Hearing Date: October 27, 2021 at 11:00 a.m. (Prevailing Eastern Time)
Objection Deadline: October 20, 2021 at 4:00 p.m. (Prevailing Eastern Time)

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Counsel for William A. Brandt, Jr., former Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
CHINA FISHERIES GROUP LIMITED (CAYMAN), *et al.*,	**Case No.: 16-11895 (JLG)**
Debtors.[1]	**(Jointly Administered)**
In re:	**Chapter 11**
CFG PERU INVESTMENTS PTE. LIMITED (SINGAPORE),	**Case No. 16-11914 (JLG)**
Debtor.	**(Jointly Administered)**

[1] The Debtors are China Fishery Group Limited (Cayman), Pacific Andes International Holdings Limited (Bermuda), N.S. Hong Investment (BVI) Limited, South Pacific Shipping Agency Limited (BVI), China Fisheries International Limited (Samoa), CFGL (Singapore) Private Limited, Chanery Investment Inc. (BVI), Champion Maritime Limited (BVI), Growing Management Limited (BVI), Target Shipping Limited (HK), Fortress Agents Limited (BVI), Ocean Expert International Limited (BVI), Protein Trading Limited (Samoa), CFG Peru Investments Pte. Limited (Singapore), Smart Group Limited (Cayman), Super Investment Limited (Cayman), Pacific Andes Resources Development Limited (Bermuda), Nouvelle Foods International Ltd., Golden Target Pacific Limited, Pacific Andes International Holdings (BVI) Limited, Zhonggang Fisheries Limited, Admired Agents Limited, Chiksano Management Limited, Clamford Holding Limited, Excel Concept Limited, Gain Star Management Limited, Grand Success Investment (Singapore) Private Limited, Hill Cosmos International Limited, Loyal Mark Holdings Limited, Metro Island International Limited, Mission Excel International Limited, Natprop Investments Limited, Pioneer Logistics Limited, Sea Capital International Limited, Shine Bright Management Limited, Superb Choice International Limited, Toyama Holdings Limited (BVI), and Pacific Andes Enterprises (Hong Kong) Limited.

NOTICE OF HEARING ON FIRST AND FINAL FEE APPLICATION OF FORMER CHAPTER 11 TRUSTEE WILLIAM A. BRANDT, JR., FOR COMPENSATION FOR SERVICES RENDERED AS CHAPTER 11 TRUSTEE FOR THE PERIOD FROM NOVEMBER 10, 2016 THROUGH AND INCLUDING JUNE 24, 2021, AND SECOND AND FINAL APPLICATION OF FORMER CHAPTER 11 TRUSTEE WILLIAM A. BRANDT, JR., FOR REIMBURSEMENT OF EXPENSES FOR THE PERIOD MARCH 1, 2020 THROUGH AND INCLUDING JUNE 24, 2021

PLEASE TAKE NOTICE that William A. Brandt, Jr., in his capacity as former chapter 11 trustee (the "Trustee") of CFG Peru Investments Pte. Limited (Singapore) ("CFG Peru") in the above-captioned chapter 11 cases, by his attorneys, Baker & Hostetler LLP, hereby files his: (i) First and Final Fee Application of Former Chapter 11 Trustee William A. Brandt, Jr., for Compensation for Services Rendered as Chapter 11 Trustee for the Period From November 10, 2016 Through and Including June 24, 2021; and (ii) Second and Final Application of Former Chapter 11 Trustee William A. Brandt, Jr., for Reimbursement of Expenses for the Period March 1, 2020 Through and Including June 24, 2021 (the "Fee Application").

PLEASE TAKE FURTHER NOTICE that a hearing on the Fee Application will be held before the Honorable James L. Garrity, United States Bankruptcy Judge for the Southern District of New York, in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 601, New York, New York 10004 (the "Bankruptcy Court"), on **October 27, 2021, at 11:00 a.m. (prevailing Eastern Time)** (the "Hearing"), or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE, that the Hearing will be conducted through Zoom for Government. Any parties wishing to participate must do so through Zoom for Government by registering at https://www.nysb.uscourts.gov/content/judge-james-l-garrity-jr by 4:00 p.m. (Prevailing Eastern Time) on October 25, 2021.

PLEASE TAKE FURTHER NOTICE that responses or objections to the Fee Application and the relief requested therein, if any, must be made in writing and (a) filed with the Bankruptcy Court no later than 4:00 p.m. (prevailing Eastern Time) on October 20, 2021 (the "Objection Deadline") and (b) served so as to be actually received by the following parties by the Objection Deadline:

(i) counsel for William A. Brandt, Jr., the former Chapter 11 Trustee for the bankruptcy estate of CFG Peru Investments Pte. Ltd. (Singapore), Baker & Hostetler LLP, Transamerica Pyramid Center, 600 Montgomery Street, Suite 3100, San Francisco, CA 94111-2806, Attn: Robert A. Julian (rjulian@bakerlaw.com), and David J. Richardson (drichardson@bakerlaw.com).

(ii) counsel for Michael E. Foreman, the Plan Administrator for CFG Peru Investments Pte. Limited (Singapore), and former counsel for William A. Brandt, Jr., the Chapter 11 Trustee for the bankruptcy estate of CFG Peru Investments Pte. Limited (Singapore), Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001-8602, Attn: Lisa Laukitis (lisa.laukitis@skadden.com), and Clark Xue (clark.xue@ skadden.com), and Skadden, Arps, Slate, Meagher & Flom LLP, 500 Boylston Street, Boston, Massachusetts 02116, Attn: Elizabeth Downing (liz.downing@skadden.com);

(iii) counsel for the other Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Matthew S. Barr, Esq. (matt.barr@weil.com), Marcia Goldstein (marcia.goldstein@weil.com), and Gabriel A. Morgan (gabriel.morgan@weil.com), and Klestadt Winters Jureller Southard & Stevens, LLP, Attn: Tracy Klestadt (tklestadt@klestadt.com), and John Jureller, Jr.(jjureller@klestadt.com);

(iv) the Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Richard Morrissey (richard.morrissey@usdoj.gov);

(iv) the former Chapter 11 Trustee, 110 East 42nd Street, Suite 1818, New York, New York 10017, Attn: William A. Brandt, Jr. (bbrandt@dsiconsulting.com); and

(v) the Plan Administrator for CFG Peru Investments Pte. Limited (Singapore), 24 Talcott Road, Rye Brook, NY 10573, Attn: Michael E. Foreman (michael@foremanlawpllc.com).

PLEASE TAKE FURTHER NOTICE that unless a written objection to the Application, with proof of service, is filed with the Bankruptcy Court and a courtesy copy delivered to the Honorable James L. Garrity's Chambers by the Objection Deadline, the Trustee may, on or after the Objection Deadline, submit to the Bankruptcy Court orders substantially in the form of the [Proposed] Findings of Fact and Conclusions of Law attached hereto as Exhibit A, and the [Proposed] Order attached hereto as Exhibit B, which orders may be entered with no further notice or opportunity to be heard.

Dated: October 1, 2021
New York, New York

Respectfully submitted,

BAKER & HOSTETLER LLP

By: */s/ David J. Richardson*

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
CHINA FISHERIES GROUP LIMITED (CAYMAN), *et al.*,	**Case No.: 16-11895 (JLG)**
Debtors.[2]	**(Jointly Administered)**
In re:	**Chapter 11**
CFG PERU INVESTMENTS PTE. LIMITED (SINGAPORE),	**Case No. 16-11914 (JLG)**
Debtor.	**(Jointly Administered)**

[2] The Debtors are China Fishery Group Limited (Cayman), Pacific Andes International Holdings Limited (Bermuda), N.S. Hong Investment (BVI) Limited, South Pacific Shipping Agency Limited (BVI), China Fisheries International Limited (Samoa), CFGL (Singapore) Private Limited, Chanery Investment Inc. (BVI), Champion Maritime Limited (BVI), Growing Management Limited (BVI), Target Shipping Limited (HK), Fortress Agents Limited (BVI), Ocean Expert International Limited (BVI), Protein Trading Limited (Samoa), CFG Peru Investments Pte. Limited (Singapore), Smart Group Limited (Cayman), Super Investment Limited (Cayman), Pacific Andes Resources Development Limited (Bermuda), Nouvelle Foods International Ltd., Golden Target Pacific Limited, Pacific Andes International Holdings (BVI) Limited, Zhonggang Fisheries Limited, Admired Agents Limited, Chiksano Management Limited, Clamford Holding Limited, Excel Concept Limited, Gain Star Management Limited, Grand Success Investment (Singapore) Private Limited, Hill Cosmos International Limited, Loyal Mark Holdings Limited, Metro Island International Limited, Mission Excel International Limited, Natprop Investments Limited, Pioneer Logistics Limited, Sea Capital International Limited, Shine Bright Management Limited, Superb Choice International Limited, Toyama Holdings Limited (BVI), and Pacific Andes Enterprises (Hong Kong) Limited.

SUMMARY OF FIRST AND FINAL FEE APPLICATION OF FORMER CHAPTER 11 TRUSTEE WILLIAM A. BRANDT, JR., FOR COMPENSATION FOR SERVICES RENDERED AS CHAPTER 11 TRUSTEE FOR THE PERIOD FROM NOVEMBER 10, 2016 THROUGH AND INCLUDING JUNE 24, 2021, AND SECOND AND FINAL APPLICATION OF FORMER CHAPTER 11 TRUSTEE WILLIAM A. BRANDT, JR., FOR REIMBURSEMENT OF EXPENSES FOR THE PERIOD MARCH 1, 2020 THROUGH AND INCLUDING JUNE 24, 2021

General Information	
Name of Applicant:	William A. Brandt, Jr., solely in his capacity as former Chapter 11 Trustee of CFG Peru Investments Pte. Ltd. (Singapore)
Petition Date:	June 30, 2016
Date of Appointment:	November 10, 2016
Summary of Fees and Expenses Sought in the Application	
This is a:	___ monthly application ___ interim application _x_ final application
Period for Which Fees are Sought:	November 10, 2016 through and including June 24, 2021[3]
Period for Which Expense Reimbursement is Sought:	March 1, 2020 through and including June 24, 2021 (the "Final Expense Period"), plus final approval of expenses previously approved on an interim basis for the period of November 10, 2016 through and including February 29, 2020
Amount of Compensation Requested as Reasonable, Actual, and Necessary:	$25,000,000[4]
Amount of Expense Reimbursement Requested for Final Expense Period as Actual and Necessary:	$409,382.02[5]

[3] June 24, 2021 is the date of transition to the Plan Administrator's term. Consistent with statements made to the Court, the Trustee has not sought fees for hours incurred after June 10, 2021.

[4] The Trustee requests $11,958,625.00 as the "lodestar," and a 2.09 multiplier fee enhancement, for a total commission of $25,000,000. The Trustee's requested commission is a fraction of the statutory cap which, as detailed below, equals $88,677,733.

[5] The Trustee previously filed a *First Interim Application of the Chapter 11 Trustee, William A. Brandt, Jr., for Reimbursement of Expenses for the Period November 10, 2016 Through and Including February 29, 2020* (the "First Interim Expense Request") [Dkt. 2231], which was granted by an Order of this Court entered December 20, 2020 [Dkt. 2272], allowing reimbursement of $355,051.93 of expenses. No objections were filed to the First Interim Expense Request.

Amount of Expense Reimbursement Approved and Paid on Interim Basis, Requested for Final Approval:	$355,051.93
Total Compensation and Expense Reimbursement Requested for Final Approval:	$25,764,433.95
Total Compensation and Expense Reimbursement Requested for Payment:	$25,409,382.02

Summary of Fees, Professionals, and Rates

Fees Sought in This Application Already Sought Pursuant to Monthly Fee Application But Not Yet Allowed:	$0.00
Expenses Sought in This Application Already Sought Pursuant to Monthly Fee Applications But Not Yet Allowed:	$0.00
Current Hourly Rate of Professional	$875.00
Blended Rate of Professional	$790.00
Number of Professionals Included in this Application:	1
Increase in Rates	At the time of his appointment as Chapter 11 Trustee, on November 10, 2016, the Trustee's hourly rate was $695.00. His hourly rate has increased on January 1 of each year thereafter, as follows: 2017 - $725 2018 - $795 2019 - $825 2020 - $855 2021 - $875 The Trustee's blended rate is $790.00. However, as described below, the Trustee requests allowance of all fees at his current rate of $875.00/hour to address the five-year delay in payment, pursuant to applicable law.

TIME SUMMARY TO FINAL FEE APPLICATION OF
FORMER CHAPTER 11 TRUSTEE WILLIAM A. BRANDT, JR.

YEAR OF SERVICES	HOURS	ORIGINAL RATE	CURRENT RATE	AMOUNT
2016	409.7	$695.00	$875.00	$358,487.50
2017	3,272.8	$725.00	$875.00	$2,863,700.00
2018	3,471.7	$795.00	$875.00	$3,037,737.50
2019	3,426.5	$825.00	$875.00	$2,998,187.50
2020	1,949.2	$855.00	$875.00	$1,705,550.00
2021	1,137.1	$875.00	$875.00	$994,962.50
TOTAL LODESTAR AMOUNT:	13,667.0		$875.00	$11,958,625.00
REQUESTED FEE ENHANCEMENT			2.09 multiplier	$13,041,375.00
TOTAL REQUESTED COMMISSION				$25,000,000.00

SUMMARY OF EXPENSES INCURRED BY THE FORMER CHAPTER 11 TRUSTEE
FROM MARCH 1, 2020 THROUGH AND INCLUDING JUNE 24, 2021[6]

CHARGES AND DISBURSEMENTS	AMOUNT
Airfare[7]	$2,357.44
Lodging	$838.62
Travel Meals	$119.66
Travel Meeting Expenses (cabs/limos	$214.00
Transportation (Parking, Gas, Tolls, etc.)	$84.00
Long Distance Telephone	$342.43

[6] The Trustee's expenses also include the costs of preparing his Fee Application subsequent to June 24, 2021.
[7] The Trustee's international airfare expenses reflect a voluntary 50 percent reduction in the amount of $2,357.44.

Conference Calls	$883.72
Courtcall Charges	$910.00
Messenger/Delivery Service	$724.95
Photocopies (@ $0.10)	$265.30
Postage	$84.27
Pacer Charges	$81.50
WiFi Charges	$16.00
Outside Attorney's Fees/Costs related to Fee Application	$286,127.50
Inhouse Attorney's Fees/Costs related to Fee Application	$84,296.00
Document Review Services to Remove NDA/Confidential Information	$32,036.63
TOTAL EXPENSES FOR SECOND EXPENSE PERIOD	$409,382.02
EXPENSES PREVIOUSLY APPROVED ON AN INTERIM BASIS	$355,051.93
TOTAL EXPENSES FOR FINAL APPROVAL	$764,433.95

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
CHINA FISHERIES GROUP LIMITED (CAYMAN), *et al.*,	**Case No.: 16-11895 (JLG)**
Debtors.[8]	**(Jointly Administered)**
In re:	**Chapter 11**
CFG PERU INVESTMENTS PTE. LIMITED (SINGAPORE),	**Case No. 16-11914 (JLG)**
Debtor.	**(Jointly Administered)**

FIRST AND FINAL FEE APPLICATION OF FORMER CHAPTER 11 TRUSTEE WILLIAM A. BRANDT, JR., FOR COMPENSATION FOR SERVICES RENDERED AS CHAPTER 11 TRUSTEE FOR THE PERIOD FROM NOVEMBER 10, 2016 THROUGH AND INCLUDING JUNE 24, 2021, AND SECOND AND FINAL APPLICATION OF FORMER CHAPTER 11 TRUSTEE WILLIAM A. BRANDT, JR., FOR REIMBURSEMENT OF EXPENSES FOR THE PERIOD MARCH 1, 2020 THROUGH AND INCLUDING JUNE 24, 2021

[8] The Debtors are China Fishery Group Limited (Cayman), Pacific Andes International Holdings Limited (Bermuda), N.S. Hong Investment (BVI) Limited, South Pacific Shipping Agency Limited (BVI), China Fisheries International Limited (Samoa), CFGL (Singapore) Private Limited, Chanery Investment Inc. (BVI), Champion Maritime Limited (BVI), Growing Management Limited (BVI), Target Shipping Limited (HK), Fortress Agents Limited (BVI), Ocean Expert International Limited (BVI), Protein Trading Limited (Samoa), CFG Peru Investments Pte. Limited (Singapore), Smart Group Limited (Cayman), Super Investment Limited (Cayman), Pacific Andes Resources Development Limited (Bermuda), Nouvelle Foods International Ltd., Golden Target Pacific Limited, Pacific Andes International Holdings (BVI) Limited, Zhonggang Fisheries Limited, Admired Agents Limited, Chiksano Management Limited, Clamford Holding Limited, Excel Concept Limited, Gain Star Management Limited, Grand Success Investment (Singapore) Private Limited, Hill Cosmos International Limited, Loyal Mark Holdings Limited, Metro Island International Limited, Mission Excel International Limited, Natprop Investments Limited, Pioneer Logistics Limited, Sea Capital International Limited, Shine Bright Management Limited, Superb Choice International Limited, Toyama Holdings Limited (BVI), and Pacific Andes Enterprises (Hong Kong) Limited.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

I.

PRELIMINARY STATEMENT[9]

William A. Brandt, Jr., in his capacity as former chapter 11 trustee (the "Trustee" or "Mr. Brandt") of CFG Peru Investments Pte. Limited (Singapore) ("CFG Peru"), subject to entry of an order of discharge, in the above-captioned chapter 11 cases, submits this (i) first and final application (the "Fee Application") seeking compensation for services rendered as Chapter 11 Trustee for the period from November 10, 2016 through and including June 24, 2021 (the "Fee Application Period"),[10] and (ii) second and final application (the "Expenses Application" and, with the Fee Application, the "Application") seeking reimbursement of expenses, pursuant to sections 326, 330, 331 and 503 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Bankruptcy Rules"), the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York (June 17, 2013) promulgated pursuant to Local Bankruptcy Rule 2016-1(a) (the "Local Guidelines"), to the extent applicable, and the United States Trustee's Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 effective as of November 1, 2013 (the "U.S. Trustee Guidelines," and together with the Local Guidelines (the "Fee Guidelines"), to the extent applicable, for the period from March 1, 2020 through and including June 24, 2021, plus his costs for preparation of this Fee Application (the "Final Expense Period"), as well as final approval of expenses already paid on an interim basis. In support of this Application, the Trustee submits the Declaration of William A. Brandt Jr. (the

[9] Capitalized terms not otherwise defined in this Preliminary Statement have the meaning ascribed to them in the Fee Application below.

[10] June 24, 2021 is the date of transition to the Plan Administrator's term. Consistent with statements made to the Court, the Trustee has not sought fees for hours incurred after June 10, 2021.

"Brandt Decl."), the Declaration of Patrick J. O'Malley (the "O'Malley Decl."), filed herewith, and the [Proposed] Findings of Fact and Conclusions of Law attached hereto as Exhibit A, and the [Proposed] Order attached hereto as Exhibit B. In further support of this Application, the Trustee represents as follows:

By this Fee Application, the Trustee requests allowance and payment of a commission in the form of (i) a lodestar of $11,958,625.00 arising from the Trustee's time spent on the case and his hourly rate through to June 10, 2021; (ii) a fee enhancement in the form of a 2.09 multiplier applied to the lodestar, for a total requested commission of $25,000,000; (iii) final approval of $355,051.93 in interim expenses previously allowed and paid; and (iv) approval and payment of allowable expenses in the amount of $409,382.02 incurred in the period March 1, 2020 through June 24, 2021 (plus his costs for preparation of this Fee Application). On August 12, 2021, at the request of the Office of the U.S. Trustee ("UST"), the Trustee forwarded to the UST a draft of this Fee Application for review and comment. That draft requested approval of the Trustee's lodestar with a 2.5 multiplier for a total commission of over $29.9 million. After further discussions with the UST, the Trustee has reduced his requested commission to $25,000,000, the amount escrowed for payment of his commission in this case.

The Trustee requests final approval of his requested commission arising from a particularly unique assignment. As the chapter 11 trustee for CFG Peru, the Trustee effectively served in the role of chief executive officer for the parent of a troubled-yet-operating, billion-dollar, international enterprise, and was tasked with overseeing and resolving operational and business matters throughout the world for nearly five years (a third of which coincided with a worldwide pandemic).[11]

[11] Fact stated herein that are not supported by citation to a docket entry are supported by the Brandt Decl. filed herewith.

William A. Brandt, Jr. was appointed to serve as Trustee for CFG Peru because of his forty-five years of experience in corporate restructuring, his business experience, his political contacts in regions where CFG Peru's operations are based, his strong knowledge of international affairs, and his deep understanding of the Bankruptcy Code. He was tasked with a mandate "to maximize the value of the Peruvian Business and to determine how to realize that value for the benefit of the Debtors' estates and creditors." *Memorandum Decision and Order Granting Motion for the Appointment of a Chapter 11 Trustee*, at p. 48 [Dkt. 203] (the "Order Appointing Trustee").[12] He has fulfilled that mandate.

On the Petition Date, creditors of CFG Peru and its subsidiaries were faced with a material risk that they would receive no meaningful recovery on their claims. CFG Peru came into chapter 11 with essentially no funds from operations of its own, just as its most valuable operating subsidiaries were addressing damage done by joint provisional liquidators appointed in various jurisdictions, and the competing pressures of INDECOPI insolvency proceedings filed in Peru. The operating subsidiaries in Peru had no meaningful cash of their own, as they had lost their $125 million line of credit because of damage done by the appointment of joint provisional liquidators, and therefore had no cash to contribute to the parent's chapter 11 case, and would be unable to commence the fishing season without replacement financing. The liquidation value of the operating entities was a fraction of their operational worth, and under Peruvian law, within an INDECOPI proceeding, any liquidation proceeds would be shared *pari passu* by both third-party creditors and insider claims. The latter represented about one-third of the debt in the INDECOPI proceedings, which was sufficient to establish a blocking position.

[12] All citations to a "Dkt." are citations to pleadings filed in Case No. 16-11895 (JLG).

Creditors of the operating entities pleaded with this Court for the appointment of a trustee because their only realistic alternative would be to accept pennies on the dollar. Yet even with a trustee's appointment, it remained an open question whether these cases would survive more than a few weeks before CFG Peru would be deemed administratively insolvent. These Chapter 11 Cases presented unprecedented challenges to any chapter 11 trustee who might be appointed and who would be expected to assert authority over non-debtor assets situated in multiple foreign jurisdictions. It was also abundantly clear when the Trustee was appointed that these cases would go a long way toward establishing whether a U.S. bankruptcy court could feasibly serve as the forum to restructure a sprawling international enterprise where the parent company chooses relief under chapter 11. Under this Trustee's leadership, that has proven to be the case.

While the Trustee's appointment was driven by a motion filed by creditors of CFG Peru's "crown jewels," Corporacion Pesquera Inca, S.A.C. ("Copeinca") and CFG Investment S.A.C. ("CFGI") (collectively, the "Peruvian Opcos"), both of which are located in Peru, the Trustee's appointment was not universally welcomed. Management of the Peruvian Opcos filed a declaration opposing the appointment of a chapter 11 trustee.[13] Thus, preservation of the value of the Peruvian Opcos required immediate and delicate action, not merely to resolve the INDECOPI proceedings, to address the damage done to the Peruvian Opcos by provisional liquidators, and to obtain and arrange for the financing required for the Peruvian Opcos to remain operational, but also to preserve the immense value in the Peruvian Opcos' organization and employee base. Immediately following his appointment, the Trustee boarded a plane to Lima and wound up spending the 2016 Thanksgiving holiday in Peru laying the groundwork for a strong working

[13] *See* Dkt. 103, *Objection of CFG Investment S.A.C., Corporation Pesquera Inca S.A.C., and Sustainable Fishing Resources S.A.C. to the Club Lender Parties' Motion for the Entry of an Order Directing the Appointment of a Chapter 11 Trustee*.

relationship that has endured and, to date, has resulted in 100% retention of the Peruvian Opcos' management and, moreover, of virtually all of their roughly 2,500 employees. The Trustee recognized at the outset that fulfillment of his mandate would not be achieved if the Peruvian Opcos were to lose the experience of existing management, and that it would be integral to his role as the effective CEO of this global enterprise to preserve asset value wherever it might be found, including within management and employees. The Trustee has returned to Lima frequently (on an average of more than once a month before the COVID-19 shutdown), working hand in hand with the Peruvian Opcos management, and their legal and financial advisors, as well as engaging his own legal counsel and consulting with political contacts and civic leaders, to preserve and restructure the assets and operations of the Peruvian Opcos so as to ensure—consistent with his mandate—that the value of the Peruvian Opcos would be maximized to the fullest extent possible in these cases.

These Chapter 11 Cases involve companies that are registered and/or operational throughout the world in at least thirteen separate, sovereign national jurisdictions (Peru, Hong Kong, Singapore, the U.S., Namibia, Mauritius, Spain, Samoa, Panama, Norway, the Cayman Islands, Bermuda, and the British Virgin Islands), necessitating the engagement of counsel by the Trustee in nearly all, and judicial appearances by the Trustee in half. Not a single Debtor in any of the Chapter 11 Cases filed before this Court is incorporated in the United States, while most of the Debtors' creditors are also based in other parts of the world, such as Hong Kong, Singapore, and certainly Peru. As this Court is aware, the international scope of these cases has presented unique and complex challenges, some of which have forced the Trustee to appear in courts and proceedings throughout the world—even at risk of personal liability in a court that would not recognize his appointment as Trustee.

The Trustee recognized from the outset that his relationships with creditors, and with the Ng family that owns most of the Debtors' equity interests, would be uniquely critical to a successful restructuring, particularly given the complex web of guarantees and intercompany debts among the various Debtors and affiliated entities. Those same guarantees meant that some creditors of the Peruvian Opcos were also creditors of the CFG Peru estate, and that any benefits that the Trustee's restructuring efforts provided to the Peruvian Opcos would also provide direct benefits to the estate of CFG Peru. Over the course of his service, the Trustee regularly met with creditors in Hong Kong, Singapore, New York, and the United Kingdom, roughly at intervals of every six weeks prior to the COVID-19 shutdown, and elsewhere as required, in order to provide transparency to all stakeholders, particularly those that might be less familiar with the chapter 11 process or less able to have their voices heard in this Court. His efforts to reach settlements with the Ng family, in particular, have been critical to maintaining the course in these cases and permitting a plan of reorganization to be confirmed.

These cases have been extraordinarily complex, time-consuming, and challenging on multiple levels. And yet, the Trustee's mandate has been fulfilled. A plan of reorganization has been confirmed, providing that creditors of CFG Peru and/or the Peruvian Opcos, who as of the Petition Date were likely to receive cents on the dollar, will instead receive equity and cash payments (for themselves and/or their professionals) that have a value of more than a billion dollars according to their own evidence. The related Debtors that remain in chapter 11 cases before this Court—although never under the Trustee's control, and remaining under the stewardship of the Ng family—are now positioned to file their own plans of reorganization. And the U.S. bankruptcy court has proven to be a viable forum for the restructuring of a sprawling international enterprise,

thus providing an advantageous pathway for future international restructurings to take place under the jurisdiction of the U.S. bankruptcy courts.

This Fee Application raises issues of law that have received infrequent attention by courts in chapter 11 cases, and a fact scenario that has no equal in reported case law. Most case law discussing fee applications of "trustees," and the meaning of the statutory cap provided by 11 U.S.C. § 326(a) ("Section 326(a)"),[14] do so in the context of a chapter 7 trustee whose assignment is simply to liquidate assets, or in the context of a chapter 11 trustee whose assignment is to administer a small business or individual estate. Few cases have applied Section 326(a) to the chapter 11 trustee of a parent company and the operations of its subsidiaries. But those that have are on point with the issues raised in this Fee Application and support the Trustee's requested lodestar and fee enhancement.

The statutory cap, under applicable case law described below, is calculated with reference to two primary sources of disbursements: (i) disbursements made by the CFG Peru enterprise under the Trustee's stewardship, as disclosed in the Monthly Operating Reports ("MORs"); and (ii) the equity and cash turned over to the Plan Administrator by the Trustee, and distributed to creditors under the Confirmed Plan (defined below). *See, e.g., In re MACCO Props., Inc.*, 540 B.R. 793 (Bankr. W.D. Okla. 2015) (calculating chapter 11 trustee's cap in parent/management company case based on disbursements of all debtor and non-debtor subsidiary LLCs overseen by trustee); *In re North American Oil & Gas, Inc.*, 130 B.R. 473, 479-80, fn. 15 (Bankr. W.D. Tex. 1990) (distributions of property other than cash, such as "equity instruments, notes, or even assignments," may be included where reducing such assets to cash is not appropriate and cash value can be "easily

[14] All citations in this Fee Application to a "Section" are citations to a section of the Bankruptcy Code.

and readily" quantified); *In re Toole*, 294 F. 975 (S.D.N.Y. 1920) ("moneys disbursed" to calculate commission included value of securities distributed or to be distributed to creditors).

These two categories of disbursements, together, produce a statutory cap of $88,677,733, which is far beyond the Trustee's requested commission. Even if this Court were to calculate the statutory cap based on either of these sources of value, alone, the statutory cap would still be in excess of $33,000,000. Thus, under any reasonable interpretation of existing case law applying Section 326(a), the statutory cap is well beyond the Trustee's requested commission.

Further, the Trustee's request for a fee enhancement in the form of a 2.09 multiplier to be applied to his lodestar is well within the range of fee enhancements granted to trustees in cases far less complex than these extraordinary Chapter 11 Cases. *See In re Miniscribe Corp.*, 309 F.3d 1234, 1241 (10th Cir. 2002) (affirming 2.57 multiplier of trustee's lodestar, reduced from bankruptcy court's award of 3.5 multiplier); *In re Biskup*, 236 B.R. 332, 337 (Bankr. W.D. Pa. 1999) (awarding fee that worked out to 2.76 multiplier); *In re 1031 Tax Group, LLC*, 2009 Bankr. LEXIS 3875 *4-5, 2009 WL 4806199 (Bankr. S.D.N.Y. December 9, 2009) (awarding 2.0 multiplier in case that provided 34% dividend to unsecured creditors). Indeed, Houlihan Lokey, financial advisors to the Plan Proponents (defined below), are to be paid a near 2.0 multiplier for their work.

The Trustee's hourly rate—$875.00/hour—is about one-half the hourly rate of bankruptcy professionals of comparable skill and experience practicing in the Southern District of New York. If the Trustee charged a rate similar to those of his competitors in this district, or the senior bankruptcy partners employed as his counsel in this case, his current hourly rate would likely be about $1,600/hour, and his lodestar in this case would be nearly $22 million at such a rate. The fee enhancement that would be requested on such a reasonable lodestar to reach the same requested

commission would be merely a 1.143 multiplier, an enhancement that is on the low end of the scale.

The Trustee's service, and the circumstances of these Chapter 11 Cases, justify the fee enhancements awarded in similarly exceptional cases:

- the Trustee took over an estate with no material cash at the parent or subsidiary level, where the sole value in the Peruvian Opcos was under threat from competing liquidators/insolvency proceedings, and criminal investigations;
- the Trustee took over an estate of entirely foreign companies, with operations throughout the world, without any assurance that foreign courts or agencies would recognize his authority, and having to risk personal liability in foreign litigation;
- the Trustee financed the case by operating the CFG Peru enterprise for nearly five years, as his primary professional endeavor, without any interim payment of his fees;
- the Trustee preserved and enhanced the value of CFG Peru and the Peruvian Opcos by, among other things, resolving their INDECOPI liquidation proceedings, addressing harm caused by the appointment of joint provisional liquidators, netting and subordinating intercompany debt to facilitate a sale or restructuring, resolving pending disputes and litigation, and building the Peruvian Opcos into self-funded companies that required no outside financing; and
- the Trustee marshalled, administered, and, in some cases, liquidated assets throughout the world in a manner that is unprecedented in a chapter 11 case of a foreign parent company, and rationalized the Peruvian Opcos by selling non-core assets.

The Trustee now requests final approval of his commission for the entirety of his appointment, pursuant to Sections 326(a) and 330(a), as well as final approval of expenses previously paid, and those incurred between March 1, 2020, and June 24, 2021.

II.

JURISDICTION

This Court has jurisdiction to consider this Application under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and this Application in this district is proper under 28 U.S.C. §§ 1408 and 1409.

The legal predicates for the relief requested herein are Sections 326, 330, 331, and 503 of the Bankruptcy Code; Bankruptcy Rule 2016; and Local Bankruptcy Rule 2016-1.

III.

RELIEF REQUESTED

A. Summary of Requested Relief

Pursuant to Sections 326(a) and 330(a), the Trustee requests approval of a commission comprised of: (i) $11,958,625.00 as reasonable compensation in the form of a lodestar, pursuant to Section 330(a)(1) and (a)(3); and (ii) application of a 2.09 multiplier to the lodestar, pursuant to Section 326(a) and the legal standards applicable thereto, for the reasons addressed herein, for a total, allowed commission of $25,000,000. In addition, the Trustee requests final allowance of $355,051.93 previously awarded and paid as interim expenses, and requests both payment and final allowance of $409,382.02 of expenses incurred during the Final Expense Period.

The lodestar component of the Trustee's requested commission is based upon his reasonable hours multiplied by his current hourly rate, with consideration of factors described in Section 330(a)(3), and which breaks down as follows for each year in the Fee Application Period:

YEAR OF SERVICES	HOURS	ORIGINAL RATE	CURRENT RATE	AMOUNT
2016	409.7	$695.00	$875.00	$358,487.50
2017	3,272.8	$725.00	$875.00	$2,863,700.00
2018	3,471.7	$795.00	$875.00	$3,037,737.50
2019	3,426.5	$825.00	$875.00	$2,998,187.50
2020	1,949.2	$855.00	$875.00	$1,705,550.00
2021	1,137.1	$875.00	$875.00	$994,962.50
TOTAL LODESTAR AMOUNT:	13,667.0		$875.00	$11,958,625.00

In addition to the lodestar component, the Trustee requests a fee enhancement in the form of a 2.09 multiplier, discussed below, for a total commission of $25,000,000.

As the Fee Application Period addressed by this Fee Application covers the entirety of the Trustee's appointment, the services provided by the Trustee run the gamut from early tasks to identify and preserve assets, to, among many other categories: (i) furthering the creditors' plan of reorganization by pursuing related settlements with certain creditors and equity interests; (ii) the sale and disposition of non-core real estate, vessels and other assets owned by CFG Peru's subsidiaries; (iii) the analysis and resolution of claims, including intercompany claims, by and against CFG Peru and its subsidiaries; and (iv) addressing a variety of issues attendant to the size, complexity, and worldwide scope of these Chapter 11 Cases. The Trustee's requested lodestar, and his requested fee enhancement, are reasonable under applicable law.

No agreement or understanding exists between the Trustee and any other person or persons for the sharing of compensation received or to be received for professional services rendered in or in connection with these cases, nor will any be made except as permitted pursuant to Section 504(b)(1).

IV.

BACKGROUND

A. The Chapter 11 Cases

On June 30, 2016 (the "Petition Date"), each of the debtors in the above-captioned cases (the "Debtors"), except Pacific Andes Resources Development Ltd. ("PARD"), Nouvelle Foods International Ltd. ("Nouvelle"), Golden Target Pacific Limited ("Golden Target"), Pacific Andes International Holdings (BVI) Limited ("PAIH (BVI)"), Zhonggang Fisheries Limited ("Zhonggang"), and the Additional Debtors (defined below) filed voluntary petitions under Chapter 11 of the Bankruptcy Code in this Court. On September 29, 2016, PARD filed its Chapter

11 bankruptcy case. On March 27, 2017, Nouvelle and Golden Target filed Chapter 11 bankruptcy cases. On April 17, 2017, PAIH (BVI) and Zhonggang filed Chapter 11 bankruptcy cases. On May 2, 2017, an additional sixteen[15] Debtors filed Chapter 11 bankruptcy cases, and on September 8, 2021, Pacific Andes Enterprises (Hong Kong) Limited filed a Chapter 11 bankruptcy case (collectively, the "Additional Debtors," and collectively with PARD, Nouvelle, Golden Target, PAIH (BVI), Zhonggang, and the other Debtors' Chapter 11 cases, the "Chapter 11 Cases").

No creditors' committee was appointed in any of these Chapter 11 Cases by the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee").

The Debtors constitute part of a group of companies (collectively, the "Pacific Andes Group") that was once the world's twelfth largest fishing company. The Debtors consist principally of holding companies and defunct, non-operating companies. CFG Peru derives its value primarily from its indirect or direct interests in the Peruvian Opcos, which operate an anchovy fishing and processing business and together control a significant percentage of the anchovy fishing quotas fixed by the Peruvian government.

B. Appointment of the Trustee

Barely a week after the Petition Date, certain of the Club Lenders (the "Club Lender Parties")[16] made clear their lack of confidence in the Ng family's control of the Debtors. In their initial filing in this case, the Club Lender Parties informed this Court that they intended to seek

[15] The Additional Debtors are: Admired Agents Limited, Chiksano Management Limited, Clamford Holding Limited, Excel Concept Limited, Gain Star Management Limited, Grand Success Investment (Singapore) Private Limited, Hill Cosmos International Limited, Loyal Mark Holdings Limited, Metro Island International Limited, Mission Excel International Limited, Natprop Investments Limited, Pioneer Logistics Limited, Sea Capital International Limited, Shine Bright Management Limited, Superb Choice International Limited, and Toyama Holdings Limited (BVI).

[16] The Club Lender Parties are Coöperatieve Rabobank U.A. ("Rabobank"), Standard Chartered Bank (Hong Kong) Limited ("Standard Chartered Bank"), and DBS Bank (Hong Kong) Limited.

appointment of a trustee who would protect foreign assets of non-debtor entities, for recoveries in these cases:

> The Club Lender Parties intend to file a motion seeking the appointment of a trustee in these Chapter 11 cases to ensure independent fiduciary oversight to preserve the estates' equity stakes in a lucrative fishery business and processing plants in Peru operated by certain non-Debtor affiliates (the "Peruvian Business"). The Debtors' equity stakes in the Peruvian Business—which is operated by certain affiliates whose only connections to the United States are professional retainers and a New York bond indenture, and are the subject to coordinated so-called "involuntary" bankruptcy proceedings in Peru—**comprise the single most valuable asset of the Debtors' estates, the proceeds of which will dictate recoveries in these chapter 11 cases**.[17]

The Club Lender Parties further expressed that they, and other significant creditors, remained "very concerned that the valuable Peruvian Business is outside the Chapter 11 estates and that local management may take precipitous action to destroy the value under the direction of the Debtors' sponsors." *Id*. at p. 11. The Club Lender parties made good on their stated intention in short order, filing the *Club Lender Parties' Motion for the Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104(a)(2)* (the "Trustee Appointment Motion") on August 9, 2016.

The Trustee Appointment Motion enjoyed broad support among the largest creditors in the Chapter 11 Cases, with the Noteholders,[18] Malayan Banking Berhad, Hong Kong Branch ("Maybank"),[19] Bank of America[20] and the Pickenpack Administrator (defined below)[21] all filing

[17] *See* Dkt. 13, *Club Lender Parties' Statement, Limited Objection and Reservation of Rights to the Debtors' First Day Motions, and Request for a Scheduling Conference*, at p. 5 (emphasis added).
[18] Dkt. 62, *Statement of Senior Noteholder Committee Regarding Club Lender Parties' Motion for Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. Section 1104(a)(2).*
[19] Dkt. 61, *Maybank's Joinder In Respect of the Club Lender Parties' Motion for the Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. Section 1104(a)(2).*
[20] Dkt. 63, *Joinder to the Club Lender Parties' Motion for Entry of an Order Directing the Appointment of a Chapter 11 Trustee*.
[21] Dkt. 65*, Joinder of the Insolvency Administrator of the Pickenpack Group to the Club Lender Parties' Motion for the Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104 (a)(2).*

statements with the Court supporting the appointment of a trustee. Those in opposition to the Trustee Appointment Motion included the Peruvian Opcos and Sustainable Fishing Resources ("SFR") (a subsidiary of CFG Peru and direct affiliate of CFGI),[22] whose objection was supported by Francisco Paniagua,[23] the general manager, and the Peruvian Opcos' legal advisor, Gustavo Miro Quesada,[24] as well as the other Debtors and the Ng family.

In granting the Trustee Appointment Motion, this Court expressed that a primary consideration was the acknowledged reality that CFG Peru would be unlikely to have any substantial cash assets within its estate:

> only minimal income is expected to be received in the ordinary course of business in the near term because, among other things, the CF Group debtors rely on the Peruvian Opcos for substantially all of their income, and any income from the Peruvian Opcos is speculative and may not occur anytime soon due to the involuntary petitions against the Peruvian Opcos in Peru.

Dkt. 203, Order Appointing Trustee, at p. 43.[25] Despite CFG Peru's lack of cash, the Court noted the propriety of appointing the Trustee solely for the CFG Peru estate, given its role as the entity that holds and controls the value that will be administered for the benefit of creditors:

> CFG Peru Singapore, is the 100% direct and indirect owner of the Peruvian Opcos. In the course of any restructuring (standalone or otherwise), that Debtor must, among other things, assess the value of its interests in the Peruvian Opcos and determine how to apply that value in furtherance of the restructuring. Thus, the appointment of a trustee for CFG Peru (Singapore) is particularly appropriate. … It will be incumbent upon the appointed trustee, in furtherance of his or her fiduciary duties, without limitation, to assess the highest and best use of those assets in the context of the resolution of these Chapter 11 cases and the means for the Debtors to realize maximum benefits from those assets.

Id., at pp. 48-49.

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[22] Dkt. 103, *Objection to the Club Lender Parties' Motion for the Entry of an Order Directing the Appointment of a Chapter 11 Trustee*.
[23] Dkt. 99, *Declaration Of Francisco Paniagua*.
[24] Dkt. 104, *Declaration of Gustavo Miro-Quesada Milich*.
[25] All page citations to the Order Appointing Trustee are to the docket version that is Dkt. 203. *See also, In re China Fishery Grp. Ltd.*, 16 Bkr. 11895, 2016 Bankr. LEXIS 3852, 2016 WL 6875903 (Bankr. S.D.N.Y. Oct. 28, 2016).

It was widely understood at the time of the Trustee's appointment that, while he was appointed as Trustee for the chapter 11 case of a parent company, it is the parent of an international fishing enterprise with assets which were spread across the world, the most critical of which were embroiled in competing insolvency proceedings, but that the relief all creditors of all entities would ultimately receive would result from the efforts of the Trustee to protect the value of non-debtor assets through his administration of the CFG Peru chapter 11 case.

On November 10, 2016, the U.S. Trustee sought approval of William A. Brandt, Jr., as the chapter 11 trustee of CFG Peru pursuant to the Order Appointing Trustee.[26] On that same date, the Court entered an order approving the selection of Mr. Brandt as the Trustee.[27]

C. The Structure of CFG Peru, Its Subsidiaries, and Their Creditors

A detailed description of the corporate structure of CFG Peru's enterprise and the nature of the debts that each entity faced on the Petition Date would require an overwhelming page count. However, there are a few key facts that require attention.

The Peruvian Opcos "are the most valuable assets" within the "China Fishery Group of companies."[28] And, in turn, "CFG Peru Singapore, is the 100% direct and indirect owner of the Peruvian Opcos."[29] There are two primary creditor groups that hold the largest debts against the Peruvian Opcos: the Club Lenders and the Noteholders. The Noteholders' claims arise under that certain Indenture dated as of July 30, 2012, by and among CFGI, as issuer, the Senior Notes Trustee, and various guarantors, one of which is CFG Peru.[30] Thus, any actions taken with respect

[26] *See* Dkt. 218, *Application for Order Approving the Appointment of a Chapter 11 Trustee in Debtor CFG Peru Singapore*.
[27] *See* Dkt. 219, *Order Approving the Appointment of Chapter 11 Trustee.*
[28] *See* Dkt. 203, *Order Appointing Trustee*, at p. 8.
[29] *Id*., at p. 48.
[30] *See* Proof of Claim 3-1, and the Indenture attached thereto.

to CFGI's primary obligation to the Noteholders relieved CFG Peru of prospective enforcement of its own guaranty obligation.

The Club Lenders, on the other hand, are not creditors of CFG Peru. The claims of the Club Lenders arise under a Facility Agreement dated March 20, 2014, which provided the Peruvian Opcos with $650,000,000 in financing.[31] Despite being creditors of CFG Peru's subsidiary, rather than being direct creditors of CFG Peru, this case has been run largely to protect the interests of the Club Lenders, as well as the Noteholders. The Club Lender Parties sought the Trustee's appointment specifically to protect their interests in the Peruvian Opcos. Some of the Club Lenders' and Noteholders' professionals—none of whom were engaged in this case pursuant to 11 U.S.C. § 330—have been or will be paid tens of millions of dollars in fees and a prospective fee enhancement under the terms of the plan of reorganization confirmed in this case on June 10, 2021 (the "Confirmed Plan").[32] In other words, from start to finish, this has been a case to restructure CFG Peru's entire corporate enterprise, regardless of the Trustee's appointment solely as trustee for the parent company, CFG Peru.

The international structure of CFG Peru's subsidiaries and affiliates created issues that have never been addressed before in reported case law to the degree that they dominated these cases. CFG Peru had no funds from any operations of its own on or since the Petition Date. Rather, nearly all funds in the CFG Peru accounts on the Petition Date were "pre-funded retainers" obtained from an affiliate.[33] The Peruvian Opcos, themselves, were embroiled in insolvency

[31] *See* Dkt. 741, *Motion For Order Pursuant To Bankruptcy Code Sections 105(a), 363(b) And 1108, Authorizing And Approving (A) The Issuance Of New Promissory Notes Related To The Club Facility And (B) Taking All Desirable Or Necessary Corporate Governance Actions In Connection Therewith*, at ¶ 10.

