Hearing Date: December 14, 2021 at 2:00 p.m. (Prevailing Eastern Time)

BAKER & HOSTETLER LLP
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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.

NOTICE OF [AMENDED 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

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 [Amended 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 (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, attached hereto as Exhibit A (the "Amended Proposed Findings and Conclusions").

PLEASE TAKE NOTICE that a redline version of the Amended Proposed Findings and Conclusions is attached hereto as Exhibit B to demonstrate the revisions made to the original version filed as an exhibit to 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 (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, as Dkt. 2712, on October 1, 2021.

Dated: November 29, 2021

Respectfully submitted,

BAKER & HOSTETLER LLP

By: */s/ David J. Richardson*

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EXHIBIT A

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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.

[AMENDED 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. 2712 (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. 2713] (the "Brandt Decl."), the Declaration of Patrick J. O'Malley and its attached exhibits [Dkt. 2714] (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.

41. The evidence and testimony, along with this Court's experience overseeing these cases, demonstrates that the Trustee fulfilled his mandate by exercising his control and discretion

to operate the Peruvian Opcos and thereby protect and preserve the value of the CFG estate and its sole assets of material value, the Peruvian Opcos.

Ensuring a Transparent, Collaborative Process

42. 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.

43. 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.

44. 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.

45. The Trustee has provided evidence and testimony to demonstrate that the disbursements disclosed in the MORs for the Peruvian Opcos were disbursements arising from his operations and restructuring of the Peruvian Opcos, and were made pursuant to his control and discretion over the Peruvian Opcos' operations and restructuring.

46. 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

47. 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.

48. 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.

49. 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

50. 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.

51. 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.

52. 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.

53. 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

[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*.

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.

Instituting a Sale Process for the CFGI Equity Interests

54. 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.

55. 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

[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.

- 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.

56. 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.

57. 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]

58. 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).

59. 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

[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.

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 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

60. 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]

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

[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.

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
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

62. 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.

[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*.

[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*.

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

64. 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.

65. 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.

66. 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

67. 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").

68. 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

[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.

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 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.

69. 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.

70. 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]

71. 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.

72. 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

73. 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.

74. 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.

75. 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].

76. 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].

77. 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.

78. 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

79. 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]

80. 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."

81. 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.

82. 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

83. 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]

84. 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]

85. 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]

86. 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

87. 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:

88. 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

89. 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

90. 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.

91. 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.

92. 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.

93. 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.

94. 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.

95. 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.

96. 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.

97. 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.

98. 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.

99. 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

100. 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.

101. 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.

102. 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.

103. 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).

104. 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.

105. 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.

106. 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.

107. 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.

108. 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.

109. 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.

110. 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.

111. 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.

112. 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

113. 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).

114. "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).

115. 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.").

116. 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).

117. 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]

118. 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.

119. 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.").

120. 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

121. 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).

122. 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).

123. 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.

124. 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.

125. 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).

126. 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).

127. 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

128. 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").

129. 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.").

130. 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

131. 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).

132. 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.'"). This principle has been applied to bankruptcy fee applications both before and after *Missouri*. See, *In re Commercial Consortium of California*, 135 B.R. 120, 126-27 (Bankr. C.D. Cal. 1991) (following) for bankruptcy fee application, and citing pre-*Missouri* case law applying the same concept for bankruptcy fee applications).

133. 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.

134. 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.

135. 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)).

136. 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).

137. 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.

138. 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

139. 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:

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

140. 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

141. 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.

142. 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.

143. 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.

144. 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").

145. 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

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

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

146. 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 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 ...").

147. 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, and which include both equity and new debt issued in satisfaction of such creditors' claims against the Peruvian Opcos and/or CFG Peru. 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]

148. 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), particularly under the facts of this case, 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.

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

149. 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

[64] *See* Trustee Appointment Motion, at p. 41, ¶ 59.

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").

150. 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).

