



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](mailto:platinumreceiver@otterbourg.com), so as to be actually received no later than **April 12, 2024**.

**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: March 29, 2024  
New York, New York

OTTERBOURG P.C.

By: /s/ Erik B. Weinick  
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*Attorneys for Melanie L. Cyganowski, as Receiver*

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)

**DECLARATION OF MELANIE L. CYGANOWSKI, AS RECEIVER,  
IN SUPPORT OF MOTION FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT AGREEMENT BETWEEN THE RECEIVER,  
JOSEPH M. SANFILIPPO AND FORD O'BRIEN LANDY LLP**

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 Entities<sup>1</sup> in support of my motion (the “*Motion*”) for entry of an Order (a) approving the settlement agreement (the “*Settlement Agreement*”)<sup>2</sup> between me, on

<sup>1</sup> The “*Receivership Entities*” are: (i) Platinum Partners Credit Opportunities Master Fund L.P. (“*PPCOMF*”), (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. (“*PCM*”), (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.

<sup>2</sup> A copy of the Settlement Agreement is attached hereto as Exhibit A.

behalf of the Receivership Entities, Joseph M. SanFilippo (“*SanFilippo*”) and Ford O’Brien Landy LLP (“*Ford O’Brien*”, and jointly and severally with SanFilippo, the “*Claimants*”) (the Receiver and Claimants collectively referred to herein as, the “*Parties*,” and each a “*Party*”); (b) authorizing me to take any such necessary steps to enter into, effectuate the terms of, and fulfill my obligations under, the Settlement Agreement; and (c) granting such other and further relief as the Court deems just.

I.

**PRELIMINARY STATEMENT**

2. Based on my business judgment, I have determined to enter into a settlement with Claimants that I believe greatly benefits the receivership estate (the “*Receivership Estate*”). The Settlement Agreement, which memorializes the terms and conditions of the Parties’ agreement, fully resolves a significant claim asserted in the Receivership. Specifically, Claimants have agreed to reduce their indemnification claim by over 80% from an originally filed amount of \$2,686,426.31 down to \$450,000. Moreover, the \$450,000 is a reduction of more than 50% of the \$929,863 that I would have allowed on a non-priority basis. As a result, I believe the Settlement Agreement is beneficial to the Receivership Estate, and have agreed to pay the settlement amount within five (5) business days of the date an Order of the Court approving the Settlement Agreement becomes final and non-appealable.

3. The Parties have agreed to resolve their disputes after considerable arms’ length negotiations, and based on terms that I believe are fair and reasonable. The Settlement Agreement brings to conclusion the litigation over the SanFilippo Claims and the Ford O’Brien Claims (each as defined below, and collectively, the “*Claims*”) in the Receivership, helping to bring this Receivership closer to conclusion.

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

## II.

### FACTS

#### A. The Receivership and Criminal Case

##### 1. The Receivership

5. On December 19, 2016 (the “*Receivership Date*”), the Securities and Exchange Commission filed its Complaint against SanFilippo and certain other individuals and entities, alleging, among other things, fraud and violations of securities law. ECF No. 1.

6. On the Receivership Date, the Court placed all but three of the Receivership Entities into receivership (the “*Receivership*”). By Order of the Court on December 29, 2017, this Receivership was expanded to include the other three Receivership Entities. ECF No. 297.

##### 2. The Criminal Case

7. On the Receivership Date, SanFilippo, along with certain other individuals and entities, was charged by the United States Government in an eight-count indictment, alleging, among other charges, conspiracy, securities fraud, and investment adviser fraud, in *U.S. v. Nordlicht, et al.*, Case No. 1:16-cr-00640-BMC (E.D.N.Y.), Cr. ECF No. 1.

8. After a trial was conducted, a jury verdict was rendered acquitting SanFilippo on all five counts in the Indictment with which he was charged. The *Judgment of Acquittal* was entered on July 10, 2019. Cr. ECF No. 776.

**B. The Parties**

**1. The Receiver**

9. On the Receivership Date, the Court appointed Bart M. Schwartz as the initial receiver for the original Receivership Entities.

10. Following Mr. Schwartz's resignation as the initial receiver, 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* [ECF No. 276], as thereafter amended to encompass each of the Receivership Entities and certain other entities [ECF No. 297] (collectively, the "***Receivership Order***").

**2. SanFilippo and Ford O'Brien**

11. SanFilippo was the former Chief Financial Officer of Platinum Management (NY) LLC ("***PMNY***"), a non-Receivership Entity, until the Receivership Date.

