

Proposed Presentment Date: October 29, 2021 at 12:00 p.m. (prevailing Eastern Time)  
Proposed Objections Due: October 29, 2021 at 11:00 a.m. (prevailing Eastern Time)

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

In re:	)	
	)	Case No. 16-11895 (JLG)
CHINA FISHERY GROUP LIMITED (CAYMAN), <i>et al.</i> , <sup>1</sup>	)	
	)	Chapter 11
Debtors.	)	
	)	(Jointly Administered)
In re:	)	
	)	Case No. 16-11914 (JLG)
CFG PERU INVESTMENTS PTE. LTD. (SINGAPORE),	)	
	)	Chapter 11
Debtor.	)	
	)	(Jointly Administered)

**CREDITOR PLAN PROPONENTS' MOTION TO  
ENFORCE THE INJUNCTION ORDER AND CONFIRMATION ORDER**

<sup>1</sup> The debtors in these chapter 11 cases 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. Ltd. (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, and Toyama Holdings Limited (BVI).

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The Creditor Plan Proponents (as defined in the *Creditor Plan Proponents’ Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* [Docket No. 2564] (as amended, supplemented, or modified from time to time, the “**Chapter 11 Plan**”))<sup>2</sup> state as follows in support of this motion:

**Preliminary Statement**

1. The Creditor Plan Proponents require immediate Court intervention to ensure that a rogue creditor’s unlawful actions [REDACTED] do not derail consummation of the confirmed Chapter 11 Plan.

2. More specifically, on Thursday, October 21, 2021, the Plan Administrator convened a creditors meeting for the UK Proceeding contemplated by the Chapter 11 Plan. During that meeting, the Plan Administrator disclosed to the Creditor Plan Proponents and the other voting creditors that the lone dissenting Club Facility Lender—Sun Securities Limited (“**Sun Securities**”)—had filed [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (the “**Enforcement Proceeding**”).

3. As the Court may recall, there has long been suspicion that Sun Securities—a small Hong Kong-based broker dealer with little, if any, record of investing in distressed debt—may seek to obstruct CFG Peru’s restructuring. Among other reasons, Sun Securities became a lender of record in July 2017, *i.e.*, more than a year *after* the commencement of these cases and nearly a

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<sup>2</sup> Capitalized terms used in this motion but not defined herein shall have the meanings ascribed to such terms in the Chapter 11 Plan.

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year *after* appointment of the former Chapter 11 Trustee and did not respond to efforts by the former Chapter 11 Trustee to engage.

4. In response, a variety of protective measures were undertaken. The Court entered an injunction against the commencement of extraterritorial insolvency proceedings and approved a system to prevent assignments of Club Loan Facility claims to potential bad actors; the former Chapter 11 Trustee also sought discovery from Sun Securities. More recently, the Creditor Plan Proponents ensured that the Chapter 11 Plan included an injunction against post-confirmation obstruction by dissident creditors such as Sun Securities. Sun Securities also received actual notice of both the confirmation hearing and the UK Proceeding contemplated by the Chapter 11 Plan to avoid *post hac* disputes about notice.

5. These efforts notwithstanding, Sun Securities commenced the Enforcement Proceeding in clear violation of the Court's 2017 injunction and the Chapter 11 Plan. The Enforcement Proceeding places at risk CFG Peru's years-long restructuring, and it is imperative that the Court enforce the relevant protections provided by the Court's prior injunction and the confirmed Chapter 11 Plan to enjoin Sun Securities and any other parties from seeking to obstruct implementation of the Chapter 11 Plan.

6. Sun Securities' collateral attack on the confirmed Chapter 11 Plan puts the entire restructuring at risk. More specifically, the Enforcement Proceeding may prevent [REDACTED] [REDACTED] from effectuating certain near-term actions that may be necessary or appropriate to consummate the Chapter 11 Plan—including the upcoming hearing to sanction [REDACTED] proposed U.K. restructuring plan. The Enforcement Proceeding, if not abated, will increase the risk that the restructuring will become mired in a lengthy insolvency proceeding that may prevent consummation of the Chapter 11 Plan [REDACTED]

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[REDACTED]

[REDACTED]. These actions reek of bad faith: Sun Securities has played an active role in the UK Proceeding without ever disclosing its recent actions abroad to the High Court of Justice of England and Wales (the “**High Court**”) or CFGI; Sun Securities also received over \$1.8 million in cash distributions pursuant to the Chapter 11 Plan while it was seeking to derail the restructuring.

7. Prior to filing this motion, the Creditor Plan Proponents demanded in writing that Sun Securities withdraw its self-serving Enforcement Proceeding. Sun Securities refused. Accordingly, the Creditor Plan Proponents request that the Court grant the requested relief and enjoin Sun Securities and any other related parties from continuing to violate this Court’s prior injunction against extraterritorial enforcement actions and order confirming the Chapter 11 Plan.

#### **Jurisdiction and Venue**

8. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Creditor Plan Proponents confirm their consent to entry of a final order by the Court in connection with this motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

9. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The bases for the relief requested herein are sections 105(a) and 1141 of title 11 of the United States Code (the “**Bankruptcy Code**”), rules 3020(d) and 9014 of the Federal Rules of

Bankruptcy Procedure (the “**Bankruptcy Rules**”), paragraph 2 of the Injunction Order, and Articles IV.K and VIII.K of the Chapter 11 Plan.

