IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
FTX TRADING, LTD., *et al.*,[1]	Case No. 22-11068 (KBO)
	(Jointly Administered)
Debtors.	**Ref: 28643, 28645, 28646**

OPPOSITION TO DEBTORS' AMENDED OBJECTION TO PROOFS OF CLAIM AND MOTION FOR SUBORDINATION PURSUANT TO 11 U.S.C. §§ 510(B) AND 510(C)(1) AND CROSS-MOTION TO COMPEL ARBITRATION

Seth Melamed ("**Melamed**") hereby submits: (i) this opposition ("**Opposition**") to the Debtors' Amended Objection to Proofs of Claim and Motion for Subordination Pursuant to 11 U.S.C. 510(B) and 510(C)(1) (the "**Amended Claim Objection**") filed by FTX Trading Ltd. ("**FTX**"), FTX Japan Holdings K.K. ("**FTX Japan Holdings**" or "**Holdings**") and Quoine Pte Ltd. ("**Quoine**" or "**FTX Singapore**")[2] to proofs of claim numbers 3244, 3353, 3385, 3956, 4470, 4578 (the "**Pre-Petition Claims**") and the administrative claim filed on November 8, 2024 [D.I. 27798] (the "**Administrative Claim**"; collectively with the Pre-Petition Claims, the "**Claims**") filed by Melamed; and (ii) this cross-motion to compel arbitration ("**Cross-Motion**"). In connection with this Opposition and Cross-Motion, Melamed submits the Declarations of: i) Seth Melamed ("**Melamed Decl.**"); ii) Ryo Kawabata dated February 27, 2025 (the "**Arbitration Decl.**"); iii) Takane Hori in response to Declaration of Taro Tanaka dated February

[1] The last four digits of FTX Trading Ltd.'s and Alameda Research LLC's tax identification numbers are 3288 and 4063, respectively. Due to the large number of debtor entities in these chapter 11 cases (collectively, the "Debtors"), a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at https://cases.ra.kroll.com/FTX

[2] FTX Japan Holdings, Quoine and FTX Japan K.K. ("**FTX Japan**") are collectively referred to herein as the "**Liquid Entities**"). The bankruptcy of FTX Japan was dismissed in July of 2024.

27, 2025 ("**Hori Response Decl.**"); and iv) Takane Hori Regarding Representative Director Fees Under Japanese Law dated February 27, 2025 (the "**Hori Director's Fee Decl.**"). In support of this relief, Melamed states as follows:

PRELIMINARY STATEMENT

On July 10, 2024, twenty months after the bankruptcy filing, the Debtors objected to Melamed's claims.[3] Melamed filed his opposition on August 16, 2024[4] and requested that the Claims be adjudicated in Singapore based on the arbitration agreement between the parties. At the hearing on September 12, 2024, the Court asked the parties to submit foreign law declarations on whether, under Japanese law, the arbitration agreement would be enforced. Concurrently with the filing of this Opposition, Melamed submits the Arbitration Declaration which concludes: "it is my professional opinion that a Japanese court would honor the binding arbitration agreement contained in the SPA, ¶19.2. . ." Arbitration Decl., ¶ 9.

Inexplicably, the Debtors have chosen not to address this issue. The Debtors' Japanese law expert, Taro Tanaka, is silent on this critical issue in his declaration (the "**Tanaka Declaration**"). Accordingly, this Court can conclude that the arbitration agreement is enforceable under Japanese law and direct that Melamed's Claims be adjudicated through arbitration in Singapore.

Under Third Circuit precedent, the Court lacks discretion to deny the enforcement of the arbitration agreement unless "the party opposing arbitration can establish congressional intent …. to preclude waiver of judicial remedies for the statutory rights at issue." *See In re Mintze*, 434 F.3d 222, 231 (3d Cir. 2006). The Debtors do not attempt to address this standard. Instead,

[3] *See Objection to Proofs of Claim Filed by Seth Melamed* [D.I. 20051] and *Declaration of Steven P. Coverick* [D.I. 20052] (collectively, the "**Objection**").

[4] *See Opposition To Debtors' Objection To Proofs Of Claim* (D.I. 23170) along with the *Declaration of Takane Hori* (D.I. 23171) ("**Initial Hori Decl.**") and *Corrected Declaration of Seth Melamed*. (D.I. 23173) (the "**Initial Melamed Decl.**"; collectively, the "**Melamed Opposition**"). The Melamed Opposition is incorporated herein, and capitalized terms used herein shall have the meanings ascribed to such terms in that Opposition.

the Debtors' request that this Court not enforce the arbitration agreement and delve into the complexities of Japanese law and their supposed effects on convenience, efficiency and cost (Amended Claim Objection, ¶¶67, 69). This standard has been rejected by the Third Circuit. *See Hays and Co v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1158 (3d Cir. 1989) ("even if there were some potential for an adverse impact on the core proceeding, such as inefficient delay, duplicative proceedings, or collateral estoppel effect, [movant] has not shown that it would be substantial enough to override the policy favoring arbitration.").

To the extent that these arguments were considered, Melamed has submitted Hori's Response Decl. to demonstrate that Tanaka incorrectly concludes that FTX did not breach the contract on the Completion Date. Hori's Response Decl. opines that a Japanese Court (or Arbitration Panel applying Japanese Law) would conclude that "clause 2.4(d) of the Side Letter" amended the SPA and required the payment of the Retained Consideration on April 4, 2022." *Id.*, ¶¶ 14,16. In addition, Hori's Response Decl. opines that the Debtors' failure to pay the Retained Consideration on the Completion Date was a breach of the SPA (and Side Letter) for which a money damage award in Melamed's favor would be issued. *Id.*, ¶¶ 16-17.

To divert from the arbitration issue, the Debtors have injected a new argument into this dispute: Melamed's claims should be equitably subordinated under Section 510(c)(1) of the Bankruptcy Code. This gambit fails for several reasons.

First, the Amended Claim Objection is procedurally defective. Equitable subordination cannot be sought through a motion – it requires the filing of an adversary proceeding.

Second, even if the Court were to consider the merits, equitable subordination fails as a *matter of law*. The Debtors have failed to demonstrate *any* of the three elements for equitable

subordination[5] and conveniently ignore their own prior admissions that the Liquid Transaction provided "substantial value" to the Debtors.[6] Moreover, the Debtors ignore that: i) the customers of FTX Japan received their crypto or fiat back in full when it resumed operations in February 2023; and ii) the Disclosure Statement projects a recovery to creditors in the range of 129%-143% of their allowed claims[7]. As a result, the remedy of equitable subordination would be contrary to the Third Circuit precedent.

The remainder of the Amended Claims Objection with respect to Melamed's pre-petition claims is a regurgitation of the Objection. For the sake of brevity, Melamed incorporates the arguments from the Melamed Opposition.

