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*Special Counsel to Michael E. Foreman in His Capacity as Plan Administrator Under
the Creditor Plan Proponents' Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)*

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

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In re:)	Case No. 16-11895 (JLG)
)	
CHINA FISHERY GROUP LIMITED (CAYMAN), <i>et al.</i> , ¹)	Chapter 11
)	
Debtors.)	(Jointly Administered)
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)	
In re:)	Case No. 16-11914 (JLG)
)	
CFG PERU INVESTMENTS PTE. LTD. (SINGAPORE),)	Chapter 11
)	
Debtor.)	(Jointly Administered)
<hr/>)
)	Re: Docket No. 2712

**THE PLAN ADMINISTRATOR’S STATEMENT REGARDING:
(I) THE FIRST AND FINAL FEE APPLICATION OF MR.
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;
(II) THE CREDITOR PLAN PROPONENTS’ OBJECTION THERETO;
AND (III) THE REPLY BRIEF IN SUPPORT OF FIRST AND FINAL FEE
APPLICATION OF MR. WILLIAM A. BRANDT, JR. AS CHAPTER 11 TRUSTEE**

Michael E. Foreman, in his capacity as the Plan Administrator under the *Creditor
Plan Proponents’ Chapter 11 Plan for CFG Peru Investments Pte. Ltd. (Singapore)* [Docket

¹ The debtors in these chapter 11 cases are China Fishery Group Limited (Cayman), Pacific Andes International Holdings Limited (Bermuda), N.S. Hong Investment (BVI) Limited, South Pacific Shipping Agency Limited (BVI), China Fisheries International Limited (Samoa), CFGL (Singapore) Private Limited, Chanery Investment Inc. (BVI), Champion Maritime Limited (BVI), Growing Management Limited (BVI), Target Shipping Limited (HK), Fortress Agents Limited (BVI), Ocean Expert International Limited (BVI), Protein Trading Limited (Samoa), CFG Peru Investments Pte. Ltd. (Singapore), Smart Group Limited (Cayman), Super Investment Limited (Cayman), Pacific Andes Resources Development Limited (Bermuda), Nouvelle Foods International Ltd., Golden Target Pacific Limited, Pacific Andes International Holdings (BVI) Limited, Zhonggang Fisheries Limited, Admired Agents Limited, Chiksano Management Limited, Clamford Holding Limited, Excel Concept Limited, Gain Star Management Limited, Grand Success Investment (Singapore) Private Limited, Hill Cosmos International Limited, Loyal Mark Holdings Limited, Metro Island International Limited, Mission Excel International Limited, Natprop Investments Limited, Pioneer Logistics Limited, Sea Capital International Limited, Shine Bright Management Limited, Superb Choice International Limited, and Toyama Holdings Limited (BVI).

No. 2564] (as amended, supplemented, or modified from time to time, the “**Plan**,” and, Mr. Foreman, in such capacity, the “**Plan Administrator**”), respectfully states as follows in support of this statement (the “**Statement**”) regarding: (i) 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* [Docket No. 2712] (the “**Fee Application**”); (ii) *The Creditor Plan Proponents Objection 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 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* [Docket No. 2813] (the “**Objection**”); and (iii) the *Reply Brief In Support of First and Final Fee Application of Former Chapter 11 Trustee William A. Brandt, Jr., For Compensation for Services Rendered as Chapter 11 Trustee for the Period from November 10, 2016 Through and Including June 24, 2021, and Second And Final Application of Former Chapter 11 Trustee William A. Brandt, Jr., for Reimbursement of Expenses for the Period March 1, 2020 Through and Including June 24, 2021* [Docket No. 2829] (the “**Reply**” and, together with the Fee Application, collectively, the “**Fee Request Pleadings**”):²

I. Preliminary Statement

1. Mr. Foreman was appointed as the Plan Administrator pursuant to the Plan effective as of the Confirmation Date, June 10, 2021, succeeding Chapter 11 Trustee Mr.

² Capitalized terms used in this objection but not defined herein shall have the meanings ascribed to such terms in the Plan or the Fee Application, as applicable.