### **Relief Requested**

11. The Creditor Plan Proponents request entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Order**”): (a) enforcing the *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* [Docket No. 809] (the “**Injunction Order**”), *see* Pesce Decl., Ex. 1, and holding that the Enforcement Proceeding contravenes the terms thereof; and (b) enforcing the *Order Confirming Creditor Plan Proponents’ Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* [Docket No. 2569] (the “**Confirmation Order**”), *see* Pesce Decl., Ex. 2, and holding that the Enforcement Proceeding contravenes the terms thereof. In support of this motion, the Creditor Plan Proponents submit the *Declaration of Gregory F. Pesce in Support of the Creditor Plan Proponents’ Motion to Enforce the Injunction Order and the Confirmation Order* (the “**Pesce Declaration**”), filed in connection herewith.

### **Background**

12. On June 30, 2016, CFG Peru and certain affiliates commenced voluntary chapter 11 cases with the Court.

13. On June 30, 2016, in connection with the filing of CFG Peru’s chapter 11 case, each of Fishman S.A.C., Construcciones y Reparaciones Marinas S.A.C., and Marines Forces S.A.C. (collectively, the “**Petitioning Creditors**”) initiated involuntary ordinary bankruptcy proceedings

in respect of CFGI and Copeinca (collectively, the “**Peruvian OpCos**”) in Peru (the “**First Involuntary Enforcement Proceeding**”) before the INDECOPI.

14. On October 28, 2016, the Court entered the *Memorandum Decision and Order Granting Motion for the Appointment of a Chapter 11 Trustee* [Docket No. 203], which directed the U.S. Trustee to appoint a chapter 11 trustee in CFG Peru’s chapter 11 case.

15. On November 10, 2016, the U.S. Trustee filed the *Application for Order Approving the Appointment of a Chapter 11 Trustee in Debtor CFG Peru Singapore* [Docket No. 218] identifying William A. Brandt, Jr. as the Chapter 11 Trustee for CFG Peru, which request was approved by the Court on November 14, 2016. *See* Docket No. 226.

16. On November 15, 2016, CFGI received a summons from the INDECOPI regarding the First Involuntary Enforcement Proceeding summoning CFGI to appear and respond by December 1, 2016.

17. On November 28, 2016, the Court approved the *Stipulation By and Among the Chapter 11 Trustee, CFGI Investment S.A.C., Corporación Pesquera Inca S.A.C., and Sustainable Fishing Resources S.A.C.* [Docket No. 255] (the “**First Dismissal Stipulation**”), pursuant to which the First Involuntary Enforcement Proceeding was dismissed.

18. On or about September 29, 2016, without any notice or first seeking relief from the automatic stay, Club Facility Lender, China CITIC Bank International Limited, or an affiliate thereof, commenced involuntary ordinary bankruptcy proceedings in respect of the Peruvian OpCos with the INDECOPI (the “**Second Involuntary Enforcement Proceeding**”).

19. On December 6, 2016, the former Chapter 11 Trustee filed the *Chapter 11 Trustee’s Motion for the Entry of an Order Pursuant to Sections 105(a) and 362 of the Bankruptcy Code*

*Enforcing the Automatic Stay* [Docket No. 267] to enforce the automatic stay with respect to the Peruvian OpCos in response to the Second Involuntary Enforcement Proceeding.

20. On December 16, 2016, the former Chapter 11 Trustee withdrew that motion upon learning of the dismissal of the Second Involuntary Enforcement Proceeding. *See* Docket No. 279.

21. In conjunction with the foregoing, the former Chapter 11 Trustee and certain CFG Peru creditors became concerned that certain parties may again seek to obstruct this case. For example, the Creditor Plan Proponents understand that on July 13, 2017, Sun Securities took assignment of claims arising under the Club Facility Agreement in an aggregate principal amount of approximately \$24,125,874.16.<sup>3</sup> The Sun Securities trade was suspicious because, among other reasons, it occurred more than a year *after* the commencement of these cases and nearly a year *after* appointment of the former Chapter 11 Trustee. Sun Securities also refused to engage with the former Chapter 11 Trustee or other creditors, which is customary for distressed investors in similar situations.

22. In response, certain preventive actions were taken. Specifically, on September 7, 2017, the former Chapter 11 Trustee filed the *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* [Docket No. 743] (the “**Injunction Motion**”), seeking an

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<sup>3</sup> Pursuant to the Club Facility Agreement, Standard Chartered Bank (Hong Kong) Limited (“SCB”) was an original lender under the Club Facility. Upon information and belief, on May 19, 2017, SSG Capital Parties, LLP (“SSG”) purchased all claims, rights, interest, and benefit of SCB in relation to the outstanding principal amount of \$24,125,874.16 under the Club Facility (the “**Traded Portion**”). This purchase was effected through the Loan Markets Association standard form of assignment for distressed claims (the “**Trade Confirmation**”). Upon information and belief, on June 21, 2017, and in accordance with Section 5 of the Trade Confirmation, SSG nominated Sun Securities as the buyer of the Traded Portion. Upon information and belief, on July 13, 2017, SCB assigned the entirety of the Traded Portion to Sun Securities.

order confirming that the automatic stay under section 362 of the Bankruptcy Code enjoined enforcement actions by holders of Club Facility Claims and Senior Notes against the Peruvian OpCos. On September 8, 2017, notice of the Injunction Motion was sent directly to counsel to the Club Facility Agent on behalf of all of the Club Facility Lenders. *See Affidavit of Service* [Docket No. 756].

23. Additionally, on September 7, 2017, the former Chapter 11 Trustee filed the *Chapter 11 Trustee's 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* [Docket No. 741] to establish certain procedures to effectuate assignments of claims under the Club Facility in a manner that would prevent any such assignee from commencing a proceeding before the INDECOPI.

