

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
In re	:	Chapter 11
	:	
TERRAFORM LABS PTE. LTD.,	:	Case No. 24-10070 (BLS)
	:	
Debtor.¹	:	
	:	
	X	

**DECLARATION OF MARK G. CALIFANO IN
SUPPORT OF THE SUPPLEMENTAL MOTION OF DEBTOR FOR
ENTRY OF ORDER PURSUANT TO SECTIONS 363, 503(B), AND 105(A)
OF THE BANKRUPTCY CODE AUTHORIZING DEBTOR TO PAY CERTAIN
AMOUNTS IN FURTHERANCE OF LITIGATION AND GRANTING RELATED RELIEF**

I, Mark G. Califano, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury:

1. I am a partner in the law firm of Dentons US LLP (“**Dentons US**”), located at 1900 K Street, NW Washington, D.C., 20006, and have been duly admitted to practice law in the State of New York and in the District of Columbia, as well as in the United States District Courts for the Southern District of New York, the United States Court of Appeals for the Second Circuit, and the Supreme Court of the United States.

2. I act for Terraform Labs Pte. Ltd. (“**TFL**” or the “**Debtor**”), as part of its legal team in the ongoing SEC Enforcement Action and DOJ Investigation.² I refer to (i) my declaration, the *Declaration of Mark G. Califano in Support of the Motion of Debtor for Entry of Orders Pursuant to Sections 363, 503(b), and 105(b) of the Bankruptcy Code Authorizing Debtor to Pay Certain Amounts in Furtherance of Litigation and Granting Related Relief* [Docket No. 61-

¹ The Debtor’s principal office is located at 1 Wallich Street, #37-01, Guoco Tower, Singapore 078881.

² Capitalized terms used but not defined in this Declaration shall have the meanings ascribed to them in the Litigation Payments Motion or the Supplemental Motion.

4] (the “**Original Declaration**”) in support of the *Motion of Debtor for Entry of Orders Pursuant to Bankruptcy Code Section 363 Authorizing Debtor to Pay (I) Fees and Expenses of Counsel to Debtor Employees (II) Certain Critical Vendors Claims (III) Certain Foreign Litigation Related Claims and Obligations, and (IV) Granting Related Relief* [Docket No. 61], filed on February 13, 2024 (the “**Litigation Payments Motion**”) and (ii) my supplemental declaration, the *Supplemental Declaration of Mark G. Califano in Support of the Motion of Debtor for Entry of Orders Pursuant to Sections 363, 503(b), and 105(a) of the Bankruptcy Code Authorizing Debtor to Pay Certain Amounts in Furtherance of Litigation and Granting Related Relief* [Docket No. 144], filed on March 4, 2024 (the “**Supplemental Declaration**,” together with the Original Declaration, the “**Initial Declarations**”).

3. I submit this declaration (the “**Second Supplemental Declaration**”) in support of the *Supplemental Motion of Debtor for Entry of Order Pursuant to Sections 363, 503(b), and 105(a) of the Bankruptcy Code Authorizing Debtor to Pay Certain Amounts in Furtherance of Litigation and Granting Related Relief* [Docket No. 301], filed on May 10, 2024 (the “**Supplemental Motion**”) with respect to counsel for present and former Employees.

4. Except as otherwise indicated, the facts set forth in this Second Supplemental Declaration are based upon my personal knowledge, my review of relevant documents, my personal experience, knowledge and information provided to me by the Debtor’s Employees, and/or my discussions with the Debtor’s officers and advisors. If called upon to testify, I would testify competently to the facts set forth in this Second Supplemental Declaration. I am not being compensated specifically for this testimony other than through payments received by Dentons as a professional proposed to be retained by the Debtor as the Debtor’s special litigation counsel in this chapter 11 case (the “**Chapter 11 Case**”).

The DOJ Investigation

5. As described further in the Initial Declarations, the Debtor is the subject of a criminal investigation conducted by the Department of Justice (the “**DOJ**”) in the Southern District of New York (the “**DOJ Investigation**”). The Debtor has been responding to DOJ requests and I anticipate that the DOJ Investigation will remain active through at least the end of the year. Prior to and following the SEC Jury Trial, the DOJ has been seeking to collect additional records from Employees and interview several of them, including former in-house counsel. I understand that the DOJ has recently sought production of materials in connection with additional subpoenas served on a number of Employees, and that the DOJ will imminently seek interviews of additional Employees. It is expected that the DOJ will increase its investigatory activity in the next three months to obtain evidence in its investigation and in anticipation of its prosecution of Mr. Kwon.

