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August 17, 2016

VIA HAND DELIVERY AND ELECTRONIC MAIL/FACSIMILE

The Honorable Victor Marrero
United States District Court
Southern District of New York
500 Pearl Street, Room 11B
New York, New York 10007-1312

The Honorable Martin Glenn
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Room 523
New York, New York 10004

Re: *In re MF Global Holdings Ltd. Investment Litigation*, No. 12-md-02338-VM
(*DeAngelis v. Corzine, et al.*, No. 11-cv-07866 (VM))

Dear Judges Marrero and Glenn:

The MFG Plaintiffs'¹ request for a joint status conference and, more specifically, their argument that the putative Allocation Motion in the Chapter 11 proceedings, if any (such a motion is not required under the Settlement Agreement), must precede the determination of Customer Counsel's Fee Motion should be seen for what it is – an effort to delay resolution of the Fee Motion to gain a tactical advantage for their anticipated opposition.²

Left unsaid in the MFG Plaintiffs' Letter is that, in July 2015, the Plan Administrator (through MFGAA) knowingly purchased from MFGI the claims that Customer Counsel was litigating (the "Assigned Claims") subject to a significant deferred and ongoing fee obligation to Customer Counsel, directed Customer Counsel's continued litigation efforts following the purchase of the Assigned Claims to ready those claims for trial, and adopted the CCAA that specifically places adjudication of the Fee Motion solely in the hands of the District Court.³ These facts are undisputed. Also left unsaid in the Letter is that Customer Counsel provided the MFG Plaintiffs and their counsel a draft of Customer Counsel's Fee Motion (at their request) twenty-seven (27) days before Customer Counsel filed the motion on August 9, 2016 – giving the MFG Plaintiffs at least fifty (50) days to consider, prepare and file an opposition to the Fee Motion, if any, no later

¹ Capitalized terms undefined herein shall have the meaning ascribed to them in the MFG Plaintiffs' letter requesting a joint status conference with the Courts, dated August 16, 2016 (the "Letter").

² Pursuant to the Court's preliminary approval order, the final approval hearing for settlement of the Customers' pre-judgment interest claims is scheduled for September 16, 2016. (ECF No. 1108 at ¶ 3). Accordingly, Co-Lead Counsel included that date as the requested hearing date in their August 9, 2016 notice of the Fee and Expense Motion (ECF No. 1115 at p. 2) so that, as typical, all aspects of the global settlement related to Customers could be concluded by the Court at once.

³ See, e.g., CCAA at 3 ("The Parties agree that all recoveries in respect to the Assigned Claims and the Class Action Claims, *net of reasonable attorneys' fees and costs approved by the District Court*, will be processed for distribution by the Trustee"; "All reasonable fees and costs incurred by co-counsel . . . shall be subject to all applicable law and Court approval pursuant to Federal Rule of Civil Procedure 23, along with notice and Court approval").

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than fourteen (14) days prior to the noticed September 16, 2016 hearing.⁴ Customer Counsel also met with the MFG Plaintiffs' counsel (at their request) on August 1, 2016 to discuss the Fee Motion, fully eight (8) days before it was filed. Tellingly, not once during negotiations of the Settlement Agreement or in the thirty-five (35) days the MFG Plaintiffs have possessed the Fee Motion (or a draft) has their counsel suggested the need for an Allocation Motion as a condition to resolving the Fee Motion or any other aspect of the settlement – and plainly it is not needed here.⁵

First, as noted above, the CCAA plainly states that determination of Customer Counsel's fees is exclusively the province of the District Court and Customer Counsel's Fee Motion is properly resolvable at the final hearing as noticed. The Settlement Agreement likewise provides that Customer Counsel must seek a fee determination *from the District Court* (*see* Settlement Agreement at ¶ 14), while, at the same time, the Settlement Agreement disclaims allocation as a condition of approval of any aspect of the Settlement (*id.* at ¶ 54). If the MFG Plaintiffs believe, *ex post facto*, that the Bankruptcy Court's participation is relevant to the Fee Motion – and Customer Counsel does not believe it is – that participation can occur on September 16, if Judge Glenn is available at that time.

Second, no allocation among the MFG Plaintiffs is necessary to resolve the Fee Motion. Collectively, the MFG Plaintiffs receive all proceeds of the global settlement (net of fees), and the Settlement Agreement itself contemplates a circumstance where the Bankruptcy Court does not determine allocation and it is left to the MFG Plaintiffs to decide for themselves the internal issue of how to account for the settlement proceeds.⁶ Here the Fee Motion sets forth the bases for the requested fee as a percentage of recoveries achieved by Customer Counsel since the outset of the Customer cases, as well as identifying the insurance proceeds that cover (only) the Assigned Claims. Far from a key aspect of the Fee Motion, how the MFG Plaintiffs choose internally to allocate the settlement proceeds is neither relevant to nor requires resolution before the Fee Motion.

In sum, the MFG Plaintiffs have provided no basis to delay resolution of the Fee Motion

⁴ The reasonableness of this schedule (*see* Letter, n.2) is underscored by the fact that the same briefing schedule is included in the preliminary approval order for any customer to object to the settlement of the customer interest claims, a schedule that counsel for the MFG Plaintiffs specifically negotiated and approved. *See* Settlement Agreement, Exhibit D at ¶¶ 11, 14.

⁵ To the contrary. *See* Settlement Agreement at ¶ 54 ("A plan of distribution or allocation is not a term of this Agreement, and it is not a condition of this Agreement that any particular plan of distribution or allocation be approved. Any plan of distribution or allocation is a matter separate and apart from the Settlement between the Parties and any decision by the Bankruptcy Court concerning a plan of distribution shall not affect the validity or finality of the Settlement.").

⁶ *See* Settlement Agreement at ¶ 6(i) (funds "shall be held . . . until the Effective Date . . . at which time such funds shall be immediately distributed to the MFG Plaintiffs in accordance with any allocation protocol established by the Bankruptcy Court or, if no allocation protocol is established, shall be distributed directly to the MFG Plaintiffs in accordance with instructions provided by the MFG Plaintiffs.") (emphasis added).

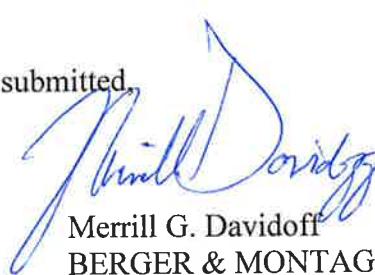
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and, correspondingly, there is no need for a status conference to set a briefing schedule or for any other purpose (and there is certainly no basis for the extraordinary remedy of taking the September 16 hearing off the calendar).⁷

Customer Counsel are available to answer any questions the Court may have concerning the foregoing.

Respectfully submitted,


Andrew J. Entwistle
ENTWISTLE & CAPPUCCI LLP


Merrill G. Davidoff
BERGER & MONTAGUE, P.C.

Co-Lead Customer Counsel

cc: The Honorable James C. Francis (via hand delivery and email)
Counsel for the MFG Plaintiffs (via email)

⁷ Customer Counsel reserve the right to respond to the other points in the MFG Plaintiffs' Letter if it becomes necessary.