24. On October 4, 2017, the Court entered the Injunction Order and the *Order 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* [Docket No. 813] (the “**Promissory Notes Order**”), which required proposed assignees of Club Facility Claims to agree to not pursue extraterritorial enforcement proceedings.

25. CFG Peru's creditors believed the Injunction Order and the Promissory Notes Order would prevent creditors from pursuing enforcement actions that may impede the sale process and, therefore, CFG Peru's creditors were generally supportive of the Court's entry of those orders.

26. Eventually, it became clear that the former Chapter 11 Trustee's sale process had failed and that a different path was necessary. On March 1, 2021, following over a year of discussions among CFG Peru's creditors, creditors holding approximately 56% of the principal



amount of the Senior Notes and 71% of the principal amount of the Club Facility executed the Restructuring Support Agreement. Ultimately, creditors holding approximately 88% of the principal amount of the Senior Notes and approximately 94% of the principal amount of the Club Facility (including HSBC-HK, which acceded to an amended version of the Restructuring Support Agreement on May 6, 2021) entered into the Restructuring Support Agreement.

27. On March 16, 2021, the Creditor Plan Proponents—on behalf of the parties to the Restructuring Support Agreement—filed the Chapter 11 Plan and Disclosure Statement and began to prosecute confirmation of the Chapter 11 Plan.

28. On April 30, 2021, the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed by the Debtors and Related Voting and Objection Deadlines* (the “**Confirmation Hearing Notice**”), a copy of the Chapter 11 Plan, and additional solicitation materials were served by Epiq Corporate Restructuring LLC via email on the holders of claims entitled to vote to accept or reject the Chapter 11 Plan, including Sun Securities. *See* Pesce Decl., Ex. 3. On May 7, 2021, updated solicitation materials were served by first class mail, with PDF copies of the documents served via email, upon Sun Securities and other interested parties. *See id.*

29. Sun Securities did not object to the Chapter 11 Plan nor did Sun Securities opt out of the releases included in Article VIII of the Chapter 11 Plan.

30. On June 10, 2021, the Court entered the Confirmation Order. *See* Docket No. 2569. The Chapter 11 Plan provides that, post-confirmation, a creditor-selected Plan Administrator will prosecute the Chapter 11 Plan and the transactions contemplated thereby. On May 21, 2021, the Creditor Plan Proponents identified Michael Foreman as the Plan Administrator. *See* Docket No. 2494, Exhibit C.

31. Post-confirmation, the Plan Administrator has worked collaboratively with the Creditor Plan Proponents to effectuate the Chapter 11 Plan. For example, the Chapter 11 Plan provides for the payment of \$75 million prior to the completion date to pay down a portion of the debts owed to creditors of Copeinca and CFGI (including the Club Facility Lenders) (the “**Interim Distribution**”). The first tranche of the Interim Distribution in an amount equal to \$50 million was remitted by CFGI on September 27, 2021. Of this amount, Sun Securities received approximately \$1.848 million.

32. Another key implementation step is the pursuit of a restructuring plan in the United Kingdom in order to discharge the debt of the Peruvian OpCos under the Club Facility Agreement, which is—and has always been—governed by English law. On September 6, 2021, the Plan Administrator, as contemplated by the Chapter 11 Plan, caused CFGI to notify certain of its creditors (including Sun Securities and all other Club Facility Lenders) of CFGI’s intention to propose a restructuring plan under Part 26A of the UK Companies Act 2006 (the “**Restructuring Plan**”). *See* Pesce Decl., Ex. 4. On September 24, 2021, CFGI filed the Restructuring Plan with the High Court. *See* Pesce Decl., Ex. 5. On October 1, 2021, the High Court conducted the “convening hearing” for the Restructuring Plan. The Chapter 11 Plan was described in detail in the explanatory statement for the Restructuring Plan, dated October 1, 2021,<sup>4</sup> and was included in the materials distributed to parties attending the convening hearing, including counsel to Sun Securities. The record date for voting and entitlement purposes in connection with the

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<sup>4</sup> *See* Pesce Decl., Ex. 6. at 3.19 (“[T]he Restructuring (as contemplated by the RSA) comprises three principal restructuring processes: (i) the Chapter 11 Plan; (ii) the Restructuring Plan; and (iii) a Singapore Process . . . .”); *id.* at 3.21 (“On 10 June 2021, the Chapter 11 Plan was confirmed by the U.S. Bankruptcy Court following a vote by creditors of CFG Peru (including the unanimous support of those Existing SN Holders voting, which totalled 84.77% by value of all Existing SN Holders). The effective date of the Chapter 11 Plan will be the same date as the completion of the restructuring contemplated by the Restructuring Plan (being the Restructuring Effective Date) and *the two processes are interconditional.*”) (emphasis added); *id.* at 3.22 (“The Chapter 11 Plan provides for . . . the appointment of a plan administrator . . . appointed by the Chapter 11 Plan Proponents, to oversee implementation of the Restructuring . . . .”).

Restructuring Plan was October 20, 2021. The following day, October 21, 2021, the Plan Administrator conducted a creditors meeting in connection with the Restructuring Plan. At that meeting, 99% of the holders of the Senior Notes and 94% of the lenders under the Club Facility Agreement that submitted a vote in respect of the Restructuring Plan voted in favor of the Restructuring Plan. The sanction hearing is currently scheduled for November 3, 2021, and the restructuring is anticipated to close in late November 2021.