Melamed's administrative claim consists of claims for: i) unpaid post-petition directors' fees; and ii) amounts owed under the KEIP approved by this Court.

The Debtors object to the allowance of these claims on the basis that Melamed has the burden to demonstrate the "reasonable value of his services." Amended Claim Objection, ¶27. Here, the Debtors' own acts establish the "reasonable value" of Melamed's services.

Prior to the Petition Date, Melamed served as the representative director of Holdings (the "**Representative Director**") and was paid a monthly stipend of $47,000 (the "**Monthly Director Fee**"). On March 31, 2024, John J. Ray III, acting in his capacity as a shareholder pursuant to the Omnibus Corporate Authority dated November 10, 2022 (the "**OCA**")),[8] *reappointed* Melamed to serve as Representative Director at the same Monthly Director Fee that was in place

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[5] The three elements are "(1) the claimant must have engaged in some type of inequitable conduct; (2) the misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant; and (3) equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Code." *In re Winstar Commc'ns, Inc.*, 554 F.3d 382, 411 (3d Cir. 2009)(quotations and brackets omitted) (*citing Benjamin v. Diamond* (*In re Mobile Steel Co.*), 563 F.2d 692, 699–700 (5th Cir. 1977)). The Third Circuit has described equitable subordination as a "remedial rather than penal" doctrine designed "to undo or to offset any inequality in the claim position of a creditor that will produce injustice or unfairness to other creditors in terms of the bankruptcy results." *Citicorp Venture Capital, Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 323 F.3d 228, 233-34 (3d Cir. 2003).

[6] *Report of Robert J Cleary Examiner,*[D.I. 15545].

[7] The Court can take judicial notices of the Debtors' projections in the Disclosure Statement.

[8] *See In re FTX Trading, Ltd.,* Case No. 22-bk-11068, *Voluntary Petition for Bankruptcy* at 12 [D.I. 1].

pre-petition. The reasonable value of Melamed's services is shown by the business judgment of the Debtors.

Melamed was terminated as Representative Director of Holdings without cause on or about July 30, 2024. Three weeks later, in retaliation for Melamed objecting to the Plan, the Debtors purported to "amend" the termination "to cause". As detailed in the Hori Director's Fee Decl., the Debtors did not have "justifiable grounds" under Japanese Law for changing Melamed's termination to cause, and Melamed is entitled to be paid his fees as Representative Director for the remainder of his term. Hori Director's Fee Decl., ¶¶ 11, 26, 28-29.

With respect to the amounts owed under the KEIP, the Debtors sought and obtained approval of the KEIP from this Court. In connection with that process, the Debtors lauded the performance of Melamed (which they apparently now disavow). The reasonable value of Melamed's services was demonstrated by the representations made to the Court and in the declaration supporting the KEIP. Finally, the KEIP Order did not require a participant to execute a "waiver and release" in order to receive the payment. The Debtors imposed that condition on Melamed in an attempt to obtain a release of the separate claims that are addressed herein.

PROCEDURAL HISTORY

1. On and after November 11, 2022 and November 14, 2022, (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**Court**").

2. On November 22, 2022, the Court entered the *Interim Order (I) Authorizing the Debtors To (A) Pay Prepetition Compensation And Benefits And (B) Continue Compensation And Benefits And (II) Granting Certain Related Relief* [D.I. 138] ("**Wage Order**").

3. On April 9, 2023, the Debtors filed *the First Interim Report Of John J. Ray III To The Independent Directors On Control Failures At The FTX Exchanges* [D.I. 1242] ("**First Interim Report**").

4. On May 19, 2023, the Court entered the *Order (I)(A) Establishing Deadlines for Filing Non-Customer and Government Proofs of Claim and Proofs of Interest and (B) Approving the Form and Manner of Notice Thereof and (II) Granting Related Relief* [D.I. 1519] (the "**Non-Customer Bar Date Order**"). The Non-Customer Bar Date Order established, among other things, the deadline of June 30, 2023 to file non-Customer Claims against the Debtors.

5. On April 26, 2023, Debtors filed the Motion of Debtors for Entry of an Order Authorizing Implementation of a Key Employee Incentive Plan [D.I. 1359] (the "**KEIP Motion**"). In the KEIP Motion, the Debtors represented the following to the Court:

> seven employees of [Holdings] have been identified as critical . . . (the "**KEIP Participants**"). The KEIP Participants have the institutional knowledge, specialized skillsets and critical relationships with regulators and [Holdings'] employees that are necessary to maximize the going concern value of [Holdings] or to restart the Debtors' exchange. . . . . *Because of the KEIP Participants' tremendous efforts, [Holdings] was able to resume withdrawals from users' accounts on February 21, 2023—a critical feat,* given that these capabilities are essential to [Holdings'] ability to operate and to maintain and maximize its going concern value.
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> [Holdings] unique position led the Debtors to determine that implementation of an incentive program is necessary with respect to employees critical to the Company's Transaction and Reorganization efforts. Given the regulatory regime in Japan, [Holdings] requires the efforts of the KEIP Participants to enable it to comply with the [Japan Financial Service Agency's] laws and regulations with respect to segregated asset balances and for the Company to expeditiously return customer assets, in turn ensuring the Company's overall continued operations and value. . . . The Company's continued operations and value as a going concern are critical to the administration of these Chapter 11 Cases and to the preservation of optionality in connection with any potential sale process as well as in connection with pursuing a Reorganization. . . . For these reasons, the Debtors believe that the KEIP is critical and in the best interest of the Debtors and their estates to effectuate a value maximizing Transaction or Reorganization. Accordingly, the

> Debtors request Court authorization to implement an incentive plan for the KEIP Participants, generally on the terms described herein.

Id., ¶¶ 3-4, 7 (emphasis supplied).

6. On June 8, 2023, this Court entered the Order Authorizing Implementation of a Key Employee Incentive Plan [D.I. 1589] (the "**KEIP Order**"). Paragraph 4 of the KEIP Order specified the conditions for payment of the KEIP award:

> Each KEIP Participant will earn the second KEIP payment (the "Transaction or Reorganization Award") upon the earlier of: (i) the consummation of a Transaction (the "Transaction Award") or (ii) the Reorganization (the "Reorganization Award"), in each case subject to the continued employment of the KEIP Participant through the applicable Transaction or Reorganization that triggers the payment. . . . If earned, the Transaction Awards will be payable to each applicable KEIP Participant within 60 days of the closing of the Transaction.

7. On June 26, 2023, the Debtors filed the *Notice of Filing Second Interim Report of John J. Ray III to the Independent Directors: the Commingling and Misuse of Customer Deposits at FTX.Com* [D.I. 1704] ("**Second Interim Report**").