12. Ford O'Brien was the law firm that represented SanFilippo in the Criminal Case.

**C. The Claims of SanFilippo and Ford O'Brien**

13. On June 28, 2017, SanFilippo submitted two proofs of claim in the Receivership (collectively, the "***SanFilippo Claims***"): (i) one proof of claim against PCM and PMNY in the amount of \$400,000 based on an alleged balance for unpaid 2015 compensation and identified as Claim Number 18; and (ii) one proof of claim against PCM and PMNY in the amount of \$100,000 based on an alleged retention payment for 2016 and identified as Claim Number 19.

14. By Order of the Court, entered on February 11, 2019, the deadline for non-governmental units to file proofs of claim in the Receivership was established as March 29, 2019. ECF No. 453.

15. On March 29, 2019, Ford O'Brien filed a proof of claim against PCM and PMNY in the amount of \$2,686,426.31 based on alleged attorneys' fees and identified as Claim Number 156 ("**FOB Claim 156**").

16. Ford O'Brien later filed two proofs of claim against PCM and PMNY: (i) a proof of claim was filed on September 13, 2019 in the amount of \$2,686,426.31 based on alleged attorneys' fees and identified as Claim Number 329 ("**FOB Claim 329**"); and (ii) a proof of claim was filed on September 16, 2019 in the amount of \$2,686,426.31 based on alleged attorneys' fees and identified as Claim Number 330 ("**FOB Claim 330**", and together with FOB Claim 156 and FOB Claim 329, the "**Ford O'Brien Claims**").

**D. Claims Reconciliation Process**

17. On December 1, 2020, the Court entered an Order that approved my motion to establish procedures to reconcile and verify the claims and interests asserted in this Receivership (the "**Claims Verification Order**"). ECF No. 554.

18. In accordance with the Claims Verification Order, I filed my *Notice of Claims Analysis Report* on March 9, 2021. ECF No. 564. The Claims Analysis Report set forth my finalized determinations as to whether a claim filed against a Receivership Entity may become an "Approved Claim" (as defined in the Claims Verification Order), including my determinations with respect to the Claims submitted by Claimants. Pursuant to the Claims Verification Order, if a party failed to timely submit an objection to my determinations as to their claim(s) as set forth in the Claims Analysis Report, then my determinations set forth in the Claims Analysis Report shall be final and binding. *See* Claims Verification Order, I.C.ii.

19. With respect to the SanFilippo Claims, my determinations set forth in the Claims Analysis Report were to disallow the SanFilippo Claims in their entirety on the grounds that they

constituted claims for which the Receivership Entities had no liability because SanFilippo was not employed by a Receivership Entity during the period for which the claims were asserted. ECF No. 564.

20. SanFilippo did not timely oppose my determinations as to the SanFilippo Claims as set forth in the Claims Analysis Report. Pursuant to the Claims Verification Order, my determinations to disallow the SanFilippo Claims are therefore deemed “final and binding”.

21. With respect to the Ford O’Brien Claims, my determinations set forth in the Claims Analysis Report were to (i) partially allow FOB Claim 329 against PPCOMF only in an amount of \$922,863.04 on a non-priority basis; and (ii) disallow FOB Claim 156 and FOB Claim 330 in their entirety as duplicative of the partially allowed FOB Claim 329. ECF No. 564.

22. On April 23, 2021, Ford O’Brien timely objected to the Claims Analysis Report (the “*Objection*”). Through the Objection, Ford O’Brien disputed my determination regarding FOB Claim 329, and, in particular, disputed the amount and priority of payment in relation to other claimants in the Receivership.

23. Ford O’Brien did not timely oppose my determinations regarding FOB Claim 156 and FOB Claim 330. Pursuant to the Claims Verification Order, my determinations to disallow FOB Claim 156 and FOB Claim 330 are therefore deemed “final and binding”.

24. On November 12, 2021, I filed an omnibus motion to confirm my determinations as to the Ford O’Brien Claims and certain other claims submitted by other claimants in the Receivership (the “*Omnibus Motion*”). ECF Nos. 597-599, 602.

25. On December 13, 2021, Claimants filed their opposition to the Omnibus Motion. ECF No. 609.



26. On December 28, 2021, I filed a reply in support of the Omnibus Motion. ECF No. 617. I also filed a sur-reply in further support of the Omnibus Motion on January 28, 2022. ECF No. 622.

27. The Court heard oral argument on the Omnibus Motion on March 13, 2024 (the “*March 13 Hearing*”). The Court reserved its decision. On March 13, 2024, immediately prior to the start of the March 13 Hearing, the Claimants and I reached an agreement in principle on the settlement of the Claims, subject to documentation and Court approval, and therefore, the Court did not hear argument as to these Claims.