33. Following sanction of the Restructuring Plan, pursuant to clause 4 (*Implementation of Financial Restructuring*) thereof, CFGI will be authorized (as attorney for each of the relevant creditors, including Sun Securities) to take all steps necessary to consummate the transactions contemplated by the Restructuring Plan. These steps will include a full discharge of the claims of the Club Facility Lenders under the Club Facility Agreement in exchange for consideration to be distributed equitably to all Club Facility Lenders in accordance with their rights under the Club Facility Agreement and the Restructuring Plan. Similarly, following sanction of the Restructuring Plan, pursuant to clause 11 (*Standstill*) thereof, the relevant creditors (including Sun Securities) shall be subject to a standstill (in addition to those pursuant to orders of the Court) against all enforcement actions.

34. Sun Securities, unlike nearly all of CFG Peru's other constituents, refused to engage with the former Chapter 11 Trustee or the Creditor Plan Proponents. However, Sun Securities has participated in all stages of the Restructuring Plan. Those actions have included: (a) making submissions to court by way of letter dated September 30, 2021, *see* Pesce Decl., Ex. 7; (b) appearing at the convening hearing on October 1, 2021 through its counsel on a watching brief; and (c) voting in the creditor meetings and submitting the corporate confirmation, details, and

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KYC information required to receive the exchanged notes to be offered through the Restructuring Plan.

35. During the creditors meeting conducted in connection with the Restructuring Plan on October 21, 2021, which the Creditor Plan Proponents attended, the Plan Administrator disclosed that on October 19, 2021, [REDACTED] Sun Securities—the only Club Facility Lender that has not signed the Restructuring Support Agreement and that did not vote in favor of the Restructuring Plan—commenced the Enforcement Proceeding.

**Sun Securities Has Placed CFG Peru's**  
**Restructuring [REDACTED] at Great Risk**

36. The Enforcement Proceeding is deeply disturbing to the Creditor Plan Proponents.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] By this motion, the Creditor Plan Proponents seek entry of the Order to confirm that the commencement of the Enforcement Proceeding violates the Injunction Order and the Confirmation Order, without prejudice to the rights of the Creditor Plan Proponents to seek other legal or equitable relief (including, without limitation, sanctions or damages against Sun Securities or any party that has aided or abetted it in its scheme to derail the Chapter 11 Plan and/or discovery pursuant to Bankruptcy Rule 2004 with respect thereto) and enjoining Sun Securities and any other parties from taking further steps in violation of such orders. [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

38. The Enforcement Proceeding is expected to cause a cascade of negative effects, among other things: (a) undermining the Injunction Order, which has prevented distracting and value-destructive illegal, extritorial creditor enforcement actions for four years; (b) eviscerating the Chapter 11 Plan that will permit the Peruvian OpCos to discharge hundreds of millions of dollars of funded indebtedness; (c) impairing the ability of the Peruvian OpCos to access \$150 million in new capital that the creditors have agreed to fund at emergence; and (d) placing CFG Peru's estate at greater risk of administrative insolvency by requiring it to incur additional administrative expenses while at the same time preventing CFG Peru to continue to receive funding from the Peruvian OpCos.

39. Prior to filing this motion, on October 25, 2021, the Creditor Plan Proponents made a written demand that Sun Securities withdraw the Enforcement Proceeding on or before 8:00 a.m. (prevailing Eastern Time), on October 27, 2021. *See* Pesce Decl., Ex. 8. Sun Securities refused. *See* Pesce Decl., Ex. 9. Accordingly, the Creditor Plan Proponents have filed this motion.

### **Argument**

#### **I. Sun Securities Violated at Least Two Orders of the Court by Commencing the Enforcement Proceeding.**

40. The Enforcement Proceeding violates the letter and spirit of two of the most important Court orders entered in this case: the Injunction Order entered in October 2017 when

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the former Chapter 11 Trustee and other stakeholders feared creditors like Sun Securities would (again) commence involuntary proceedings abroad in an effort to stymie CFG Peru's chapter 11 restructuring; and the Confirmation Order.

41. The Injunction Order provides:

[A]ll persons (including individuals, partnerships, corporations and all those acting on their behalf) ***holding claims relating to the Club Facility . . . shall be stayed, restrained, and enjoined from: . . . commencing or continuing any judicial, administrative, or other action or proceeding against the Peruvian OpCos in Peru to collect their respective debts against the Peruvian OpCos, whether by commencing bankruptcy proceedings with the [INDECOPI],*** commencing any other proceeding or enforcement action in Peru with respect to those debts, or issuing or employing process, that was or could have been initiated before the Debtors' Chapter 11 Cases commenced . . . .

Injunction Order ¶ 2 (emphasis added).

42. The Chapter 11 Plan provides that the Injunction Order remains in effect with respect to creditors, such as Sun Securities, other than the Creditor Plan Proponents. *See* Plan, Art. IV.K ("Upon entry of the Confirmation Order, the Injunction Order shall be vacated and without any further effect, ***solely with respect to the Creditor Plan Proponents, the Consenting Creditors, the Plan Administrator, NewCo, and their respective Affiliates.***") (emphasis added).

