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

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In re	:	Chapter 11
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MF GLOBAL HOLDINGS LTD., <i>et al.</i> ,	:	Case No. 11-15059 (MG)
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Debtors.	:	(Jointly Administered)
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	:	
TODD THIELMANN, PIERRE-YVAN	:	
DESPAROIS, NATALIA SIVOVA,	:	
SANDY GLOVER-BOWLES,	:	
ARTON SINA, and SCOTT 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.	:	
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**DIRECT TESTIMONY OF SEAN A. GUMBS**

I, Sean A. Gumbs, under penalty of perjury, testify as follows:

**I. SUMMARY OF TESTIMONY**

1. I am a Senior Managing Director with FTI Consulting, Inc. ("FTI") and have been heavily involved in FTI's engagement as financial advisor to the Debtors and the Chapter 11 Trustee (as such terms are defined below).<sup>1</sup> Based on my experience with MFGI, which covers the time period after October 31, 2011, when MFGI's liquidation under the Securities Investor Protection Act ("SIPA") was commenced and James W. Giddens was appointed as Trustee (the "SIPA Trustee"), the SIPA Trustee controlled every facet of MFGI including its liquidation, assets, employees, communications with those employees, and the layoffs of MFGI employees conducted on November 11, 2011. As a result, MFGI, under the SIPA Trustee's control, operated entirely independently of any other entity, including the Debtor Defendants and the Chapter 11 Trustee.

2. FTI's primary goals were to preserve the Debtors' liquidity and critical resources and maximize recoveries to the Debtors' creditors. To that end, FTI worked diligently to identify and retain key employees of the Debtors whose services were critical to the orderly wind-down of the Debtors' estates. FTI also assisted with the implementation of cost savings initiatives by detecting services and personnel that were nonessential to the Debtors and implementing a framework for shared services to ensure that costs were being properly allocated between the respective estates of the Debtors and MFGI. Although certain of these tasks involved significant interaction with, and involvement of, the SIPA Trustee's advisors, at no

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<sup>1</sup> MF Global Holdings Ltd. ("Holdings Ltd."), MF Global Finance USA Inc. ("Finance USA"), MF Global Capital LLC ("Capital"), MF Global FX Clear LLC ("FX Clear"), MF Global Market Services LLC ("Market Services"), and MF Global Holdings USA Inc. ("Holdings USA") are collectively referred to herein as the "Debtors." The Debtors, together with MF Global Inc. ("MFGI") and other domestic and foreign affiliates, are referred to herein collectively as "MF Global". Holdings Ltd., Finance USA and Holdings USA are referred to herein collectively as the "Debtor Defendants." Holdings Ltd. and Finance USA are referred to herein as the "Initial Debtors."

time did the Debtors, their board, management, employees, the Chapter 11 Trustee or their respective advisors, including FTI, exercise any control over MFGI's liquidation or the layoff of MFGI employees.

3. I offer this testimony in connection with the Debtor Defendants' opposition to the above-captioned plaintiffs' motion for class certification.

## **II. EXPERIENCE AND BACKGROUND**

4. I am a Senior Managing Director with FTI in its Corporate Finance/Restructuring and Interim Management practice groups based in New York.

5. I have over 20 years of experience in operational and financial restructurings, interim management, and bankruptcy proceedings in a variety of industries. I hold a Masters of Business Administration from Harvard Business School and a Bachelor of Science in Economics from the Wharton School of the University of Pennsylvania.

6. For the period from November 1, 2011 to November 28, 2011, FTI was employed as the financial advisor to the Initial Debtors, each of which filed chapter 11 petitions in this Court on October 31, 2011 (the "Initial Petition Date").<sup>2</sup>

7. Thereafter, FTI was retained as the financial advisor to Louis J. Freeh, who was appointed as the chapter 11 trustee (the "Chapter 11 Trustee") of the Initial Debtors on November 28, 2011. Mr. Freeh was also appointed as the Chapter 11 Trustee of (a) Capital, FX Clear and Market Services (collectively, the "Unregulated Debtors") after they each filed chapter 11 petitions in this Court on December 19, 2011; and (b) Holdings USA after it filed a chapter 11 petition in this Court on March 2, 2012. FTI served as financial advisor to the

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<sup>2</sup> As disclosed in the Initial Debtors' application to retain FTI, before the Initial Petition Date, the Strategic Communications practice of FTI provided certain strategic communication services to the Debtors and continued to provide such services after the Debtors' bankruptcy filings. 11-15059-mg, ECF Docket # 130.

Chapter 11 Trustee until the Debtors' Amended and Restated Joint Plan of Liquidation (the "Liquidating Plan") went effective on June 4, 2013 (the "Effective Date").

8. Since the Effective Date, FTI has served as the financial advisor to Holdings Ltd., in its capacity as the plan administrator under the Liquidating Plan.