### III.

#### THE SETTLEMENT AGREEMENT

28. 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. As of the Effective Date (as defined below), FOB Claim 329 shall be fixed and finalized as an allowed claim against PPCOMF in the amount of \$450,000 (the “*Allowed Claim*”).
- b. Within five (5) business days of the Effective Date, and provided that Ford O’Brien shall have previously delivered to the Receiver a properly completed and signed Form W-9, the Receiver shall pay Ford O’Brien, solely from Receivership Property (as defined in the Receivership Order), the amount of \$450,000 (the “*Settlement Amount*”) on account of the Allowed Claim, by wire transfer pursuant to the wire transfer instructions that Ford O’Brien provides to the Receiver, in writing and confirmed by telephone call, contemporaneously with its execution of this Agreement (the “*Wire Transfer*”).
- c. Upon the Receiver’s payment of the Settlement Amount by the Wire Transfer (the “*Payment*”), and without any further act or notice by any person or entity:
  - i. FOB Claim 329 and each of the other Claims shall be deemed to be satisfied in full of any amount demanded or otherwise claimed.
  - ii. Claimants shall be deemed to have dismissed the Claims with *prejudice*.

- iii. Claimants agree not to object to any terms of a plan of distribution proposed by the Receiver that are consistent with this Agreement.
- iv. Claimants agree that any equity or ownership interest Claimants may have held, or hold, either directly or indirectly, in any Receivership Entity shall be deemed waived with prejudice, and that Claimants shall not be entitled to any distribution, apart from the Settlement Amount, in the Receivership.

29. The Parties shall exchange general releases of one another except that the releases do not release any rights or obligations of any Party under the Settlement Agreement and/or a plan of distribution that I propose, as approved by the Court or any document, instrument or agreement executed to implement the plan of distribution or the Settlement Agreement. The Settlement Agreement does not release any person or entity not a party to the Settlement Agreement.

30. 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.

31. The terms of the Settlement Agreement provide that a condition precedent to the Effective Date of the Settlement Agreement is the entry of a final, non-appealable Order from the Court approving the Settlement Agreement.

32. In my business judgment, and in accordance with the Receivership Order, I believe the Settlement Agreement is fair, reasonable and beneficial to the Receivership Estate. The Settlement Agreement was the product of arms' length negotiations. The Settlement Agreement resolves all litigation involving the Parties regarding the Claims, in an efficient, fair, and practical manner. I believe that approval of the Settlement Agreement greatly outweighs the motion practice, the litigation, and the attendant cost, delay, and inconvenience to the Receivership Estate, as well as the Court, that would result if the Settlement Agreement is not approved.

33. In my business judgment, the Settlement Agreement provides several benefits to the Receivership Estate. Most importantly, the Settlement Agreement fixes the allowed amount of FOB Claim 329 in an amount significantly less than the amount originally asserted in FOB Claim 329 (from \$2,686,426.31 down to \$450,000). This significant discount on the claim makes an immediate payment (as opposed to waiting for a more general distribution) fair and appropriate. Said differently, the reduction is so great that it would be imprudent to dismiss the benefit of the reduced claim amount to the Receivership Estate.

#### IV.

#### CONCLUSION

34. 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 B** (a) approving the Settlement Agreement; (b) authorizing me to take any such necessary steps to enter into, effectuate the terms of, and fulfill my obligations under, the Settlement Agreement; and (c) granting such other and further relief as the Court deems just.

Executed this 29<sup>th</sup> day of March 2024, at New York, New York.

/s/ Melanie L. Cyganowski  
Melanie L. Cyganowski, as Receiver

**EXHIBIT A**

**SETTLEMENT AGREEMENT**

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**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement (this “**Agreement**”) is hereby entered into this 29<sup>th</sup> day of March, 2024, by and between (1) Melanie L. Cyganowski, in her capacity as the court appointed receiver (solely in such capacity, the “**Receiver**”) for Platinum Credit Management, L.P. (“**PCM**”), Platinum Partners Credit Opportunities Master Fund L.P. (“**PPCOMF**”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Partners Credit Opportunities Fund International Ltd., Platinum Partners Credit Opportunities Fund International (A) Ltd., Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., (collectively, the “**Receivership Entities**,”), (2) Joseph M. SanFilippo (“**SanFilippo**”), and (3) Ford O’Brien Landy LLP (“**Ford O’Brien**”, and jointly and severally with SanFilippo, “**Claimants**”) (The Receiver and Claimants are collectively referred to herein as the “**Parties**” and each as a “**Party**”).

