

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

In re:

Farfetch Limited (in Official Liquidation),

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 24-11519

**DECLARATION OF CHRISTOPHER KENNEDY IN SUPPORT OF CHAPTER 15
PETITION FOR RECOGNITION AS FOREIGN MAIN PROCEEDING**

I, Christopher Kennedy, do hereby declare, under penalty of perjury under the laws of the United States of America, that the following is true and correct to the best of my knowledge and belief:

I. The Liquidators and the Cayman Proceeding

1. My colleague, Alexander Lawson, and I (the “**Petitioners**” or “**Liquidators**”) are the duly appointed Joint Official Liquidators of Farfetch Limited (in Official Liquidation) (the “**Company**”) and foreign representatives in a Cayman Islands foreign proceeding,¹ pending before the Grand Court of the Cayman Islands (Financial Services Division) (the “**Cayman Court**”). The Company is in liquidation in the Cayman Islands (the “**Cayman Liquidation**”) pursuant to a winding up order dated February 9, 2024 (the “**Winding Up Order**”) of the Cayman Court. A true and correct copy of the Liquidation Order is attached to the Form 401 Petition.

2. I respectfully submit this declaration (the “**Declaration**”) in support of the Petitioners’ Verified Petition dated July 10, 2024 (the “**Verified Petition**”) seeking the U.S. Bankruptcy Court’s recognition of (a) the Cayman Liquidation as a “foreign main proceeding” pursuant to 11 U.S.C. § 1517(b)(1); and (b) the Petitioners as “foreign representatives” of the

¹ The Petitioners are Joint Official Liquidators of a liquidation under Section 92(d) of the Companies Act (2023 Revision) (the “**Companies Act**”).

Company, pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “**Bankruptcy Code**”).

3. I am a qualified insolvency practitioner and a Managing Director of Alvarez & Marsal Cayman Islands Limited (“**A&M**”). My colleague and fellow Liquidator, Mr. Lawson, is also a qualified insolvency practitioner and Managing Director at A&M. We both meet the prescribed requirements under the Insolvency Practitioners’ Regulations (2023 Consolidation) to act as Liquidators. We both work from the offices of A&M, which are located at 2nd Floor, Flagship Building, 142 Seafarers Way, George Town, Grand Cayman, KY1-1104, Cayman Islands. We are both residents of the Cayman Islands.

4. I am duly authorized to make this Declaration on behalf of the Liquidators. I am fully familiar with the facts of this matter. Unless otherwise indicated, all statements contained herein are true to the best of my knowledge and based upon my personal knowledge of the Company’s operations and financial condition, my review of relevant documents and my conversations with relevant personnel. I am over the age of 18 and, if called to testify, would testify competently about the facts set forth herein.

5. I am familiar with the Model Law on Cross-Border Insolvency, adopted by the United Nations Commission on International Trade Law (UNCITRAL), and approved by a resolution of the United Nations General Assembly on December 15, 1997. I also understand that the Model Law has been adopted in the United States as chapter 15 of the Bankruptcy Code. I have previously been recognized as the foreign representative of Cayman Islands-incorporated funds pursuant to chapter 15 of the Bankruptcy Code, including in *In re Niton Fund SPC*, 15-13252 (SMB) (Bankr. S.D.N.Y.), *In re Madison Niche Assets Fund, Ltd., et. al.*, 16-10043 (KJC) (Bankr. D. Del.), and *In re Platinum Partners Value Arbitrage Fund L.P. (In Provisional*

Liquidation), *et al.*, No. 16-12925 (SCC) (Bankr. S.D.N.Y. Nov. 23, 2016), among others.

6. I make this Declaration in my statutory capacity as an officer of the Cayman Court and request an extension of comity for the benefit of all of the Company's creditors and investors, whose interests I represent. For the reasons discussed below, I submit that: (a) Mr. Lawson and I are duly appointed "foreign representatives" of the Company in the Cayman Liquidation and that the Cayman Liquidation constitutes a "foreign proceeding" within the meaning of sections 101(23) and (24) of the Bankruptcy Code, respectively; (b) this case was properly commenced in accordance with the requirements of Chapter 15 of the Bankruptcy Code; and (c) the Cayman Liquidation satisfies all of the requirements to be recognized as a "foreign main proceeding" pursuant to sections 1502(4) and 1517(b)(1) of the Bankruptcy Code.