43. Moreover, Article VIII.K of the Chapter 11 Plan, entitled "Injunction," expressly provides that, post-confirmation, creditors and their respective parties ***"shall be enjoined from taking any actions to interfere with, and shall be compelled to take any actions requested by the Creditor Plan Proponents to permit, the implementation or Consummation of the Plan."***

Chapter 11 Plan, Art. VIII.K (emphasis added). [REDACTED]

[REDACTED]

[REDACTED]

44. Enforcement of the Injunction Order and the Confirmation Order is necessary and warranted by the facts and circumstances of this case. The Injunction Order was entered following the commencement of two separate enforcement proceedings at the outset of this case that, absent dismissal, would have left CFG Peru and its debtor affiliates mired in lengthy, unpredictable foreign insolvency proceedings. The Injunction Order provided a measure of stability to this case over the last four years and the Creditor Plan Proponents, therefore, reaffirmed its applicability to all other creditors in the Chapter 11 Plan. Similarly, the Creditor Plan Proponents included a standstill effective as of the confirmation date in the Chapter 11 Plan to ensure that Sun Securities and other potentially hostile creditors did not seek to disrupt the post-confirmation implementation process. There is no question that Sun Securities is subject to the Injunction Order and the Confirmation Order and that its actions violate the text and spirit of those orders. As the United States Supreme Court has noted, it is “well-established” that “persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order.” *Celotex Corp. v. Edwards*, 514 U.S. 300, 306 (1995). The same is true here: Sun Securities is required to comply with this Court’s prior orders and its willful failure to do so imperils the ability of distressed companies to use the Bankruptcy Code to restructure their affairs in an orderly, value-maximizing manner.

45. This is particularly true where, as is the case here, Sun Securities was well aware of the Chapter 11 Plan. The Creditor Plan Proponents understand Sun Securities became a holder of record under the Club Facility in 2017, during the pendency of these chapter 11 proceedings. Sun Securities also received notice of the proceedings. For example, Sun Securities received the Confirmation Hearing Notice via first class mail, with a PDF copy served via email, approximately 40 days in advance of the confirmation hearing—satisfying the notice requirements specified in

Bankruptcy Rule 2002. *See* Fed. R. Bankr. P. 2002(b)(2) (stating that the clerk shall give all creditors “not less than 28 days’ notice by mail of the time fixed . . . for filing objections and the hearing to consider confirmation of a . . . chapter 11 plan”). The same is true of the Injunction Order, notice of which was provided on September 8, 2017 to the Club Facility Agent on behalf of the Club Facility Lenders, as contemplated by the Club Facility Agreement. *See In re Vivaro Corp.*, 541 B.R. 144, 151 (Bankr. S.D.N.Y. 2015) (stating that, generally, notice must be “reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”).

46. To the extent Sun Securities had any issues with this Court’s prior injunction orders, Sun Securities could and should have raised any such issues with the Court. *See Celotex*, 514 U.S. at 313 (“If respondents believed the Section 105 Injunction was improper, they should have challenged it in the Bankruptcy Court, like other similarly situated bonded judgment creditors have done. . . . Respondents chose not to pursue this course of action, but instead to collaterally attack the Bankruptcy Court’s Section 105 Injunction in the federal courts in Texas. This they cannot be permitted to do without seriously undercutting the orderly process of the law.”); *see also In re Motors Liquidation Co.*, 513 B.R. 467, 478 (Bankr. S.D.N.Y. 2014) (citing *Celotex*, 514 U.S. at 306-07). Sun Securities did not object; instead, it sought to work in the shadows from its Hong Kong base, waiting to launch a collateral attack on the confirmed Chapter 11 Plan at the eleventh hour. The Court should not condone this type of conduct and, accordingly, the Creditor Plan Proponents request that the Court grant the requested relief.

## **II. The Court Has Authority to Enforce Its Prior Orders.**

47. It is axiomatic that a federal court has the power and jurisdiction to enforce its own orders, and this Court may therefore enforce the Injunction Order and the Confirmation Order.



*See, e.g., Local Loan Co. v. Hunt*, 292 U.S. 234, 239 (1934) (stating that a bankruptcy court has jurisdiction to enforce its orders); *In re Johns-Manville Corp.*, 97 B.R. 174, 180 (Bankr. S.D.N.Y. 1989) (finding that the bankruptcy court retains jurisdiction to interpret and enforce its own orders); *In re Cont'l Airlines, Inc.*, 236 B.R. 318 (Bankr. D. Del. 1999), *aff'd*, 279 F.3d 226 (3d Cir. 2002) (in enforcing its order, finding creditors in contempt of the plan and confirmation order and awarding debtor attorneys' fees and costs). Moreover, a bankruptcy court has statutory jurisdiction over all matters arising in, arising under, and related to chapter 11 cases, and such jurisdiction extends beyond confirmation of a chapter 11 plan. 28 U.S.C. § 157(a) ("Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district."); 28 U.S.C. § 1334(b) (stating that "district courts shall have original . . . jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11"); *Elliott v. GM LLC (In re Motors Liquidation Co.)*, 829 F.3d 135, 153 (2d Cir. 2016) ("A bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders, particularly when disputes arise over a bankruptcy plan of reorganization."); *The LTV Corp. v. Back (In re Chateaugay Corp.)*, 201 B.R. 48, 64 (Bankr. S.D.N.Y. 1996), *aff'd in part*, 213 B.R. 633 (S.D.N.Y. 1997) ("Contrary to Defendants' contention, bankruptcy court jurisdiction is not 'constricted' by confirmation of a debtor's plan of reorganization."); *see In re Spiegel, Inc.*, No. 03-11540, 2007 WL 201112, at \*4 (Bankr. S.D.N.Y. Jan. 23, 2007) ("A Bankruptcy Court's jurisdiction continues post-confirmation to protect its confirmation decree, to prevent interference with the execution of a confirmed plan, and to otherwise aid in its operation.") (citing *Chateaugay*, 201 B.R. at 64).