**WHEREAS**, on December 19, 2016, the Securities and Exchange Commission (the “**SEC**”) commenced the action in the United States District Court for the Eastern District of New York (the “**Court**”) styled *SEC v. Platinum Management (NY) LLC, et al.*, Case No. 16-06848 (BMC) (the “**Receivership Case**”); and

**WHEREAS**, in connection with the Receivership Case, the Court placed certain of the Receivership Entities under receivership and in connection therewith, appointed Bart M. Schwartz as receiver; and

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

**WHEREAS**, on June 28, 2017, SanFilippo filed two proofs of claim in the Receivership Case (collectively, the “**SanFilippo Claims**”): (i) one proof of claim against PCM and the non-Receivership Entity Platinum Management (NY) LLC (“**PMNY**”) in the amount of \$400,000.00, identified as Claim Number 18 and (ii) one proof of claim against PCM and PMNY in the amount of \$100,000.00, identified as Claim Number 19; and

**WHEREAS**, Ford O’Brien filed three proofs of claim in the Receivership Case (collectively, the “**Ford O’Brien Claims**” and together with the SanFilippo Claims, the “**Claims**”): (i) two proofs of claim against PCM and PMNY, one in the amount of \$2,686,426.31, filed on March 29, 2019 and identified as Claim Number 156 (“**FOB Claim 156**”); one in the amount of \$2,686,426.31, filed on September 13, 2019 and identified as Claim Number 329 (“**FOB Claim 329**”); and one in the amount of \$2,686,426.31, filed on September 16, 2019 and identified as Claim Number 330 (“**FOB Claim 330**”); and

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

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

**WHEREAS**, in the Claims Analysis Report, the Receiver published her determinations that the SanFilippo Claims were disallowed in their entirety on the grounds that they constituted claims for which the Receivership Entities had no liability because SanFilippo was employed by a non-Receivership Entity for the period for which the claims were asserted; and

**WHEREAS**, in the Claims Analysis Report, the Receiver published her determinations that with respect to (1) FOB Claim 329, such claim was partially allowed as to amount only as against PPCOMF in the amount of \$922,863.04; and (2) FOB Claim 156 and FOB Claim 330, both claims were disallowed in their entirety as being duplicative of the partially allowed FOB Claim 329; and

**WHEREAS**, on April 23, 2021, Ford O’Brien submitted an objection to the Claims Analysis Report (the “**Objection**”), which objection was deemed timely received, disputing the Receiver’s determinations set forth in the Claims Analysis Report as to FOB Claim 329; and

**WHEREAS**, SanFilippo did not timely serve the Receiver with an objection to the Receiver’s determinations set forth in the Claims Analysis Report as to the SanFilippo Claims, and accordingly, pursuant to the Claims Verification Order, the Receiver’s determinations to disallow the SanFilippo Claims are “final and binding”. *See* Claims Verification Order, I.C.ii; and

**WHEREAS**, Ford O’Brien has not timely served the Receiver with an objection to the Receiver’s determinations as to FOB Claim 156 and FOB Claim 330 as set forth in the Claims Analysis Report, and accordingly, pursuant to the Claims Verification Order, the Receiver’s determinations to disallow FOB Claim 156 and FOB Claim 330 are “final and binding”. *See* Claims Verification Order, I.C.ii; and

**WHEREAS**, the Receiver filed an omnibus motion to confirm her determinations set forth in the Claims Analysis Report [Dkt. Items 597-599, 602] (the “**Omnibus Motion**”), and Claimants filed an objection to the Omnibus Motion [Dkt. Items 609], and the Receiver filed a reply and sur-reply in support of the Omnibus Motion [Dkt. Items 617, 622]; and

**WHEREAS**, the Parties have engaged in correspondence, mediation, and motion practice before the Court regarding the Claims; and

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

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

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

2. **The Allowance and Payment of the Allowed Claim.**

a. As of the Effective Date (as defined below), FOB Claim 329 shall be fixed and finalized as an allowed claim against PPCOMF in the amount of \$450,000.00 (the “*Allowed Claim*”).

b. Within five (5) business days of the Effective Date, and provided that Ford O’Brien shall have previously delivered to the Receiver a properly completed and signed Form W-9, the Receiver shall pay Ford O’Brien, solely from Receivership Property (as defined in the Receivership Order), the amount of \$450,000.00 (the “*Settlement Amount*”) on account of the Allowed Claim, by wire transfer pursuant to the wire transfer instructions that Ford O’Brien provides to the Receiver, in writing, contemporaneously with its execution of this Agreement (the “*Wire Transfer*”).

c. Upon the Receiver’s payment of the Settlement Amount by the Wire Transfer (the “*Payment*”), and without any further act or notice by any person or entity:

- i. FOB Claim 329 and each of the other Claims shall be deemed to be satisfied in full of any amount demanded or otherwise claimed.
- ii. Claimants shall be deemed to have dismissed the Claims with prejudice.
- iii. Claimants agree not to object to any terms of a plan of distribution proposed by the Receiver that are consistent with this Agreement.
- iv. Claimants agree that any equity or ownership interest Claimants may have held, or hold, either directly or indirectly, in any Receivership Entity shall be deemed waived with prejudice, and that Claimants shall not be entitled to a distribution, apart from the Settlement Amount, in the Receivership Case.