William G. Brandt, Jr. (in such capacity, “**Mr. Brandt**” or the “**Chapter 11 Trustee**”), as the sole fiduciary of the CFG Peru Estate. The Plan removed Mr. Brandt and, in turn, charged the Plan Administrator with all corporate governance powers, duties, and responsibilities attendant to the management, administration, and restructuring efforts of CFG Peru and its non-debtor affiliates, the Peruvian OpCos (together with CFG Peru, collectively, the “**Company**”). Those duties include his duty to the Court and the Company’s stakeholders to call out and correct material misinformation regarding the Company and its restructuring put in the public domain which risks an adverse impact on the Company and its restructuring. This is not an insignificant matter, in light of the complexity of this restructuring and the attention paid to this restructuring in the worldwide press.

2. Up until now, the Plan Administrator has stayed out of the Fee Application dispute between Mr. Brandt and the Creditor Plan Proponents. However, having reviewed the Fee Request Pleadings and the Objection after Mr. Brandt’s recent filing of his Reply, as well as Mr. Brandt’s deposition, the Plan Administrator is troubled by certain statements made by Mr. Brandt related to the Company and its restructuring as of and after the Confirmation Date. In particular, the Plan Administrator has identified material misstatements and factual inaccuracies in the Fee Request Pleadings ranging from the Company’s readiness on the Confirmation Date to implement the Plan to the Company’s post-Confirmation finances, liquidity, operations and litigation matters. This misinformation is striking coming from Mr. Brandt. Since his role as the sole fiduciary of CFG Peru terminated on the Confirmation Date, Mr. Brandt is no position to provide a true and correct report on the state of the Company and its restructuring after Confirmation.

3. Accordingly, the Plan Administrator, in the necessary exercise of his duties to the CFG Peru Estate, the Company and this Court, submits this Statement to identify and correct the misinformation placed into the public domain and before this Court in the Fee

Request Pleadings. The facts, as discussed herein, show that, contrary to the uninformed picture painted by Mr. Brandt, the Company is not teetering on the edge of financial distress, and the considerable work that had to be done after the Confirmation Date to implement the Plan has, in large part, been done, collaboratively and successfully. The remaining issues facing the Company and its restructuring are continuing to be addressed by the Plan Administrator and the Creditor Plan Proponents. Those are the facts.

II. The Plan Administrator' Role and Duties Under the Plan

4. On March 16, 2021, the Creditor Plan Proponents filed the initial versions of the Plan and the Disclosure Statement.

5. On June 10, 2021, the Court confirmed the Plan. *See* Docket No. 2569.

6. Pursuant to the Plan, the Plan Administrator is “the sole representative of, and shall act for CFG Peru in the same fiduciary capacity as applicable to a board of managers and officers or other governing body, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same)” Plan Art. IV.A.1.

7. Under the Plan, except for certain limited transitional matters that were to occur between June 10 and June 24, “any rights and obligations of the Chapter 11 Trustee shall transfer to the Plan Administrator as of the Confirmation Date.” Put another way, CFG Peru’s fiduciary administration turned over as of Confirmation, and the Estate’s new fiduciary replaced its former fiduciary.

8. Upon Confirmation, the Plan Administrator immediately began an active, hands-on, day-to-day role in overseeing the management and administration of the Company

and its efforts to implement the Plan.³ To facilitate those efforts, pursuant to the Plan and the Global Settlement Agreement, pursuant to applicable Singaporean and Peruvian law the Plan Administrator also was appointed a director of CFG Peru and a general manager and the sole Class A Attorney of both Copeinca and CFGI, positions never held by Mr. Brandt.⁴ In these roles and with such authority, the Plan Administrator regularly engages with the other General Managers of the Peruvian OpCos and the chief financial officer of those companies, Mr. Dennis Jose Cavero Oviedo (together with Messrs. Tirado and Paniagua, collectively, the “**Senior Management**”). The Peruvian OpCos are capably managed and operated on a day-to-day basis by the Senior Management. The Plan Administrator has found each of them to be highly qualified for their roles, experts in their industries, and adept at all aspects of managing the considerable fishing, biomass harvesting, processing, production, and related operations of the Peruvian OpCos, which employ approximately 2,800 people, operate ten plants in eight town and villages in Peru, and operate over 60 vessels.

9. It quickly became quite clear to the Plan Administrator that - the representations Mr. Brandt to the Court notwithstanding⁵ - the Creditor Plan Proponents lacked much information regarding the Company, including its operations, finances and intercompany relationships, critical to implementing the Plan and certain restructuring transactions. *See* Fee Application at 33 (“I have been diligently providing materials to the creditors’ committee, the ad hoc committee”); *see also* Reply at 9 n.11. The Plan

³ The Plan provides that “the members of the New Board of CFG Peru, as identified in the Plan Supplement, shall be deemed to have been appointed and to have succeeded to and/or shall have all the powers of, as applicable, (1) the Chapter 11 Trustee, under the Bankruptcy Code and/or any and/or its property, assets, and undertakings and/or (2) CFG Peru’s directors, managers, officers, trustees, or similarly held position or other governing body.” Plan Art. IV, Sec. A.2.

