UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
MF GLOBAL HOLDINGS, LTD.; MF GLOBAL FINANCE USA, INC. et al.	:	Case No. 11-15059 (MG) Case No. 11-15058 (MG) Case No. 11-02790 (MG) SIPA
	:	(Jointly Administered)
Debtors.	:	
Todd Thielmann, Pierre-Yvan Desparois, Natalia Sivova, Sandy Glover-Bowles, and Arton Sina, Individually, and on behalf of All Other Similarly Situated Former Employees,	:	Adv. Pro. No. 11-02880 (MG)
Plaintiffs,	:	
v.	:	
MF GLOBAL HOLDINGS LTD, MF GLOBAL HOLDINGS USA INC., MF GLOBAL FINANCE USA, INC.; MF GLOBAL INC., et al.,	:	
Defendants.	:	

PLAINTIFFS' REPLY BRIEF IN SUPPORT
OF MOTION FOR LEAVE TO AMEND COMPLAINT

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I. INTRODUCTION

While leave to amend could appropriately be granted with respect to both Ms. Dyman and Ms. Corrigan, Plaintiffs[1] have identified and offer an alternate willing plaintiff, Scott L. Kisch, in place of Ms. Dyman.[2] Mr. Kisch was an employee of Defendants who was a corporate executive with responsibilities across the MF Global organization and was terminated by MF Global Holdings USA, Inc. ("Holdings USA"). He was not associated with MF Global Inc. ("MFGI"). Mr. Kisch did not sign a release. He, together with Ms. Corrigan will seek to represent putative class members who did or did not sign releases. Accordingly, Plaintiffs have prepared an alternate Third Amended Complaint a copy of which is annexed to the Declaration of Jack A. Raisner ("Raisner Dec.") as Exhibit A. (*See also* Exhibit B to Raisner Dec. a redline between the operative complaint and the alternate Proposed Third Amended Complaint.)

Defendants contend that Plaintiffs' motion to amend is futile because Ms. Corrigan signed a release that purported to waive all claims against MF Global. But, Defendants acknowledge that the validity of a release is a fact-intensive inquiry – it must be tested at summary judgment and trial, not on a motion to amend. Moreover, the futility of a proposed complaint is measured by whether it would survive a motion to dismiss, but the release is not annexed to the complaint or referenced therein, therefore it is not relevant at this stage and is not a basis to deny amendment. Even if it were, the credible evidence shows the release is seriously flawed.

While Defendants pretend that they do not know why Plaintiffs believe Ms. Corrigan's release is invalid, Plaintiffs spelled out their rationale in response to a letter from Defendants

[1] All capitalized terms, unless specifically defined herein, are used as defined in Plaintiffs' Memorandum of Law in Support of their Motion to Amend.

[2] For the avoidance of doubt, Plaintiffs withdraw their request to add Ms. Dyman as a plaintiff and the arguments set forth in this brief relate only to the addition of Ms. Corrigan and Mr. Kisch as plaintiffs.

threatening to seek Rule 11 sanctions. (*See* Exhibits C and D to the Declaration of Jack Raisner ("Raisner Dec."). In their response, Plaintiffs explained that there are *inter alia*, questions as to whether any valid consideration was given to Ms. Corrigan (*i.e.*, whether they received compensation beyond what was already owed to them). In fact, Ms. Corrigan settled her claims against Defendants in exchange for compensation for unused vacation days to which she was already legally entitled. The questions as to validity set forth in Plaintiffs' response seem to have put an end to Defendants' counsel's Rule 11 threats. In fact, the only relevant ethical question on this motion is whether Defendants were permitted to contact putative class members and purport to settle their WARN claims without once mentioning that the WARN claims would be settled by signing the releases allowing their individual claims.

Now, after receiving a response to their letter, Defendants raise another, equally unconvincing argument – that the proposed complaint is futile because Ms. Corrigan's claims are not typical of those of the class. But, Defendants' counsel expressly declined to depose Ms. Corrigan during class certification discovery reasoning that her testimony was irrelevant to the class certification inquiry. Now they believe that she is not only relevant to class certification but that her status as a potential class representative is relevant even on the motion to amend. However, any class certification issues are more properly considered on a class certification motion. On a motion to amend, the burden is on the nonmovant and Defendants have not presented any evidence regarding whether other members of the putative class signed a release, or how many, which is a necessary inquiry in determining whether a release would defeat typicality.

For these reasons, as well as those set forth below and in Plaintiffs' opening brief, leave to amend should be granted.