3. **Releases.** Upon the occurrence of the Payment in accordance with the terms of this Agreement:

a. Claimants, for themselves and on behalf of their agents, representatives, employees, attorneys, successors and assigns (collectively, the “*Claimant Releasors*”), release, acquit, and forever discharge each of (i) the Receivership Entities, their current agents, current representatives, current officers, current directors, current employees, current attorneys and/or other professionals, successors and assigns; and (ii) the Receiver, her current or former agents, representatives, employees, attorneys and/or other professionals, successors and assigns (collectively, the “*Receivership Releasees*”) from any and all claims, demands, debts, liabilities, causes of action, obligations, and liabilities of any kind, which the Claimant Releasors could have had, claim to have had or could ever have, whether at law or in equity, whether known or unknown,

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whether anticipated or unanticipated, arising from the beginning of time through and including the Effective Date of this Agreement against the Receivership Releasees.

b. the Receiver on behalf of the Receivership Entities (collectively, the “*Receivership Releasees*”) releases, acquits, and forever discharges Claimants, their agents, representatives, employees, attorneys, successors and assigns, solely in their capacity as such (collectively, the “*Claimant Releasees*”), from any and all claims, demands, debts, liabilities, causes of action, obligations, and liabilities of any kind, which the Receivership Entities could have had, claim to have had or could ever have, whether at law or in equity, whether known or unknown, whether anticipated or unanticipated, arising from the beginning of time through and including the Effective Date of this Agreement against the Claimant Releasees.

c. The foregoing releases do not release any rights or obligations of any Party under this Agreement and/or a plan of distribution proposed by the Receiver, as approved by the Court, or any document, instrument or agreement executed to implement the plan or this Agreement. Nothing herein shall be deemed a release of any person or entity not a party to this Agreement.

**4. Representations and Warranties.**

a. As of the Effective Date of this Agreement, Claimants represent and warrant that except for the Claims, Claimants have not filed, asserted, or held any other claims against, or interests in, the Receivership Entities in the Receivership Case. To the extent any such other claims or interests have been asserted or exist in the Receivership Case, regardless of whether Claimants filed a proof of claim, the same are hereby waived in their entirety, with prejudice.

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

**5. Approval.**

a. Within five (5) business days of the execution of this Agreement by all Parties, the Receiver shall file a motion with the Court seeking approval of this Agreement.

b. This Agreement shall become effective on the date on which an Order of the Court approving this Agreement becomes final and non-appealable (the “*Effective Date*”).

c. If the Court declines to enter an Order approving this Agreement, or an Order of the Court approving this Agreement does not become final and non-appealable, then: (i)



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this Agreement shall be deemed null and void and without legal effect; (ii) none of the Parties shall be deemed to have waived any right or defense, or to have settled any controversy or dispute that existed immediately before the execution of this Agreement; and (iii) each Party shall be restored to their respective positions as of immediately before the execution of this Agreement, including, for example and without limitation, Ford O'Brien's right to seek the original amount of \$2,686,426.31 as set forth in FOB Claim 329 and the Receiver's right to object in any respect to the allowance of FOB Claim 329.

6. **Miscellaneous.**

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

If to the Receiver

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

If to the Claimants

Ford O'Brien Landy LLP  
Attn: Kevin J. O'Brien, Esq.  
275 Madison Avenue, 24th Floor  
New York, NY 10016  
[kobrien@fordobrien.com](mailto:kobrien@fordobrien.com)

b. **Venue and Choice of Law.** The Parties consent and submit to the exclusive jurisdiction of the Court over any actions or proceedings relating to the enforcement or interpretation of this Agreement, and any Party bringing such action or proceeding shall do so in the Court. This Agreement and all claims and disputes arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the State of New York, except to the extent federal law applies, without regard to choice of law principles to the extent such principles would apply a law other than that of the State of New York.

c. **Waiver of Jury Trial.** EACH OF THE PARTIES HERETO HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, AND AGREES THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

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

e. **No Oral Modifications.** This Agreement may not be modified or amended orally. This Agreement may be modified or amended only by a writing signed by a duly authorized

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representative of each of the Parties and approved by the Court. No waiver of any breach of any term of this Agreement shall be construed as a waiver of any subsequent breach.

f. **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.