⁴ Previously, the general managers of CFGI were Francisco Paniagua and certain Ng Family Members; and the general managers of Copeinca were Jose Miguel Tirado and certain Ng Family Members. These Ng Family Members were also class A attorneys at CFGI and Copeinca. Pursuant to the Global Settlement Agreement, the Ng Family Members agreed to step down from their positions at CFGI and Copeinca (as well as the other related entities). The removal of the Ng Family Members and appointment of the Plan Administrator occurred on or about June 29, 2021.

⁵ In the Fee Request Pleadings, Mr. Brandt repeatedly asserts that he “expressed consistent support for a parallel process,” Reply Ex. A at 4, and that he “rejected terms, not a process” involving CFG Peru’s creditors. Reply Ex. A at 8

Administrator determined - again, Mr. Brandt's assertions to the Court notwithstanding – that there apparently had been no meaningful engagement between the Company and the Creditor Plan Proponents, and between their respective professionals, regarding contingency plans to implement a reorganization transaction (such as the Plan) in the event Mr. Brandt's sale process failed. After his initial discussions with all of the leading principals and their respective professionals, the Plan Administrator observed that the Company's engagement with the Creditor Plan Proponents was largely undeveloped (save for the apparently cooperative working relationship between counsel) and had been adversely impacted by disagreements between the Creditor Plan Proponents and Mr. Brandt. Indeed, the Plan Administrator was surprised that the Creditor Plan Proponents and the Company seemingly had each begun to develop its own Plan implementation analysis and strategies. The Plan Administrator inherited a restructuring truly characterized by parallel paths – two separate paths to the finish line had begun, with considerable work yet to do and yet virtually no mechanism established to bring those paths together.

10. Therefore, the Plan Administrator's first order of business was to ensure communication, transparency, and greater trust between the Creditor Plan Proponents and the Company and their respective professionals. The Plan Administrator worked with all parties to establish a single plan implementation process and timeline - an ongoing, iterative process that has required (and will likely continue to require) considerable time and effort. Among other things, the Plan Administrator developed an information-sharing protocol between Senior Management and the Company's professionals and the Creditor Plan Proponents and their advisers. The Plan Administrator, Senior Management and the Creditor Plan Proponents participate in regular video conferences. The Plan Administrator instituted twice-a-week video conferences between his and the Creditor Plan Proponents' respective professionals. Additionally, the Plan Administrator facilitated weekly cash forecast calls between the Senior

Management and Houlihan Lokey, the Creditor Plan Proponents' investment banker ("HL"), as well as other efforts to foster collaboration between the parties. This process, in a relatively brief period of time, significantly addressed the difficulties in the working relationships between the two sides as they existed on the Confirmation Date, permitting each side to gain a better understanding of the other's perspectives, concerns, and positions. These efforts are expected to ultimately lay the groundwork for the transition, after the Effective Date, to the Company's new capital and corporate governance structures.

11. In addition, the Plan Administrator promptly began to address a number of other key matters necessary to "right the ship" and put the Company on a fully consensual, collaborative course towards emergence:

- ***Transitional Activities.*** From the time he was first approached for the position of Plan Administrator, Mr. Foreman understood that he would be assuming the fiduciary leadership over a highly complex restructuring that presented a steep learning curve. Once selected by the Creditor Plan Proponents, Mr. Foreman began to familiarize himself with the over 5-year history of CFG Peru's Chapter 11 Case, the Plan and related agreements and documents, and the relationships and interactions among the major stakeholders.
 - To take advantage of its institutional knowledge of CFG Peru's Chapter 11 Case and ensure the Plan Administrator and the Company continued to have the most effective legal representation, Mr. Foreman requested Mr. Brandt's consent to retain his counsel, Skadden, Arps, Slate, Meagher & Flom LLP ("**Skadden**"), as the Plan Administrator's lead counsel. Mr. Brandt consented.
 - Through Skadden, Mr. Foreman sought to engage Mr. Brandt in a meaningful, productive transition process ahead of Confirmation to avoid beginning his role as the Plan Administrator from a standing start on the Confirmation Date. See **Exhibit A** attached. Mr. Brandt never responded to Mr. Foreman's efforts to engage directly with him on the various matters pending at the end of his administration.
 - In addition to Skadden, Mr. Foreman was appreciative that Mr. Brandt's financial advisor, Development Specialists, Inc. ("**DSI**"), made its personnel available to the Plan Administrator post-confirmation. DSI provided a general overview of the case status and assistance on administrative tasks such as changing the authorized signatories for CFG Peru's bank accounts (a process which ultimately took approximately five weeks to complete). Since much is made of the status of the Estate's Cash as of Confirmation in the Fee Request

