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USA, Inc., MF Global Holdings, Ltd., and MF
Global Holdings USA, Inc.*

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

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	:	
In re	:	Chapter 11
	:	
MF GLOBAL HOLDINGS LTD., <i>et al.</i> ,	:	Case No. 11-15059 (MG)
	:	
Debtors.	:	(Jointly Administered)
-----	x	
	:	
TODD THIELMANN, PIERRE-YVAN	:	
DESPAROIS, NATALIA SIVOVA,	:	
SANDY GLOVER-BOWLES,	:	
ARTON SINA, and SCOTT L. KISCH	:	Adv. Pro. No. 11-02880 (MG)
Individually, and on behalf	:	
of All Other Similarly Situated Former	:	
Employees,	:	
	:	
Plaintiffs,	:	
v.	:	
	:	
MF GLOBAL HOLDINGS LTD,	:	
et al.,	:	
	:	
Defendants.	x	

**ANSWER AND AFFIRMATIVE DEFENSES TO THE THIRD AMENDED
CLASS ACTION ADVERSARY PROCEEDING COMPLAINT**

For their answer to the third amended class action adversary proceeding complaint in this action (the “Complaint”), defendants MF Global Finance USA, Inc. (“Finance USA”), MF Global Holdings, Ltd. (“Holdings Ltd.”), and MF Global Holdings USA, Inc. (“Holdings USA”) (collectively, “Defendants”) plead as follows:

RESPONSE TO ALLEGATIONS

Response to Allegations Regarding the Nature of the Action

1. Defendants deny the allegations in paragraph 1 of the Complaint.
2. Defendants deny the allegations in paragraph 2 of the Complaint except admit that the plaintiffs purport to bring this adversary proceeding as a class action on behalf of themselves and other purportedly similarly situated former employees of Defendants pursuant to the WARN Act and the NY WARN Act.
3. Defendants deny the allegations in paragraph 3 of the Complaint except admit that the plaintiffs purport to bring this adversary proceeding as a class action under the WARN Act.

Response to Allegations Regarding Jurisdiction and Venue

4. Defendants admit that this Court has jurisdiction over this matter.
5. Defendants admit that this adversary proceeding is a core proceeding.
6. Defendants admit that venue is proper in this District.

Response to Allegations Regarding the Parties

7. Defendants deny the allegations in paragraph 7 of the Complaint except lack knowledge or information sufficient to admit or deny any allegation with respect to Mr. Thielmann’s state of mind and admit that, while it did not at any time act as a joint or single employer with MF Global Holdings, Inc. (“MFGI”), defendant Holdings USA performed certain human resources and other administrative functions on MFGI’s behalf.

8. Defendants deny the allegations in paragraph 8 of the Complaint except lack knowledge or information sufficient to admit or deny any allegation with respect to Mr. Desparois's state of mind and admit that, while it did not at any time act as a joint or single employer with MFGI, defendant Holdings USA performed certain human resources and other administrative functions on MFGI's behalf.

9. Defendants deny the allegations in paragraph 9 of the Complaint except lack knowledge or information sufficient to admit or deny any allegation with respect to Ms. Sivova's state of mind and admit that, while it did not at any time act as a joint or single employer with MFGI, defendant Holdings USA performed certain human resources and other administrative functions on MFGI's behalf.

10. Defendants deny the allegations in paragraph 10 of the Complaint, except admit that, while it did not at any time act as a joint or single employer with MFGI, defendant Holdings USA performed certain human resources and other administrative functions on MFGI's behalf.

11. Defendants deny the allegations in paragraph 11 of the Complaint, except admit that, while it did not at any time act as a joint or single employer with MFGI, defendant Holdings USA performed certain human resources and other administrative functions on MFGI's behalf.

12. Defendants deny the allegations in paragraph 12 of the Complaint, except admit that Scott L. Kisch was employed by defendant Holdings USA, that he worked at 717 Fifth Avenue, and that he reported to Thomas F. Connolly. Defendants lack knowledge or information sufficient to admit or deny any allegations with respect to Mr. Kisch's state of mind.