48. Furthermore, the Court also specifically retained jurisdiction over enforcement of the Injunction Order and the injunction provisions of Article VIII of the confirmed Chapter 11

Plan. *See* Injunction Order ¶ 8 (“The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.”); Chapter 11 Plan, Art. XI (“[T]he Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Case and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to . . . enforce the injunction, release, and exculpation provisions set forth in Article VIII.”).

### **III. The Court Has Personal Jurisdiction Over Sun Securities.**

49. Determining whether a bankruptcy court may exercise personal jurisdiction over a foreign party is a two-prong inquiry. *See Off. Comm. of Unsecured Creditors of Arcapita v. Bahrain Islamic Bank*, 549 B.R. 56, 63 (S.D.N.Y. 2016); *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 170 (2d Cir. 2013). **First**, the bankruptcy court must determine whether the party “has the requisite minimum contacts with the United States at large.” *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC*, 460 B.R. 106, 117 (Bankr. S.D.N.Y. 2011). **Second**, the court must determine that its exercise of personal jurisdiction is reasonable. *See Asahi Metal Indus. Co., Ltd. v. Super Ct. Cal.*, 480 U.S. 102, 113 (1987) (stating that the court must determine whether exercising personal jurisdiction over the defendant party will offend “traditional notions of fair play and substantial justice”). As set forth in greater detail herein, the Court may properly exercise jurisdiction over Sun Securities.

#### **A. Sun Securities Has the Requisite Minimum Contacts with the United States.**

50. In the bankruptcy context, courts look to any contacts between the relevant party and the United States. *See Bahrain Islamic Bank*, 549 B.R. at 63 (stating that the sovereign in a bankruptcy proceeding is the United States so the court must first “determine whether the defendant has the requisite minimum contacts with the United States at large”). Specific jurisdiction exists when the defendant’s conduct connects him to the forum in a meaningful way,

even when the conduct occurs entirely outside the relevant forum. *In re Platinum & Palladium Antitrust Litig.*, No. 1:14-CV-9391-GHW, 2017 WL 1169626, at \*42 (S.D.N.Y. Mar. 28, 2017); *see 7 W. 57th St. Realty Co., LLC v. Citigroup, Inc.*, No. 13 Civ. 981(PGG), 2015 WL 1514539, at \*9 (S.D.N.Y. Mar. 31, 2015) (“A defendant need not have committed a physical act within the forum state, however, for his contacts with the forum to be sufficient.”).

51. The Second Circuit has held that “personal jurisdiction may be asserted by courts where a foreign corporation, through an act performed elsewhere, causes an effect in the United States.” *Eskofot A/S v. E.I. Du Pont De Nemours & Co.*, 872 F. Supp. 81, 87 (S.D.N.Y. 1995); *see S.E.C. v. Unifund SAL*, 910 F.2d 1028, 1033 (2d Cir. 1990) (holding that courts permit the exercise of jurisdiction over a defendant whose “conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there” and “[o]ne circumstance making such anticipation reasonable is where a defendant has acted in such a way as to have ‘caused consequences’ in the forum state”).

**1. Sun Securities Is Subject to this Court’s Jurisdiction Because It Received Actual Notice of the Chapter 11 Plan and Has Already Begun to Accept Distributions Thereunder.**

52. As noted above, the Creditor Plan Proponents provided *actual notice* to Sun Securities of the Chapter 11 Plan, and the Plan Administrator subsequently caused CFGI to provide notice to Sun Securities of the Restructuring Plan. By virtue of those notices, Sun Securities had notice of the Chapter 11 Plan and the transactions contemplated thereby, including the proposed \$75-million Interim Distribution. Consistent with the Chapter 11 Plan, on September 27, 2021, the Plan Administrator effectuated the first tranche of the Interim Distribution in an amount equal to \$50 million. The Creditor Plan Proponents understand that Sun Securities received approximately \$1.848 million of that tranche. By receiving estate property from an estate fiduciary in accordance with a confirmed chapter 11 plan, Sun Securities consented to this Court’s

jurisdiction. *See In re Globo Comunicacoes e Participacoes S.A.*, 317 B.R. 235, 251 (S.D.N.Y. 2004) (“[E]xercise of extraterritorial jurisdiction over debtor’s assets, even absent the consent of that debtor, is consistent with constitutional Due Process standards where the bankruptcy court has established its authority to assert *in personam* jurisdiction over the debtor and thereby take control over the worldwide *res* of the debtor’s estate.”). Nor can Sun Securities legitimately dispute this Court’s jurisdiction after accepting the benefits from the Chapter 11 Plan. *See In re Motors Liquidation Co.*, 565 B.R. 275, 288 (Bankr. S.D.N.Y. 2017) (holding that an Austrian lender “knowingly consented to the jurisdiction provision in the DIP Order by accepting a transfer of funds”).

**2. The Court May Properly Exercise Jurisdiction Over Sun Securities Because Its Actions Have an Effect in the United States (Including on the Chapter 11 Plan Confirmed by the Court).**

53. The actions of Sun Securities have also “caused an effect in the United States” sufficient to establish jurisdiction. *Eskofot A/S*, 872 F. Supp. at 87. As the Plan Administrator has communicated to the Court, in light of the significant costs associated with CFG Peru remaining in bankruptcy, as well as the December 31, 2021 long-stop date contemplated by the Restructuring Support Agreement, the Plan Administrator has promptly implemented many aspects of the Chapter 11 Plan. Among other things, on September 24, 2021, CFGI proposed the Restructuring Plan and commenced the UK Proceeding with the High Court. Ahead of that, CFGI and the Creditor Plan Proponents finalized the final forms of numerous debt, equity, and other long-form transaction documents necessary to effectuate the restructuring. CFGI and the Creditor Plan Proponents, through their respective tax advisers, also completed a months-long process to determine the appropriate tax structure for the restructuring. On October 1, 2021, the High Court conducted the convening hearing for the Restructuring Plan, and on October 21, 2021, the Plan Administrator conducted the creditors meeting.