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

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

i. **Costs.** Each Party shall bear its own costs in connection with the negotiation, execution and implementation of this Agreement.

j. **Severability.** If any part of this Agreement is held by a court of competent jurisdiction to conflict with any federal, state or local law, and as a result such part is declared to be invalid and of no force or effect in such jurisdiction, all remaining terms of this Agreement shall otherwise remain in full force and effect and be construed as if such invalid portion or portions has not been included herein, except as provided in section 5 of this Agreement.

k. **Further Assurances.** The Parties each agree to execute such further and additional documents, instruments and writings as may be necessary, proper, required, desirable or convenient for the purpose of fully effectuating, including obtaining Court approval of, the terms of this Agreement.

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

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

*[remainder of page left intentionally blank]*

**EXECUTION COPY**

n. **No Third Party Beneficiaries.** Neither this Agreement, nor any negotiations or proceedings in connection herewith, may be used and shall not be admissible in any proceeding against any Party to this Agreement for any purpose, except to enforce the terms of this Agreement.

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

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

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

**JOSEPH M. SANFILIPPO**

By: \_\_\_\_\_  
Joseph M. SanFilippo

**FORD O'BRIEN LANDY LLP**

By: \_\_\_\_\_  
Kevin J. O'Brien

**EXECUTION COPY**

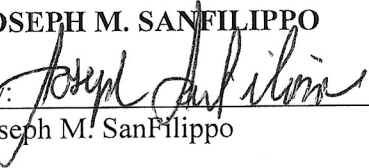
n. **No Third Party Beneficiaries.** Neither this Agreement, nor any negotiations or proceedings in connection herewith, may be used and shall not be admissible in any proceeding against any Party to this Agreement for any purpose, except to enforce the terms of this Agreement.

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

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

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

**JOSEPH M. SANFILIPPO**

By:  \_\_\_\_\_  
Joseph M. SanFilippo

**FORD O'BRIEN LANDY LLP**

By:  \_\_\_\_\_  
Kevin J. O'Brien

**EXHIBIT B**

**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, JOSEPH M. SANFILIPPO AND FORD O’BRIEN LANDY LLP**

On \_\_\_\_\_, 2024, Melanie L. Cyganowski, the court-appointed receiver (the “*Receiver*”)<sup>1</sup> of the Receivership Entities<sup>2</sup> filed a motion [ECF Nos. \_\_\_\_] (the “*Motion*”) for the entry of an Order (a) approving the settlement agreement (the “*Settlement Agreement*”) between the Receiver, on behalf of the Receivership Entities, Joseph M. SanFilippo and Ford O’Brien Landy LLP; (b) authorizing the Receiver to take any such necessary steps to enter into, effectuate

<sup>1</sup> 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 Settlement Agreement Between the Receiver, Joseph M. SanFilippo and Ford O’Brien Landy LLP* (the “*Receiver Decl.*”).

<sup>2</sup> 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.

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], as thereafter amended to encompass each of the Receivership Entities and certain other entities [ECF No. 297] (collectively, 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 enter into, effectuate 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. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2024  
Brooklyn, New York

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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 SETTLEMENT  
AGREEMENT BETWEEN THE RECEIVER, JOSEPH M. SANFILIPPO AND  
FORD O'BRIEN LANDY LLP**

OTTERBOURG P.C.  
230 Park Avenue  
New York, NY 10169  
(212) 661-9100

*Attorneys for Melanie L. Cyganowski, as Receiver*

Of Counsel:

Erik B. Weinick

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Melanie L. Cyganowski, the court-appointed receiver (the “**Receiver**”)<sup>1</sup> of the Receivership Entities<sup>2</sup>, through her counsel, respectfully submits this memorandum of law in support of her motion (the “**Motion**”) for the entry of an Order (a) approving the settlement agreement (the “**Settlement Agreement**”)<sup>3</sup> between the Receiver, on behalf of the Receivership Entities, Joseph M. SanFilippo (“**SanFilippo**”) and Ford O’Brien Landy LLP (“**Ford O’Brien**”, and jointly and severally with SanFilippo, the “**Claimants**”) (the Receiver and Claimants collectively referred to herein as, the “**Parties**,” and each a “**Party**”); (b) authorizing the Receiver to take any such necessary steps to enter into, 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**

The Receiver has determined in her business judgment to enter into the Settlement Agreement because the Settlement Agreement provides significant benefits to the receivership estate (the “**Receivership Estate**”). Chiefly, and most importantly, under the settlement, Claimants have agreed to reduce their indemnification claim by over 80% from the filed amount of \$2,686,426.31 to \$450,000. Notably, this settlement amount is greater than 50% of the amount

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<sup>1</sup> 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 Settlement Agreement Between the Receiver, Joseph M. SanFilippo and Ford O’Brien Landy LLP* (the “**Receiver Decl.**”).