II. DEFENDANTS OPPOSITION DOES NOT APPLY TO MR. KISCH

Defendants contend that Ms. Corrigan cannot be added as a plaintiff, reasoning that amendment is futile because she signed a release which either a) bars her claims outright, or b) creates class certification issues. Defendants are wrong on both counts and Ms. Corrigan should be added as a plaintiff, as discussed in Point III. But, critically, Defendants arguments do not even apply to Mr. Kisch. Mr. Kisch did not sign any release or settlement agreement with Defendants. (*See* Declaration of Scott L. Kisch, ¶ 12). Accordingly, Defendants release-based opposition to amendment has no force with respect to Mr. Kisch and leave to amend should be granted to add him as a plaintiff.

III. DEFENDANTS HAVE NOT SHOWN THAT AMENDMENT IS FUTILE

a. A disputed release is not a basis to deny amendment of a complaint

The assertion of a defense to a proposed claim does not make the proposed claim futile. *See, e.g.*, *Adler v. Alcide Corp.*, 1998 WL 684597, at *3 (S.D.N.Y. Sept. 30, 1998) ("[U]nless a proposed amendment is clearly frivolous or legally insufficient on its face, the substantive merits of a claim or defense should not be considered on a motion to amend."). Where the opposition to a motion to amend is based on matters outside of the pleadings, amendment should be allowed and consideration of the merits held for a motion for summary judgment. *See Curtis v. Citibank*, 1998 WL 3354, at *3 (S.D.N.Y. Jan. 5, 1998) (collecting cases and holding that because "defendant's opposition to the motion [to amend] is based, not on the adequacy of the Proposed Amended Complaint, but on matters outside the pleadings . . . defendant's objections would be more appropriately raised in a motion for summary judgment"); *Adler*, 1998 WL 684597, at *4 (Allowing amended answer where "Plaintiffs' arguments [against amendment] rest on factual

allegations that are beyond the pleadings.").[3] Relatedly, the court should not decide disputed issues of fact on a motion to amend. *See Burgee v. Patrick*, 1996 WL 227819, at *5 (S.D.N.Y. May 3, 1996) ("the issue of Plaintiff's negligent performance of services under this provision is also a question of fact that this Court cannot resolve on this motion to amend").

Thus, where a release is asserted as a basis for futility of an amended complaint and the validity of the release is called into question, as here, amendment to add claims that may be governed by the release is not futile. *See Smellie v. Mount Sinai Hosp.*, 2004 WL 2725124, at *2 (S.D.N.Y. Nov. 29, 2004) (holding that amendment was not futile where plaintiffs "raise[d] questions as to whether the releases are effective."); *Kawski v. Johnson & Johnson*, 2005 WL 3555517, at *9 (W.D.N.Y. Dec. 19, 2005) ("defendant has not shown that the proposed amendment would be futile, since plaintiff's allegations [regarding misrepresentation], if proven, could result in the release being voided").

Indeed, where a plaintiff makes a colorable case for the invalidity of a release, the peculiarly fact-sensitive nature of the determination, *see* Defendants' Br. at 11, makes a finding of futility impossible at this stage. *See Kawski*, 2005 WL 3555517, at *9 ("the Court cannot conduct th[e] required analysis [to determine validity of the release] since we are only at the pleading stage"); *see also Burgee v. Patrick*, 1996 WL 227819, at *5 (S.D.N.Y. May 3, 1996) (declining to decide issue of fact on motion to amend). Here, even if the Court is inclined to consider the release at this juncture, the validity of the release is far from established. *See infra*; *see also Joint Venture Asset Acquisition v. Zellner*, 808 F. Supp. 289, 302 (S.D.N.Y. 1992)

[3] Defendants' contention that the Court should ignore Plaintiffs' submission of factual evidence because it is not attached to the complaint, incorporated by reference, or relied upon by the complaint (Def. Br. at 8 citing *Garanti Finansial Kiralama A.S. v. Aqua Marine & Trading Inc.*, 697 F.3d 59, 63 n.4 (2d Cir. 2012), proves too much. The release is also not annexed to, relied upon, or integral to the allegations of the complaint and should not be considered at this juncture either. Defendants seek to have their cake and eat it too by submitting material outside the four corners of the complaint and exhorting the Court to consider a release but ignore Plaintiffs' evidence.