9. Effective as of March 15, 2015, I was appointed as a director of Holdings Ltd. pursuant to the Liquidating Plan and as set forth in the *Notice of Appointment of (I) Director Selection Committee Members, (II) Plan Trustees, (III) Litigation Trust Committee Member, and (IV) Sean Gumbs as a Director of MF Global Holdings Ltd.*<sup>3</sup>

### **III. LAYOFFS RESULTING FROM LIQUIDATION PROCEEDINGS**

#### **A. Layoffs Conducted by the Debtors in November 2011**

10. Immediately after FTI was retained, on or about November 1 or 2, 2011, I met with certain members of the Debtors' senior management including Bradley Abelow, President and Chief Operating Officer, and Thomas Connolly, Global Head of Human Resources. The initial focus of the meeting was, among other things, the Debtors' liquidity including cash collateral and their critical resource needs including personnel. Similar meetings and conversations were held on a regular, if not daily, basis during the weeks immediately following the Initial Petition Date.

11. As a result of the Debtors' financial situation, it became clear that in order to preserve liquidity and critical resources, it was necessary to lay off certain members of the Debtors' workforce. It also was evident that in order to maximize recoveries to creditors of the Initial Debtors' estates, it was imperative to retain certain key employees to assist with the wind-down of the estates.

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<sup>3</sup> 11-15059-mg, ECF Docket # 2084.

12. In order to make recommendations regarding the Debtors' retention and layoffs of employees, Mr. Connolly provided me with an employee list that I understood was downloaded from the Debtors' Oracle human resources system ("Oracle HRS"), which system was maintained by the human resources department ("HR"). The information in the list included, among other things, the domestic employees of Holdings Ltd., Holdings USA, the Unregulated Debtors and MFGI, with a notation indicating the legal entity that employed each employee. This employee list is commonly referred to as the "Oracle 10/27 List" or the "10/27 List".

13. I, together with senior management of the Debtors and others at FTI, undertook certain actions regarding the employees who were listed in the Oracle 10/27 List including, without limitation, gaining an understanding of the work they did and their job responsibilities. We also consulted with counsel for the Initial Debtors and the heads of certain of the Debtors' businesses and support functions about some of the employees in order to make employee retention determinations. Ultimately, FTI and senior management of the Debtors identified the Debtors' employees who we believed performed essential services that (a) would provide cost savings to the Initial Debtors' estates, (b) were necessary for an orderly wind-down of the estates, and/or (c) were related to the various obligations imposed upon the Initial Debtors under the Bankruptcy Code.

14. Based upon this research and analysis, FTI made recommendations to senior management of the Debtors, including Messrs. Connolly and Abelow and counsel for the Initial Debtors, regarding the Debtors' employees who we believed should be retained and who should be laid off. Thereafter, the Debtors implemented a process to lay off the Debtors' employees who performed services that were no longer required. It is my understanding that the terminations of the Debtors' employees commenced on or about November 6 or 7, 2011;

however, I was not involved in the terminations including the drafting or distribution of any termination letters to the employees.

**B. SIPA Trustee's Layoffs and Funding of Final Payroll to MFGI Employees**

15. It is my understanding that the Oracle 10/27 List also was used by MFGI to identify MFGI employees as of October 31, 2011.

16. FTI had no control over the MFGI (or SIPA Trustee) employees. In fact, FTI was prohibited from communicating with MFGI employees (and employees who were later hired by the SIPA Trustee) without first obtaining permission from the SIPA Trustee's advisors.

17. Based upon my work performed in the Debtors' chapter 11 cases, including reviewing MF Global's historical practices, it is my understanding that prior to the Initial Petition Date, Holdings USA provided payroll and benefit services for the domestic MF Global entities including MFGI. I understand that historically, Holdings USA acted as the paymaster for the domestic MF Global entities and issued paychecks to employees or made direct deposits into employee bank accounts and made required payroll tax payments on behalf of their respective employers and that each domestic MF Global entity, including MFGI, was responsible for pre-funding its own payroll.

18. It is my understanding that on or about November 11, 2011, the SIPA Trustee laid off virtually all of the MFGI employees. I was not involved in the termination of the MFGI employees or the decision to lay off the MFGI employees.

19. On November 15, 2011, final paychecks for the laid off MFGI employees were issued. These paychecks were administered by, and issued in the name of, Holdings USA in its

capacity as the paymaster, but only after the SIPA Trustee, at the request of FTI and the Debtors, pre-funded the November 15 payroll amounts for all MFGI employees.<sup>4</sup>

20. Subsequent to the MFGI employee layoffs, the SIPA Trustee extended offers to numerous former MFGI employees to work for him in connection with the liquidation of MFGI. I understand that a number of these former MFGI employees accepted the SIPA Trustee's offer of employment.<sup>5</sup>

#### **IV. POST-PETITION SHARED SERVICES ARRANGEMENT WITH THE SIPA TRUSTEE**

##### **A. SIPA Trustee's Employment of Certain Former Employees of the Debtors**

21. In connection with my review and analysis of the Debtors' personnel needs, I determined that some Holdings USA's employees who were slated to be laid off by the Debtors were spending a significant amount of time after the Initial Petition Date doing work for the SIPA Trustee. As a result, before they were laid off, the Debtors and I communicated with Mr. Siegel and attorneys from Hughes Hubbard to see if the SIPA Trustee was interested in hiring them in connection with the liquidation of MFGI.<sup>6</sup>