[32] *See, e.g.,* Dkt. 2600, *The Hongkong and Shanghai Banking Corporation Limited's Motion for Entry of an Order Pursuant to the Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd (Singapore) and Section 1129(a)(4) of the Bankruptcy Code (I) Approving Pre-Confirmation Fees Incurred by Davis Polk & Wardwell LLP and Boies Schiller Flexner LLP and (II) Authorizing and Directing the Plan Administrator to Promptly Pay Such Amounts*, at ¶ 2 (fees and expenses total "nearly $20 million").

[33] *See* Dkt. 203, *Order Appointing Trustee*, at p. 6.

proceedings in Peru. And absent the efforts of the Trustee to bring order to the entire corporate enterprise, this case would have been over within weeks, and the Peruvian Opcos would have languished in their pending insolvency proceedings. Instead, the Trustee took control of the entire enterprise in order to protect and preserve the value of the Peruvian Opcos, as he was tasked to do upon his appointment. Without such efforts, there would never have been a Confirmed Plan in this case, let alone preserved value in the Peruvian Opcos.

D. Other Insolvency Proceedings

These Chapter 11 Cases were filed against a tumultuous backdrop of insolvency proceedings and litigation, much of which from the outset threatened CFG Peru's potential to carry out a successful restructuring in this Court.

1. The Hong Kong and Cayman Islands Proceedings (Prepetition)

On November 25, 2015, one of the Club Lenders, Hongkong and Shanghai Banking Corporation ("HSBC"), filed in a Hong Kong court a winding up petition and related application for the appointment of joint provisional liquidators against China Fisheries International Limited (Samoa) ("CFIL"). HSBC filed a like petition and application in a Cayman Islands court with respect to China Fishery Group Limited (Cayman) ("CFGL"). Both efforts were made on an *ex parte* basis and HSBC's unilateral actions took the other Club Lenders by surprise given their prior holistic negotiations with respect to the Club Loan.[34] KPMG was appointed as joint provisional liquidators by both the Hong Kong and Cayman Islands courts.

The proceedings in Hong Kong and the Cayman Islands were soon dismissed based in large part on the efforts of the Club Lender Parties working with the Ng family and HSBC. Both sides,

[34] Dkt. 58, *Declaration of Guy Isherwood in Support of the Club Lender Parties' Motion for the Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. 1104(a)(2)*, at ¶ 27.

however, acknowledged that HSBC's efforts had a negative impact on the Peruvian Opcos due to what the provisional liquidators did when they arrived in Peru. As the Club Lenders stated:

> As a consequence of the protective measures in the December 2015 Undertaking having been implemented, thereby ensuring transparency, management scrutiny and independent oversight, the Club Lenders agreed to support the dismissal of the JPLs in both Hong Kong and the Cayman Islands. The intention being to remove the obvious stigma of an insolvency process depressing the value of the business.[35]

CFGL further explained how the consequences of HSBC's actions far exceeded an "obvious stigma" that was "depressing the value" of the Peruvian Opcos, in a pleading filed before this Court:

> The appointment of the JPLs had an adverse impact on the Prepetition Sale Process and further exacerbated financial difficulties already being experienced by the CFGL Group by deterring key participants from collaborating with the Peruvian Business. Parties integral to the success of the Peruvian Business, including, among others, local banks, suppliers, employees, and crew, declined to continue doing business with the Peruvian Opcos in light of the JPLs' appointment. Moreover, potential investors in the Peruvian Business conveyed to the Pacific Andes Group's management team that they were no longer interested in purchasing the Peruvian Business in light of the JPLs' appointment and/or their interest was conditioned upon the JPLs being dismissed.[36]

The Trustee soon learned from his on-the-ground assessment of the Peruvian Opcos that the Debtors' telling largely bore out and that HSBC was responsible for significant damage inflicted on the Debtors' enterprise. Based on his assessment, the Trustee sought Bankruptcy Rule 2004 discovery from HSBC, which the Court approved over HSBC's objection.[37] HSBC dug in its heels, objecting to the Trustee's selection of special counsel in the dispute, appealing the Court's approval of the Trustee's 2004 motion, seeking a stay of discovery pending appeal, and even

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[35] *Id*., at ¶¶ 33, 37.

[36] Dkt. 800, *Notice of Filing Chapter 11 Plan and Disclosure Statement of China Fishery Group Limited (Cayman), Pacific Andes Resources Development Limited (Bermuda), and Certain of Their Affiliated Debtors*, at p. 24.

[37] *See* Dkt. 634, *Memorandum Decision and Order Granting Trustee's Motion for Order Authorizing Issuance of Subpoenas to Hongkong Shanghai Banking Corporation Limited*.

putting the dispute before a Hong Kong court, accusing the Trustee of breaching confidentiality of the JPL proceedings and objecting to the Trustee's attempt to seek recognition in his role as a trustee in Hong Kong.

The Trustee ultimately prevailed in the discovery dispute and he subsequently commenced an adversary proceeding against HSBC alleging, among other things, tortious interference with the Peruvian Opcos' business and equitable subordination, or disallowance of HSBC's claims under the Club Loan.[38] By the time the Plan Proponents filed their proposed plan of reorganization with the Court, the dispute remained unresolved, and both the Trustee and HSBC agreed to mediation with the Honorable Sean H. Lane as mediator.[39] The dispute was settled on the eve of this Court's Confirmation Hearing, with HSBC agreeing, among other things, to a $25 million reduction of its claim, including an $11.5 million reduction of its claim for attorney fees.[40]

2. The Peruvian INDECOPI Proceedings

INDECOPI is the administrative and regulatory authority that, among other things, adjudicates and supervises the restructuring and liquidation of Peruvian companies that are subject to proceedings under Peruvian insolvency law.

On the Petition Date, several creditors of the Peruvian Opcos commenced involuntary proceedings against each of the Peruvian Opcos, and against SFR. CFGI, Copeinca, and SFR, none of which were able to seek direct relief from this Court because of restrictions under Peruvian law, filed voluntary petitions with this Court on the same date seeking recognition of the

[38] Adv. Proc. No. 18-01575.

[39] *See* Adv. Proc. No. 18-01575, Dkt. 58, *Stipulation and Order (A) Referring Matters to Mediation and (B) Governing the Disclosure of Confidential Documents*.

[40] *See* Dkt. 2556, Exhibit 1, *Stipulation and Consent Order (A) Dismissing Adversary Proceeding with Prejudice Pursuant to Fed. R. Civ. P. 7041(a)(2) and Fed. R. Bankr. P. 7041 and (B) Reflecting Settlement By and Among William A. Brandt, Jr., Chapter 11 Trustee, and the Hongkong and Shanghai Banking Corporation Limited* (the "HSBC-HK Stipulation").

involuntary INDECOPI proceedings pursuant to Chapter 15 of the Bankruptcy Code. This Court did not immediately rule on the Chapter 15 petitions. *See* Order Appointing Trustee, pp. 30-31.

On September 30, 2016, each of the Peruvian Opcos filed voluntary petitions with INDECOPI, but neither petitioned this Court for recognition of those proceedings. At the time, the Peruvian Opcos' management believed that the INDECOPI proceedings provided the better path toward normalizing operations and safeguarding assets, as well as protecting the Peruvian officers and directors from potential liability for operating the business in the zone of insolvency.

Upon his appointment, the Trustee concluded that the INDECOPI proceedings required immediate resolution if he was to fulfill his mandate to maximize the value of the Peruvian Opcos for the benefit of their creditors, the Club Lenders and Noteholders in particular. The Trustee worked closely with local management of the Peruvian Opcos to facilitate a consensual resolution, recognizing that litigating the petitions before INDECOPI in Peru and the Chapter 15 recognition petitions in New York would be both costly and detrimental to the fledgling relationship between the Trustee and local management, as well as local creditors and Peruvian civic leaders, and ultimately, to the success of the CFG Peru case.

The Trustee contacted a number of political and civic leaders with whom he is acquainted in both the United States and Peru. These officials included former ambassadors and former political officeholders, as well as distinguished businesspeople that have served or presently serve on the boards of a variety of Latin American, South American, and U.S. concerns. Through these contacts and those made with INDECOPI officials, and with the capable assistance provided by local counsel in Lima, by senior members of the Peruvian Opcos' management team, and by the Trustee's counsel, the Trustee was able to initiate, sustain and, importantly, resolve the issues connected with the INDECOPI petitions.

A positive result quickly ensued. On November 23, 2016 – just seven days after the Trustee's appointment – he filed with this Court the *Stipulation By and Among the Chapter 11 Trustee, CFGI [sic] Investment S.A.C., Corporacion Pesquera Inca S.A.C., and Sustainable Fishing Resources S.A.C.* [Dkt. 244] (the "INDECOPI Stipulation"). The INDECOPI Stipulation was a harbinger of what was to become a strong relationship between the Trustee and the Peruvian Opco's local management, and it provided for the withdrawal of the voluntary INDECOPI proceedings, the dismissal of the involuntary proceedings upon satisfaction of the petitioning creditors' debts, the withdrawal of the Chapter 15 petitions filed in this Court and, critically, a commitment by the Trustee and management to work collaboratively toward their shared goals of restoring and preserving the health and viability of the Peruvian Opcos.

Complete resolution of the INDECOPI proceedings required further action by the Trustee, as one of the Club Lenders, China CITIC Bank International ("China CITIC"), without notice to other parties, had filed a further involuntary proceeding with INDECOPI against the Peruvian Opcos in September 2016, prior to the Trustee's appointment. The Trustee filed a motion against China CITIC to enforce the automatic stay and to have the bank's filing declared void *ab initio*, upon which China CITIC withdrew the remaining INDECOPI proceedings.[41]

In an effort to prevent any further mischief, and to protect CFG Peru's interests in the Peruvian Opcos, the Trustee moved this Court for an order confirming that the automatic stay applied to any collections actions pursued in Peru by holders of the Club Loan facility and the Notes, and by CFG Peru's affiliate, CFIL.[42] The Trustee was motivated not only by China CITIC's

[41] *See* Dkt. 268, *Chapter 11 Trustee's Motion for the Entry of an Order Pursuant to Sections 105(a) and 362 of the Bankruptcy Code to Enforce the Automatic Stay,* and Dkt. 279, *Notice of Withdrawal of Chapter 11 Trustee's Motion for the Entry of an Order Pursuant to Sections 105(a) and 362 of the Bankruptcy Code to Enforce the Automatic Stay Scheduled for December 21, 2016 at 11:00 a.m.*

[42] *See* Dkt. 743, *Motion of William A. Brandt, Jr., Chapter 11 Trustee for CFG Peru Investments Pte. Ltd. (Singapore), Pursuant to 11 U.S.C. §§ 105(a), 362(a), and 541(a)(1), for Entry of an Order Confirming Applicability of*

prior attempt to proceed against the Peruvian Opcos, but also by a significant uptick in trading of the Notes and sales of claims relating to the Club Loan, which meant a constant introduction of new entities holding claims, who might try to enforce such claims against the Peruvian Opcos in Peru. The Court granted the Trustee's request[43] and from that point forward, creditors, including Other Debtors and non-debtor affiliates, largely kept a safe distance from the Peruvian Opcos, which in turn gave the Trustee the room to maneuver and allowed him to focus on restructuring the operations of the Peruvian Opcos, preserve their value, and restore profitability.

3. The Singapore Proceedings

Debtor PARD, an indirect parent of CFG Peru, did not enter Chapter 11 on the Petition Date. It instead opted, along with three non-debtor subsidiaries,[44] to restructure under the Singapore Companies Act. After PARD failed to persuade the Singaporean court to extend a moratorium (similar to a bankruptcy stay) beyond that country's borders, PARD abandoned the effort and entered Chapter 11.

4. The Germany Proceedings (Prepetition)

In December of 2015, a group of companies commonly referred to as the "Pickenpack Group"[45] requested that the Local Court of Lüneberg, Germany, open an insolvency proceeding under the German Insolvency Act. Based largely on a report by the preliminary insolvency administrator, the German Court found the Pickenpack Group to be insolvent and over-indebted,

Automatic Stay to Any Collection Actions Pursued in Peru by Holders of Club Facility and Senior Notes Claims and by Debtor CFIL against Peruvian Operating Companies.

[43] *See* Dkt. 809, *Order Granting Motion of William A. Brandt, Jr., Chapter 11 Trustee for CFG Peru Investments Pte. Ltd. (Singapore), Pursuant to 11 U.S.C. §§ 105(a), 362(a), and 541(a)(1), for Entry of an Order Confirming Applicability of Automatic Stay to Any Collection Actions Pursued in Peru by Holders of Club Facility and Senior Notes Claims and by Debtor CFIL against Peruvian Operating Companies*.

[44] The three subsidiaries are PAE (BVI), Parkmond and Pacific Andes Food (Hong Kong) Limited.

[45] The Pickenpack Group is comprised of Pickenpack Europe GmnH, Pickenpack Production Lüneberg GmbH, Pickenpack Holding Germany GmbH, and TST The Seafood Traders GmbH. None of the Pickenpack Group members are Pacific Andes Group entities. PA Capital Investment Limited, a direct subsidiary of Debtor PAIH (BVI), holds a 19 percent stake in Pickenpack and either PAIH (BVI) or PAIH (Bermuda) is alleged to be liable to the Pickenpack Group based on letters of comfort provided to the Group.

and appointed the preliminary insolvency administrator as the Insolvency Administrator (the "Pickenpack Administrator") over the Pickenpack Group assets.

The Pickenpack Administrator filed numerous proofs of claim in these Chapter 11 Cases, including claims against CFG Peru that totaled $283 million. Upon review of the claims, the Trustee determined that there was no merit to those asserted against CFG Peru. Rather than object to the claims, the Trustee engaged in discussions with the Pickenpack Administrator's New York counsel, who ultimately agreed with the Trustee. Because of the Trustee's handling of these claims, they were all withdrawn without the need for any litigation, benefitting the estate with the withdrawal of $283 million in claims.[46]

5. The BVI Liquidation Proceedings

Both before and after the Petition Date, a series of applications were filed before the High Court of Justice of the British Virgin Islands (the "BVI Court"), requesting the appointment of provisional liquidators. The most significant of these proceedings began on September 26, 2016, when Bank of America applied for the appointment of provisional liquidators for Pacific Andes Enterprises (BVI) ("PAE (BVI)"), Parkmond Group Limited ("Parkmond") and PARD Trade Limited ("PARD Trade"). A month later, Rabobank and Standard Chartered Bank sought similar relief with respect to PAE (BVI). In December 2016 and January 2017, applications for the appointment of provisional liquidators were filed against Europaco Limited (BVI) ("Europaco") by a trade creditor and Maybank, respectively.

These applications proved to be a significant development affecting, ultimately, all of the Trustee's efforts: The BVI Court appointed Nicholas James Gronow and two other individuals as

[46] *See* Dkt. 1498, *Withdrawal of Claim*, pp. 1-16.

liquidators (the "FTI Liquidators")[47] for PAE (BVI), Europaco, Parkmond, and PARD Trade. Through liquidation applications to the BVI Court in the names of entities already within their control, the FTI Liquidators subsequently were appointed to serve in the same capacity for Richtown Developments Ltd. and Metro Win, Inc., Ltd. (Hong Kong), and for five additional entities that were outside the Pacific Andes Group, and alleged to be controlled by members of the Ng family, that were purported to be participants in trade finance fraud[48] (together, the "FTI Liquidation Entities"). Additionally, the FTI Liquidators replaced the directors of certain Pacific Andes Group entities—which were wholly owned subsidiaries of some of the FTI Liquidation Entities—with FTI Director Services, an affiliate of FTI Consulting, Inc.[49]

The FTI Liquidators and FTI Director Services filed more than 200 proofs of claim in the Chapter 11 Cases, including against CFG Peru, totaling some $4.2 billion. Nearly all of these claims rested on the same foundation: allegations of a massive trade finance fraud scheme. The FTI Claimants asserted that PAE (BVI) and Europaco obtained approximately $5.57 billion in trade finance facilities from various financial institutions between September 2010 and August 2015. Instead of using those funds to supply fish (as represented), the FTI Liquidators claimed that PAE (BVI) and Europaco allegedly circulated the funds through various companies within the Pacific Andes Group and among so-called "Agent Companies" allegedly controlled by the Ng family, and then round-tripped them back to PAE (BVI) and Europaco. As discussed in detail

[47] Although the joint provisional liquidators are affiliated with FTI Consulting, Inc., it had no involvement in the BVI Liquidation Proceedings or the later affiliated proceedings in Hong Kong. The use of "FTI" is for convenience in identification of the liquidators and proceedings related to them and has been used throughout the CFG Peru case, including in Court filings.

[48] The non-Pacific Andes Group entities, sometimes referred to as "Agent Companies," are Solar Fish Trading Ltd. ("Solar Fish"), Palanga Ltd. ("Palanga"), Zolotaya Orda Ltd. ("Zolotaya"), Alatir Ltd. ("Alatir") and Perun, Ltd. ("Perun").

[49] The Pacific Andes Group entities to which FTI Director Services was appointed include Europaco (AP) Limited (BVI), Europaco (BP) Limited (BVI), Europaco (EP) Limited (BVI), Europaco (GP) Limited (BVI), New Millennium Group Holdings, Ltd. (BVI), Pacos Processing Ltd. (Cayman) and Pacos Trading Ltd. (Cayman).

below, the claims lodged against CFG Peru were abandoned after the Trustee challenged their validity, and the FTI Liquidators chose instead to pursue the same claims against CFGI in a Hong Kong court.

E. Disclosure Statements and Plans

1. The Confirmed Plan

On March 16, 2021, Burlington Loan Management DAC and Monarch Alternative Capital LP, solely on behalf of certain advisory clients and related claimants (together, the "Plan Proponents" and each a "Plan Proponent")[50] filed the *Creditor Plan Proponents' Chapter 11 Plan For CFG Peru Investments Pte. Ltd. (Singapore) And Smart Group Limited (Cayman)* [Dkt. 2381] (the "Proposed Plan") and the *Disclosure Statement for The Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore) and Smart Group Limited (Cayman)* [Dkt. 2382].[51] By order entered April 23, 2021,[52] the Court approved the adequacy of the disclosure statement and granted other related relief.

As is common in complex chapter 11 cases, robust negotiations between and among parties followed the filing of the Proposed Plan.[53] The Trustee was not a Plan Proponent, but played an active part in negotiations that resolved critical issues for confirmation, refined terms, and resolved disputes. For example, the Trustee continued negotiations with the Ng family and the other Debtors toward an agreement that would resolve certain issues critical to the Proposed

[50] "Ad Hoc Group" means the ad hoc committee of (i) Noteholders holding CFGI's 9.75% senior notes due 2019 (the "Notes"); and (ii) Club Lenders under the $650 million term loan made pursuant to that certain facility agreement, dated March 20, 2014 (the "Club Loan"), initially represented by Kirkland & Ellis LLP as counsel.

[51] *See* Dkts. 2381, *Proposed Plan*, and Dkt. 2382, *Disclosure Statement*. *See also* Dkt. 2384 (Plan Proponents' motion for approval of the disclosure statement, filed concurrently therewith).

[52] *See* Dkt. 2441, *Order Approving (I) the Adequacy of the Disclosure Statement; (II) Solicitation and Notice Procedures; (III) Form of Ballots and Notices in Connection Therewith; and (IV) Certain Dates with Respect Thereto*.

[53] The negotiations did not all involve the Trustee. A key example is discussions the Plan Proponents engaged in with Richard Morrissey to resolve concerns the U.S. Trustee had regarding certain aspects of the plan.

Plan (or any plan, for that matter), including issues connected with the Netting Agreement (defined below) and the eventual resolution of the cases of the Debtors remaining under the control of the Ng family (the "Other Debtors"), which, without CFG Peru as a debtor, would likely languish on the docket for an indeterminable period of time. As the Trustee explained at the April 21, 2021, hearing:

> [O]ne of the key aspects of getting the case to this point was the netting agreement, which I tend to view as one of the harder negotiations that occurred during the course of this case, and to be largely voluntary on behalf of the Ngs and Pacific Andes in exchange for an effort to try and market the companies. In exchange for those issues, I began a dialogue with the Ngs and Pacific Andes after the FTI settlement regarding what it would take to both conclude this with respect to either the Creditor Plan or a market test, which I would prefer, or a sale process.
>
> Your Honor, I'm pleased to report that after extensive negotiations through counsel and with the principals, the estates controlled by myself have reached a settlement with the Ngs and the Pacific Andes debtors which I believe will allow, among other things, the funding of a plan by them for the other 37 or so Debtors so that at some point altogether (sic), all of this will leave your Court at about the same time.

See Dkt. 2459, Transcript of Proceedings for April 21, 2021, at pp. 25-26.

The Trustee's negotiations with the Ng family members were complicated by factors such as the late-process discovery that J.T. Ng had caused CFGI to issue a guarantee of an alleged debt owed by a subsidiary of CFGI to Morskoy Veter, a company believed to be affiliated with a longtime business associate of the Pacific Andes Group. However, the net effect of what the Trustee initiated was a settlement reached with the Ng family, which was a necessary step for plan confirmation to proceed.

The Trustee also worked to finalize a resolution of the HSBC litigation pending in Hong Kong, discussed in Section IV.D.1, above, to ensure that the litigation would not imperil the plan confirmation process. The Trustee's negotiations worked in tandem with negotiations between HSBC and the Plan Proponents, who needed HSBC's support to confirm their Proposed Plan

(and to meet creditor consent requirements in the scheme proceedings in Singapore and the United Kingdom that would follow plan confirmation) given the percentage of Club Lender debt held by HSBC.

In addition, and in advance of the plan confirmation process, the Trustee received Court approval over the Plan Proponents' objection to engage in a final marketing process to ensure that the creditors' Proposed Plan represented the best option for CFG Peru's creditors, and that there were no bidders at the necessary threshold to pay off, *inter alia*, the Peruvian Opcos' third-party debt in connection with the CFG Peru Sale.

On June 9 and 10, 2021, the Court held a hearing on confirmation of the Plan Proponents' Proposed Plan (the "Confirmation Hearing"). During the adjournment, the Plan Proponents filed a further amended plan and, on June 10, 2021, the Court entered its *Order Confirming Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* [Dkt. 2569] (the "Confirmation Order"), by which it confirmed the final version of the Confirmed Plan.[54]

The complete terms of the Confirmed Plan are beyond the scope of this Fee Application, but several terms are particularly relevant to certain issues discussed in this Fee Application, most material of which are those that pertain to distribution of CFG Peru's direct and indirect equity interests in the Peruvian Opcos (the "CFGI Equity Interests").

The Confirmed Plan implements a Restructuring Support Agreement (the "Creditor RSA") that is Exhibit A to the Confirmed Plan, and proposes a transaction to be implemented whereby the CFGI Equity Interests will be distributed to Noteholders and the Club Lenders.[55] The Confirmed Plan, in turn, provides for satisfaction of the claims of Noteholders by the fulfillment

[54] Dkt. 2564, *Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* (defined above as the "Confirmed Plan").
[55] *See* Exhibit A to Confirmed Plan, *Creditor RSA*, at p. 1, Recital C.

of this term of the Creditor RSA, as the Noteholders are a class of creditors of the CFG Peru estate by CFG Peru's guarantee of CFGI's primary obligations to the Noteholders.[56]

At risk of oversimplifying the Confirmed Plan, it is a document that exists for the primary purpose of distributing the value in the Peruvian Opcos to Noteholders and the Club Lenders—the latter of whom petitioned this Court for the Trustee's appointment at the outset of this case, specifically to ensure that such value in the Peruvian Opcos would be protected.

2. The Other Debtors' Disclosure Statements and Plans

In September and October 2017, certain of the Other Debtors filed proposed plans of reorganization in these Chapter 11 Cases,[57] neither of which proceeded on a path to confirmation.

On October 4, 2019, two of the Other Debtors, PAIH and PAIH (BVI), filed a motion[58] (the "PAIH Compromise Motion") which proposed a complicated set of transactions that, for the most part, do not require explanation here, and which were described as setting the stage for an eventual plan of reorganization at the PAIH level of the Pacific Andes Group. But as the proposed transactions also would have imposed substantial burdens or costs upon CFG Peru and its subsidiaries and assets, the Trustee filed an objection to the PAIH Compromise Motion[59] and the scheduled hearing was adjourned several times. In early 2021, however, the FTI Liquidators filed

[56] *See* Confirmed Plan, Article III.B.3.

[57] *See* Dkt. 807, *Joint Chapter 11 Plan of Reorganization of China Fishery Group Limited, Pacific Andes Resources Development Limited (Bermuda), and Certain of Their Affiliated Debtors*, and Dkt. 808, *Joint Chapter 11 Plan of Reorganization of Pacific Andes International Holdings Limited (Bermuda) and Certain of its Affiliated Debtors.*

[58] *See* Dkt. 1753, *Motion of Pacific Andes International Holdings Limited (Bermuda) and Pacific Andes International Holdings (BVI) Limited, Pursuant to Bankruptcy Code Sections 105, 363 and 502, and Bankruptcy Rules 2002, 3001(e), 3007, 4001, 6004, 9014 AND 9019, (I) to Approve Compromise among Movants, Certain Creditors and Investors, (II) to Authorize Certain Corporate Governance Actions in Furtherance of Compromise, (III) to Approve the Compromise and Allowance of Certain Claims Related to the Proposed Transaction, and (IV) to Grant Related Relief*.

[59] *See*, Dkt. 1772, *Objection to Motion of Pacific Andes International Holdings Limited (Bermuda) and Pacific Andes International Holdings (BVI) Limited, Pursuant to Bankruptcy Code Sections 105, 363 and 502, and Bankruptcy Rules 2002, 3001(E), 3007, 4001, 6004, 9014 And 9019, (i) to Approve Compromise Among Movants, Certain Creditors and Investors, (ii) to Authorize Certain Corporate Governance Actions in Furtherance of Compromise, (iii) to Approve the Compromise and Allowance of Certain Claims Related to the Proposed Transaction, and (iv) to Grant Related Relief.*

an objection followed the next day by a first supplement to the PAIH Compromise Motion filed by PAIH and PAIH (BVI).[60] On April 23, 2021, the PAIH Compromise Motion was withdrawn.[61]

Many of the Trustee's accomplishments described in this Fee Application have made it possible for the affiliated Other Debtors to propose and potentially confirm plans of reorganization to resolve the remaining Chapter 11 Cases. On September 27, 2021, the Other Debtors filed two separate motions for approval of disclosure statements. *See* Dkts. 2684-2689. While one of the proposed plans largely tracks the PAIH Compromise Motion, the other is dependent on the global settlement conceived and substantially completed by the Trustee through negotiations with the Other Debtors and members of the Ng family.

V.

THE TRUSTEE'S ACCOMPLISHMENTS

The events described above that have transpired throughout the history of these Chapter 11 Cases provide background for the complex environment within which the Trustee accomplished his duties. But a full understanding of the value that the Trustee brought to these cases requires context beyond a chronological list of events.

It might appear in hindsight that the CFG Peru chapter 11 case, filed under the jurisdiction of a U.S. bankruptcy court, was a natural focus for the restructuring of CFG Peru's international

[60] *See* Dkt. 2341, *First Supplement to Motion of Pacific Andes International Holdings Limited (Bermuda) and Pacific Andes International Holdings (BVI) Limited, Pursuant to Bankruptcy Code Sections 105, 363 and 502, and Bankruptcy Rules 2002, 3001(e), 3007, 4001, 6004, 9014 AND 9019, (I) to Approve Compromise among Movants, Certain Creditors and Investors, (II) to Authorize Certain Corporate Governance Actions in Furtherance of Compromise, (III) to Approve the Compromise and Allowance of Certain Claims Related to the Proposed Transaction, and (IV) to Grant Related Relief*. The Supplement expressly states that it is not in response to the previous day's objection by the FTI Liquidators.

[61] *See* Dkt. 2440, *Notice of Withdrawal, without Prejudice, of Motion of Pacific Andes International Holdings Limited (Bermuda) and Pacific Andes International Holdings (BVI) Limited, Pursuant to Bankruptcy Code Sections 105, 363 and 502, and Bankruptcy Rules 2002, 3001(e), 3007, 4001, 6004, 9014 AND 9019, (I) to Approve Compromise among Movants, Certain Creditors and Investors, (II) to Authorize Certain Corporate Governance Actions in Furtherance of Compromise, (III) to Approve the Compromise and Allowance of Certain Claims Related to the Proposed Transaction, and (IV) to Grant Related Relief.*

enterprise. But at the time of the Trustee's appointment there was no certainty that CFG Peru would be able to remain in chapter 11. CFG Peru had no funds from operations of its own, the Peruvian Opcos were embroiled in the INDECOPI proceedings, there had just been competing liquidators asserting authority over subsidiary and affiliate assets of CFG Peru in foreign jurisdictions, there was no certainty that any foreign jurisdiction would recognize the Trustee's authority, and there was a very real potential for the value of the Peruvian Opcos and other assets of CFG Peru to be bled dry by a thousand cuts. The Trustee could not fulfill his mandate to preserve the value of the Peruvian Opcos by serving as a passive shareholder. Rather, he had to impose his position as that of an effective CEO, overseeing and restructuring the entire enterprise falling under the parent, CFG Peru.

The Trustee has navigated through legal, financial, and political obstacles to ensure that there would be an ongoing billion-dollar enterprise that could be reorganized or sold under the umbrella of the CFG Peru chapter 11 case. The following provides context to the chronological description of events, to show the accomplishments that are relevant to the Trustee's requested commission.

A. Ensuring a Transparent, Collaborative Process

The Trustee determined at the outset of his appointment that, given the complexities of the Chapter 11 Cases, their global scale, and creditors' overall lack of confidence in the Ng family members, transparency was critical to his administration of the CFG Peru estate and his stewardship of the Peruvian Opcos. Though this is not an accomplishment that translates into a simple dollar value, it is a starting point for demonstrating the manner by which the Trustee operated, and how an issue such as transparency was critical to the events that followed.

Transparency was accomplished in several manners. Because none of the dozens of Debtors are incorporated in the U.S., and creditors are predominantly located in Asia, the Trustee began conducting regular meetings in Hong Kong, Singapore, London, and New York, and engaged with creditors based throughout the world. The value of the Trustee's in-person meetings with creditors (and others) was underscored during the COVID-19 pandemic and its attendant lockdowns and restrictions on travel.[62] By the start of the lockdown, the necessary relationships had long been established.

Also in aid of a transparent process, and pursuant to discussions with the UST in which the Trustee was asked to file MORs that disclosed a roll-up on a consolidated basis for the benefit of all creditors, the Trustee and Development Specialists, Inc. ("DSI") filed MORs that fully disclosed the financial transactions of all moneys disbursed at the operating level, and of each entity that falls within the CFG Peru corporate structure. MORs without such full disclosures would have provided no useful information to creditors, the UST, or this Court, as MORs showing only the disbursements made solely from CFG Peru accounts would disclose only administrative payments such as professional fees and quarterly UST fees. Instead, the MORs filed by the Trustee explained the operations and financial transactions carried out by the entities that hold the value in the CFG Peru enterprise; the same value the Trustee had been appointed to protect, preserve and enhance. Many of the transactions disclosed in the MORs were brought before this Court for approval and/or public disclosure, such as the sales of fishing vessels, real property, and other assets of the Peruvian Opcos (as described more fully, below). And, as addressed below, quarterly UST fees were paid based upon the operations of the entire CFG Peru enterprise, as fully disclosed in the MORs.

[62] Much of Asia is 12 hours ahead of Eastern Standard Time and 13 hours ahead of Eastern Daylight Time.

In addition to the disclosures made in the MORs, the Trustee made frequent disclosures to this Court about the status and direction of the cases, whether in formal pleadings, regular motions addressing his restructuring efforts, or in appearances at status conferences. The Trustee commenced this effort with a comprehensive Status Report of the Chapter 11 Trustee (the "Trustee's Status Report"), which was filed on April 24, 2017, and provided detailed information about the Debtors' corporate structure, the industry within which the Peruvian Opcos operate, the nature of core and non-core assets, the Trustee's efforts to date, and his roadmap for the CFG Peru case going forward.

Transparency for prospective purchasers was also a critical concern, particularly as audits of the Peruvian Opcos hadn't been finished for years prior to the Trustee's appointment. The Trustee worked with Deloitte in Peru to resurrect the audit practice and obtain prompt audits for 2015, 2016 and 2017, and ensured annual compliance thereafter. These regular audits also would have been necessary to an IPO of the Peruvian Opcos, and kept this option alive as a potential exit strategy (an option that remains available post-confirmation). The Trustee also worked with Peruvian taxing authorities to determine the tax implications of any sale of the Peruvian Opcos, with or without a prior netting of intercompany debts. The tax certificates that the Trustee obtained from SUNAT (Peru's governmental taxing authority) provided clarity for the netting process (described below), and certainty for any prospective purchasers.

Further transparency—for prospective purchasers—was provided by the Trustee through the creation of a virtual data room ("VDR"), which held the information necessary for any interested party to complete their due diligence. The VDR was maintained throughout the case to ensure the availability of such information whenever it might be required.

The Trustee and his DSI team also ensured the same transparency for creditors, and worked in this regard with numerous parties who sought access to information in the VDR, such as Houlihan Lokey, Inc. ("Houlihan"), which was providing financial advisory services to the Senior Noteholders Committee.[63] The Trustee, assisted by DSI, brought Houlihan's professionals up to speed on a variety of matters, provided Houlihan with access to the VDR, and answered numerous questions submitted by Houlihan about the VDR information and a host of other matters. A productive, collaborative relationship soon developed because of the shared goal of maximizing the value of the Peruvian Opcos.

Even as the CFG Peru case was nearing its conclusion, transparency remained a goal of the Trustee, as shown by his testimony before the Court when the Plan Proponents first filed their Proposed Plan with the Court:

> I have been diligently providing materials to the creditors' committee, the ad hoc committee, a whole slew of that as recently as yesterday, updating the due diligence rooms, making sure that everyone is on the same footing in discussing all of this, so that we all are aware of each other's efforts and the fact that, at this point, I'm trying to play at least somewhat of a neutral role in shepherding everybody towards the goal line, and seeing if I can find a way to convenience (sic) everyone to finish all of this at once, rather than just have a partial settlement.[64]

The Trustee's commitment to transparency provided a critical base from which his work to restructure the CFG Peru corporate enterprise could proceed under the informed view of this Court and all parties in interest.

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[63] The Senior Noteholder Committee was an unofficial committee "comprised of certain entities that hold, or that act as investment manager of or advisor to certain funds, controlled accounts and/or other entities that hold or are beneficial owners of," the Notes. *See* Dkt. 62, *Statement of Senior Noteholder Committee Regarding Club Lender Parties' Motion for the Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104(a)(2)* at para. 1.

[64] *See* Dkt. 2390, Transcript of Proceedings held on March 16, 2021, at p. 8.

B. Restoring and Strengthening of the Peruvian Opcos

The Trustee's resolution of the INDECOPI petitions was merely the first step in his efforts to reorganize and preserve the value of the Peruvian Opcos. The Trustee did not have the luxury of sitting back as a passive shareholder, waiting for the right moment to market CFG Peru's equity interests in the Peruvian Opcos, as their value hinged on critical work required to restructure the Peruvian Opcos, reorganize their web of intercompany debt, recover the value lost in non-critical assets, and preserve the value that the Peruvian Opcos had in their existing management and employees.

The Trustee essentially had to become an expert on the highly regulated fishing industry in Peru, the fishmeal and fish oil production process, and the global market for the Peruvian Opcos' products. With the assistance of DSI and his legal advisors, the Trustee also acquainted himself with applicable international and maritime laws, and with the assets of the CFG Peru subsidiaries, including the Peruvian Opcos, such as processing plants and fishing vessels.

The Trustee and DSI conducted an in-depth review of the Peruvian Opcos' books and records, audit reports, industry reports and myriad other sources to understand underlying issues with the Peruvian Opcos' operations that were exacerbated by the effects of El Niño and HSBC's aggressive collection efforts. Such efforts permitted the Trustee to take steps to rationalize and restructure the assets of the Peruvian Opcos (discussed below) in a manner that would stabilize the businesses and restore their profitability. Had the Trustee adopted the position that his role was solely to administer the stock interests of the parent company, it is unlikely the Peruvian Opcos would hold any value for creditors in this case, or in any proceedings.

Along the way, the Trustee developed strong relationships with the senior managers of the Peruvian Opcos, relationships that would not only prove productive throughout the case, but which were valued by the creditors at the time of Plan Confirmation:

> [T]he management team here is really first in class. They have done excellent work here against really incredible conditions, in terms of the economy, the restructuring and now, as Your Honor is probably reading about, all of the uncertainty, given Peru's current political climate.[65]

Neither were the benefits of the Trustee's efforts limited to senior-level management. Because of the positive relationships forged by the Trustee, a strong working relationship developed between lower-level employees and the Trustee's professionals—DSI, in particular. This facilitated and enhanced the efficiency of efforts such as creating and maintaining the VDR.

A further task required to strengthen the Peruvian Opcos was to establish a computer system separate and independent from operations of the other Ng family-owned Pacific Andes Group entities in Hong Kong to preserve the integrity of the data. The establishment of a separate computer system in Peru ensured control over data entry, and certainty over data such as receivables and payables, ensuring the integrity of financial information shared with this Court, with creditors, and with prospective purchasers.

C. Funding the CFG Peru Chapter 11 Case

An immediate issue that required resolution upon the Trustee's appointment was funding for administration of the case. As a holding company, CFG Peru had no material assets other than its equity interests in the Peruvian Opcos, and had no income of its own to pay even the basic requirements of a chapter 11 debtor, such as the quarterly UST fees or the fees of professionals engaged in the case.

Of equal concern was the fact that the Peruvian Opcos, then embroiled in the INDECOPI proceedings, were also without cash. As a consequence of the appointment of the JPL Liquidators and the INDECOPI proceedings, the $125 million line of credit utilized by the Peruvian Opcos was revoked by their lenders in Peru. This line of credit financed fishing operations and was repaid

[65] Dkt. 2577, Transcript of Proceedings held on June 9, 2021, at p. 20, lines 18-23 (remarks of Gregory Pesce).

after the catch was processed and sold. Even the primary need to resolve the INDECOPI proceedings required cash, as any resolution would necessarily involve satisfying the petitioning creditors' claims.

The Trustee, with the assistance of his DSI professionals, undertook substantial efforts in connection with obtaining debtor-in-possession financing from numerous potential lenders (both large, international lenders, and local lenders situated in Peru). The Trustee also turned to the Club Lenders in the hope that they would provide financing to CFG Peru, but they were unwilling to do so without priming liens, which could not be granted.

With traditional sources of financing unavailable, and the chapter 11 process unable to provide relief, the Trustee turned to the Peruvian Opcos' longstanding customers in Japan and China to obtain financing in anticipation of their future purchases. The Trustee's negotiations were successful enough to permit the Peruvian Opcos to resume operations and to begin accumulating cash that would eventually, after a couple of seasons of operations, permit them to operate without the need for third-party financing. In effect, the Trustee managed to operate a billion-dollar business for more than four years without traditional outside financing.

The Trustee also required funds for the administrative expenses of CFG Peru to avoid administrative insolvency. The Trustee negotiated a loan agreement with CFGI pursuant to Section 364(c)(1) (the "Superpriority Loan") that would be funded, in part, by proceeds of sales of SFR assets, primarily fishing vessels. The Trustee's efforts to obtain this Court's approval of the Superpriority Loan[66] met with resistance. Although the Trustee negotiated a resolution and received approval of the Superpriority Loan from the Court,[67] the order was without prejudice to

[66] *See* Dkt. 548, *Motion For An Order (I) Authorizing The Chapter 11 Trustee To Obtain Intercompany Postpetition Financing On A Superpriority Administrative Claim Basis, And (II) Granting Related Relief.*

[67] *See* Dkt. 585, *Order (I) Authorizing the Chapter 11 Trustee to Obtain Intercompany Postpetition Financing on a Superpriority Administrative Claim Basis and (II) Granting Related Relief*, entered June 12, 2017.

any claims the Indenture Trustee may have against, among others, the proceeds of assets belonging to CFGI, Copeinca or SFR.

D. Instituting a Sale Process for the CFGI Equity Interests

The Trustee's establishment of a process to sell the CFGI Equity Interests began almost immediately upon his appointment, including the acquisition and review of due diligence information, completion of a preliminary analysis of the market, identification of potential buyers, consideration of alternative means for selling the Peruvian Opcos, establishment of the VDR, and the allocation of responsibilities for implementation of the sale process.

The Trustee tasked his DSI professionals with key components of this effort in order to alleviate the financial burden on the estate while ensuring that the process reflected the Trustee's vision. Among other things, DSI professionals facilitated the sale process by:

- Traveling to Peru to inspect each of the processing plants owned by CFGI and Copeinca and, to the extent possible, their fishing vessels. DSI professionals met with onsite management teams to review processing plant financials, operations, assets, inventory, and production, and worked closely with the production managers and senior management on review of production. DSI staff also monitored daily fishing and production reports produced in the ordinary course;

- Developing a start-to-finish collection of sale and marketing materials, including marketing literature designed to introduce prospective purchasers to the CFGI Equity Interests and CFGI and Copeinca more generally; a comprehensive confidential information memorandum that provided essential information on the CFGI Equity Interests like company background, operations and performance data, accompanied by appropriate nondisclosure agreements that would protect the estate; and presentation materials with even more detailed information for use during in-person meetings in Lima, Peru, with prospective purchasers;

- Creating and maintaining the VDR to ensure prospective purchasers received the most current information possible; and

- Facilitating prospective purchasers' tours of the Peruvian Opcos' vessels and processing plants, which were located along nearly the whole of the Peruvian coastline.

As the Court and parties in interest are well aware, the Peruvian Opcos' inability to be debtors in a U.S. bankruptcy court complicated the available procedures for liquidating their value. The only feasible means to dispose of the Peruvian Opcos' value in a comprehensive manner would be a sale of the CFGI Equity Interests. The Trustee tasked his legal advisors to draft a purchase and sale agreement ("PSA") that would serve as the baseline for negotiations with potential buyers. In addition, because the sale would be of stock, the PSA would have to include seller disclosure schedules, which involved a collaborative effort among the Trustee and his advisors locally and in Peru. As he did in other aspects of the sale process, the Trustee tasked DSI professionals to shepherd the development of the seller disclosure schedules, under his supervision. By doing so, the Trustee was able to not only ease the financial expense to the estate, but also to corral the effort and ensure that the work being done was commensurate with the expressions of interest he was receiving from potential buyers. [68]

Because of the positioning of CFG Peru within the larger Pacific Andes corporate structure, and the fact that two of its indirect parents are publicly listed companies, any sale of the company or discrete smaller assets such as the fishing vessels would require consents from the Hong Kong and Singapore exchanges. This was a matter that required extensive and delicate negotiations, and which the Trustee ultimately and successfully resolved.

Separately, in the early stages of the CFG Peru case and in furtherance of his goal of transparency, the Trustee sought approval of bid procedures in advance of a sale by filing his *Chapter 11 Trustee's Motion for an Order (I) Approving Bidding Procedures, (II) Approving the Form and Manner of Notice Thereof, and (III) Granting Related Relief* on July 26, 2017 [Dkt. 646] (the "Bid Procedures Motion"). As stated in the Bid Procedures Motion:

[68] The seller disclosure schedules proved useful as the Plan Proponents worked with other creditors toward their Creditor RSA.

> The Bidding Procedures will provide the formal framework for the Sale Process, which has been designed to elicit value-maximizing bids for the CFGI Equity Interests. Among other things, the Bidding Procedures (i) set forth the timeline for the Sale Process that is reasonable and appropriate to elicit value-maximizing bids for the CFGI Equity Interests, and (ii) set forth the basic rules for submitting bids for the CFGI Equity Interests and the date for a potential Auction.[69]

Although there were objections to the Bid Procedures Motion, the Trustee was able to negotiate with those parties and present revised procedures to the Court, which the Court approved.[70]

The sale process required far more than procedures and due diligence materials, as the structure of the CFG Peru enterprise created a series of roadblocks. The Trustee carried out a restructuring of the enterprise to shift dormant or otherwise non-operating subsidiaries out of the CFGI corporate family, netted a complex web of intercompany claims (discussed below), and sold non-core assets (discussed below). Throughout, the Trustee maintained active communications with parties that had expressed interest in the Peruvian Opcos, or whom the Trustee believed should be introduced to a prospective sale. On the latter point, the Trustee commenced a process in early 2019 to update the confidential information memorandum to reflect improved operations at the Peruvian Opcos and the benefits obtained from internal restructuring. The Trustee undertook a similar effort ahead of plan confirmation, which, in addition to attempting to solicit interest, served to protect the integrity of the plan against charges that the creditors received too much value for too little consideration.

The tasks involved in marketing the CFGI Equity Interests were monumental, given the many international laws and regulations that had to be addressed, as well as the interests of many divergent creditor and equity groups. Although the Trustee did not receive an acceptable offer for

[69] *Bid Procedures Motion* at ¶ 5.
[70] On October 21, 2020, the Trustee withdrew the *Bid Procedures Motion* at the Court's request due to the passage of time and the fact that portions of it had been superseded by other events. *See* Dkt. 2200.

the CFGI Equity Interests that would be sufficient to pay off the necessary debt, the work ensured a streamlined corporate enterprise that could be the subject of a chapter 11 plan of reorganization, and a future sale.

E. Establishing a Sale Process for and Selling Non-Core Assets

At the time of the Trustee's appointment, the CFG Peru subsidiaries, including the Peruvian Opcos, owned a panoply of assets (each a "Non-Core Asset") that were unnecessary to CFG Peru's core Peruvian anchovy fishing and processing operations, and which the Trustee, in his business judgment, determined should be sold.