("once a plaintiff . . . has put into the record at least 'some evidence' . . . sufficient to void the release, the party asserting the release as a defense must come forward with 'real evidence' to sustain its burden regarding the legality of the release.").

b. Ms. Corrigan did not receive consideration

Applying New York law, Defendants contend that no consideration was needed for the release of Ms. Corrigan's WARN claims. But, the release of federal claims, including WARN claims, is governed by federal law, even when the parties have selected New York law. *See Locafrance U. S. Corp. v. Intermodal Sys. Leasing, Inc.*, 558 F.2d 1113, 1115, n.3 (2d Cir. 1977) (applying federal law to release though "parties agreed to construe the agreement in accordance with New York law"). Thus, this Court has considered the release of WARN claims under federal law. *See DePalma v. Realty IQ Corp.*, 2002 WL 461647, at *3 (S.D.N.Y. Mar. 25, 2002) (analyzing release of WARN claims under federal law).[4]

In determining the validity of a release under federal law, courts consider "whether the consideration given in exchange for the waiver exceeds employee benefits to which the employee was already entitled. . . ." *Id.*, at *3 quoting *Bormann v. AT&T Communications*, 875 F.2d 399, 403 (2d Cir. 1989). While Defendants argue that Ms. Corrigan obtained an allowed claims, wages that are already owed are not valid consideration for a release of federal claims, including WARN claims. *See, e.g.*, *DePalma*, 2002 WL 461647, at *3 (citing *Zveiter, infra*, and denying judgment on the pleadings against WARN claim because "it is unclear, at this stage, whether the '2 weeks [ ] salary' constitutes 'consideration.'") (internal citation omitted); *Zveiter*

[4] Defendants cite to *Ciaramella v. Reader's Digest Ass'n, Inc.*, 131 F.3d 320, 322 (2d Cir. 1997) for the proposition that New York law applies to the releases. But *Ciaramella* holds that federal law applies if there is a significant conflict between federal policy and state law. Here, there is a conflict between federal law which requires that releases be knowing and voluntary and state law allowing releases without any consideration. Accordingly, state law is preempted. *See, e.g, Dice v. Akron, C. & Y. R. Co.*, 342 U.S. 359, 362 (1952) ("validity of releases under the Federal Employers' Liability Act raises a federal question to be determined by federal rather than state law.")

v. Brazilian Nat. Superintendency of Merch. Marine, 833 F. Supp. 1089, 1097 (S.D.N.Y.) *opinion supplemented on reconsideration*, 841 F. Supp. 111 (S.D.N.Y. 1993) (denying summary judgment and noting that "there is some dispute as to the extent to which this [severance pay given in exchange for release] exceeded the pay that she was owed.")

Defendants have not put forth any evidence demonstrating that Ms. Corrigan received payment for anything other than what she was already owed, and they cannot. Ms. Corrigan's termination letter indicated she would receive payment for 14 days of unused vacation days with her last paycheck. (*See* Declaration of Marion Corrigan ("Corrigan Dec.") at ¶ 5). After she did not receive payment for her unused vacation, Ms. Corrigan filed a proof of claim seeking payment for the vacation days and here restricted stock units. (*Id.* at ¶ 6). When Ms. Corrigan signed the release, it was in order to obtain payment for her vacation days and the zero-value restricted stock units based on company records. (*Id.* at ¶ 10). Accordingly, Ms. Corrigan's release is not valid because it waived rights under the WARN Act without any consideration other than what she was already owed.

c. Consideration of class certification factors is premature and Defendants have not satisfied their burden of showing that Ms. Corrigan's claims are not typical

When given the opportunity to depose Ms. Corrigan during class certification discovery, counsel for the Defendants declined, stating that this testimony would be irrelevant. (Raisner Dec. ¶ 8). While Defendants have changed their tune, the class certification inquiry is now triply irrelevant at this juncture: Plaintiffs have identified a willing corporate level executive with company-wide responsibilities as class representative to represent employees who were terminated by Holdings USA but who did not sign a releases. (*See* Declaration of Scott L. Kisch ¶¶ 4-12). Moreover, at the class certification stage, Plaintiffs will demonstrate that there is no distinction between an "MFGI employee" and any other MF Global employee, they were all

employed by Holdings USA. Accordingly, there is ample reason for the Court to allow amendment and to sort out the fact-heavy considerations on a class certification motion.

In this regard, even the cases cited by Defendants recognize that the better course is to save thorough class certification analysis for a class certification motion. *See Presser v. Key Food Stores Co-op., Inc.*, 218 F.R.D. 53, 57 (E.D.N.Y. 2003) ("the defendant's opposition to the amendment involves not-yet-certified classes, allowing the amendment is appropriate and defendant's arguments against certification are more appropriately addressed in the context of motions to certify the proposed classes.") (Citation omitted); *Pierre v. JC Penney Co.*, 2006 WL 407553, at *6, n.11 (E.D.N.Y. Feb. 21, 2006) (same, citing *Presser*); *see also Duling v. Gristede's Operating Corp.*, 265 F.R.D. 91, 105 (S.D.N.Y. 2010) (not cited by Defendants; holding that "merits of the class certification question are best resolved in the context of the certification motion" and allowing amendment that "would not necessarily defeat certification").