Pleadings, it is important to explain that Mr. Brandt did not transfer any funds to a new bank account for CFG Peru or the Plan Administrator. Rather, the Plan Administrator and his financial advisor, Portage Point Partners LLC (“**Portage**”) merely replaced Mr. Brandt and DSI as authorized parties with respect to the same, already existing CFG Peru bank account.

- Mr. Foreman determined that it was necessary for him retain a new, independent financial advisor to provide the type of support that DSI had provided to Mr. Brandt. The Plan Administrator retained Portage for that purpose.
 - Except to the limited extent the Plan permitted Mr. Brandt to complete the monthly operating reports (“**MORs**”) for the period through Confirmation, once Confirmation occurred on the Confirmation Date, Mr. Brandt and DSI should have had no authorized access to any non-public information concerning the Company and its restructuring.⁶
 - Finally, as noted above, to facilitate the transition between administrations, post-confirmation, the Plan Administrator moved swiftly to create a new culture of collaboration between with the Company, including Senior Management, and the Creditor Plan Proponents, and all of their many professionals.
- ***The UK Proceeding and the Singapore Scheme.*** Immediately upon his appointment, the Plan Administrator determined that significant work lay ahead for the Company and Creditor Plan Proponents to consummate the Plan. As noted above, the Plan Administrator immediately instituted a protocol of teamwork among lead lawyers at Skadden, Kirkland & Ellis LLP, White & Case LLP, and, when appropriate, the relevant local attorneys and other professionals in Peru, the United Kingdom, Singapore and other jurisdictions. All professionals are now working toward a common goal mandated by the Plan Administrator and endorsed by all of the professionals - to pursue a process characterized by collaboration and cooperation, fostering a new spirit of working together that quite frankly did not exist on the Confirmation Date.
- While the Plan contemplated the UK Proceeding and the Singapore Scheme, considerable work still had to be performed to implement these proceedings. The Plan Administrator has worked closely with the Senior Management and the Creditor Plan Proponents and their respective U.S. and Peruvian advisors to develop comprehensive

⁶ This is a critical point, since the Fee Request Pleadings are replete with statements as to the Post Confirmation Period that suggest they are being made from an informed position with access to nonpublic information. To be clear, if Mr. Brandt’s statements regarding Post-Confirmation Date matters reflect such access, the Plan Administrator would view such access, and his public disclosure of such information, as a serious breach against the best interests of CFG Peru and the Peruvian OpCos. And, Mr. Brandt has never requested such access, but, if made, such a request would be denied, not only because it would serve no useful purpose to the Company and its restructuring, but because Mr. Brandt has demonstrated that such access would be used to thwart the Company’s restructuring.

strategies under US, UK, Singaporean and Peruvian law, including establishing the underlying legal predicates and the considerable factual and financial information required for each process. As one example of the many duplicative actions, Mr. Brandt and the Creditor Plan Proponents had consulted with separate Queen's Counsel with regard to the court process to be pursued in implementing the UK Proceeding. The Plan Administrator determined that the two sides did not each need its own counsel, and, instead, the Plan Administrator and CFGI engaged a Queen's Counsel with the support of the Creditor Plan Proponents.