13. Defendants deny the allegations in paragraph 13 of the Complaint except admit that (a) Holdings Ltd. is a Delaware corporation that previously had a principal place of business at 717 Fifth Avenue, New York, New York, (b) that Holdings Ltd. conducted business in this

district; (c) that Holdings Ltd. is the direct parent of wholly-owned subsidiary Holdings USA; and (d) that Holdings USA is a New York corporation; and lack knowledge or information sufficient to form a belief as to the allegations that (a) “several Plaintiffs’ 401K handbook[s] list[] ‘MF Global Holdings’ as the entity administering the plan” and (b) that MF Global Holdings is “the entity listed on the Plaintiffs’ SOS security plan card.”

14. Defendants deny the allegations in paragraph 14 of the Complaint except admit that Finance USA is a Delaware corporation that previously had a principal place of business at 717 Fifth Avenue, New York, New York, and lack knowledge or information sufficient to form a belief as to any allegations regarding Plaintiffs’ state of mind.

15. Defendants deny the allegations in paragraph 15 of the Complaint except admit that (a) Holdings USA is the direct parent of MFGI; (b) that MFGI is a Delaware corporation; (c) that Holdings USA is direct parent of Finance USA, a New York corporation; and (d) that, while it did not at any time act as a joint or single employer with MFGI, defendant Holdings USA performed certain human resources and other administrative functions on MFGI’s behalf.

16. Defendants deny the allegations in paragraph 16 of the Complaint.

Response to Allegations that the MF Global Group Acted as a Single Employer

17. Defendants deny the allegations in paragraph 17 of the Complaint.

18. Defendants deny the allegations in paragraph 18 of the Complaint.

19. Defendants deny the allegations in paragraph 19 of the Complaint, except admit that the Defendants each filed schedules and statements of financial affairs with this Court, admit that paragraph 19 quotes correctly, but selectively, from the Defendants’ schedules and statements of financial affairs, and refer to those schedules and statements of financial affairs for their full contents.

20. Defendants deny the allegations in paragraph 20 of the Complaint. To the extent that paragraph 20 quotes or refers to documents filed in the Defendants' respective chapter 11 cases, Defendants refer to those documents for their full and accurate contents.

21. Defendants deny the allegations in paragraph 21 of the Complaint.

22. Defendants deny the allegations in paragraph 22 of the Complaint.

23. Defendants deny the allegations in paragraph 23 of the Complaint.

Response to Allegations Regarding the Liquidating Fiduciary Defense

24. Defendants deny the allegations in paragraph 24 of the Complaint.

25. Defendants deny the allegations in paragraph 25 of the Complaint except admit that Mr. Abelow submitted a "first day" affidavit on behalf of Holdings Ltd. and Finance USA (the "Abelow Affidavit"); admit that paragraph 25 quotes correctly, but selectively, from the Abelow Affidavit; and refer to the Abelow Affidavit for its full contents.

26. Defendants deny the allegations in paragraph 26 of the Complaint and state that James W. Giddens, as trustee for the liquidation of MFGI, (the "SIPA Trustee") terminated the plaintiffs' employment with MFGI and terminated the employment of similarly-situated employees.

Response to WARN Class Allegations

27. Defendants deny the allegations in paragraph 27 of the Complaint except admit that the plaintiffs purport to bring this adversary proceeding as a class action under the WARN Act.

28. Defendants deny the allegations in paragraph 28 of the Complaint.

29. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 of the Complaint.

30. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Complaint.

31. Defendants deny the allegations in paragraph 31 of the Complaint.

32. Defendants deny the allegations in paragraph 32 of the Complaint.

33. Defendants deny the allegations in paragraph 33 of the Complaint.

34. Defendants deny the allegations in paragraph 34 of the Complaint.

35. Defendants deny the allegations in paragraph 35 of the Complaint.

36. Defendants deny the allegations in paragraph 36 of the Complaint except admit that any potential litigation concerning the WARN Act rights of Plaintiffs and others allegedly similarly-situated should occur in this Court.

37. Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in paragraph 37 of the Complaint.

Response to New York WARN Act Class Allegations

38. Defendants deny the allegations in paragraph 38 of the Complaint except admit that plaintiffs Pierre-Yvan Desparois, Natalia Sivova, Arton Sina, and Scott L. Kisch purport to bring this adversary proceeding as a class action under the NY WARN Act.

39. Defendants deny the allegations in paragraph 39 of the Complaint.

40. Defendants lack knowledge or information sufficient to form a belief as the truth of the allegations in paragraph 40 of the Complaint.

41. Defendants lack knowledge or information sufficient to form a belief as the truth of the allegations in paragraph 41 of the Complaint.