151. 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]

152. 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.

153. 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,"[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

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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).

[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.

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]

154. 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 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.

155. A "party in interest" is one who has a "pecuniary" interest affected by the bankruptcy case. *In re Stone Barn Manhattan LLC*, 405 B.R. 68, 74 (Bankr. S.D.N.Y. 2009).

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[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.

Throughout this case, this Court has applied a necessarily broad definition of the term "parties in interest" to include entities such as the Club Lenders, who are creditors of the Peruvian Opcos but are not direct creditors of CFG Peru. A broad definition of "parties in interest" has been necessary for the advancement of this case and the interests of creditors given that the Peruvian Opcos are the subsidiaries that operate CFG Peru's business and are the only assets of any material value in the CFG Peru estate, and given the intertwined nature of CFG Peru and Peruvian Opcos. The pecuniary interests of creditors of the Peruvian Opcos are directly impacted by this Court's appointment of the Trustee as chapter 11 trustee of their indirect parent company, CFG Peru, and by the Trustee's administration of CFG Peru's assets which has included the operation of the Peruvian Opcos. The MOR Disbursements made from accounts of the Peruvian Opcos reflect disbursements made by the Trustee, through his control and discretion in operating the Peruvian Opcos, to "parties in interest" pursuant to Section 326(a), the payments of which were necessary for the preservation of the value of the CFG Peru estate.

156. 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)

157. 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 (including both equity interests and new debt) 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 and new debt reflect the value of an estate that the Trustee was appointed to protect and preserve for the benefit of these same creditors.

158. The combined $850 million enterprise value of these interests is reflected in the confirmation evidence put forward in this case by Houlihan Lokey, LLC (the "Houlihan Valuation"), and further supported by evidence submitted by the Trustee of a contemporaneous market bid for the same assets, involving a comparable mix of cash, equity, and debt.

159. 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.

160. 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).

161. 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.").

162. The CFGI Equity Interests (including both the equity and debt components that comprise the consideration received by Noteholders and Club Lenders under the Confirmed Plan) carry a value of $850,000,000, pursuant to evidence submitted in support of plan confirmation,[70] as demonstrated by both the transferability terms in the Confirmed Plan and its attached Restructuring Support Agreement, and the active trading of debt that has taken place in this case. The $850 million Houlihan Valuation reflects a proper value for determining the value of the Peruvian Opcos when turned over by the Trustee to the Plan Administrator, even though the Houlihan Valuation states that it is value upon emergence, or as of the effective date of the Confirmed Plan, as the Trustee's turnover of such assets was subject to the terms of the Confirmed Plan. Such value constitutes disbursements that should be included within the statutory cap, along with all cash disbursements made under the Plan.

163. 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

[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.

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).

164. 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] Evidence submitted by the Plan Proponents in support of confirmation shows that these Plan Cash Disbursements are part of a larger total amount of payments of $384 million to be funded by a $150 new money facility along with $234 of cash from the accounts and operations Peruvian Opcos and an affiliate. Thus, of these total disbursements, the $211 million Plan Cash Disbursements will be funded with estate funds turned over by the Trustee, or by operations of the operating businesses turned over by the Trustee, and are properly included as disbursements of moneys to parties in interest under Section 326(a). 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.

[71] These amounts do not include the $25 million reserve set aside to address the Trustee's commission.

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.

165. Even if this Court were to limit cash disbursements to the $123,259,000 balance as of June 30, 2021, in the accounts of CFG Peru and the Peruvian Opcos, this Court's ruling on the MOR Disbursements and CFGI Equity Interests establishes a statutory cap far in excess of the Trustee's requested commission. The statutory cap will exceed the Trustee's requested commission under either cash scenario.

166. Thus, the total disbursements that are to be included within a proper 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**

167. 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**

168. 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.