Here, Defendants argue that Ms. Corrigan is subject to a unique defense because she signed a release. But that inquiry is premature. Defendants have not put forth evidence in opposition that suggests how many putative class members have signed releases, but at least 26 individuals have signed releases. (Raisner Dec. Exhibit E (Hearing Transcript). The paucity of evidence precludes a finding that the release is "unique." *See e.g., In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 599-600 (3d Cir. 2009) (remanding for further consideration of typicality on class certification because plaintiff signed a release and there was no evidence as to whether any other class members had signed releases). Additionally, Ms. Corrigan could represent a subclass of the 26+ individuals who also signed releases. *See Finnan v. L.F. Rothschild & Co.*, 726 F. Supp. 460, 465 (S.D.N.Y. 1989) (certifying WARN class though some employees had signed releases, others arbitration agreements, and others had resigned.)

Accordingly, class certification concerns do not create a barrier to amending the complaint to add Ms. Corrigan. In any event, class certification discovery is still ongoing. Any class issues should be considered on a class motion when that discovery can be brought to bear.

d. Defendants' settlements with represented parties and putative class members are invalid

"One policy of Rule 23 is the protection of class members from misleading communications from the parties or their counsel. That same policy concern applies where a party misleads class members by omitting critical information from its communications. Communications that threaten the choice of remedies available to class members are subject to a district court's supervision." *See In re Currency Conversion Fee Antitrust Litig.*, 361 F. Supp. 2d 237, 252 (S.D.N.Y. 2005) *appeal granted, order amended on other grounds*, 2005 WL 1871012 (S.D.N.Y. Aug. 9, 2005) (citations omitted). This same policy applies even to putative class members. *Id.* ("A court has supervisory authority over a defendant's communications with putative class members. *See* Fed.R.Civ.P. 23(d)."). Thus, "[w]hen a defendant contacts putative class members for the purpose of altering the status of a pending litigation, such communication is improper without judicial authorization." *Id.* at 253; *see also, id.* at 251-254 (collecting cases and finding arbitration clause unconscionable because it sought to limit putative class members' rights). Similarly, under New York Rule of Professional Conduct 4.2, a lawyer cannot "cause another to communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter."[5]

In determining whether a release of federal claims is knowing and voluntary and therefore binding, Court's consider whether the plaintiff was represented by or consulted with an

[5] While the attorney client relationship does not begin until after class certification for purposes of Rule 4.2. *see Tedesco v. Mishkin*, 629 F. Supp. 1474, 1483 (S.D.N.Y. 1986), Plaintiffs are aware of at least one putative class member who signed a retainer and was represented at the time Defendants contacted them to sign a release.

attorney, whether an employer encouraged an employee to consult an attorney, and if the employee had a fair opportunity to do so. *See DePalma*, 2002 WL 461647, at *3. Likewise, under New York law, "a contract may [also] be reformed if there is . . . a mistake by one party coupled with fraud or inequitable conduct of the other party." *DS Parent, Inc. v. Teich*, 2014 WL 546358, at *4 (N.D.N.Y. Feb. 10, 2014).

Here, Defendants did not suggest to Ms. Corrigan that she consult with an attorney or attempt to determine if she had an attorney, (*see* Corrigan Dec. ¶ 9). Instead, Defendants sought to curtail her WARN rights by omitting material information – that they intended her signature on the letter for her vacation claims to be a release of her WARN rights. (Corrigan Dec. ¶ 10, 12). The release is opaque as to a non-lawyer and does not even mention WARN claims. (*See id.* at ¶ 12).

CONCLUSION

Wherefore, for all the foregoing reasons, Plaintiffs' motion should be granted together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
June 22, 2015

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
MF GLOBAL HOLDINGS, LTD.; MF GLOBAL FINANCE USA, INC. et al.	:	Case No. 11-15059 (MG) Case No. 11-15058 (MG) Case No. 11-02790 (MG) SIPA
	:	(Jointly Administered)
Debtors.	:	
Todd Thielmann, Pierre-Yvan Desparois, Natalia Sivova, Sandy Glover-Bowles, and Arton Sina, Individually, and on behalf of All Other Similarly Situated Former Employees,	:	Adv. Pro. No. 11-02880 (MG)
Plaintiffs,	:	
v.	:	
MF GLOBAL HOLDINGS LTD, MF GLOBAL HOLDINGS USA INC., MF GLOBAL FINANCE USA, INC.; MF GLOBAL INC., et al.,	:	
Defendants.	:	

DECLARATION OF JACK A. RAISNER IN SUPPORT OF PLAINTIFF'S MOTION TO AMEND COMPLAINT

I, Jack A. Raisner hereby declare the following under penalty of perjury:

1. I am a Partner at Outten & Golden LLP, attorneys for Plaintiffs herein, and an attorney in good standing admitted to practice before this Court.

