff,	: :
	: :
v.	: :
	: :
MARK A. NORDLICHT,	: :
	: :
Defendant.	: :
-----	X

**ORDER DISMISSING
SECOND AMENDED ADVERSARY COMPLAINT
AND CLOSING ADVERSARY PROCEEDING**

On [____], 2023, the Court entered an *Order Approving a Settlement Agreement Between Melanie L. Cyganowski, in Her Capacity as Receiver for Platinum Partners Credit Opportunities Master Fund L.P. et al., and Mark A. Nordlicht* [Dkt. __] (the “**Settlement Order**”),¹ in which the Court, among other things, (i) approved the Settlement Agreement; (ii) authorized the

¹ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Settlement Order.

Receiver to file the Proposed Second Amended Complaint in the above-captioned adversary proceeding; and (iii) ordered the above-captioned adversary proceeding to remain open until the Receiver's timely receipt and irrevocable collection of both the Initial Payment and the Subsequent Payment, after which time the Receiver would submit to the court a proposed order dismissing the Proposed Second Amended Complaint with prejudice and closing the Adversary.

In accordance with the Settlement Order, on [____], 2023, the Receiver filed the Second Amended Complaint [Dkt. ____].

The Receiver represents to the Court that the Receiver has received and collected the Initial Payment and the Subsequent Payment. Accordingly, after due deliberation and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Second Amended Complaint, including all claims asserted therein (including claims under Bankruptcy Code Sections 523(a)(19), 727(a)(2)(A), 727(a)(4)(A) (B), and common law fraud) are dismissed with prejudice.
2. The dismissal of the Second Amended Complaint is without prejudice to and shall not affect in any way the allegations and claims in the Proposed Amended POC.
3. The Clerk of the Court shall close the Adversary Proceeding.

Dated: New York, New York
_____, 2023

Hon. David S. Jones
United States Bankruptcy Judge

Exhibit 2 to Settlement Agreement

Form of Certification

CERTIFICATION OF MARK A. NORDLICHT

I, Mark A. Nordlicht, pursuant to 28 U.S.C. § 1746, hereby certify that the following is true to the best of my knowledge, information, and belief:

1. On July _____, 2023, I entered into a Settlement Agreement (the “Settlement Agreement”) with Melanie L. Cyganowski, in her capacity as receiver (the “Receiver”) for Platinum Partners Credit Opportunities Master Fund L.P, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund International Ltd., Platinum Partners Credit Opportunities Fund International (A) Ltd., and Platinum Partners Credit Opportunities Fund (BL) LLC. In the Settlement Agreement, I agreed, among other things, that on the fifth (5th) business day of each month during the Five-Year Period (as defined in the Settlement Agreement), I would submit a certification to the Receiver attesting to my gross income for the immediately prior month or if no such gross income was received during the immediately prior month, and calculating the amount to be paid pursuant to Section II.E.4 of the Settlement Agreement.

2. During the month of _____ in the year _____, my gross income from whatever source derived, was _____, and the amount I must pay the Receiver pursuant to Section II.E.4 of the Settlement Agreement is _____.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: _____

Mark A. Nordlicht

Location: _____

Exhibit 3 to Settlement Agreement

Affidavit of Judgment by Confession

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF WESTCHESTER

-----X
MELANIE L. CYGANOWSKI, AS RECEIVER, BY AND FOR 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 INTERNATIONAL LTD., PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND INTERNATIONAL (A) LTD., and PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND (BL) LLC,

Plaintiff,

Index No.

v.

AFFIDAVIT OF JUDGMENT BY CONFESSION

MARK A. NORDLICHT,

Defendant.

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

Mark A. Nordlicht, being duly sworn, deposes and says:

1. I hereby confess judgment herein in favor of Melanie L. Cyganowski, in her capacity as receiver (the "Receiver") for Platinum Partners Credit Opportunities Master Fund L.P, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund International Ltd., Platinum Partners Credit Opportunities Fund International (A) Ltd., and Platinum Partners Credit Opportunities Fund (BL) LLC., for the sum of \$5,000,000, minus \$ _____, which I have paid pursuant to Section II.E.4. of Settlement Agreement (defined below), for a total of \$ _____ (the

“Settlement Obligation”); and hereby authorize the Receiver or her successors or assigns to seek the entry of judgment for such sum against me.

2. I reside at 245 Trenor Drive, New Rochelle, New York 10804, and hereby submit to the jurisdiction of the courts of the County of Westchester in the State of New York, and authorize the entry of judgment against me in the County of Westchester in the State of New York.

3. This Affidavit of Judgment by Confession is for a debt justly due to the Receiver arising from the following facts:

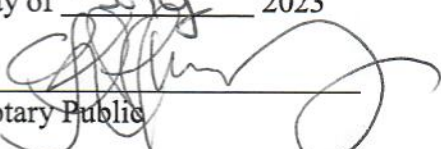
- a. On July 21, 2023, I entered into a Settlement Agreement (the “Settlement Agreement”) with the Receiver to resolve the disputes in the adversary proceeding styled *Cyganowski v. Nordlicht*, Adv. Pro. No. 20-07025-DSJ (Bankr. S.D.N.Y), pursuant to which the Receiver agreed to accept payments from me pursuant to the terms of the Settlement Agreement.
- b. On _____, 2023, the United States Bankruptcy Court for the Southern District of New York approved the Settlement Agreement pursuant to an order in *Cyganowski v. Nordlicht*, Adv. Pro. No. 20-07025-DSJ (Bankr. S.D.N.Y) and on _____, 2023, the United States District Court for the Eastern District of New York approved the Settlement Agreement pursuant to an order in *Securities & Exch. Comm’n v. Platinum Mgmt. (NY) LLC, et al.*, 16 Civ. 06848 (BMC).
- c. In the Settlement Agreement, I agreed that upon the occurrence of an Event of Default (as defined therein), the Receiver may immediately, and without notice except as may be required under law, file this Affidavit of Judgment by Confession with this Court and obtain a judgment against me in an amount equal to the Settlement Obligation.

4. I agree that, in the event, and at the time, that the Receiver files this Affidavit of Judgment by Confession, there has been an Event of Default permitting the Receiver to file this Affidavit of Judgment by Confession.
5. I authorize the Receiver to fill in the blank spaces provided for in Section 1 above with the accurate sums, respectively, of (i) the total of payments that I made under Section II.E.4. of the Settlement Agreement prior to the Event of Default permitting the filing of this Affidavit of Judgment by Confession, and (ii) the difference between that amount and \$5,000,000, and the blank spaces provided for in Section 3.b. above.
6. This Affidavit of Judgment by Confession does not relate to the payment of any installment within the prohibitions of CPLR 3201. Nothing herein shall limit the Receiver's right to the enforcement and collection, pursuant to CPLR Article 52, or any other applicable law, of the judgment confessed hereby.
7. This Affidavit of Judgment by Confession and any judgment entered on account of the Affidavit of Judgment by Confession shall be non-dischargeable pursuant to 11 U.S.C. § 523(a)(19).
8. This Affidavit of Judgment by Confession is not made for the purpose of securing the Receiver against a contingent liability.