169. 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. Even if disputed cash disbursements were omitted, a statutory cap based solely on the $850 million enterprise value of the CFGI Equity Interests, or the MOR Disbursements, would establish a statutory cap in excess of $25 million. Under any of these 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

170. The Trustee has requested a fee enhancement in the form of a 2.09 multiplier of his lodestar.

171. 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).

172. 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.")

173. 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.

174. 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

175. 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").

176. 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.

177. 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

178. 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.

179. 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.

180. 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

181. 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]

182. 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).

183. 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

[72] The "conflicts of interest" aspect of this *Johnson* factor is not relevant to the instant case.

184. 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).

185. 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.

186. 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

187. 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

188. 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 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.

189. 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

[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.

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").

190. 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.

191. 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

192. 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.").

193. 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.

194. 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.

195. The actions of the Plan Proponents in objecting to the Trustee's Fee Application further demonstrate the undesirable nature of a case such as this one. *See In re MACCO Props., Inc.*, 540 B.R. 793, 859 and fn. 352 (Bankr. W.D. Okla. 2015) (undesirability prong met in part by "risk [of] being inadequately compensated," and noting that it "is certainly not desirable to accept an engagement that requires defending one's integrity and reputation against careless or malicious insinuations of misconduct.").

(h) Awards in Similar Cases

196. "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]

197. 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).

198. 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

199. 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.

200. 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.

201. 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.

202. 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

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

204. 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

205. 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). This Court rejects the argument put forward by the Plan Proponents that a trustee should be denied fees for preparing a fee application if a party in interest has reserved rights to object, or threatened to object to the application.

206. 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).

207. 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

208. 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: December 14~~October 27~~, 2021 at 2~~11~~:00 p~~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.

[AMENDED 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. 2712—— (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. 2713——] (the "Brandt Decl."), the Declaration of Patrick J. O'Malley and its attached exhibits [Dkt. 2714——] (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.

~~40.~~41. The evidence and testimony, along with this Court's experience overseeing these cases, demonstrates that the Trustee fulfilled his mandate by exercising his control and discretion

to operate the Peruvian Opcos and thereby protect and preserve the value of the CFG estate and its sole assets of material value, the Peruvian Opcos.

Ensuring a Transparent, Collaborative Process

~~41.~~42. 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.~~43. 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.

44. 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.

~~43.~~45. The Trustee has provided evidence and testimony to demonstrate that the disbursements disclosed in the MORs for the Peruvian Opcos were disbursements arising from his operations and restructuring of the Peruvian Opcos, and were made pursuant to his control and discretion over the Peruvian Opcos' operations and restructuring.

~~44.~~46. 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.~~47. 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.~~48. 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.~~49. 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.~~50. 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.~~51. 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.~~52. 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.~~53. 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

[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.*

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.

Instituting a Sale Process for the CFGI Equity Interests

~~52.~~54. 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.~~55. 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

[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.

- 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.~~56. 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.~~57. 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.~~58. 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.~~59. 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

[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.

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 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.~~60. 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.~~61. Using these procedures, the Trustee accomplished the disposition of the following Non-Core Assets[34]:

[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.

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
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.~~62. 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.

[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*.

[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*.

~~61.~~63. 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 responsibility attendant to vessels in an international maritime environment. *See* Brandt Decl. at ¶ 67.

~~62.~~64. 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.~~65. 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.~~66. 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.~~67. 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.~~68. 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

[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.

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 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.~~69. 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.~~70. 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.~~71. 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.~~72. 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.~~73. 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.~~74. 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.~~75. 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.~~76. 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.~~77. 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.~~78. 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.~~79. 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.~~80. 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.~~81. 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.~~82. 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.~~83. 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.~~84. 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.~~85. 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.~~86. 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.~~87. 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.~~88. 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.~~89. 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.~~90. 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.~~91. 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.~~92. 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.~~93. 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.~~94. 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.~~95. 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.~~96. 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.~~97. 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.~~98. 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.~~99. 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.~~100. 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.~~101. 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.~~102. 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.~~103. 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.~~104. 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.~~105. 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.~~106. 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.~~107. 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.~~108. 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.~~109. 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.~~110. 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.~~111. 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.~~112. 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.~~113. 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.~~114. "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.~~115. 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.~~116. 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.~~117. 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.~~118. 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

[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.