2. I make this declaration in support of Plaintiffs' Motion to Amend the Complaint (the "Motion").

3. I am fully familiar with the facts and circumstances of this matter, and I make the representations herein based upon my personal knowledge or upon the documents that are of record in this matter.

4. Annexed hereto as Exhibit A is an alternate proposed Third Amended Complaint submitted in place of the proposed Third Amended Complaint that was submitted with Plaintiffs' initial moving papers.

5. Annexed hereto as Exhibit B is a redline between the alternate proposed Third Amended Complaint and the operative Second Amended Complaint.

6. On May 27, 2015 counsel for Defendants sent a letter to Plaintiffs' counsel threatening to seek Rule 11 sanctions if Plaintiffs did not withdraw this Motion. The letter did not attach a motion. (A true and correct copy of this letter is annexed hereto as Exhibit C).

7. On June 12, 2015, counsel for Plaintiffs responded, also by letter. (A true and correct copy of this response is annexed hereto as Exhibit D).

8. During the class certification discovery process that is currently ongoing, Plaintiffs' counsel offered to make Marion Corrigan and Therese Dyman available for deposition. Defendants' counsel declined to depose them stating in part that "we do not believe that their testimony is relevant to any of the issues to be determined on plaintiffs' class certification motion."

9. During a February 18, 2015 status conference, counsel for Defendants indicated that 26 employee claims had been settled to that point. (*See* Exhibit E hereto, a true and correct copy of relevant excerpts from the transcript of that status conference, at 28:6-7).

Dated: June 22, 2015
New York, New York

Respectfully submitted,

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By:

/s/ Jack A. Raisner

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EXHIBIT A

DRAFT

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
MF GLOBAL HOLDINGS, LTD.; MF GLOBAL FINANCE USA, INC., *et al*.,	:	Case No. 11-15059 (MG) Case No. 11-15058 (MG)
	:	(Jointly Administered)
Debtors.	:	
TODD THIELMANN, PIERRE-YVAN DESPAROIS, NATALIA SIVOVA, SANDY GLOVER-BOWLES, ARTON SINA, MARION CORRIGAN and SCOTT L. KISCH, Individually, and on behalf of All Other Similarly Situated Former Employees,	:	
Plaintiffs,	:	
v.	:	Adv. Pro. No. 11-02880 (MG)
MF GLOBAL HOLDINGS, LTD, MF GLOBAL HOLDINGS USA, INC., MF GLOBAL FINANCE USA, INC.; *et al.*,	:	
Defendants.	:	

THIRD AMENDED CLASS ACTION ADVERSARY PROCEEDING COMPLAINT FOR VIOLATION OF THE WARN ACT, 29 U.S.C. § 2101, *et seq.*; AND VIOLATION OF THE NEW YORK WARN ACT, LABOR LAW § 860 *et seq.*

Plaintiffs Todd Thielmann, Pierre-Yvan Desparois, Natalia Sivova, Sandy Glover-Bowles, Arton Sina, Marion Corrigan and Scott L. Kisch (collectively, the "Plaintiffs" or the "Class Plaintiffs") allege on behalf of themselves and a class of similarly situated former employees of Defendants, by way of this Third Amended Adversary Proceeding Complaint

against MF Global Holdings, Ltd., MF Global Holdings USA, Inc., and MF Global Finance USA, Inc. (collectively hereinafter referred to as "MF Global Group" or "Defendants"), by and through their counsel, as follows:

NATURE OF THE ACTION

1. The MF Global Group operated their businesses as a single enterprise and the Class Plaintiffs, as well as more than 2,870 other employees, were employed by the MF Global Group collectively. The Plaintiffs were terminated from their employment as a result of a decision made collectively by the Defendants' leadership on or about November 11, 2011. More than 1,000 employees were laid off on November 11, without any advance notice.