<sup>2</sup> The “**Receivership Entities**” are: (i) Platinum Partners Credit Opportunities Master Fund L.P. (“**PPCOMF**”), (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. (“**PCM**”), (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.

<sup>3</sup> 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.**”).

the Receiver would allow on a non-priority basis (\$929,863). For these reasons, the Receiver considers the settlement, which was the result of considerable arms' length negotiations, to be beneficial to the Receivership Estate, and has agreed to pay the Claimants promptly (within 5 business days) of an Order of the Court approving the settlement becoming final and unappealable.

The Receivers respectfully requests that the Court approve the settlement.

### **FACTS**

The salient facts are set forth in the accompanying declaration of Melanie L. Cyganowski and are stated here briefly:

SanFilippo was the former Chief Financial Officer of Platinum Management (NY) LLC ("**PMNY**"), a non-Receivership Entity, until the commencement of this Receivership (defined below) on December 19, 2016. On the same date, SanFilippo, along with certain other individuals and entities, was charged by the United States Government in an indictment (the "**Indictment**") in *U.S. v. Nordlicht, et al.*, Case No. 1:16-cr-00640-BMC (E.D.N.Y.), ECF No. 1 (the "**Criminal Case**"). SanFilippo was represented in the Criminal Case by Ford O'Brien. SanFilippo was acquitted on all five counts in the Indictment with which he was charged. (Receiver Decl. ¶¶ 5-8, 11-12.)

In the Receivership, Ford O'Brien submitted three claims<sup>4</sup> (collectively, the "**Ford O'Brien Claims**") against PCM and PMNY seeking attorneys' fees. Each of the Ford O'Brien Claims was in the amount of \$2,686,426.31. (Receiver Decl. ¶¶ 15-16.) While SanFilippo did not submit any claims in the Receivership for the reimbursement of his legal fees incurred in

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<sup>4</sup> The Ford O'Brien Claims consist of: Claim Number 156 ("**FOB Claim 156**"), Claim Number 329 ("**FOB Claim 329**"), and Claim Number 330 ("**FOB Claim 330**").

connection with the Criminal Case, he submitted two claims (collectively, the “*SanFilippo Claims*”, and together with the FOB Claims, the “*Claims*”) in the Receivership against PCM and PMNY for alleged compensation that was not paid. (Receiver Decl. ¶ 13)

In furtherance of the Receiver’s administration of the Receivership, the Court entered an Order on December 1, 2020 establishing procedures for the reconciliation and verification of claims and interests asserted in the Receivership (the “*Claims Verification Order*”). ECF No. 554. Approximately three months later, in accordance with the Claims Verification Order, the Receiver filed her *Notice of Claims Analysis Report*, wherein, as relates to Claimants, the Receiver published her determination to (i) disallow FOB Claim 156 and FOB Claim 330 in their entirety and partially allowing FOB Claim 329 (as to amount only) in the amount of \$922,863.04, and (ii) disallow the SanFilippo Claims in their entirety. ECF No. 564. Ford O’Brien filed an objection and disputed the Receiver’s determination set forth in the Claims Analysis Report regarding FOB Claim 329, and, in particular, disputed the amount and the priority of payment in relation to other claimants in the Receivership. No timely opposition was filed to the Receiver’s determinations regarding the SanFilippo Claims, FOB Claim 156 and FOB Claim 330, and are therefore deemed “final and binding” pursuant to the Claims Verification Order. (Receiver Decl. ¶¶ 17-23.)

The Receiver filed an omnibus motion to confirm her determinations set forth in the Claims Analysis Report (the “*Omnibus Motion*”). ECF Nos. 597-599, 602. Claimants filed an objection to the Omnibus Motion (ECF No. 609), and the Receiver filed a reply and sur-reply in support of the Omnibus Motion (ECF Nos. 617, 622). Oral argument on the Omnibus Motion was held on March 13, 2024 (the “*March 13 Hearing*”), with the Court reserving its decision at the conclusion of the March 13 Hearing. On March 13, 2024, immediately prior to the start of

the March 13 Hearing, the Parties reached an agreement in principle on the settlement of the Claims, subject to documentation and Court approval, and therefore, the Court did not hear argument as to these Claims. (Receiver Decl. ¶¶ 24-27.)