- Ultimately, on October 21, 2021, as part of the UK Proceeding, the Plan Administrator conducted meetings of creditors in connection with the restructuring plan proposed by CFGI pursuant to Part 26A of the UK Companies Act 2006 (the "**Restructuring Plan**"). All of the holders of Senior Notes voted in favor of the Restructuring Plan, and only one Club Loan Lender voted against it. As more fully discussed below, the efforts to consummate the Restructuring Plan have been delayed pending litigation commenced by that creditor. The sanction hearing has been adjourned to January 2022, and the Plan's Effective Date is presently expected to occur during Q1 2022.
- To facilitate implementation of the Plan under Singapore law, the Plan Administrator first obtained recognition in Singapore of his position under the Plan in Singapore. Thereafter, as contemplated by the Global Settlement Agreement, the Plan Administrator (in coordination with the Senior Management, the Creditor Plan Proponents, and the Other Debtors) worked to (i) conduct a shareholders meeting for China Fishery Group Limited ("**CFGL**"), the ultimate parent company of CFG Peru, for the purposes of obtain shareholder approval of the Plan or, alternatively, and (ii) file a scheme for CFG Peru under Singapore law. Eventually, the Plan Administrator and the Creditor Plan Proponents decided that a scheme should be filed for recognition and approval before the Singapore Court, on November 19, 2021, while the parties also proceeded with obtaining shareholder approval. In early December, the parties were advised by Singapore Exchange Regulation Pte. Ltd. ("**SGX**") that it would grant CFGL a waiver from compliance with Rule 1014 of the Listing Manual in respect of the proposed disposal of CFGL's indirect subsidiaries (i.e., the Peruvian OpCos), pursuant to the Plan, with such waiver being conditioned on the sanction of the Restructuring Plan by the appropriate High Court overseeing the UK Proceeding.
- **Tax and Corporate Structuring.** The Restructuring Support Agreement and the Plan require the Creditor Plan Proponents to finalize various long-form corporate, debt, and equity documents that set out the post-Effective Date capital and corporate structure of the Peruvian OpCos. The final forms of these documents were required to be filed in conjunction with the filing of the Restructuring Plan at the time that CFGI sought sanction from the High Court. Unlike in the United States – where plan proponents regularly update or

modify chapter 11 plans or plan supplement documents through confirmation – CFGI and the Creditor Plan Proponents were required to file the relevant documents months before the sanction hearing was to occur, a process that required extensive cooperation and advanced planning by the parties.

- Upon his appointment, the Plan Administrator learned that the Creditor Plan Proponents did not have key information for the Peruvian OpCos which was necessary for the parties to determine an optimal, efficient post-Effective Date tax and corporate structure for the Company. This situation was immediately corrected by considerable information sharing in the weeks following the Confirmation Date.
- As a result, the parties worked intensely throughout the Summer to complete this process. The Plan Administrator worked closely with the Senior Management and the Peruvian OpCos' tax advisor and Peruvian corporate counsel, as well as the Creditor Plan Proponents' U.S., U.K., Singaporean and Peruvian professionals, in the collaborative development of a corporate and tax-efficient structure for the transaction, which implicated the tax regimes and corporate laws of Peru, the United States, the United Kingdom, Singapore, Spain, Norway, Hong Kong, and numerous other jurisdictions. Those efforts ultimately were successful in formulating a broad consensus by the end of the Summer for the implementation of appropriate structures to best serve the myriad interests of Senior Management and the Creditor Plan Proponents.
- ***Global Settlement Agreement.*** The Plan Administrator observed that Mr. Brandt and the Chapter 11 Debtors were not signatories to the Global Settlement Agreement and learned that they did not have a meaningful participation in the negotiation and documentation of that agreement. Nevertheless, the Plan permits the Plan Administrator and CFG Peru to effectuate and oversee that agreement. Immediately following the Confirmation Date, it became apparent to the Plan Administrator, Senior Management and the Creditor Plan Proponents that the Global Settlement Agreement would require various amendments to refine the bargain the Creditor Plan Proponents had struck with the Other Debtors. Consequently, the Creditor Plan Proponents, with significant input by the Plan Administrator, the Senior Management and the Company's professionals, revised the Global Settlement Agreement to reflect the better information, incorporate additional tasks, and clarify responsibilities required to consummate the agreement and, ultimately, the Plan. For example, the Plan Administrator and his professionals worked with the Creditor Plan Proponents to revise the tasks required to effectuate the Singapore Scheme, developing a parallel path process where the Ng Family Members assumed responsibility for proceeding to secure ultimate shareholder approval for the proposed transaction, and the Plan Administrator and Creditor Plan Proponents assumed responsibility for preparing a parallel path to secure court approval of the Singapore Scheme in the event that the shareholder approval provided to be problematic. As noted above, this revised approach has proven to be successful.