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54. Sun Securities' actions, however, place the Chapter 11 Plan confirmed by the Court  
at risk. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

55. Courts have found personal jurisdiction in analogous situations, and the Court may properly enjoin Sun Securities and any affiliated parties from sowing further chaos in these cases. *See, e.g., In re Chiles Power Supply Co., Inc.*, 264 B.R. 533, 542–44 (Bankr. W.D. Mo. 2001) (enjoining defendants from pursuing litigation even though the court agreed that defendants were “Canadian entities separate and apart from their affiliates that transact business in the United States, and that [the] entire transaction [at issue] took place in Canada, and they have done no acts in the United States,” because the bankruptcy court had authority to “issue any Order necessary to enforce a provision of a duly confirmed Plan of Reorganization,” and “Defendants’ actions . . . threaten[ed] to unravel [certain] provisions of the Confirmed Plan”); *see also In re Probulk Inc.*, 407 B.R. 56, 64 (Bankr. S.D.N.Y. 2009) (holding that trustee made out a prima facie case that personal jurisdiction existed over foreign insurers because “termination of the debtors’ insurance . . . would have an immediate, substantial, direct and foreseeable impact on the U.S. debtors that § 541(c)(1)(B) and § 362(a) [of the Bankruptcy Code] were designed to prevent,” and noting “the interest of the United States in administering bankruptcy proceedings of domestic corporations in one forum”) (citation omitted).

**B. The Court’s Exercise of Jurisdiction Over Sun Securities Is Reasonable.**

56. In exercising jurisdiction, courts also consider: “(1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; [and] (3) the plaintiff’s interest in obtaining convenient and effective relief . . . .” *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 170 (2d Cir. 2013). Each of these factors strongly favors the Court exercising jurisdiction over Sun Securities in this case.

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**1. The Court Will Not Impose Any Burden on Sun Securities by Exercising Its Jurisdiction in this Case.**

57. The requested relief will impose no burden on Sun Securities. The Creditor Plan Proponents understand that Sun Securities became a holder of record under the Club Facility in 2017, *after* the commencement of these cases in this Court. In other words, Sun Securities became a holder of record *after* the Debtors crashed into chapter 11 and, indeed, *after* the Court ordered the appointment of a chapter 11 trustee. Simply put, Sun Securities knew what it was getting into and the Court exercising jurisdiction over Sun Securities is entirely consistent with Sun Securities holding debt subject to a pending chapter 11 proceeding.

58. Nor is Sun Securities an unsophisticated party that was unaware that its conduct may violate a prior Court order. Indeed, it was a lender of record at the time that the Court entered the Injunction Order, notice of which was provided to the Club Facility Agent. Similarly, Sun Securities received actual notice of the Chapter 11 Plan, including the opportunity to vote to reject the Chapter 11 Plan and opt out of the third-party releases as part of the confirmation process.

59. Finally, as illustrated by its participation in the UK Proceeding before the High Court—for which Sun Securities has engaged counsel in England, engaged experts in Peru, appeared at the convening hearing, and taken other steps necessary to prosecute its unfounded objection to the Restructuring Plan—Sun Securities is capable of participating in far-off insolvency proceedings. By the same token, Sun Securities is well aware by virtue of those steps that the Restructuring Plan is necessary to effectuate the debt-for-equity swap contemplated by the Chapter 11 Plan [REDACTED]

[REDACTED] *See Probulk*, 407 B.R. 56 at 64 (stating that in cases “where the Trustee has shown a substantial course of business between the parties and a substantial effect within the United States, as well as a clear need for immediate

relief and severe injury absent that relief, a foreign entity cannot stand mute and contend, in effect, “catch me if you can” as “any other rule would invite foreign entities doing substantial business with U.S. companies to violate the stay, stand mute in connection with an extended dispute involving personal jurisdiction, and create the very damage that the automatic stay is designed to prevent”).

**2. The Court Has a Significant Interest in Exercising Jurisdiction in this Matter.**

60. The next factor relevant in this analysis requires the Court to consider “the interests of the forum state in adjudicating the case.” *Licci*, 732 F.3d at 170. There is no question that the Court has a significant interest in this matter. As a general matter, U.S. courts have a pronounced interest in ensuring that the nation’s bankruptcy laws are properly enforced, and that bankruptcy-related disputes are all heard and resolved in the single centralized forum as designed and intended by Congress. *See Off. Comm. of Unsecured Creditors of Arcapita v. Bahrain Islamic Bank*, 549 B.R. 56, 71 (S.D.N.Y. 2016) (stating that the “United States has a strong interest in adjudicating claims that arise under its Bankruptcy Code so that both creditors and debtors can obtain the remedies and relief that the United States Congress has determined are fair and equitable”); *U.S. Lines, Inv. v. GAC Marine Fuels Ltd. (In re McLean Indus. Inc.)*, 68 B.R. 690, 699 (Bankr. S.D.N.Y. 1986) (finding that the United States had a strong interest in adjudicating the dispute at issue because it arose “solely under [the United States’ bankruptcy] laws and concern[ed] a vital protection provided by federal statute to those who seek to reorganize”).