Mark A. Nordlicht

Sworn to before me this 21st
Day of July 2023



Notary Public

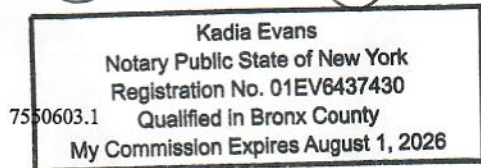


Exhibit 4 to Settlement Agreement

Debtor Releasors

Debtor Releasors

Mark Nordlicht Grantor Trust
Mark Nordlicht Grantor Trust (MNR)
Mark Nordlicht Grantor Trust (NIII)
Mark Nordlicht GRANTOR TRUST (GSR)
Nordlicht GST Trust
Platinum Liquid Opportunity GP, LLC
Platinum Credit Holdings LLC
Platinum Credit Management LLC
Albert and Brenda Kalter Tenants in Common
Dahlia Kalter
16th Avenue Associates LLC
16th Avenue Associates, LLC
535 W.E.A. Group LLC
OBH 2308, LLC
NYFLA Investors LLC
Barbara Nordlicht
Kenneth Nordlicht
Ora Gichtin
David Gichtin
Trenor Trust
Goldstone Partners LLC

Exhibit 5 to Settlement Agreement

Release

RELEASE

Recitals

WHEREAS, Melanie L. Cyganowski, as Receiver (the “*Receiver*”) for (i) Platinum Partners Credit Opportunities Master Fund LP, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd., (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., and (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, (vii) Platinum Liquid Opportunity Management (NY) LLC, (viii) Platinum Partners Liquid Opportunity Fund (USA) L.P., and (ix) Platinum Partners Liquid Opportunity Master Fund L.P (collectively, the “*Receivership Entities*”) commenced an action against Mark A. Nordlicht (“*Nordlicht*”), entitled *Cyganowski v. Nordlicht*, Adv. Pro. No. 20-07025-DSJ (Bankr. S.D.N.Y) (the “*Adversary*” or “*Adv.*”) in the United States Bankruptcy Court for the Southern District of New York;

WHEREAS, the Receiver and Nordlicht have entered into a settlement agreement (the “*Settlement Agreement*”) to, among other things, resolve the Adversary;

WHEREAS conditioned on the occurrence of the Effective Date (as that term is defined in the Settlement Agreement) and the Receiver’s receipt of a release by [Insert Name of Releasing Party] (the “*Releasor*”), the Settlement Agreement provides for the release of the Releasor by the Receiver Releasors (as that term is defined in the Settlement Agreement);

WHEREAS, Releasor has been provided with a copy of the Settlement Agreement;

Now therefore, for good and valid consideration, the receipt and sufficiency being acknowledged and agreed upon by the Releasor, conditioned on the occurrence of the Effective

Date (as that term is defined in the Settlement Agreement), the following release shall become effective:

Release Provisions

The Releasor to the fullest extent permitted by law, hereby waives, releases and discharges (i) the Receiver, the Receivership Entities, and their present and former affiliates, parents, subsidiaries, divisions, officers, directors, trustees, partners, stockholders, members, certificate holders, employees, attorneys, accountants, financial advisors, agents, representatives, successors and assigns (the “*Receiver Released Parties*”), from all present and future actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, obligations, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity which the Releasor ever had, now have or hereafter can, shall or may have, from the beginning of the world to the Effective Date against the Receiver Released Parties, (ii) any equity or ownership interest a Releasor may have held, or holds, in any Receivership Entity, (iii) a distribution in the Receivership Action on account of any equity or ownership interest in any Receivership Entity and (iv) any claims it may have against any Receivership Entity, either directly or derivatively, on account of any equity or ownership interest it may have in any other entity.

This Release may not be changed orally but may be modified or amended only by a writing signed by the Releasor and the Receiver (or a successor receiver or other person with court approved authority over the Receivership Entities).

This Release shall be interpreted, construed and enforced in accordance with the laws of the State of New York, without regards to conflicts of law principles.

In witness whereof, the Releasor has executed this Release on [Insert Date].

[Insert Name of Releasor]

By: _____

Name: _____

Title: _____

Sworn to before me this _____
Day of _____ 2023

Notary Public

EXHIBIT B

BANKRUPTCY COURT ORDER APPROVING SETTLEMENT AGREEMENT

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
In re: : Chapter 7
: :
MARK A. NORDLICHT, : Case No. 20-22782-DSJ
: :
Debtor, : :
----- X
MELANIE L. CYGANOWSKI, AS RECEIVER, BY : Adv. Pro. No. 20-07025-DSJ
AND FOR 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 INTERNATIONAL :
LTD., PLATINUM PARTNERS CREDIT :
OPPORTUNITIES FUND INTERNATIONAL (A) :
LTD., and PLATINUM PARTNERS CREDIT :
OPPORTUNITIES FUND (BL) LLC, :
Plaintiff, :
v. :
MARK A. NORDLICHT, :
Defendant. :
----- X

**ORDER APPROVING A SETTLEMENT AGREEMENT
BETWEEN MELANIE L. CYGANOWSKI, IN HER CAPACITY AS
RECEIVER FOR PLATINUM PARTNERS CREDIT OPPORTUNITIES
MASTER FUND L.P. ET AL., AND MARK A. NORDLICHT**

Upon consideration of the motion (the “**Motion**”)¹ of Melanie L. Cyganowski, in her capacity as receiver (the “**Receiver**”) for the “Receivership Entities,”² seeking entry of an order, pursuant to § 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 9019 and 7041 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 4007-2(b) of the Local Bankruptcy Rules of the Southern District of New York (the “**Local Bankruptcy Rules**”) approving a settlement agreement between the Receiver, on behalf of the Receivership Entities, and Mark A. Nordlicht (the “**Debtor**”, and together with the Receiver, the “**Parties**”); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice having been provided under the circumstances and no other or further notice need be provided; and no objection to the Motion having been filed; and the Court having held a hearing on the Motion; and the Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Motion is in the best interests of the estate and all other parties in interest; and after due deliberation and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED as set forth below.

¹ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

² The “**Receivership Entities**” or “**PPCO Funds**” include Platinum Partners Credit Opportunities Master Fund L.P (“**PPCO Master Fund**”), Platinum Partners Credit Opportunities Fund (TE) LLC (“**PPCO Fund TE**”), Platinum Partners Credit Opportunities Fund LLC (“**PPCO Fund**”), Platinum Partners Credit Opportunities Fund International Ltd. (“**PPCO Fund International**”), Platinum Partners Credit Opportunities Fund International (A) Ltd. (“**PPCO Fund International A**”), and Platinum Partners Credit Opportunities Fund (BL) LLC (“**PPCO Fund BL**”).

without prejudice to, and shall not affect in any way the allegations and claims in, the Proposed Amended POC.

5. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

6. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Dated: New York, New York
August 23, 2023

s/ David S. Jones
Honorable David S. Jones
United States Bankruptcy Judge

EXHIBIT C

TRANSCRIPT OF BANKRUPTCY COURT AUGUST 22, 2023 HEARING

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 20-22782-dsj

Adv. Case No. 20-07025-dsj

- - - - - x

In the Matter of:

MARK A. NORDLICHT,

Debtor.

- - - - - x

MELANIE L. CYGANOWSKI, et al.,

Plaintiffs,

v.

MARK A. NORDLICHT,

Defendant.

- - - - - x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

August 22, 2023

10:00 AM

1 B E F O R E :
2 HON. DAVID S. JONES
3 U.S. BANKRUPTCY JUDGE

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5 ECRO: UNKNOWN
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1 Adversary proceeding: 20-07025-dsh Cyganowski et al v.
2 Nordlicht
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4 HEARING re Motion Filed by Melanie L. Cyganowski in her
5 Capacity as Receiver for Platinum Partners Credit
6 Opportunities Master Fund L.P. et al, For an Order Approving
7 a Settlement Agreement Between the Receiver and Mark
8 Nordlicht

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Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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3 OTTERBOURG P.C.