- **Reporting and Financial Transparency.** Another area where Mr. Brandt and the Creditor Plan Proponents conducted separate processes to accomplish what appeared to be the same objectives was each side's separate practice of identifying and keeping track of the total administrative expense claims of CFG Peru's estate and the other obligations of CFG Peru or CFGI that must be satisfied on the Effective Date. Indeed, the Plan Administrator was unable to identify a single document that tracked all of the sources and required uses of the Estate's and CFGI's Cash on the Effective Date.
 - In response, the Plan Administrator instituted a process whereby each professional of the Company and the Creditor Plan Proponents now reports to the Plan Administrator and HL, on a weekly or monthly basis, an estimate of its accrued fees and expenses, as well as fees and expenses actually incurred. As a result, since July, all parties have been working off of the same information upon which to assess the Company's liquidity needs, prior to and on the Effective Date.
 - Early on, the Plan Administrator learned that the MORs filed by Mr. Brandt for the CFG Peru Estate had historically reported the cash disbursements made by *both* CFG Peru *and* its non-debtor Peruvian OpCos. Since this practice was contrary to Mr. Foreman's over thirty-five years of experience representing chapter 11 debtors and trustees, the Plan Administrator investigated the nature of these disbursements and determined that there were no instances where the Peruvian OpCos were paying debts for which CFG Peru was a primary obligor or co-obligor.
 - Accordingly, the Plan Administrator, through Portage, advised the United State Trustee (the "UST") that this practice of reporting the cash disbursements of non-debtors would immediately cease with any post-confirmation MORs. The UST has not disputed that decision. The Plan Administrator has read Mr. Brandt's explanation for the practice prior to Confirmation and has not found it persuasive so as to reverse his decision to not reflect non-debtors in his filed post-Confirmation reports.
- **Post-Confirmation Litigation.** Two significant post-Confirmation litigation matters had their genesis before the Confirmation Date.
 - Since the Confirmation Date, the Plan Administrator has overseen the defense of an arbitration commenced under the English Arbitration Act 1996 in February, 2019 by Balithskiy Briz Limited Liability Company, as successor in interest to Morskoy Veter Limited Liability Company (the "**Arbitration Claimant**"), against CFG Peru's wholly-owned non-debtor subsidiary, J. Wiludi & Asociados Consultores en Pesca S.A.C. (the "**Wiludi Arbitration**"), wherein the Arbitration Claimant asserts a claim in the amount of \$14,000,000. In October 2021, an entity apparently related to the Arbitration Claimant commenced an arbitration before the China Maritime Arbitration Commission under the 2018 CMAC Arbitration Rules against CFGI, asserting a claim in the amount of \$14,000,000 plus interest accrued thereon at the annual compound rate of 10%. The arbitration claim against CFGI relates to

matters Mr. Brandt brought before this Court in the weeks preceding confirmation. The Plan Administrator understands that Mr. Brandt and DSI spent considerable time addressing issues relating to many of the matters relating to the Wiludi Arbitration.

- On September 30, 2021, a dissident Club Facility Lender, Sun Securities Limited (“**Sun Securities**”), commenced litigation against CFGI that, as noted above, has prevented the Creditor Plan Proponents and the Plan Administrator from proceeding with the sanctioning of the Restructuring Plan. The Plan Administrator is aware that Mr. Brandt had investigated Sun Securities and the nature of its claims.

III. Mr. Brandt’s Fee Request Pleadings Contain Material Misstatements Regarding the Company’s Financial Condition and Other Matters

12. In light of the foregoing, the Plan Administrator respectfully submits that Mr. Brandt’s Fee Request Pleadings present an inaccurate, if not incomplete, narrative of: the Company and its restructuring, the considerable efforts of the Plan Administrator, the Senior Management and the Creditor Plan Proponents to implement the Plan; and the many matters they have attended to since the Confirmation Date. In addition, as been demonstrated, Mr. Brandt’s description is considerably at odds with what the Plan Administrator faced on the Confirmation Date regarding the Company’s readiness to implement the Plan following his departure. To the extent the Court requires additional information and background on the matters, the Plan Administrator will be available at the hearing on the Fee Application, as needed, to answer any questions the Court may have.

13. In addition to these material misstatements, Mr. Brandt misstates certain matters regarding the Company’s current financial condition. In doing so, he presents as facts that what can only be his conjecture on matters arising during the post-Confirmation Period, which the Plan Administrator is compelled to address below.

A. The Company has Sufficient Liquidity to Operate and is Progressing Toward the Plan Effective Date.

14. While Mr. Brandt claims in his Reply that he has useful insight into the matters now being addressed by the Plan Administrator, arguing that the Creditor Plan Proponents (and, by implication, the Plan Administrator) should have followed these insights, Mr. Brandt never shared his thoughts or recommendations with the Plan Administrator. Reply at 3-5. Indeed, the Plan Administrator did not learn of any of Mr. Brandt's "insights" until his Fee Application became the subject to dispute, and he filed his Reply.