6. Several Employees have retained separate Employee Counsel in connection with the DOJ Investigation, including to advise and represent them in connection with preparing for and attending interviews, and in responding to subpoenas issued by the DOJ. As the DOJ Investigation remains ongoing and current, and former Employees continue to be subject to DOJ subpoenas, Employee Counsel expect to incur Employee Counsel Fees and Expenses advising and representing the Employees going forward. Additional Employees may also require legal counsel for similar reasons.

Employee Counsel

7. Employees who are subjected to DOJ grand jury subpoenas and interviews require qualified legal representation to ensure they are properly prepared for interviews and promptly respond to requests for information, to avoid noncooperation and noncompliance, and to protect their and the Debtor’s legal interests. The Employee Counsel have gained significant

knowledge, expertise, and familiarity with their clients, the Debtor, its operations, the legal issues it faces, and the respective Employees' roles at the Debtor, as well as knowledge of all relevant facts.

8. Kobre & Kim LLP ("**Kobre**") continues to perform services relating to the DOJ Investigation for Employees who have executed Kobre Employee Engagement Letters, including responding to grand jury subpoenas and ongoing document production. Specifically, I understand that it has come to Kobre's attention that the DOJ may ask at least two (2) additional Employees to comply with grand jury subpoenas and the Debtor expects Kobre to collect information, review for privilege and responsiveness, and produce documents in the near-term. I also understand, based on my discussions with Kobre, after the filing of the Supplemental Motion, that the DOJ advised Kobre that it will seek, in the near term, to compel testimony from multiple Employees represented by Kobre; this is in addition to Kobre's existing expectation that the DOJ will request interviews with additional Employees represented by Kobre. Given this new information following the filing of the Supplemental Motion, Kobre has told me that it now estimates the firm will incur up to \$900,000 in Employee Counsel Fees and Expenses representing such Employees during the Payment Period, an increase of \$300,000 compared to the amount requested in the Proposed Order.

9. Reed Smith LLP ("**Reed Smith**") represents three (3) Employees who were the three in-house lawyers employed by the Debtor from late 2021 through May 2022. I understand that the DOJ has informed Reed Smith that it will seek to interview such Employees in the coming few weeks. The DOJ's investigation in relation to these Employees involves important areas of defense for the Debtor and failure to have the former in-house counsel in a common interest agreement and communicating with the Debtor would result in significant additional risk and cost to the Debtor, especially if the Debtor's internal attorney client privileged communications or attorney work product

are not adequately protected. Reed Smith told me it estimates the firm will incur approximately \$1,200,000 in Employee Counsel Fees and Expenses during the Payment Period.

10. Goodwin Procter LLP (“**Goodwin**”) represents one (1) Employee that will be the subject of further DOJ interviews. Goodwin told me it estimates the firm will incur approximately \$50,000 in Employee Counsel Fees and Expenses during the Payment Period.

11. McGuire Woods LLP (“**McGuire**”) represents one (1) Employee from whom the DOJ has repeatedly sought to obtain testimony in furtherance of its investigation. The DOJ has labelled such Employee a subject of the DOJ Investigation and has indicated that it intends to interview this Employee again. McGuire told me it estimates the firm will incur approximately \$87,000 in Employee Counsel Fees and Expenses during the Payment Period.

12. Orrick Herrington & Sutcliffe LLP (“**Orrick**”) represents a former in-house counsel the Debtor understands the DOJ intends to interview. For the same reasons outlined in Paragraph 9 above, I believe that it would be in the Debtor’s best interest to indemnify this Employee for his legal fees. Orrick told me it estimates that the firm will incur approximately \$200,000 in Employee Counsel Fees and Expenses during the Payment Period.