61. Consistent with the foregoing, the Court has an interest in ensuring that its orders, such as the Injunction Order and the Confirmation Order, are enforced according to their terms. *See In re MF Glob. Holdings Ltd.*, 561 B.R. 608, 623–24 (Bankr. S.D.N.Y. 2016) (“[W]here a motion seeks to prevent the prosecution of causes of action expressly prohibited by the



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confirmation order, it would be difficult to identify judicial acts that are any more critical to the orderly functioning of the bankruptcy process or more closely tethered to core bankruptcy jurisdiction.”); *In re Little*, 610 B.R. 558, 563-64 (Bankr. D.S.C. 2020) (“To permit a party other than the bankruptcy court to make such determinations would undermine the court’s ability to enforce both its own orders and the Bankruptcy Code and would strip the courts of their primary enforcement mechanism.”). Accordingly, this factor also strongly weighs in favor of the Court exercising its jurisdiction over Sun Securities in this matter.

**3. The Creditor Plan Proponents Have a Significant Interest in the Requested Relief.**

62. The final factor relevant to this analysis is the movant’s “interest in obtaining convenient and effective relief . . . .” *Licci*, 732 F.3d at 170. This factor also clearly weighs in favor of the requested relief. In the face of the former Chapter 11 Trustee’s failed sale process and refusal to consider any other restructuring construct, the Creditor Plan Proponents determined that it was necessary to propose a chapter 11 plan. The decision of a creditor to file a plan without a trustee’s support is an exceptionally rare occurrence; a decision of this magnitude required the Creditor Plan Proponents to incur significant costs in terms of delay, professional fees, and missed opportunity costs. [REDACTED]

[REDACTED] The failure to grant the requested relief would deprive the Creditor Plan Proponents of the finality and protection to which they are entitled by this Court’s prior orders, and, in particular, the Injunction Order and the Confirmation Order. *See, e.g., In re Chiles Power Supply Co., Inc.*, 264 B.R. 533, 542 (Bankr. W.D. Mo. 2001) (holding that allowing defendant who had received notice of all proceedings in the bankruptcy court but “chose not to protect any rights they might have by participating in those

proceedings” to proceed against an insurance carrier “in a foreign proceeding in defiance of the release issued by [the bankruptcy court] would destroy the finality all other parties are entitled to expect from the Plan confirmation process”).

**The Court Should Enter the Supplemental Relief Requested in the Order**

63. Sun Securities has habitually attempted to evade this Court’s jurisdiction notwithstanding that Sun Securities consented to this Court’s jurisdiction by accepting estate property and taking actions designed to impact the Court and this case. Accordingly, the Creditor Plan Proponents request that the Court grant certain supplemental relief with respect to certain parties, including (a) any parties that may be actively aiding or abetting Sun Securities (including, without limitation, Chau Vinh Heng, Sam Hui, May Ho, Dickinson Cheung, and Raymond Cole), (b) certain governmental bodies with an interest in this matter, and (c) the Depository Trust Company, the Senior Notes Trustee, and the Club Facility Agent, and certain other financial institutions that the Creditor Plan Proponents believe Sun Securities may directly or indirectly request the cooperation of to facilitate actions intended by Sun Securities to derail the Chapter 11 Plan. The Creditor Plan Proponents will provide notice to the parties other than Sun Securities that the Creditor Plan Proponents believe may be subject to the relief requested.

**Reservation of Rights**

64. The Creditor Plan Proponents are evaluating other potential actions that they may pursue in this Court or abroad (including before any applicable regulatory authorities in Hong Kong, the United Kingdom, and/or the United States) to the extent that Sun Securities does not abate its illegal extraterritorial Enforcement Proceeding. Accordingly, this motion is submitted without prejudice to, and with a full express reservation of, the Creditor Plan Proponents’ rights to supplement or amend this motion and take any appropriate action to protect the integrity of the

restructuring process and the interests of all stakeholders. The Creditor Plan Proponents reserve all their rights and remedies under applicable law and contract against both Sun Securities as well as any other persons and entities that support, or have taken any action to aid and abet, Sun Securities.<sup>6</sup>

### **Notice**

65. The Creditor Plan Proponents will provide notice of this motion to the following parties or their counsel: (a) the Plan Administrator; (b) CFGI; (c) the Senior Notes Trustee; (d) the Club Facility Agent; (e) the U.S. Trustee; (f) the United States Attorneys' Office for the Southern District of New York; (g) the Internal Revenue Service; (h) the United States Securities and Exchange Commission; (i) the United States Department of Justice, Criminal Division; (j) the New York Stock Exchange; (k) the Depository Trust Company; (l) the United States Department of Treasury; (m) the Department of Homeland Security; (n) Sun Securities; (o) Chau Vinh Heng; (p) Sam Hui; (q) May Ho; (r) Dickinson Cheung; and (s) Raymond Cole. In light of the exigent nature of this request, the Creditor Plan Proponents intend to effectuate service, to the extent practicable, via courier or personal delivery.

### **No Prior Request**

66. No prior request for the relief sought in this motion has been made to this or any other court.

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<sup>6</sup> See *In re Lehman Bros. Holdings, Inc.*, No. 15-149-BR, 2016 WL 1212079 (2d Cir. Mar. 29, 2016) (upholding a bankruptcy court order that imposed sanctions on a plaintiff who violated a bankruptcy sale order by commencing and continuing to prosecute a lawsuit against the purchaser of a debtor's assets where the purchaser bought the debtor's assets free and clear of claims and liens).

WHEREFORE, the Creditor Plan Proponents respectfully request entry of the Order, granting the relief requested therein and such other relief as the Court deems appropriate under the circumstances.

Dated: October 28, 2021

*/s/ Gregory F. Pesce*

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Gregory F. Pesce (admitted *pro hac vice*)

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