4 Attorneys for Melanie L. Cyganowski, as Receiver

5 for PPCO Funds

6 230 Park Avenue

7 New York, NY 10169

8

9 BY: PETER FELDMAN

10 MICHAEL A. PANTZER

11

12 BACKENROTH, FRANKLY KRINSKY, LLP

13 Attorneys for Mark Nordlicht

14 488 Madison Avenue, Floor 22

15 New York, NY 10010

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17 BY: ANIL RAJ MAKHIJANI

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P R O C E E D I N G S

THE COURT: The next case is Cyganowski v. Nordlicht, number 20-07025. That's an adversary proceeding. Who is here on that case please?

MR. PANZER: Good morning, Your Honor. Michael Panzer with the law firm of Otterbourg PC appearing on behalf of Melanie Cyganowski as the receiver for Platinum Partners Credit Opportunities Master Fund LP and the related receivership entities. With me, Your Honor, this morning is Peter Feldman. We are the plaintiff and a creditor of the debtor.

THE COURT: Great.

MR. MAKHIJANI: Good morning, Your Honor. Anil Makhijani, Quinn Emanuel Urquhart & Sullivan on behalf of the debtor, Mark Nordlicht, who is also the defendant and counter-claim plaintiff in this adversary proceeding.

THE COURT: Okay. I think that's all I was anticipating today. Thank you all for being here. I've reviewed your papers. We're here on a motion by Ms. Cyganowski in her capacity as receiver for approval of a proposed settlement.

I'm just going to let, I guess, Mr. Panzer I assume is going to present it, do so. I basically just want to make sure I understand what the settlement is and really what remains alive and unresolved if and when I approve this

1 settlement. I think I have it, but I want to make sure I've
2 got it. I didn't have any specific concerns. I think your
3 papers are solid, but what I am lacking is just an
4 explanation of the reasoning that led to the actual number
5 you've arrived at and then coupled with just making sure I
6 have clear what remains in play henceforth. So, I'll turn
7 to you for that.

8 MR. PANZER: Thank you, Your Honor. So, the
9 settlement agreement resolves the claims that are pending in
10 the adversary proceeding. The settlement agreement resolves
11 the receiver's claims pursuant to Section 727(a)(2) and
12 (a)(4) objecting to the debtor's bankruptcy discharge.

13 The settlement agreement also resolves the
14 debtor's counter-claim against the receiver objecting to the
15 receiver's proof of claim; the amended proof of claim, which
16 is pending. The motion to amend the proof of claim, which
17 is pending, asserts a claim against the debtor for \$154
18 million. The settlement agreement also resolves the
19 receiver's claims pursuant to Section 523(a)(19) objecting
20 to the dischargeability of the receiver's claims against the
21 debtor.

22 So, the settlement agreement in satisfaction of
23 the 523(a)(19) claim provides for payments by the debtor to
24 the receiver and such payments are only coming from the non-
25 estate assets of the debtor. So, the payments provide for a

1 \$50,000 payment to the receiver upon the effective date of
2 the settlement agreement, another \$50,000 payment within 90
3 days of the effective date and then for five years the
4 debtor is going to contribute half of his gross monthly
5 income to the receiver in the minimum amount of \$250,000 up
6 to the maximum amount of \$5 million.

7 THE COURT: That's cumulative, right?

8 MR. PANZER: Yes, cumulative.

9 THE COURT: Okay. Got it. That's helpful.

10 Assuming the motion to amend the proof of claim is granted,
11 then what will be left in place after the settlement is the
12 proof of claim as against the debtor or the estate pending
13 further developments, right?

14 MR. PANZER: Yes. And just to bring to Your
15 Honor's attention is just procedural steps that we see
16 taking place. That's included in the settlement agreement
17 because the receiver is appointed pursuant to an order of
18 the District Court of the Eastern District of New York.
19 It's a receivership order and the receiver believes that the
20 receivership court should approve the settlement agreement.
21 And so, if Your Honor approves the settlement agreement
22 today, one of the conditions to the effective date of the
23 settlement is that the receiver will seek approval of the
24 settlement agreement from Judge Cogan in the Eastern
25 District of New York. If Judge Cogan approves the

1 settlement agreement, at that point the receiver will file
2 the amended complaint in the adversary and the amended proof
3 of claim and following the debtor's payment of \$50,000 upon
4 the effective date and the second payment of \$50,000, we
5 will then submit an order to Your Honor dismissing the
6 adversary with prejudice, but as you mentioned, leaving the
7 proof of claim without prejudice to the proof of claim in
8 the debtor's bankruptcy case.

9 THE COURT: Okay. The up to \$5 million settlement
10 account recovery on account of the settlement before me now,
11 will the funds flow to the benefit of the estate although
12 they originate from non-estate funds? What happens to the
13 money?

14 MR. PANZER: The funds that are being paid
15 pursuant to the settlement agreement are going to the
16 receivership estate.

17 THE COURT: Okay.

18 MR. PANZER: That's on account of the receiver's
19 523(a)(19) claim objecting to the debtor's dischargeability
20 of the receiver's claims asserted against the debtor.

21 THE COURT: Okay. In your view how would you
22 characterize the interests of the estate that I am looking
23 out for in conducting the review I'm doing today?

24 MR. PANZER: I understand, Your Honor, that we are
25 settling a Section 727 action, which is an objection to the

1 debtor's bankruptcy discharge which has an affect on the
2 entire estate. In reviewing a Section 727 settlement, that
3 also resolves a 523(a)(19) claim, the Court does have the
4 obligation to review the claims that are asserted and what's
5 being settled, but the Court is only required to review the
6 merits of the 523 claim being settled and to ensure that the
7 settlement is not an effort to receive payments on account
8 of the 727 claim.

9 Here our 523(a)(19) claim we believe is
10 meritorious and it's independent of the claims that are
11 asserted under 727. We have filed a motion to amend the
12 proposed second amended complaint, which walks through the
13 basis of the receiver's 523(a)(19) claim and those claims
14 are for based upon common law fraud, deceit, manipulation
15 based upon affirmative representations and omissions that
16 were committed in connection with the purchase or sale of
17 any security.

18 A portion of those claims relate to facts that the
19 debtor was convicted of securities fraud. So, those claims
20 are different from the Section 727 claims, which relate to
21 the allegations that the debtor did not disclose certain
22 assets and transactions that are unrelated to the underlying
23 facts of the 523(a) claims.

24 So, we see those claims as being two distinct
25 claims and the receiver wants to settle the 523(a)(19)

1 claims and does not want to proceed on the 727 claims. So,
2 they are distinct claims. The chapter 7 trustee has settled
3 an adversary proceeding that relates to the underlying facts
4 of the 727 action as well and the bankruptcy estate is
5 receiving \$2.5 million on account of that settlement.

6 We don't see any impropriety with receiving a
7 direct payment on account of the 523(a)(19) claims. We've
8 given notice to all creditors in the creditor matrix and
9 given them an opportunity to appear at the hearing today.
10 There have been no objections filed and we haven't received
11 any objections formally or informally.

12 So, we believe that the estate's interests are
13 protected by the notice that has gone out and the work that
14 the chapter 7 trustee has done in this case.

15 THE COURT: Right and notice went to the U.S.
16 Trustee's Office as well, right?

17 MR. PANZER: Yes, my apologies for not mentioning
18 that.

19 THE COURT: No worries. I'm just nailing that
20 down. I will say I indeed noted the absence of any
21 objection by anyone and that is a comforting consideration.
22 I think maybe you've told me what you want to tell me. This
23 has been a pretty helpful description. Anything else you
24 want to add?