8. On June 30, 2023, Melamed timely filed six (6) proofs of claim (the "**Claims**") in this case as follows:

Claim Number	Claim Amount	Debtor	Nature of Claim
Claim 3385	$35,613,112.19	FTX Trading	[SPA Damages]
Claim 3353 Claim 3956 Claim 4578	$52,500.00	FTX Singapore FTX Japan FTX Japan Holdings	Services fee from September and October of 2022
Claim 3244 Claim 4470	$200,000	FTX Japan Holdings FTX Japan	Bonus Payment

9. On June 26, 2024, the Court entered the *Order (I) Approving the Adequacy of the Disclosure Statement; (II) Approving Solicitation Packages; (III) Approving the Forms of Ballots; (IV) Establishing Voting, Solicitation and Tabulation Procedures; and (V) Establishing*

Notice and Objection Procedures for the Confirmation of the Plan [D.I. 19068] (the "**Solicitation Procedures Order**"). Among other things, the Solicitation Procedures Order approved the adequacy of the Disclosure Statement for Debtors' Joint Chapter 11 Plan of Reorganization of FTX Trading Ltd. and Its Affiliated Debtors and Debtors-in-Possession [D.I. 19143] (the "**Disclosure Statement**"), voting and solicitation procedures and established the timeline to consider confirmation of a joint chapter 11 plan.

10. The Disclosure Statement projected that customers of the FTX Debtors (including Quoine customers) would receive a distribution of between 129% to 143% of their allowed claims. *Id.*, pp. 635 of 689.

11. On July 10, 2024, the Debtors filed the Objection [D.I. 20051].

12. On July 16, 2024, the Court entered an *Order (I) Authorizing and Approving Sale of Debtors' Interests in FTX Japan K.K. Free and Clear of All Liens, Claims, Interests and Encumbrances; (II) Authorizing and Approving FTX Japan Holding K.K.'S Entry Into, and Performance Under, the Purchase and Sale Agreement; (III) Dismissing the Chapter 11 Case of FTX Japan K.K. Effective as of Closing; and (IV) Granting Related Relief* [D.I. 20560] (the "**FTX Japan Sale Order**").

13. On August 16, 2024, Melamed filed the Melamed Opposition. In addition, on August 16, 2024, Melamed filed an *Objection to the Plan/Joinder in Objection of Retail Creditors and Reservation of Rights* [D.I. 23167] (the "**Plan Objection**").

14. On October 7, 2024, the confirmation hearing took place.

15. On October 8, 2024, the Bankruptcy Court entered the *Order Confirming Second Amended Joint Chapter 11 Plan of Reorganization of FTX Trading Ltd. and Its Debtor Affiliates*. [D.I. 26404].

16. On October 21, 2024, Melamed filed a timely notice of appeal [D.I. 27000]. The appeal is presently being briefed before the District Court.[9]

17. On November 7, 2024, Melamed filed an administrative expense claim (the "**Administrative Claim**"). The Administrative Claim asserted two claims that were entitled to administrative status: i) unpaid amounts due under the KEIP Order; and ii) amounts owed on account of Monthly Director Fees.

18. On December 9, 2024, the Debtors filed the Amended Claim Objection.

19. On January 3, 2025, the Plan went Effective and the FTX Recovery Trust succeeded to the rights of the Debtors. S*ee Notice of Effective Date of the Second Amended Joint Chapter 11 Plan of Reorganization of FTX Trading Ltd. and Its Debtor Affiliates* [D.I. 29127].

20. On February 17, 2025, the FTX Recovery Trust filed the *Statement of The FTX Recovery Trust Regarding Recognition Of Chapter 11 Case Of Quoine Pte Ltd In Singapore* [D.I. 29590] in which it indicated that "Quoine is a Consolidated Debtor and any claims filed against Quoine will be satisfied solely through distributions from the FTX Recovery Trust in accordance with the Plan."

STATEMENT OF FACTS

21. For brevity, the Initial Melamed Decl. is incorporated herein by reference. The following supplemental facts are submitted:

A. FTX acquires Liquid/Management Agreement

22. Liquid was a holding company that owned two successful cryptocurrency exchange operating entities with difficult-to-obtain licenses in Japan (FTX Japan) and in Singapore (Quoine) (collectively, the "**Liquid Entities**"). Melamed Decl., ¶3.

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[9] *See* Delaware District Court Case No. 24-1175 (TLA).

23. On November 19, 2021, Melamed signed the Agreement for the Sale and Purchase of Shares, Stock Options, and Warrants in Liquid Group Inc. (Major Shareholders) ("**SPA**"), as modified by that certain Side Letter Agreement of the same date (the "**First Side Letter**"). *Id.,* ¶4.

24. The First Side Letter provides in relevant part that:

> The total amount of consideration to be paid by the Purchaser to Mr. Melamed (the "Consideration") shall be paid ratably on the Completion Date, the Second Completion Date and the Last Completion Date, **provided, that the total amount of Crypto Consideration of Mr. Melamed, which shall be withheld in its entirety by the Purchaser as Retained Consideration in accordance with clause 4 of the Major Shareholders SPA, shall be paid on the Completion Date**.

Id., ¶5(emphasis supplied).

25. The SPA and First Side Letter are governed by the laws of Japan. *Id.* at ¶6.

26. Section 19.2 of the SPA provides that any disputes are to be resolved by binding arbitration:

> *[a]ny dispute*, controversy or claim arising *in any way* out of or in connection with *this Agreement* (including, without limitation: (i) any issue regarding contractual, pre-contractual or non-contractual rights, obligations or Liabilities; and (ii) any issue as to the existence, validity, breach or termination of this Agreement) shall be referred to and finally resolved by binding arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the SIAC Rules in force when the Notice of Arbitration is submitted in accordance with such Rules (the "Rules"), which Rules are deemed to be incorporated by reference into this Clause and as may be amended by the rest of this Clause.

Id., ¶7. *(*emphasis supplied).

27. As a condition to the Completion Date, Melamed was required to, and did, sign a Management Agreement which was thereafter amended on June 30, 2022 and on October 19, 2022 (as amended, the "**Management Agreement**"), pursuant to which he was appointed the Representative Director[10] and Chief Operating Officer (COO) of FTX Japan. *Id.*, ¶8. Closing

[10] Under Japanese law, a Representative Director is a type of Director with the company's highest authority and the right to enter into business and sign legal contracts on behalf of the corporation in Japan.

conditions under the SPA were completed on April 4, 2022 (the "**Completion Date**"). FTX did not pay Melamed the Retained Consideration as required by Section 2.1(d) of the First Side Letter on the Completion Date. *Id.*, ¶9.