When the Trustee sold the first of the Non-Core Assets, he also developed procedures that would permit these assets to be sold on a notice-only basis, with an opportunity for interested parties to object. This process relieved the estate from the expense of preparing and filing a motion for each Non-Core Asset sale, and eliminated the need for hearings on the sales, while safeguarding the rights of interested parties, including creditors, and ensuring continued transparency. These protocols, adopted just six months into the CFG Peru bankruptcy, drew no objections and were approved by the Court.[71] Using these procedures, the Trustee accomplished the disposition of the following Non-Core Assets:

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[71] *See* Dkt. 482, *Order Granting Chapter 11 Trustee's Motion for Order Pursuant to Bankruptcy Code Sections 105(a), 363(b), 541(a)(1), and 1108 and Bankruptcy Rules 2002, 6004, and 9006 Authorizing and Approving Procedures for (A) The Sale or Transfer of Certain Non-Debtor Assets and (B) Taking All Desirable or Necessary Corporate Governance Actions in Connection Therewith*, and Dkt. 584, *Order Granting Chapter 11 Trustee's Motion for Order Pursuant to Bankruptcy Code Sections 105(a) and 1108 and Bankruptcy Rule 2002 Authorizing and Approving Procedures for (A) the Sale or Transfer of Certain Additional Non-Debtor Assets and (B) Taking All Desirable or Necessary Corporate Governance Actions in Connection Therewith*.

Asset	Subsidiary	Purchase Price
Residential Real Property	Inmobiliaria y Constructora Pahk	$1,300,000
Commercial Real Property w/ Football Field[72]	Copeinca (Peru)	$17,000,000
Commercial Real Property (La Planchada)[73]	CFG Investment	0
Tavrida (settlement)	CFG Investment	$500,000
Pacific Voyager	Sustainable Fishing Resources	$4,000,000
Liafjord	Sustainable Fishing Resources	$4,000,000
Pacific Champion	Sustainable Fishing Resources	$3,400,000
Enterprise	Sustainable Fishing Resources	$3,400,000
Damanzaihao	Sustainable Fishing Resources	$11,150,000
Hunter[74]	Sustainable Fishing Resources	$1,500,000
Sheriff	J. Wiludi & Asociados Consultores en Pesca	$1,000,000

Each of the Non-Core Asset sales involved its own unique set of challenges. For example, CFGI owned non-core real property in La Planchada that burdened the entity with expenses, provided no benefit, and had no real sale potential. The Trustee determined in his business judgment that the best option was to donate the La Planchada property to the Peruvian Ministry of Education so that they could construct a regional educational institution on the site. His innovative approach relieved CFGI of the expense of maintaining the property while fostering good will among the locals and with the Peruvian government. Thus, while the "purchase price" listed above is $0, the benefit to the estate was substantial.

Sales of certain fishing vessels presented far greater challenges. With the aid of his financial and legal advisors, the Trustee ascertained the governance requirements and the

[72] *See* Dkt. 1234, *Notice of Sale Of Non-Debtor Real Estate In Accordance With Non-Debtor Asset Sale Order*. *See also* Dkt. 1280, *Statement in Opposition of Certain Debtors to Proposed Sale of Copeinca Headquarters*.

[73] See Dkt. 1293, *Motion to Authorize Chapter 11 Trustee's Motion For Order Pursuant To Bankruptcy Code Sections 105(a) And 363(b) And Bankruptcy Rules 2002 And 6004 Authorizing Taking All Corporate Governance Actions In Connection With The Donation Of Excess, Unusable, And Vacant Real Estate Property In La Planchada, Peru To The Peruvian Government By Non-Debtor Corporation CFG Investment S.A.C.*, and Dkt. 1339, order granting relief.

[74] *See* Dkt. 1656, *Notice of Sale of a Non-Debtor Vessel in Accordance With Non-Debtor Asset Sale Order*.

shareholder consents needed to consummate contemplated asset sales. He also resolved complex ownership and flagging rights of the fishing vessels and addressed issues of financial responsibility attendant to vessels in an international maritime environment.

A significant issue for resolution was the status of Chinese and Russian crew members who manned fishing vessels, but required payment of outstanding wages and repatriation to their home countries. It was a challenge that involved overlapping issues of Peruvian and maritime laws, visa and immigration issues, and the financing required for the crew members' wages and repatriation expenses. In the case of the *Damanzaihao*, a factory vessel that was not licensed to operate in Peruvian territorial waters, crew members were not authorized to set foot on Peruvian soil, and extensive negotiations with Peruvian officials were necessary to permit the crew members' transit through Peru for repatriation to their home countries without incurring substantial fines from Peruvian authorities. Further negotiations with officials from the crew members' home countries, including significantly through the Chinese ambassador in Peru, resulted in a release of any claims crew members might have against the estate, the Peruvian Opcos or CFG Peru subsidiaries, while aiding in the ultimate humanitarian objective of ending the crew members' prepetition limbo.

The Trustee's management and sale of Non-Core Assets was instrumental to the improved health of the Peruvian Opcos and to the administration of the CFG Peru estate. In addition to resolving substantial issues like those described above, the Trustee's Non-Core Asset sales provided cash to fund the administrative expenses associated with CFG Peru's chapter 11 case, laid the foundation for the restructuring of the CFGI subsidiaries, and alleviated the Peruvian Opcos' burden of bearing the ongoing expenses incurred with respect to vessels that, in some cases, had not operated for three years prior to the Petition Date.

Evidence of the success of the Trustee's restructuring efforts is that, within two years of his appointment as Trustee, the Peruvian Opcos were self-funding, and were beginning to accumulate cash.

F. Investigating Intercompany Claims and Negotiating the Netting Agreement

As of the Petition Date, the Debtors' enterprise was burdened by a labyrinth of intercompany claims totaling more than $7 billion.[75] Some $650 million of those intercompany claims flowed into and out of CFG Peru and its subsidiaries, including the Peruvian Opcos and their subsidiaries. Chief among them was a $459,047,750 million claim asserted by CFIL, a debtor in the Chapter 11 Cases that is outside the CFG Peru family of companies,[76] against CFGI (the "$459m Intercompany Claim").

Generally, under Peruvian law, and specifically within INDECOPI proceedings, insider claims are not subordinate to the claims of other creditors. And because CFGI could not be a chapter 11 debtor, insider claims could not be discharged, nor judicially subordinated. This meant that the $459m Intercompany Claim was *pari passu* with the claims of Noteholders, and that any sale of CFGI Equity Interests in the Peruvian Opcos would require a sale price sufficient to satisfy all claims—Noteholders, Club Lenders, the $459m Intercompany Claim, and all others. A sale for any less would have left the purchaser liable for any unpaid amounts, which meant that a sale was not a viable prospect without a netting of intercompany claims. Additionally, absent a netting process, a purchaser could not be assured that it would not be liable for outstanding intercompany claims against CFGI and its subsidiaries held by the other chapter 11 Debtors or non-debtor affiliates. These concerns applied equally, if differently, to any creditor-led transaction because creditors needed the same measure of certainty regarding how the $459m

[75] *See* Dkt. 203, Order Appointing Trustee, at p. 6.
[76] CFIL is a direct affiliate of CFG Peru; both are the direct subsidiaries of debtor Smart Group.

Intercompany Claim would be handled, as well as the certainty that other claims against CFGI would not surface after confirmation of a plan.

Through extended and complex negotiations in early 2018, the Trustee reached a settlement with the various affected corporate entities and creditors to remove CFGI's intercompany debt from its balance sheet and to remove other intercompany claims off the balance sheets of CFGI's subsidiaries (the "Netting Agreement"). The main purpose of the Netting Agreement was to consolidate intercompany claims owed by subsidiaries of CFG Peru into one claim held by CFIL against CFG Peru. In simpler terms, the Netting Agreement subordinated intercompany claims to facilitate either a sale or a restructuring. It also ensured that the Peruvian Opcos would not be susceptible to further INDECOPI proceedings by removing the blocking position that large insider claims could hold in an INDECOPI proceeding.

The Trustee filed a joint motion for approval of the Netting Agreement (the "Netting Motion")[77] with the other Debtors, reflecting the Trustee's belief that the long-term interests of the Peruvian Opcos were best served by working cooperatively, where possible, with Ng family members who served as officers and directors of the other Debtors.[78] Despite the obvious benefits of clearing an obstacle to a sale, simplifying the intercompany claims, and channeling liabilities of the Peruvian Opcos to CFG Peru, the Netting Motion drew initial objections from the Noteholders

[77] *See* Dkt. 993, *Joint Motion for an Order Approving the Settlement Agreement Netting Intercompany Claims Among and Between CFG Peru Singapore, the Other Debtors, and the Nondebtor Affiliates, Including the CFG Peru Singapore Subsidiaries.* The Exhibits to the Netting Motion, which visually explain the results of the Netting Agreement, are attached to the Brandt Decl. as Exhibit G.

[78] The foremost example of the benefit of the Trustee's approach to the Ng family is the settlement agreement he largely formed with the Ng family members and the other Debtors that resolved issues critical to the Confirmed Plan.

and Bank of America.[79] The Trustee resolved these objections, however, and the Court entered its order approving the Netting Agreement on April 26, 2018 (the "Netting Order").[80]

In May 2020, the Trustee determined that it was advisable to effectuate certain preliminary aspects of the Netting Agreement in order to save the Peruvian Opcos approximately $10.3 million in annual taxes. Although the other Debtors, still controlled by the Ng family, had expressed an initial willingness to proceed in this manner, they refused to execute documents necessary to realize these tax savings. The Trustee brought the matter to the Court and sought authority to remove and replace the directors at the affected entities,[81] which may have motivated the Ng family members to reach agreement on the Trustee's terms, culminating in the *Order Concerning Netting of 459m Claim* [Dkt. 2096], entered by the Court on July 1, 2020.

G. Resolving Claims against CFG Peru and Its Subsidiaries

As with any trustee's administration of a debtor's business, the task is both proactive and reactive, as litigation and critical motions are routinely filed against an estate, creating roadblocks to each trustee's reorganization efforts. The CFG Peru case has had no shortage of such challenges, many of which arose in foreign courts. The following is a summary of the key matters that were addressed by the Trustee.

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[79] *See* Dkt. 1020, *Senior Noteholder Committee's Limited Objection to Chapter 11 Trustee and the Other Debtors Joint Motion for an Order Approving the Settlement Agreement Netting Intercompany Claims Among and Between CFG Peru Singapore, the Other Debtors, and the Nondebtor Affiliates, Including the CFG Peru Singapore Subsidiaries,* and Dkt. 1021, *Objection of Bank of America, N.A. to the Chapter 11 Trustee and the Other Debtors Joint Motion for an Order Approving the Settlement Agreement Netting Intercompany Claims Among and Between CFG Peru Singapore, the Other Debtors, and the Non-Debtor Affiliates, Including the CFG Peru Singapore Subsidiaries*.

[80] *See* Dkt. 1112, *Order Approving the Settlement Agreement Netting Intercompany Claims Among and Between CFG Peru Singapore, the Other Debtors, and the Non-Debtor Affiliates, Including the CFG Peru Singapore Subsidiaries, and Approving Stipulation with Bank of America, N.A*.

[81] *See* Dkt. 2050, *Chapter 11 Trustee's Motion for Order Pursuant to Bankruptcy Code Sections 105(a) and 363(b) and Bankruptcy Rules 2002 and 6004 (I) Compelling Debtors China Fisheries International Limited and CFG Peru Singapore to Effectuate Certain Preliminary Aspects of the Netting of Intercompany Claims, and (II) Authorizing Corporate Governance Actions Necessary to Remove or Replace the Ng Subsidiary Directors at CFG Peru Singapore's Subsidiaries*.

In March 2019, the Trustee objected to the original proofs of claim filed against CFG Peru by three of the companies controlled by the FTI Liquidators, PAE (BVI), Solar Fish and Parkmond (collectively, the "FTI Claimants"). The claims generally alleged trade finance fraud and "round tripping" transactions (described in Section IV.D.5, above), but said nothing about CFG Peru. In response to the Trustee's objection to the FTI Claimants' proofs of claim, two of those Claimants—PAE (BVI) and Solar Fish—filed new proofs of claim that attempted to shift the spotlight to CFG Peru, claiming an elaborate scheme that allegedly benefitted CFG Peru in the amount of $152 million.

The Trustee sought to expunge the new claims on the merits. But before the Court could rule, PAE and Solar Fish withdrew the claims with prejudice.[82] The withdrawal did not end the matter, however, as the FTI Liquidators pursued the $152 million claim directly against CFGI in Hong Kong via an action filed in the names of five of the FTI Liquidation Entities,[83] alleging the same factual circumstances and legal theories set forth in the FTI Claimants' proofs of claim against CFG Peru (the "CFGI Hong Kong Litigation"). The FTI Liquidators had already commenced an action against certain members of the Ng family and various companies alleged to be controlled by them in the names of certain FTI Liquidation Entities.[84]

The two litigation matters were consolidated in the summer of 2020, not long after the initial mediation sessions concluded (discussed below), at the request of the plaintiffs. The Trustee believed the CFGI Hong Kong Litigation claims were without merit, but the litigation

[82] *See* Dkt. 1650, letter dated July 16, 2019, from Clifford Chance to the Hon. James L. Garrity, Jr.
[83] The plaintiffs in the CFGI Hong Kong Litigation (Action No. 2019-836) are PAE (BVI), Solar Fish, Europaco, Palanga, and Zolotaya.
[84] The Plaintiffs in the earlier FTI litigation (Action No. 2019-688) are PAE (BVI), Solar Fish, Richtown, Parkmond, and Europaco.

promised to take two to three years, if not more, to resolve. Accordingly, the Trustee determined that the CFGI Hong Kong Litigation should be mediated, as discussed in Section V.I below.

The Trustee also worked with his professionals to clean up CFG Peru's claims register. Early on, the Trustee sought to disallow and expunge claims asserted against CFG Peru by holders of PARD's 8.5% bonds due in 2017, on which CFG Peru is not an obligor, resulting in the Court entering the *Order Granting the Chapter 11 Trustee's First Omnibus Objection to No Liability Claims (PARD Bonds)* [Dkt. 1420].

The Trustee similarly negotiated and coordinated with counsel to the Other Debtors to clean up their respective claims registers, which culminated in the Trustee and the Other Debtors entering into the *Stipulation By and Between Certain Debtors and Chapter 11 Trustee Withdrawing Proofs of Claim Nos. 145, 171, 350, 371, 1517, 1527, 1528, 1771, and 1773 and Withdrawing PAIH Debtors' Objection to Such Claims* [Dkt. 1336].

One of the more delicate issues that the Trustee faced was the initiation of two criminal investigations against the Peruvian Opcos at the time of his appointment, one of which arose from the circumstances of the *Damanzaihao* factory vessel and its crew, and both of which concerned circumstances that preceded the Trustee's appointment. *See* Section V.E, above. Any criminal charges arising from these investigations would have severely impacted the ability of the Peruvian Opcos to operate and maintain their value. The Trustee was able to resolve the two investigations without any charges being filed against the Peruvian Opcos or any of their management.

As a result of these and other efforts, including the Trustee's successful negotiations with the Pickenpack Administrator resulting in the withdrawal of $283 million in claims, the only proof of claim remaining against CFG Peru, other than its guarantee of the Notes and its obligations for intercompany claims, was a $1.1 million claim by Rabobank. That obligation, owed by Copeinca

and guaranteed by CFG Peru, represented the attorneys' fees incurred in the protracted pre-petition effort to obtain for the Peruvian Opcos short-term working capital from certain of the Club Lenders.[85] Thus, it bears noting that the sole obligations of CFG Peru—subsequent to the Trustee's efforts, and aside from administrative claims and the effects of the Netting Agreement—are guarantees of obligations owed by CFGI and Copeinca, and all efforts to restructure the Peruvian Opcos thereby reduced the potential for a triggering of such guarantees, and inured to the benefit of CFG Peru and its body of creditors.

H. Attempts to Provide Interim Distributions on Creditor Claims

By early 2019, the Trustee's work with the Peruvian Opcos had led to a buildup of excess cash in the Peruvian Opcos' accounts, and the Trustee determined that interim distributions to the Club Lenders and the Noteholders would be beneficial by reducing the amounts of the claims and the interest that was accruing thereon. On February 15, 2019, the Trustee filed his first motion to effectuate such a distribution.[86] Informal objections were raised by Bank of America and certain Noteholders (who came to be known in Court filings as the Kasowitz Noteholders), with the latter indicating that they intended to file a formal objection to the Trustee's motion.[87] Rather than use estate resources to litigate the matter, the Trustee withdrew his motion.[88]

On August 27, 2019, the Trustee filed a renewed motion for authorization to make an interim distribution,[89] believing the Kasowitz Noteholders' issue was not only ripe for the Court's

[85] *See* Proof of Claim 67-1.

[86] *See* Dkt. 1490, *Chapter 11 Trustee's Motion for an Order Pursuant to Bankruptcy Code Sections 105(a) and 363(b) and Bankruptcy Rules 2002 and 6004 Authorizing Taking Corporate Governance Actions to Enable an Interim Distribution of Excess Cash to Certain Creditors by Non-Debtor CFG Investment S.A.C.*

[87] The term "Kasowitz Noteholders" developed organically as a means of distinguishing the objecting Noteholders from the group as a whole and is distinguished by the name of the group's counsel, Kasowitz Benson & Torres LLP.

[88] *See* Dkt. 1613, *Notice of Withdrawal of Chapter 11 Trustee's Motion for an Order Pursuant to Bankruptcy Code Sections 105(a) and 363(b) and Bankruptcy Rules 2002 and 6004 Authorizing Taking Corporate Governance Actions to Enable an Interim Distribution of Excess Cash to Certain Creditors by Non-Debtor CFG Investment S.A.C.*

[89] *See*, Dkt. 1710, *Chapter 11 Trustee's Renewed Motion for Order Pursuant to Bankruptcy Code Sections 105(a) and 363(b) and Bankruptcy Rules 2002 and 6004 Authorizing Taking Corporate Governance Actions Necessary to Enable an Interim Distribution of Excess Cash to Certain Creditors by Non-Debtor CFG Investment S.A.C.*

determination, but also presented a gating issue that would impede progress in the case if not addressed. Not surprisingly, the Kasowitz Noteholders[90] objected to the Trustee's Renewed Motion. The core of their objection is what became known as the "Intercreditor Dispute."

Put briefly, the Intercreditor Dispute centered on language in the Indenture requiring that CFGL cause Copeinca to execute a guarantee of the Notes (the "Copeinca Guarantee"), but which, as of the Petition Date, had not been done. Without the Copeinca Guarantee, the Noteholders would receive no interim distribution (or other distributions, including sale proceeds) from Copeinca; their recovery would come solely from CFGI.[91] The Kasowitz Noteholders acknowledged that there was no guarantee by Copeinca, but took the position, first, that the Copeinca Guarantee should be executed and, second, that the absence of the Copeinca Guarantee was not relevant because CFGI and Copeinca are *de facto* substantively consolidated. For his part, the Trustee was neutral before the Court with respect to the Intercreditor Dispute.

In the end, the Court authorized an interim distribution from CFGI, but not Copeinca, as reflected in the Court's order entered January 30, 2020.[92] Ironically, the delay occasioned by the Kasowitz Noteholders proved fatal to creditors receiving an interim distribution in the near term, as news of what was then called "coronavirus" began to emerge. Just a few short weeks later, the world was in the grip of a pandemic and few nations, if any, were hit as hard as Peru. Put bluntly, the ability of the Peruvian Opcos to continue normal operations was in doubt, making an expenditure of the excess cash imprudent.

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[90] The Kasowitz Noteholders was an evolving group that at the time was comprised of Plan Proponent Davidson Kempner Asia Limited, Cowell & Lee Capital Management Limited, Serica Capital Asia Limited, Hutch Capital Management, Hansabay, Double Haven and EG Capital Advisors.

[91] The Trustee's interim distribution formula was based on the anchovy quota held respectively by CFGI and Copeinca.

[92] *See* Dkt. 1939, *Order Pursuant to Bankruptcy Code Sections 105(a) and 363(b) and Bankruptcy Rules 2002 and 6004 Authorizing Taking Corporate Governance Actions Necessary to Enable an Interim Distribution of Excess Cash to Certain Creditors by Non-Debtor CFG Investment S.A.C.*

I. Initiating Mediation to Resolve Gating Issues

The Intercreditor Dispute and the CFGI Hong Kong Litigation were plainly in the way of CFG Peru's exit from its Chapter 11 case, and it was evident that a speedy resolution was necessary. The Trustee took a critical step toward that solution on December 10, 2019, when he filed his *Chapter 11 Trustee's Emergency Motion for Entry of an Order (A) Appointing a Mediator, (B) Directing the Proposed Mediation Parties to Participate in Mediation, and (C) Authorizing Taking Corporate Governance Actions Necessary to Enable Non-Debtor CFG Investment S.A.C. to Participate in Mediation* [Dkt. 1859] (the "Mediation Motion"). The importance of referring such matters to mediation was made clear in the Mediation Motion:

> Despite his best efforts, the Chapter 11 Trustee has not been able to bring the relevant parties to the table to resolve these issues. Instead, the parties have moved farther apart, with the FTI Liquidators now preparing for protracted litigation in Hong Kong, and certain of the Objecting Noteholders laying the groundwork for protracted discovery against the Chapter 11 Trustee through the 2004 Motion. These strategies will hinder the Debtor's prospects for exiting chapter 11 while resulting in the incurrence of significant costs. By this Motion, the Chapter 11 Trustee seeks the Court's help to avoid protracted litigation by compelling the relevant parties to negotiate and resolve the Hong Kong Action and the Copeinca Guarantee Dispute before a mediator … to carve a path forward in this case.[93]

In its response to the Mediation Motion, the Indenture Trustee made the point more bluntly:

> Despite exceptional and diligent efforts by the Chapter 11 Trustee, large intercreditor disputes in the case are unresolved, and will remain unresolved, unless all key creditor constituencies work together to resolve them. The impasse described in the [Mediation] Motion reduces the prospects for a successful exit from chapter 11 without massive litigation costs. In the Motion, the Chapter 11 Trustee seeks the Court's help to avoid expensive and protracted litigation by compelling the relevant parties to

[93] Mediation Motion at ¶ 2.

> participate in mediation. This is the best chance of achieving the best creditor outcome in the case.[94]

Unsurprisingly, the Kasowitz Noteholders and the FTI Liquidators objected to the Trustee's Mediation Motion, but both parties were ultimately ordered to participate in mediation before the Honorable Robert D. Drain as mediator.[95]

The mediation sessions, which were delayed because of the onset of the COVID-19 pandemic, proved fruitful. Details cannot be provided here because of confidentiality requirements, but the record speaks for itself. Judge Drain's efforts with respect to the CFGI Hong Kong Litigation were of immediate benefit, opening a dialogue between the FTI Liquidators and the Trustee that led to a negotiated settlement that fully resolved the claims asserted against CFGI.[96] Mediation of the Intercreditor Dispute was equally successful as it paved the way for the restructuring support agreement and, ultimately, the Confirmed Plan.[97]

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[94] *See* Dkt. 1867, *TMF Trustee Limited's Response in Support of Chapter 11 Trustee's Emergency Motion for Entry of an Order (A) Appointing a Mediator, (B) Directing the Proposed Mediation Parties to Participate in Mediation, and (C) Authorizing Taking Corporate Governance Actions Necessary to Enable Non-Debtor CFG Investment S.A.C. to Participate in Mediation,* at para. 2.

[95] *See* Dkt. 1938, *Order (A) Granting Mediation Motion, (B) Referring Matters to Mediation, and (C) Authorizing Taking Corporate Governance Actions Necessary to Enable Non-Debtor CFG Investment S.A.C. to Participate in Mediation*, and Dkt. 1957, *Order Appointing a Mediator.*

[96] *See* Dkt. 2352, *Motion of Chapter 11 Trustee Pursuant to Sections 105(a) and 363 and Fed. R. Bankr. P. 9019 for Order (I) Approving Settlement Agreement Resolving Hong Kong Action with Certain Liquidation Companies HCA 836/2019, (II) Authorizing Corporate Governance Actions, and (III) Granting Related Relief*, and Dkt. 2398, *Order Granting Motion of Chapter 11 Trustee Pursuant to 11 U.S.C. §§ 105(a) and 363 and Fed. R. Bankr. P. 9019 for Order (I) Approving Settlement Agreement Resolving Hong Kong Action with Certain Liquidation Companies HCA 836/2019, (II) Authorizing Corporate Governance Actions, and (III) Granting Related Relief.*

[97] *See, e.g.*, Dkt. 2541, *Declaration of Andrew J. Herenstein [of Monarch Alternative Capital LP] in Support of the Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* at paras. 8, 9 (describing the mediation as successful and that the restructuring support agreement was built on the momentum of that success). *See also* Dkt. 2557, *Creditor Plan Proponents' Brief in Support of Confirmation of the Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* at para. 55 ("Intercreditor Mediation and Mediated Intercreditor Settlement were critical to the development of the Restructuring Support Agreement and the consensus achieved on the Plan.").

J. The Financial Health of CFG Peru

From the Trustee's appointment through to entry of the Confirmation Order, the Trustee's work to restructure CFG Peru and the Peruvian Opcos has provided demonstrable benefit to the value he was tasked with preserving. In a recent proceeding in Singapore, the Plan Administrator filed a declaration in which he described the financial improvements that CFG Peru has undergone, noting the following:

> Based on the balance sheets provided in the Monthly Operating Reports:
>
> (a) As of 31 December 2016, CFG Peru had:
> i. US $383,059,000 in total assets;
> ii. US $392,182,000 in total liabilities; and
> iii. Negative US $9,123,000 in total equity;
>
> (b) As of 31 May 2018, after various intercompany claims had been resolved, CFG Peru had:
> i. US $383,386,000 in total assets;
> ii. US $400,751,000 in total liabilities; and
> iii. Negative US $17,365,000 in total equity;
>
> (c) As of 31 December 2019, CFG Peru had:
> i. US $385,975,000 in total assets;
> ii. US $429,220,000 in total liabilities; and
> iii. Negative US $43,245,000 in total equity;
>
> (d) As of 31 December 2020, CFG Peru had:
> i. US $878,109,000 in total assets;
> ii. US $847,646,000 in total liabilities; and
> iii. US $30,461,000 in total equity; and
>
> (e) As of 31 May 2021 (based on latest available Monthly Operating Report) CFG Peru had:
> i. US $879,173,000 in total assets;
> ii. US $852,220,000 in total liabilities; and
> iii. US $26,951,000 in total equity.

See Affidavit of Michael Foreman filed in HC/OS 521/2017, in the General Division of the High Court of the Republic of Singapore, Ex. H to the Brandt Decl., at ¶ 36.

VI.

THE TRUSTEE'S REQUESTED COMMISSION

A. Summary of the Trustee's Requested Commission

For nearly five years the Trustee has operated CFG Peru and its sprawling subsidiaries and assets in a manner equivalent to the CEO of an international enterprise. He neither has been nor could have been a passive shareholder awaiting an "as-is" purchaser for CFG Peru's equity interests in subsidiaries that were embroiled in their own insolvency proceedings. His efforts to preserve, rationalize, and reorganize the business of CFG Peru's subsidiaries and affiliates were necessary in order to preserve and maximize the value of such assets for the benefit of creditors, including those creditors of the Peruvian Opcos who sought his appointment specifically to protect the Peruvian Opcos.

The Trustee has approximately forty-five years of experience operating and reorganizing businesses throughout the U.S. and the world in a trustee/CRO capacity. He has become a "go-to" professional for complex chapter 11 restructuring cases such as railroads or the CFG Peru global fishing enterprise. Yet during his nearly five-years of service in this case, the Trustee's hourly rate has ranged from $695/hour in 2016, to $875/hour in 2021. It is a rate that is far below comparable professionals with similar experience.

Unlike other professionals in this case, the Trustee has not received interim payment of fees, as the Trustee understands that it is a custom and practice of the UST in the Southern District of New York that chapter 11 trustees are not to receive interim compensation. Instead, he has helped to finance these cases by deferring his commission to the instant Fee Application for nearly five years, as it was in the best interest of CFG Peru's estate to be able to delay payment of his fees until this stage of the case.

Since confirmation of the Confirmed Plan and the transition of control to the Plan Administrator, the Trustee has continued to provide services as needed in aid of plan consummation and other transition services. As he informed the Court prior to plan confirmation and in anticipation of such services, he has not requested any compensation for such time.

The commission requested by the Trustee in this Fee Application—which is composed of his lodestar as calculated and explained below, and a requested fee enhancement—is commensurate with the fees of professionals who have been paid in these cases, whether they are professionals engaged pursuant to 11 U.S.C. § 330, or professionals for creditors of the Peruvian Opcos, who appeared in this case to protect their clients' interests in the subsidiary assets. Over $70,000,000 of professional fees have been sought by and/or approved for these professionals:

Professional	**Client**	**Total Fees**[98]	**Total Expenses**
Skadden Arps	Chapter 11 Trustee	$25,727,170	$405,622
Quinn Emmanuel	Chapter 11 Trustee	$6,860,628	$296,305
DSI	Chapter 11 Trustee	$8,218,338	$454,039
Klestadt	Debtors	$2,100,394	$15,041
Kroll/Duff & Phelps	Debtors	$821,154	$420
RSR Consulting	Debtors	$765,759	$6,382
Epiq	Debtors' Claims Agent	$469,339	$0
Kirkland & Ellis[99]	Creditor Plan Proponents/Ad Hoc Group	$7,817,097	$932,436
White & Case	Creditor Plan Proponents	$284,111	$249
DLA Piper	Creditor Plan Proponents	$1,222,333	$10,947

[98] To the extent this Fee Application is filed before the Trustee has received a final fee application of such a professional, the Total Fees and Total Expenses are estimates based on prior Monthly Fee Statements and Interim Fee Applications.

[99] The attorney's fees requested by Kirkland & Ellis LLP ("*Kirkland*") include $698,250 incurred by eight other professional entities on behalf of the Plan Proponents and/or Ad Hoc Group, including Blackoak LLC, David Allison QC, Epic Corporate Restructuring LLC, Henry Phillips, Lottie Pyper, Lucid Issuer Services Limited, Maples and Calder (Hong Kong) Ltd., and Philippi Prietocarrizosa Ferrero Du & Ur. *See* Dkt. 2625, *Creditor Plan Proponent's Motion for Entry of an Order Pursuant to the Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore) and Section 1129(a)(4) of the Bankruptcy Code (I) Approving All Pre-Confirmation Fees, Expenses, Costs, and Disbursements Incurred by Kirkland & Ellis LLP and Kirkland & Ellis International LLP, Attorneys for the Creditor Plan Proponents and Ad Hoc Group, and (II) Authorizing and Directing the Plan Administrator to Cause CFG Peru (or the Peruvian Opcos, or Newco on Behalf of CFG Peru) to Promptly Pay All Such Pre-Confirmation Fees, Expenses, Costs, and Disbursements* (the "*Kirkland Fee Application*"), at p. 47, ¶ F.

Kasowitz, Benson, Torres	Kasowitz Client Group	$1,774,586	$8,981
Miranda & Amado	Creditor Plan Proponents	$76,755	$4,142
Houlihan Lokey[100]	Ad Hoc Committee/ Plan Proponents	$8,625,000	$846,238
Davis Polk, and Boies Schiller[101]	HSBC	$5,500,000	$0

B. The Law That Applies to a Determination of the Trustee's Commission

1. The Bankruptcy Court Establishes the Standards for Allowance of a Trustee's Commission

A trustee's compensation—whether the trustee was appointed in a case filed under chapters 7, 11, 12, or 13—is subject to the standards established by Sections 326(a) and 330(a). Some aspects of these standards are applied with little difference to both liquidating and operating trustees, whether appointed in a chapter 7 or chapter 11 case, while others are applied more broadly in chapter 11 cases with operating businesses.

Only a small number of trustees are appointed in cases that require them to operate and reorganize a large multi-entity enterprise. In such cases, a chapter 11 trustee frequently takes on the effective role of a chief executive officer or chief restructuring officer. *See, e.g., In re E. Coast Foods, Inc.,* 2021 U.S. Dist. LEXIS 148043 *11, 2021 WL 3473926 *4 (C.D. Cal. Aug. 6, 2021) (awarding statutory cap in excess of lodestar, and finding as "sound" the bankruptcy

[100] Houlihan's fee application seeks approval for an initial $4,625,000 in fees, and notes that it will be paid a $4,000,000 success fee on the Plan's Effective Date, thereby receiving total fees of $8,625,000. Houlihan's fee application explains that it has already received reimbursement of $700,854.77 of its expenses, and that the Plan Administrator will reimburse those members of the Ad Hoc Creditors' Group who reimbursed such expenses, thereby placing the cost of such fees onto the estate, along with the additional $145,384.20 in expenses sought for approval in the fee application.

[101] This amount, allowed for payment under the Confirmed Plan, is approx. one quarter of the nearly $20 million in attorney's fees incurred by HSBC, of which $11,500,000 was waived under the terms of the HSBC-HK Stipulation [Dkt. 2556, Ex. 1]. HSBC asserts in its fee application that the remaining fees, approx. $3 million, continue to accrue. [*See* Dkt. 2600].

court's position that chapter 11 trustee is "a chief restructuring officer hired to run a company" and that it "is not uncommon for such non-bankruptcy professionals to be entitled to success fees or bonuses when they deliver exceptional results"); *In re Pruitt*, 319 B.R. 636, 643 (Bankr. S.D. Cal. 2004) ("a trustee's role is different from that of an attorney and may be compensated differently. If, for example, this Trustee had served in lieu of a CEO in an operating business, the Court could consider what a full-time CEO in that industry is compensated in determining the reasonableness of the statutory rate."); *Connolly v. Harris Trust Co. of Cal. (In re Miniscribe Corp.)*, 241 B.R. 729, 749 (Bankr. Colo. 1999) ("It is not the role of the trustee to provide legal services. It is the role of the trustee to act as the fiduciary for the estate. He is the estate's chief executive officer and its chief financial officer with … full responsibility for the assets and affairs of the estate, a responsibility that he cannot delegate."); *rev'd on unrelated grounds* 309 F.3d 1234 (10th Cir. 2002); *In re Cardinal Indus.*, 151 B.R. 843 (Bankr. S.D. Ohio 1993) (chapter 11 trustee's "services encompassed the role of a chief executive officer …"); *Wall v. Wilson (In re Missionary Baptist Found.)*, 77 B.R. 552, 554 (Bankr. N.D. Tex. 1987) ("the Trustee was not engaged in a liquidation, but rather a reorganization and continuing operation of a going business. The Trustee occupies the position of a chief executive officer of a business which requires a myriad of items over the course of the business day."). Such was the appointment of this Trustee in these Chapter 11 Cases.

Regardless of the chapter governing a trustee's appointment, all trustee compensation is subject to the limits of a statutory cap calculated pursuant to Section 326(a). The Trustee believes that the calculation of the statutory cap for his commission is largely an academic exercise, as application of Section 326(a) to the facts of this case pursuant to the case law discussed below results in a statutory cap that is well in excess of any amount the Trustee seeks

in total compensation. However, as further explained below, courts also rely on the statutory cap as a measure of the reasonableness of a trustee's requested commission by comparison.

2. A Proper Lodestar Analysis Is the First Step to Determining the Trustee's Appropriate Commission

Section 330(a)(1) provides that a trustee is entitled to receive "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses," subject to the maximum commission amount calculated under Section 326(a). "Bankruptcy courts enjoy wide discretion in determining reasonable fee awards, which discretion will not be disturbed by an appellate court absent a showing that it was abused." *In re JLM, Inc*., 210 B.R. 19, 23 (B.A.P. 2d Cir. 1997).

Several sections of the Bankruptcy Code are relevant to the analysis of the "reasonable" compensation permitted by Section 330(a)(1). Section 330(a)(3) establishes certain factors to be considered when determining a reasonable lodestar amount. Section 330(a)(7) establishes that a chapter 11 trustee's compensation is treated as a "commission" under Section 326. And Section 326(a)(1) establishes a statutory cap for such a trustee's commission.

Where the Second Circuit's application of Sections 326 and 330(a) differs in any manner from other Circuits, it is addressed below. But courts generally agree that the starting point for analysis of a chapter 11 trustee's commission is a "lodestar analysis." *In re Miniscribe Corp.*, 309 F.3d 1234, 1241 (10th Cir. 2002) ("a court awarding trustee fees must begin by assessing reasonableness under § 330(a) before applying the percentage-based cap under § 326(a)"); *Nicholas v. Oren (In re Nicholas)*, 496 B.R. 69, 74 (Bankr. E.D.N.Y. 2011) (lodestar is "starting point" for reasonable fee, which "can then be adjusted on the basis of case specific considerations"); *In re 1031 Tax Group, LLC*, 2009 Bankr. LEXIS 3875 *4-5, 2009 WL 4806199 (Bankr. S.D.N.Y. December 9, 2009) ("A lodestar analysis consists of two steps. First,

courts calculate a lodestar amount … Courts then determine whether any adjustment to this amount is warranted under the twelve factors announced by the *Johnson* court … [and] the requirements of § 330."); *In re Northwest Airlines Corp.*, 382 B.R. 632, 645 (Bankr. S.D.N.Y. 2008) (Section 330 "incorporates the lodestar analysis by requiring that the bankruptcy court consider the time spent upon legal services and the rate charged for those services. The customary way to determine a reasonable fee is to begin with the 'lodestar' test, and then decide whether to apply any appropriate enhancements under *Johnson* ...") (citations omitted) *rev'd on other grounds sub nom. Lazard Freres & Co. LLC v. Adams (In re Northwest Airlines Corp.)*, 399 B.R. 124 (S.D.N.Y. 2008).

The lodestar analysis is often described as a mathematical calculation by which reasonable hours are multiplied by the trustee's hourly rate. But the analysis also requires reference to Section 330(a)(3), which provides that, when:

> determining the amount of reasonable compensation to be awarded to … [a] trustee under chapter 11 … the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Section 330(a)(3). *See also In re Value City Holdings, Inc*., 436 B.R. 300, 306 (Bankr. S.D.N.Y. 2010) ("Fee applications are to be evaluated in light of all 'relevant factors' as set forth in section 330(a)(3)").[102]

Five of these six subsections are relevant in a chapter 11 trustee's fee application. Subsection (E) pertains solely to the qualifications of a "professional person," which is a term that is distinct from a "trustee" and other categories of officers compensable under Section 330. *See* Section 330(a)(1)(A) ("reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person …").[103]

The statutory cap required by Section 326(a)[104] also plays a role in a court's analysis of a trustee's lodestar, not merely to ensure that a lodestar does not exceed the cap, but as an indicator of whether the lodestar amount is reasonable by comparison. This role for Section 326(a), as both a limiting factor and an indicator of reasonableness, has been amplified by courts since

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[102] Many courts in circuits other than the Second Circuit had held that twelve factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 717-19 (5th Cir. 1974) (the "*Johnson* factors"), must be considered when determining a lodestar amount. As is addressed more fully below, the Second Circuit has endorsed "permissive use" of the *Johnson* factors when determining the reasonableness of an attorney's hourly rate, but otherwise reserves the *Johnson* factors for consideration of any adjustment to a reasonable lodestar amount, such as a fee enhancement. *See Lilly v. City of New York*, 934 F.3d 222, 232-33 (2d Cir. 2019), and Section VI.B.3, below. The Trustee contends that, consistent with Second Circuit authority discussed below, the *Johnson* factors are best utilized in the fee enhancement discussion below.

[103] To whatever extent, if any, Section 330(a)(3)(E) is found to apply, the Trustee has demonstrated immense skill in the field of restructuring, not merely by his forty-plus years in the field, but by the actions he has taken in these cases to fulfill his duties as Trustee, as more fully described throughout this Fee Application.

[104] Section §326(a) provides that:

> In a case under chapter 7 or 11 [11 USCS §§ 701 et seq. or 1101 et seq.], other than a case under subchapter V of chapter 11 [11 USCS §§ 1181 et seq.], the court may allow reasonable compensation under section 330 of this title [11 USCS § 330] of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

2005 when Congress amended Section 330(a) to add subsection 330(a)(7), requiring that a trustee's compensation be treated as a "commission." Section 330(a)(7) "applies to all trustees, whether they are administering chapter 7 or chapter 11 cases." *In re Clemens*, 349 B.R. 725, 733 (Bankr. D. Utah 2006). *Collier* explains that the 2005 amendments to Section 330(a):

> changed the legal framework in two respects, by excluding chapter 7 trustees from the entities subject to the mandatory application of the factors listed in section 330(a)(3), and by providing that the compensation of a trustee is to be treated as a commission, based on the formulae in section 326(a). The primary effect of the change is that, in the majority of cases, absent extraordinary circumstances, a trustee's allowed fee will be based on the statutory commission rates provided in section 326(a).
>
> Nevertheless, labeling the trustee's fee as a commission does not avoid the requirement that the court also determine that the fee is "reasonable," and does not alter the provisions in section 330(a) that limit a trustee to "reasonable" compensation and that permit the court to award less than the amount requested.

King, *Collier on Bankruptcy*, P 330.02 (16th ed. rev'd. 2021). *See, also Clemens,* 349 B.R. at 729 ("[T]he plain meaning of § 330(a)(7) requires the Court to consider the provisions of § 326 *as a part of* its reasonableness inquiry. In essence, the addition of § 330(a)(7) to the Code serves to now supplement the Court's Lodestar analysis.") (emphasis in original); *In re Mack Props*., 381 B.R. 793, 798 (Bankr. M.D. Fla. 2007) ("A court is to consider the provisions of Section 326 as a part of reasonableness inquiry"); *In re Bank of New England Corp*., 484 B.R. 252, 283 (Bankr. D. Mass. 2012) ("The statute is clear that the 3% is not an entitlement, nor is it presumed to be reasonable. It is a statutory cap that the court is to consider as part of its reasonableness inquiry.").

As one commentator has explained, the statutory cap creates a presumption in favor of the maximum commission, and should be balanced against a trustee's lodestar to determine a proper commission:

> The first step in determining a Chapter 11 trustee's compensation should be to determine a lodestar and the § 326(a) statutory maximum trustee commission. If the lodestar exceeds the statutory maximum commission then the statutory maximum commission should be awarded and that is the end of the analysis; courts have no authority to award more than the statutory maximum. By contrast, if the statutory maximum commission exceeds the lodestar, then, because a Chapter 11 trustee's compensation is to be in the nature of a commission, **the statutory maximum commission should be balanced against the lodestar to determine the proper Chapter 11 trustee commission**. **There should be a presumption in favor of the statutory maximum commission**, but not so strong a presumption as to 'improperly shortchange' the requirement that the court consider the 'time spent.'"

John Silas Hopkins, III, *Effective Review of Compensation in Large Bankruptcy Cases*, 88 Am. Bankr. L.J. 127, 145-46 (2014) (emphasis added).

The plain language of Section 330(a)(3) demonstrates that determination of a trustee's lodestar is carried out by looking back over the course of the case, but from the perspective of what was reasonable at the time a service was undertaken. Reasonableness is not determined through hindsight or second-guessing. *In re Brous*, 370 B.R. 563, 570 (Bankr. S.D.N.Y. 2007) ("A decision reasonable at first may turn out wrong in the end. The test is an objective one, and considers 'what services a reasonable lawyer or legal firm would have performed in the same circumstances.'") (*quoting In re Ames Dep't Stores, Inc*., 76 F.3d 66, 72 (2d Cir.1996)). One court has cautioned that the lodestar analysis, by its nature, "typically is a quest by the opposing party and the court to examine a fee applicant's time records, and to extract from those records time that was not efficiently or well spent," and that it is rare for hours to be reviewed from the perspective that the time might have been "unreasonably low." *In re Miniscribe*, 241 B.R. at 748.

The above analysis of relevant provisions of the Bankruptcy Code is consistent with the position that the Trustee has taken in this Court from the outset of his appointment:

> MR. BRANDT: Could I offer just a thought for your reaction? I don't view the 326 commission here as you would a 7 Trustee. I view it as you start from a lodestar position, no matter what the outcome of the case is. I also think it's obvious that one person can't do all of this. In fact, as you'll see in the report, DSI teams have been dispatched to the plants, to the ships, and the accounting; it all permeates. At some point, I stand in front of you at the end of this case, and I say, here are the provisions for why you should think about awarding me commissions under 326, and they are the lodestar, to start with; they are the outcome of the case, the degree of difficulty, and all of that.

Transcript of Proceedings held in Case No. 16-11895 on Wednesday, April 12, 2017 [Dkt. 474], at pp. 78:24 – 79:17.

3. The "*Johnson* Factors" Guide a Court's Consideration of a Requested Fee Enhancement

The establishment of a lodestar amount is the first step in determining a chapter 11 trustee's reasonable compensation under Section 330(a)(1). Consideration is then given to "whether any adjustment to this amount is warranted under the twelve factors announced by the *Johnson* court …" *In re 1031 Tax Group, LLC*, 2009 Bankr. LEXIS 3875 at *4-5, 2009 WL 4806199 at *2; *In re Northwest Airlines Corp*., 382 B.R. 632, 645 (Bankr. S.D.N.Y. 2008) ("The customary way to determine a reasonable fee is to begin with the 'lodestar' test, and then decide whether to apply any appropriate enhancements under *Johnson* ...") (citations omitted).

The "*Johnson* factors" are twelve factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 717-19 (5th Cir. 1974), which:

> were developed in a civil rights case, [and] are: 1) time and labor required; 2) novelty and difficulty of the issues; 3) skill required to render proper legal services; 4) preclusion of other employment; 5) customary fee; 6) whether the fee is fixed or contingent; 7) time limits imposed; 8) amount involved and results obtained; 9) attorney's experience, reputation, and ability; 10) undesirability of the case; 11) length and nature of the attorney/client relationship; and 12) awards in similar cases.

See Mkt. Ctr. E. Retail Prop. v. Barak Lurie (In re Mkt. Ctr. E. Retail Prop.), 469 B.R. 44, 52, fn. 32 (10th Cir. BAP 2012) (quoting *Johnson*, 488 F.2d at 717-19).

The vast majority of case law discussing the *Johnson* factors arises in the context of applications for approval of attorney's fees in non-bankruptcy settings, and many of the Johnson factors are specifically phrased to address issues that arise in the course of an attorney's duties. *Id*. ("length and nature of the attorney/client relationship …"). Only a few cases have applied the *Johnson* factors to chapter 11 trustees, or provided any direction for how such factors should be applied to a trustee's request for a fee enhancement. However, the Trustee contends that certain guidance can be discerned from cases that have interpreted *Johnson* for purposes of attorney's fees applications, including in non-bankruptcy settings.