25 MR. PANZER: No, Your Honor. Thank you to Judge

1 Gropper for helping the parties in mediation and Your Honor
2 to allow the parties to work on a resolution.

3 THE COURT: Right. My compliments. I know it's
4 been a long road with a failed initial attempt and I'm very
5 grateful to Judge Gropper as well. Mr. Makhijani, what if
6 anything would you like to add?

7 MR. MAKHIJANI: Nothing to add except to second
8 the help of Judge Gropper and his court for allowing us to
9 go through that path. I do think this is a beneficial
10 outcome for all involved.

11 THE COURT: Okay. I'm prepared to rule on the
12 motion to approve the settlement agreement. So the
13 following constitutes my oral ruling.

14 Before the Court is the motion of Melanie L.
15 Cyganowski in her capacity as receiver for Platinum Partners
16 Credit Opportunities Master Fund, LP, et al for an order to
17 approve the settlement agreement between the receiver and
18 Mark Nordlicht, who is the debtor in the Chapter 7 case,
19 Number 20-22782.

20 The settlement agreement is as described in the
21 motion papers and as has been described by Mr. Panzer in his
22 helpful recap on the record today. It resolves an adversary
23 proceeding under which the motion is docketed, number 20-
24 7025, as between the receiver and Mr. Nordlicht. It leaves
25 unresolved a proof of claim in a very substantial amount as

1 against the bankruptcy estate. But it does resolve certain
2 disputes and yields up to a \$5 million payment to the
3 receiver on account of resolution of the claims.

4 I'm not going to attempt a recap of the dispute or
5 the exact workings of the settlement for fear of misstating
6 it. It's involved and it's in the papers. I've reviewed
7 it, including the proposed settlement agreement. Let me
8 also say this Court's approval is designed to be subject to
9 further approval by the Eastern District district court by
10 Judge Cogan, if and when this Court approves the settlement
11 for bankruptcy law purposes. And I understand the logic of
12 that, and so my approval is subject to the further required
13 approval of Judge Cogan in the Eastern District or any other
14 presiding judge who takes over the matter.

15 Okay. For my own purposes, I am applying the
16 familiar paths that bankruptcy courts have of resolving all
17 settlements that affect the bankruptcy estate, pursuant to
18 Section 105 of the Code and Bankruptcy Rule 9019. In
19 performing that review, we applied the familiar Iridium
20 factors identified by the Second Circuit as the applicable
21 test. See *In re Iridium Operating LLC*, 478 F.3d 452, 462
22 (2d Cir. 2007). And I have considered those factors and
23 applied them in reaching the decision I do today.

24 I'm just going to give a very brief recap. The
25 receiver's motion papers set forth a very clear discussion

1 of how those factors apply and why they support approval
2 here, and I agree with that presentation entirely.

3 First, the balance between the litigation's
4 possibility of success and the settlement's future benefits,
5 it's clear that here we have an intensely fought dispute
6 that required not one but two rounds of mediation through
7 skilled mediating among skilled professionals and the
8 parties have thoroughly fleshed out and thought through the
9 various pathways that this litigation could take and the
10 odds of success and the benefit of the settlement, including
11 that without the settlement there would be an uncertain
12 outcome and a certainty of expensive, time-consuming and
13 challenging litigation. So I'm satisfied that the
14 settlement reaches, at a minimum, below the minimum
15 reasonable outcome for the parties' complex disputes.

16 What I articulated just bleeds into the second
17 factor, which is the likelihood of complex and protracted
18 litigation with attendant expense, inconvenience and delay
19 in the absence of a settlement. Here, that is not a
20 likelihood, that is a certainty.

21 The paramount interests of the creditors,
22 including each affected class' relative benefits and the
23 degree to which creditors either do not object to or
24 affirmatively support the proposed settlement. Again, I
25 think the settlement is fair and equitable and at least

1 consistent with the best interests of the estate. And I
2 note and I'm comforted by the fact that despite abundant
3 notice, no creditors have come forward to object.

4 Fourth, whether other parties in interest support
5 the settlement. The directly affected parties support it,
6 and everyone else is silent, representing at a minimum,
7 acquiescence. The competency and experience of counsel
8 supporting, and my own knowledge in approving the
9 settlement, all of those are extremely high in the case of
10 counsel, and at least adequate in my own case.

11 Sixth, the nature and breadth of the releases to
12 be obtained by officers and directors. I don't perceive any
13 problematic aspects of any releases on offer here. It seems
14 to be largely a bilateral release of litigants. And the
15 extent to which the settlement is the product of arm's
16 length bargaining, that is abundantly established here by
17 the presence and work. That's clear to the Court, of
18 counsel before the Court, and the exceptional efforts of
19 former Judge Gropper as mediator.

20 I say exceptional efforts. I'm taking that on
21 faith. I know he's fantastic. I know you worked very hard
22 before him. He has, of course, maintained appropriate
23 confidences, so I have never even directly spoken with him
24 about his work. But nevertheless, I'm very grateful and I'm
25 confident that he was both key to the outcome and a

1 guarantor of vigorous arm's length bargaining.

2 I think that's all I need to say. For the
3 foregoing reasons, I'm satisfied that from a Bankruptcy
4 Court and bankruptcy estate perspective, the motion meets
5 all applicable requirements. And I therefore am happy to
6 approve it, subject to the further approval that is
7 contemplated from the District Court in the Eastern
8 District.

9 So I will ask Mr. Panzer to submit his proposed
10 order, which accompanied the motion in Word, just to
11 facilitate our processing of it.

12 I'm now taking a quick look at it to see if I had
13 any requested changes. I do not have any requested changes.
14 I marked it up to make sure I had to indicate some questions
15 that I wanted to ask you, but we've covered those. So I'm
16 prepared to approve it.

17 Mr. Panzer, anything else? You look ready to
18 speak.

19 MR. PANZER: No, just was anticipating any
20 questions you may have. We did also attach the subsequent
21 proposed order that we intend to submit, once there's
22 approval by the Receivership Court and the payment is made.
23 So I wasn't sure if you wanted to also look at that order
24 now. That's Exhibit 1 to the settlement agreement. Just to
25 -- if you had any comments to that order now, so that you

1 know you can expect to receive that order.

2 THE COURT: Right. I have to -- let me remind
3 myself about that one. I paid more attention to the
4 settlement order. But I'm going to take a quick look right
5 now at the other one.

6 As you can probably tell, I do things
7 electronically, so I am just opening it up. I'm fine with
8 the form of order. Annexed is Exhibit 1 to the settlement
9 agreement. Can you just tell me approximately when I'll
10 expect to be asked to sign it?

11 MR. PANZER: So we anticipate moving before --
12 pursuant to the settlement agreement moving before Judge
13 Cogan within five business days of your entry of the first
14 order. And so, to provide for notice before Judge Cogan, we
15 expect there to be some notice period of perhaps 14 days,
16 after which time, you know, we expect to receive the first
17 payment from the Debtor.

18 And pursuant to the settlement agreement, there is
19 also a 90-day period for the Debtor to make the subsequent
20 payment. So, you know, approximately about, I would say,
21 maybe 120 days if, you know, all payments -- if the order is
22 entered in the timeline that we expect and the payments are
23 made pursuant to the timeline set forth in the settlement
24 agreement.