22. Our discussions resulted in the implementation of a process where the Initial Debtors provided the SIPA Trustee with a list of the Debtors' employees who were slated to be laid off by the Debtors (the "Nonessential Debtor Employees"). The SIPA Trustee then identified certain of the Nonessential Debtor Employees who he wanted to hire and Mr. Siegel

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<sup>4</sup> DX Y (MFG\_WARN\_00008993-9000) is a true and correct copy of an email exchange between me and certain of the SIPA Trustee's advisors regarding, among other things, the funding of the November 15, 2011 payroll by the Debtors for the Debtors' employees and by the SIPA Trustee for the MFGI employees.

<sup>5</sup> DX Z (MFG\_WARN\_00005668-5674) is a true and correct copy of an email exchange between Mr. Connolly, Mr. Richard Siegel, the SIPA Trustee's independent advisor, and certain attorneys at Hughes Hubbard & Reed ("Hughes Hubbard"), counsel to the SIPA Trustee, regarding, among other things, the SIPA Trustee's employment of former MFGI employees as of November 14, 2011.

<sup>6</sup> DX AA (MFG\_WARN\_00006945-6954) is a true and correct copy of an email exchange between me, Mr. Siegel, and an attorney at Hughes Hubbard regarding, among other things, the SIPA Trustee's employment of certain Holdings USA employees who were scheduled to be laid off.

informed me of his intention to hire them. In order to provide the SIPA Trustee with sufficient time to hire the employees immediately after the Debtors terminated their employment, the Debtors retained them for a short period of time (the “Interim Period”) subject to an agreement with the SIPA Trustee that he would be responsible for the payment of their payroll, benefits and related administrative costs.<sup>7</sup>

23. Some of the Nonessential Debtor Employees were hired by the SIPA Trustee immediately after their employment with one of the Debtors was terminated (the “SIPA Hired Former Debtor Employees”) and the SIPA Trustee reimbursed Holdings USA for the SIPA Hired Former Debtor Employees’ payroll, benefits and related administrative costs for the Interim Period.

24. Neither I, nor the Debtors, had any control over the SIPA Trustee’s hiring of the SIPA Hired Former Debtor Employees. Those decisions were made by the SIPA Trustee.

**B. Post-Petition Shared Services Arrangement between the Debtors and the SIPA Trustee**

25. Within days after the Initial Petition Date, FTI reviewed the costs being borne by the Debtors and the various administrative services the Debtors were providing that benefitted the MFGI estate to ensure that the costs were being properly allocated between the Debtors and the SIPA Trustee. This was particularly important given the Initial Debtors’ limited liquidity.

26. In connection with this analysis, FTI determined that there were several areas where the Debtors were, after the Initial Petition Date, providing the MFGI estate with certain resources and services including, without limitation, HR, Oracle HRS, payroll, benefits,

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<sup>7</sup> DX BB (MFG\_WARN\_00003340–3344) is a true and correct copy of an email exchange between me, Mr. Siegel and an attorney at Hughes Hubbard regarding, among other things, the SIPA Trustee’s agreement to reimburse Holdings USA for payroll and benefit costs for certain Nonessential Debtor Employees who were scheduled to be laid off but who, at the SIPA Trustee’s request, were retained for a short period of time.

insurance, computer systems, and shared facilities.<sup>8</sup> We also determined that some of the Debtors' employees and some of the SIPA Trustee's employees spent a portion of their time providing services that benefited the other estate. We generally referred to these employees as "shared service employees". Although the estates shared certain services of these employees, neither estate had the authority to retain, fire or direct the activities of any employees on behalf of the other estate.

27. The advisors to the Initial Debtors (and later the Chapter 11 Trustee) engaged in lengthy negotiations with the SIPA Trustee's advisors, including Mr. Siegel and Hughes Hubbard, regarding the possible sharing of services and resources between the estates, including the "shared service employees" and an appropriate allocation of costs between the Debtors and the SIPA Trustee for such services. I led these negotiations on behalf of the Debtors' estates. These negotiations resulted in the establishment of a framework for the allocation between the estates of the costs associated with the shared services and resources.

28. The shared services negotiations with the SIPA Trustee commenced in November 2011, and within the first few months after the Initial Petition Date, the estates reached an agreement on the allocation of payroll-related administrative costs and payroll and benefits costs for the "shared service employees". The estates respected the divisions between the different corporate employers and related costs such that each employer was responsible for the payroll, benefits and related administrative costs of their own employees. For the "shared service employees", the estates estimated the employees' time expended on tasks for the different estates and based upon that information agreed to reimburse the estate that employed the employee an appropriate percentage of the employee's payroll, benefits and related

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<sup>8</sup> DX CC (MFG\_WARN\_00007749-7753) is a true and correct copy of an email exchange between me and attorneys at Skadden Arps, counsel for the Initial Debtors, with a draft summary presentation regarding certain shared services between the Debtors and the SIPA Trustee.