B. Bankruptcy Filing

28. The Liquid Entities did not file for bankruptcy in Japan or in Singapore.[11] *Id.* at ¶10. After the Petition Date, the Liquid entities continued to operate their businesses in the ordinary course and Melamed continued in his role as COO of FTX Japan and as its Representative Director and interacted with the Debtors' professionals continuously.[12] *Id.*

29. In addition, Melamed was in constant interaction with the JFSA, which was the regulatory body that had issued the license to FTX Japan. *Id.*, ¶11. The JFSA suspended FTX Japan's license on or about November 9, 2022 as the fraud at the FTX entities (other than Liquid) had become known. *Id.* Melamed's meetings with the JFSA centered around the suspension of the license, the bankruptcy of the other FTX Entities and the JFSA's repeated concern that the segregated assets held for customers would be absorbed by the FTX Estate. *Id.* This concern was heightened by the fact that FTX Japan had never made or authorized a bankruptcy filing. *Id.* Prior to the withdrawals being reenabled for FTX Japan customers on February 21, 2023, Melamed had to convince the JFSA that under no circumstances would the FTX Estate seize the segregated assets of FTX Japan's customers. *Id.* After withdrawals resumed, the discussions with the JFSA centered around the resumption of full exchange operations at FTX Japan and a potential sale of the company to a third party. *Id.*

[11] Equally important, no board resolution authorizing the filing for bankruptcy protection was ever sought or obtained for FTX Japan (or Holdings or Quoine). Neither FTX Japan (nor Holdings) filed for bankruptcy protection in Japan; nor did Quoine file for bankruptcy protection in Singapore. Indeed, the Disclosure Statement included a liquidation analysis of FTX Japan which concluded that "[FTX Japan] can fully satisfy its claims and administrative expenses" and had residual equity of between $74-89 million. *Id.*, pp. 655 of 689.

[12] Melamed's name appears in no less than 58 time entries in the January 2023 Monthly Fee Statement of Alvarez & Marsal. *See Third Monthly Fee Statement of Alvarez & Marsal North America, LLC for the period January 1, 2023 to January 31, 2023*. D.I. 812. *See also Fourth Monthly Fee Statement of Alvarez & Marsal North America, LLC for the period February 1, 2023 to February 28, 2023*. D.I. 1224 (66 times).

30. On February 21, 2023, FTX Japan resumed withdrawal service for customers. *Id.*, ¶12. On March 8, 2023, the JFSA lifted the Business Suspension order that had been imposed when the parent company FTX Trading Ltd had stopped processing withdrawals in November 2022. *Id.* All customers of FTX Japan received their cryptocurrency returned in kind and any fiat returned in full.[13] *Id.*

31. The exemplary efforts of Melamed are described in the KEIP Motion and in the accompanying *Declaration Of Edgar W. Mosley II In Support Of Motion Of Debtors For Entry Of An Order Authorizing And Approving The Debtors' Key Employee Incentive Plan* [D.I. 1359-3] (the "**Mosley Declaration**"):

> *The KEIP Participants have stepped up in their roles and have engaged effectively with regulators, endeavored to stabilize the Company's workforce and operate the Company efficiently* and have made significant progress towards the Company's goal of either pursuing a Transaction or resuming exchange operations. *As a result of the KEIP Participants' diligence, the Company was able to resume withdrawals from users' accounts on February 21, 2023, which was a critical achievement,* because these capabilities are necessary for the Company to be able to operate and to maintain and maximize its going concern value.
>
> *Because of the KEIP Participants' tremendous efforts, [Holdings] was able to resume withdrawals from users' accounts on February 21, 2023—a critical feat,* given that these capabilities are essential to [Holdings'] ability to operate and to maintain and maximize its going concern value.
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> The seven KEIP Participants' institutional knowledge, industry experience and specialized skills are essential to maximize the Company's value through the administration of these Chapter 11 Cases and during a Transaction or Reorganization. The KEIP Participants include the Company's COO [Melamed], CPO, CFO, Head of Operations, CCO, Data Scientist and Front End Engineer. The KEIP Participants perform integral functions for the Company, including serving as the leaders of the Company's compliance efforts, liaising with regulators and serving as the technical leads of the Company, and in such positions, they serve in various critical roles, including performing functions related to the Debtors' ability to ensure the return of users' assets, resume

[13] https://www.reuters.com/technology/ftx-japan-allow-asset-withdrawals-starting-tuesday-2023-02-21/

operations as an exchange, effectively respond to regulatory inquiries and effectuate a successful Reorganization or Transaction.

The KEIP Participants have diligently worked to, among other things, (i) respond to significant regulatory scrutiny and liaise with regulators, (ii) reduce costs, (iii) make great progress towards resuming user withdrawals and (iv) retain certain employees and contractors during a period of significant uncertainty and Debtor workforce-wide attrition.

Mosley Declaration, ¶¶ 8, 14, 15.

C. Reappointment as Representative Director/Termination by Debtors

32. On March 31, 2024, John J. Ray III, acting in his capacity as a shareholder pursuant to the OCA,, reappointed Melamed to be Representative Director for a term of two years. *Id.,* ¶13.

33. On July 26, 2024, the Court entered its Order pursuant to which the Debtors were authorized to convey the stock of FTX Japan to BitFlyer. Following this sale, the Court entered an Order dismissing the chapter 11 case of FTX Japan. [D.I. 20560]. *Id.*, ¶14. Based on the FTX Japan Sale price of 4.5 billion JPY to BitFlyer, the KEIP award payable to Melamed is approximately USD $112,116 (the "**KEIP Award**"). *Id.*

34. On July 26, 2024, Mr. Melamed resigned as Representative Director of FTX Japan but not from his position as Representative Director of FTX Japan Holdings. *Id.*, ¶15.

35. On July 30, 2024, Melamed was terminated, without cause, by the Debtor as Representative Director of FTX Japan Holdings. *Id.*, ¶16.

36. On August 16, 2024, Melamed filed the Plan Objection. *Id.*, ¶17.

37. On August 20, 2024, in retaliation for Melamed's Plan Objection, the Debtors again purported to terminate Melamed, this time for "cause," and ceased paying Melamed his Monthly Director Fee. *Id.*, ¶18.

D. <u>Administrative Claim (Directors' Fees/KEIP)</u>

38. Melamed filed the Administrative Claim which asserts an unliquidated claim for amounts due for unpaid directors fees and for amounts due under the KEIP. *Id.*, ¶20. Twenty months remained on Melamed's term as Representative Director when he was terminated on July 30, 2024 and no Monthly Director Fees have been paid since his termination. *Id.* Melamed has a statutory claim against the Debtors under the Japanese Companies Act (the "**<u>JCA</u>**") because the Debtors lacked "justifiable grounds" to terminate Melamed with cause. Hori Director's Fee Decl., ¶¶ 29-30. As a result, pursuant to Article 339(2) of the JCA, the Debtors are obligated to pay Melamed his Monthly Director Fee for the remainder of the unfulfilled term of his directorship, including any bonuses or other benefits he would have been able to receive at the end of the term under the Management Agreement. *Id.* In addition, under the Management Agreement, the Debtors are obligated to pay remuneration to Melamed for a total period of at least seven months from the date the termination notice is delivered. *Id.*, ¶14.