### **THE SETTLEMENT AGREEMENT**

The material terms of the Settlement Agreement, all of which are subject to the occurrence of the Effective Date (as defined in the Settlement Agreement), are summarized as follows<sup>5</sup>:

- a. As of the Effective Date (as defined below), FOB Claim 329 shall be fixed and finalized as an allowed claim against PPCOMF in the amount of \$450,000.
- b. Within five (5) business days of the Effective Date, and provided that Ford O'Brien shall have previously delivered to the Receiver a properly completed and signed Form W-9, the Receiver shall pay Ford O'Brien, solely from Receivership Property (as defined in the Receivership Order), the amount of \$450,000 on account of the Allowed Claim, by wire transfer pursuant to the wire transfer instructions that Ford O'Brien provides to the Receiver, in writing and confirmed by telephone call, contemporaneously with its execution of this Agreement (the "*Wire Transfer*").
- c. Upon the Receiver's payment of the Settlement Amount by the Wire Transfer (the "*Payment*"), and without any further act or notice by any person or entity:
  - i. FOB Claim 329 and each of the other Claims shall be deemed to be satisfied in full of any amount demanded or otherwise claimed.
  - ii. Claimants shall be deemed to have dismissed the Claims with *prejudice*.
  - iii. Claimants agree not to object to any terms of a plan of distribution proposed by the Receiver that are consistent with this Agreement.
  - iv. Claimants agree that any equity or ownership interest Claimants may have held, or hold, either directly or indirectly, in any Receivership Entity shall be deemed waived with prejudice, and that Claimants shall not be entitled to any distribution, apart from the Settlement Amount, in the Receivership.

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<sup>5</sup> For the complete terms and conditions of the Settlement Agreement, the Court and all parties to the Settlement Agreement are respectfully directed to the Settlement Agreement, which is attached to the Receiver Decl. as **Exhibit A**.

The Parties shall exchange general releases of one another except that the releases do not release any rights or obligations of any Party under the Settlement Agreement and/or a plan of distribution proposed by the Receiver, as approved by the Court or any document, instrument or agreement executed to implement the plan of distribution or the Settlement Agreement. The Settlement Agreement does not release any person or entity not a party to the Settlement Agreement.

The terms of the Settlement Agreement also provide that a condition precedent to the Effective Date of the Settlement Agreement is the entry of a final, non-appealable Order from the Court approving the Settlement Agreement.

### **ARGUMENT**

#### **A. A Receiver Has Authority to Settle Claims**

Pursuant to the Receivership Order, the Receiver has the authority to compromise Receivership Property on terms in the manner she deems most beneficial to the Receivership Estate. Receivership Order, ¶¶ 6, 28, 34; *see also* Claims Verification Order, III.A. (“Without modify [sic] any prior agreements entered into by the Receiver or orders entered by this Court unless specifically stated, the Receiver may, in her sole discretion, settle and compromise any Disputed Claim or Disputed Interest on terms and for reasons that she deems, in her business judgment, to be appropriate[.]”)

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).<sup>6</sup>

**B. The Settlement Agreement Should Be Approved**

In the exercise of the Receiver’s business judgment, the Receiver concluded that the Settlement Agreement is fair, reasonable and beneficial to the Receivership Estate. The Settlement Agreement, which was the product of considerable arms’ length negotiations, resolves all litigation involving the Parties regarding the Claims efficiently, fairly, and in a practical manner. (Receiver Decl. ¶¶ 3, 32.)

Moreover, in the Receiver’s business judgment, the Settlement Agreement provides several benefits to the Receivership Estate. Most importantly, the Settlement Agreement fixes the allowed amount of FOB Claim 329 in an amount significantly less than the amount originally asserted in FOB Claim 329 (from \$2,686,426.31 down to \$450,000). (Receiver Decl. ¶ 33.) The proposed Settlement Amount of \$450,000 reflects a reduction in Claimants’ indemnification claim by over 80% from the originally requested amount of \$2,686,426.31. (Receiver Decl. ¶ 2.)

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<sup>6</sup> *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.”).

Indeed, the Settlement Amount is lower than the amount of the claim that the Receiver would have allowed on a non-priority basis by over 50%. (Receiver Decl. ¶ 2.) Accordingly, the Receiver believes it would be imprudent to dismiss the benefit of the reduced claim amount to the Receivership Estate. (Receiver Decl. ¶ 33.)

The Receiver has also determined in her business judgment that the immediate payment (as opposed to waiting for a more general distribution) is fair and appropriate because of the significant discount on the claim and because, under the circumstances, payment of the Settlement Amount would still permit distributions under a plan of distribution to other general unsecured creditors and investors in the Receivership. (Receiver Decl. ¶¶ 2, 33.)

### **CONCLUSION**

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

Dated: March 29, 2024  
New York, New York

OTTERBOURG P.C.

By:  /s/ Erik B. Weinick

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*Attorneys for Melanie L. Cyganowski, as Receiver*