25 THE COURT: Okay. And at that point, you will be

1 submitting to me this order dismissing the second amended
2 adversary complaint and of closing the Adversary Proceeding
3 Number 20-7025.

4 So let's do the following to guard against
5 anything getting derailed. Let me just ask you to -- let's
6 just set a status conference in this case for about six
7 months out in the adversary, with the full expectation and
8 hope that I will never see you again on this matter. But if
9 there's been some delay, I'll just want to hear about it and
10 this will help me not lose track.

11 So, what I'll ask you to do is just contact Miss.
12 Calderon, my Deputy. Get a date approximately six months
13 out and just file a notice of status conference. And then,
14 obviously, if the consent order comes through prior to then,
15 then that'll eliminate the need for the conference. Okay?

16 MR. PANZER: Yes, Your Honor.

17 THE COURT: All right. I'm going to just tell you
18 a fun fact that has nothing to do with the merits. But
19 Judge Cogan was on the panel that selected me as a
20 bankruptcy judge. So I have a special fondness for him.
21 And I guess I won't task you with extending greetings while
22 you do your important work on this case. But it's fun to
23 it's fun to cross paths with him in this regard. They were
24 filling both Southern and Eastern District slots in one
25 combined process. That's why I got to speak with him.

1 Anyway, okay, that's neither here nor there. But I couldn't
2 help but share.

3 That's all we need to do today, I think, Mr.
4 Panzer?

5 MR. PANZER: Yes, Your Honor. Thank you.

6 THE COURT: Okay. Thanks to both of you. Good
7 luck going forward, and we're adjourned. Take care.

8 (Whereupon these proceedings were concluded.)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: August 25, 2023

[& - approve]

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EXHIBIT D

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)

**ORDER APPROVING SETTLEMENT AGREEMENT
BETWEEN THE RECEIVER AND MARK A. NORDLICHT**

On August 30, 2023, Melanie L. Cyganowski, the court-appointed receiver (the “*Receiver*”)¹ of the Receivership Entities² filed a motion [ECF Nos. ____] (the “*Motion*”) for the entry of an Order (a) approving a settlement agreement (the “*Settlement Agreement*”) between the Receiver, on behalf of the Receivership Entities, and Mark A. Nordlicht (“*Nordlicht*”, and together with the Receiver, the “*Parties*”); (b) authorizing the Receiver to take any such necessary steps to

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the *Declaration of Melanie L. Cyganowski, as Receiver, in Support of the Receiver’s Motion for Entry of an Order Approving a Settlement Agreement Between the Receiver and Mark A. Nordlicht* (the “*Receiver Decl.*”).

² The “*Receivership Entities*” are: (i) Platinum Partners Credit Opportunities Master Fund LP, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd., (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, (vii) Platinum Credit Management, L.P., (viii) Platinum Liquid Opportunity Management (NY) LLC, (ix) Platinum Partners Liquid Opportunity Fund (USA) L.P., and (x) Platinum Partners Liquid Opportunity Master Fund L.P.

effectuate and enforce the terms of, and fulfill her obligations under, the Settlement Agreement; and (c) granting such other and further relief as the Court deems just; and

In support of the Motion, the Receiver filed a Notice of Motion [ECF No. ____], the Receiver Decl. [ECF No. ____], and a Memorandum of Law [ECF No. ____]; and

The Court finding that notice of the Motion was good and sufficient under the particular circumstances and that no other further notice need be given; and

The Court having jurisdiction to consider the relief requested in the Motion pursuant to, inter alia, the *Second Amended Order Appointing Receiver* entered on October 16, 2017 [ECF No. 276] (the “*Receivership Order*”); and

The Court finding that (a) the Receiver’s entry into the Settlement Agreement is consistent with the Receiver’s authority under the Receivership Order and is a reasonable and proper exercise of the Receiver’s discretion; (b) approval of the Settlement Agreement is in the best interests of the Receivership Entities, their estates and stakeholders; and (c) based upon the record herein and after due deliberation and for good and sufficient cause shown, it is hereby

ORDERED THAT:

1. The Motion is GRANTED in all respects.
2. All objections, if any, to the relief provided for herein that have not been withdrawn, waived or settled, and all reservation of rights included therein, are hereby overruled in all respects.
3. The Settlement Agreement is hereby approved and the Receiver is authorized to take any such necessary steps to effectuate and enforce the terms of, and fulfill the Receiver’s obligations under, the Settlement Agreement.
4. This Order shall be effective and enforceable immediately upon entry.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: _____, 2023
Brooklyn, New York

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

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)

**MEMORANDUM OF LAW IN SUPPORT
OF THE RECEIVER’S MOTION FOR ENTRY OF
AN ORDER APPROVING A SETTLEMENT AGREEMENT
BETWEEN THE RECEIVER AND MARK A. NORDLICHT**

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Of Counsel:

Erik B. Weinick
Michael A. Pantzer

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Melanie L. Cyganowski, the court-appointed receiver (the “**Receiver**”) of the Receivership Entities¹, through her counsel, respectfully submits this memorandum of law in support of her motion (the “**Motion**”) for the entry of an Order (a) approving a settlement agreement (the “**Settlement Agreement**”)² between the Receiver, on behalf of the Receivership Entities, and Mark A. Nordlicht (“**Nordlicht**”, and together with the Receiver, the “**Parties**”); (b) authorizing the Receiver to take any such necessary steps to effectuate the terms of, and fulfill her obligations under, the Settlement Agreement; and (c) granting such other and further relief as the Court deems just.

PRELIMINARY STATEMENT

Nordlicht was, among other things, the former co-Chief Investment Officer of each of the three portfolio managers, general partners and managing Members of the Platinum Funds (as defined below) until the commencement of this Receivership. Thereafter, on June 29, 2020, Nordlicht filed a Chapter 7 Petition (the “**Petition**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), thereby commencing the bankruptcy case titled *In re Nordlicht*, Case No. 20-22782-DSJ (the “**Bankruptcy Case**”). Following over thirty (30) months of litigation and mediation to resolve the Parties’ claims against each other in the Adversary (as defined below) in the Bankruptcy Case, on July 21, 2023, the Receiver filed a motion in the Bankruptcy Court for approval of the Settlement Agreement (Adv. Dkt. 57) (the

¹ The “**Receivership Entities**” are: (i) Platinum Partners Credit Opportunities Master Fund LP, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd., (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, (vii) Platinum Credit Management, L.P., (viii) Platinum Liquid Opportunity Management (NY) LLC, (ix) Platinum Partners Liquid Opportunity Fund (USA) L.P., and (x) Platinum Partners Liquid Opportunity Master Fund L.P.

² A copy of the Settlement Agreement is attached as **Exhibit A** to the Declaration of Melanie L. Cyganowski, as Receiver, in Support of the Receiver’s Motion for Entry of an Order Approving a Settlement Agreement Between the Receiver and Mark A. Nordlicht (the “**Receiver Decl.**”).

“**BR CT Settlement Motion**”). No objection were filed to the BR CT Settlement Motion. On August 22, 2023, the Bankruptcy Court (Jones USBJ) held a hearing on the BR CT Settlement Motion and on August 23, 2023 entered an Order granting it (Adv. Dkt. 60) (the “**BR Settlement Order**”).³ Although the Bankruptcy Court has approved the Settlement Agreement, one of the conditions to the Effective Date (as that term is defined in the Settlement Agreement) of the Settlement Agreement is this Court’s approval of the Settlement Agreement (Settlement Agreement, Section II.B.). Accordingly, by this Motion, the Receiver seeks this Court’s approval of the Settlement Agreement.