39. Pursuant to Exhibit A-1 of the KEIP Order, Melamed was designated to receive the KEIP Award (which as noted above is approximately $112,116). Melamed Decl., ¶19.

III.
<u>JURISDICTION</u>

40. The Court has jurisdiction to consider this Objection pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**<u>Local Rules</u>**"), Melamed does not consent to the entry of a final order or judgment by the Court in connection with the Objection if it is later determined that the Court,

absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

I.
ALL CLAIMS SHOULD BE ADJUDICATED THROUGH ARBITRATION IN SINGAPORE

A. The Arbitration Agreement Should Be Enforced

41. The Amended Objection pays little attention to the broad arbitration agreement in the SPA which provides that:

> **[a]ny dispute, controversy or claim arising in any way out of or in connection with this Agreement** (including, without limitation: (i) any issue regarding contractual, pre-contractual or non-contractual rights, obligations or Liabilities; and (ii) any issue as to the existence, validity, breach or termination of this Agreement) shall be referred to and finally resolved by binding arbitration administered by the Singapore International Arbitration Centre ("**SIAC**") in accordance with the SIAC Rules in force when the Notice of Arbitration is submitted in accordance with such Rules (the "**Rules**"), which Rules are deemed to be incorporated by reference into this Clause and as may be amended by the rest of this Clause. The arbitration proceedings, all documents and all testimony, written or oral, produced in connection therewith, and the arbitration award shall be confidential. SPA § 19.2

42. The Debtors assert that arbitration would be inefficient because the "Management Agreement does not contain an arbitration clause, so only . . . one of Melamed's five Claims—could be resolved in arbitration." Amended Claim Objection, ¶ 67. The Debtors fail to note that the Management Agreement itself arises from the SPA. Specifically, Article 3.1 of the SPA states that:

> On or before Completion, each of the Management Shareholders shall enter into a Management Agreement with the Company on the terms and conditions reasonably satisfactory to the Purchaser and the respective Management Shareholder …

SPA § 3.1.

43. Because Melamed's Claims all arise either from the SPA or the Management Agreement, Melamed's claims should all be adjudicated in an arbitration in Singapore. *See*

Celsius Mining LLC v. Mawson, 24 Civ. 2063, 2024 WL 1719633, at *6 (S.D.N.Y. Apr. 22, 2024) (reversing bankruptcy court's narrow reading of the scope of an arbitration agreement that applied to "any dispute of any nature between the parties relating in any way to this agreement").

44. The Debtors assert that sending the claims to arbitration would be inefficient, leading to undue delay and excessive costs, prejudicial and ultimately futile because of the Digital Estimation Order and their assertion that portions of the Claims should be subordinated (which are meritess as demonstrated *infra* at points II-IV). Amended Claim Objection, ¶¶67-69.

45. These speculative arguments are not factors in the analysis. In *In re Mintze*, 434 F.3d 222 (3d Cir. 2006), the Third Circuit reversed the bankruptcy court's determination that it had discretion in denying a motion to compel arbitration:

> Before we can determine whether the Bankruptcy Court abused its discretion, we must determine whether the Bankruptcy Court *had any discretion* to exercise. *See Hays*, 885 F.2d at 1156 (refusing to address the abuse of discretion issue because the court "committed a more fundamental error in determining that it had discretion to exercise"). . . .

Id. at 231.

46. The Third Circuit concluded:

> To overcome enforcement of arbitration, a party must establish congressional intent to create an exception to the FAA's mandate with respect to the party's statutory claims. Congressional intent can be discerned in one of three ways: (1) the statute's text, (2) the statute's legislative history, or (3) "an inherent conflict between arbitration and the statute's underlying purposes." *McMahon*, 482 U.S. at 227, 107 S.Ct. 2332 (citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628, 632-37, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985)).

Id.

47. The Third Circuit concluded that such congressional intent can be shown only in very limited circumstances:

> Where an otherwise applicable arbitration clause exists, a bankruptcy court lacks the authority and discretion to deny its enforcement, unless the party opposing arbitration can

> establish congressional intent, under the *McMahon* standard, to preclude waiver of judicial remedies for the statutory rights at issue.

Id. Not only have the Debtors failed to establish that level of congressional intent; they have failed to identify any specific "statutory rights at issue."

48. Even if the Court had discretion to exercise, which it does not, the Debtors' argument that the Court should exercise its discretion is unpersuasive for the following reasons. *First*, as noted above, the scope of the arbitration agreement includes disputes arising from the Management Agreement. *Second*, inefficiency, undue delay, excessive costs, and alleged prejudice are general policy concerns untethered to specific statutory rights.. *See Hays and Co v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1158 (3d Cir. 1989) ("even if there were some potential for an adverse impact on the core proceeding, such as inefficient delay, duplicative proceedings, or collateral estoppel effect, [movant] has not shown that it would be substantial enough to override the policy favoring arbitration"); *see also Dean Witter Reynolds Inc. v. Byrd,* 470 U.S. 213 (1985).

49. The Debtors rely on *In re Yellow Corporation, et. al*., Case No. 23-11069 (CTG), D.I. 2765 at 1. *Yellow* is inapposite to the situation before this Court. In *Yellow*, the bankruptcy court found "unusual circumstances" because the restructuring and the recovery to creditors was entirely dependent on determining the amount of certain pension liabilities and how the claim would be treated under a Plan. Here, in contrast, the Plan has been confirmed and gone effective, a record date for distributions has been set and Melamed's claim is *de minimus* in the universe of claims against the Debtors.

50. As such, there are no such "unusual circumstances" present in this case. The Debtors have not overcome the presumption of liquidating the claim through arbitration and

Melamed's claims should be adjudicated in the manner that the parties agreed to in the SPA. Arbitration Decl., ¶¶ 8-9. Melamed's Cross-Motion should be granted.

51. In their attempt to prevent the Claims from being arbitrated, the Debtors argue that the arbitration is a waste of time. The Debtors submit the Tanaka Declaration to opine that there was no breach-of-contract claim as of the Completion Date. That opinion is incorrect.

52. Clause 2.1(d) of the First Side Letter provides that "the total amount of Crypto Consideration of Mr. Melamed, which shall be withheld in its entirety by the Purchaser as Retained Consideration in accordance with clause 4 of the [SPA], **shall be paid on the Completion Date**. Detailed allocation of the Consideration is set forth in Schedule 1 hereto." (Side Letter §. 2.1(d) (emphasis added).)

53. In addition, Schedule 1, Item 4 of the Side Letter ("Side Letter Schedule") shows that the payment of the Retained Consideration is to occur on the Completion Date.

54. Hori opines that a Japanese Court (or Arbitration Panel applying Japanese Law) would conclude that the First Side Letter amended the SPA and required the payment of the Retained Consideration on the Completion Date and that the Debtors' failure to make that payment was a breach of the SPA for which a money damages award should be issued. Hori Response Decl., ¶16.