42. Defendants deny the allegations in paragraph 42 of the Complaint.

43. Defendants deny the allegations in paragraph 43 of the Complaint.

44. Defendants deny the allegations in paragraph 44 of the Complaint.

45. Defendants deny the allegations in paragraph 45 of the Complaint.

46. Defendants deny the allegations in paragraph 46 of the Complaint except admit that any potential litigation concerning the NY WARN Act rights of Plaintiffs and others allegedly similarly-situated should occur in this Court.

47. Defendants lack knowledge or information sufficient to form a belief as the truth of the allegations in paragraph 47 of the Complaint.

Response to Purported Claims for Relief

48. In response to paragraph 48 of the Complaint, Defendants incorporate by reference their responsive pleadings above.

49. Defendants deny the allegations in paragraph 49 of the Complaint.

50. Defendants deny the allegations in paragraph 50 of the Complaint.

51. Defendants deny the allegations in paragraph 51 of the Complaint.

52. Defendants deny the allegations in paragraph 52 of the Complaint.

53. Defendants deny the allegations in paragraph 53 of the Complaint.

54. Defendants deny the allegations in paragraph 54 of the Complaint.

55. Defendants deny the allegations in paragraph 55 of the Complaint.

56. Defendants deny the allegations in paragraph 56 of the Complaint.

57. Defendants deny the allegations in paragraph 57 of the Complaint.

58. Defendants deny the allegations in paragraph 58 of the Complaint.

59. Defendants deny the allegations in paragraph 59 of the Complaint.

60. Defendants deny the allegations in paragraph 60 of the Complaint and state that Holdings USA filed its bankruptcy petition on March 2, 2012.

61. Defendants deny the allegations in paragraph 61 of the Complaint, except admit that the plaintiffs purport to seek equitable relief.

62. In response to paragraph 62 of the Complaint, Defendants incorporate by reference their responsive pleadings above.

63. Defendants deny the allegations in paragraph 63 of the Complaint.

64. Defendants deny the allegations in paragraph 64 of the Complaint.

65. Defendants deny the allegations in paragraph 65 of the Complaint.

66. Defendants deny the allegations in paragraph 66 of the Complaint.

67. Defendants deny the allegations in paragraph 67 of the Complaint.

68. Defendants deny the allegations in paragraph 68 of the Complaint.

69. Defendants deny the allegations in paragraph 69 of the Complaint.

AFFIRMATIVE AND OTHER DEFENSES

First Defense

(Failure to State a Claim)

70. The Complaint fails to state a claim upon which relief can be granted.

Second Defense

(No Single Employer Liability)

71. The Defendants did not employ the Plaintiffs. Rather, the Plaintiffs were employed by non-party MFGI. Upon information and belief, MFGI's decision to lay-off the Plaintiffs was made by the SIPA Trustee. The Defendants had no control over the SIPA Trustee's decisions regarding the plaintiffs' employment. The Defendants are not liable for the SIPA Trustee's lay-offs under a single employer liability theory.

Third Defense
(Liquidating Fiduciary)

72. At the time that the Defendants laid off their respective employees, the layoffs were conducted by a liquidating fiduciary who was not a statutory employer under the WARN.

Fourth Defense
(Faltering Company)

73. At the time that notice would have been required, the Defendants were actively seeking capital or business that would have allowed the Defendants to avoid or postpone any layoffs for a reasonable time and reasonably and in good faith believed that advance notice would have precluded their ability to obtain such capital or business.

Fifth Defense
(Unforeseeable Business Circumstances)

74. Any layoffs were caused by business circumstances unforeseeable at the time that notice would have been required and the Defendants provided the required notice as soon as reasonably possible.

Sixth Defense
(No Costs or Attorneys' Fees)

75. Plaintiffs are not entitled to recover attorneys' fees or other costs.

Seventh Defense

76. Defendants specifically reserve the right to assert any additional defenses that may become apparent during the courts of discovery.

CONCLUSION

Wherefore, Defendants demand judgment as follows:

- (a) Dismissing the Complaint with prejudice;
- (b) Awarding their costs of suit, including attorneys' fees, in defending these actions;
- (c) Interest at the legal rate; and
- (d) Such other and further relief as the Court deems just and proper.

Dated: July 17, 2015
New York, New York

/s/ Brett H. Miller
Brett H. Miller

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