The Receiver determined, in her business judgment, to enter into the Settlement Agreement because the Settlement Agreement, provides significant benefits to the Receivership Estate. Under the Settlement Agreement Nordlicht (i) will withdraw his objection to the Receivership’s proof of claim, or any potential objection to the Receivership’s \$154,800,000 amended proof of claim, in Nordlicht’s Chapter 7 Bankruptcy Case, resolving the only objection that has been asserted to date and thereby retaining the Receivership Estate’s right to receive its *pro rata* share of Nordlicht’s Chapter 7 estate property⁴, (ii) pay the Receivership Estate a minimum of \$350,000 and up to \$5.1 million from his non-Chapter 7 estate property based upon his future earnings⁵, and (iii) execute a non-dischargeable affidavit of judgment by confession

³ A copy of the BR Settlement Order is attached to the Receiver Decl. as **Exhibit B**. A copy of the transcript of the August 22, 2023 hearing is attached to the Receiver Decl. as **Exhibit C**.

⁴ Nordlicht’s Chapter 7 estate is comprised of Nordlicht’s property, pursuant to 11 U.S.C. § 541, as of the Petition Date. During the administration of Nordlicht’s Chapter 7 estate, the Chapter 7 Trustee has settled claims against Nordlicht, his family members, and entities they control, pursuant to which the settling parties, including Nordlicht, agreed to pay \$2.5 million to the Nordlicht bankruptcy estate. *See Stadtmauer v. Nordlicht (In re Nordlicht)*, Adv. Pro. No. 20-06489 (RDD) (Bankr. S.D.N.Y. June 2, 2021), Dkt. 35, *affirmed*, No. 21-CV-5990 (KMK), 2022 WL 1591788, at *1 (S.D.N.Y. May 19, 2022), *appeal pending*, No. 22-1223 (2d Cir.). It is not clear whether or when the Nordlicht Chapter 7 estate will make distributions to creditors or what amount the Receivership Estate might receive on account of the amended proof of claim.

⁵ Amounts required to be paid by Nordlicht will be offset by any amount paid by Nordlicht as restitution pursuant to an Order and Judgment in the Criminal Action. If within three (3) years of the effective date of the Settlement Agreement, Nordlicht’s conviction is fully vacated, and/or he is granted a new trial and in such new trial, he is

against Nordlicht in the amount of \$5 million (minus any credits for monthly payments previously paid). Moreover, this will all occur without the costs and uncertainties of continued litigation – the Settlement Agreement resolves *all* pending claims, causes of action and disputes between the Parties’ in the Bankruptcy Case.

The Parties have agreed to a resolution of these disputes after considerable arm’s length negotiations in mediation conducted by the Hon. Alan Gropper (USBJ Ret.) (“*Judge Gropper*”), and based on terms (described more fully below) that the Parties believe are fair and reasonable, and which the Bankruptcy Court has approved. The Settlement Agreement brings to conclusion the litigation in the Bankruptcy Case and resolves the pending (and potential future) litigation between the Parties, helping to bring the Receivership to conclusion.

For these reasons, and those more fully set forth herein and in the Receiver Decl., the Motion should be granted.

FACTS

A. Parties

1. Nordlicht

Nordlicht was formerly the co-Chief Investment Officer (“*CIO*”) of and held an ownership interest in each of the three portfolio managers, general partners and managing members of three groups of hedge funds – the PPCO Funds⁶, the “PPVA Funds”⁷ and the PPLO

acquitted on all charges, and/or he is successful on any appeal of his criminal conviction resulting in acquittal of all charges against him the Receivership Estate shall not be entitled to any further payments from Nordlicht.

⁶ The “*PPCO Funds*” include (i) Platinum Partners Credit Opportunities Master Fund LP, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd., (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., (vi) Platinum Partners Credit Opportunities Fund (BL) LLC.

⁷ The “*PPVA Funds*” include Platinum Partners Value Arbitrage Fund L.P. (“*PPVA Master Fund*”), Platinum Partners Value Arbitrage Fund (USA) L.P. (“*PPVA Fund USA*”), Platinum Partners Value Arbitrage Fund (International) Limited (“*PPVA Fund International*”), and Platinum Partners Value Arbitrage Fund (Intermediate)

Funds⁸ (collectively, the “*Platinum Funds*”). (Receiver Decl. ¶ 6).

On December 19, 2016, an eight-count indictment was unsealed in this Court commencing a criminal action captioned *United States v. Nordlicht*, 16-cr-00640 (BMC) (E.D.N.Y.), against Nordlicht, among others for securities fraud, investment adviser fraud, conspiracy to commit securities fraud, conspiracy to commit investment adviser fraud, and conspiracy to commit wire fraud, for defrauding investors (the “*Criminal Action*”).

Nordlicht was subsequently convicted of securities fraud, conspiracy to commit securities fraud, and conspiracy to commit wire fraud, (*See generally* Criminal Action, Dkt. No. 773 (E.D.N.Y. July 9, 2019)), and was acquitted on the remaining charges.

On July 12, 2023, the Court (i) granted Nordlicht’s motion for a judgment of acquittal as to his conviction for conspiracy to commit wire fraud, but denied his motion as to his securities fraud convictions; and (ii) denied Nordlicht’s renewed motion for a new trial as to the securities fraud convictions (*See* Criminal Action, Dkt. No. 1004).

2. The Receiver

On December 19, 2016, certain of the Receivership Entities, and certain other entities, were placed into receivership (the “*Receivership*” and all assets of the Receivership, the “*Receivership Estate*”) by orders of the Court in this Action and Bart M. Schwartz was appointed the initial receiver (the “*Prior Receiver*”).

Following the Prior Receiver’s resignation, on July 6, 2017, the Court appointed the Receiver, with all of the rights, duties, obligations and powers of the Receiver, as more

Limited. Platinum Management (NY) LLC served as the investment manager of the PPVA Funds. Platinum Partners Value Arbitrage L.P. is the general partner of the PPVA Funds.

⁸ The “*PPLO Funds*” include Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Liquid Opportunity Fund (International) Ltd, and Platinum Partners Liquid Opportunity Fund (USA) L.P.. Platinum Liquid Opportunity GP LLC is the general partner of the PPLO Fund. Platinum Liquid Opportunity Management (NY) LLC served as the investment manager of the PPLO Funds.

specifically set forth in the October 16, 2017 Second Amended Order Appointing Receiver, (Dkt. 276), as thereafter amended to encompass each of the Receivership Entities and certain other entities (Receivership Dkt. 297) (collectively, the “**Receivership Order**”).

B. Nordlicht’s Bankruptcy Case, the Proof of Claim, and the Adversary

On June 29, 2020, Nordlicht filed the Petition in the Bankruptcy Court, thereby commencing the Bankruptcy Case. Mark S. Tulis was appointed as the Chapter 7 Trustee (the “**Chapter 7 Trustee**”) of Nordlicht’s bankruptcy estate. (Receiver Decl. ¶ 12).