15. The Plan Administrator would be surprised if Mr. Brandt (no longer having any role with the CFG Peru or the Peruvian OpCos) has been permitted access to any non-public information on the Company's current financial condition and operations. Nonetheless, Mr. Brandt attempts to support his own Fee Application by leveling considerable and unsubstantiated criticism of the post-Confirmation administration of the Company and its restructuring efforts. Such criticisms can only be speculative, because there is no plausible way, they could have an evidentiary foundation.

B. Mr. Brandt has No Basis to Attack the Interim Distributions.

16. For example, Mr. Brandt's attack on the Plan Administrator's decision to make two Interim Distribution payments totaling \$50 million is not only baseless but contradicts his own sworn statements arguing that he deserves credit for them. In the Reply, Mr. Brandt first argues that no Interim Distributions should have been made, stating that the "Proponents are facing difficulties with their Confirmed Plan because it was rushed to satisfy their desire to drain the Peruvian OpCos of cash, both by the Interim Distribution to themselves and payment of their professional fees," Reply at 4.⁷ Yet, he seemingly

⁷ After taking the Plan Administrator to task for the Interim Distributions, Mr. Brandt appears to take credit for these very same distributions stating, "The fact that the Plan Proponents had the means to pay themselves \$50 million of the Interim Distribution is a testament to the Trustee's work in restoring value to the Peruvian OpCos." See Reply at 42

contradicts himself when he claims that the Plan Administrator's release of the Interim Distribution payments is a "testament" to Mr. Brandt's administration. Reply at 42.

17. Here are the facts regarding the Interim Distributions. The Plan Administrator's decision to make the two Interim Distribution payments, as well as his decision to not make the final \$25 million Interim Distribution payment, followed a lengthy, deliberative process specifically designed to ensure that the Peruvian OpCos should always have more than sufficient liquidity cushions even if the occurrence of the Effective Date was delayed from mid-November, as originally anticipated, to the first quarter of 2022 or beyond. *See* Reply at 3. The decision to make the first two Interim Distribution payments was grounded in an extensive, collaborative process with the Senior Management, which agreed that making the distributions would not impose unreasonable demands or risks on them. Moreover, all professionals of the Plan Administrator and the Creditor Plan Proponents were engaged in this process. It is incontrovertible that the payment of two Interim Distributions totaling \$50 million was a reasonable exercise of the Plan Administrator's business judgment and consistent with his powers and duties under the Plan and Confirmation Order.

C. Mr. Brandt Has Provided No Insight regarding the Sun Securities Situation.

18. Next, Mr. Brandt claims that the Plan Administrator and the Creditor Plan Proponents should have known about "[t]he potential that an unpaid creditor of the Peruvian OpCos might file an INDECOPI proceeding and imperil the success of the CFG Peru chapter 11 case was a concern throughout the Trustee's tenure," Reply at 24, with the implication that the Interim Distribution payments should not have made in light of this risk, adding "they cannot easily disgorge the \$50 million in Interim Distribution payments made to parties throughout the world." Reply at 4.

19. To be sure, when the Sun Securities situation arose, despite the vigilance of the Plan Administrator and the Peruvian OpCos, the Plan Administrator and Senior

Management worked closely with the Creditor Plan Proponents, as well as the Peruvian law firms engaged by the parties, to quickly reach consensus to defer the final \$25 million Interim Distribution to ensure that the Peruvian OpCos would have more than sufficient liquidity if the Effective Date were delayed. All decisions made in this regard by the Plan Administrator were, and have been, the product of his efforts to obtain the best information and analysis from all interested parties, including Senior Management as well as Peruvian counsel. If Mr. Brandt was aware of risks that might have delayed the Effective Date, he did nothing to advise the Plan Administrator of them during the transition process or since that time. While such issues and risks had their origin in pre-Confirmation matters and events, Mr. Brand has never offered any concrete steps for a resolution of such matters, not even in his Reply.

20. Mr. Brandt said he would have prevented Sun Securities from obstructing the transaction, Brandt Dep. 74:7 10, yet the Creditor Plan Proponents advised the Plan Administrator that Mr. Brandt apparently had sought (without success) for years to take action against Sun Securities. In fact, Mr. Brandt has not suggested, in his deposition or the Fee Request Pleadings, any actual, concrete steps he would take, or that the Plan Administrator should have taken or now take, to resolve the Sun Securities issues. In any event, such the criticism lodged by Mr. Brandt regarding the delay of the Plan Effective Date to the first quarter of 2022 is a red herring, as it appears to be wholly irrelevant to his fee request. Reply at 3.