II. Farfetch Limited Pre-Liquidation

7. According to the investigations that I have overseen to date, and my review of the documents referenced below, I understand that:

8. The Company was incorporated as an exempt company limited by shares under the law of the Cayman Islands on May 15, 2018.² The Company had its registered office in the Cayman Islands at Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, Cayman Islands (which has since been changed to the offices of A&M).

9. The Company is an offshore holding company and was the sole parent of FF PLC, a public limited company organized under the laws of England and Wales and operating from the United Kingdom. FF PLC owned direct and indirect operating subsidiary companies, collectively referred to as the "**FF Group**." The FF Group was founded by José Neves. The FF Group had a global retail platform for luxury fashion, e-commerce platforms, and fashion and beauty product

² The Company's registration number is 336922.

labels, as well as a London department store.

10. Mr. Neves was also the Chief Executive Officer and a director of the Company. At all material times, Mr. Neves had effective control of the Company via a dual-class share structure, under which he holds 77% of shareholder voting rights despite holding only 15% of its total issued shares. Following the resignation of the Company's independent directors in December 2023, Mr. Neves became the sole director of the Company.

11. The Company's subsidiaries, including Farfetch US Holdings, Inc. ("**FF US**"), were financed by a \$600 million³ senior secured Term Loan with a maturity date of October 20, 2027, which was fully drawn (the "**Term Loan**").

12. The Company also raised capital by issuing convertible senior notes, including: (a) \$400 million of 3.75% Convertible Senior Notes issued under an Indenture dated April 30, 2020, repayable no later than May 1, 2027 ("**2027 Notes**"), and (b) \$650 million of 0% Convertible Senior Notes issued under an Indenture dated November 17, 2020, repayable no later than November 15, 2030 (the "**2030 Notes**," and together with the 2027 Notes, the "**Notes**").

13. The Company lent the proceeds of the Notes to the operating subsidiaries of FF PLC (the "**Intercompany Loans**"). The due date of the Intercompany Loans mirrored that of the Notes. Certain Intercompany Loans, made on April 30, 2020, in the amount of \$400 million were payable no later than May 1, 2027. The other Intercompany Loans, made on November 17, 2020, in the amount of \$650 million, were payable no later than November 15, 2030. The debtors were obligated to pay the Intercompany Loans at the time of the respective maturities of the Notes.

14. From September 21, 2018, until January 2, 2024, the Company's stock was listed on the NYSE and publicly traded. As a result of numerous Securities and Exchange Commission

³ Monetary amounts are all in U.S. dollars.

filings, including Form 20-F filing requirements, the Company made known that it was governed by Cayman Articles, the Companies Act and the common law of the Cayman Islands and that stakeholders' rights would be limited by the application of Cayman Islands law.

15. At present, the Company's only asset is cash held in its Cayman Islands bank account totaling approximately \$1.2M, and \$25,000 in the Reid Collins IOLTA account in Delaware. The Company's liabilities, on the other hand, are comprised almost entirely of creditor claims totaling approximately \$1.1B.

III. Events Leading Up to the Cayman Liquidation

16. In May 2023, the Company reported positive first quarter results and informed the market that:

We have delivered what we set out to achieve, with accelerating underlying growth, disciplined cost control and improved cash flows. We have successfully navigated through unprecedented macro challenges, and through continued focused execution, we remain on track to deliver a year of luxury market-beating growth, a return to profitability and positive free cash flow.⁴

Following the publication of its second quarter results on August 17, 2023, the Company's public communications indicated that it remained positive about its levels of growth, lower costs, and strong liquidity position. The Company projected that this liquidity was sufficient to meet its anticipated operating cash needs for at least the next twelve months.

17. In late October 2023, the Company's liquidity position appears to have rapidly and dramatically changed. That same month, a Special Committee of the board of the Company retained professionals to advise them on the various options available to the Company to urgently resolve a liquidity crisis. On November 28, 2023, the Company issued a press release informing the market that it would not announce its third quarter results and its earnings call scheduled for

⁴ Ex. 6 to Verified Pet. (Form 6-K Issued on May 18, 2023).