2. The Plaintiffs bring this action on behalf of themselves, and other similarly situated former employees who worked for the MF Global Group and were terminated without cause, as part of, or as the result of, plant closings, mass layoffs and terminations ordered collectively by Defendants and who were not provided 60 days advance written notice of their terminations by Defendants, as required by the Worker Adjustment and Retraining Notification Act ("WARN Act"), 29 U.S.C. § 2101 *et seq*. and 90 days advance written notice as required by the New York Labor Laws § 860 *et seq*. ("NY WARN Act"), together the "WARN Acts."

3. The Plaintiffs and all similarly situated employees seek to recover 60 days wages and benefits pursuant to the WARN Acts from Defendants. Plaintiffs' claims, as well as the claims of all similarly situated employees, are entitled to first priority administrative expense status pursuant to the United States Bankruptcy Code § 503(b)(1)(A), or alternatively wage priority status pursuant to United States Bankruptcy Code § 507(a)(4), (5).

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1331, 1334 and 1367 and 29 U.S.C. § 2104(a)(5).

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O).

6. Venue is proper in this District pursuant to 29 U.S.C. § 2104(a)(5).

THE PARTIES

Plaintiffs

7. Class Plaintiff Todd Thielmann was an employee of Defendants and worked as a Floor Broker at the Defendants' offices located in Chicago, Illinois, which employed approximately 600 employees until his termination on or about November 11, 2011. Mr. Thielmann believed that he worked for the MF Global Defendants' collectively and not one particular Defendant. Mr. Thielmann received his paychecks from MF Global Holdings USA, Inc. which maintained a business address at 717 Fifth Avenue, New York, NY 10022. MF Global Holdings USA, Inc. was also the entity whose HR Department Mr. Thielmann regularly interacted with and contacted on his and the other employees' behalf relating to the administration of the MF Global Group's Long Term Investment Plan. Mr. Thielmann's health insurance was also administered under a group contract between United Healthcare and MF Global Holdings USA, Inc.

8. Class Plaintiff Pierre-Yvan Desparois worked as a Vice President in Credit Risk Management at the Defendants' office located at 717 Fifth Avenue, New York, New York (the "Headquarters Facility"), which employed approximately 450 employees until his termination on or about November 11, 2011. Mr. Desparois worked to advance the interests of each of the Defendants collectively, and it is not clear which of the Defendants employed Mr. Desparois.

9. Class Plaintiff, Natalia Sivova, worked as a Lead QA Analyst and Manager in Global IT Quality Assurance, at the Defendants' offices located at the Headquarters Facility, which employed approximately 450 employees until her termination on or about November 11 , 2011. Ms. Sivova received her paychecks from MF Global Holdings USA, Inc., which

maintained a business address at 717 Fifth Avenue, New York, NY 10022. Her 401(k) Investment plan was through MF Global Holdings. The Human Resources Department was located at the Headquarters Facility. Her health benefit plan was through MF Global Holdings USA, Inc. and her SOS Security Plan card was through MF Global Holdings, Ltd. Ms. Sivova's termination letter was on the letterhead of MF Global Holdings USA, Inc.

10. Class Plaintiff, Sandy Glover-Bowles, was employed by Defendants as an Accountant and worked at Defendants' office located at 440 South LaSalle Street, Chicago, Illinois (the "LaSalle Facility"), until her termination on or about November 11, 2011. Ms. Bowles' paycheck came from MF Global Holdings USA, Inc.

11. Class Plaintiff Arton Sina was employed as an international settlements specialist and worked out of the office located at 717 Fifth Ave, New York, New York. Mr. Sina's W-2 was issued under MF Global Holdings, USA, Inc., who was also the payor on his paycheck. Mr. Sina's employment contract listed MF Global Holdings USA, Inc. as the employer, and it was signed by Thomas F. Connolly, whose title was Global Head of Human Resources. That position was later taken over by Linda Angello, whose office was located at 55 East 52nd Street in New York. Mr. Sina's Labor Law Notice of Wage Rate, Background and Credit Check forms listed "MF Global" as the employer. His 40lK handbook lists the employer as "MF Global Holdings," however, the rollover signup form lists MF Global, Inc. Mr. Sina's health benefit plan was administered by "MF Global, Holdings, USA Inc." Finally, his SOS Security Plan card, given to employees for medical or security advice, was issued by MF Global Holdings, Ltd.