1. The Receiver’s Proof of Claim

On November 25, 2020, the Receiver filed a Proof of Claim in the amount of \$219,900,000 in the Bankruptcy Case (Bankruptcy Case, Claims Register at Claim No. 12-1) (the “**Original POC**”). In the Original POC, the Receiver alleged, among other things, that Nordlicht breached his fiduciary duties to the PPCO Funds, committed fraud against the PPCO Funds, and unjustly enriched himself at the expense of the PPCO Funds, by, *inter alia*, allegedly engaging in the following actions:

- causing PPCO Master Fund to enter into transactions in order to benefit and prop up the PPVA Funds, which were facing a severe liquidity crisis, at the expense of the PPCO Funds, including, without limitation, causing the PPCO Master Fund to transfer cash to the PPVA Funds, saddling the PPCO Funds with tens of millions of dollars of loans to the PPVA Funds, a portion of which has not been, and will never be, repaid, and causing PPCO Master Fund to take on toxic investments from the PPVA Funds (the “**PPVA Scheme**”).
- causing PPCO Master Fund to enter into a series of transactions designed to benefit a group of affiliated companies known as “Beechwood” (collectively, “**Beechwood**”) at the

expense of the PPCO Funds, in which Nordlicht caused the PPCO Master Fund to purchase overvalued or worthless secured notes from Beechwood entities or entities the assets of which were managed by Beechwood, and, although he had a fiduciary duty to disclose the fact that this misconduct was undertaken for the benefit of the PPCO Funds, he failed to do so (the “*Platinum-Beechwood Restructuring Scheme*”).

- transferring tens of millions of dollars of value from the PPCO Funds to preferred investors in the Platinum Funds whom he intended to favor at the expense of the PPCO Funds, through a convoluted and unlawful series of transactions involving certain bonds of Black Elk Energy Offshore Operations, LLC (the “*Black Elk Scheme*”).

(Original POC at ¶¶ 15-21, 22-36, 37-61). As further discussed below, Nordlicht objected to the Original POC.

2. The Adversary

On December 7, 2020, prior to the expiration of a tolling agreement between the Parties, the Receiver timely filed a complaint in the Bankruptcy Court (the “*Complaint*”) against Nordlicht, thereby commencing the adversary proceeding titled *Cyganowski v. Nordlicht*, Adv. Pro. No. 20-07025-DSJ (Bankr. S.D.N.Y.) (the “*Adversary*” or “*Adv.*”). In the Complaint, the Receiver asserted a single claim objecting to Nordlicht’s bankruptcy discharge under 11 U.S.C. § 727(a)(4)(A), on the ground that Nordlicht knowingly and fraudulently made numerous false oaths or accounts by failing to disclose certain assets and transactions in his bankruptcy schedules. (Receiver Decl. ¶ 14).

On March 3, 2021, Nordlicht moved to dismiss (the “*MTD*”) the Complaint (Adv. Dkt. 11). The Receiver opposed the MTD and on July 16, 2021, the Bankruptcy Court granted in part and denied in part the MTD (Adv. Dkt. 19).

On November 5, 2021 (Adv. Dkt. 21), over Nordlicht’s objection (which was granted in part), the Receiver filed a “First Amended Adversary Complaint Objecting to Discharge” (the “**First Amended Complaint**”), which added a new claim under 11 U.S.C. § 727(a)(2) for intentionally concealing, or permitting to conceal, his property within one-year of his Petition. (Receiver Decl. ¶ 16).

On November 19, 2021, with the Receiver’s consent, Nordlicht filed his “Answer to First Amended Complaint Objecting to Discharge” (Adv. Dkt. 30) (the “**Answer**”) generally denying the allegations of the First Amended Complaint. Thereafter, on February 1, 2022, Nordlicht filed an amended “Answer to First Amended Complaint Objecting to Discharge and Counterclaim” (Adv. Dkt. 35) (the “**Answer and Counterclaim**”), which added a Counterclaim against the Receiver (the “**Counterclaim**”), consisting primarily of an objection pursuant to 11 U.S.C. § 502 to the Original POC (the “**Claim Objection**”) (Answer and Counterclaim, ¶¶ 200-243). In the Claim Objection, Nordlicht asserts, among other things, that the Original Proof of Claim is not entitled to *prima facie* validity as it allegedly fails to (i) comply with Rule 3001 of the Bankruptcy Rules, and (ii) satisfy Federal Rule of Civil Procedure 9(b). (Receiver Decl. ¶ 17).

Given the litigation between the Parties, on June 7, 2022, the Bankruptcy Court entered the “Stipulation and Order Assigning Adversary Proceeding to Mediation” (Adv. Dkt. 42), which referred the disputes in the Adversary to mediation (the “**Mediation**”) and appointed Judge Gropper as mediator. (Receiver Decl. ¶ 18).

The Mediation was initially unsuccessful. *See* Adv. Dkt. 46. Accordingly, with the consent of the Bankruptcy Court (Adv. Dkt. 48), on March 7, 2023, the Receiver filed the “Motion for Leave to File Proposed Amended Proof of Claim and Proposed Second Amended Adversary Complaint” (Adv. Dkts. 49-51) (the “**Second Motion to Amend**”), in which the Receiver sought

leave to file (a) an amended proof of claim (Adv. Dkt. 50-1) (the “*Proposed Amended POC*”), to provide further detail and particularity to the Original POC to satisfy the concerns raised by Nordlicht in the Counterclaim; and (b) a “Second Amended Adversary Complaint Objecting to Discharge” [Adv. Dkt. 50-2] (the “*Proposed Second Amended Complaint*”) to amend the First Amended Complaint including to add claims under 11 U.S.C. § 523(a)(19), to deny the discharge to Nordlicht for a debt for “common law fraud, deceit, or manipulation in connection with the purchase or sale of any security” (the added claims in Proposed Second Amended Complaint are referred to, collectively, as the “*523(a)(19) Claim*”). (Receiver Decl. ¶ 19).

Commencing in April of 2023, the Parties participated in renewed mediation with Judge Gropper, which resulted in a settlement in principle between the Parties, subject to approval by the Bankruptcy Court and this Court. (Receiver Decl. ¶ 20).

On August 23, 2023, following notice and a hearing, the Bankruptcy Court entered the BR Settlement Order granting the BR CT Settlement Motion.

THE SETTLEMENT AGREEMENT

The material terms of the Settlement Agreement, all of which are subject to the conditions to the Effective Date (as defined in the Settlement Agreement), are summarized as follows:

- a. Nordlicht shall be deemed to have dismissed with prejudice the Initial Answer, the Answer and Counterclaim and the Claim Objection; and shall be deemed to have withdrawn, waived and released with prejudice, any asserted, unasserted or potential objection or defense to the Original POC, Proposed Amended POC and Proposed Second Amended Complaint.
- b. Nordlicht agrees that the Receiver is permitted to file the Proposed Amended POC and the Proposed Second Amended Complaint which shall be deemed to

be the Receiver's operative Proof of Claim and Complaint in the Bankruptcy Case and Adversary, respectively.

- c. Nordlicht shall be deemed to have waived, withdrawn and released with prejudice any objection to any distribution(s) the Receiver might receive in the Bankruptcy Case on account of the Proposed Amended POC in addition to any payments to be received under the Settlement Agreement.
- d. Nordlicht shall be deemed to have waived, withdrawn and released with prejudice any asserted, unasserted or potential claim for sanctions and attorneys' fees against the Receiver and her counsel under Federal Rule of Bankruptcy Procedure 3001 or otherwise.