A relevant starting point among cases discussing the *Johnson* factors is *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010), largely because it is the most cited opinion of the U.S. Supreme Court discussing the Johnson factors, and is likely to be raised by any party that responds to this Fee Application. In *Perdue*, the Supreme Court expressed favor for the "objective" lodestar method to determine reasonable fees, over the more "subjective" *Johnson* factors. *Id*., at 551-52. The Supreme Court further "reject[ed] any contention that a fee determined by the lodestar method may not be enhanced in any situation," and held that the lodestar's strong presumption of reasonableness "may be overcome in those rare circumstances in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee." *Id*. at 553-54.

Perdue was not a bankruptcy case, nor did it address a trustee fee application. The Fifth Circuit and Tenth Circuit have each held that *Perdue* does not impact fee applications in bankruptcy cases. *See In re Mkt. Ctr. E. Retail Prop., Inc.*, 730 F.3d 1239, 1247 (10th Cir. 2013) (rejecting application of *Perdue* to the bankruptcy context as the underlying policy reasons are different); *In re Pilgrim's Pride Corp*., 690 F.3d 650, 664-67 (5th Cir. 2012) (holding that

Perdue did not overrule bankruptcy precedent on fee allowance, giving differing policy concerns with fee-shifting statutes).

The Second Circuit has not addressed the degree, if any, to which *Perdue* impacts fee applications or fee enhancement requests in bankruptcy cases in the Second Circuit, but has confirmed that—post-*Perdue*, and in fee-shifting cases—the *Johnson* factors are permissively considered in the establishment on a reasonable lodestar, and then serve as the guide for any request to vary the amount of the lodestar, such as a request for a fee enhancement. *See Lilly v. City of New York*, 934 F.3d 222, 232-33 (2d Cir. 2019) (discussing history of *Johnson* factors in context of attorney's fees under federal fee-shifting statute, 42 U.S.C. § 2000-k(k), and explaining that *Johnson* factors under *Perdue* are involved primarily in analyzing an enhancement of the lodestar value).

Bankruptcy courts in the Second Circuit, both before and after *Perdue*, have consistently held that the *Johnson* factors apply at the fee enhancement stage. *See In re Nicholas*, 496 B.R. at 74 (Bankr. E.D.N.Y. 2011) (citing *Perdue*, stating that lodestar is "starting point" for reasonable fee, which "can then be adjusted on the basis of case specific considerations"); *In re 1031 Tax Group, LLC*, 2009 Bankr. LEXIS 3875 at *4-5, 2009 WL 4806199 at *2 (applying *Johnson* factors to fee enhancement stage); *In re Northwest Airlines Corp.*, 382 B.R. at 645 (same).

C. The Trustee's Fees Reflect a Proper Lodestar Calculation

1. The Trustee's Time Spent on these Cases

The first factor listed in Section 330(a)(3) for determination of the reasonableness of a chapter 11 trustee's compensation is subparagraph (A), "the time spent on such services." This factor is related to subparagraph (C) ("whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title"), and subparagraph (D) ("whether the services were performed within a

reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed").

The Trustee has devoted the vast majority of his practice for the past five years to this case, which for him, personally, means most waking hours. Unlike time entries of attorneys, which are subject to certain limitations such as the requirement that such time be focused on legal tasks, trustees who operate businesses properly record time for matters that are not comparable to attorney time, but may relate to matters of administration, personnel and human resources, strategy, lobbying, and other such tasks that would not appear on a legal bill.

> This difference is significant because a trustee typically performs functions different from the average attorney. For example, an attorney working on a discrete matter, such as relief from the automatic stay, may more easily time the work being done so that it may be billed to a particular client. However, a trustee entrusted with the difficult task of running a failing business may have many on-going functions to perform. Further, the trustee may be involved in more than one trusteeship along with other business engagements. To require the trustee to keep detailed time records traditionally required to be kept by attorneys seeking fees would be unduly burdensome.

In re Greenley Energy Holdings, Inc., 102 B.R. 400, 405 (E.D. Pa. 1989); *see also In re Cardinal Indus.*, 151 B.R. 843 (Bankr. S.D. Ohio 1993) (discussing trustee's estimated time entries and stating, "the Court is guided by its observations of Alix's activities during his tenure and by the understanding that strict time accounting in tenths of an hour is not the way chief executive officers normally work.").

Despite the suggestion in *Greenley* that a trustee need not keep time records, the Trustee keeps extremely detailed time records. He has a practice of using his time entries much like a daily diary of tasks, issues, and analysis. Some entries reveal privileged content, or reveal information about matters that are or were subject to confidentiality agreements or non-disclosure agreements, such as the identity of entities that discussed with the Trustee a

prospective purchase of certain assets. The Trustee has combed through his time records to redact privileged or confidential content, and to remove from his bills time entries that, on reflection, he has chosen to remove from his lodestar calculation. *See* Brandt Decl., ¶ 91.

As addressed throughout Sections IV and V, above, the Trustee has engaged in complex and time-consuming tasks that were necessary to his duties to preserve the value of CFG Peru's subsidiary assets, restructure the CFG Peru corporate enterprise to facilitate transactions such as those contemplated in the Confirmed Plan, and to protect CFG Peru and its subsidiaries from a myriad of challenges and proceedings arising in foreign jurisdictions. The Trustee's proposed lodestar is based upon hours that were both necessary to his duties, and reasonable.

2. The Trustee's Current Hourly Rate Is a Reasonable Rate for Calculation of His Lodestar Amount

The second and sixth prongs for consideration of reasonableness under Section 330(a)(3) are related, as one addresses "the rates charged for such services," and the other addresses "whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title." *See* Section 330(a)(3)(B) and (F).

a. The Trustee's Lodestar Should Be Calculated Using His Current Hourly Rate to Address Delays in Payment

In cases where a trustee provides services for several years, and particularly where the trustee has not received interim compensation during the appointment, such trustee is helping to finance the case, and the calculation of a lodestar amount based on historic rates would prejudice the trustee for having refrained from demanding timely interim payments.

Here, the Trustee's hourly rate has varied over the nearly five years—six calendar years—of this case, from $695/hour in 2016, to $875/hour in 2021. But the Trustee has not been paid any compensation at any time (other than limited expense reimbursement). It is precisely in

circumstances such as these that courts—the Second Circuit, in particular—have held that a trustee's current hourly rate should be the rate used in a lodestar calculation for all years of service. In *Missouri v. Jenkins*, 491 U.S. 274 (1989), the U.S. Supreme Court held that a district court had properly awarded fees under 42 U.S.C. § 1988 based on the attorney's then-current market rate, rather than the rate that had applied to each year of a multi-year case. 491 U.S. at 283-84 ("[C]ompensation received several years after the services were rendered -- as it frequently is in complex civil rights litigation -- is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed.").

The Second Circuit has followed the *Missouri* holding twice, and applied an attorney's current rate to calculate the lodestar amount for services provided over preceding years. *See, e.g.*, *Grant v. Martinez*, 973 F.2d 96, 100 (2d Cir. 1992) ("a district court has the latitude to depart from the two-phase approach and may calculate all hours at whatever rate is necessary to compensate counsel for delay"); *Reiter v. MTA N.Y. City Transit Auth*., 457 F.3d 224 (2d Cir. 2006) (following *Missouri* and holding that when calculating a lodestar, the "rates used by the court should be 'current rather than historic hourly rates.'").

The same principle has also been applied in bankruptcy where there has been a lengthy delay in payment. *See In re Commercial Consortium of California*, 135 B.R. 120, 126-27 (Bankr. C.D. Cal. 1991) (following *Missouri*, overruling U.S. Trustee's objection to current hourly rate for lodestar calculation as unwarranted fee enhancement and holding that use of current rate to account for delay did not require "a strict standard of exceptional circumstances" as the rate was not for enhancement, but to compensate for "time value of money").

Under the precedent of *Missouri*, *Reiter*, and *Grant*, the Trustee's current hourly rate of $875/hour should be the rate used to calculate the Trustee's lodestar for each year of his service.

b. The Trustee's Hourly Rate Is Reasonable

In addition to applying a trustee's current hourly rate, courts have an obligation when calculating a lodestar amount to determine whether such rate is "in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Reiter*, 457 F.3d at 232 (*quoting Blum v. Stenson*, 465 U.S. 886, 896 n. 11 (1984)).

The Trustee's rate is established in accordance with the hourly billing rates of DSI, which are set at a level that remains competitive for middle-market restructurings. *See* Brandt Decl., ¶¶ 8 and 92. This means that the Trustee's rate is not merely "reasonable" in comparison to other professionals of similar experience, but is far below rates charged by his competitors based in larger markets, such as the Southern District of New York.

For example, in the chapter 11 cases *In re Soundview Elite, Ltd., et al.*, Case No. 13-13098 (MKV), Corinne Ball, Esq., of Jones Day, served as the chapter 11 trustee. In her final fee application, she stated that her regular billing rate as a trustee was $1,000 - $1,200/hour for the period covered by her appointment (2014-2015), though ultimately she deemed her rate to be rounded down to match the limits of the statutory cap. *See* Brandt Decl., Ex. I, p. 4. As a measure of comparison to the instant case, with respect to its complexity, total distributions in the *Soundview Elite* cases were just over $61 million. *Id*. at p. 47, ¶ 102. As a further measure of comparison, Ms. Ball reported her regular billing rate in 2015 as being $1,200/hour, while Mr. Brandt commenced his position as Trustee for CFG Peru one year later, in 2016, with a billing rate of $695/hour.

In the chapter 11 case of *In re Firestar Diamond, Inc*., Case No. 18-10509 (SHL), Richard Levin, Esq., served as chapter 11 trustee for which he received a commission at the statutory cap, and also served as his own counsel, through his firm, Jenner & Block. His hourly rate was not

applicable to his trustee fee application, as he sought the statutory cap and did not submit any time records. But his hours acting as his own attorney were billed at $1,300 or $1,400/hour in 2018 and 2019, respectively.[105] During the same two-year period, Mr. Brandt's hourly rate as Trustee was $795-$825/hour. As a further measure of comparison to the instant case, with respect to its complexity, total distributions in the *Firestar Diamond* case were just over $44 million. *See* Brandt Decl., Ex. J.

In the chapter 11 case of *In re TS Employment, Inc*., Case No. 15-10243 (MG), James S. Feltman, a managing director at Duff & Phelps, LLC, was appointed chapter 11 trustee. The case is ongoing, and a final fee application has not yet been filed. However, as a source of comparison, Mr. Feltman filed his first interim fee application as trustee on December 4, 2018, which demonstrates that his hourly rate for 2017/18 was $950/hour. *See* Brandt Decl., Exh. K. His fee application was filed without time records, and requested the statutory cap in the interim application, which, the application explained, would award Mr. Feltman an hourly rate of $2,523.45/hour, on distributions that, at that point of the case, just exceeded $42 million. *Id*. at p. 25, ¶ 73. The requested compensation was granted on an interim basis. *Id*. at Ex. E.

A further reasonableness comparison is the hourly rates of other professionals in these cases, particularly as the above examples demonstrate that many chapter 11 trustees in large cases are also attorneys who charge the same hourly rate as both attorney and trustee. In the case of the Trustee's own counsel prior to Plan confirmation, Skadden Arps Slate, Meagher & Flom LLP ("Skadden"), the hourly rate of partners who have worked on this case in 2021, and who

[105] *See* Dkt. 1621 in Case No. 18-10509 (SHL), *Final Application of Jenner & Block LLP as Counsel to the Chapter 11 Trustee for Compensation for Services Rendered and Reimbursement of Expenses Incurred for (I) the Seventh Interim Compensation Period from May 1, 2020 through August 2, 2020; and (II) the Final Compensation Period from June 14, 2018 through August 2, 2020,* at p. 7.

have fewer years of experience in restructuring than this Trustee, is $1,565.00/hour.[106] A second or third-year associate's rate for a Skadden attorney is closer to the rate charged by the Trustee. *Id*. (3rd year associate at $865/hour). Similarly, though Kirkland & Ellis LLP ("Kirkland") did not file a current rate sheet in support of its fee application for fees incurred as counsel to the Plan Proponents and Ad Hoc Group, Kirkland attached its 2016 engagement letter which demonstrates that in 2016, when the Trustee's hourly rate was $695/hour, the most senior partner on this case billed a rate of $1,325/hour.[107]

By making this comparison, the Trustee does not mean to question the rates charged by Skadden or Kirkland, as their rates are commensurate with other major firms appearing in these Chapter 11 Cases. Rather, the comparison provides a stark example of how "in line" the Trustee's current hourly rate is in the chapter 11 community. *Reiter*, 457 F.3d at 232.

The Trustee's current hourly rate is more than reasonable in relation to comparable market rates, and is the appropriate rate for calculation of his lodestar amount under the authority of *Missouri*, *Reiter*, and *Grant*.

3. Calculation of the Trustee's Lodestar

The Trustee has devoted immense time to this case, from the date of his appointment through to the completion of his post-confirmation tasks. Based upon the factors described above, the Trustee seeks approval of fees calculated by the following reasonable hours, as more fully detailed in his time records attached to the Brandt Decl. as Exhibits A-F:

[106] *See* Dkt. 2237, *Declaration of Lisa Laukitis Regarding Annual Rate Increase of Skadden, Arps, Slate, Meagher & Flom LLP*, at p. 6, and Dkt. 2408, *Twelfth Interim Fee Application of Skadden, Arps, Slate, Meagher & Flom LLP for Compensation for Services Rendered and Reimbursement of Expenses as Counsel to the Chapter 11 Trustee for the Period From July 1, 2020 Through and Including October 31, 2020*, at p. A-9.

[107] See Dkt. 2625, *Kirkland Fee Application*, at Ex. B, p. 2.

YEAR OF SERVICES	HOURS	ORIGINAL RATE	CURRENT RATE	AMOUNT
2016	409.7	$695.00	$875.00	$358,487.50
2017	3,272.8	$725.00	$875.00	$2,863,700.00
2018	3,471.7	$795.00	$875.00	$3,037,737.50
2019	3,426.5	$825.00	$875.00	$2,998,187.50
2020	1,949.2	$855.00	$875.00	$1,705,550.00
2021	1,137.1	$875.00	$875.00	$994,962.50
TOTAL LODESTAR AMOUNT:	13,667.0		$875.00	$11,958,625.00
REQUESTED FEE ENHANCEMENT			2.09 multiplier	$13,041,375.00
TOTAL REQUESTED COMMISSION				$25,000,000.00

The Trustee contends that the additional factors for consideration under Section 330(a)(3) do not provide any basis for a reduction of this amount, as briefed above.

4. The Lodestar Is Eminently Reasonable by Comparison to the Statutory Cap

a. The Statutory Cap Requires a Broad Interpretation in a Chapter 11 Context

As noted above, Section 330(a)(7) states that a trustee's compensation is to be treated "as a commission, based on section 326," and courts have interpreted this to mean that consideration of the statutory cap is a "part of" a court's inquiry into the reasonableness of a trustee's commission. *In re Clemens,* 349 B.R. at 729; *In re Mack Props*., 381 B.R. at 798; *In re Bank of New England Corp*., 484 B.R. at 283.

Calculation of the statutory cap involves two sources of value: (i) equity and cash turned over by the Trustee, and distributed under the Confirmed Plan; and (ii) disbursements made by the

CFG Peru enterprise during the Trustee's tenure, reported in the MORS. Either of these, alone, produces a statutory cap far in excess of the Trustee's requested commission. As the Trustee explained early in these cases:

> MR. BRANDT: The issue is what applies under 326. The bookies might say, if you were at a racetrack, that 326 is the handle; in other words, all monies turned over, disbursed by the estate, which includes, not just sale proceeds, but all of the obvious revenue and distributions by the subsidiary companies. The number here will be impossibly large. And no one in their right mind, including -- Your Honor, you're beyond being in your right mind -- would ever think of awarding it that way. But there has to be some measure along the continuum, from the bottom to the top, of asking for some enhancement, if necessary, of the lodestar, or simply the awarding of the lodestar, including myself and the other members of my firm. But yes, Your Honor, for the purposes of the Code, if you read it literally, it would include the (indiscernible) handle, which is not just the sums derived from a sale, but all other sums that flow upward or are disbursed. And indeed, as we've sat down with the U.S. Trustee and prepared the monthly operating reports, that was the request they made of us, that we provide a roll-up for transparency for the creditors.

Transcript of Proceedings held in Case No. 16-11895 on Wednesday, April 12, 2017 [Dkt. 474], at pp. 81:10 – 82:6.

Application of Section 326(a) hinges primarily on whether the case involves an operating trustee or a liquidating trustee, as the duties of a chapter 7 trustee differ materially from those of a chapter 11 trustee. Indeed, Section 1106(a) specifically relieves a chapter 11 trustee from the requirement of a chapter 7 trustee under Section 704(a) to "collect and reduce to money the property of the estate." As one court has explained:

> [A] chapter 7 trustee, among other things, shall 'collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest.' Thus, by definition, it is the job of a Chapter 7 trustee to monetize all assets of the estate and use that money to pay creditors. In this light, it makes complete sense to base a trustee's compensation on the amount of cash actually disbursed. This accomplishes two goals: first, it provides an objective basis upon which to compensate a trustee, and, second, it provides an

> incentive to the trustee to get money in the hands of creditors as quickly as possible in order to accelerate his entitlement to a fee.
>
> On the other hand, there is no directive for a Chapter 11 trustee to 'reduce to money' property of the estate. In fact, although § 1106(a) requires a Chapter 11 trustee to perform some duties listed in section 704(a), it specifically excludes subsection (a)(1) from the list. This dichotomy underscores the differences between the two types of trustee appointments. Rather, the Chapter 11 trustee's job is to operate the business and confirm a plan of reorganization, using as many of the tools in Section 1123 as may be appropriate to achieve the desired result under Section 1129.

In re Radical Bunny, LLC, 459 B.R. 434, 443 (Bankr. D. Az. 2011) (citation omitted).

The conflict described in *Radical Bunny* is particularly relevant to these cases. If the Trustee had received a sufficient offer for the CFGI Equity Interests, and had liquidated such interests and distributed cash to the Noteholders and Club Lenders, it would be unquestionable that all such funds were "moneys disbursed" by the trustee that should be considered within the calculation of the statutory cap. Instead, the Trustee restored and preserved the value of the Peruvian Opcos, as he was instructed to do upon his appointment, since the realities of the market eventually demonstrated that a sale would not realize the highest value for the CFGI Equity Interests. The Trustee then turned over the CFGI Equity Interests to the Plan Administrator under the terms of a Confirmed Plan that requires distribution of the CFGI Equity Interests as well as cash to the Noteholders, Club Lenders, and in the case of cash, their professionals. That difference cannot be—and is not under applicable law—the difference in a trustee's ability to receive a proper commission, or none at all.

Courts have found that the value of equity interests distributed to creditors, including under a confirmed creditor plan, should be considered within the statutory cap (discussed below). The rationale is plain and simple: A contrary result would incentivize chapter 11 trustees to act like a chapter 7 trustee, to "get money in the hands of creditors as quickly as possible." *In re Radical*

Bunny, 459 B.R. at 443. If the purpose behind a chapter 11 trustee's appointment is protection, preservation, and enhancement of asset value, then creditors receive the value of the trustee's services dedicated to those aims whether or not an equity interest is liquidated to cash. And the trustee who fulfills the purpose of protecting, preserving, and enhancing asset value should neither be penalized for placing the interests of creditors ahead of the interests of a higher statutory cap, nor incentivized to liquidate an operating estate.

These Chapter 11 Cases were filed to protect against a "fire sale" of the Peruvian Opcos.[108] And for that purpose (among many others), they succeeded. But the reorganizational goals on which chapter 11 is based would be undermined if any chapter 11 trustee felt motivated to engage in such a "fire sale" as the sole means of ensuring their own compensation. *See In re Orient River Invest., Ltd.*, 133 B.R. 729, 732 (Bankr. E.D. Pa. 1991) (Bankruptcy Code's uniform provisions for compensation of all trustees "requires bankruptcy courts to make some allowances for operating trustees who perform their services diligently"). And, likewise, the ability of bankruptcy courts to attract qualified candidates to serve as chapter 11 trustees for parent or holding companies would be severely diminished if such trustees faced the potential of a miniscule commission after years of service, simply because they preserved an operating business rather than liquidated its assets. This is particularly the case where a trustee is sought for the estate of a parent company, whose sole value may be the equity interests of its subsidiaries, and whose sole operations and operating disbursements will be recorded in the financial statements of the subsidiaries. A chapter 11 process that does not recognize such disbursements and preservation of value for purposes of a Section 326(a) calculation will be unable to attract viable candidates for the position of chapter 11 trustee.

[108] *See* Dkt. 203, *Order Appointing Trustee*, at p. 3.

There is a paucity of reported case law applying Section 326(a) to chapter 11 trustees, as opposed to chapter 7 trustees, and even less that pertains to chapter 11 trustees appointed to operate a large business or to serve as trustee of a parent company with operating subsidiaries. However, there is case law that is directly on point to demonstrate that a proper application of Section 326(a) in these cases would require calculation of the statutory cap based upon distributions made by the entire corporate enterprise, as reported in the MORs, plus all value distributed under the Confirmed Plan.

b. Section 326(a) applies to funds disbursed by operating subsidiaries

Section 326(a) requires calculation of a trustee's statutory cap based on "all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims." Most case law that considers a proper interpretation of Section 326(a) concerns the meaning of "moneys disbursed or turned over in the case by the trustee." Section 326(a) is derived from a similar provision in the Bankruptcy Act of 1898 which included the identical concept of "moneys disbursed or turned over." *See* H.R. Rep. No. 95-595 at 327 (1977), U.S. Code Cong. & Admin. News 1978, 5963, 6238 (stating that section 326(a) "is derived in part from section 48c of the [Bankruptcy Act of 1898]"). As explained below, the few courts that have applied Section 326(a) (or the same language in its predecessor statute) to chapter 11 cases that involve multiple entities under a trustee's control have applied the term "moneys disbursed or turned over in the case" in broad terms.

One of the first cases to address the scope of the term "moneys disbursed or turned over" and its application to a trustee's or receiver's capped commission was *In re Toole*, 294 F. 975 (S.D.N.Y. 1920), in which the District Court interpreted Section 48c of the former Bankruptcy Act, and explained that complex corporate restructurings, such as the stockbroker firm before it, require any receiver or trustee to provide:

> great industry, capacity for detail, and unusual expenditure of time and energy. To deal with them satisfactorily demands an experienced and able receiver and counsel. It is usually the case that the amounts available for general creditors are far less than the moneys or securities which are successfully reclaimed by third parties, and often they are negligible in amount as compared with the so-called reclamation claims. **If no compensation can be awarded, except commissions which may be calculated upon the general estate, it is literally true that no competent person would wisely accept the office of receiver or trustee of such an estate**.

In re Toole, 294 F. at 976 (emphasis added). Thus, the District Court found that the phrase "moneys disbursed or turned over" allowed "compensation to trustees and receivers for all property properly administered by the bankruptcy court, irrespective of whether it turns out to belong to the general estate or not," as the phrase was a "very broad provision." *Id*.

Toole is the first of a series of cases from courts in the Second Circuit to hold that a statutory cap on trustee or receiver compensation is not limited to distributions that were made from or with property of the estate, or funds that were passed through a debtor's account. Rather, property of non-debtors and third parties will frequently be obtained, controlled, or impacted by a trustee's work in a manner that courts find appropriate for inclusion in such a calculation. As one court explained, discussing Section 326(a):

> The statute plainly does not require that disbursed funds be property of the estate. Some courts interpreting this language agree and conclude that the base is not limited to distributions of property of the estate, as a trustee may disburse monies to parties in interest, within the meaning of Section 326(a) without in the process having actually distributed property of the estate.

In re Robert Plan Corp., 493 B.R. 674, 687 (Bankr. E.D.N.Y. 2012) (citations omitted).

The Second Circuit has also followed *Toole*, in a pre-Code case, to hold that a trustee should not be barred from claiming a commission on a fund that was property of an insurance company, and not property of the estate, but which the trustee administered prior to payment. *See In re Dutcher Constr. Corp.*, 378 F.2d 866, 871-72 (2d Cir. 1967) (following *Toole*, to hold

that even though funds due to insurance company never became property of the estate, it "is not to say that the Trustee should not be allowed to recover the necessary expenses of litigation or a commission for handling this fund ...").

Here, the Trustee is not requesting a commission based on disbursements from a third-party fund such as an insurance company's proceeds. Rather, he requests that the statutory cap for his commission be based upon the disbursements made by the corporate enterprise that he administered and that he disclosed each month in the MORs, as well as the value of the CFGI Equity Interests distributed to creditors under the Confirmed Plan (discussed below). Despite the Club Lender Parties' request that a trustee be appointed "in these Chapter 11 Cases,"[109] the Trustee was appointed solely for CFG Peru, an entity with no material funds of its own, and whose primary value was non-debtor, operating subsidiaries. Yet the Trustee's mandate was not to simply retain stock as a passive shareholder, but to protect, preserve, and enhance the value of the non-debtor subsidiaries for the benefit of all creditors, whether they were creditors of CFG Peru, or other entities within the CFG Peru corporate enterprise. The fact that cash disbursed through the Peruvian Opcos was not property of the estate does not prohibit their consideration as disbursements for establishment of the statutory cap. *In re Toole*, 294 F. at 976; *In re Dutcher Constr.*, 378 F.2d at 871-72; *In re Robert Plan*, 493 B.R. at 687.

(1) Disbursements by CFG Peru's Subsidiaries Are Moneys Disbursed Under Section 326(a)

Over the course of the Trustee's administration of the CFG Peru estate, the CFG Peru enterprise disbursed $1,894,149,430, all of which was disclosed each month in the MORs (the "MOR Disbursements"). *See* Dkt. 2614, MOR for June 2021.[110] Where a trustee is appointed to

[109] *See* Trustee Appointment Motion, at p. 41, ¶ 59.
[110] A copy of the MOR for June 2021 is attached to the O'Malley Decl. as Exhibit 2.

operate a parent company, and mandated to preserve the value of operating subsidiaries, Section 326(a) applies to all distributions made by the corporate enterprise, as a whole, irrespective of whether disbursements passed through the parent's bank account.

This precise issue was considered with substantial analysis in *In re MACCO Props., Inc.*, 540 B.R. 793 (Bankr. W.D. Okla. 2015) ("*MACCO Props.*"), in which Michael Deeba ("Deeba") was appointed as chapter 11 trustee for the estate of MACCO Properties, Inc. ("MACCO"). *Id*., at 800. MACCO managed and was the 99-100% owner of 30 LLCs that engaged in real estate investment, some of which were also bankruptcy debtors, and some of which were not. *Id*., at 801. Like CFG Peru, MACCO had no significant operations of its own and its debts were primarily guaranties of the LLCs' notes. *Id*. at 802. Five years after Deeba's appointment, MACCO provided unsecured creditors a less-than-full recovery, while equity received nothing, an outcome the court largely attributed to the equity holders' "self-inflicted" conduct. *Id*., at 801.

Deeba's final fee application requested a commission in the full amount of the statutory cap, which represented his lodestar plus a fee enhancement, and which he calculated based on all distributions made by the MACCO parent and subsidiary LLCs, putting squarely before the court the scope of Section 326(a) when distributions flow from related entities rather than directly from the debtor. The debtor's equity holders argued that disbursements by the subsidiaries should be excluded because Deeba wasn't appointed as trustee for the non-debtor entities. The court sided with the trustee:

> [M]aintaining the businesses of all debtor and non-debtor SPEs, including receiving and disbursing funds, was necessary to preserve the value of MACCO's estate. Trustee's obligation to the MACCO enterprise *required* him to actively oversee and direct the operations of dozens of large multi-family and business properties, manage the demands of creditors, and determine how to realize from each asset the best result for the estate. All funds flowing through the entire business enterprise were managed and accounted for by Trustee.

> Again, Trustee rendered significant services that can be compensated only by including SPE disbursements in the Section 326 Base.

MACCO Props., 540 B.R. at 848 (emphasis in original). *See also In re Toole*, 294 F. at 976 (explaining that the phrase "moneys disbursed or turned over to any person, including lienholders" in the Bankruptcy Act was "a very broad provision"); *In re Orient River*, 133 B.R. at 733 (compensation for chapter 7 trustee who operated debtor's business was properly calculated on moneys that included "disbursements made in actual operation of businesses").

The *MACCO Props.* court then engaged in a lengthy analysis of Deeba's lodestar, and any enhancement that could be awarded under the *Johnson* factors. Deeba's lodestar and his requested 20 percent enhancement were found by the court to be reasonable, but just slightly above the statutory cap. Therefore, the court awarded Deeba the full amount of the statutory cap (lodestar plus a nearly 20% enhancement) as his appropriate commission. *Id*., at 860.

Of particular importance to the *MACCO Props.* court's broad interpretation of Section 326(a) was the extent to which operations or liquidation of the subsidiary LLCs benefitted the parent and its creditors: "Disbursements that [Deeba] made to creditors of MACCO's subsidiaries with proceeds of the sales eliminated MACCO's exposure on its guarantees, and constituted valuable services to the MACCO estate." *Id*. at 849. The same factor applies here with respect to CFG Peru Singapore's guarantee of CFIL's obligations to the Noteholders, which could have been triggered and enforced had the Trustee not been able to resolve the INDECOPI proceedings.[111]

[111] The Tenth Circuit distinguished *MACCO Props.* in *Connolly v. Morreale (In re Morreale)*, 959 F.3d 1002 (10th Cir. 2020), a chapter 7 case in which the chapter 7 trustee removed the debtor from its role as manager of a chapter 11 LLC, and operated the business on his own. 959 F.3d at 1008-09. The Tenth Circuit did not overrule *MACCO Props.* or find that it was wrongly decided, which it had the power to do since Oklahoma is a Tenth Circuit district, but distinguished *MACCO Props.* on the facts and the chapter 7 issues that arose in *Morreale*.

Language similar to Section 326(a) is employed in 28 U.S.C. § 1930(a)(6)(A), which requires payment of quarterly fees to the UST "in each case under chapter 11" based on "disbursements" made. *See* 28 U.S.C. § 1930(a)(6)(A). In these Chapter 11 Cases, each of the Other Debtors pays such fees based on the disbursement made in their respective cases.[112] But in the case of CFG Peru and its non-debtor subsidiaries, quarterly fees were based on all MOR Disbursements of the CFG Peru enterprise, not merely the bank accounts of CFG Peru. Indeed, the UST requested in early 2017 that this Court delay payment of certain professional fees until CFG Peru was brought current on outstanding quarterly fees[113] – the amount of which was generated from the consolidated distributions made by all of the entities reported on the MORs.[114] All of the MOR Disbursements recorded on the MORs are disbursements "in the case" of CFG Peru.

The UST and any chapter 11 trustee face the same dilemma in any chapter 11 case of a holding/parent company because of the substantially similar language in their respective statutes. If either is compensated (or paid fees) solely from funds that pass through the accounts of a holding company debtor, without reference to disbursements made by operating subsidiaries,

[112] *See* Dkt. 2135, Monthly Operating Report, listing quarterly UST payments by each of the other Debtors.

[113] Dkt. 526, *Response Of The United States Trustee Regarding Applications For First Interim Allowance Of Compensation And Reimbursement Of Out-Of-Pocket Expenses For Professionals Of Chapter 11 Trustee Of Debtor CFG Peru Investments Pte. Limited (Singapore)*, at p. 2.

[114] Quarterly UST Fees are required by 28 U.S.C. § 1930(a)(6), which mandates the payment of fees based on "disbursements." Section 1930(a)(6) provides no further guidance on the meaning of the noun "disbursements." Nor does Section 326(a) provide guidance on the verb form of the same root, basing a trustee's commission on moneys "disbursed." But courts that interpret the term "disbursements" by its ordinary meaning apply a broad definition to discern the scope of quarterly U.S.T. fees. *See Cranberry Growers Coop. v. Layng*, 930 F.3d 844, 850 (7th Cir. 2019) (concurring with bankruptcy court's acknowledgment that "[t]he great weight of case law broadly defines 'disbursements,'" and holding that customer's payment to debtor's secured creditor was a "disbursement" for purposes of Section 1930(a)(6)); *In re Fabricators Supply Co*., 292 B.R. 531, 536 (Bankr. D. N.J. 2003) (creditor's sweep of debtor's blocked account constituted a "disbursement" for purposes of Section 1930(a)(6)); *In re Flatbush Assocs*., 198 B.R. 75, 78 (Bankr. S.D.N.Y. 1996) (characterizing the rent paid by the debtor's subtenants directly to the debtor's landlord as "disbursements" for purposes of calculating the quarterly fee); *In re Hays Builders, Inc*., 144 B.R. 778, 780 (W.D. Tenn. 1992) (all disbursements, whether made by the debtor or third party are to be included for calculation of quarterly fees).

each would face the risk of no compensation/fees for work performed, and would face the incentive to remain passive in a role that requires their foremost attention.

The CFG Peru case involves substantially identical considerations to *MACCO Props*. Like the parent/manager in *MACCO Props.*, this Trustee was appointed to administer a holding company, where all value was found in operating subsidiaries, some in bankruptcy, and some not. And like the cross-corporate obligations in *MACCO Props.*, CFG Peru was a guarantor on CFGI's primary obligation to the Noteholders, which exceeded $300 million on the Petition Date. As has been described more fully above, every disbursement made by a Peruvian Opco inured to the benefit of their guarantor, CFG Peru, and properly constitutes a disbursement of moneys under Section 326(a). *See* discussion in Section IV.C, above.

The primary difference between *MACCO Props.* and this case is that Mr. Brandt is not asking that the statutory cap be approved as his total commission—under *his* understanding of how the statutory cap applies, which is consistent with the interpretation given to Section 326(a) in *MACCO Props*.

The scope of this Trustee's appointment was addressed at the outset of this case, whether it was the plea of the Club Lender Parties that this Court appoint a chapter 11 trustee "to preserve the estates' equity stakes in a lucrative fishery business and processing plants in Peru operated by certain non-Debtor affiliates,"[115] or this Court's Order Appointing Trustee, which instructed the Trustee that it would "be incumbent upon [him], in furtherance of his or her fiduciary duties, without limitation, to assess the highest and best use of those assets in the context of the resolution of these Chapter 11 cases and the means for the Debtors to realize maximum benefits from those

[115] *See* Dkt. 13, *Club Lender Parties' Statement, Limited Objection and Reservation of Rights to the Debtors' First Day Motions, and Request for a Scheduling Conference*, at p. 5.

assets."[116] And, it was abundantly clear in this Court's Order Appointing Trustee that the Trustee would be appointed as trustee for an entity that was entirely dependent upon Peruvian subsidiaries for cash. *See* Order Appointing Trustee, at p. 43 ("the CF Group debtors rely on the Peruvian Opcos for substantially all of their income, and any income from the Peruvian Opcos is speculative and may not occur anytime soon due to the involuntary petitions against the Peruvian Opcos in Peru. … This factor supports the appointment of a Chapter 11 trustee").[117]

It would be inequitable for the Trustee to have been appointed as trustee for the parent entity (as in *MACCO Props.*), specifically tasked with protecting and preserving the value of the subsidiary and affiliate non-debtor entities, and have been required to pay quarterly fees based on all "disbursements" by those subsidiary and non-debtor entities, yet be unable to claim compensation arising from those mandated tasks. A proper calculation of the statutory cap must be based on the full scope of the Trustee's mandate, including all MOR Disbursements made in fulfillment of that mandate—whether they were disbursements made at the parent level (such as administrative expense claims paid by CFG Peru), or at the subsidiary level (the Peruvian Opcos, and others, disclosed in the MORs). *MACCO Props.*, 540 B.R. at 860. Were it any other way, "it is literally true that no competent person would wisely accept the office of receiver or trustee of such an estate." *In re Toole*, 294 F. at 976.

(2) The Equity Interests Turned Over Pursuant to the Confirmed Plan Are Additional Moneys Disbursed Under Section 326(a)

Under the terms of the Confirmed Plan, the Trustee has turned over the estate of CFG Peru to the Plan Administrator, who is charged with effecting a transaction that will distribute the

[116] *See* Dkt. 203*, Order Appointing Trustee*, at p. 48-49.

[117] The term "CF Group" is defined in the *Order Appointing Trustee* as "CFGL (the publicly traded holding company), Smart Group, Protein Trading, SPSA, CFG Peru Singapore, CFIL, Growing Management, Chanery, Champion, Target Shipping, Fortress, CFGLPL, and Ocean Expert." Dkt. 203, at p. 8, fn. 11. Several of these entities are also guarantors of Peruvian Opco debt, and as demonstrated by the Court's quote, would benefit from the Trustee's restructuring and preservation of the Peruvian Opcos.

CFGI Equity Interests to creditors including the Noteholders and the Club Lenders. *See* Confirmed Plan at Article III.B.4, and Ex. A thereto, Recital C. These equity interests reflect the value of an estate that the Trustee was appointed to protect, preserve, and enhance, for the benefit of these same creditors. Indeed, it bears repeating that the Trustee was appointed at the request of the Club Lenders, who are not creditors of the CFG Peru estate, to protect their interests in its subsidiary Peruvian Opcos. The Trustee fulfilled that duty, as demonstrated by the value distributed under the Confirmed Plan.

It is standard practice in chapter 11 cases that the value of an estate turned over by a trustee to the prepetition debtors, or to creditors, is value that is included within the calculation of the statutory cap. In *In re Toole*, *supra*, a court-appointed receiver sought a commission for distributions that included securities that had been turned over to creditors, or *would* be turned over to creditors in the future, rather than merely cash that was property of the estate. The District Court for the Southern District of New York held, as quoted above, that the Bankruptcy Act's limitation of a commission to "moneys disbursed or turned over" was not intended to limit the commissions of trustees and receivers to distributions that were property of the estate. *In re Toole*, 294 F. at 976. The court further held that any interpretation of terms such as "moneys" and "lienholders" should be expansive, questioning whether a trustee's or receiver's commission could be properly subject to "technical consideration[s]" such as the nature of a lienholder's rights. *Id*. The court went on to interpret "moneys disbursed or turned over"—the identical phrase that appears in Section 326(a)—to expansively cover not only cash, but the value of securities received by creditors:

> I think it also reasonable to suppose that the words 'or turned over' are sufficient to include property at the value received, as well as 'moneys disbursed.'

In re Toole, 294 F. at 977. The court ultimately determined that the receiver's commission "ought to be calculated upon cash, as well as upon the securities already turned over to claimants under orders of this court … [and] commissions on the remaining securities when administered by the trustee." *Id*. *See also In re Lehrenkrauss*, 16 F. Supp. 792, 793-94 (E.D.N.Y. 1936) (following *In re Toole*, holding that mortgages of debtor turned over to certificate holders are "moneys disbursed or turned over" but requiring evidence of value); *In re North American Oil & Gas, Inc.*, 130 B.R. 473, 479-80, fn. 15 (Bankr. W.D. Tex. 1990) (distributions of property other than cash, such as "equity instruments, notes, or even assignments," may be included where reducing such assets to cash is not appropriate and cash value can be "easily and readily" quantified).

Where a trustee turns over "moneys" or their equivalent to a party such as a reorganized debtor or liquidating trustee created under a plan of reorganization, it is included within the statutory cap calculation. *See In re ACIS Capital Mgmt., L.P.*, 603 B.R. 300, 306-07 (Bankr. N.D. Tex. 2019) (including in 326(a) calculation all moneys turned over by chapter 11 trustee to reorganized debtor upon plan confirmation); *North American Oil & Gas*, 130 B.R. at 479-80, fn. 15 (where creditors' confirmed plan created liquidating agent position, disbursements made under the plan to liquidating agent were properly included in statutory cap calculation). The *North American Oil & Gas* case is instructive, both because it is consistent with the holding in *In re Toole*, and as it involves the commission due to a chapter 11 trustee under a confirmed plan proposed by creditors. Though the court in *North American Oil & Gas* concluded that "unliquidated assets" turned over to the plan's liquidating agent could not be considered for calculation of the statutory cap, the court noted that it could be appropriate to consider equity interests turned over to satisfy the claims of creditors:

> In the rare case, distributions of property other than cash might be includable in the base, where the distribution constitutes a liquidation of the estate and, for reasons having to do with the unique factual posture of the case, actual conversion to cash is not appropriate. For example, a trustee might in certain circumstances be called upon to distribute equity instruments, notes, or even assignments, in satisfaction of outstanding claims against the estate. To the extent that these distributions can easily and readily be quantified in money or money's worth, the transactions could justifiably be included in the base.").

North American Oil & Gas, 130 B.R. at 479-80, fn. 15. The Trustee is not arguing by this Fee Application that the statutory cap calculation should include "unliquidated assets" of the type considered in *North American Oil & Gas*, as he has not proposed any value for equipment, supplies, furniture, or any other hard assets. Instead, per *In re Toole* and *North American Oil & Gas*, among other cases cited above, the CFGI Equity Interests should be included in the calculation. In this case, the Plan Proponents filed evidence with this Court stating that the plan value of the CFGI Equity Interests is $850,000,000, and that they could not be liquidated for a price necessary to pay all required debt payments.[118] That value should be included within the statutory cap, along with all cash disbursements made under the Plan.

A further important case for comparison is *In re Guyana Dev. Corp*., 201 B.R. 462 (Bankr. S.D. Tex. 1996), in which the court appointed a chapter 11 trustee for the case of a parent company that owned oil and gas subsidiaries and other assets throughout the world. By the court's description, the trustee was "in effect the CEO and/or the CFO of a vast real estate and oil and gas business with interests in numerous foreign countries." 201 B.R. at 482. Like Mr. Brandt, the *Guyana* trustee faced considerable opposition from equity, was forced to address

[118] *See* Dkt. 2542, *Declaration of Bradley Jordan in Support of the Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* at ¶¶ 14 and 23. The Trustee accepts this valuation solely for purposes of this Fee Application, as it demonstrates a value that has been accepted by this Court for Plan confirmation purposes, and demonstrates that the statutory cap on Plan distributions alone exceeds the total commission requested by this Fee Application.

litigation throughout the world involving allegations of prepetition fraud, and faced substantial difficulties created by the foreign location of assets. *Id*., *passim*. But rather than preserve an operating entity, the trustee in *Guyana* liquidated the subsidiaries, liquidated all assets, and ultimately liquidated the parent company in a plan of liquidation. *Id*. at 472. The *Guyana* trustee's fees were then based on such cash distributions. *Id*. Were Section 326(a) to be narrowly defined, the contrast between *Guyana* and CFG Peru would demonstrate that a decision to liquidate a chapter 11 estate rather than preserve an operating enterprise would directly—and materially—impact a trustee's personal compensation. *Guyana* and CFG Peru each posed similar challenges to their respective trustee. And each trustee ensured the preservation of value, whether in cash or equity. But the manner by which that value was transferred to creditors in a chapter 11 case cannot be the difference between a trustee who is fully compensated for their efforts, and a trustee who is not.

The timing and manner for the distribution of the CFGI Equity Interests under the Plan do not affect their inclusion in the calculation of the Trustee's commission. There is no requirement that a trustee personally sign a check or execute an assignment when the transfer of value is distributed under a confirmed plan. *See, In re ACIS*, 603 B.R. at 306-07 (including in 326(a) calculation all moneys turned over by chapter 11 trustee to reorganized debtor upon plan confirmation); *MACCO Props.*, 540 B.R. at 848-49 (moneys disbursed by escrow or title company were moneys disbursed by trustee for purposes of commission calculation); *North American Oil & Gas*, 130 B.R. at 479-80, and fn. 15 (including disbursement to liquidating agent under terms of creditors' confirmed plan); *In re Greenley*, 102 B.R. at 404 (reversing bankruptcy court's denial of trustee fees, refusing to interpret "the statute so narrowly under the facts," holding that cap would include "value of contracts negotiated by trustee that provided estate with certain future

value," and including value of guarantee contracts turned over to creditors); *In re Toole*, 294 F. at 977 (receiver's commission included value of securities still to be distributed by trustee).

In addition to the value of the CFGI Equity Interests, the Confirmed Plan calls for cash payments to be made to various parties (e.g., Ng/China Fishery Settlement, HSBC Settlement, Bank of America, Interim Distribution, etc.), which are listed on Exhibit 1 to the O'Malley Decl., in a total amount of $211,000,000 (the "Plan Cash Disbursements").[119] As noted above, the fact that such payments required by a confirmed plan are to be paid after confirmation, by another party, does not remove them from the category of disbursements that qualify for Section 326(a) calculation. *See, In re ACIS*, 603 B.R. at 306-07; *In re MACCO Props.*, 540 B.R. at 848-49; *North American Oil & Gas*, 130 B.R. at 479-80, and fn. 15; *In re Greenley*, 102 B.R. at 404; *In re Toole*, 294 F. at 977.

Thus, the total disbursements that are to be included within a calculation of the statutory cap are as follows:

Category of Disbursement	Amount
MOR Disbursements	$1,894,149,430
CFGI Equity Interests	$850,000,000
Plan Cash Disbursements	$211,000,000
Total for Statutory Cap Calculation	**$2,955,149,430**

(3) Statutory Cap Far Exceeds the Trustee's Requested Commission

During the Trustee's tenure, the MOR Disbursements, the value of the CFGI Equity Interests, and the Plan Cash Disbursements total $2,955,149,430. As described in the O'Malley Decl., the statutory cap based upon these total disbursements is calculated as follows:

[119] These amounts do not include the $25 million reserve set aside to address the Trustee's commission. *See* Dkt. 2564, Confirmed Plan, at Article II, Section B.

Category of Distributions	**Amount Attributable to Statutory Cap**
"25 percent on the first $5,000 or less"	$5,000 x 25% = $1,250.00
"10 percent on any amount in excess of $5,000 but not in excess of $50,000"	$45,000 x 10% = $4,500.00
"5 percent on any amount in excess of $50,000 but not in excess of $1,000,000"	$950,000 x 5% = $47,500.00
"reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000"	$2,954,149,430 x 3% = $88,624,483
TOTAL:	**$88,677,733**

The Trustee's requested commission is a fraction of the statutory cap if calculated as permitted under the applicable law discussed above.