55. Hori also opines that if FTX were determined to have breached the SPA and Side Letter, a Japanese court (or an arbitral panel applying Japanese law) would award money damages in an amount equal to the value of the Retained Consideration as of the date of the breach along with interest of 3% per annum on the overdue sum with, interest accruing daily (pursuant to Clause 15.4 of the SPA) and a statutory late penalty of 3% per annum on such foregoing capitalized amount pursuant to Article 404(2) of the Japanese Civil Code. *Id.*, ¶17.

56. Finally, Hori notes that the analysis in the Tanaka Declaration ignores the requirement to agree in good faith regarding the withholding of the Crypto Consideration in Clause 2.4(d) of the SPA and how that obligation was manifested in Clause 2.1(d) of the Side Letter. Second, in his analysis, Mr. Tanaka simply ignores the "paid on Completion Date" requirement imposed in Clause 2.1(d) of the Side Letter and the Side Letter Schedule. Hori disagrees with each of his conclusions that it was "clear" that: (a) FTX was not required to pay Melamed the Retained Consideration on the Completion Date (Tanaka Declaration, ¶15); (b) FTX did not breach the SPA and Side Letter by retaining the Crypto Consideration beyond the Completion Date (Tanaka Declaration, ¶17); (c) FTX was not required to pay Mr. Melamed any of the Crypto Consideration until April 2023 (Tanaka Declaration, ¶17); and (d) the SPA and the Side Letter gave Mr. Melamed a contractual right to delivery of specific amounts of the Crypto Consideration on April 4, 2023 and April 4, 2024 (Tanaka Declaration, ¶18). *Id.*, ¶19.

57. In sum, the Debtors' assertion that there was no breach of contract claim on the Completion Date is incorrect.

II.
THE NEWLY MINTED EQUITABLE SUBORDINATION MOTION UNDER SECTION 510(c)(1) IS PROCEDURALLY IMPROPER

58. In the Amended Claims Objection, the Debtors seek an order equitably subordinating Melamed's claims under Section 510(c)(1) of the Bankruptcy Code. This relief, being sought more than two years after the Petition Date (and five months after the Claim Objection was filed), is a transparent attempt to create a side show.

59. Equitable subordination is "an extraordinary remedy which is applied sparingly." *See, e.g., In re Epic Capital Corp.*, 307 B.R. 767, 773 (D. Del. 2004). Indeed, the application of

this remedy in this instance reaffirms the maxim that "no good deed goes unpunished." Melamed is the *only* person in the FTX debacle who actually held his customers' assets in segregated wallets (in contrast to everyone else). Nonetheless, the Debtors now seek to equitably subordinate his claim after the *Debtors* have consistently lauded Melamed's prudence and observation of sound financial and business practices throughout the case:

- *Because of the KEIP Participants' tremendous efforts, [Holdings] was able to resume withdrawals from users' accounts on February 21, 2023—a critical feat,* given that these capabilities are essential to [Holdings'] ability to operate and to maintain and maximize its going concern value. KEIP Motion at [4] (emphasis supplied)

- *With isolated exceptions, including . . . FTX Japan, a Debtor acquired in 2022* . . ., the FTX Group lacked independent or experienced finance, accounting, human resources, information security, or cybersecurity personnel or leadership, and lacked any internal audit function whatsoever. First Interim Report at 7 (emphasis supplied).

- The FTX Group knew how to create a contractual agreement to separate and protect customer deposits when it suited the FTX Group to do so. *In its terms of service with customers in Japan, for example, one of the few jurisdictions in which exchange customer deposits were actually protected and separated*, FTX Japan Co. Ltd. represented that fiat currency deposits were held in "a segregated user management trust" that was "managed separately from the Company's money. . . . *"* Second Interim Report at 19 (emphasis supplied).

- S&C's investigation also found that the FTX Group acquired Liquid, a Japanese cryptocurrency exchange, in April 2022 for approximately $185 million. S&C investigated potential claims arising out of the FTX Japan acquisition and decided against pursuing litigation. *S&C concluded that the Debtors had received substantial value from the FTX Japan acquisition, as the company was a successful cryptocurrency exchange that had a difficult-to-obtain Japanese license.* Examiner's Report [D.I. 15545] at 161.

As these admissions reflect, there was nothing inequitable about Melamed conduct.

60. Even if there was inequitable conduct, which there was not, the Debtors' attempt to assert it in their Amended Claim Objection is procedurally improper. Equitable subordination may only be sought through an adversary proceeding. *See* Fed. Rules .Bankruptcy Pro. 7001(8).

Rule 3007(b) specifically states that a claim objection "shall not include a demand for relief of a kind specified in Rule 7001".

61. Here, the filing of the Amended Claim Objection expressly violated Rules 3007(b) and 7001(8). *See In re MF Global Inc.*, 531 B.R. 424, 431 (Bankr. S.D.N.Y. 2015) ("if the Trustee's Objection seeks relief of the type that must be sought in an adversary proceeding, such relief cannot be sought in a claim objection and must instead be pursued in an adversary proceeding."); *In re Js II, LLC*, 389 B.R. 570, 587-88 (Bankr. N.D. Ill. 2008) (equitable subordination claim raised in claim objection "is improper under the Federal Rules of Bankruptcy Procedure and must be dismissed"); *In re Protarga, Inc.*, 2004 WL 1906145 at *3 (Bankr. D. Del. 2004) ("Claims for equitable subordination must be brought as a separate adversary proceeding pursuant to Rule 7001(8) of the Federal Rules of Bankruptcy Procedure."). Rule F.R.B.P. 3007(b) prohibits a party in interest from including "a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim").

62. Because the Debtors' request for equitable subordination is procedurally defective, it must be dismissed.

III.
ANY EQUITABLE SUBORDINATION CLAIM AGAINST MELAMED FAILS AS A MATTER OF LAW

63. Even if one were to ignore the procedural defects, the allegations of the Debtors do not survive under Rule 12(b)(6). To survive a motion to dismiss, a complaint must "contain either direct or indirect allegations respecting all the material elements necessary to sustain recovery under some *viable* legal theory." *In re Energy Future Holdings Corp.*, 546 B.R. 566, 576 (Bankr. D. Del. 2016) (internal quotation marks and citation omitted) (emphasis in original). The mere possibility that a plaintiff might prove some facts in support of its claims is insufficient

to survive a motion to dismiss. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Dismissal is appropriate where a plaintiff fails "to raise a right to relief above the speculative level." *Id.* at 555. "A pleading that offers 'labels or conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555, 557) (internal citation omitted) (alteration in original). "Ultimately, a Rule 12(b)(6) motion is a context-specific analysis that allows a court to draw on its 'judicial experience and common sense.'" *In re Washington Mut., Inc.*, 575 B.R. 609, 615 (Bankr. D. Del. 2017) (Walrath, J.)(quoting *Iqbal*, 556 U.S. at 679).