13. The Employee Counsel are essential to ensure coordination between the Debtor, the Employees, and the DOJ in connection with the DOJ Investigation and that each Employee is prepared for and represented during interviews, promptly produces and provides responsive information and records, properly asserts the Debtor’s privilege, cooperates in these processes and in other matters involving the Debtor, and does not otherwise improperly produce privileged information and records that would irreparably prejudice the Debtor.

14. If the Debtor is unable to pay Employee Counsel Fees and Expenses promptly, in most instances, Employee Counsel will discontinue their representation of Employees

and/or cease cooperating with the Debtor in connection with the DOJ Investigation, other litigation matters, and this Chapter 11 Case. Indeed, at least one Employee Counsel has already advised me that it will no longer represent Employees in the DOJ Investigation without payment, and another Employee Counsel has advised me it will no longer communicate with the Debtor in relation to its representation of Employees. Among other things, this will make it more difficult for the Debtor to cooperate in the DOJ Investigation and in other litigation matters. Many previously represented Employees will be unwilling to cooperate with the Debtor or any other parties, and unable to respond to DOJ or other litigation matter requests promptly and appropriately. This would be harmful and costly to the Debtor, as it will be left without these key sources of information to assist it in the criminal investigation, related civil litigation, and this Chapter 11 Case. The Debtor will then have to address Employee noncooperation and noncompliance issues, and will likely lose the assistance of many Employees in responding to issues in the various litigations, including in the criminal investigation, as the DOJ and other parties turn to the Debtor to address such issues.

Law Firm Rodic

15. As outlined in the Initial Declarations, Mr. Kwon has substantial knowledge about and holds key information regarding important events in the Debtor's history and the Debtor's operations, including during the relevant period of time concerning the DOJ Investigation. In addition, because Mr. Kwon is the Debtor's majority shareholder, certain corporate governance practices require Mr. Kwon to execute or direct proxies to execute documents on his behalf.

16. Montenegrin authorities highly restrict foreign counsel from visiting Mr. Kwon. Therefore, the primary means of communication between Dentons and Mr. Kwon is through Rodic as an intermediary. Rodic has assisted with communications between the Debtor's counsel and Mr. Kwon, as well as facilitated the execution of corporate documentation on behalf

of the Debtor.

17. Rodic charges a fixed fee of €245,000 per month. Rodic will need to continue to serve as Mr. Kwon's Montenegrin counsel until such time as Mr. Kwon is extradited. Although the precise details of when and where Mr. Kwon will be extradited are unknown, I would expect that Mr. Kwon could be extradited to the United States or Korea in May. Until such extradition occurs, it is important for Rodic to continue to represent Mr. Kwon, for the reasons outlined above, including to facilitate Mr. Kwon's ability to provide the Debtor with critical information in connection with the DOJ Investigation. I believe the payment of the Rodic Fees and Expenses for the months of May and June are necessary to ensure Rodic's continued representation, and therefore essential to obtaining critical information in connection with the DOJ Investigation.

18. For the avoidance of doubt, the Debtor will not need to pay Rodic's fees and expenses going forward if Mr. Kwon is extradited to the United States or Korea from Montenegro.

Governance

19. Prior to the Debtor's filing the Supplemental Motion, the Board and the Special Committee reviewed information relating to the Employee Counsel Fees and Expenses, during the course of two (2) separate Board meetings on April 30 and May 7 and two (2) separate formal and informal Special Committee meetings on May 7. I attended these meetings of the Board and Special Committee and advised the Board and the Special Committee regarding the amount of the Employee Counsel Fees and Expenses, the necessity for paying the Employee Counsel in connection with the DOJ Investigation, and the significant consequences if the Employee Counsel Fees and Expenses were not paid. The Board and the Special Committee took the opportunity to ask questions of me regarding the Employee Counsel Fees and Expenses and the risks associated with

failing to pay postpetition Employee Counsel Fees and Expenses. The Special Committee unanimously approved these payments and the filing of the Supplemental Motion.

20. Further, on May 16, after discussions with me regarding the developments in the DOJ Investigation following the filing of the Supplemental Motion, as described above, the Special Committee approved the increase of Kobre's estimated fees by \$300,000.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: May 17, 2024
New York, NY

Respectfully submitted,

By: /s/ Mark G. Califano
Mark G. Califano
Partner, Dentons US LLP