If, for any reason, this Court were to conclude that the statutory cap should not include MOR Disbursements arising from the operations of the Peruvian Opcos and other non-debtor subsidiaries, then a statutory cap based on the value of the CFGI Equity Interests ($850,000,000), the Plan Cash Disbursements ($211,000,000), and disbursements recorded in the MORs that were paid directly from the accounts of CFG Peru ($48,556,281) (the "CFG Peru Cash Disbursements"), would still exceed $33 million, and be well in excess of the Trustee's requested commission. *See* O'Malley Decl. at ¶¶ 9-10. And, if for any reason, this Court were to find that all MOR Disbursements qualify for the statutory cap, but the value of the CFGI Equity Interests does not, the statutory cap would exceed $64 million. *See* O'Malley Decl. at ¶ 11.

Thus, whether this Court calculates the statutory cap as described in the chart, above, consistent with *MACCO Props., In re Toole,* and other authority cited herein, or calculates the statutory cap without the inclusion of either the MOR Disbursements or the CFGI Equity Interests,

the statutory cap will be in excess of the commission sought by the Trustee in this Fee Application. Further, each such option for calculation of the statutory cap demonstrates the reasonableness of the Trustee's requested commission by comparison, pursuant to Section 330(a)(1) and (7).

D. The Trustee Requests a Fee Enhancement That Addresses the Unique Accomplishments, Risks, and Needs of His Appointment

By this Fee Application, the Trustee is requesting a fee enhancement in the form of a 2.09 multiplier of his lodestar. Such a multiplier is consistent with relevant case law discussed below. But some context is appropriate at the outset. Mr. Brandt sets his own hourly rate, and acknowledges his intentional choice to set his rate for the middle market. But if his rate were set in the range comparable to his competitors based in this district, it would likely be about $1,600/hour for 2021. Such a rate would have translated into a lodestar of $21,867,200. To reach the same requested overall commission, he would then only be seeking a fee enhancement multiplier of 1.143. Thus, the Trustee contends that the number of the multiplier itself is less relevant than the overall commission that he has requested for the work performed in this case, and the success of his efforts.

Case law addressing fee enhancements requested by chapter 11 trustees is infrequent, and often resolves the trustee's request by finding that the statutory cap limits the amount of any fee enhancement, and then by awarding the capped commission. In cases where the statutory cap is not a limiting factor, reported cases display a range of fee enhancement multipliers for trustees that run up to the range of 2.57 and 2.76 times the lodestar.

One particularly relevant case involving a chapter 11 trustee, in which the statutory cap did not limit the court's consideration of the requested fee enhancement, is *Connolly v. Harris Trust Co. (In re Miniscribe Corp.)*, 257 B.R. 56 (D. Colo. 2000); *aff'd In re Miniscribe Corp.*, 309 F.3d 1234 (10th Cir. 2002). In *Miniscribe*, the bankruptcy court initially granted the chapter 11 trustee

a fee enhancement in the form of a 3.5 times multiplier for the trustee's lodestar, but the District Court lowered the multiplier to 2.57 on appeal, and the Tenth Circuit affirmed, noting that such a multiplier was consistent with other fee enhancement cases:

> The 2.57 multiplier, unchallenged by Harris Trust, finds some support in other lodestar multiplier cases. *See*, e.g., *In re Computron Software, Inc*., 6 F. Supp. 2d 313 (D.N.J. 1998) (applying, in securities fraud class action, lodestar test as cross check for common fund recovery and finding 2.5 multiplier "fair"); *In re Biskup*, 236 B.R. 332, 337 (Bankr. W.D. Pa. 1999) (applying fee that worked out to 2.76 multiplier for exceptional work by trustee in discovery and preservation of asset in bankruptcy case).

Miniscribe, 309 F.3d at 1245.

A fee enhancement is particularly appropriate in the context of a trustee's operation of a business. *See In re Residences at Bear Creek, Inc*., 2002 Bankr. LEXIS 1986 *11 (Bankr. N.D. Tex. June 13, 2002) (explaining, where chapter 7 trustee was authorized to operate the debtor's business, "[t]he lodestar does not reflect the compensation of the operator of a business. The lodestar also does not contemplate the risks of the operation of a business while in a fiduciary capacity.").

Some courts analyze and grant a fee enhancement without laying out a detailed analysis of the *Johnson* factors. For example, in *In re 1031 Tax Group*, *supra*, (a chapter 11 fee enhancement case concerning a trustee from the Southern District of New York), the court briefly listed the twelve *Johnson* factors justifying a 2.0 multiplier of the lodestar without any specific reference to how each specific *Johnson* factor applied to the analysis. Instead, the court generally described the challenges that faced the trustee, the nature of his efforts to reorganize the estate, the litigation undertaken and resulting settlements, and the standard bankruptcy tasks carried out by the trustee to address claims allowance, preferences, plan negotiations, and administrative claim requests, all of which justified the 2.0 multiplier on the lodestar. *See* 2009 Bankr. LEXIS 3875 at *8-11. By contrast, the court in *MACCO Props.*, *supra*, went through a specific analysis of each of the

Johnson factors, some in significant detail, before awarding a fee enhancement in the full amount of the statutory cap. *See* 540 B.R. at 855-60.

The *Johnson* factors provide guidance for analysis of a fee enhancement request, but not all of the factors remain relevant, as several, such as the first factor—time and labor involved—are "subsumed within the Court's lodestar analysis." *Miniscribe*, 241 B.R. at 749.

Other courts have also held that factors pertaining to the professional's skill and the complexity of the case only remain relevant in exceptional cases. *See Asarco, L.L.C. v. Jordan Hyden Womble Culbreth & Holzer, P.C. (In re Asarco, L.L.C.)*, 751 F.3d 291, 295 (5th Cir. 2014) ("Because the four *Johnson* factors related to attorney skill and legal complexity are presumably fully reflected in the lodestar, those four factors can only form the basis for a fee enhancement in 'rare and exceptional' circumstances."), *aff'd on other grounds, Baker Botts L.L.P. v. Asarco LLC*, 576 U.S. 121, 135 S.Ct. 2158, 192 L. Ed. 2d 208 (2015). The Trustee contends that the instant case is such a "rare and exceptional" case as it pertains to the duties required of this Trustee, and that each of these four factors pertaining to the professional's skill and the complexity of the case remains relevant to a calculation of the requested fee enhancement.

A court has "wide discretion" in applying the *Johnson* factors to enhance or reduce a trustee's commission request. *MACCO Props.*, 540 B.R. at 846. The following is an analysis of the *Johnson* factors that are relevant to the Trustee's request for a fee enhancement in this extraordinary and unique case.

1. The Novelty and Difficulty of the Issues

In *Johnson*, the Fifth Circuit explained that, by this factor, an attorney "should be appropriately compensated for accepting the challenge" of a difficult case. 488 F.2d at 718. In *MACCO Props.*, the bankruptcy court found this factor to weigh strongly in favor of an enhancement to a trustee's lodestar where the trustee of a holding company operated subsidiary

LLCs. *See MACCO Props.*, 540 B.R. at 855 (this factor "weighs strongly in favor of enhancing Trustee's compensation" where trustee's duties included "not only operating and administering MACCO's own assets, but also to operating, protecting, and preserving SPEs' property as well").

To say that this case has been "unique" would be an understatement. The Trustee had to step in to operate an international enterprise, in which he was not welcomed by equity, or initially by management. He has had to navigate competing proceedings, efforts to commandeer assets throughout the world, and efforts to undermine this chapter 11 case. All of this has been accomplished while Peru has undergone intense political conflict and change, amidst difficult weather and climate conditions that impacted the fishery harvest, and while having to fit the operations of this international conglomerate within the framework of a chapter 11 case filed in a United States Bankruptcy Court—much of that during an international pandemic.

From the outset of the Trustee's appointment, it was unclear whether these cases had any future in chapter 11, whether the value of the Peruvian Opcos *could* be preserved, and whether unsecured creditors would receive any value through the chapter 11 process. The Trustee contends that there is no comparable chapter 11 trustee appointment that involves such novelty and difficulty of issues. And the Trustee contends that he has met such novelty and difficulty of issues by providing creditors of these estates with the best outcome possible under the circumstances of these cases.

2. The Skill Required to Properly Perform the Services; and, The Experience, Reputation, and Ability of the Professional

With respect to the "skill required to properly perform the services, the Fifth Circuit in *Johnson* explained that "[t]he trial judge's expertise gained from past experience as a lawyer and his observation from the bench of lawyers at work become highly important in this consideration." *Johnson*, 488 F.2d at 718. Similarly, in *MACCO Props.*, the court found that this factor

"warrant[ed] compensation at rates in excess of those billed" where the court observed that the "Trustee's credentials are exceptionally suited to the issues that arose in this case, and his expertise and experience, as well as his integrity and patience, produced outstanding results." *MACCO Props.*, 540 B.R. at 855-56. Thus, at least to some extent, this factor asks the Court to apply its own observation and judgment to determine the skills applied by the Trustee.

This factor overlaps with the *Johnson* factor describing the "experience, reputation, and ability" of the professional, the latter of which pertains primarily to the propriety of rate charged with respect to the abilities of the professional. *See Johnson*, 488 F.2d at 718-19. In *MACCO Props.*, the bankruptcy court analyzed this factor to conclude that the trustee in that case had "demonstrated the highest caliber of stewardship under the most challenging circumstances." *MAACO Props.*, 540 B.R. at 857.

In this case, Mr. Brandt was uniquely qualified to take the helm of CFG Peru's business as Trustee, address the political and legal complications that arose, negotiate with creditors, political bodies and other authorities throughout the case, maintain existing management at the Peruvian Opcos, and restructure the non-debtor entities' operations and asset base. Despite his particular skills and qualifications, the Trustee's current billing rate of $875/hour is far below the rates that any similarly qualified professional would likely have charged for the same position. *See* Section VI.C.2.b, above.

As in *MACCO Props.*, this Trustee displayed skills, experience, and credentials that were "exceptionally suited to the issues that arose in this case," and similarly "produced outstanding results." *Id*. at 857. This is a factor that warrants "compensation at rates in excess of those billed" (*id*.), in the amount requested herein.

3. The Preclusion of Other Employment Due to Accepting the Case

This factor "involves the dual consideration of otherwise available business which is foreclosed because of conflicts of interest which occur from the representation, and the fact that once the employment is undertaken the attorney is not free to use the time spent on the client's behalf for other purposes." *Johnson*, 488 F.2d at 718.

The "conflicts of interest" aspect of this *Johnson* factor is not relevant to the instant case. But the effort required for the Trustee to fulfill his duties in this case had a preclusive affect that largely prevented the Trustee from accepting other engagements, including engagements that would have provided the Trustee with timely and certain fees, rather than the risks and delays inherent in the CFG Peru assignment. *See MACCO Props.*, 540 B.R. at 856 (finding this factor "weighs in favor of an enhancement of the lodestar" where case required 72% of trustee's time in the first nineteen months of the case, limiting options for other clients and work).

The Trustee was able to take on one substantial chapter 11 matter, as chapter 11 trustee for a railroad, which commenced at the beginning of 2020 and is continuing, but he has continued to devote himself to this case and a successful outcome. It is fair to say that William A. Brandt, Jr. is a professional who would have easily replaced the CFG Peru engagement with other work if this appointment had not been made. Instead, he has gone without compensation in this case for nearly five years, and gone without the vast majority of compensation that he could have earned over that time from other engagements. This factor also weighs in favor of an enhancement to the Trustee's lodestar.

4. The Customary Fee, and Whether the Fee Is Fixed or Contingent

A position such as chapter 11 trustee for a large, international fishing enterprise is not a position that can be handed off to the lowest bidder. The "bankruptcy court is not the bargain basement of the federal court system." *In re Ingersoll*, 238 B.R. 202, 208 (D. Colo. 1999).

As has been presented above, fee applications that have been filed by chapter 11 trustees appointed in other medium and large chapter 11 cases that are pending or recently were pending in the Southern District of New York demonstrate that this Trustee's hourly rate—before application of any fee enhancement—is far below the hourly rates charged by comparable trustees. *See* Section VI.B.2.b (comparison to rates charged in *In re Soundview Elite, Ltd., et al.*, Case No. 13-13098 (MKV), *In re Firestar Diamond, Inc*., Case No. 18-10509 (SHL), and *In re TS Employment, Inc*., Case No. 15-10243 (MG)). And, as presented above, the Trustee's hourly rate is about one-half of what his rate would be if he were to charge an hourly rate comparable to senior restructuring attorneys working on these same Chapter 11 Cases, even though he has far more years of experience in the restructuring field.

As briefed above, the requirement that a trustee's fees be viewed as a "commission" necessitates a more flexible approach to a fee enhancement than is the case with the applications of other professionals. The concept of a fee enhancement that effectively doubles an hourly rate is not unique to this Trustee's Fee Application. Houlihan has served as a financial advisor to the Ad Hoc Group, and subsequently the Plan Proponents, and is not engaged as a professional in these cases under Section 328. Yet Houlihan's fees that are requested in connection with Plan Confirmation—$4,625,000— will be nearly doubled by a $4 million success fee that Houlihan is entitled to receive under its engagement agreement upon the Effective Date of the Confirmed Plan. *See* Section VI.A, above.

5. Time Limitations Imposed by the Client or the Circumstances

The Fifth Circuit explained this factor in *Johnson* by stating that "[p]riority work that delays the lawyer's other legal work is entitled to some premium." *Johnson*, 488 F.2d at 718. This factor relates closely to the factor discussed above addressing the preclusion of other employment. The Trustee's administration of the CFG Peru estate and its entire enterprise required the Trustee's

primary and constant attention to this appointment, starting with flying to Peru the day after his appointment in an effort to address the INDECOPI proceedings, and continuing throughout with the matters addressed in Sections IV and V, above. This factor supports the Trustee's requested fee enhancement.

6. The Amount Involved and the Results Obtained

The meaning of "success" in any case, in the context of a trustee's fee application, diverges among all fact scenarios. As one court explained, having distilled cases on the subject:

> the fundamental inquiry is the same — have the trustee's or professional's actions in this case benefited the bankruptcy estate to such an admirable degree that a mere multiplication of the hours expended by the hourly rate fails to adequately compensate the individual for the work they have done?

In re New England Compounding Pharm., 544 B.R. 724, 737 (Bankr. D. Mass. 2016).

While is it common in bankruptcy cases to equate success with the recovery received by unsecured creditors, the analysis is more specific to the facts of each case. *See, e.g. In re The 1031 Tax Grp.*, 2009 Bankr. LEXIS 3875, at *11, 2009 WL 4806199, at *3 (awarding 2.0 multiplier in case that provided 34% dividend to unsecured creditors); *In re Chary*, 201 B.R. 783, 788 (Bankr. W.D. Tenn. 1996) (Chapter 7 trustee's counsel entitled to enhancement where remarkable efforts resulted in a 40% recovery to creditors); *Matter of Baldwin-United Corp.*, 79 B.R. 321, 347 (Bankr. S.D. Ohio 1987) (counsel entitled to enhancement where creditors will receive almost 60 cents on the dollar); *see also In re New England Compounding Pharm.*, 544 B.R. at 738 ("the outcome of some cases, particularly those which initially appear administratively insolvent, can be characterized as exceptional and surpassing expectations even where creditors receive less than full payment.").

In *Cardinal*, *supra*, unsecured creditors received stock in the reorganized company, just like unsecured creditors in this case, and this measure of success was combined with other factors

in the case to justify an enhanced commission of $2,100,000 plus stock in the reorganized company. *Cardinal*, 151 B.R. at 846.

In any case where creditors have not been paid in full, in cash, it could be argued that a fee enhancement is paid from funds that would be distributed to creditors. But as the court in *In re New England Compounding Pharm.* explained, in the course of dismissing the objection of the creditors who were "paying for it," dilution of distributions to creditors "is not, in and of itself, a reason to deny appropriate compensation." 544 B.R. at 738 ("In cases where creditors *are* paid in full, courts have understandably emphasized that fact in elaborating on the propriety of a fee enhancement. But the outcome of some cases, particularly those which initially appear administratively insolvent, can be characterized as exceptional and surpassing expectations even where creditors receive less than full payment.") (citation omitted).

The Trustee was appointed to take control of a single debtor's estate, but also to protect and enhance the value of its subsidiaries—primarily the Peruvian Opcos, entities with a value in excess of a billion dollars, yet facing a material risk in their then-pending insolvency proceedings. The Trustee has fulfilled that task under extraordinary circumstances, and the value that he preserved will now be distributed to creditors in the form of equity. The operation of those businesses over the course of the Trustee's stewardship resulted in disbursements of nearly $2 billion over the course of his five years of overseeing the operations of the business, and nearly $1 billion in cash and plan value distributed under the Confirmed Plan—all of which was materially threatened on the Petition Date. The Club Lenders stated to this Court at the outset of the case that they "remain[ed] very concerned that the valuable Peruvian Business is outside the Chapter 11 estates and that local management may take precipitous action to destroy the value under the

direction of the Debtors' sponsors." *See* Dkt. 13, p. 11, ¶ 11. The Trustee was appointed to preserve that value, and he has fulfilled that duty under extraordinary circumstances.

7. The "Undesirability" of the Case

The "undesirability" prong was developed in *Johnson* in the context of difficult civil rights cases, which can have a negative impact on an attorney's career. *Johnson*, 488 F.2d at 719. In chapter 11 bankruptcy cases, this prong has been interpreted to address issues that are unique to trustees such as the risks and delays associated with payment, the magnitude of the case, and the risks of failure that could impact future engagements. *See, e.g., MACCO Props.*, 540 B.R. at 859-60 (finding this factor "weighs overwhelmingly in favor of compensating Trustee as fully as the Section 326 compensation cap allows" where trustee had gone two years without any payment in the face of the "risk of inadequate compensation."); *Cardinal*, 151 B.R. at 848 ("the risk of nonpayment, the magnitude of the task to be performed, and the risk to Alix's professional reputation should he fail would have resulted in a much higher hourly rate to the client had the lodestar calculation been the sole contemplated basis for compensation.").

The "undesirability" of the CFG Peru trusteeship has been substantial and unique. The case has been inordinately complex and time consuming, involving frequent international travel, extensive litigation that included risks of personal liability, and numerous political challenges. It has been a case with lengthy payment delays (five years on fees), along with material payment risk. From the outset of the appointment, there have been parties suggesting that the Trustee's compensation could not address assets he administered if they were not property of the estate—even as those same parties had come into this Court to plea for the appointment of a trustee to protect their subsidiary asset value. While that issue has been fully addressed, above, it demonstrates the risks inherent in taking on the role of trustee for a parent company of an international enterprise. The degree to which that risk has been addressed and dismissed, or

applied in a manner that penalizes the Trustee, will establish how "undesirable" positions such as this trusteeship are regarded in future cases.

The international nature of the assets and subsidiaries furthered the undesirable nature of this case by exposing the Trustee to risks of personal liability. As this Court is well aware, a Hong Kong Court in which the Trustee sued HSBC refused to recognize the Trustee's appointment by this Court. The effect of that ruling, under Hong Kong law, was that the Trustee was litigating the case as an individual and risking personal exposure to claims arising from the litigation, as well as risking liability for the fees and costs that a losing party must pay under Hong Kong's judicial procedures. It was a risk that was unique to the particular circumstances of this case.

A successful resolution of a case does not erase the "undesirability" of the case that existed at the time of a trustee's appointment. Creditors sought the appointment of a trustee because of the risks facing the value that would satisfy their claims. But in so doing, they required the Trustee to take on substantial risks of his own, and they are risks that are properly compensated by adjustment of a trustee's commission.

8. Awards in Similar Cases

"The reasonableness of a fee may also be considered in the light of awards made in similar litigation within and without the court's circuit." *Johnson*, 488 F.2d at 719. The Court need look no further than the instant case for a comparison of a fee enhancement, in the form of the $4 million "success fee" that Houlihan is entitled to receive on the Effective Date of the Confirmed Plan, which is an approx. 2.0 multiplier of its $4,625,000 fee request.[120]

[120] *See* Dkt. 2582, *Creditor Plan Proponent's Motion for Entry of an Order Pursuant to the Creditor Plan Proponents' Chapter 11 Plan For CFG Peru Investments Pte. Ltd. (Singapore) and Section 1129(a)(4) of the Bankruptcy Code (I) Approving All Pre-Confirmation Fees, Expenses, Costs and Disbursements Incurred by Houlihan Lokey, Inc. and (II) Authorizing and Directing the Plan Administrator to Promptly Pay All Such Preconfirmation Fees, Expenses, Costs and Disbursements,* at p. 7, fn. 6.

Few other cases legitimately fall within the category of "similar litigation" for a proper comparison of awards. However, there are several cases that are sufficiently similar, though not as large in size or complexity, some of which have been discussed in detail above. *See Miniscribe*, 309 F.3d at 1237 (chapter 7 trustee was awarded commission of $1.8 million, calculated with a 2.57 multiplier of the lodestar, which represented 60% of the statutory cap of $3.044 million in a case that lasted approximately eight years); *In re 1031 Tax Group*, 2009 Bankr. LEXIS 3875, at *2-3 (chapter 11 trustee awarded commission calculated with 2.0 multiplier of the lodestar, for total allowed commission of just under $2 million, representing 70% of the statutory cap of $2,580,000, following two year appointment that returned a 34% distribution to unsecured creditors); *New England Compounding Pharm.,* 44 B.R. at 733 and 740 (in chapter 11 case that lasted approx. three years and did not pay unsecured creditors in full, trustee was granted total commission of $2.271 million, calculated by lodestar of $1.135 million multiplied by a 2.0 multiplier, and representing 39% of statutory cap).

The commission requested by this Fee Application is within the ranges of such cases, as the Trustee requests a fee enhancement in the form of a 2.09 multiple of his lodestar, for a total commission of $25,000,000. If this Court calculates the statutory cap based upon the MOR Distributions as well as value distributed under the Confirmed Plan, the Trustee's requested commission represents less than one third of the statutory cap, and less than 1% of total disbursements in these Chapter 11 Cases.

The Confirmed Plan may have been proposed by creditors, but it is a plan that could not have been proposed and confirmed had the Trustee not fulfilled his mandate to protect, preserve, and enhance the value of the Peruvian Opcos. There are many reasons why buyers did not offer to purchase the Peruvian-based fishing operations for a price that would satisfy all unsecured debt,

none of which are a reflection on the Trustee's performance. He is not responsible for climate conditions that impact the fishery, nor political considerations that may cause potential buyers to hesitate. But the fact that unsecured creditors are receiving equity interests in the very business that was embroiled in the INDECOPI Insolvency Proceedings on the Petition Date, and the same business that they sought to have protected by moving for the appointment of the Trustee, is a testament to the success of the Trustee's efforts.

The term "administratively insolvent" was not used frequently at the outset of this case. But it was a potential reality faced by CFG Peru and its subsidiaries given the ongoing insolvency proceedings of the Peruvian Opcos, the lack of cash in CFG Peru's accounts, and the competing appointments of liquidators. Despite the potentially fatal challenges that faced this corporate enterprise when the CFG Peru case was filed, the enterprise that remains today is one that has preserved value—retained management, retained primary assets, retained fishing quotas, etc.—while being entirely reorganized in terms of intercompany debts, liquidation of non-material assets, and resolution of material proceedings that were pending against many of the companies, both civil and criminal.

Under the external circumstances that plagued CFG Peru and its subsidiaries on the Petition Date, the manner in which this case has proceeded is the best outcome that could have taken place. And in every sense of the word, the Trustee's tenure has been a success.

Wherefore, for all of the reasons outlined above, the Trustee respectfully requests that he be granted a commission for his duties in this case in the total amount of $25,000,000.

E. The Trustee's Final Expenses Should Be Allowed for Payment

Section 330(a)(1) of the Bankruptcy Code provides that the Court may award to a trustee "reimbursement for actual, necessary expenses."

1. Summary of the Trustee's Reasonable Expenses During the Final Expense Period

Over the course of the Final Expense Period, the Trustee has incurred the following expenses:

CHARGES AND DISBURSEMENTS	AMOUNT
Airfare[121]	$2,357.44
Lodging	$838.62
Travel Meals	$119.66
Travel Meeting Expenses (cabs/limos	$214.00
Transportation (Parking, Gas, Tolls, etc.)	$84.00
Long Distance Telephone	$342.43
Conference Calls	$883.72
Courtcall Charges	$910.00
Messenger/Delivery Service	$724.95
Photocopies (@ $0.10)	$265.30
Postage	$84.27
Pacer Charges	$81.50
WiFi Charges	$16.00
Outside Attorney's Fees/Costs related to Fee Application	$286,127.50
Inhouse Attorney's Fees/Costs related to Fee Application	$84,296.00
Document Review Services to Remove NDA/Confidential Information	$32,036.63
TOTAL EXPENSES FOR SECOND EXPENSE PERIOD	$409,382.02
EXPENSES PREVIOUSLY APPROVED ON AN INTERIM BASIS	$355,051.93
TOTAL EXPENSES FOR FINAL APPROVAL	$764,433.95

2. The Trustee May Recover the Expenses of Preparing the Instant Fee Application

Among the expense items listed in the chart, above, are the Trustee's attorney's fees

[121] The Trustee's international airfare expenses reflect a voluntary 50 percent reduction in the amount of $2,357.44.

incurred in connection with the instant Fee Application. There are three components to these charges: (i) the Trustee's engagement of Baker & Hostetler, LLP ("Baker Hostetler") to prepare his Fee Application and to address issues pertaining to the Fee Application that arose during Plan confirmation negotiations—a necessity that arose when it became apparent that the Trustee's counsel throughout the case, Skadden, would become counsel to the Plan Administrator; (ii) the involvement of DSI's inhouse counsel in preparation of the Fee Application, to reduce the expenses that would be required if Baker Hostetler counsel were required to obtain the same historical knowledge; and (iii) the costs of a document review service that has reviewed the Trustee's time records to remove information subject to NDA's, confidential entries, and other such redactions.

An estate professional may properly recover attorney's fees in connection with the preparation of a fee application. *In Mesa Air Grp., Inc*., 449 B.R. 441, 445 (Bankr. S.D.N.Y. 2011) ("Since fee applications are required under the Bankruptcy Code, courts may award fees for time spent in actually preparing a fee application 'based on the level and skill reasonably required to prepare the application'.") (quoting 11 U.S.C § 303(a)(6)).

Consistent with applicable authority, the Trustee has *not* requested fees that he may incur defending his Fee Application. *See Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 135, 135 S. Ct. 2158, 2164, 192 L. Ed. 2d 208 (2015) (denying fees for defense of law firm's fee application).

Where an estate professional engages an attorney to assist him on an individual basis, such as the preparation of a fee application, there is no requirement to seek court approval of the engagement under Section 327, and the fees and expenses are properly reimbursed by the estate.

> [N]othing in the language of section 327 suggests that counsel retained to represent a retained professional in connection with its retention or fee

> applications should or even could be retained under section 327—that is work being done for the professional, not for the estate. And nothing in section 327 excludes such expenses as "necessary" where the work was required to comply with the Bankruptcy Code, Rules, or General Orders. … [W] where the fees are incurred in representing the professionals, and not in performing work for the debtor, section 327 does not apply.

In re Borders Group, Inc., 456 B.R. 195, 208-210 (Bankr. S.D.N.Y. 2011) (allowing trustee to recover reasonable attorney's fees and expenses of counsel retained in an individual capacity, for work done solely on his behalf rather than on behalf of debtor). Similarly, in *In re Geneva Steel Co.*, 258 B.R. 799 (Bankr. D. Utah 2001), the court permitted Blackstone, the debtor's financial advisor, to recover its attorney's fees in connection with fee applications, and responded to objections on the grounds that Blackstone's counsel had not been approved under Section 327 by stating that there is "no provision in the Code for a professional appointed pursuant to Section 327 to seek appointment of another professional to represent its interests at a fee hearing." *Id*. at 803. The court further observed that it would be "fundamentally unfair" to expect the debtor's financial advisor to have to accept representation by the estate's counsel, or shoulder the costs itself. *Id*. *See also In re Am. Preferred Prescription, Inc.*, 218 B.R. 680, 686 (Bankr. E.D.N.Y. 1998) (awarding debtor's accounting firm its attorney's fees for retention dispute, despite no court-approved application under Section 327, as engagement to protect its own interests which did not require Section 327 approval).

The Trustee—now the *former* Trustee, subject to entry of an order of discharge, and no longer represented by Skadden—properly engaged Baker Hostetler in his individual capacity to prepare his fee application and defend his interests during plan confirmation proceedings, and is properly compensated for his reasonable expenses in doing so, along with the fees of DSI inhouse counsel that he has incurred. Further, by engaging counsel that is not based in New York, the Trustee was able to obtain cost-effective rates for preparation of his Fee Application. The hourly

billable rate of David Richardson, the attorney who has done the bulk of the work on the Trustee's behalf, and who has twenty-eight years of restructuring practice, is $795.00/hour. It is a rate that is lower than the 2021 rate for a third-year associate employed by Skadden as counsel to the Trustee. *See* Dkt. 2237, p. 6 (3rd year associate at $865/hour). The fees incurred by DSI inhouse counsel represent 205.6 hours incurred by Cathy Vance, Esq. between June 1, 2021 and September 24, 2021, and whose billing rate is $410/hour. Invoices detailing the work performed by Baker Hostetler and DSI's inhouse counsel in connection with this Fee Application are attached to the Brandt Decl. as Exhibits L-Q (Baker Hostetler) and Exhibit R (DSI), respectively.[122]

The following chart lists the time entries for each Baker Hostetler professional:

NAME	YEAR OF ADMISSION	GROUP	RATE	HOURS	AMOUNT
Robert Julian (Partner)	1979	Restructuring	$1,285.00	27.4	$35,209.00
David Richardson (Counsel)	1993	Restructuring	$795.00	289.5	$230,152.50
Jason Blanchard (Associate)	2011	Restructuring	$785.00	0.50	$392.50
Tanye Kinne (Legal Asst.)		Restructuring	$415.00	0.90	$373.50
Subtotal:					$266,127.50
Estimated time for 9/17-10/1					$20,000.00
Total:					**$286,127.50**

The Trustee incurred $286,127.50 in attorney's fees arising from Baker Hostetler's preparation of this Application, and negotiations during the Plan confirmation process relating to the procedures and financial protections for the Trustee's Application, as well as $84,296.00 in

[122] Baker Hostetler's invoices detail fees in the following amounts: (i) for March 2021, $18,430.50; (ii) for April 2021, $18,667.00; (ii) for May 2021, $75,179.00; (iii) for June 2021, $71,651.00; (iv) for July 2021, $13,711.00; and (v) for August 2021, $50,522.00. Baker Hostetler has estimated that its fees and expenses for September based on time entries by mid-September ($17,967.00), plus an estimated further $20,000 through to the filing on October 1, 2021, will total $37,967.00, for total fees and expenses arising from this engagement of $286,127.50.

attorney's fees arising from the services of DSI inhouse counsel. The total amount of such fees—$370,423.50—equals 1.48% of the total commission requested by the Trustee in the Fee Application. Courts look to such a percentage comparison to determine reasonableness of fees incurred in preparation of a fee application, and find fees that fall in the range of 3-5% of the amount sought in the fee application to be reasonable. *See In re Mesa Air Grp.,* 449 B.R. at 445 (finding that the "3-5 % range [of the total fees sought] is a useful metric"); *In re Borders*, 456 B.R. at 212 (following *Mesa Air Grp*., and allowing fees for fee application preparation that equaled 3.5% of the requested fees).

Wherefore, the Trustee respectfully requests that his expenses arising from the Final Expense Period in the amount of $409,382.02 be approved and reimbursed, and that his total expenses of $764,433.95 (including his First Interim Expenses) be approved on a final basis.

VII.

RESERVATION OF RIGHTS

The Trustee reserves the right to supplement this Fee Application to seek amounts for fees or expenses incurred during the Fee Application Period but not yet reflected in the Trustee's records, or to amend the amounts listed herein to correct any bookkeeping errors. Delays in receiving invoices for certain expenses do occur, and in the event that a subsequent review reveals that the Trustee has incurred additional expenses during the Fee Application Period, which were not processed before the time of this Fee Application, the Trustee reserves the right to seek reimbursement of such additional expenses by subsequent application to the Court. The Trustee does not waive, and expressly reserves, his right to respond to any objections regarding this Fee Application. In the event that any objections to this Fee Application are filed, the Trustee reserves the right to seek payment for all or any part of the write-offs.

VIII.

COMPLIANCE WITH GUIDELINES

The Trustee believes that this Fee Application, together with the attachments hereto, substantially complies in all material respects with the Fee Guidelines. To the extent this Fee Application does not comply in every respect with the requirements of such Fee Guidelines, the Trustee respectfully requests a waiver for any such technical non-compliance.

IX.

NO PRIOR REQUEST

No previous request for the relief sought herein has been made to this Court or any other court.

X.

NOTICE

Notice of this Fee Application shall be given to (a) the U.S. Trustee; (b) creditors holding the fifty largest claims as set forth in the consolidated list filed with the Debtors' petitions; (c) U.S. counsel to Standard Chartered Bank (Hong Kong) Limited; (d) U.S. counsel to Coöperatieve Rabobank, U.A.; (e) U.S. counsel to the Ad Hoc Group; (f) U.S. counsel to Bank of America N.A.; (g) U.S. counsel to Malayan Banking Berhad, Hong Kong Branch; (h) U.S. counsel to Friedrich von Kaltenborn-Stachau, the insolvency administrator for the Pickenpack companies; (i) U.S. counsel to Delaware Trust Company, the Indenture Trustee under the Notes; (j) U.S. counsel to the Other Debtors; (k) the United States Attorney's Office for the Southern District of New York; (l) the Internal Revenue Service; (m) the United States Securities and Exchange Commission; (n) Jessie Ng on behalf of the Other Debtors; (o) U.S. counsel to the FTI Liquidators; (p) counsel to certain holders of the Notes and Club Loan, Kasowitz Benson Torres LLP; (q) counsel for Madison Pacific Trust Limited, Hogan Lovells US LLP; (r) the Plan Administrator; and (s) any party that has requested notice pursuant to Bankruptcy Rule 2002. A copy of this Application is also available on the Court's website.

XI.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that this Court enter an order (a) approving on a final basis the Trustee's commission pursuant to Sections 330(a) and 326(a) in the requested amount of $25,000,000 (the "Commission"); (b) authorizing the reimbursement of the Trustee's actual and necessary expenses in the amount of $409,382.02 (the "Final Period Expenses") incurred during the Final Expense Period; (c) approving on a final basis the $355,051.93 previously approved and paid in connection with the Trustee's First Interim Expense Request; (d) ordering payment of the Commission and Final Period Expenses by the parties identified in the Confirmed Plan as responsible for payment of such administrative expenses; and (e) granting such other and further relief as is just and proper.

Dated: October 1, 2021
New York, New York

Respectfully submitted,

By: /s/ William A. Brandt, Jr.

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Former Chapter 11 Trustee

Filed by:

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EXHIBIT A

Hearing Date: October 27, 2021 at 11:00 a.m. (Prevailing Eastern Time)
Objection Deadline: October 20, 2021 at 4:00 p.m. (Prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
CHINA FISHERIES GROUP LIMITED (CAYMAN), *et al.*,	**Case No.: 16-11895 (JLG)**
Debtors.[1]	**(Jointly Administered)**
In re:	**Chapter 11**
CFG PERU INVESTMENTS PTE. LIMITED (SINGAPORE),	**Case No. 16-11914 (JLG)**
Debtor.	**(Jointly Administered)**

[1] The Debtors are China Fishery Group Limited (Cayman), Pacific Andes International Holdings Limited (Bermuda), N.S. Hong Investment (BVI) Limited, South Pacific Shipping Agency Limited (BVI), China Fisheries International Limited (Samoa), CFGL (Singapore) Private Limited, Chanery Investment Inc. (BVI), Champion Maritime Limited (BVI), Growing Management Limited (BVI), Target Shipping Limited (HK), Fortress Agents Limited (BVI), Ocean Expert International Limited (BVI), Protein Trading Limited (Samoa), CFG Peru Investments Pte. Limited (Singapore), Smart Group Limited (Cayman), Super Investment Limited (Cayman), Pacific Andes Resources Development Limited (Bermuda), Nouvelle Foods International Ltd., Golden Target Pacific Limited, Pacific Andes International Holdings (BVI) Limited, Zhonggang Fisheries Limited, Admired Agents Limited, Chiksano Management Limited, Clamford Holding Limited, Excel Concept Limited, Gain Star Management Limited, Grand Success Investment (Singapore) Private Limited, Hill Cosmos International Limited, Loyal Mark Holdings Limited, Metro Island International Limited, Mission Excel International Limited, Natprop Investments Limited, Pioneer Logistics Limited, Sea Capital International Limited, Shine Bright Management Limited, Superb Choice International Limited, Toyama Holdings Limited (BVI), and Pacific Andes Enterprises (Hong Kong) Limited.

[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW APPROVING FIRST AND FINAL FEE APPLICATION OF FORMER CHAPTER 11 TRUSTEE WILLIAM A. BRANDT, JR., FOR COMPENSATION FOR SERVICES RENDERED AS CHAPTER 11 TRUSTEE FOR THE PERIOD FROM NOVEMBER 10, 2016 THROUGH AND INCLUDING JUNE 24, 2021, AND SECOND AND FINAL APPLICATION OF FORMER CHAPTER 11 TRUSTEE WILLIAM A. BRANDT, JR., FOR REIMBURSEMENT OF EXPENSES FOR THE PERIOD MARCH 1, 2020 THROUGH AND INCLUDING JUNE 24, 2021

The matter of the First and Final Fee Application of Former Chapter 11 Trustee William A. Brandt, Jr., for Compensation for Services Rendered as Chapter 11 Trustee for the Period From November 10, 2016 Through and Including June 24, 2021, and Second and Final Application of Former Chapter 11 Trustee William A. Brandt, Jr., for Reimbursement of Expenses for the Period March 1, 2020 Through and Including June 24, 2021, Dkt. ___ (the "Fee Application") of William A. Brandt, Jr., in his capacity as former chapter 11 trustee (the "Trustee") of CFG Peru Investments Pte. Limited (Singapore) ("CFG Peru") in the above-captioned chapter 11 cases, came on for hearing before the undersigned United States Bankruptcy Judge on October 27, 2021 (the "Hearing"). Appearances are as noted on the record.

By his Fee Application, the Trustee requests allowance and payment of a commission in the form of (i) a lodestar of $11,958,625.00 arising from the Trustee's time spent on the case and his hourly rate; (ii) a fee enhancement in the form of a 2.09 multiplier applied to the lodestar, for a total requested commission of $25,000,000; (iii) final approval of $355,051.93 in interim expenses previously allowed and paid; and (iv) approval and payment of allowable expenses in the amount of $409,382.02 incurred in the period March 1, 2020 through June 24, 2021.

The Court having read and considered the Trustee's Fee Application, the Declaration of William A. Brandt, Jr. and its attached exhibits [Dkt. ___] (the "Brandt Decl."), the Declaration of Patrick J. O'Malley and its attached exhibits [Dkt. ___] (the "O'Malley Decl."), and the

Trustee's proposed findings of fact and conclusions of law in support of his Fee Application, and all other pleadings and papers that have been filed and brought before the Court during this case, having presided over all hearings conducted in this case since its inception on June 30, 2016, and having heard and considered the arguments of counsel at the Hearing, hereby makes the following findings of fact and conclusions of law:

I.

FINDINGS OF FACT

A. The Chapter 11 Cases

1. On June 30, 2016 (the "Petition Date"), each of the debtors in the above-captioned cases (the "Debtors"), except Pacific Andes Resources Development Ltd. ("PARD"), Nouvelle Foods International Ltd. ("Nouvelle"), Golden Target Pacific Limited ("Golden Target"), Pacific Andes International Holdings (BVI) Limited ("PAIH (BVI)"), Zhonggang Fisheries Limited ("Zhonggang"), and the Additional Debtors (defined below) filed voluntary petitions under Chapter 11 of the Bankruptcy Code in this Court. On September 29, 2016, PARD filed its Chapter 11 bankruptcy petition. On March 27, 2017, Nouvelle and Golden Target filed Chapter 11 bankruptcy petitions. On April 17, 2017, PAIH (BVI) and Zhonggang filed Chapter 11 bankruptcy petitions. Lastly, on May 2, 2017, the following additional seventeen Debtors filed Chapter 11 bankruptcy cases: Admired Agents Limited, Chiksano Management Limited, Clamford Holding Limited, Excel Concept Limited, Gain Star Management Limited, Grand Success Investment (Singapore) Private Limited, Hill Cosmos International Limited, Loyal Mark Holdings Limited, Metro Island International Limited, Mission Excel International Limited, Natprop Investments Limited, Pioneer Logistics Limited, Sea Capital International Limited, Shine Bright Management Limited, Superb Choice International Limited, Toyama Holdings

Limited (BVI), and Pacific Andes Enterprises (Hong Kong) Limited, and on September 8, 2021, Pacific Andes Enterprises (Hong Kong) Limited filed a Chapter 11 bankruptcy case (collectively, the "Additional Debtors," and collectively with PARD, Nouvelle, Golden Target, PAIH (BVI), Zhonggang, and the other Debtors' Chapter 11 cases, the "Chapter 11 Cases").

2. No creditors' committee was appointed in any of these Chapter 11 Cases by the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee" or "UST").

3. The Debtors constitute part of a group of companies (collectively, the "Pacific Andes Group") that was once the world's twelfth largest fishing company. The Debtors consist principally of holding companies and defunct, non-operating companies. CFG Peru derives nearly all of its value from its indirect or direct interests in its subsidiaries, primarily Corporacion Pesquera Inca, S.A.C. ("Copeinca") and CFG Investment S.A.C. ("CFGI") (collectively, the "Peruvian Opcos"), both of which are located in Peru. The Peruvian Opcos operate an anchovy fishing and processing business and together control a significant percentage of the anchovy fishing quotas fixed by the Peruvian government.

B. Appointment of the Chapter 11 Trustee

4. Barely a week after the Petition Date, Coöperatieve Rabobank U.A. ("Rabobank"), Standard Chartered Bank (Hong Kong) Limited ("Standard Chartered Bank"), and DBS Bank (Hong Kong) Limited, which were referred to in the Chapter 11 Cases as the "Club Lender Parties" made clear their lack of confidence in the control of the Debtors by the Debtors' equityholders (the "Ng Family"). In their initial filing in this case, the *Club Lender Parties' Statement, Limited Objection and Reservation of Rights to the Debtors' First Day Motions, and Request for a Scheduling Conference* [Dkt. 13], the Club Lender Parties informed

this Court on page 5 of their brief that they intended to seek appointment of a trustee who would protect foreign assets of non-debtor entities, for recoveries in these cases:

> The Club Lender Parties intend to file a motion seeking the appointment of a trustee in these Chapter 11 cases to ensure independent fiduciary oversight to preserve the estates' equity stakes in a lucrative fishery business and processing plants in Peru operated by certain non-Debtor affiliates (the "Peruvian Business"). The Debtors' equity stakes in the Peruvian Business—which is operated by certain affiliates whose only connections to the United States are professional retainers and a New York bond indenture, and are the subject to coordinated so-called "involuntary" bankruptcy proceedings in Peru—comprise the single most valuable asset of the Debtors' estates, the proceeds of which will dictate recoveries in these chapter 11 cases.

The Club Lender Parties further expressed that they, and other significant creditors, remained "very concerned that the valuable Peruvian Business is outside the Chapter 11 estates and that local management may take precipitous action to destroy the value under the direction of the Debtors' sponsors." *See* Dkt. 13, p. 11. The Club Lender parties made good on their stated intention in short order, filing the *Club Lender Parties' Motion for the Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104(a)(2)* (the "Trustee Appointment Motion") on August 9, 2016. *See* Dkt. 57.

5. The Trustee Appointment Motion enjoyed broad support among the largest creditors in the Chapter 11 Cases, with statements filed in support of the appointment of a trustee filed by the ad hoc Senior Noteholders Committee (the "Noteholders") [Dkt. 62], Malayan Banking Berhad, Hong Kong Branch ("Maybank") [Dkt. 61], Bank of America [Dkt. 63], and the Pickenpack Administrator (defined below) [Dkt. 65]. Those in opposition to the Trustee Appointment Motion included the Peruvian Opcos and Sustainable Fishing Resources ("SFR") [Dkt. 103], whose objection was supported by the Declaration of Francisco Paniagua, the general manager and legal advisor to the Peruvian Opcos [Dkt. 99], and the Declaration of Gustavo

Miro-Quesada Milich, legal advisor to the Peruvian Opcos [Dkt. 104], as well as the other Debtors and the Ng Family.

6. In granting the Trustee Appointment Motion by its Memorandum Decision and Order *Granting Motion for the Appointment of a Chapter 11 Trustee* [Dkt. 203] (the "Order Appointing Trustee"), this Court expressed that a primary consideration was the acknowledged reality that CFG Peru would be unlikely to have any substantial cash assets within its estate:

> only minimal income is expected to be received in the ordinary course of business in the near term because, among other things, the CF Group debtors rely on the Peruvian Opcos for substantially all of their income, and any income from the Peruvian Opcos is speculative and may not occur anytime soon due to the involuntary petitions against the Peruvian Opcos in Peru.

Order Appointing Trustee, p. 43. In recognizing that the Peruvian Opcos represent the only available value for creditors, the Court noted that "a trustee is in the best position to evaluate the optimal way to maximize the value of the Peruvian Business and to determine how to realize that value for the benefit of the Debtors' estates and creditors." *Id*., at p. 48.

7. Despite CFG Peru's lack of cash, the Court noted the propriety of appointing the Chapter 11 Trustee solely for the CFG Peru estate, given its role as the entity that holds and controls the value that would be administered for the benefit of creditors:

> CFG Peru Singapore, is the 100% direct and indirect owner of the Peruvian Opcos. In the course of any restructuring (standalone or otherwise), that Debtor must, among other things, assess the value of its interests in the Peruvian Opcos and determine how to apply that value in furtherance of the restructuring. Thus, the appointment of a trustee for CFG Peru (Singapore) is particularly appropriate. … It will be incumbent upon the appointed trustee, in furtherance of his or her fiduciary duties, without limitation, to assess the highest and best use of those assets in the context of the resolution of these Chapter 11 cases and the means for the Debtors to realize maximum benefits from those assets.