November 29, 2023, would not be held.⁵

18. On December 18, 2023, the Company announced that Farfetch PLC (“**FF PLC**”), its wholly owned direct subsidiary, had informed the Company’s board of directors that it had entered into an agreement with Athena Topco LP (“**Athena Topco**”), a Delaware limited partnership owned by Coupang, Inc. (“**Coupang**”), and funds managed and/or advised by Greenoaks Capital Partners LLC (“**Greenoaks**”) on the following terms (the “**Coupang Sale**”):

- FF PLC committed to sell substantially all of its assets to Athena Topco (now known as Surpique LP) pursuant to which releases would be provided, including releases of \$1 billion of intercompany loans.
- Athena Topco would also provide a Bridge Loan facility⁶ of \$500 million (the “**Bridge Loan**”) at a rate of 12.5% per annum, compounding monthly in payment-in-kind interest that was immediately due and payable upon the occurrence of certain events (a “**MOIC Event**”).⁷ Upon the occurrence of a MOIC Event, pursuant to a Transaction Support Agreement (“**TSA**”), the Bridge Loan was required to be repaid at a price equal to 1.95x of the \$500 million.
- A pre-existing Term Loan facility would be amended to require FF Group borrowers to prepay the Term Loan with the net proceeds of any non-ordinary course asset sale and up to \$125 million of Italian VAT receivables that would be deposited in a blocked account. Any MOIC event or default under the Bridge Loan was a cross-default under the Term Loan facility requiring the payment of a MOIC of 0.95x the Term Loan facility, plus the outstanding loan amount.
- In the event of a competing transaction, (a) FF PLC would pay Athena Topco a termination fee of \$20 million, (b) the Term Loan lenders would receive consent fees of 7.5% of the outstanding principal amount of each Term Loan, and (c) 10% of the Term Loan would be repurchased pro rata among the Term Loan

⁵ Ex. 8 to Verified Pet. (Press Release Issued on Nov. 28, 2023).

⁶ These were provided on an as-needed basis to fund ordinary course working capital, operations, and/or expenses of FF PLC and its direct and indirect subsidiaries and the Company, in accordance with an agreed financial plan (including specified limits for particular entities and heads of spending).

⁷ These included: “(a) if the Coupang Sale failed to be consummated prior to the end of the exclusivity period set out in the TSA (*i.e.*, April 30, 2024); (b) if a competing transaction was signed in relation to FF PLC’s assets pursuant to the ‘marketing process’; (c) upon an event of default and acceleration under the Bridge Loan Facility; or (d) if the TSA were terminated.”

lenders upon entry into the competing deal.⁸

19. JP Morgan and Evercore conducted a marketing process during the latter half of December and early January to ascertain whether there were other parties who wished to make a competing bid for the assets of FF PLC. While several parties indicated interest or provided key diligence questions, no indicative bids were received by January 22, 2024. Term sheets were received in respect of offers to purchase the Company and also to acquire assets within the core marketplace business. Other parties expressed an interest in certain of the Company's underlying assets. For reasons not fully clear to the Petitioners at this time, these offers were not deemed acceptable.

20. On January 24, 2024, the Company issued a Fundamental Change Notice (as defined in the Indentures) with respect to the Notes in which it stated that it could not repurchase the Notes in cash either at that time or after the consummation of the Coupang Sale. On January 25, 2024, certain holders of the 2027 Notes issued a notice of default and acceleration to the Company and the Trustee in accordance with the terms of the 2027 Indenture as a result of which the 2027 Notes became immediately due and payable.

21. On February 2, 2024, Wilmington Trust National Association (*i.e.*, the Indenture Trustee) filed a petition to wind up the Company with the Cayman Court pursuant to Section 92(d) of the Companies Act on the grounds that the Company was then, or would imminently become, unable to pay its debts as and when they fall due and, accordingly, was insolvent.⁹ No creditor objected to the relief sought, and neither did Mr. Neves, the Company's sole director.

22. On February 9, 2024, the Cayman Court entered a Winding Up Order, and the

⁸ Ex. 9 to Verified Pet (Form 6-K, Dec. 18, 2023).

⁹ In the alternative, the Petitioner sought a winding up order against the Company pursuant to Section 92(e) of the Act, on the basis that it is just and equitable that the Company be wound up.