12. Class Plaintiff Marion Corrigan was employed in New York, New York as vice president senior generalist human resources by Defendants. By tenure, she was the senior-most human resources officer at MF Global Group, having been employed by Defendants and their

predecessors since 1994. In 2011, her direct supervisor was Thomas F. Connolly, the Global Head of Human Resources of MF Global Holdings, Ltd. MF Global Group did not consider its employees as being employed by anyone particular entity, rather different facets pertaining to each employee's employment by MF Global Group were carried out under different entity names. On or about November 7, 2011, at Mr. Connolly's instructions, Ms. Corrigan began carrying out terminations as part of a mass layoff on or about November 7, 2011. Ms. Corrigan terminated employees based on spreadsheet lists prepared for her, and they included employees associated with carrying out corporate functions of MF Global Group as well as those associated with broker-dealer functions. Mr. Connolly terminated her on or about November 9, 2011. The letterhead of her termination letter read "MF Global Holdings USA, Inc."

13. Class Plaintiff Scott L. Kisch was employed by Defendants as Vice President Business Continuity and Employee Security. He was in charge of MF Global's security and emergency response operations. He reported directly to Thomas F. Connolly, and worked at 717 Fifth Avenue. At no point during Mr. Kisch's tenure at MF Global did he understand himself to be working for any particular entity within MF Global, rather, he worked with high-level corporate executives of what he perceived was a single organization who were responsible for directing its many operations. He understood that all domestic MF Global employees were hired through the corporate Human Resources department and then, like himself, were subject to the supervision, directly or indirectly, of those executives. Mr. Kisch received his termination letter from MF Global Holdings USA, Inc.

Defendants

14. Defendant debtor MF Global Holdings, Ltd. is a Delaware company with principal place of business located at 717 Fifth Avenue, New York, New York and conducted

business in this district. Defendant MF Global Holdings, Ltd. is the direct parent of wholly owned subsidiary MF Global Holdings USA, Inc., a New York corporation. Upon information and belief, this was the Defendant that administered the Plaintiffs' 401K plan, insofar as several Plaintiffs' 401K handbook lists "MF Global Holdings" as the entity administering the plan. This is also the entity listed on the Plaintiffs' SOS security plan card, which was issued to them for medical and security advice.

15. Defendant debtor MF Global Finance USA, Inc. is a Delaware corporation with its principal place of business located at 717 Fifth Avenue, New York, New York and conducted business in this district. The Plaintiffs are unclear what role this particular entity played in the MF Global Group's operations, but the Plaintiffs believe that their efforts and services aided this Defendant and enhanced its economic interests.

16. Defendant debtor MF Global Holdings USA, Inc. is the direct parent of MF Global Inc., a Delaware corporation, and MF Global Finance USA, Inc., a New York corporation. The Plaintiffs' paystubs, and W-2s reflect MF Global Holdings USA, Inc. as their employer. The termination letters delivered to Pierre-Yvan Desparios, Natalia Sivova, Arton Sina, Marion Corrigan and Scott L. Kisch were on MF Global Holdings USA, Inc.'s letterhead. This Defendant was also the entity whose letterhead appeared on correspondence sent to the Plaintiffs relating to human resources matters. Specifically, Thomas F. Connolly, whose title was "Global Head of Human Resources" used letterhead issued under this Defendant's name.

17. Until on or about November 11, 2011, the Plaintiffs and the other similarly situated former employees were employed by Defendants and worked at or reported to one of Defendants' offices.

THE MF GLOBAL GROUP ACTED AS A SINGLE EMPLOYER

18. MF Global Group constitutes a single employer, as that term is defined by the WARN Act and its regulations. 29 USC § 2101(a)(I), 20 C.F.R. § 639.3(a)(2).

19. MF Global Group comprised several related Defendant entities not in an arm's length relationship with one another that together constituted a single integrated enterprise that employed and terminated the Plaintiffs and similarly situated former employees.

20. The Defendants each filed schedules and statements of financial affairs with this Court which confirmed the single entity nature of their business operations. Specifically, the Defendants made the following representations in each of their schedules and statements of financial affairs:

> Prior to October 31, 2011, when MFG filed for bankruptcy, the Debtors operated with other MFG direct and indirect subsidiaries ("non-Debtor MFG entities"), on a global, integrated and interdependent basis. Under this operating format, it was common for financial books and records of one affiliate to be maintained by a centralized regional accounting function, which was maintained by a different affiliate. Additionally, it was common that back office and financial reporting systems, owned or utilized by one affiliate were maintained by technology support personnel and hosted by technology infrastructure from another different affiliate and also then used by various other affiliates.

See e.g. Case No. 11-15059, Doc. No. 701 at p. 2 (Banla. S.D.N.Y. May 18,2012).