64. Equitable subordination is "an extraordinary remedy which is applied sparingly," *In re HH Liquidation, LLC*, 590 B.R. at 298 (cleaned up), because it represents a "departure from the usual principles of equality of distribution" *In re M. Paolella & Sons,* Inc., 161 B.R. 107, 117 (E.D. Pa. 1993) (citation and internal quotation marks omitted), *aff'd*, 37 F.3d 1487 (3d Cir. 1994). The Third Circuit requires a movant to establish three elements before a court may subordinate a creditor's claim: "(1) the claimant must have engaged in some type of inequitable conduct; (2) the misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant; and (3) equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Code." *In re Winstar Commc'ns, Inc.* , 554 F.3d 382, 411 (3d Cir. 2009) (cleaned up) (citing *Benjamin v. Diamond* (*In re Mobile Steel Co.*), 563 F.2d 692, 699–700 (5th Cir. 1977)).

65. The allegations set forth in ¶¶ 57-63 of the Amended Claim Objection fail to establish any of the three elements.

66. While the burden of proof on the plaintiff "is less demanding when the respondent is an insider," *id.*, it is axiomatic that "[i]nsider status alone ... is insufficient to warrant subordination." *In re Fabricators, Inc.*, 926 F.2d 1458, 1467 (5th Cir.1991); *In re Nutri/Sys. of Fla. Assocs.*, 178 B.R. 645, 657 (E.D. Pa. 1995). With respect to insiders, the plaintiff bears the burden of presenting "material evidence of unfair conduct" *In re N & D Properties, Inc.*, 799 F.2d 726, 731 (11th Cir.1986). The Debtors' allegations fail to present *any* evidence of Melamed's alleged inequitable conduct, let alone material evidence.

67. With respect to the first element, Courts recognize three general categories of behavior that may constitute inequitable conduct: 1) fraud, illegality, or breach of fiduciary duties; 2) undercapitalization; and 3) claimant's use of the debtors as a mere instrumentality or alter ego." *In re Epic Capital Corp.* , 290 B.R. 514, 524 (Bankr. D. Del. 2003).

68. The Debtors allege the following instances of inequitable conduct: 1) the hack in August of 2021 (the "**August 2021 Hack**"), which the Debtors intimate was not disclosed, 2) the subsequent sale of Holdings to FTX and the allegation that "FTX substantially overpaid for Liquid" (the "**Overpayment Allegation**"); and 3) the "transfer of almost $11 million of Quoine cryptocurrency assets to FTX.com" (the "**Quoine Transfer**").[14]

69. These allegations fail to demonstrate a "plausible" claim for equitable subordination.

70. *First*, the Debtors have not alleged any inequitable conduct by Melamed in an individual capacity. The Debtors simply conflate the action of the Liquid Entities with Melamed. The August 2021 Hack was in fact disclosed to the Debtors and the SPA itself contains a

[14] The Amended Claim Objection cavalierly requests equitable subordination based on these allegations "and additional facts likely to be adduced in discovery". Amended Claim Objection, ¶63. Respectfully, the Debtors cannot seriously suggest that they will be determining the basis for equitable subordination after incurring nearly $1 billion in professional fees, a significant amount of which was devoted to investigating claims against third parties.

defined term "Crypto Asset Breach"[15] which is used no less than sixteen times. Moreover, with respect to the August 2021 Hack and the Overpayment Allegation, if the Debtors and its advisors had determined that FTX substantially overpaid for Liquid, they would have, consistent with their fiduciary duties, commenced an avoidance action with respect to the Liquid Transaction. No such action was ever commenced, and the Debtors' prior admissions completely contradict this story. *See* Examiner's Report at p. 161 (noting that Debtors received "substantial value").[16]

71. *Second*, the Debtors' allegations *completely ignore* the success of FTX Japan which the Debtors previously applauded. As noted, all customers of FTX Japan received their cryptocurrency back in kind and their *fiat* in full. No other FTX entity can make that claim.

72. *Third*, with respect to the Quoine Transfer, the Debtors fail to note that: i) the liability associated with the transfer was recorded on the books and records of Quoine as an intercompany payable; ii) the Debtors' estates were substantively consolidated; and iii) the assets and liabilities of all of the Debtors were pooled together.[17] In other words, the Quoine customers were not harmed by the Quoine Transfer because the plan treated the Debtors as a unitary entity.

73. *Finally*, accepting all of these allegations as true, there is no harm to creditors. All customers of FTX Japan received back that which they had deposited onto the platform. The customers of Quoine are projected by the Debtors to receive a distribution of between 129% to 143% of their allowed claims. *See Disclosure Statement* [D.I. 19143] at p. 635 of 689.

74. Ultimately, whatever allegations Debtors now attempt to conjure up under section 510(c) fail as a *matter of law* because creditors are projected to receive a recovery in excess of 100%. *See Citicorp Venture Capital, Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 323

[15] "Crypto Asset Breach" means "the incident involving the unauthorised [sic] access to the warm wallet of the Group that took place on or around 19 August 2021."

[16] The Debtors received significantly less than what they paid due to their own actions (or more appropriately inaction) by not allowing the reboot of FTX Japanand not effectuating a prompt sale. The sale to Bitflyer occurred almost eighteen months after the suspension order had been lifted and customers of FTX Japan had found a new home during that period.

[17] By virtue of the recent recognition ruling in Singapore, Quoine is not an excluded entity under the Plan. *See Statement of The FTX Recovery Trust Regarding Recognition Of Chapter 11 Case Of Quoine Pte Ltd In Singapore* [D.I. 29590].

F.3d 228, 233-34 (3d Cir. 2003) (the equitable subordination doctrine is designed "to undo or to offset any inequality in the claim position of a creditor that will produce injustice or unfairness to other creditors in terms of the bankruptcy results."); *Windstream Holdings, Inc. v. Charter Commc'ns, Inc. (In re Windstream Holdings, Inc.)* , 627 B.R. 32, vacated in part, 634 F. Supp. 3d 99 (S.D.N.Y. 2022), *aff'd*, 2024 WL 3195997 (2d Cir. June 24, 2024) (where unsecured creditors receive a 100% recovery on their claims, the remedy of equitable subordination does not apply).[18]