Petitioners were appointed as Liquidators (in this capacity, jointly and severally) of the Company.¹⁰ Pursuant to the Companies Act, the Liquidators are empowered and required to take possession of and collect the property of the Company, and to take all actions necessary for that purpose. In furtherance thereof, the Cayman Court also authorized the Liquidators to exercise their powers, both within and outside of the Cayman Islands, without further order of the Cayman Court, as follows:

In addition to the powers prescribed in Part II of the Third Schedule to the Companies Act which are exercisable without sanction of the Cayman Court, the Joint Official Liquidators may also without further sanction or intervention from the Cayman Court, take any such action as may be necessary or desirable to obtain recognition of their appointment in the United Kingdom and/or in the United States of America and to make applications to the courts of those jurisdictions for that purpose.

23. Since then, Mr. Lawson and I have worked from A&M's office in the Cayman Islands. We have (i) retained Caymans Islands, U.S., and United Kingdom legal counsel from our Cayman Islands offices and under Cayman Islands law; (ii) obtained certain books and records of the Company in the Cayman Islands; (iii) regularly communicated with creditors and shareholders from the Cayman Islands; (iv) sent the first report to creditors dated April 12, 2024, which provided creditors with an update on the progress of the Cayman Proceeding from the Cayman Islands; (v) held the first creditors' meeting at our offices in the Cayman Islands on May 30, 2024; and (vi) formed a liquidation committee comprised of four creditors. We have also been recognized as foreign representatives in the U.K.

24. The primary purpose of the liquidation committee is to act as a sounding board for the Liquidators and represent the interests of the wider body of creditors. The Petitioners will conduct all liquidation committee meetings, from their offices in the Cayman Islands. All creditors,

¹⁰ Attachment to the Form 401 Petition.

who are located in a variety of places, must file proofs of claims in the Cayman Proceeding and claims will be administered and adjudicated by the Petitioners from the Cayman Islands.

IV. Qualifications for Recognition and Jurisdiction in the United States

25. Mr. Lawson and I have acted as joint liquidators with respect to more than 100 Cayman Islands companies. We have been recognized as foreign representatives pursuant to chapter 15 in the past and are familiar with a significant number of the offshore jurisdiction chapter 15 cases that have been filed in the U.S. Under Cayman law, Mr. Lawson and I now have the sole right to administer the Company and dispose of or distribute the Company's assets. In view of the foregoing, I submit that the case for chapter 15 recognition of the Cayman Liquidation of the Company, in this instance, is strong, and that the need for recognition is urgent because of certain lawsuits that have been filed against the Company in the U.S.

26. I have been advised that, in order to qualify for recognition under chapter 15, the Petition must meet certain requirements. In particular, it must be brought by a "foreign representative" of a "foreign proceeding" that is pending before a "foreign court," all as defined in the Bankruptcy Code.

27. I am aware of the definition of "foreign representative," as referred to in 11 U.S.C. § 101(24), and I believe that the Liquidators qualify as such. The Liquidators were appointed by the Cayman Court pursuant to the Companies Act to act as the Liquidators of the Company. Among other things, the Liquidators are charged with administering, protecting and liquidating the business and assets of the Company and acting on behalf of the Company. The Liquidators also are authorized, subject to sanction of the Cayman Court, to bring or defend any action or legal proceeding in the name or on behalf of the Company, or for the benefit of its estate. As such, the Liquidators are the persons responsible for representing the Company in the Cayman Liquidation and in all related matters, including this matter, and are therefore "foreign representatives" of the

Company within the meaning of section 101(24) of the Bankruptcy Code.

28. I also have been advised that a “foreign court” is defined in section 1502 of the Bankruptcy Code as “a judicial or other authority competent to control or supervise a foreign proceeding.” I respectfully submit that the Cayman Court qualifies as a foreign court for purposes of section 1502.

29. I understand that a “foreign proceeding” is defined as “a collective judicial . . . proceeding in a foreign country . . . under a law relating to insolvency or the adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.” 11 U.S.C. § 101(23). I respectfully submit that the Cayman Liquidation qualifies as such, since, by definition, it is a liquidation proceeding pursuant to and governed by the Companies Act under the collective judicial supervision of the Cayman Court for the benefit of all of the Company’s creditors, and parties in interest.