Additionally, the terms of the Settlement Agreement provide that Nordlicht shall make certain payments to the Receivership Estate, in satisfaction of the 523(a)(19) Claim, as follows:

- a. On the first business day following the Effective Date (as defined in the Settlement Agreement), Nordlicht shall pay the Receiver, on behalf of the Receivership Estate, the amount of \$50,000 (the "**Initial Payment**").
- b. Within ninety (90) calendar days of the Effective Date, Nordlicht shall pay the Receiver, on behalf of the Receivership Estate, the amount of \$50,000 (the "**Subsequent Payment**").
- c. Upon the Receiver's timely receipt and indefeasible collection of both the Initial Payment and the Subsequent Payment, the Receiver shall submit a proposed order to the Bankruptcy Court dismissing the Proposed Second Amended Complaint with prejudice and closing the Adversary.
- d. In addition to the Initial Payment and the Subsequent Payment, beginning within five (5) business days of the first day of the month following Nordlicht's bankruptcy discharge, Nordlicht shall make payments to the Receiver, on behalf of the Receivership Estate, based on Nordlicht's future income paid over time in monthly payments the "**Monthly Payments**") in the minimum amount of \$250,000 and the maximum amount of \$5,000,000 and in the event of default the Receiver may file a non-dischargeable affidavit of judgment by confession against Nordlicht in the amount of \$5,000,000, minus any credits for Monthly Payments previously paid. Any amounts required to be paid by Nordlicht for Monthly Payments will be offset by any amount paid by

Nordlicht as restitution pursuant to an Order and Judgment in the Criminal Action.

The Parties shall exchange general releases of one another except that the releases do not release the Receiver's right to assert the Proposed Amended POC against Nordlicht's bankruptcy estate or to receive restitution and/or disgorgement payments from Nordlicht.

The above is intended to be only a summary of the Settlement Agreement. The Receiver respectfully refers the Court and all parties to the Settlement Agreement attached to the Receiver Decl. as **Exhibit A** for its complete terms and conditions.

As stated above, the terms of the Settlement Agreement provide that a condition precedent to the Effective Date of the Settlement Agreement is the approval of the Settlement Agreement by this Court. Pursuant to the Receivership Order, the Receiver must obtain approval from the Court to enter into certain types of transactions that the Receivership Order identifies as "outside of the ordinary course of business." Specifically, the Receivership Order provides:

The Receiver may engage in transactions outside of the ordinary course of business of the Receivership Entities' orderly wind down only upon motion and approval of the Court. For purposes of this paragraph, a transaction outside of the ordinary course of business is any transaction that involves (i) the expenditure of Receivership cash in excess of \$3 million, or *the disposition of the Receivership Estate's interest in Receivership Property in exchange for cash or property of value in excess of \$3 million*, and/or (ii) any "carrying on" of a business within the meaning of 28 U.S.C. § 959.

Receivership Order, ¶ 30 (emphasis added).

Because entry of the Settlement Agreement may be deemed outside of the ordinary course of business, as it involves the "disposition" of Receivership Property "in exchange for cash or property of value in excess of \$3 million," the Receiver believes it appropriate to seek this Court's approval of the Settlement Agreement. (Receiver Decl. ¶ 27). Therefore, by its terms, the Effective Date of the Settlement Agreement is conditioned upon final non-appealable orders from the Bankruptcy Court and this Court.

ARGUMENT

A. The Settlement Agreement Should be Approved

A receiver's settlement of claims furthers the purposes of a receivership to marshal the estate's assets for the benefit of injured creditors. *S.E.C. v. Parish*, No. 07-CV-00919, 2010 WL 8347143, at *6 (D.S.C. Feb. 10, 2010) (receiver's proposed settlement approved by the court, finding the settlement was "consistent with and furthers the purposes of the receivership"). Thus, it is well-settled that a settlement by a receiver in a federal receivership is within the receiver's broad discretion and should be approved if it is fair. *See, e.g., Gordon v. Dadante*, 336 Fed. Appx. 540, 546 (6th Cir. 2009); *S.E.C. v. Credit Bancorp, Ltd.*, No. 99-CIV-11395, 2002 WL 1792053, at *4-5 (S.D.N.Y. Aug. 2, 2002); *S.E.C. v. Princeton Economic Int'l, Inc.*, No. 99-CIV-9667, 2002 WL 206990, at *1 (S.D.N.Y. Feb. 8, 2002). "[R]eceptors benefit from the general presumption that district courts favor settlement." *Sterling v. Stewart*, 158 F.3d 1199, 1202 (11th Cir. 1998). Indeed, courts long have emphasized that public policy favors settlement. *Lyondell Chem. Co. v. Occidental Chem. Corp.*, 608 F.3d 284, 297 n.43 (5th Cir. 2010).⁹

Paragraphs 6, 28 and 34 of the Receivership Order confirm the Receiver's broad discretion to enter into settlements. Pursuant to these paragraphs of Receivership Order, the Receiver has the authority to bring legal actions as the Receiver deems necessary or appropriate in discharging her duties and to compromise Receivership Property on terms in the manner she deems most beneficial to the estate.

⁹ *See also*, 3 Clark, Ralph Ewing, A Treatise on the Law and Practice of Receivers, § 770, p. 1424 (3d ed. 1992) (cited with approval in *Credit Bancorp, Ltd.*, 2002 WL 1792053, at *4) ("Since the Court has authority to authorize a receiver to collect assets of a corporation, it has the further authority to authorize the receiver to sue to collect the assets of the corporation. It naturally follows, as a necessary corollary of the foregoing, that the receiver has the power, when so authorized by the court, to compromise claims either for or against the receivership and whether in suit or not in suit.").

Moreover, in the Receiver's business judgment, the Settlement Agreement provides substantial benefits to the Receivership estate. (Receiver Decl. ¶¶ 3, 30). First, the Receivership Estate receives payments from Nordlicht in the minimum of \$350,000 and up to \$5.1 million from his non-Chapter 7 estate property based upon his future earnings. Second, it resolves all litigation involving Nordlicht and the Receiver pending before the Bankruptcy Court, including the Claim Objection, the First Amended Complaint, and the Second Motion to Amend. Approval greatly outweighs the motion practice, the litigation, and the attendant cost, delay, and inconvenience to the Receivership Estate that would surely result if the Settlement Agreement is not approved.

Indeed, the litigation in the Bankruptcy Court is still in its earliest days. Specifically, discovery in the Adversary is in its preliminary stages because it was stayed while the Parties participated in Mediation before Judge Gropper. Pre-trial proceedings will likely involve significant discovery, forensic accounting and additional motion practice. Moreover, given the allegations of fraudulent intent asserted in the First Amended Complaint, the 523(a)(19) Claim and the Receiver's Proposed Amended POC, trial will likely be lengthy with multiple witnesses. The Adversary has been hard-fought and highly litigious, with Nordlicht vehemently opposing the relief requested by the Receiver, including filing the MTD, opposing the Receiver's First Motion to Amend, and filing the Counterclaim objecting to the Receiver's Original POC. The Receiver has no reason to believe that any future litigation will not be similarly hard-fought and protracted, including appeals. (Receiver Decl. ¶ 29).

In sum, the Settlement Agreement provides several critical benefits to the Receivership Estate, including (i) withdrawal of Nordlicht's potential objections to the Proposed Amended POC, which the Receiver will continue to assert against Nordlicht's bankruptcy estate thereby retaining the right to receive the Receivership Estate's *pro rata* share of the Chapter 7 estate

property; (ii) the payments by Nordlicht to the Receivership Estate, from non-bankruptcy estate assets; (iii) in the event of default under the Settlement Agreement, the Receiver has the right to file a non-dischargeable affidavit of judgment by confession against Nordlicht in the amount of \$5,000,000, minus any credits for Monthly Payments previously paid; and (iv) the resolution of the Parties' disputes without further litigation.

CONCLUSION

For the reasons set forth above and in the Receiver Decl., the Motion should be granted.

Dated: New York, New York
August 30, 2023

OTTERBOURG P.C.

By: /s/ Erik B. Weinick

Erik B. Weinick

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