D. Mr. Brandt's Information Appears to be Incorrect.

21. Finally, Mr. Brandt's misstatements on financial matters are not limited to the instances described above. The Plan Administrator and his financial advisors, working with the Peruvian OpCos' finance department, remain unable to reconcile significant amounts of Cash that Mr. Brandt claims to have "turned over" to the Plan Administrator – or, more appropriate, left in CFG Peru's account. Mr. Brandt's claims that he "transferred" - i.e., left -

Cash of not less than \$211 million to the Plan Administrator. Fee Application at 87. To be clear, as noted above, no Cash was “transferred.” Rather, the Plan Administrator caused the relevant banks and financial institutions to change the names of the authorized signatory from Mr. Brandt and DSI to Mr. Foreman and Portage. In any event, after significant review, the Plan Administrator’s records show that, as of June 30, 2021, the CFG Peru had Cash of approximately \$68,146,000, and the Peruvian OpCos accounts had Cash of approximately \$55,572,000.⁸ Again, the Plan Administrator has no insight into Mr. Brandt’s calculations and how he arrived at his number.

IV. CONCLUSION

22. From the Plan Administrator’s earliest involvement in this case, Mr. Brandt has made clear that his connection with the Company stopped dead in its tracks on the Confirmation Date. Rather than offering assistance to the Plan Administrator before or since Confirmation, Mr. Brandt has apparently been waiting on the sidelines for the failure of the Plan Administrator and Creditor Plan Proponents’ considerable efforts to consummate the Plan, stating in his deposition that “if the Company is not able to emerge . . . I’m the trustee again and I’ll probably be able—given what is going on, I’ll probably be able to build it back from the six months of mess that the Plan Proponents have created and still sell it for a good[] amount [I]f I come back for a second round, you can be sure the cap will be far higher and it will be so at my request.” *See* Brandt Dep. 74:14 75:2. This statement deeply disturbs the Plan Administrator and should concern the Court as well.

23. The Plan Administrator had hoped that the issues between the Creditor Plan Proponents and Mr. Brandt regarding his Fee Application could be resolved amicably. The Plan Administrator had hoped to avoid being involved in the dispute. However, Mr. Brandt’s

⁸ As of May 31, 2021, the CFG Peru account appears to have had Cash of approximately \$3,217,990, and the Peruvian OpCos appear to have had Cash of approximately \$204,572,000.

material misstatements, conjecture and opinions in his deposition and Reply regarding the Company and its restructuring from and after Confirmation now compel the Plan Administrator to submit this Statement, to correct the public record regarding the financial condition and administration of the CFG Peru Estate since the Confirmation Date, as well as the Company and its ongoing restructuring efforts. Accordingly, the Plan Administrator urges this Court to disregard any statements made by Mr. Brandt with respect to the state of the Company as of and after the Confirmation Date and any post-Confirmation matters pertaining to the Company and its restructuring efforts, and to take such other and further action and relief as this Court deems appropriate.

Dated: December 8, 2021

/s/ Peter S. Goodman

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Rye Brook New York
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*Special Counsel to Michael E. Foreman in His
Capacity as Plan Administrator Under
the Creditor Plan Proponents' Chapter 11 Plan for
CFG Peru Investments Pte. Ltd. (Singapore)*

EXHIBIT A

Michael Foreman

From: Laukitis, Lisa <Lisa.Laukitis@skadden.com>
Sent: Tuesday, May 25, 2021 2:24 PM
To: William A. Brandt, Jr. (bbrandt@dsiconsulting.com)
Cc: Michael Foreman
Subject: CFG

Bill,

Thank you for letting me know earlier this afternoon that it would be acceptable to you for Skadden to represent the proposed plan administrator. After our call, Michael and I spoke for the first time and he is interested in having Skadden assist him in his new role. He asked if I could send you a message, copying him, just to confirm that you would be ok with that arrangement.

He also asked if you might be willing to speak to him and share information during this transition period, so that he is not operating from a standing start as of confirmation. I have some concern about the sharing of information before he is officially appointed, but if you are willing, I think we could perhaps manage around that with an NDA. I will give that more thought and circle back.

Best,
Lisa

Lisa Laukitis
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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

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