30. I am also aware that section 1517(b)(1) of the Bankruptcy Code provides that a foreign proceeding shall be recognized as a “foreign main proceeding” if the foreign proceeding is “pending in the country where the debtor has the center of its main interests” (“COMI”). I understand that section 1516(c) of the Bankruptcy Code provides that a debtor’s “registered office” is presumed to be the debtor’s COMI in the absence of evidence to the contrary. Since the Company was formed under the laws of the Cayman Islands and maintains its registered office there, I believe that there is no basis for rebutting this statutory presumption that is afforded. In any case, the facts clearly indicate that the Company’s COMI is the Cayman Islands. As demonstrated by the facts included herein, I further believe that the Company is engaged in non-transitory economic activity in the Cayman Islands.

31. As Liquidators, we have displaced the prior board of directors of the Company. No action with respect to the Company, whether transactional-related or litigation-related, may be taken without the express approval and consent of myself and Mr. Lawson. All of the Company's known assets and interests are under the sole and exclusive control of the Liquidators from the Cayman Islands. Consistent with the Companies Act, the Companies Winding Up Rules (2023 Consolidation) ("**CWR**") and the Winding Up Order, Mr. Lawson and I have engaged in numerous activities to further the Company's liquidation.

32. Since our appointment by the Cayman Court, we have worked from our offices at A&M in the Cayman Islands, from which all decisions are made, and have (i) retained Cayman Islands, U.S., and United Kingdom legal counsel from our Cayman Islands offices and under Cayman Islands law; (ii) obtained certain books and records of the Company in the Cayman Islands; (iii) regularly communicated with creditors and shareholders from the Cayman Islands; (iv) sent the first report to creditors dated April 12, 2024, which provided creditors with an update on the progress of the Cayman Proceeding from the Cayman Islands; (v) held the first creditors' meeting at their offices in the Cayman Islands on May 30, 2024; and (vi) formed a liquidation committee comprised of four creditors. Petitioners have also recovered funds and opened a Cayman Islands bank account, which holds approximately \$1.2 million of Company funds. The Cayman Proceeding has also been recognized as a main proceeding in the United Kingdom. All relevant inquiries from creditors and other parties-in-interest are now directed to the Liquidators.

33. I have reviewed documentation issued by and to the Company prior to the Liquidation, including various Securities and Exchange Act filing requirements. In all such documentation which I have reviewed, the Company is referred to and addressed as a Cayman Islands company. Thus, all parties-in-interest were aware that the Company was a Cayman Islands

company. No creditor or stakeholder objected to the liquidation in the Cayman Islands and all major stakeholders are actively participating in the Cayman Liquidation. All creditors of the Company must submit their claims in the Cayman Liquidation, and stakeholders have the right to access the Cayman Court and appeal decisions of the Liquidators.

34. Based upon the above, I am confident that the Company's "nerve center" has been established in the Cayman Islands with the Liquidators. I also believe that all relevant creditors, stakeholders, and shareholders regard the Company to be a Cayman Islands company and the Cayman Islands to be the Company's current "nerve center." I further believe it is clear that since the commencement of the Cayman Liquidation, the Company has been engaged in non-transitory economic activity in the Cayman Islands.

35. In accordance with 11 U.S.C. § 1515(c), I am aware of no other pending foreign insolvency proceedings, except the Cayman Liquidation, in which the Company is the subject of the proceeding.

36. In accordance with Rule 1007-1(a)(4) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), a schedule of known and pending actions in the United States in which the Company is named as a party is attached to the Form 401 Petition, together with the disclosures required under Bankruptcy Rule 7007.1. The Liquidators are authorized under Cayman Islands law, subject to sanction of the Cayman Court, to act on behalf of the Company in staying, defending against, or prosecuting these actions, as applicable.

37. For all of these reasons, I respectfully request that this Court enter an Order: (a) recognizing my colleague, Alexander Lawson, and myself as duly authorized foreign representatives of the Company and the Cayman Liquidation as a foreign main proceeding under chapter 15 of the Bankruptcy Code; and (b) granting such other and further relief as this Court may deem just and proper.

Pursuant to Section 1746 of Title 28 of the United States Code, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 10, 2024
Grand Cayman, Cayman Islands

/s/ Christopher Kennedy
CHRISTOPHER KENNEDY

*Joint Official Liquidator of Farfetch Limited (in
Official Liquidation)*