IV.
CONSIDERATION OF SECTION 510(B) IS PREMATURE
UNTIL THE AMOUNT OF THE CLAIM IS DETERMINED

75. The Debtors assert that a portion of Melamed's claim is subject to subordination under Section 510(b) and, as a result, the Court should retain jurisdiction. This argument puts the cart before the horse. The first step is to determine the amount of Melamed's claim under Japanese law through arbitration. As set forth in the Hori Response Decl., a claim of fraud can be pled under Article 709 and Article 96 of the Japanese Civil Code. A plaintiff can make both claims simultaneously. Hori Response Decl., ¶20. If Melamed prevailed in his fraud claims damages would be calculated: (i) if under Article 709, by determining the difference between the consideration Mr. Melamed received for the Liquid Transaction and the value of his interests that he conveyed to FTX pursuant to the SPA,with a statutory late penalty of 3% per annum to accrue from the date the parties entered into the SPA and Side Letter, and (ii) if under Article 96, by seeking to restore him to his original position before the wrongdoing occurred, which would be determined based on the value of Melamed's interests in Liquid at the time that he was defrauded by FTX and FTX benefitted from such fraud (*i.e.*, the date the parties entered into the SPA and

[18] Melamed reserves all rights to make fact-based arguments if equitable subordination is properly raised in an adversary proceeding.

the Side Letter), with a statutory late penalty of 3% per annum which will accrue from the date notice of Melamed's claim was made to FTX, pursuant to Article 404(2) of the Japanese Civil Code. *Id.*, ¶21. Until the amount of these damages is determined in arbitration (in accordance with Japanese law), there is no liquidated claim and consideration of §510(b), even if applicable, is premature.

V.
THE DEBTORS OWE MELAMED MONTHLY DIRECTOR FEES FOR THE REMAINDER OF THE TERM

76. Under Article 362(3) of the JCA, a company with a board of directors like Holdings must appoint a representative director from among its directors. Article 31(1) of the Articles of Incorporation of FTX Japan Holdings stipulates to the same effect. As noted above, Melamed was the Representative Director of Holdings.

77. Under Article 361(1) of the JCA, remuneration and bonuses for directors shall be determined by resolution at a shareholders meeting if they are not stipulated in the articles of incorporation of the company. Based on Article 36 of the Articles of Incorporation of Holdings, "[r]emuneration and retirement bonuses payable to the Directors shall be determined by resolution adopted at a General Meeting of Shareholders." *Id.,* ¶ 22. In connection with Melamed's reappointment as Representative Director, John J. Ray III acting in his capacity as a shareholder pursuant to the OCA, determined, among other things, that the Monthly Director Fee will be Melamed's remuneration.

78. Article 339 of the JCA provides, in relevant part that "[a representative director] dismissed pursuant to the provisions of the preceding paragraph is entitled to demand damages arising from the dismissal from the Stock Company, except in cases where there are justifiable grounds for such dismissal." Hori Director's Fee Decl., ¶21.

79. As set forth in the Hori Director's Fee Decl., under Japanese law, there were no "justifiable grounds" for Melamed's alleged dismissal "for cause" on August 20, 2024. *See* Hori Director's Fee Decl., ¶¶ 28-30. The "justifiable grounds" required to dismiss a director is a high threshold and Japanese courts have interpreted this standard to mean either that "there are objective and reasonable circumstances that make it unavoidable to judge that the company cannot entrust the execution of duties to the director as a director," or "there are objective circumstances that make it difficult for the company to expect the director to fulfill his or her duties as a director." *Id.*, ¶28. Hori opines that under Japanese law that there were not "justifiable grounds" and concludes that Melamed is entitled to remuneration for the remainder of his term as Representative Director, including any bonuses or other benefits he would have been able to receive at the end of his 2 year term. *Id.,* ¶30.[19]

VI.
THE DEBTORS OWE THE FULL AMOUNT OF THE KEIP AWARD TO MELAMED

80. Paragraph 4 of the KEIP Order specified the conditions for payment of the KEIP award:

> Each KEIP Participant will earn the second KEIP payment (the "Transaction or Reorganization Award") upon the earlier of: (i) the consummation of a Transaction (the "Transaction Award") or (ii) the Reorganization (the "Reorganization Award"), in each case subject to the continued employment of the KEIP Participant through the applicable Transaction or Reorganization that triggers the payment. . . . If earned, the Transaction Awards will be payable to each applicable KEIP Participant within 60 days of the closing of the Transaction.

[19] Separate from the statutory claim under the JCA, Melamed has a contractual claim under § 11.1 of the MA. Under the Management Agreement, the Debtors were required to provide Melamed with three months' prior written notice. ¶¶ 12, 13. In the event of termination without Cause, Melamed was entitled (i) three months of compensation and benefits, and (ii) an additional four months of the Monthly Director Fee as a result of the garden leave provision. Therefore, as a contractual matter, Melamed is entitled to payment, as an administrative expense, a minimum of seven months of the Monthly Director Fees from the date the termination notice was delivered on July 30, 2024. *Id.* at ¶14.

81. In the Amended Claim Objection, the Debtors assert three reasons for their refusal to pay the Transaction award owed to Melamed pursuant to the KEIP order. They assert that Melamed's Administrative Claim should be disallowed because: (i) it is duplicative of Melamed's pre-petition salary and bonus claims; (ii) Melamed refused to sign the award agreement; and (iii) the Purchase and Sale Agreement between Holdings and BitFlyer allegedly released the Debtors of the obligation under the KEIP.

82. First, the KEIP Award is not duplicative of Melamed's pre-petition salary and bonus claims.[20] The KEIP was a post-petition compensation plan to incentivize key employees to maximize the value of the Liquid Entities for the benefit of the estate.

83. Second, the Debtors assert Melamed "did not agree to the terms of the KEIP and thus waived any right to participate." Amended Claims Objection, ¶54. The proposed award letter that Melamed received requested a waiver and release of all claims against the Debtors as a condition for payment of the KEIP Award.

84. Obviously, this was a new condition imposed by the Debtors after the KEIP Order had been entered. The Debtors are not entitled to create new conditions for receiving the KEIP Award other than those set forth in the KEIP Order.

85. Third, the Debtors assert the Bitflyer Agreement released the Debtors' obligation to pay the KEIP Award to Biflyer. The KEIP Order is specific that the Debtors shall pay the KEIP Award. The FTX Japan Sale Order does not reference a proposed modification of the KEIP Order. Pursuant to both the FTX Japan Sale Order and the KEIP award, the Court retained jurisdiction and it should direct that the Debtors pay the KEIP Award immediately and reimburse Melamed for any fees incurred in connection with his efforts to enforce the KEIP Order.

[20] The basis for the Unpaid Salary and Bonus Claims are laid out in detail in the Opposition which is incorporated herein by reference. *See* Opposition, ¶¶55-64.

RESERVATION OF RIGHTS

This Objection and Cross Motion are limited to the grounds stated herein and is without prejudice to the rights of Melamed or his Claims. Melamed expressly reserves all further substantive or procedural rights.

CONCLUSION

For the reasons stated herein and in the Initial Opposition, Melamed respectfully requests that the Court deny the Amended Claims Objection, grant the Cross-Motion to Compel Arbitration and provide such other relief as is just and proper.

Dated: April 7, 2025
Wilmington, Delaware

Respectfully submitted,

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