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.

~~117.~~119. 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.~~120. 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.~~121. 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.~~122. 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).

~~121.~~123. 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.~~124. 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.~~125. 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*

[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).

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.~~126. 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.~~127. 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.~~128. 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.~~129. 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.~~130. 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.~~131. 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.~~132. 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.'"). This principle has been applied to bankruptcy fee applications both before and after *Missouri*. See,~~:~~ *In re Commercial Consortium of California*, 135 B.R. 120, 126-27 (Bankr. C.D. Cal. 1991) (following ~~)*Missouri*~~ for bankruptcy fee application, and citing pre-*Missouri* case law applying the same concept for bankruptcy fee applications~~, 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.~~133. 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.~~134. 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.~~135. 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.~~136. 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.~~137. 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.~~138. 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.~~139. 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.~~140. 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.~~141. 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.~~142. 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.~~143. 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.~~144. 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.~~145. 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

146. 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

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

[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. *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 ...").

~~144.~~

~~145.~~147. 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, and which include both equity and new debt issued in satisfaction of such creditors' claims against the Peruvian Opcos and/or CFG Peru. 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.~~148. 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

[64] *See* Trustee Appointment Motion, at p. 41, ¶ 59.

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), particularly under the facts of this case, 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.

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

~~147.~~149. 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.~~150. 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.~~151. 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.~~152. 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

[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).

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.~~153. 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,"[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]

154. 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

[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.

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 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.

~~152.~~155. A "party in interest" is one who has a "pecuniary" interest affected by the bankruptcy case. *In re Stone Barn Manhattan LLC*, 405 B.R. 68, 74 (Bankr. S.D.N.Y. 2009). Throughout this case, this Court has applied a necessarily broad definition of the term "parties in interest" to include entities such as the Club Lenders, who are creditors of the Peruvian Opcos but are not direct creditors of CFG Peru. A broad definition of "parties in interest" has been necessary for the advancement of this case and the interests of creditors given that the Peruvian Opcos are the subsidiaries that operate CFG Peru's business and are the only assets of any material value in the CFG Peru estate, and given the intertwined nature of CFG Peru and Peruvian Opcos. The pecuniary interests of creditors of the Peruvian Opcos are directly impacted by this Court's appointment of the Trustee as chapter 11 trustee of their indirect parent company, CFG Peru, and by the Trustee's administration of CFG Peru's assets which has included the operation of the Peruvian Opcos. The MOR Disbursements made from accounts of the Peruvian Opcos reflect disbursements made by the Trustee, through his control and discretion

in operating the Peruvian Opcos, to "parties in interest" pursuant to Section 326(a), the payments of which were necessary for the preservation of the value of the CFG Peru estate.

~~153.~~156. 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)

157. 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 (including both equity interests and new debt) 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 and new debt reflect the value of an estate that the Trustee was appointed to protect and preserve for the benefit of these same creditors.

158. The combined $850 million enterprise value of these interests is reflected in the confirmation evidence put forward in this case by Houlihan Lokey, LLC (the "Houlihan Valuation"), and further supported by evidence submitted by the Trustee of a contemporaneous market bid for the same assets, involving a comparable mix of cash, equity, and debt.