Id., at pp. 48-49.

8. On November 10, 2016, the U.S. Trustee sought approval of William A. Brandt, Jr., as the chapter 11 trustee of CFG Peru pursuant to the Order Appointing Trustee. *See* Dkt. 218. On that same date, the Court entered an order approving the selection of Mr. Brandt as the Trustee. *See* Dkt. 219.

C. The Structure of CFG Peru, Its Subsidiaries, and Their Creditors

9. This Court explained in its Order Appointing Trustee that the Peruvian Opcos "are the most valuable assets" within the "China Fishery Group of companies," and that, in turn, "CFG Peru Singapore, is the 100% direct and indirect owner of the Peruvian Opcos." Order Appointing Trustee, pp. 8 and 48.

10. There are two primary creditor groups that hold the largest debts against the Peruvian Opcos: (i) the Club Lenders (comprised of the Club Lender Parties, China CITIC Bank International ("China CITIC"), and the Hongkong and Shanghai Banking Corporation ("HSBC")), and (ii) the Noteholders. The Noteholders' claims arise under that certain Indenture dated as of July 30, 2012, by and among CFGI, as issuer, the Senior Notes Trustee, and various guarantors, one of which is CFG Peru.[2] Any actions taken with respect to CFGI's primary obligation to the Noteholders relieved CFG Peru of prospective enforcement of its own guaranty obligation.

11. The Club Lenders, on the other hand, are not creditors of CFG Peru. The claims of the Club Lenders arise under a Facility Agreement dated March 20, 2014, which provided the Peruvian Opcos with $650,000,000 in financing.[3] Despite being creditors of CFG Peru's

[2] *See* Proof of Claim 3-1, and the Indenture attached thereto.
[3] *See* Dkt. 741, *Motion For Order Pursuant To Bankruptcy Code Sections 105(a), 363(b) And 1108, Authorizing And Approving (A) The Issuance Of New Promissory Notes Related To The Club Facility And (B) Taking All Desirable Or Necessary Corporate Governance Actions In Connection Therewith*, at ¶ 10.

subsidiary, rather than being direct creditors of CFG Peru, the Club Lender Parties sought the Trustee's appointment specifically to protect their interests in the non-debtor Peruvian Opcos.

12. The international structure of CFG Peru's subsidiaries and affiliates created a series of unique issues for the Trustee to address. CFG Peru had essentially no funds from any operations of its own on or since the Petition Date. Rather, nearly all funds in the CFG Peru accounts on the Petition Date were "pre-funded retainers" obtained from an affiliate.[4] The Peruvian Opcos, themselves, were embroiled in insolvency proceedings in Peru. Absent the efforts of the Trustee to bring order to the entire corporate enterprise, it is likely that these Chapter 11 Cases would have been converted to chapter 7, and the Peruvian Opcos would have languished in their pending insolvency proceedings. The appointment of the Trustee as chapter 11 trustee for CFG Peru was intended to prevent such a result, and preserve and protect the value of the Peruvian Opcos for the benefit of creditors.

D. Other Insolvency Proceedings

13. These Chapter 11 Cases were filed against a backdrop of insolvency proceedings and litigation, much of which from the outset threatened CFG Peru's potential to carry out a successful restructuring in this Court.

The Hong Kong and Cayman Islands Proceedings (Prepetition)

14. On November 25, 2015, one of the Club Lenders, HSBC, filed in a Hong Kong court a winding up petition and related application for the appointment of joint provisional liquidators against China Fisheries International Limited (Samoa) ("CFIL"). HSBC filed a like petition and application in a Cayman Islands court with respect to China Fishery Group Limited (Cayman) ("CFGL"). Both efforts were made on an *ex parte* basis and HSBC's unilateral

[4] *See* Dkt. 203, *Order Appointing Trustee*, at p. 6.

actions took the other Club Lenders by surprise given their prior holistic negotiations with respect to the Club Loan.[5] KPMG was appointed as joint provisional liquidators by both the Hong Kong and Caymans courts.

15. The proceedings in Hong Kong and the Cayman Islands were soon dismissed based in large part on the efforts of the Club Lender Parties working with the Ng Family and HSBC. Both sides, however, acknowledged that HSBC's efforts had a negative impact on the Peruvian Opcos due to what the provisional liquidators did when they arrived in Peru. As the Club Lender Parties stated:

> As a consequence of the protective measures in the December 2015 Undertaking having been implemented, thereby ensuring transparency, management scrutiny and independent oversight, the Club Lenders agreed to support the dismissal of the JPLs in both Hong Kong and the Cayman Islands. The intention being to remove the obvious stigma of an insolvency process depressing the value of the business.[6]

16. CFGL further explained how the consequences of HSBC's actions far exceeded an "obvious stigma" that was "depressing the value" of the Peruvian Opcos, in a filing before this Court:

> The appointment of the JPLs had an adverse impact on the Prepetition Sale Process and further exacerbated financial difficulties already being experienced by the CFGL Group by deterring key participants from collaborating with the Peruvian Business. Parties integral to the success of the Peruvian Business, including, among others, local banks, suppliers, employees, and crew, declined to continue doing business with the Peruvian Opcos in light of the JPLs' appointment. Moreover, potential investors in the Peruvian Business conveyed to the Pacific Andes Group's management team that they were no longer interested in purchasing the Peruvian Business in light of the JPLs' appointment and/or their interest was conditioned upon the JPLs being dismissed.[7]

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[5] Dkt. 58, *Declaration of Guy Isherwood in Support of the Club Lender Parties' Motion for the Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. 1104(a)(2)*, at ¶ 27.
[6] *Id*., at ¶¶ 33, 37.
[7] Dkt. 800, *Notice of Filing Chapter 11 Plan and Disclosure Statement of China Fishery Group Limited (Cayman), Pacific Andes Resources Development Limited (Bermuda), and Certain of Their Affiliated Debtors*, at p. 24.

17. Shortly after his appointment, the Trustee sought Bankruptcy Rule 2004 discovery from HSBC, which the Court approved over HSBC's objection.[8] HSBC objected to the Trustee's selection of special counsel in the dispute, appealed the Court's approval of the Trustee's 2004 motion, sought a stay of discovery pending appeal, and sought to place the dispute before a Hong Kong court.

18. The Trustee obtained his requested discovery from HSBC, and subsequently commenced an adversary proceeding against HSBC alleging, among other things, tortious interference with the Peruvian Opcos' business and equitable subordination, or disallowance of HSBC's claims under the Club Loan.[9] By the time the Plan Proponents (defined below) filed their proposed plan of reorganization with the Court, the dispute remained unresolved, and both the Trustee and HSBC agreed to mediation with the Honorable Sean H. Lane as mediator.[10] The dispute was settled on the eve of this Court's Confirmation Hearing, with HSBC agreeing, among other things, to a $25 million reduction of its claim, including a $11.5 million reduction of its claim for attorney fees.[11]

The BVI Liquidation Proceedings

19. Both before and after the Petition Date, a series of applications was filed before the High Court of Justice of the British Virgin Islands (the "BVI Court") requesting the appointment of provisional liquidators. The most significant of these proceedings began on September 26, 2016, when Bank of America applied for the appointment of provisional

[8] *See* Dkt. 634, *Memorandum Decision and Order Granting Trustee's Motion for Order Authorizing Issuance of Subpoenas to Hongkong Shanghai Banking Corporation Limited*.
[9] Adv. Proc. No. 18-01575.
[10] *See* Adv. Proc. No. 18-01575, Dkt. 58, *Stipulation and Order (A) Referring Matters to Mediation and (B) Governing the Disclosure of Confidential Documents*.
[11] *See* Dkt. 2556, Exhibit 1, *Stipulation and Consent Order (A) Dismissing Adversary Proceeding with Prejudice Pursuant to Fed. R. Civ. P. 7041(a)(2) and Fed. R. Bankr. P. 7041 and (B) Reflecting Settlement By and Among William A. Brandt, Jr., Chapter 11 Trustee, and the Hongkong and Shanghai Banking Corporation Limited* (the "HSBC-HK Stipulation").

liquidators for Pacific Andes Enterprises (BVI) ("PAE (BVI)"), Parkmond Group Limited ("Parkmond") and PARD Trade Limited ("PARD Trade"). A month later, Rabobank and Standard Chartered Bank sought similar relief with respect to PAE (BVI). In December 2016 and January 2017, applications for the appointment of provisional liquidators were filed against Europaco Limited (BVI) ("Europaco") by a trade creditor and Maybank, respectively. *See* Brandt Decl. at ¶ 33.

20. The BVI Court appointed Nicholas James Gronow and two other individuals as liquidators (the "FTI Liquidators")[12] for PAE (BVI), Europaco, Parkmond, and PARD Trade. Through liquidation applications to the BVI Court in the names of entities already within their control, the FTI Liquidators subsequently were appointed to serve in the same capacity for Richtown Developments Ltd. and Metro Win, Inc., Ltd. (Hong Kong), and for five additional entities that were outside the Pacific Andes Group, and alleged to be controlled by members of the Ng Family, that were purported to be participants in trade finance fraud[13] (together with PAE (BVI), Europaco, Parkmond, and PARD Trade, the "FTI Liquidation Entities"). Additionally, the FTI Liquidators replaced the directors of certain Pacific Andes Group entities—which were wholly owned subsidiaries of some of the FTI Liquidation Entities—with FTI Director Services, an affiliate of FTI Consulting, Inc.[14]

[12] Although the joint provisional liquidators are affiliated with FTI Consulting, Inc., it had no involvement in the BVI Liquidation Proceedings or the later affiliated proceedings in Hong Kong. The use of "FTI" is for convenience in identification of the liquidators and proceedings related to them and has been used throughout the CFG Peru case, including in Court filings.

[13] The non-Pacific Andes Group entities, sometimes referred to as "Agent Companies," are Solar Fish Trading Ltd. ("Solar Fish"), Palanga Ltd. ("Palanga"), Zolotaya Orda Ltd. ("Zolotaya"), Alatir Ltd. ("Alatir") and Perun, Ltd. ("Perun").

[14] The Pacific Andes Group entities to which FTI Director Services was appointed include Europaco (AP) Limited (BVI), Europaco (BP) Limited (BVI), Europaco (EP) Limited (BVI), Europaco (GP) Limited (BVI), New Millennium Group Holdings, Ltd. (BVI), Pacos Processing Ltd. (Cayman) and Pacos Trading Ltd. (Cayman).

21. The FTI Liquidators and FTI Director Services filed more than 200 proofs of claim in the Chapter 11 Cases, including against CFG Peru, totaling some $4.2 billion.[15] Nearly all of these claims rested on the same foundation: allegations of a massive trade finance fraud scheme. The FTI Claimants asserted that PAE (BVI) and Europaco obtained approximately $5.57 billion in trade finance facilities from various financial institutions between September 2010 and August 2015. Instead of using those funds to supply fish (as represented), the FTI Liquidators claimed that PAE (BVI) and Europaco allegedly circulated the funds through various companies within the Pacific Andes Group and among so-called "Agent Companies" allegedly controlled by the Ng Family, and then recirculated them back to PAE (BVI) and Europaco. As discussed in detail below, the claims lodged against CFG Peru were abandoned after the Trustee challenged their validity, and the FTI Liquidators chose instead to pursue the same claims against CFGI in a Hong Kong court.

The Peruvian INDECOPI Proceedings

22. INDECOPI is the administrative and regulatory authority that, among other things, adjudicates and supervises the restructuring and liquidation of Peruvian companies that are subject to proceedings under Peruvian insolvency law.

23. On the Petition Date, several creditors of the Peruvian Opcos commenced involuntary proceedings against each of the Peruvian Opcos and against SFR, a subsidiary of CFG Peru and direct affiliate of CFGI. CFGI, Copeinca and SFR, none of which were able to seek direct relief from this Court because of restrictions under Peruvian law, filed voluntary petitions with this Court on the same date seeking recognition of the involuntary INDECOPI

[15] *See* Dkt. 1650, letter dated July 16, 2019, from Clifford Chance to the Hon. James L. Garrity, Jr.

proceedings pursuant to Chapter 15 of the Bankruptcy Code. *See* Order Appointing Trustee, pp. 30-31.

24. Upon his appointment, the Trustee worked closely with the Peruvian Opcos' management, and their legal and financial advisors, and consulted with political contacts and civic leaders with whom he is acquainted, to facilitate a consensual resolution, recognizing that litigating the petitions before INDECOPI in Peru and the Chapter 15 recognition petitions in New York would be both costly and detrimental to the fledgling relationship between the Trustee and local management, as well as local creditors and Peruvian civic leaders, and ultimately, to the success of the CFG Peru case. Through these contacts and those made with INDECOPI officials, and with the capable assistance provided by local counsel in Lima, by senior members of the Peruvian Opcos' management team, and by the Trustee's counsel, the Trustee was able to initiate, sustain and, importantly, resolve the issues connected with the INDECOPI petitions.

25. On November 23, 2016 – just seven days after the Trustee's appointment – the Trustee filed with this Court the *Stipulation By and Among the Chapter 11 Trustee, CFGI [sic] Investment S.A.C., Corporacion Pesquera Inca S.A.C., and Sustainable Fishing Resources S.A.C.* (the "INDECOPI Stipulation"). *See* Dkt. 244. The INDECOPI Stipulation provided for the withdrawal of the voluntary INDECOPI proceedings, the dismissal of the involuntary proceedings upon satisfaction of the petitioning creditors' debts, the withdrawal of the Chapter 15 petitions filed in this Court and, critically, a commitment by the Trustee and management to work collaboratively toward their shared goals of restoring and preserving the health and viability of the Peruvian Opcos.

26. Complete resolution of the INDECOPI proceedings required further action by the Trustee, as one of the Club Lenders, China CITIC Bank International ("China CITIC"), without

notice to other parties, had filed a further involuntary proceeding with INDECOPI against the Peruvian Opcos in September 2016, prior to the Trustee's appointment. The Trustee filed a motion against China CITIC to enforce the automatic stay and to have the bank's filing declared void *ab initio*, upon which China CITIC withdrew the remaining INDECOPI proceedings.[16]

27. In an effort to prevent any further mischief, and to protect CFG Peru's interests in the Peruvian Opcos, the Trustee moved this Court for an order confirming that the automatic stay applied to any collections actions pursued in Peru by holders of the Club Loan facility and the Notes, and by CFG Peru's affiliate, CFIL.[17] The Court granted the Trustee's request,[18] which allowed the Trustee to focus on restructuring the operations of the Peruvian Opcos, preserve their value, and restore profitability.

The Singapore Proceedings

28. Debtor PARD, an indirect parent of CFG Peru, did not enter Chapter 11 on the Petition Date. It instead opted, along with three non-debtor subsidiaries,[19] to restructure under the Singapore Companies Act. After PARD failed to persuade the Singaporean court to extend a moratorium (similar to a bankruptcy stay) beyond that country's borders, PARD abandoned the effort and entered Chapter 11.

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[16] *See* Dkt. 268, *Chapter 11 Trustee's Motion for the Entry of an Order Pursuant to Sections 105(a) and 362 of the Bankruptcy Code to Enforce the Automatic Stay,* and Dkt. 279, *Notice of Withdrawal of Chapter 11 Trustee's Motion for the Entry of an Order Pursuant to Sections 105(a) and 362 of the Bankruptcy Code to Enforce the Automatic Stay Scheduled for December 21, 2016 at 11:00 a.m*.

[17] *See* Dkt. 743, *Motion of William A. Brandt, Jr., Chapter 11 Trustee for CFG Peru Investments Pte. Ltd. (Singapore), Pursuant to 11 U.S.C. §§ 105(a), 362(a), and 541(a)(1), for Entry of an Order Confirming Applicability of Automatic Stay to Any Collection Actions Pursued in Peru by Holders of Club Facility and Senior Notes Claims and by Debtor CFIL against Peruvian Operating Companies*.

[18] *See* Dkt. 809, *Order Granting Motion of William A. Brandt, Jr., Chapter 11 Trustee for CFG Peru Investments Pte. Ltd. (Singapore), Pursuant to 11 U.S.C. §§ 105(a), 362(a), and 541(a)(1), for Entry of an Order Confirming Applicability of Automatic Stay to Any Collection Actions Pursued in Peru by Holders of Club Facility and Senior Notes Claims and by Debtor CFIL against Peruvian Operating Companies*.

[19] The three subsidiaries are PAE (BVI), Parkmond and Pacific Andes Food (Hong Kong) Limited.

The Germany Proceedings (Prepetition)

29. In December of 2015, a group of companies commonly referred to as the "Pickenpack Group"[20] requested that the Local Court of Lüneberg, Germany, open an insolvency proceeding under the German Insolvency Act. Based largely on a report by the preliminary insolvency administrator, the German Court found the Pickenpack Group to be insolvent and over-indebted, and appointed the preliminary insolvency administrator as Insolvency Administrator over the Pickenpack Group assets (the "Pickenpack Administrator"). *See* Brandt Decl. at ¶ 44.

30. The Pickenpack Administrator filed numerous proofs of claim in these Chapter 11 Cases, including claims against CFG Peru that totaled $283 million. Upon review of the claims, the Trustee engaged in discussions with the Pickenpack Administrator's New York counsel to address his concerns about the claims. Because of the Trustee's handling of these claims, they were all withdrawn without the need for any litigation, benefitting the estate with the withdrawal of $283 million in claims.[21]

E. Disclosure Statements and Plans

31. On March 16, 2021, Burlington Loan Management DAC and Monarch Alternative Capital LP, solely on behalf of certain advisory clients and related claimants (together, the "Plan Proponents" and each a "Plan Proponent") [22] filed the *Creditor Plan Proponents' Chapter 11 Plan For CFG Peru Investments Pte. Ltd. (Singapore) And Smart*

[20] The Pickenpack Group is comprised of Pickenpack Europe GmnH, Pickenpack Production Lüneberg GmbH, Pickenpack Holding Germany GmbH, and TST The Seafood Traders GmbH. None of the Pickenpack Group members are Pacific Andes Group entities. PA Capital Investment Limited, a direct subsidiary of Debtor PAIH (BVI), holds a 19 percent stake in Pickenpack and either PAIH (BVI) or PAIH (Bermuda) is alleged to be liable to the Pickenpack Group based on letters of comfort provided to the Group.

[21] *See* Dkt. 1498, *Withdrawal of Claim*, pp. 1-16.

[22] "Ad Hoc Group" means the ad hoc committee of (i) Noteholders holding CFGI's 9.75% senior notes due 2019 (the "Notes"); and (ii) Club Lenders under the $650 million term loan made pursuant to that certain facility agreement, dated March 20, 2014 (the "Club Loan"), initially represented by Kirkland & Ellis LLP as counsel.

Group Limited (Cayman) [Dkt. 2381] (the "Proposed Plan") and the *Disclosure Statement for The Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore) and Smart Group Limited (Cayman)* [Dkt. 2382].[23] By order entered April 23, 2021,[24] the Court approved the adequacy of the disclosure statement and granted other related relief.

32. As is common in complex chapter 11 cases, robust negotiations between and among parties followed the filing of the Proposed Plan.[25] The Trustee was not a Plan Proponent, but played an active part in negotiations that resolved critical issues for confirmation, refined terms, and resolved disputes. For example, the Trustee continued negotiations with the Ng Family and the other Debtors toward an agreement that would resolve certain issues critical to the Proposed Plan, including issues connected with the Netting Agreement (defined below) and the eventual resolution of the other Debtors' cases, which, without CFG Peru as a debtor, would likely languish on the docket for an indeterminable period of time. As the Trustee explained at the April 21, 2021, hearing:

> [O]ne of the key aspects of getting the case to this point was the netting agreement, which I tend to view as one of the harder negotiations that occurred during the course of this case, and to be largely voluntary on behalf of the Ngs and Pacific Andes in exchange for an effort to try and market the companies. In exchange for those issues, I began a dialogue with the Ngs and Pacific Andes after the FTI settlement regarding what it would take to both conclude this with respect to either the Creditor Plan or a market test, which I would prefer, or a sale process.
>
> Your Honor, I'm pleased to report that after extensive negotiations through counsel and with the principals, the estates controlled by myself have reached a settlement with the Ngs and the Pacific Andes debtors which I believe will allow, among other things, the funding of a plan by them for

[23] *See* Dkts. 2381, *Proposed Plan*, and Dkt. 2382, *Disclosure Statement*. *See also* Dkt. 2384 (Plan Proponents' motion for approval of the disclosure statement, filed concurrently therewith).

[24] *See* Dkt. 2441, *Order Approving (I) the Adequacy of the Disclosure Statement; (II) Solicitation and Notice Procedures; (III) Form of Ballots and Notices in Connection Therewith; and (IV) Certain Dates with Respect Thereto*.

[25] The negotiations did not all involve the Trustee. A key example is discussions in which the Plan Proponents engaged with Richard Morrissey to resolve concerns the U.S. Trustee had regarding certain aspects of the plan.

> the other 37 or so Debtors so that at some point altogether (sic), all of this will leave your Court at about the same time.

See Dkt. 2459, Transcript of Proceedings for April 21, 2021, at pp. 25-26.

33. The Trustee's negotiations with the Ng Family members were complicated by factors such as the late-process discovery that J.T. Ng had caused CFGI to issue a guarantee of an alleged debt owed by a subsidiary of CFGI to Morskoy Veter, a company believed to be affiliated with a longtime business associate of the Pacific Andes Group. *See* Dkt. 2477. However, the net effect of what the Trustee initiated was a settlement reached with the Ng Family, which was a necessary step for plan confirmation to proceed.

34. In addition, and in advance of the plan confirmation process, the Trustee engaged in a final marketing process to ensure that the creditors' Proposed Plan represented the best option for CFG Peru's creditors, and that there were no bidders at the necessary threshold to pay off, *inter alia*, the Peruvian Opcos' third-party debt in connection with the CFG Peru Sale.

35. The Trustee also worked to finalize a resolution of the HSBC litigation pending before this Court and in Hong Kong, discussed above, to ensure that the litigation would not imperil the plan confirmation process. The Trustee's negotiations worked in tandem with negotiations between HSBC and the Plan Proponents, who needed HSBC's support to confirm their Proposed Plan (and to meet creditor consent requirements in the scheme proceedings in Singapore and the United Kingdom that would follow plan confirmation) given the percentage of Club Lender debt held by HSBC. *See* Brandt Decl. at ¶ 27.

36. On June 9 and 10, 2021, this Court held a hearing on confirmation of the Plan Proponents' Proposed Plan (the "Confirmation Hearing"). During the adjournment, the Plan Proponents filed a further amended plan and, on June 10, 2021, the Court entered its *Order Confirming Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd.*

(Singapore) [Dkt. 2569] (the "Confirmation Order"), by which it confirmed the final version of the Confirmed Plan.[26]

37. The complete terms of the Confirmed Plan are beyond the scope of these Findings of Fact and Conclusions of Law, but several terms are particularly relevant, most material of which are those that pertain to distribution of CFG Peru's direct and indirect equity interests in the Peruvian Opcos (the "CFGI Equity Interests").

38. The Confirmed Plan implements a Restructuring Support Agreement (the "Creditor RSA") that is Exhibit A to the Confirmed Plan, and proposes a transaction to be implemented whereby the CFGI Equity Interests will be distributed to Noteholders and the Club Lenders.[27] The Plan, in turn, provides for satisfaction of the claims of Noteholders by the fulfillment of this term of the Creditor RSA, as the Noteholders are a class of creditors of the CFG Peru estate by the CFG Peru guarantee of CFGI's primary obligations to the Noteholders.[28] The evidence submitted by the Plan Proponents in support of their Proposed Plan valued the CFGI Equity Interests at $850 million.[29]

F. The Trustee's Accomplishments

39. The accomplishments of the Trustee begin with the events described above, which demonstrate the legal and procedural context of these Chapter 11 Cases at the time of the Trustee's appointment, the challenges that the Trustee and CFG Peru faced from competing proceedings in various jurisdictions (including the INDECOPI proceedings and JPL

[26] Dkt. 2564, *Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* (defined above as the "Confirmed Plan").
[27] *See* Exhibit A to Confirmed Plan, *Creditor RSA*, at p. 1, Recital C.
[28] *See* Confirmed Plan, Article III.B.3.
[29] *See* Dkt. 2542, *Declaration of Bradley Jordan in Support of the Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* at ¶¶ 14 and 23. The Trustee accepts this valuation solely for purposes of this Fee Application, as it demonstrates a value that has been accepted by this Court for Plan confirmation purposes, and demonstrates that the statutory cap on Plan distributions alone exceeds the total commission requested by this Fee Application.

appointments), and the challenges that other parties presented to CFG Peru's reorganization in the form of excessive proofs of claim, proceedings filed in other jurisdictions, and efforts to stall the reorganization in this Court, all demonstrate substantial accomplishments by this Trustee before the structural challenges of CFG Peru's restructuring efforts are considered. The Trustee was appointed for the chapter 11 estate of a foreign holding company that had no cash of its own, and where the sole subsidiaries of value were Peruvian entities facing competing liquidation proceedings, and which therefore had no cash to contribute to the parent, CFG Peru. *See* Order Appointing Trustee, p. 43. The Trustee could not have fulfilled his mandate by sitting back as a passive shareholder, but had to assert himself as the effective Chief Executive Officer of an international fishing enterprise in order to preserve and protect the value of the Peruvian Opcos. Although a hoped-for purchaser for the CFGI Equity Interests did not materialize, the mere fact that the CFGI Equity Interests provided $850 million of value to be disbursed to creditors under the Confirmed Plan, plus over two hundred million dollars of cash payments, four years after the Peruvian Opcos which constitute such value were facing liquidation in the INDECOPI proceedings, among a myriad of other threats and challenges discussed herein, demonstrates that the Trustee accomplished the primary task that he was appointed to fulfill under extraordinary circumstances.

40. In addition to the legal challenges that the Trustee faced in this Court and in proceedings filed in other jurisdictions, the Trustee reorganized CFG Peru's enterprise, addressed difficult issues of financing and intercompany debts, and preserved a corporation not merely by its form, but by its management and employees.

Ensuring a Transparent, Collaborative Process

41. It is evident to this Court from the manner by which the Trustee operated these Chapter 11 Cases, by the information that he disclosed to this Court, and by his filings in the CFG Peru Case, that the Trustee intended from the outset to provide transparency to the process.

42. The docket of these Chapter 11 Cases demonstrates that creditors of the Peruvian Opcos looked to the CFG Peru estate and the Trustee's efforts to obtain recoveries on their claims against the Peruvian Opcos, and that these same creditors of subsidiary entities played an active role in the CFG Peru chapter 11 case to ensure that the Trustee's efforts were directed toward the preservation and protection of those Peruvian Opcos for their benefit. Transparency was therefore a critical feature of any trustee's service in such circumstances, and was accomplished throughout this Trustee's service.

43. Such transparency included the Trustee's disclosure of financial information pertaining to CFG Peru and each of its direct and indirect subsidiaries in the Monthly Operating Reports (the "MORs") filed in these Chapter 11 Cases. Many of the transactions disclosed in the MORs were brought before this Court for approval and/or public disclosure, such as the sales of fishing vessels, real property, and other assets of the Peruvian Opcos and their related entities (as described more fully, below). Additionally, as addressed below, quarterly UST fees were paid based upon the operations of the entire CFG Peru enterprise, as fully disclosed in the MORs. Disclosure of only those disbursements made from the accounts of CFG Peru alone would not have provided this Court or creditors with a complete understanding of the entire business that the Trustee was overseeing in his capacity as chapter 11 trustee of a parent holding company.

44. In addition to public filings and statements made in these Chapter 11 Cases, it is clear from the record that the Trustee took many additional steps to ensure a transparent process for creditors of all Debtors and their affiliates, such as resurrecting audit practice for the Peruvian Opcos by working with Deloitte in Peru to obtain prompt audits for 2015, 2016 and 2017, and ensured annual compliance thereafter, and obtaining tax certificates for the Peruvian Opcos from Peruvian taxing authorities to provide clarity in subsequent negotiations and sale efforts. In addition, the establishment and maintenance of a virtual data room ("VDR") provided prospective purchasers and creditors (including Plan Proponents) with critical information about the Debtor and the nature and value of its subsidiary assets.

Restoring and Strengthening of the Peruvian Opcos

45. The Trustee's resolution of the INDECOPI petitions, discussed above, was a critical first step in the Trustee's fulfillment of his duty to preserve and protect the value of the Peruvian Opcos. It has been plain to this Court by the nature and detail of the Trustee's presentations that he has taken the leading role in a restructuring of the Peruvian Opcos' finances and operations consistent with the terms of his appointment.

46. As the Trustee explained in his declaration filed in support of his Fee Application, his role required that he become highly knowledgeable in a short space of time about the highly regulated fishing industry in Peru, the fishmeal and fish oil production process, and the global market for the Peruvian Opcos' products, along with an understanding of applicable international and maritime laws, and with the assets of the CFG Peru subsidiaries, such as processing plants and fishing vessels. *See* Brandt Decl. at ¶ 52.

47. The Trustee, with the assistance of Development Specialists, Inc. ("DSI"), which served as accountant to the Chapter 11 Trustee, conducted an in-depth review of the Peruvian

Opcos' books and records, audit reports, industry reports and myriad other sources to understand underlying issues with the Peruvian Opcos' operations that were exacerbated by the effects of El Niño and HSBC's aggressive collection efforts. Such efforts permitted the Trustee to take steps to rationalize and restructure the assets of the Peruvian Opcos in a manner that would stabilize the businesses and restore their profitability. *See* Brandt Decl. at ¶¶ 52-53. Had the Trustee adopted the position that his role was solely to administer the stock interests of the parent company, it is unlikely the Peruvian Opcos would hold any value for creditors in this case, or in any proceedings. The Trustee oversaw the establishment of a computer system for the Peruvian Opcos that were separate and independent from operations of the Ng Family-owned other Pacific Andes Group entities in Hong Kong to preserve the integrity of the data. The establishment of a separate computer system in Peru ensured control over data entry and certainty over data such as receivables and payables, ensuring the integrity of financial information shared with this Court, with creditors, and with prospective purchasers. *See* Brandt Decl. at ¶ 55.

Funding the CFG Peru Chapter 11 Case

48. One of the first issues that required the Trustee's attention was funding for administration of the case. As a holding company, CFG Peru had no material assets other than its equity interests in the Peruvian Opcos and had no income of its own to pay even the basic requirements of a chapter 11 debtor, such as quarterly U.S. Trustee fees or the fees of professionals engaged in the case. *See* Order Appointing Trustee, p. 43.

49. The Peruvian Opcos were also without financing because their $125 million line of credit had been revoked because of the prepetition appointment of the JPL liquidators and the INDECOPI filings. *See* Order Appointing Trustee, p. 20, fn. 20. The Peruvian Opcos could not have commenced a fishing season without financing as their business is typically financed by a

line of credit that is repaid when the catch is processed and sold. Even the primary need to resolve the INDECOPI proceedings required cash, as any resolution would necessarily involve satisfying the petitioning creditors' claims. *See* Brandt Decl. at ¶ 56.

50. The Trustee, with the assistance of his DSI professionals, attempted to obtain financing for the Peruvian Opcos from traditional lenders, as well as from the Club Lenders, but was unable to obtain financing. Instead, the Trustee turned to the Peruvian Opcos' longstanding customers in Japan and China to obtain financing in anticipation of their future purchases. The Trustee's negotiations were successful enough to permit the Peruvian Opcos to continue operations and to begin accumulating cash that would soon permit them to operate without any third-party financing, such that the Trustee managed to operate a billion-dollar business for more than four years without traditional outside financing. *See* Brandt Decl. at ¶ 56.

51. In order to address CFG Peru's financing requirements to avoid administrative insolvency, the Trustee negotiated a loan agreement with CFGI pursuant to Section 364(c)(1) (the "Superpriority Loan")[30] that would be funded, in part, by proceeds of sales of SFR assets, primarily fishing vessels. The Trustee's efforts to obtain this Court's approval of the Superpriority Loan met with resistance. Although the Trustee negotiated a resolution and received approval of the Superpriority Loan from the Court,[31] the order was without prejudice to any claims the Indenture Trustee may have against, among others, the proceeds of assets belonging to CFGI, Copeinca or SFR.

[30] *See* Dkt. 548, *Motion For An Order (I) Authorizing The Chapter 11 Trustee To Obtain Intercompany Postpetition Financing On A Superpriority Administrative Claim Basis, And (II) Granting Related Relief.*

[31] *See* Dkt. 585, *Order (I) Authorizing the Chapter 11 Trustee to Obtain Intercompany Postpetition Financing on a Superpriority Administrative Claim Basis and (II) Granting Related Relief*, entered June 12, 2017.

Instituting a Sale Process for the CFGI Equity Interests

52. The Trustee established a process to sell the CFGI Equity Interests, including the acquisition and review of due diligence information, completion of a preliminary analysis of the market, identification of potential buyers, consideration of alternative means for selling the Peruvian Opcos, establishment of the VDR, and the allocation of responsibilities for implementation of the sale process. *See* Brandt Decl. at ¶ 59.

53. The Trustee tasked his DSI professionals with key components of this effort in order to alleviate the financial burden on the estate while ensuring that the process reflected the Trustee's vision. Among other things, DSI professionals facilitated the sale process by:

- Traveling to Peru to inspect each of the processing plants owned by CFGI and Copeinca and, to the extent possible, their fishing vessels. DSI professionals met with onsite management teams to review processing plant financials, operations, assets, inventory, and production, and worked closely with the production managers and senior management on review of production. DSI staff also monitored daily fishing and production reports produced in the ordinary course;

- Developing a start-to-finish collection of sale and marketing materials, including marketing literature designed to introduce prospective purchasers to the CFGI Equity Interests and CFGI and Copeinca more generally; a comprehensive confidential information memorandum that provided essential information on the CFGI Equity Interests like company background, operations and performance data, accompanied by appropriate nondisclosure agreements that would protect the estate; and presentation materials with even more detailed information for use during in-person meetings in Lima, Peru, with prospective purchasers;

- Creating and maintaining the VDR to ensure prospective purchasers received the most current information possible; and

- Facilitating prospective purchasers' tours of the Peruvian Opcos' vessels and processing plants, which were located along nearly the whole of the Peruvian coastline. *See* Brandt Decl. at ¶ 60.

54. The Peruvian Opcos were not eligible to be debtors in a U.S. bankruptcy court. *See* Order Appointing Trustee, p. 30. Thus, the only feasible means to dispose of the Peruvian Opcos' value in a comprehensive manner would be a sale of the CFGI Equity Interests. The

Trustee tasked his legal and financial advisors to draft a purchase and sale agreement, and seller disclosure schedules, and he engaged in sensitive and delicate negotiations whereby he obtained necessary consents for such a sale from the Hong Kong and Singapore exchanges. *See* Brandt Decl. at ¶¶ 61-62.

55. Separately, in the early stages of the CFG Peru case, the Trustee sought approval of bid procedures in advance of a sale by filing his *Chapter 11 Trustee's Motion for an Order (I) Approving Bidding Procedures, (II) Approving the Form and Manner of Notice Thereof, and (III) Granting Related Relief* on July 26, 2017 [Dkt. 646] (the "Bid Procedures Motion"). Although there were objections to the Bid Procedures Motion, the Trustee was able to negotiate with those parties and present revised procedures to the Court, which the Court approved.[32]

56. The sale process required far more than procedures and due diligence materials, as the structure of the CFG Peru enterprise created a series of roadblocks to a successful sale process. The Trustee carried out a restructuring of the enterprise to shift dormant or otherwise non-operating subsidiaries out of the CFGI corporate family, netted a complex web of intercompany claims (discussed below), and sold non-core assets (discussed below).

57. Throughout, the Trustee maintained active communications with parties that had expressed interest in the Peruvian Opcos, or whom the Trustee believed should be introduced to a prospective sale, and routinely updated the confidential information memorandum to reflect improved operations at the Peruvian Opcos and the benefits obtained from internal restructuring. *See* Brandt Decl. at ¶¶ 60-62. Although the Trustee did not receive an acceptable offer for the CFGI Equity Interests that would be sufficient to pay off the necessary debt, the work ensured a

[32] On October 21, 2020, the Trustee withdrew the *Bid Procedures Motion* at the Court's request due to the passage of time and the fact that portions of it had been superseded by other events. *See* Dkt. 2200.

streamlined corporate enterprise that could be the subject of a chapter 11 plan of reorganization, and a future sale.

Establishing a Sale Process for and Selling Non-Core Assets

58. At the time of the Trustee's appointment, the CFG Peru subsidiaries, including the Peruvian Opcos, owned a panoply of assets (the "Non-Core Assets") that were unnecessary to the core Peruvian anchovy fishing and processing operations, and which the Trustee, in his business judgment, determined should be sold. When the Trustee sold the first of the Non-Core Assets, he also developed procedures that would permit these assets to be sold on a notice-only basis, with an opportunity for interested parties to object, which relieved the estate from the expense of preparing and filing a motion for each Non-Core Asset sale and eliminated the need for hearings on the sales, while safeguarding the rights of interested parties, including creditors, and ensuring continued transparency. These protocols, adopted just six months into the CFG Peru bankruptcy, drew no objections and were approved by the Court.[33]

59. Using these procedures, the Trustee accomplished the disposition of the following Non-Core Assets[34]:

Asset	Subsidiary	Purchase Price
Residential Real Property	Inmobiliaria y Constructora Pahk	$1,300,000
Commercial Real Property w/ Football Field[35]	Copeinca (Peru)	$17,000,000

[33] *See* Dkt. 482, *Order Granting Chapter 11 Trustee's Motion for Order Pursuant to Bankruptcy Code Sections 105(a), 363(b), 541(a)(1), and 1108 and Bankruptcy Rules 2002, 6004, and 9006 Authorizing and Approving Procedures for (A) The Sale or Transfer of Certain Non-Debtor Assets and (B) Taking All Desirable or Necessary Corporate Governance Actions in Connection Therewith*, and Dkt. 584, *Order Granting Chapter 11 Trustee's Motion for Order Pursuant to Bankruptcy Code Sections 105(a) and 1108 and Bankruptcy Rule 2002 Authorizing and Approving Procedures for (A) the Sale or Transfer of Certain Additional Non-Debtor Assets and (B) Taking All Desirable or Necessary Corporate Governance Actions in Connection Therewith*.

[34] *See* Brandt Decl., at ¶ 65.

[35] *See* Dkt. 1234, *Notice of Sale Of Non-Debtor Real Estate In Accordance With Non-Debtor Asset Sale Order*. *See also* Dkt. 1280, *Statement in Opposition of Certain Debtors to Proposed Sale of Copeinca Headquarters*.

Commercial Real Property (La Planchada)[36]	CFG Investment	0
Tavrida (settlement)	CFG Investment	$500,000
Pacific Voyager	Sustainable Fishing Resources	$4,000,000
Liafjord	Sustainable Fishing Resources	$4,000,000
Pacific Champion	Sustainable Fishing Resources	$3,400,000
Enterprise	Sustainable Fishing Resources	$3,400,000
Damanzaihao	Sustainable Fishing Resources	$11,150,000
Hunter[37]	Sustainable Fishing Resources	$1,500,000
Sheriff	J. Wiludi & Asociados Consultores en Pesca	$1,000,000

60. Each of the sales of Non-Core Assets involved its own unique set of challenges. For example, CFGI owned non-core real property in La Planchada that burdened the entity with expenses, provided no benefit, and had no real sale potential. The Trustee determined in his business judgment that the best option was to donate the La Planchada property to the Peruvian Ministry of Education so that they could construct a regional educational institution on the site. His innovative approach relieved CFGI of the expense of maintaining the property while fostering good will among the locals and with the Peruvian government. Thus, while the "purchase price" listed above is $0, the benefit to the estate was substantial. *See* Brandt Decl. at ¶ 66.

61. Sales of certain fishing vessels presented far greater challenges. With the aid of his financial and legal advisors, the Trustee ascertained the governance requirements and the shareholder consents needed to consummate contemplated asset sales. He also resolved complex ownership and flagging rights of the fishing vessels and addressed issues of financial

[36] *See* Dkt. 1293, *Motion to Authorize Chapter 11 Trustee's Motion For Order Pursuant To Bankruptcy Code Sections 105(a) And 363(b) And Bankruptcy Rules 2002 And 6004 Authorizing Taking All Corporate Governance Actions In Connection With The Donation Of Excess, Unusable, And Vacant Real Estate Property In La Planchada, Peru To The Peruvian Government By Non-Debtor Corporation CFG Investment S.A.C.*, and Dkt. 1339, order granting relief.

[37] *See* Dkt. 1656, *Notice of Sale of a Non-Debtor Vessel in Accordance With Non-Debtor Asset Sale Order*.

responsibility attendant to vessels in an international maritime environment. *See* Brandt Decl. at ¶ 67.

62. A significant issue for resolution was the status of Chinese and Russian crew members who manned fishing vessels, but required payment of outstanding wages and repatriation to their home countries. It was a challenge that involved overlapping issues of Peruvian and maritime laws, visa and immigration issues, and the financing required for the crew members' wages and repatriation expenses. In the case of the *Damanzaihao*, a vessel that was not licensed to operate in Peruvian territorial waters, crew members were not authorized to set foot on Peruvian soil, and extensive negotiations with Peruvian officials were necessary to permit the crew members' transit through Peru for repatriation to their home countries without incurring substantial fines from Peruvian authorities. Further negotiations with officials from the crew members' home countries, including significantly through the Chinese ambassador in Peru, resulted in a release of any claims crew members might have against the estate, the Peruvian Opcos or subsidiaries, while aiding in the ultimate humanitarian objective of ending the prepetition limbo in which the crew members found themselves. *See* Brandt Decl. at ¶ 68.

63. The Trustee's management and sale of Non-Core Assets was instrumental to the improved health of the Peruvian Opcos and to the administration of the CFG Peru estate. In addition to resolving substantial issues like those described above, the Trustee's Non-Core Asset sales provided cash to fund the administrative expenses associated with CFG Peru's chapter 11 case, laid the foundation for the restructuring of the CFGI subsidiaries, and alleviated the Peruvian Opcos' burden of bearing the ongoing expenses incurred with respect to SFR vessels that, in some cases, had not operated for three years prior to the Petition Date.

64. Evidence of the success of the Trustee's restructuring efforts is that, within two years of his appointment as Trustee, the Peruvian Opcos were self-funding, and were beginning to accumulate cash.

Investigating Intercompany Claims and Negotiating the Netting Agreement

65. As of the Petition Date, the Debtors' enterprise was burdened by a labyrinth of intercompany claims totaling more than $7 billion.[38] Some $650 million of those intercompany claims flowed into and out of CFG Peru and its subsidiaries, including the Peruvian Opcos and their subsidiaries. Chief among them was a $459,047,750 million claim asserted by CFIL, a debtor in the Chapter 11 Cases that is outside the CFG Peru family of companies,[39] against CFGI (the "$459m Intercompany Claim").

66. Generally, under Peruvian law, and specifically within INDECOPI proceedings, insider claims are not subordinate to the claims of other creditors. Because CFGI could not be a chapter 11 debtor, insider claims could be neither discharged nor judicially subordinated. This meant that the $459m Intercompany Claim was *pari passu* with the claims of Noteholders, and that any sale of CFGI Equity Interests in the Peruvian Opcos would require a sale price sufficient to satisfy all claims—Noteholders, Club Lenders, the $459m Intercompany Claim, and all others. A sale for any less would have left the purchaser liable for any unpaid amounts, which meant that a sale was not a viable prospect without a netting of intercompany claims. Additionally, absent a netting process, a purchaser could not be assured that it would not be liable for outstanding intercompany claims against CFGI and its subsidiaries held by the other chapter 11 Debtors or non-debtor affiliates. These concerns applied equally, if differently, to any creditor-led transaction because creditors needed the same measure of certainty regarding how the $459m

[38] *See* Dkt. 203, Order Appointing Trustee, at p. 6.
[39] CFIL is a direct affiliate of CFG Peru; both are the direct subsidiaries of debtor Smart Group.

Intercompany Claim would be handled, as well as the certainty that other claims against CFGI would not surface after confirmation of a plan. *See* Brandt Decl. at ¶ 72.

67. Through extended and complex negotiations in early 2018, the Trustee reached a settlement with the various affected corporate entities and creditors to remove CFGI's intercompany debt from its balance sheet and to remove other intercompany claims from the balance sheets of CFGI's subsidiaries (the "Netting Agreement"). The main purpose of the Netting Agreement was to consolidate intercompany claims owed by subsidiaries of CFG Peru into one claim owed by CFG Peru to CFIL. In simpler terms, the Netting Agreement subordinated intercompany claims to facilitate either a sale or a restructuring. It also ensured that the Peruvian Opcos would not be susceptible to further INDECOPI proceedings by removing the blocking position that large insider claims could hold in an INDECOPI proceeding. *See* Brandt Decl. at ¶ 72.

68. The Trustee filed a joint motion for approval of the Netting Agreement (the "Netting Motion")[40] with the other Debtors, which provided the obvious benefits of clearing an obstacle to a sale, simplifying the intercompany claims, and channeling liabilities of the Peruvian Opcos to CFG Peru. The Netting Motion drew initial objections from the Noteholders and Bank

[40] *See* Dkt. 993, *Joint Motion for an Order Approving the Settlement Agreement Netting Intercompany Claims Among and Between CFG Peru Singapore, the Other Debtors, and the Nondebtor Affiliates, Including the CFG Peru Singapore Subsidiaries.* The Exhibits to the Netting Motion, which visually explain the results of the Netting Agreement, are attached to the Brandt Decl. as Exhibit G.

of America.[41] The Trustee resolved these objections, however, and the Court entered its order approving the Netting Agreement on April 26, 2018 (the "Netting Order").[42]

69. In May 2020, the Trustee determined that it was advisable to effectuate certain preliminary aspects of the Netting Agreement in order to save the Peruvian Opcos approximately $10.3 million in annual taxes. Although the other Debtors, still controlled by the Ng Family, initially had expressed a willingness to proceed in this manner, they refused to execute documents necessary to realize these tax savings. The Trustee brought the matter to the Court and sought authority to remove and replace the directors at the affected entities,[43] but was able to reach an agreement with the Ng Family members, culminating in the *Order Concerning Netting of 459m Claim* [Dkt. 2096], entered by the Court on July 1, 2020.