~~154.~~159. 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.~~160. 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.~~161. 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.~~162. The CFGI Equity Interests (including both the equity and debt components that comprise the consideration received by Noteholders and Club Lenders under the Confirmed Plan) carry a value of $850,000,000, pursuant to evidence submitted in support of plan confirmation,[70] as demonstrated by both the transferability terms in the Confirmed Plan and its attached Restructuring Support Agreement, and the active trading of debt that has taken place in

[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.

this case. -The $850 million Houlihan Valuation reflects a proper value for determining the value of the Peruvian Opcos when turned over by the Trustee to the Plan Administrator, even though the Houlihan Valuation states that it is value upon emergence, or as of the effective date of the Confirmed Plan, as the Trustee's turnover of such assets was subject to the terms of the Confirmed Plan. ~~and s~~Such value constitutes disbursements that should be included within the statutory cap, along with all cash disbursements made under the Plan.

~~158.~~163. 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).

164. 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] Evidence submitted by the Plan Proponents in support of confirmation shows that these Plan Cash Disbursements are part of a larger total amount of payments of $384 million to be funded by a $150 new money facility along with $234 of cash from the accounts and operations Peruvian Opcos and an affiliate. Thus, of these total disbursements, the $211 million Plan Cash Disbursements will be funded with estate funds turned over by the Trustee, or by operations of the operating businesses turned over by the Trustee, and are properly included as disbursements of moneys to parties in interest under Section 326(a). 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.

~~159.~~165. Even if this Court were to limit cash disbursements to the $123,259,000 balance as of June 30, 2021, in the accounts of CFG Peru and the Peruvian Opcos, this Court's ruling on the MOR Disbursements and CFGI Equity Interests establishes a statutory cap far in excess of the Trustee's requested commission. The statutory cap will exceed the Trustee's requested commission under either cash scenario.

~~160.~~166. Thus, the total disbursements that are to be included within a proper calculation of the statutory cap are as follows:

Category of Disbursement	Amount
MOR Disbursements	$1,894,149,430

[71] These amounts do not include the $25 million reserve set aside to address the Trustee's commission.

CFGI Equity Interests	$850,000,000
Plan Cash Disbursements	$211,000,000
Total for Statutory Cap Calculation	**$2,955,149,430**

~~161.~~167. 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.~~168. 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.~~169. 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. Even if disputed cash disbursements were omitted, a statutory cap based solely on the $850 million enterprise value of the CFGI Equity Interests, or the MOR Disbursements, would establish a statutory cap in excess of $25 million. 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.~~170. The Trustee has requested a fee enhancement in the form of a 2.09 multiplier of his lodestar.

~~165.~~171. 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.~~172. 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.~~173. 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.~~174. 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.~~175. 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.~~176. 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.~~177. 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.~~178. 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.~~179. 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.~~180. 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.~~181. 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.~~182. 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.~~183. 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.~~184. 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.~~185. 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.~~186. 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.~~187. 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.~~188. 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

[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.

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. at 737.

~~183.~~189. 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.~~190. 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.~~191. 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.~~192. 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.~~193. 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.

194. 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.

~~188.~~195. The actions of the Plan Proponents in objecting to the Trustee's Fee Application further demonstrate the undesirable nature of a case such as this one. *See In re MACCO Props., Inc.*, 540 B.R. 793, 859 and fn. 352 (Bankr. W.D. Okla. 2015) (undesirability prong met in part by "risk [of] being inadequately compensated," and noting that it "is certainly not desirable to accept an engagement that requires defending one's integrity and reputation against careless or malicious insinuations of misconduct.").

(h) Awards in Similar Cases

~~189.~~196. "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]

[74] *See* Dkt. 2582, at p. 7, fn. 6.

~~190.~~197. 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.*, 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.~~198. 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.~~199. 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.~~200. 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.~~201. 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.~~202. 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.~~203. Section 330(a)(1) of the Bankruptcy Code provides that the Court may award to a trustee "reimbursement for actual, necessary expenses."

~~197.~~204. 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
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

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

~~198.~~205. 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). This Court rejects the argument put forward by the Plan Proponents that a trustee should be denied fees for preparing a fee application if a party in interest has reserved rights to object, or threatened to object to the application.

~~199.~~206. 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.~~207. 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.~~208. 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.