70. Many of the Trustee's accomplishments described in this Fee Application have made it possible for the affiliated Other Debtors to propose and potentially confirm plans of reorganization to resolve the remaining Chapter 11 Cases. On September 27, 2021, the Other Debtors filed two separate motions for approval of disclosure statements. *See* Dkts. 2684-2689.

[41] *See* Dkt. 1020, *Senior Noteholder Committee's Limited Objection to Chapter 11 Trustee and the Other Debtors Joint Motion for an Order Approving the Settlement Agreement Netting Intercompany Claims Among and Between CFG Peru Singapore, the Other Debtors, and the Nondebtor Affiliates, Including the CFG Peru Singapore Subsidiaries,* and Dkt. 1021, *Objection of Bank of America, N.A. to the Chapter 11 Trustee and the Other Debtors Joint Motion for an Order Approving the Settlement Agreement Netting Intercompany Claims Among and Between CFG Peru Singapore, the Other Debtors, and the Non-Debtor Affiliates, Including the CFG Peru Singapore Subsidiaries*.

[42] *See* Dkt. 1112, *Order Approving the Settlement Agreement Netting Intercompany Claims Among and Between CFG Peru Singapore, the Other Debtors, and the Non-Debtor Affiliates, Including the CFG Peru Singapore Subsidiaries, and Approving Stipulation with Bank of America, N.A.*

[43] *See* Dkt. 2050, *Chapter 11 Trustee's Motion for Order Pursuant to Bankruptcy Code Sections 105(a) and 363(b) and Bankruptcy Rules 2002 and 6004 (I) Compelling Debtors China Fisheries International Limited and CFG Peru Singapore to Effectuate Certain Preliminary Aspects of the Netting of Intercompany Claims, and (II) Authorizing Corporate Governance Actions Necessary to Remove or Replace the Ng Subsidiary Directors at CFG Peru Singapore's Subsidiaries*.

Resolving Claims against CFG Peru and Its Subsidiaries

71. Several of the Trustee's accomplishments concerned his efforts to address claims asserted against CFG Peru, including those discussed above (*i.e.*, Pickenpack Group Claims), and the following matters.

72. In March 2019, the Trustee objected to the original proofs of claim filed against CFG Peru by three of the companies controlled by the FTI Liquidators, PAE (BVI), Solar Fish and Parkmond (collectively, the "FTI Claimants"). As described above, the claims generally alleged trade finance fraud and "round tripping" transactions, but said nothing about CFG Peru. In response to the Trustee's objection to the FTI Claimants' proofs of claim, two of those Claimants—PAE (BVI) and Solar Fish—filed new proofs of claim that attempted to shift the spotlight to CFG Peru, claiming an elaborate scheme that allegedly benefitted CFG Peru in the amount of $152 million. The Trustee sought to expunge the new claims on the merits, but before the Court could rule, PAE and Solar Fish withdrew the claims with prejudice.[44] The withdrawal did not end the matter, however, as the FTI Liquidators pursued the $152 million claim directly against CFGI in Hong Kong via an action filed in the names of five of the FTI Liquidation Entities,[45] alleging the same factual circumstances and legal theories set forth in the FTI Claimants' proofs of claim against CFG Peru (the "CFGI Hong Kong Litigation"). The FTI Liquidators had already commenced an action in Hong Kong against certain members of the Ng Family and various companies alleged to be controlled by them in the names of certain FTI

[44] *See* Dkt. 1650, letter dated July 16, 2019, from Clifford Chance to the Hon. James L. Garrity, Jr.
[45] The plaintiffs in the CFGI Hong Kong Litigation (Action No. 2019-836) are PAE (BVI), Solar Fish, Europaco, Palanga, and Zolotaya.

Liquidation Entities.[46] The two litigation matters were consolidated in the summer of 2020, and were resolved in a mediation discussed below.

73. The Trustee also worked with his professionals to clean up CFG Peru's claims register. Early on, the Trustee sought to disallow and expunge claims asserted against CFG Peru by holders of PARD's 8.5% bonds due in 2017, on which CFG Peru is not an obligor, resulting in the Court entering the *Order Granting the Chapter 11 Trustee's First Omnibus Objection to No Liability Claims (PARD Bonds)* [Dkt. 1420].

74. The Trustee similarly negotiated and coordinated with counsel to the other Debtors to clean up their respective claims registers, which culminated in the Trustee and the other Debtors entering into the *Stipulation By and Between Certain Debtors and Chapter 11 Trustee Withdrawing Proofs of Claim Nos. 145, 171, 350, 371, 1517, 1527, 1528, 1771, and 1773 and Withdrawing PAIH Debtors' Objection to Such Claims* [Dkt. 1336].

75. One of the more delicate issues that the Trustee faced was the initiation of two criminal investigations against the Peruvian Opcos at the time of his appointment, one of which arose from the circumstances of the *Damanzaihao* factory vessel and its crew, discussed above, and both of which concerned circumstances that preceded the Trustee's appointment. Any criminal charges arising from these two investigations would have severely impacted the ability of the Peruvian Opcos to operate and maintain their value. The Trustee was able to resolve the two investigations without any charges ever being filed against the Peruvian Opcos or any of their management. *See* Brandt Decl. at ¶ 79.

76. As a result of these and other efforts, including the Trustee's successful negotiations with the Pickenpack Administrator resulting in the withdrawal of $283 million in

[46] The Plaintiffs in the earlier FTI litigation (Action No. 2019-688) are PAE (BVI), Solar Fish, Richtown, Parkmond, and Europaco.

claims, the only proof of claim remaining against CFG Peru, other than its guarantee of the Notes and its obligations for intercompany claims, was a $1.1 million claim by Rabobank. That obligation, owed by Copeinca and guaranteed by CFG Peru, represented the attorneys' fees incurred in the protracted pre-petition effort to obtain for the Peruvian Opcos short-term working capital from certain of the Club Lenders.[47] Thus, it bears noting that the sole obligations of CFG Peru—subsequent to the Trustee's efforts, and aside from administrative claims and the effects of the Netting Agreement—are guarantees of obligations owed by CFGI and Copeinca, and all efforts to restructure the Peruvian Opcos thereby reduced the potential for a triggering of such guarantees, and inured to the benefit of CFG Peru and its body of creditors.

Attempts to Provide Interim Distributions on Creditor Claims

77. By early 2019, the Trustee's work with the Peruvian Opcos had led to a buildup of excess cash in the Peruvian Opcos' accounts, and the Trustee determined that interim distributions to the Club Lenders and the Noteholders would be beneficial by reducing the amounts of the claims and the interest that was accruing thereon. On February 15, 2019, the Trustee filed his first motion to effectuate such a distribution.[48] Informal objections were raised by Bank of America and certain Noteholders (who came to be known in Court filings as the Kasowitz Noteholders[49]), with the latter indicating that they intended to file a formal objection to

[47] *See* Proof of Claim 67-1.

[48] *See* Dkt. 1490, *Chapter 11 Trustee's Motion for an Order Pursuant to Bankruptcy Code Sections 105(a) and 363(b) and Bankruptcy Rules 2002 and 6004 Authorizing Taking Corporate Governance Actions to Enable an Interim Distribution of Excess Cash to Certain Creditors by Non-Debtor CFG Investment S.A.C.*

[49] The term "Kasowitz Noteholders" developed organically as a means of distinguishing the objecting Noteholders from the group as a whole and is distinguished by the firm name of the group's counsel, Kasowitz Benson & Torres, LLP.

the Trustee's motion. Rather than use estate resources to litigate the matter, the Trustee withdrew his motion.[50]

78. On August 27, 2019, the Trustee filed a renewed motion for authorization to make an interim distribution,[51] believing the Kasowitz Noteholders' issue was not only ripe for the Court's determination, but also presented a gating issue that would impede progress in the case if not addressed. The Kasowitz Noteholders[52] objected to the Trustee's renewed motion. The core of their objection is what became known as the "Intercreditor Dispute."

79. Put briefly, the Intercreditor Dispute centered on language in the Indenture requiring that CFGL cause Copeinca to execute a guarantee of the Notes (the "Copeinca Guarantee"), but which, as of the Petition Date, had not been done. Without the Copeinca Guarantee, the Noteholders would receive no interim distribution (or other distributions, including sale proceeds) from Copeinca; their recovery would come solely from CFGI.[53] The Kasowitz Noteholders acknowledged that there was no guarantee by Copeinca, but took the position, first, that the Copeinca Guarantee should be executed and, second, that the absence of the Copeinca Guarantee was not relevant because CFGI and Copeinca are *de facto* substantively consolidated. For his part, the Trustee was neutral before the Court with respect to the Intercreditor Dispute.

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[50] *See* Dkt. 1613, *Notice of Withdrawal of Chapter 11 Trustee's Motion for an Order Pursuant to Bankruptcy Code Sections 105(a) and 363(b) and Bankruptcy Rules 2002 and 6004 Authorizing Taking Corporate Governance Actions to Enable an Interim Distribution of Excess Cash to Certain Creditors by Non-Debtor CFG Investment S.A.C.*

[51] *See*, Dkt. 1710, *Chapter 11 Trustee's Renewed Motion for Order Pursuant to Bankruptcy Code Sections 105(a) and 363(b) and Bankruptcy Rules 2002 and 6004 Authorizing Taking Corporate Governance Actions Necessary to Enable an Interim Distribution of Excess Cash to Certain Creditors by Non-Debtor CFG Investment S.A.C.*

[52] The Kasowitz Noteholders was an evolving group that at the time was comprised of Plan Proponent Davidson Kempner Asia Limited, Cowell & Lee Capital Management Limited, Serica Capital Asia Limited, Hutch Capital Management, Hansabay, Double Haven and EG Capital Advisors.

[53] The Trustee's interim distribution formula was based on the anchovy quota held respectively by CFGI and Copeinca.

80. In the end, the Court authorized an interim distribution from CFGI, but not Copeinca, as reflected in the Court's order entered January 30, 2020.[54] However, the delay occasioned by the Kasowitz Noteholders' objections barred any interim distribution in the near term, as news of what was then called "coronavirus" began to emerge. Just a few short weeks later, the world was in the grip of a pandemic and few nations, if any, were hit as hard as Peru. The ability of the Peruvian Opcos to continue normal operations was in doubt, making an expenditure of the excess cash imprudent.

Initiating Mediation to Resolve Gating Issues

81. The Intercreditor Dispute and the CFGI Hong Kong Litigation were plainly in the way of CFG Peru's exit from its Chapter 11 case. The Trustee took a critical step toward that solution on December 10, 2019, when he filed his *Chapter 11 Trustee's Emergency Motion for Entry of an Order (A) Appointing a Mediator, (B) Directing the Proposed Mediation Parties to Participate in Mediation, and (C) Authorizing Taking Corporate Governance Actions Necessary to Enable Non-Debtor CFG Investment S.A.C. to Participate in Mediation* [Dkt. 1859] (the "Mediation Motion"). The importance of referring such matters to mediation was made clear in the Mediation Motion:

> Despite his best efforts, the Chapter 11 Trustee has not been able to bring the relevant parties to the table to resolve these issues. Instead, the parties have moved farther apart, with the FTI Liquidators now preparing for protracted litigation in Hong Kong, and certain of the Objecting Noteholders laying the groundwork for protracted discovery against the Chapter 11 Trustee through the 2004 Motion. These strategies will hinder the Debtor's prospects for exiting chapter 11 while resulting in the incurrence of significant costs. By this Motion, the Chapter 11 Trustee seeks the Court's help to avoid protracted litigation by compelling the relevant parties to negotiate and resolve the Hong Kong Action and the

[54] *See* Dkt. 1939, *Order Pursuant to Bankruptcy Code Sections 105(a) and 363(b) and Bankruptcy Rules 2002 and 6004 Authorizing Taking Corporate Governance Actions Necessary to Enable an Interim Distribution of Excess Cash to Certain Creditors by Non-Debtor CFG Investment S.A.C.*

> Copeinca Guarantee Dispute before a mediator … to carve a path forward in this case.[55]

82. In its response to the Mediation Motion, the Indenture Trustee made the point more bluntly:

> Despite exceptional and diligent efforts by the Chapter 11 Trustee, large intercreditor disputes in the case are unresolved, and will remain unresolved, unless all key creditor constituencies work together to resolve them. The impasse described in the [Mediation] Motion reduces the prospects for a successful exit from chapter 11 without massive litigation costs. In the Motion, the Chapter 11 Trustee seeks the Court's help to avoid expensive and protracted litigation by compelling the relevant parties to participate in mediation. This is the best chance of achieving the best creditor outcome in the case.[56]

83. The Kasowitz Noteholders and the FTI Liquidators objected to the Trustee's Mediation Motion, but both parties were ultimately ordered to participate in mediation before the Honorable Robert D. Drain as mediator.[57]

84. The mediation sessions, which were delayed because of the onset of the COVID-19 pandemic, proved fruitful. Judge Drain's efforts opened a dialogue between the FTI Liquidators and the Trustee that led to a negotiated settlement that fully resolved the claims asserted against CFGI.[58] Mediation of the Intercreditor Dispute among the various creditor

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[55] Mediation Motion at ¶ 2.

[56] *See* Dkt. 1867, *TMF Trustee Limited's Response in Support of Chapter 11 Trustee's Emergency Motion for Entry of an Order (A) Appointing a Mediator, (B) Directing the Proposed Mediation Parties to Participate in Mediation, and (C) Authorizing Taking Corporate Governance Actions Necessary to Enable Non-Debtor CFG Investment S.A.C. to Participate in Mediation,* at para. 2.

[57] *See* Dkt. 1938, *Order (A) Granting Mediation Motion, (B) Referring Matters to Mediation, and (C) Authorizing Taking Corporate Governance Actions Necessary to Enable Non-Debtor CFG Investment S.A.C. to Participate in Mediation*, and Dkt. 1957, *Order Appointing a Mediator.*

[58] *See* Dkt. 2352, *Motion of Chapter 11 Trustee Pursuant to Sections 105(a) and 363 and Fed. R. Bankr. P. 9019 for Order (I) Approving Settlement Agreement Resolving Hong Kong Action with Certain Liquidation Companies HCA 836/2019, (II) Authorizing Corporate Governance Actions, and (III) Granting Related Relief*, and Dkt. 2398, *Order Granting Motion of Chapter 11 Trustee Pursuant to 11 U.S.C. §§ 105(a) and 363 and Fed. R. Bankr. P. 9019 for Order (I) Approving Settlement Agreement Resolving Hong Kong Action with Certain Liquidation Companies HCA 836/2019, (II) Authorizing Corporate Governance Actions, and (III) Granting Related Relief.*

parties was equally successful as it paved the way for the restructuring support agreement and, ultimately, the Confirmed Plan.[59]

The Financial Health of CFG Peru

85. From the Trustee's appointment through to entry of the Confirmation Order, the Trustee's work to restructure CFG Peru and the Peruvian Opcos has provided demonstrable benefit to the value he was tasked with preserving. A summary of CFG Peru's balance sheets in a recent declaration filed in Singapore by the Plan Administrator demonstrates the financial improvements that CFG Peru has undergone, noting the following:

86. Based on the balance sheets provided in the Monthly Operating Reports:

(a) As of 31 December 2016, CFG Peru had:
i. US$383,059,000 in total assets;
ii. US$392,182,000 in total liabilities; and
iii. Negative US$9,123,000 in total equity;

(b) As of 31 May 2018, after various intercompany claims had been resolved, CFG Peru had:
i. US$383,386,000 in total assets;
ii. US$400,751,000 in total liabilities; and
iii. Negative US$17,365,000 in total equity;

(c) As of 31 December 2019, CFG Peru had:
i. US$385,975,000 in total assets;
ii. US$429,220,000 in total liabilities; and
iii. Negative US$43,245,000 in total equity;

(d) As of 31 December 2020, CFG Peru had:
i. US$878,109,000 in total assets;
ii. US$847,646,000 in total liabilities; and
iii. US$30,461,000 in total equity; and

[59] *See, e.g.*, Dkt. 2541, *Declaration of Andrew J. Herenstein [of Monarch Alternative Capital LP] in Support of the Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* at paras. 8, 9 (describing the mediation as successful and that the restructuring support agreement was built on the momentum of that success). *See also* Dkt. 2557, *Creditor Plan Proponents' Brief in Support of Confirmation of the Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* at para. 55 ("Intercreditor Mediation and Mediated Intercreditor Settlement were critical to the development of the Restructuring Support Agreement and the consensus achieved on the Plan.").

(e) As of 31 May 2021 (based on latest available Monthly Operating Report) CFG Peru had:
i. US$879,173,000 in total assets;
ii. US$852,220,000 in total liabilities; and
iii. US$26,951,000 in total equity.

See Affidavit of Michael Foreman filed in HC/OS 521/2017, in the General Division of the High Court of the Republic of Singapore, Ex. H to the Brandt Decl., at ¶ 36.

G. The Trustee's Delay in Payment of Commission, and First Expense Application

87. The Trustee has not filed any earlier application for approval of interim fees, pursuant to a general policy of the UST. The Trustee filed a First Interim Application of Chapter 11 Trustee, William A. Brandt, Jr., for Reimbursement of Expenses for the Period from November 10, 2016 Through and Including February 29, 2020 [Dkt. 2231] (the "First Interim Expenses Application"), on November 20, 2020, in which the Trustee sought approval and reimbursement of $355,051.93 in expenses (the "First Interim Expenses"). No objections were filed to the First Interim Expenses Application, and it was granted by an Order of this Court entered December 20, 2020 [Dkt. 2272].

H. The Trustee's Instant Fee Application

88. The Trustee's Fee Application requests final approval of a commission based on a lodestar and fee enhancement, as well as final approval of the First Interim Expenses, and approval and reimbursement of expenses for the period March 1, 2020 through June 24, 2021.

89. By his Fee Application, the Trustee requests $11,958,625.00 as the amount of his "lodestar," based upon his current hourly billable rate of $875.00/hour, plus a 2.09 multiplier fee enhancement, for a total commission of $25,000,000.

90. The Trustee has proposed that a proper calculation of his statutory cap should include three components of disbursements. The first proposed component is cash

disbursements made by CFG Peru and its directly and indirectly owned subsidiaries or affiliates, all of which were disclosed each month in the MORs, and which served as the disbursements for calculation of quarterly UST Fees (the "MOR Disbursements"). Such MOR Disbursements total $1,894,149,430 for the period of the Trustee's Fee Application. The Court notes that the vast majority of such MOR Disbursements were made by the Peruvian Opcos in the course of their operations, operations that were preserved and protected by the Trustee's fulfillment of his duties.

91. The second proposed component is the value is the CFGI Equity Interests that are to be disbursed to Noteholders and Club Lenders under the terms of the Confirmed Plan. Evidence filed in support of confirmation of the Confirmed Plan supports a finding that the value of the CFGI Interests is $850,000,000.[60] The Court notes that the actual disbursement of the CFGI Equity Interests, though performed pursuant to the Confirmed Plan, will be carried out by the Plan Administrator or other third party, which is a matter that is discussed in the Conclusions of Law, below.

92. The third proposed component is the value of cash paid out under the terms of the Confirmed Plan, which is paid to various parties, including Noteholders and Club Lenders, Plan Proponents, settling parties such as HSBC, and their respective professionals, among others. The Trustee has submitted evidence that the amount of such cash paid out under the Confirmed Plan totals at least $211,000,000 (the "Plan Cash Payments"). *See* O'Malley Decl., at ¶ 5.

93. The Trustee's Fee Application demonstrates that a statutory cap calculated under Section 326(a), based on these three components, would total $88,677,733. *See* O'Malley Decl., at ¶ 8.

[60] *See* Dkt. 2542, *Declaration of Bradley Jordan in Support of the Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* at ¶¶ 14 and 23.

94. As an alternative, and assuming this Court would find that disbursements made by all direct and indirect subsidiaries do not qualify for the statutory cap calculation, the Trustee proposes a calculation of the statutory cap based upon the value of the CFGI Equity Interests, the Plan Cash Payments (not including a reserve for the Trustee's commission), and the $48,556,281 that was disbursed from CFG Peru's accounts for obligations incurred during the Chapter 11 Cases, the statutory cap would be calculated based on total disbursements of $1,109,556,281, and would produce a statutory cap of $33,309,938. *See* O'Malley Decl., at ¶¶ 9-10.

95. Finally, assuming this Court were to find that the statutory cap should be based on all MOR disbursements and Plan Cash Disbursements, but not upon the value of the CFGI Equity Interests, the statutory cap would be calculated based on total disbursements of $2,105,149,430, and the statutory cap would be $63,177,733. *See* O'Malley Decl., at ¶ 11.

96. The Court finds that the Trustee's initial proposal for calculation of the statutory cap is the proper method under the circumstances of these Chapter 11 Cases, and generates a statutory cap under Section 326(a) of $88,677,733. The Trustee's appointment was to serve as chapter 11 trustee for a holding company whose sole assets of value were non-debtor, foreign subsidiaries. Creditors of those non-debtor, foreign subsidiaries were the parties who pursued appointment of a trustee specifically to protect such non-debtor assets, and the Trustee fulfilled that mandate by preserving and protecting the value of CFG Peru's non-debtor, operating subsidiaries, the Peruvian Opcos.

97. Even if this Court were to conclude that either of the Trustee's alternative methods for calculating the statutory cap under the circumstances of these Chapter 11 Cases would be more appropriate, the resulting statutory cap under either method would still greatly exceed the total commission sought by the Trustee in his Fee Application.

II.

CONCLUSIONS OF LAW

Appointment of Trustees, and Allowance of a Trustee's Commission

98. This Court has jurisdiction to consider this Fee Application under 28 U.S.C. Sections 157 and 1334. This is a core proceeding under 28 U.S.C. Section 157(b). Venue of this case and this Fee Application in this district is proper under 28 U.S.C. Sections 1408 and 1409.

99. To the extent that any of the forgoing Findings of Fact constitutes a Conclusion of Law, the same is hereby incorporated herein by this reference.

100. A voluntary bankruptcy case is commenced when a debtor files a petition for relief under a particular chapter of the Bankruptcy Code. 11 U.S.C. Section 301(a). In this case, CFG Peru filed a petition for relief under chapter 11 of the Bankruptcy Code on June 30, 2016.

101. The commencement of a bankruptcy case creates an "estate." 11 U.S.C. Section 541. Generally, the estate is comprised of all property interests of the debtor as of the petition date, the proceeds of that property, and all property acquired by the estate after the petition date. 11 U.S.C. Section 541(a).

102. In a chapter 11 case, unless a trustee is appointed, a debtor acts as a "debtor in possession" of the estate and has substantially all of the rights, and is to perform substantially all of the functions and duties, of a chapter 11 trustee. 11 U.S.C. Section 1107(a). In this case, CFG Peru was a debtor in possession from June 30, 2016, through approximately November 10, 2016.

103. While a debtor is acting as a debtor in possession, with the court's approval, the debtor is authorized to employ attorneys and other professionals to represent or assist the debtor in carrying out its duties. 11 U.S.C. Section 327(a). Subject to approval of the Court, professionals receive payment from the estate. 11 U.S.C. Sections 330-331.

104. Upon request of a party in interest or the U.S. Trustee, a bankruptcy court must order the appointment of a trustee "for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management," or "if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate." 11 U.S.C. Section 1104(a). In this case, the arguments and evidence raised in the Trustee Appointment Motion constituted ample grounds for appointment of a chapter 11 trustee.

105. When a chapter 11 trustee is appointed, the debtor no longer acts as a debtor in possession and is no longer authorized to exercise control over property of the estate. Those rights, as well as the corresponding functions and duties, shift to the trustee. Although the debtor still is a party in interest and has the right to propose a plan, 11 U.S.C. Section 1121(a), its professionals cannot be paid by the estate.

106. There is no established hourly rate for services rendered by chapter 11 trustees. When a trustee is appointed, the trustee is not required to identify a rate that he or she intends to charge for services to be rendered in the case. At no point in the process for appointment of a chapter 11 trustee does the court approve hourly rates to be charged by the trustee during the case.

107. This may be contrasted with the procedure applicable to the employment of attorneys and other professionals. When a debtor in possession, trustee or official committee seeks to employ a professional, it files an application that sets forth the proposed terms and conditions of employment, "including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. Section 328(a). In this district, a notice of the application is supposed to identify the hourly rate of each professional to render services. Local Bankruptcy Rule 2014-1.

108. The risk of underpayment is also different for a chapter 11 trustee than for a professional employed by a debtor, trustee, or official committee. For all, there is an inherent risk that if the case is converted to chapter 7 and assets are liquidated by a chapter 7 trustee there will not be sufficient funds to pay administrative expenses in full. When that occurs, chapter 11 trustees and professionals receive a "pro rata" distribution from available funds after payment in full of fees and costs incurred by the chapter 7 trustee and his or her professionals. *See* 11 U.S.C. Section 726(b). There are also other scenarios in which chapter 11 trustees and professionals may receive only a pro rata (if any) distribution. The Court presumes that this inherent risk of underpayment is already priced into the hourly rates identified by attorneys, accountants, and other estate professionals when they are being employed under Section 327(a) of the Bankruptcy Code.

109. Another risk of underpayment for all professionals, which may or may not be priced into their hourly rates, arises out of the Supreme Court's decision in *Baker Botts LLP v. ASARCO LLC*, 576 U.S. 121, 135, 135 S. Ct. 2158, 2164, 192 L. Ed. 2d 208 (2015). Before that ruling, estate professionals (trustees, attorneys, etc.) who incurred fees and costs successfully defending their fee requests could seek payment of such fees and costs from the estate. In *Baker Botts*, the debtor employed two law firms to file a complaint against the debtor's parent company and obtained a judgment worth between $7 and $10 billion. *Baker Botts*, 576 U.S. at 124. That judgment contributed to a successful organization in which the parent company regained control over the debtor. *Id*. at 125. When the law firms filed their final fee applications, the parent company retaliated by causing the debtor to object to their fee requests. *Id*. The bankruptcy court awarded the firms $120 million for their work, a $4.1 million bonus, plus over $5 million for time spent litigating over their fee applications. *Id*. The Supreme Court ruled that

professionals are not entitled to compensation and reimbursement from estates for the fees and costs incurred by them in defending their fee requests. *Id*. at 135. When a trustee or professional has engaged in contentious litigation against a party during a bankruptcy case, it is not uncommon for that party to object to the trustee's and/or professional's fee request when the case ends. Before *Baker Botts*, the trustee or professional could request payment from the estate for defending against the objection. Now, however, unless the trustee or professional is able to obtain Rule 11 sanctions, the trustee or professional faces the risk of nonpayment of fees and costs incurred in such litigation.

110. In addition to the inherent risk of underpayment faced by all chapter 11 professionals, chapter 11 trustees face an additional underpayment risk because of Section 326(a). In the Court's experience, because of Section 326(a), chapter 11 trustees are very often awarded less fees than they would be awarded on an hourly-fee basis. Because of Section 326(a), chapter 11 trustees face a double risk of underpayment. First, the amount of fees awarded is very often less than the amount they would be awarded if their fees were based on hourly rates charged by their firms for their non-trustee services. Second, based on that already-reduced amount, the trustee may receive only a pro rata distribution. This double risk is not "priced into" the normal hourly rate that a trustee would charge for other restructuring positions, such as chief restructuring officer.

Application of 11 U.S.C. Section 330(a), and Companion Sections of the Bankruptcy Code

111. A court may award to a chapter 11 trustee "reasonable compensation for actual, necessary services rendered by the trustee . . .." 11 U.S.C. Section 330(a)(1)(A). "In determining the amount of reasonable compensation to be awarded to a trustee, the court shall

treat such compensation as a commission, based on section 326." 11 U.S.C. Section 330(a)(7). Section 330(a)(3) further provides factors for a court to consider:

> In determining the amount of reasonable compensation to be awarded to a . . . trustee under chapter 11 . . . the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including— (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, [the bankruptcy case]; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . . ." 11 U.S.C. Section 330(a)(3) (emphasis added).

112. "Bankruptcy courts enjoy wide discretion in determining reasonable fee awards, which discretion will not be disturbed by an appellate court absent a showing that it was abused." *In re JLM, Inc*., 210 B.R. 19, 23 (B.A.P. 2d Cir. 1997).

113. Chapter 11 cases in which trustees are appointed to operate and reorganize a large multi-entity enterprise represent a small fraction of bankruptcy cases in which trustees (primarily chapter 7 trustee) are appointed. In such cases, a chapter 11 trustee frequently takes on the effective role of a chief executive officer or chief restructuring officer, and such positions outside of bankruptcy are typically rewarded for exceptional results with bonuses or other salary enhancements. *See, e.g., In re Pruitt*, 319 B.R. 636, 643 (Bankr. S.D. Cal. 2004) ("a trustee's role is different from that of an attorney and may be compensated differently. If, for example, this Trustee had served in lieu of a CEO in an operating business, the Court could consider what a full-time CEO in that industry is compensated in determining the reasonableness of the

statutory rate."); *Connolly v. Harris Trust Co. of Cal. (In re Miniscribe Corp.)*, 241 B.R. 729, 749 (Bankr. Colo. 1999) ("It is not the role of the trustee to provide legal services. It is the role of the trustee to act as the fiduciary for the estate. He is the estate's chief executive officer and its chief financial officer with … full responsibility for the assets and affairs of the estate, a responsibility that he cannot delegate."); *rev'd on unrelated grounds* 309 F.3d 1234 (10th Cir. 2002); *In re Cardinal Indus.*, 151 B.R. 843 (Bankr. S.D. Ohio 1993) (chapter 11 trustee's "services encompassed the role of a chief executive officer …"); *Wall v. Wilson (In re Missionary Baptist Found.)*, 77 B.R. 552, 554 (Bankr. N.D. Tex. 1987) ("the Trustee was not engaged in a liquidation, but rather a reorganization and continuing operation of a [on]going business. The Trustee occupies the position of a chief executive officer of a business which requires a myriad of items over the course of the business day.").

114. The starting point for analysis of a chapter 11 trustee's commission is a "lodestar analysis." *In re Miniscribe Corp.*, 309 F.3d 1234, 1241 (10th Cir. 2002) ("a court awarding trustee fees must begin by assessing reasonableness under § 330(a) before applying the percentage-based cap under § 326(a)"); *Nicholas v. Oren (In re Nicholas)*, 496 B.R. 69, 74 (Bankr. E.D.N.Y. 2011) (lodestar is "starting point" for reasonable fee, which "can then be adjusted on the basis of case specific considerations"); *In re 1031 Tax Group, LLC*, 2009 Bankr. LEXIS 3875 *4-5, 2009 WL 4806199 (Bankr. S.D.N.Y. December 9, 2009) ("A lodestar analysis consists of two steps. First, courts calculate a lodestar amount … Courts then determine whether any adjustment to this amount is warranted under the twelve factors announced by the *Johnson* court … [and] the requirements of § 330."); *In re Northwest Airlines Corp.*, 382 B.R. 632, 645 (Bankr. S.D.N.Y. 2008) (Section 330 "incorporates the lodestar analysis by requiring that the bankruptcy court consider the time spent upon legal services and the rate charged for

those services. The customary way to determine a reasonable fee is to begin with the 'lodestar' test, and then decide whether to apply any appropriate enhancements under *Johnson* ...") (citations omitted) *rev'd on other grounds sub nom. Lazard Freres & Co. LLC v. Adams (In re Northwest Airlines Corp.)*, 399 B.R. 124 (S.D.N.Y. 2008).

115. The lodestar analysis is often described as a mathematical calculation by which reasonable hours are multiplied by the trustee's hourly rate. But the analysis also requires reference to Section 330(a)(3), which provides six factors that a court "shall" consider when determining reasonable compensation under Section 330. Section 330(a)(3). *See also In re Value City Holdings, Inc*., 436 B.R. 300, 306 (Bankr. S.D.N.Y. 2010) ("Fee applications are to be evaluated in light of all 'relevant factors' as set forth in section 330(a)(3)").[61]

116. Five of these six subparagaphs listed in Section 330(a)(3) are relevant in a chapter 11 trustee's fee application. Subparagraph (E) pertains solely to the qualifications of a "professional person," which is a term that is distinct from a "trustee" and other categories of officers compensable under Section 330. *See* Section 330(a)(1)(A) ("reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person …"). To whatever extent Section 330(a)(3)(E) should apply, the Trustee has demonstrated immense skill in the field of restructuring, not merely by his forty-five years in the field, but by the actions he has taken in these Chapter 11 Cases and in proceedings filed in other jurisdictions to fulfill his duties as Trustee.

[61] Many courts in circuits other than the Second Circuit had held that twelve factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 717-19 (5th Cir. 1974) (the "*Johnson* factors"), must be considered when determining a lodestar amount. As is addressed more fully below, the Second Circuit has endorsed "permissive use" of the *Johnson* factors when determining the reasonableness of an attorney's hourly rate, but otherwise reserves the *Johnson* factors for consideration of any adjustment to a reasonable lodestar amount, such as a fee enhancement. *See Lilly v. City of New York*, 934 F.3d 222, 232-33 (2d Cir. 2019), and Section VI.B.3, below. The Chapter 11 Trustee contends that, consistent with Second Circuit authority discussed below, the *Johnson* factors are best utilized in the fee enhancement discussion below.

117. The statutory cap required by Section 326(a) also plays a role in a court's analysis of a trustee's lodestar, not merely to ensure that a lodestar does not exceed the cap, but as an indicator of whether the lodestar amount is reasonable by comparison. This role for Section 326(a), as both a limiting factor and an indicator of reasonableness, has been amplified by courts since 2005 when Congress amended Section 330(a) to add subsection 330(a)(7), requiring that a trustee's compensation be treated as a "commission." Section 330(a)(7) "applies to all trustees, whether they are administering chapter 7 or chapter 11 cases." *In re Clemens*, 349 B.R. 725, 733 (Bankr. D. Utah 2006); *see also* King, *Collier on Bankruptcy*, P 330.02 (16th ed. Rev'd. 2021). *See, also Clemens,* 349 B.R. at 729 ("[T]he plain meaning of § 330(a)(7) requires the Court to consider the provisions of § 326 *as a part of* its reasonableness inquiry. In essence, the addition of § 330(a)(7) to the Bankruptcy Code serves to now supplement the Court's Lodestar analysis.") (emphasis in original); *In re Mack Props*., 381 B.R. 793, 798 (Bankr. M.D. Fla. 2007) ("A court is to consider the provisions of Section 326 as a part of reasonableness inquiry"); *In re Bank of New England Corp*., 484 B.R. 252, 283 (Bankr. D. Mass. 2012) ("The statute is clear that the 3% is not an entitlement, nor is it presumed to be reasonable. It is a statutory cap that the court is to consider as part of its reasonableness inquiry.").

118. The plain language of Section 330(a)(3) demonstrates that determination of a trustee's lodestar is carried out by looking back over the course of the case, but from the perspective of what was reasonable at the time a service was undertaken. Reasonableness is not determined through hindsight or second-guessing. *In re Brous*, 370 B.R. 563, 570 (Bankr. S.D.N.Y. 2007) ("A decision reasonable at first may turn out wrong in the end. The test is an objective one, and considers 'what services a reasonable lawyer or legal firm would have performed in the same circumstances.'") (*quoting In re Ames Dep't Stores, Inc*., 76 F.3d 66, 72

(2d Cir.1996)). One court has cautioned that the lodestar analysis, by its nature, "typically is a quest by the opposing party and the court to examine a fee applicant's time records, and to extract from those records time that was not efficiently or well spent," and that it is rare for hours to be reviewed from the perspective that the time might have been "unreasonably low." *In re Miniscribe*, 241 B.R. at 748.

The "*Johnson* Factors" Guide a Court's Consideration of a Requested Fee Enhancement

119. Once a court has determined a chapter 11 trustee's reasonable compensation under Section 330(a)(1) in the form of a lodestar, consideration is then given to "whether any adjustment to this amount is warranted under the twelve factors announced by the *Johnson* court …" *In re 1031 Tax Group, LLC*, 2009 Bankr. LEXIS 3875 at *4-5, 2009 WL 4806199 at *2; *In re Northwest Airlines Corp*., 382 B.R. 632, 645 (Bankr. S.D.N.Y. 2008) ("The customary way to determine a reasonable fee is to begin with the 'lodestar' test, and then decide whether to apply any appropriate enhancements under *Johnson* ...") (citations omitted).

120. The "*Johnson* factors" are twelve factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 717-19 (5th Cir. 1974), which:

> were developed in a civil rights case, [and] are: 1) time and labor required; 2) novelty and difficulty of the issues; 3) skill required to render proper legal services; 4) preclusion of other employment; 5) customary fee; 6) whether the fee is fixed or contingent; 7) time limits imposed; 8) amount involved and results obtained; 9) attorney's experience, reputation, and ability; 10) undesirability of the case; 11) length and nature of the attorney/client relationship; and 12) awards in similar cases.

See Mkt. Ctr. E. Retail Prop. v. Barak Lurie (In re Mkt. Ctr. E. Retail Prop.), 469 B.R. 44, 52, fn. 32 (10th Cir. BAP 2012)[62] (quoting *Johnson*, 488 F.2d at 717-19).

[62] *Rev. on other grounds, Mkt. Ctr. East Retail Prop. v. Lurie (In re Mkt. Ctr. East Retail Prop.)*, 730 F.3d 1239 (10th Cir. 2013).

121. The vast majority of case law discussing the *Johnson* factors arises in the context of applications for approval of attorney's fees in non-bankruptcy settings, and many of the *Johnson* factors are specifically phrased to address issues that arise in the course of an attorney's duties. *Id*. ("length and nature of the attorney/client relationship …"). Only a few cases have applied the *Johnson* factors to chapter 11 trustees, or provided any direction for how such factors should be applied to a trustee's request for a fee enhancement. However, some guidance can be discerned from cases that have interpreted *Johnson* for purposes of attorney fee applications, including in non-bankruptcy settings.

122. In *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010), the Supreme Court expressed favor for the "objective" lodestar method to determine reasonable fees over the more "subjective" *Johnson* factors. *Id*., at 551-52. The Supreme Court further "reject[ed] any contention that a fee determined by the lodestar method may not be enhanced in any situation," and held that the lodestar's strong presumption of reasonableness "may be overcome in those rare circumstances in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee." *Id*. at 553-54.

123. The Fifth Circuit and Tenth Circuit have each held that *Perdue*, which was not a bankruptcy case, does not impact fee applications in bankruptcy cases. *See In re Mkt. Ctr. E. Retail Prop., Inc.,* 730 F.3d 1239, 1247 (10th Cir. 2013) (rejecting application of *Perdue* to the bankruptcy context as the underlying policy reasons are different); *In re Pilgrim's Pride Corp.*, 690 F.3d 650, 664-67 (5th Cir. 2012) (holding that *Perdue* did not overrule bankruptcy precedent on fee allowance, given differing policy concerns with fee-shifting statutes).

124. The Second Circuit has not addressed the degree, if any, to which *Perdue* impacts fee applications or fee enhancement requests in bankruptcy cases, but has confirmed that—post-*Perdue*, and in fee-shifting cases—the *Johnson* factors are permissively considered in the establishment of a reasonable lodestar, and then serve as the guide for any request to vary the amount of the lodestar, such as a request for a fee enhancement. *See Lilly v. City of New York*, 934 F.3d 222, 232-33 (2d Cir. 2019) (discussing history of *Johnson* factors in context of attorney's fees under federal fee-shifting statute, 42 U.S.C. Section 2000-k(k), and explaining that *Johnson* factors under *Perdue* are involved primarily in analyzing an enhancement of the lodestar value).

125. Bankruptcy courts in the Second Circuit, both before and after *Perdue*, have consistently held that the *Johnson* factors apply at the fee enhancement stage. *See In re Nicholas*, 496 B.R. at 74 (Bankr. E.D.N.Y. 2011) (citing *Perdue*, stating that lodestar is "starting point" for reasonable fee, which "can then be adjusted on the basis of case specific considerations"); *In re 1031 Tax Group, LLC*, 2009 Bankr. LEXIS 3875 at *4-5, 2009 WL 4806199 at *2 (applying *Johnson* factors to fee enhancement stage); *In re Northwest Airlines Corp*., 382 B.R. at 645 (same).

The Trustee's Time Spent on these Cases

126. The first factor listed in Section 330(a)(3) for determination of the reasonableness of a chapter 11 trustee's compensation is subparagraph (A), "the time spent on such services." This factor is related to subparagraph (C) ("whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title"), and subparagraph (D) ("whether the services were

performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed").

127. It is plain, not merely from the hours that the Trustee has recorded in his time records, but from the events that have transpired over the course of the Chapter 11 Cases, that the Trustee has devoted the vast majority of his practice for the past five years to this case. To the extent that a chapter 11 trustee needs to record hourly time entries, a chapter 11 trustee that operates a business properly records time for all administrative tasks, unlike an attorney whose billed time should be limited to legal tasks. A chapter 11 trustee's time may properly include matters such as administration, personnel and human resources, strategy, lobbying, and other such tasks that would not appear on a legal bill. *See In re Greenley Energy Holdings, Inc*., 102 B.R. 400, 405 (E.D. Pa. 1989) (suggesting trustees needn't keep billing records given the significant difference in their tasks versus an attorney); *see also In re Cardinal Indus.*, 151 B.R. 843 (Bankr. S.D. Ohio 1993) (discussing trustee's estimated time entries and stating, "the Court is guided by its observations of Alix's activities during his tenure and by the understanding that strict time accounting in tenths of an hour is not the way chief executive officers normally work.").

128. The Trustee has kept extremely detailed time records that reflect a multitude of complex and time-consuming tasks that were necessary to his duties to preserve the value of CFG Peru's subsidiary assets, to restructure the CFG Peru corporate enterprise to facilitate transactions such as those contemplated in the Confirmed Plan, and to protect CFG Peru and its subsidiaries from a myriad of challenges and proceedings arising in foreign jurisdictions. The Trustee's proposed lodestar is based upon hours that were both necessary to his duties, and reasonable.

The Trustee's Current Hourly Rate Is a Reasonable Rate for Calculation of His Lodestar Amount

129. The second and sixth prongs for consideration of reasonableness under Section 330(a)(3) are related, as one addresses "the rates charged for such services," and the other addresses "whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title." *See* Section 330(a)(3)(B) and (F).

130. In cases where a trustee provides services for several years, and particularly where the trustee has not received interim compensation during the appointment, the trustee's compensation should be based on the current rate during his year of payment, rather than on historic or blended rates. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989) ("[C]ompensation received several years after the services were rendered -- as it frequently is in complex civil rights litigation -- is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed."); *Grant v. Martinez*, 973 F.2d 96, 100 (2d Cir. 1992) ("a district court has the latitude to depart from the two-phase approach and may calculate all hours at whatever rate is necessary to compensate counsel for delay"); *Reiter v. MTA N.Y. City Transit Auth*., 457 F.3d 224 (2d Cir. 2006) (following *Missouri* and holding that when calculating a lodestar, the "rates used by the court should be 'current rather than historic hourly rates.'"); *In re Commercial Consortium of California*, 135 B.R. 120, 126-27 (Bankr. C.D. Cal. 1991) (following *Missouri*, overruling U.S. Trustee's objection to current hourly rate for lodestar calculation as unwarranted fee enhancement and holding that use of current rate to account for delay did not require "a strict standard of exceptional circumstances" as the rate was not for enhancement, but to compensate for "time value of money").

131. Here, the Trustee's hourly rate has varied over the nearly five years—six calendar years—of this case, from $695/hour in 2016, to $875/hour in 2021. But the Trustee has not been paid any compensation at any time (other than a delayed expense reimbursement). It is precisely in circumstances such as these that courts—the Second Circuit, in particular—have held that a trustee's current hourly rate should be the rate used in a lodestar calculation for all years of service.

132. Under the precedent of *Missouri*, *Reiter*, and *Grant*, the Trustee's current hourly rate of $875/hour should be the rate used to calculate the Trustee's lodestar for each year of his service.

133. In addition to applying a trustee's current hourly rate, courts have an obligation when calculating a lodestar amount to determine whether such rate is "in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Reiter*, 457 F.3d at 232 (*quoting Blum v. Stenson*, 465 U.S. 886, 896 n. 11 (1984)).

134. The Trustee has submitted evidence that his hourly rate is established in accordance with the hourly billing rates of his company, DSI, which are set at a level that remains competitive for middle-market restructurings. *See* Brandt Decl., ¶¶ 8 and 92. The Trustee has also submitted evidence supporting a finding that his current rate is far below rates charged by his competitors based in larger markets, such as the Southern District of New York. *See* Exhibits I, J, K, to Brandt Decl., *In re Soundview Elite, Ltd., et al.*, Case No. 13-13098 (MKV), *In re Firestar Diamond, Inc*., Case No. 18-10509 (SHL), and *In re TS Employment, Inc*., Case No. 15-10243 (MG).

135. The Court observes that, if the Trustee had charged an hourly rate commensurate with partners at Skadden Arps Slate, Meagher & Flom LLP ("Skadden"), his own counsel in this case, his hourly rate would likely exceed the $1,565.00/hour charged in this case by partners with fewer years of restructuring experience than the Trustee. Instead, the Trustee's hourly rate has been comparable to rates charged by second and third-year associates at some of the larger law firms engaged in these Chapter 11 Cases.

136. The Trustee's current hourly rate is more than reasonable in relation to comparable market rates, and is the appropriate rate for calculation of his lodestar amount under the authority of *Missouri*, *Reiter*, and *Grant*.

Calculation of the Trustee's Lodestar

137. The Trustee has devoted immense time to this case, from the date of his appointment through to the completion of his post-confirmation tasks. Based upon the factors described above, the Trustee seeks approval of fees calculated by the following reasonable hours, as more fully detailed in his time records attached to the Brandt Decl. as Exhibits A-F:

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YEAR OF SERVICES	HOURS	ORIGINAL RATE	CURRENT RATE	AMOUNT
2016	409.7	$695.00	$875.00	$358,487.50
2017	3,272.8	$725.00	$875.00	$2,863,700.00
2018	3,471.7	$795.00	$875.00	$3,037,737.50
2019	3,426.5	$825.00	$875.00	$2,998,187.50
2020	1,949.2	$855.00	$875.00	$1,705,550.00
2021	1,137.1	$875.00	$875.00	$994,962.50
TOTAL LODESTAR AMOUNT:	13,667.0		$875.00	$11,958,625.00
REQUESTED FEE ENHANCEMENT			2.09 multiplier	$13,041,375.00
TOTAL REQUESTED COMMISSION				$25,000,000.00

138. For all of the reasons addressed above, the Court finds that the Trustee's proposed lodestar of $11,958,625.00 constitutes "reasonable compensation" under Section 330(a)(1)(A).

The Lodestar Is Eminently Reasonable by Comparison to the Statutory Cap

a. The Statutory Cap Requires a Broad Interpretation in a Chapter 11 Context

139. As noted above, Section 330(a)(7) provides that a trustee's compensation is to be treated "as a commission, based on section 326," and courts have interpreted this to mean that consideration of the statutory cap is a "part of" a court's inquiry into the reasonableness of a trustee's commission. *In re Clemens,* 349 B.R. at 729; *In re Mack Props*., 381 B.R. at 798; *In re Bank of New England Corp*., 484 B.R. at 283.

140. As explained below in connection with the proper procedure for calculation of the statutory cap, the Trustee's requested commission—both his proposed lodestar and his requested

fee enhancement—are far below the statutory cap that would be calculated under any reasonable application of Section 326(a) to the facts of these Chapter 11 Cases.

141. Application of Section 326(a) varies to some degree depending on whether the case involves an operating trustee or a liquidating trustee, as the duties of a chapter 7 trustee differ materially from those of a chapter 11 trustee. Section 1106(a) specifically relieves a chapter 11 trustee from the requirement of a chapter 7 trustee under Section 704(a) to "collect and reduce to money the property of the estate." *See In re Radical Bunny, LLC*, 459 B.R. 434, 443 (Bankr. D. Az. 2011) (contrasting duties of a chapter 7 to liquidate assets for cash, to a chapter 11 trustee to operate and preserve an ongoing business). By the nature of their statutory duties, the disbursements made to creditors by a chapter 7 trustee will vary from a chapter 11 trustee's preservation of an operating business. Yet the latter should not be penalized by a statutory cap calculation does not reflect the value provided to creditors by such preservation of asset value.

142. The Court notes that certain creditor groups had expressed a desire for a sale of the CFGI Equity Interests in these Chapter 11 Cases to generate cash for payment of their claims. The Trustee's success cannot be based on the existence or non-existence of a third-party purchaser willing to acquire assets. Rather, the Peruvian Opcos, which faced imminent liquidation upon the Trustee's appointment, have been preserved and protected by the Trustee's services, such that $850,000,000 in plan value is being distributed to Noteholders and Club Lenders in the form of the CFGI Equity Interests, plus substantial cash payments. Any contrary holding might create an incentive for future chapter 11 trustees to administer a chapter 11 case as a liquidation, to ensure that they will not have worked for no commission. *See In re Radical*

Bunny, 459 B.R. at 443 (A contrary result would incentivize chapter 11 trustees to act like a chapter 7 trustee, to "get money in the hands of creditors as quickly as possible").

143. These Chapter 11 Cases were filed to protect against a "fire sale" of the Peruvian Opcos.[63] And for that purpose (among many others), these cases, and the Trustee's services, have succeeded. But the reorganizational goals on which chapter 11 is based would be undermined if any chapter 11 trustee felt motivated to engage in such a "fire sale" as the sole means of ensuring their own compensation. *See In re Orient River Invest., Ltd.*, 133 B.R. 729, 732 (Bankr. E.D. Pa. 1991) (Bankruptcy Code's uniform provisions for compensation of all trustees "requires bankruptcy courts to make some allowances for operating trustees who perform their services diligently"). Bankruptcy courts would have difficulty attracting qualified candidates to serve as chapter 11 trustees for parent or holding companies if trustees felt required to liquidate operating subsidiaries in order to ensure their own ability to receive compensation.

b. Section 326(a) applies to funds disbursed by operating subsidiaries

144. Section 326(a) requires calculation of a trustee's statutory cap based on "all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims." Section 326(a) is derived from a similar provision in the Bankruptcy Act of 1898 which included the identical concept of "moneys disbursed or turned over." *See* H.R. Rep. No. 95-595 at 327 (1977), U.S. Code Cong. & Admin. News 1978, 5963, 6238 (stating that section 326(a) "is derived in part from section 48c of the [Bankruptcy Act of 1898]"). As explained below, the few courts that have applied Section 326(a) (or the same language in its predecessor statute) to chapter 11 cases that involve multiple entities under a trustee's control have applied the term "moneys disbursed or turned over in the

[63] *See* Dkt. 203, *Order Appointing Trustee*, at p. 3.

case" in broad terms. *See e.g., In re Toole*, 294 F. 975, 976 (S.D.N.Y. 1920) (interpreting Section 48c of the former Bankruptcy Act, the phrase "moneys disbursed or turned over" allowed "compensation to trustees and receivers for all property properly administered by the bankruptcy court, irrespective of whether it turns out to belong to the general estate or not," as the phrase was a "very broad provision."); *In re Robert Plan Corp*., 493 B.R. 674, 687 (Bankr. E.D.N.Y. 2012) (Section 326(a) "plainly does not require that disbursed funds be property of the estate"); *In re Dutcher Constr. Corp.*, 378 F.2d 866, 871-72 (2d Cir. 1967) (following *Toole*, to hold that even though funds due to insurance company never became property of the estate, it "is not to say that the Trustee should not be allowed to recover the necessary expenses of litigation or a commission for handling this fund ...").

145. The CFGI Equity Interests are property of the CFG Peru chapter 11 estate, and they are to be distributed to Noteholders and Club Lenders under the terms of the Confirmed Plan. This is precisely the value that Club Lender Parties asked this Court to preserve for their benefit by appointing the Trustee, even though they were not, and are not, creditors of the CFG Peru estate.[64]

146. Cash that was disbursed by the Peruvian Opcos and other direct or indirect subsidiaries of CFG Peru in the operation of their businesses might not be property of the CFG Peru chapter 11 estate, but that does not prevent the consideration of such disbursements from a proper calculation of the statutory cap under Section 326(a), as its terms are interpreted broadly to cover all assets administered by a chapter 11 trustee. *In re Toole*, 294 F. at 976; *In re Dutcher Constr.*, 378 F.2d at 871-72; *In re Robert Plan*, 493 B.R. at 687.

[64] *See* Trustee Appointment Motion, at p. 41, ¶ 59.

(1) Disbursements by CFG Peru's Subsidiaries Are Moneys Disbursed Under Section 326(a)

147. Where a trustee is appointed to operate a parent company, and mandated to preserve the value of operating subsidiaries, Section 326(a) applies to all distributions made by the corporate enterprise, as a whole, irrespective of whether disbursements passed through the parent's bank account. *See In re MACCO Props., Inc.*, 540 B.R. 793 (Bankr. W.D. Okla. 2015) ("MACCO Props.") (calculating statutory cap for chapter 11 trustee of parent company based upon disbursements from operations and liquidations of both debtor and non-debtor subsidiary LLCs administered by trustee). *See also Toole*, 294 F. at 976 (explaining that the phrase "moneys disbursed or turned over to any person, including lienholders" in the Bankruptcy Act was "a very broad provision"); *In re Orient River*, 133 B.R. at 733 (compensation for chapter 7 trustee who operated debtor's business was properly calculated on moneys that included "disbursements made in actual operation of businesses").

148. A further reason for considering the operations and disbursements of subsidiaries in the calculation of a statutory cap applicable to the trustee of the parent company, at least under the circumstances of these Chapter 11 Cases, is where the trustee's administration of the subsidiaries and disbursement of funds has benefited the parent such as in the form of preventing the triggering of parent guarantees. *MACCO Props*., 540 B.R. at 849. CFG Peru was a guarantor of CFGI's obligations to the Noteholders, which could have been triggered and enforced had the Trustee not been able to resolve the INDECOPI proceedings and thereby protect the value of the Peruvian Opcos as operating entities. Every disbursement made by a Peruvian Opco inured to the benefit of CFG Peru and properly constitutes a disbursement of moneys under Section 326(a).

149. Language similar to Section 326(a) is employed in 28 U.S.C. Section 1930(a)(6)(A), which requires payment of quarterly fees to the U.S. Trustee "in each case under chapter 11" based on "disbursements" made. *See* 28 U.S.C. Section 1930(a)(6)(A). The quarterly UST fees paid by CFG Peru were calculated based on all disbursements of CFG Peru and its direct and indirect subsidiaries, including the Peruvian Opcos. The court notes that the UST requested in early 2017 that this Court delay payment of certain professional fees until CFG Peru was brought current on outstanding quarterly fees[65] – the amount of which was generated from the consolidated distributions made by all of the entities reported on the MORs.[66]

150. The UST and any chapter 11 trustee face the same dilemma in each chapter 11 case of a holding/parent company because of the substantially similar language in their respective statutes. If either is compensated (or paid fees) solely from funds that pass through the accounts of a holding company debtor, without reference to disbursements made by operating subsidiaries, each would face the risk of no compensation/fees for work performed, and would face the incentive to remain a passive shareholder in a role that requires their utmost attention.

151. The scope of this Trustee's appointment was addressed at the outset of this case, whether it was the plea of the Club Lender Parties that this Court appoint a chapter 11 trustee "to

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[65] Dkt. 526, *Response Of The United States Trustee Regarding Applications For First Interim Allowance Of Compensation And Reimbursement Of Out-Of-Pocket Expenses For Professionals Of Chapter 11 Trustee Of Debtor CFG Peru Investments Pte. Limited (Singapore)*, at p. 2.

[66] Quarterly UST Fees are required by 28 U.S.C. § 1930(a)(6), which mandates the payment of fees based on "disbursements." Section 1930(a)(6) provides no further guidance on the meaning of the noun "disbursements." Nor does Section 326(a) provide guidance on the verb form of the same root, basing a trustee's commission on moneys "disbursed." But courts that interpret the term "disbursements" by its ordinary meaning apply a broad definition to discern the scope of quarterly U.S.T. fees. *See Cranberry Growers Coop. v. Layng*, 930 F.3d 844, 850 (7th Cir. 2019) (concurring with bankruptcy court's acknowledgment that "[t]he great weight of case law broadly defines 'disbursements,'" and holding that customer's payment to debtor's secured creditor was a "disbursement" for purposes of Section 1930(a)(6)); *In re Fabricators Supply Co*., 292 B.R. 531, 536 (Bankr. D. N.J. 2003) (creditor's sweep of debtor's blocked account constituted a "disbursement" for purposes of Section 1930(a)(6)); *In re Flatbush Assocs*., 198 B.R. 75, 78 (Bankr. S.D.N.Y. 1996) (characterizing the rent paid by the debtor's subtenants directly to the debtor's landlord as "disbursements" for purposes of calculating the quarterly fee); *In re Hays Builders, Inc*., 144 B.R. 778, 780 (W.D. Tenn. 1992) (all disbursements, whether made by the debtor or third party are to be included for calculation of quarterly fees).

preserve the estates' equity stakes in a lucrative fishery business and processing plants in Peru operated by certain non-Debtor affiliates,"[67] or this Court's Order Appointing Trustee, which instructed the Trustee that it would "be incumbent upon [him], in furtherance of [his] fiduciary duties, without limitation, to assess the highest and best use of those assets in the context of the resolution of these Chapter 11 cases and the means for the Debtors to realize maximum benefits from those assets."[68] It was also abundantly clear in this Court's Order Appointing Trustee that the Trustee would be appointed as trustee for an entity that was entirely dependent upon Peruvian subsidiaries for cash. *See* Order Appointing Trustee, at p. 43 ("the CF Group debtors rely on the Peruvian Opcos for substantially all of their income, and any income from the Peruvian Opcos is speculative and may not occur anytime soon due to the involuntary petitions against the Peruvian Opcos in Peru. … This factor supports the appointment of a Chapter 11 trustee").[69]

152. It would be inequitable for the Trustee to have been appointed as trustee for the parent entity (as in *MACCO Props.*), specifically tasked with protecting and preserving the value of the subsidiary and affiliate non-debtor entities, and required to pay quarterly fees based on all "disbursements" by those subsidiary and non-debtor entities, yet be unable to claim compensation arising from those mandated tasks. A proper calculation of the statutory cap must be based on the full scope of the Trustee's mandate, and all moneys disbursed as a result of his fulfillment of that mandate—whether they were disbursements made at the parent level (such as

[67] *See* Dkt. 13*, Club Lender Parties' Statement, Limited Objection and Reservation of Rights to the Debtors' First Day Motions, and Request for a Scheduling Conference*, at p. 5.
[68] *See* Dkt. 203*, Order Appointing Trustee*, at p. 48-49.
[69] The term "CF Group" is defined in the *Order Appointing Trustee* as "CFGL (the publicly traded holding company), Smart Group, Protein Trading, SPSA, CFG Peru Singapore, CFIL, Growing Management, Chanery, Champion, Target Shipping, Fortress, CFGLPL, and Ocean Expert." Dkt. 203, at p. 8, fn. 11. Several of these entities are also guarantors of Peruvian Opco debt, and as demonstrated by the Court's quote, would benefit from the Trustee's restructuring and preservation of the Peruvian Opcos.

administrative expense claims paid by CFG Peru) or at the subsidiary level (the Peruvian Opcos, and others, disclosed in the MORs). *MACCO Props.*, 540 B.R. at 860. Were it any other way, "it is literally true that no competent person would wisely accept the office of receiver or trustee of such an estate." *In re Toole*, 294 F. at 976.

153. The total MOR Disbursements disclosed in the MORs for the CFG Peru enterprise, and included within a proper calculation of the statutory cap, is $1,894,149,430. *See* Dkt. 2614, MOR for June 2021.

(2) The CFGI Equity Interests Turned Over Pursuant to the Confirmed Plan Are Additional Moneys Disbursed Under Section 326(a)

154. Under the terms of the Confirmed Plan, the Trustee has turned over the estate of CFG Peru to the Plan Administrator, who is charged with effecting a transaction that will distribute the CFGI Equity Interests to creditors including the Noteholders and the Club Lenders. *See* Confirmed Plan at Article III.B.4, and Ex. A thereto, Recital C. These equity interests reflect the value of an estate that the Trustee was appointed to protect and preserve for the benefit of these same creditors. Indeed, it bears repeating that the Trustee was appointed at the request of the Club Lenders, who are not creditors of the CFG Peru estate, to protect their interests in its subsidiary Peruvian Opcos. The Trustee fulfilled that duty, as demonstrated by the value distributed under the Confirmed Plan.

155. Value turned over to creditors under a plan of reorganization or liquidation is properly considered within calculation of the statutory cap, even where that value will be disbursed by another. *See In re Toole*, 294 F. at 976-77 (receiver's commission based on value of securities turned over to creditors, or *to be* turned over to creditors in the future by trustee, rather than merely cash that was property of the estate) (emphasis added); *In re Lehrenkrauss*, 16 F. Supp. 792, 793-94 (E.D.N.Y. 1936) (following *In re Toole*, holding that mortgages of debtor

turned over to certificate holders are "moneys disbursed or turned over" but requiring evidence of value); *In re North American Oil & Gas, Inc.*, 130 B.R. 473, 479-80, fn. 15 (Bankr. W.D. Tex. 1990) (distributions of property other than cash, such as "equity instruments, notes, or even assignments," may be included where reducing such assets to cash is not appropriate and cash value can be "easily and readily" quantified).

156. Where a trustee turns over "moneys" or their equivalent to a party such as a reorganized debtor or liquidating trustee created under a confirmed plan, it is included within the statutory cap calculation. *See In re ACIS Capital Mgmt., L.P.*, 603 B.R. 300, 306-07 (Bankr. N.D. Tex. 2019) (including in 326(a) calculation all moneys turned over by chapter 11 trustee to reorganized debtor upon plan confirmation); *North American Oil & Gas*, 130 B.R. at 479-80, fn. 15 ("[A] trustee might in certain circumstances be called upon to distribute equity instruments, notes, or even assignments, in satisfaction of outstanding claims against the estate. To the extent that these distributions can easily and readily be quantified in money or money's worth, the transactions could justifiably be included in the base.").

157. The CFGI Equity Interests carry a value of $850,000,000, pursuant to evidence submitted in support of plan confirmation,[70] and such value constitutes disbursements that should be included within the statutory cap, along with all cash disbursements made under the Plan.

158. The timing and manner for the distribution of the CFGI Equity Interests under the Plan do not affect their inclusion in the calculation of the Trustee's commission. There is no requirement that a trustee personally sign a check or execute an assignment when the transfer of value is distributed under a confirmed plan. *See, In re ACIS*, 603 B.R. at 306-07 (including in 326(a) calculation all moneys turned over by chapter 11 trustee to reorganized debtor upon plan

[70] *See* Dkt. 2542, *Declaration of Bradley Jordan in Support of the Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* at ¶¶ 14 and 23.

confirmation); *MACCO Props.*, 540 B.R. at 848-49 (moneys disbursed by escrow or title company were moneys disbursed by trustee for purposes of commission calculation); *North American Oil & Gas*, 130 B.R. at 479-80, and fn. 15 (including disbursement to liquidating agent under terms of creditors' confirmed plan); *In re Greenley*, 102 B.R. at 404 (reversing bankruptcy court's denial of trustee fees, refusing to interpret "the statute so narrowly under the facts," holding that cap would include "value of contracts negotiated by trustee that provided estate with certain future value," and including value of guarantee contracts turned over to creditors); *In re Toole*, 294 F. at 977 (receiver's commission included value of securities still to be distributed by trustee).

159. In addition to the value of the CFGI Equity Interests, the Confirmed Plan calls for cash payments to be made to various parties (*e.g.*, Ng/China Fishery Settlement, Bank of America, HSBC settlement, Interim Distribution, etc.), which are listed on Exhibit 1 to the O'Malley Decl., in a total amount of $211,000,000 (the "Plan Cash Disbursements").[71] As noted above, the fact that such payments required by a confirmed plan are to be paid after confirmation, by another party, does not remove them from the category of disbursements that qualify for Section 326(a) calculation. *See, In re ACIS*, 603 B.R. at 306-07; *MACCO Props.*, 540 B.R. at 848-49; *North American Oil & Gas*, 130 B.R. at 479-80, and fn. 15; *In re Greenley*, 102 B.R. at 404; *In re Toole*, 294 F. at 977.

160. Thus, the total disbursements that are to be included within a proper calculation of the statutory cap are as follows:

[71] These amounts do not include the $25 million reserve set aside to address the Trustee's commission.

Category of Disbursement	Amount
MOR Disbursements	$1,894,149,430
CFGI Equity Interests	$850,000,000
Plan Cash Disbursements	$211,000,000
Total for Statutory Cap Calculation	**$2,955,149,430**

161. A statutory cap applicable to the Trustee's requested commission, based upon these total disbursements is calculated as follows:

Category of Distributions	Amount Attributable to Statutory Cap
"25 percent on the first $5,000 or less"	$5,000 x 25% = $1,250
"10 percent on any amount in excess of $5,000 but not in excess of $50,000"	$45,000 x 10% = $4,500
"5 percent on any amount in excess of $50,000 but not in excess of $1,000,000"	$950,000 x 5% = $47,500
"reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000"	$2,954,149,430 x 3% = $88,624,483
TOTAL:	**$88,677,733**

162. The Trustee's requested commission is a fraction of the statutory cap when the statutory cap is properly calculated based on disbursements of CFG Peru and its operating subsidiaries, plus all value distributed under the Confirmed Plan.

163. If, for any reason, this Court were to omit the disbursements of direct and indirect subsidiaries of CFG Peru while operating under the Trustee's administration, the calculation of the statutory cap under the remaining components (CFGI Equity Interests, Plan Cash Payments, and disbursements made by CFG Peru) would result in a statutory cap of $33,309,938. *See* O'Malley Decl. at ¶¶ 9-10. And if this Court were, instead, to omit the value of the CFGI Equity

Interests distributed under the Confirmed Plan, the calculation of the statutory cap under remaining disbursements (MOR Disbursements and Plan Cash Payments) would result in a statutory cap of $63,177,733. *Id.* at ¶ 11. Under any of these three alternative means for calculating the statutory cap, the Trustee's requested commission is less than the statutory cap, and is reasonable by comparison.

The Trustee's Requested Fee Enhancement

164. The Trustee has requested a fee enhancement in the form of a 2.09 multiplier of his lodestar.

165. In cases involving exceptional circumstances, courts have previously granted fee enhancements calculated by multipliers in excess of 2.09 times the lodestar. *See Connolly v. Harris Trust Co. (In re Miniscribe Corp.)*, 257 B.R. 56 (D. Colo. 2000) (awarding 3.5 times multiplier as fee enhancement); *aff'd In re Miniscribe Corp.*, 309 F.3d 1234, 1245 (10th Cir. 2002) (lowering fee enhancement multiplier to 2.57 times the lodestar); *In re Computron Software, Inc*., 6 F. Supp. 2d 313 (D.N.J. 1998) (applying, in securities fraud class action, lodestar test as cross check for common fund recovery and finding 2.5 multiplier "fair"); *In re Biskup*, 236 B.R. 332, 337 (Bankr. W.D. Pa. 1999) (applying fee that worked out to 2.76 multiplier for exceptional work by trustee in discovery and preservation of asset in bankruptcy case).

166. A fee enhancement is particularly appropriate in the context of a trustee's operation of a business. *See In re Residences at Bear Creek, Inc*., 2002 Bankr. LEXIS 1986 *11 (Bankr. N.D. Tex. June 13, 2002) (explaining, where chapter 7 trustee was authorized to operate the debtor's business, "[t]he lodestar does not reflect the compensation of the operator of a

business. The lodestar also does not contemplate the risks of the operation of a business while in a fiduciary capacity.")

167. The *Johnson* factors provide guidance for analysis of a fee enhancement request, but not all of the factors remain relevant, as several, such as the first factor—time and labor involved—are "subsumed within the Court's lodestar analysis." *Miniscribe*, 241 B.R. at 749. A court has "wide discretion" in applying the *Johnson* factors to enhance or reduce a trustee's commission request. *MACCO Props.*, 540 B.R. at 846.

168. The following is an analysis of the *Johnson* factors that are relevant to the Trustee's request for a fee enhancement in this extraordinary and unique case.

(a) The Novelty and Difficulty of the Issues

169. The novelty and difficulty of issues factor arises from the concern that an attorney "should be appropriately compensated for accepting the challenge" of a difficult case. *Johnson*, 488 F.2d at 718. *See also MACCO Props.*, 540 B.R. at 855 (this factor "weighs strongly in favor of enhancing Trustee's compensation" where trustee's duties included "not only operating and administering MACCO's own assets, but also to operating, protecting, and preserving SPEs' property as well").

170. The CFG Peru case presented the Trustee with exceptional challenges that easily satisfy this factor. The Trustee had to step in to operate an international enterprise, in which he was not welcomed by equity, or initially by management, as the valuable subsidiaries were facing insolvency proceedings. He had to navigate competing proceedings, efforts to commandeer assets throughout the world, and efforts to undermine this chapter 11 case. All of this has been accomplished while Peru has undergone intense political conflict and change, amid difficult weather and climate conditions that impacted the fishery harvest, and while having to fit

the operations of this international conglomerate within the framework of a chapter 11 case filed in a United States Bankruptcy Court—much of that during a global pandemic.

171. From the outset of the Trustee's appointment, it was unclear whether these cases had any future in chapter 11, whether the value of the Peruvian Opcos *could* be preserved, and whether unsecured creditors would receive any value through the chapter 11 process. The novelty and difficulty of issues that were presented by the CFG Peru case are exceptional, and the Trustee's administration of the CFG Peru estate under such circumstances strongly weighs in favor of a fee enhancement to the Trustee's compensation.

(b) The Skill Required to Properly Perform the Services; and, The Experience, Reputation, and Ability of the Professional

172. The factor pertaining to an attorney's skill required to perform services focuses on the court's views in overseeing the applicant's work, as "[t]he trial judge's expertise gained from past experience as a lawyer and his observation from the bench of lawyers at work become highly important in this consideration." *Johnson*, 488 F.2d at 718. *See also MACCO Props.*, 540 B.R. at 855-56 (finding that this factor "warrant[ed] compensation at rates in excess of those billed" where the court observed that the "Trustee's credentials are exceptionally suited to the issues that arose in this case, and his expertise and experience, as well as his integrity and patience, produced outstanding results."). Thus, at least to some extent, this factor asks the Court to apply its own observation and judgment to determine the skills applied by the Trustee.

173. This factor overlaps somewhat with the *Johnson* factor describing the "experience, reputation, and ability" of the professional. *See MAACO Props.*, 540 B.R. at 857 (finding this factor to support a fee enhancement where the trustee had "demonstrated the highest caliber of stewardship under the most challenging circumstances."). In this case, Mr. Brandt was uniquely qualified to take the helm of CFG Peru's business as Trustee, address the political and

legal complications that arose, negotiate with creditors, political bodies and other authorities throughout the case, maintain existing management at the Peruvian Opcos, and restructure the non-debtor entities' operations and asset base. Despite his particular skills and qualifications, the Trustee's current billing rate of $875/hour is far below the rates that any similarly qualified professional would likely have charged for the same position.

174. As in *MACCO Props.*, this Trustee displayed skills, experience, and credentials that were "exceptionally suited to the issues that arose in this case," and similarly "produced outstanding results." *MACCO Props*., 540 B.R. at 857. This is a factor that warrants "compensation at rates in excess of those billed" (*id*.), in the amount requested by the Trustee.

(c) The Preclusion of Other Employment Due to Accepting the Case

175. The factor concerning preclusion of other employment "involves the dual consideration of otherwise available business which is foreclosed because of conflicts of interest which occur from the representation, and the fact that once the employment is undertaken the attorney is not free to use the time spent on the client's behalf for other purposes." *Johnson*, 488 F.2d at 718.[72]

176. The effort required for the Trustee to fulfill his duties in this case had a preclusive affect that largely prevented the Trustee from accepting other engagements, including engagements that would have provided the Trustee with timely and certain fees, rather than the risks and delays inherent in the CFG Peru assignment. *See MACCO Props.*, 540 B.R. at 856 (finding this factor "weighs in favor of an enhancement of the lodestar" where case required 72% of trustee's time in the first nineteen months of the case, limiting options for other clients and work).

[72] The "conflicts of interest" aspect of this *Johnson* factor is not relevant to the instant case.

177. The Trustee was able to take on one other substantial chapter 11 matter, as chapter 11 trustee for a railroad, which commenced at the beginning of 2020 and is continuing, but he has continued to devote himself to this case and a successful outcome. It is fair to say that William A. Brandt, Jr. is a professional who would have easily replaced the CFG Peru engagement with other work if this appointment had not been made. Instead, he has gone without compensation in this case for nearly five years, and gone without the vast majority of compensation that he could have earned over that time from other engagements. This factor also weighs in favor of an enhancement to the Trustee's lodestar.

(d) The Customary Fee, and Whether the Fee Is Fixed or Contingent

178. A position such as chapter 11 trustee for a large, international fishing enterprise is not a position that can be handed off to the lowest bidder. The "bankruptcy court is not the bargain basement of the federal court system." *In re Ingersoll*, 238 B.R. 202, 208 (D. Colo. 1999).

179. As has been presented above, fee applications that have been filed by chapter 11 trustees appointed in other medium and large chapter 11 cases that are or recently were pending in the Southern District of New York demonstrate that this Trustee's hourly rate—before application of any fee enhancement—is far below the hourly rates charged by comparable trustees. If the Trustee were to charge a rate commensurate with his competitors of similar experience levels, or his senior restructuring attorneys employed in the CFG Peru Chapter 11 case, his fee would likely be approx. $1,600/hour, which would amount to a lodestar of $21,867,200 based on the same hours billed in this case. To reach the same requested total commission, a fee enhancement in the form of a 1.143 multiplier would have been required, which is on the low end of the range of fee enhancements.

180. The requirement that a trustee's fees be viewed as a "commission" necessitates a more flexible approach to a fee enhancement than is the case with the applications of other professionals. The concept of a fee enhancement that effectively doubles an hourly rate is not unique to this Trustee's Fee Application in these Chapter 11 Cases. Houlihan Lokey has served as a financial advisor to the Ad Hoc Group, and subsequently the Plan Proponents, and is not engaged as a professional in these cases under any provision of the Bankruptcy Code. Yet Houlihan's fees that were awarded in connection with Plan Confirmation—$4,625,000— will be nearly doubled by a $4,000,000 success fee that Houlihan is entitled to receive under its engagement agreement upon the Effective Date of the Confirmed Plan.[73]

(e) Time Limitations Imposed by the Client or the Circumstances

181. The *Johnson* factor pertaining to time limitations imposed by the client or the circumstances entitles the professional "to some premium" to the extent it "delays the lawyer's other legal work." *Johnson,* 488 F.2d at 718. This factor relates closely to the factor discussed above addressing the preclusion of other employment. The Trustee's administration of the CFG Peru estate and its entire enterprise required the Trustee's primary and constant attention throughout the first three years of the appointment, and the majority of his time throughout the appointment. This factor supports the Trustee's requested fee enhancement.

(f) The Amount Involved and the Results Obtained

182. Although the facts that pertain to a trustee's "success" vary widely among chapter 11 cases, "the fundamental inquiry is the same — have the trustee's or professional's actions in

[73] *See* Dkt. 2582, *Creditor Plan Proponent's Motion for Entry of an Order Pursuant to the Creditor Plan Proponents' Chapter 11 Plan For CFG Peru Investments Pte. Ltd. (Singapore) and Section 1129(a)(4) of the Bankruptcy Code (I) Approving All Pre-Confirmation Fees, Expenses, Costs and Disbursements Incurred by Houlihan Lokey, Inc. and (II) Authorizing and Directing the Plan Administrator to Promptly Pay All Such Preconfirmation Fees, Expenses, Costs and Disbursements,* at p. 7, fn. 6.

this case benefited the bankruptcy estate to such an admirable degree that a mere multiplication of the hours expended by the hourly rate fails to adequately compensate the individual for the work they have done?" *In re New England Compounding Pharm*., 544 B.R. at 737.

183. While it is common in bankruptcy cases to equate success with the recovery received by unsecured creditors, the analysis is more specific to the facts of each case, and success justifying a fee enhancement is not limited to cases where unsecured creditors are paid cash in full. *See, e.g. In re The 1031 Tax Grp.*, 2009 Bankr. LEXIS 3875, at *11, 2009 WL 4806199, at *3 (awarding 2.0 multiplier in case that provided 34% dividend to unsecured creditors); *In re Chary*, 201 B.R. 783, 788 (Bankr. W.D. Tenn. 1996) (Chapter 7 trustee's counsel entitled to enhancement where remarkable efforts resulted in a 40% recovery to creditors); *Matter of Baldwin-United Corp.*, 79 B.R. 321, 347 (Bankr. S.D. Ohio 1987) (counsel entitled to enhancement where creditors will receive almost 60 cents on the dollar); *see also In re New England Compounding Pharm.*, 544 B.R. at 738 ("the outcome of some cases, particularly those which initially appear administratively insolvent, can be characterized as exceptional and surpassing expectations even where creditors receive less than full payment").

184. Nor are fee enhancements limited to cases where unsecured creditors are paid in cash, but include cases where unsecured creditors receive the value of the company in the form of stock. *See e.g. Cardinal*, 151 B.R. at 846.

185. The Trustee was appointed to take control of a single chapter 11 debtor, but also to protect and enhance the value of its subsidiaries—primarily the Peruvian Opcos, which were facing a material risk in their then-pending insolvency proceedings. The Trustee has fulfilled that task under extraordinary circumstances and the value that he preserved will now be distributed to creditors in the form of equity. As addressed above, the Trustee's stewardship of

the CFG Peru business constitutes a success for purposes of the *Johnson* factors, and this factor strongly supports a fee enhancement to his requested lodestar.

(g) The "Undesirability" of the Case

186. The "undesirability" prong was developed in *Johnson* in the context of difficult civil rights cases, which can have a negative impact on an attorney's career. *Johnson*, 488 F.2d at 719. In chapter 11 bankruptcy cases, this prong has been interpreted to address issues that are unique to trustees such as the risks and delays associated with payment, the magnitude of the case, and the risks of failure that could impact future engagements. *See, e.g., MACCO Props.*, 540 B.R. at 859-60 (finding this factor "weighs overwhelmingly in favor of compensating Trustee as fully as the Section 326 compensation cap allows" where trustee had gone two years without any payment in the face of the "risk of inadequate compensation."); *Cardinal*, 151 B.R. at 848 ("the risk of nonpayment, the magnitude of the task to be performed, and the risk to Alix's professional reputation should he fail would have resulted in a much higher hourly rate to the client had the lodestar calculation been the sole contemplated basis for compensation.").

187. The "undesirability" of the CFG Peru trusteeship has been substantial and unique. The case has been inordinately complex and time consuming, involving frequent international travel, extensive litigation that included risks of personal liability, and numerous political challenges. It has been a case with lengthy payment delays (five years on fees), along with material payment risk. From the outset of the appointment, there have been parties suggesting that the Trustee's compensation could not address assets he administered if they were not property of the estate—even as those same parties had come into this Court to plea for the appointment of a trustee to protect their subsidiary asset value. While that issue has been fully addressed, above, it demonstrates the risks inherent in taking on the role of trustee for a parent

company of an international enterprise. The degree to which that risk is either addressed and dismissed, or is applied in a manner that penalizes the Trustee, will establish how "undesirable" positions such as this trusteeship are regarded in future cases.

188. A successful resolution of a case does not erase the "undesirability" of the case that existed at the time of a trustee's appointment. Creditors sought the appointment of a trustee because of the risks facing the value that would satisfy their claims. But in so doing, they required the Trustee to take on substantial risks of his own, and they are risks that are properly compensated by adjustment of a trustee's commission.

(h) Awards in Similar Cases

189. "The reasonableness of a fee may also be considered in the light of awards made in similar litigation within and without the court's circuit." *Johnson*, 488 F.2d at 719. The Court need look no farther than the instant case for a comparison of a fee enhancement, in the form of the $4 million "success fee" that Houlihan is entitled to receive on the Effective Date of the Confirmed Plan, which is an approx. 2.0 multiplier of its $4,625,000 fee request.[74]

190. Few other cases legitimately fall within the category of "similar litigation" for a proper comparison of awards. However, there are several cases that are sufficiently similar, though not as large in size or complexity, some of which have been discussed in detail above. *See Miniscribe*, 309 F.3d at 1237 (chapter 7 trustee was awarded commission of $1.8 million, calculated with a 2.57 multiplier of the lodestar, which represented 60% of the statutory cap of $3.044 million in a case that lasted approximately eight years); *In re 1031 Tax Group*, 2009 Bankr. LEXIS 3875, at *2-3 (chapter 11 trustee awarded commission calculated with 2.0 multiplier of the lodestar, for total allowed commission of just under $2 million, representing

[74] *See* Dkt. 2582, at p. 7, fn. 6.

70% of the statutory cap of $2,580,000, following two year appointment that returned a 34% distribution to unsecured creditors); *New England Compounding Pharm.*, 544 B.R. at 733 and 740 (in chapter 11 case that lasted approx. three years and did not pay unsecured creditors in full, trustee was granted total commission of $2.271 million, calculated by lodestar of $1.135 million multiplied by a 2.0 multiplier, and representing 39% of statutory cap).

191. The commission requested by the Trustee is within the ranges of such cases, as the Trustee requests a fee enhancement in the form of a 2.09 multiple of his lodestar, for a total commission of $25,000,000. If this Court calculates the statutory cap based upon distributions disclosed in the MORs as well as value distributed under the Confirmed Plan, the Trustee's requested commission represents less than one third of the statutory cap, or less than 1% of total disbursements.

Summary of Application of *Johnson* Factors

192. The *Johnson* factors overwhelmingly support the award of a fee enhancement in the form of the Trustee's requested 2.09 multiplier, for a total commission of $25,000,000.

193. The Confirmed Plan may have been proposed by creditors, but it is a plan that could not have been proposed and confirmed had the Trustee not fulfilled his mandate to preserve and protect the value of the Peruvian Opcos. A chapter 11 trustee's commission should not be contingent upon the realization of a third-party purchaser willing to pay a market price for assets, or a price necessary to pay all creditors in full, as was required here for a sale of the Peruvian Opcos. Rather, the Trustee has preserved the value of the Peruvian Opcos, which is precisely the mandate he was given, as those entities faced pending INDECOPI proceedings, all of which is a testament to the success of the Trustee's efforts.

194. The term "administratively insolvent" was not used frequently at the outset of this case. But it was a potential reality faced by CFG Peru and its subsidiaries given the ongoing insolvency proceedings of the Peruvian Opcos, the lack of cash in CFG Peru's accounts, and the damage done to the Peruvian Opcos by competing provisional liquidators. Despite the potentially fatal challenges that faced this corporate enterprise when the CFG Peru case was filed, the enterprise that remains today is one that has preserved value—retained management, retained primary assets, retained fishing quotas, etc.—while being entirely reorganized in terms of intercompany debts, non-material asset holdings, and resolution of material proceedings that were pending against many of the companies, both civil and criminal.

195. Under the exceptional circumstances of this case, the Court grants the Trustee's Fee Application, and request for a fee enhancement, for total commission of $25,000,000.

III.

EXPENSE REIMBURSEMENT

196. Section 330(a)(1) of the Bankruptcy Code provides that the Court may award to a trustee "reimbursement for actual, necessary expenses."

197. The Trustee has summarized his fees incurred during the Final Expense Period as follows:

CHARGES AND DISBURSEMENTS	AMOUNT
Airfare[75]	$2,357.44
Lodging	$838.62
Travel Meals	$119.66
Travel Meeting Expenses (cabs/limos	$214.00
Transportation (Parking, Gas, Tolls, etc.)	$84.00
Long Distance Telephone	$342.43

[75] The Trustee's international airfare expenses reflect a voluntary 50 percent reduction in the amount of $2,357.44.

Conference Calls	$883.72
Courtcall Charges	$910.00
Messenger/Delivery Service	$724.95
Photocopies (@ $0.10)	$265.30
Postage	$84.27
Pacer Charges	$81.50
WiFi Charges	$16.00
Outside Attorney's Fees/Costs related to Fee Application	$286,127.50
Inhouse Attorney's Fees/Costs related to Fee Application	$84,296.00
Document Review Services to Remove NDA/Confidential Information	$32,036.63
TOTAL EXPENSES FOR FINAL EXPENSE PERIOD	$409,382.02
FIRST INTERIM EXPENSES PREVIOUSLY APPROVED ON AN INTERIM BASIS	$355,051.93
TOTAL EXPENSES FOR FINAL APPROVAL	$764,433.95

198. The expenses requested by the Trustee are proper expenses of a chapter 11 trustee. An estate professional may properly recover attorney's fees in connection with the preparation of a fee application. *In Mesa Air Grp., Inc*., 449 B.R. 441, 445 (Bankr. S.D.N.Y. 2011) ("Since fee applications are required under the Bankruptcy Code, courts may award fees for time spent in actually preparing a fee application 'based on the level and skill reasonably required to prepare the application'.") (quoting 11 U.S.C Section 303(a)(6)). Consistent with applicable authority, the Trustee has *not* requested fees that he may incur defending his Fee Application. *See Baker Botts*, 576 U.S. at 135 (denying fees for defense of law firm's fee application).

199. The rates charged by the Trustee's outside and inhouse counsel for preparation of the Fee Application are reasonable, and equal about 2% of the total commission requested by the Trustee in the Fee Application. *See In re Mesa Air Grp.,* 449 B.R. at 445 (finding that a "3-5 %

range [of the total fees sought] is a useful metric" for reasonable of attorney's fees arising from preparation of fee application); *In re Borders*, 456 B.R. at 212 (following *Mesa Air Grp*., and allowing fees for fee application preparation that equaled 3.5% of the requested fees).

200. The Court finds that the Trustee's expenses request for $409,382.02 for the Final Expense Period are reasonable and should be allowed and paid, and that the $355,051.93 of First Interim Fees previously allowed on an interim basis should be allowed on a final basis, for total allowed expenses in this case of $764,433.95.

IV.

CONCLUSION

201. Based upon the foregoing Findings of Fact and Conclusions of Law, this Court shall enter its order in accordance herewith: (a) approving on a final basis the Trustee's commission pursuant to Sections 330(a) and 326(a) in the requested amount of $25,000,000 (the "Commission"); (b) authorizing the reimbursement of the Trustee's actual and necessary expenses in the amount of $409,382.02 (the "Final Period Expenses") incurred during the Final Expense Period, (c) approving on a final basis the $355,051.93 previously approved and paid in connection with the Trustee's First Interim Expense Request, (d) ordering payment of the Commission and Final Period Expenses by the parties identified in the Confirmed Plan as responsible for payment of such administrative expenses.

EXHIBIT B

Hearing Date: October 27, 2021 at 11:00 a.m. (Prevailing Eastern Time)
Objection Deadline: October 20, 2021 at 4:00 p.m. (Prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
CHINA FISHERIES GROUP LIMITED (CAYMAN), *et al.*,	**Case No.: 16-11895 (JLG)**
Debtors.[1]	**(Jointly Administered)**
In re:	**Chapter 11**
CFG PERU INVESTMENTS PTE. LIMITED (SINGAPORE),	**Case No. 16-11914 (JLG)**
Debtor.	**(Jointly Administered)**

[1] The Debtors are China Fishery Group Limited (Cayman), Pacific Andes International Holdings Limited (Bermuda), N.S. Hong Investment (BVI) Limited, South Pacific Shipping Agency Limited (BVI), China Fisheries International Limited (Samoa), CFGL (Singapore) Private Limited, Chanery Investment Inc. (BVI), Champion Maritime Limited (BVI), Growing Management Limited (BVI), Target Shipping Limited (HK), Fortress Agents Limited (BVI), Ocean Expert International Limited (BVI), Protein Trading Limited (Samoa), CFG Peru Investments Pte. Limited (Singapore), Smart Group Limited (Cayman), Super Investment Limited (Cayman), Pacific Andes Resources Development Limited (Bermuda), Nouvelle Foods International Ltd., Golden Target Pacific Limited, Pacific Andes International Holdings (BVI) Limited, Zhonggang Fisheries Limited, Admired Agents Limited, Chiksano Management Limited, Clamford Holding Limited, Excel Concept Limited, Gain Star Management Limited, Grand Success Investment (Singapore) Private Limited, Hill Cosmos International Limited, Loyal Mark Holdings Limited, Metro Island International Limited, Mission Excel International Limited, Natprop Investments Limited, Pioneer Logistics Limited, Sea Capital International Limited, Shine Bright Management Limited, Superb Choice International Limited, Toyama Holdings Limited (BVI), and Pacific Andes Enterprises (Hong Kong) Limited.

[PROPOSED] ORDER APPROVING FIRST AND FINAL FEE APPLICATION OF FORMER CHAPTER 11 TRUSTEE WILLIAM A. BRANDT, JR., FOR COMPENSATION FOR SERVICES RENDERED AS CHAPTER 11 TRUSTEE FOR THE PERIOD FROM NOVEMBER 10, 2016 THROUGH AND INCLUDING JUNE 24, 2021, AND SECOND AND FINAL APPLICATION OF FORMER CHAPTER 11 TRUSTEE WILLIAM A. BRANDT, JR., FOR REIMBURSEMENT OF EXPENSES FOR THE PERIOD MARCH 1, 2020 THROUGH AND INCLUDING JUNE 24, 2021

The matter of the First and Final Fee Application of Former Chapter 11 Trustee William A. Brandt, Jr., for Compensation for Services Rendered as Chapter 11 Trustee for the Period From November 10, 2016 Through and Including June 24, 2021, and Second and Final Application of Former Chapter 11 Trustee William A. Brandt, Jr., for Reimbursement of Expenses for the Period March 1, 2020 Through and Including June 24, 2021, Dkt. ___ (the "Fee Application") of William A. Brandt, Jr., in his capacity as former chapter 11 trustee (the "Trustee") of CFG Peru Investments Pte. Limited (Singapore) ("CFG Peru") in the above-captioned chapter 11 cases, came on for hearing before the undersigned United States Bankruptcy Judge on October 27, 2021 (the "Hearing"). Appearances are as noted on the record. Any capitalized terms not defined herein carry the meaning ascribed to them in the Fee Application.

By his Fee Application, the Trustee requests allowance and payment of a commission in the form of (i) a lodestar of $11,958,625.00 arising from the Trustee's time spent on the case and his hourly rate; (ii) a fee enhancement in the form of an approximate 2.09 multiplier applied to the lodestar, for a total requested commission of $25,000,000; (iii) final approval of $355,051.93 in interim expenses previously allowed and paid; and (iv) approval and payment of allowable expenses in the amount of $409,382.02 incurred in the period March 1, 2020 through June 24, 2021 (the "Final Expense Period").

The Court having read and considered the Trustee's Fee Application, the Declaration of William A. Brandt, Jr. and its attached exhibits [Dkt. ___], the Declaration of Patrick J. O'Malley and its attached exhibits [Dkt. ___], all documents filed on the docket in response to the Fee Application, having heard oral argument at the Hearing, having entered this Court's Findings of Fact and Conclusions of Law, and good cause appearing therefor:

IT IS HEREBY ORDERED that the Trustee's Fee Application is approved.

IT IS FURTHER ORDERED that the parties identified in the Confirmed Plan as responsible for payment of the Trustee's commission and expenses are ordered to pay the Trustee's commission of $25,000,000, and his expenses of $409,382.02 arising from his Final Expense Period.

IT IS FURTHER ORDERED that the Trustee's interim expenses for the period November 10, 2016 through February 29, 2020, for which the Trustee has been paid $355,051.93, are approved on a final basis.