21. Upon information and belief:

a) Defendants shared common ownership, as reflected by the Exhibit attached to Doc. No. 9 to Case No. 11-15059 (MG);

b) Defendants' Board of Directors made unified decisions for all units in MF Global Group;

c) Defendants maintained unified operations and employees were routinely identified simultaneously as employees of various MF Global Group units. As set forth in greater detail above in paragraphs 12 through 18 of this Complaint, the MF Global Group treated

the Plaintiffs as if they worked for the integrated group and not an individual entity. All employees were governed through a centralized global human resources department, and all employees served the greater good of the entire MF Global Group. Additionally, each Defendant's statement of financial affairs confirmed the fact that the employees were "employed" collectively by the MF Global Group. Specifically, the Defendants included on their disclaimers the following representation:

> After October 31, 2011, certain costs were borne by MF Global Holdings USA, Inc. which benefited all Debtors. Additionally, some Debtors made constructive disbursements on behalf of another Debtor. These costs and disbursements relate primarily to payroll and employee benefits, human resource administration, daily cash management, bankruptcy reporting and filings, bookkeeping, facilities, and technology support ...

See e.g. Case No. 11-15059, Doc. No. 701 at p. 8 (Bankr. S.D.N.Y. May 18, 2012). Further, the interrelationship of the Defendants' unified management is reflected in each of the Defendant's responses to question 3(c) and 23 on the statement of financial affairs related to payments to insiders:

> In the ordinary course of MFG's businesses, officers of one Debtor may have been employed and paid by another Debtor or non-Debtor MFG entity. For ease of disclosure, payments listed by one Debtor reflect all payments to that individual by all Debtor entities.

Case No. 11-15059, Doc. No. 701 at p. 11 (Bankr. S.D.N.Y. May 18,2012);

d) MF Global Group's operations/financials were consolidated for purposes of MF Global Ltd.'s audited annual financial statements;

e) High level executives, including the Chief Executive Officer and Chief Operating Officer, were considered employees of MF Global Group, as set forth above, the high level executives were employed by one company and then paid by another. See e.g. Case No. 11-15059, Doc. No. 701 at p. 11 (Bankr. S.D.N.Y. May 18, 2012);

f) MF Global Group exercised unified control over the employment practices governing the Plaintiffs and Class Members, including the decision to order the mass layoffs;

g) MF Global Group maintained a single, unified human resources department, responsible for recruiting, hiring, and administering employee benefits plans of MF Global Group. In fact, the worldwide head of HR, Thomas F. Connelly, worked with the Trustee to identify employees and communicated the November 11, 2011 layoffs to employees at the New York offices;

h) Employment policies and benefits (e.g, business expense reimbursement guidelines, paid vacation entitlement, etc.) were set forth in an employee handbook that was identical for all of MF Global Group.

22. The MF Global Group maintained and operated additional facilities - as that term is defined by the WARN Act - throughout the United States, including, but not limited to, Chicago, Illinois and New York, New York (collectively the "Offices").

23. Until on or about November 11, 2011, the Plaintiffs and all similarly situated employees were employed by Defendants and worked at or reported to one of Defendants' Offices.

24. Upon information and belief, the Defendants made the decision to terminate the employment of the Plaintiffs and the other similarly situated former employees collectively as a group, and not on an individual Defendant by Defendant basis.

THE DEFENDANTS WERE NOT LIQUIDATING ON THE DATE OF THE TERMINATIONS

25. The Defendants were not liquidating as of November 11, 2011.

26. Mr. Bradley 1. Abelow, MF Global Holding Ltd's President and Chief Operating Officer and MF Global Finance USA, Inc.'s Executive Vice President and Chief Operating

Officer, as of October 31, 2011, made the following representations to the Court regarding the purpose and intention of the initial Chapter II filings:

> 6. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession in these chapter II cases. To enable the Debtors to operate efficiently following the chapter 11 filings, the Debtors will request various types of relief....
>
> ....
>
> 37. I believe that the relief sought in each of the First Day Motions (a) is vital to enable the Debtors to make the transition to, and operate in, chapter 11 with a minimum interruption or disruption to their businesses or loss of productivity or value and (b) constitutes a critical element in achieving the Debtors" successful reorganization.
>
> ….
>
> 43. The use of Cash Collateral is necessary for the Debtors to maintain sufficient liquidity so that the Debtors may continue to operate their businesses in the ordinary course of business during these chapter 11 cases. The Debtors' access to Cash Collateral is necessary in order to ensure that the Debtors have sufficient working capital and liquidity to operate their businesses and thus preserve and maintain the going concern value of the Debtors' estates, which, in turn, is integral to maximizing the recoveries for the Debtors' stakeholders
>
> ….
>
> 44. I believe that immediate and ongoing use of Cash Collateral is required to fund the day-to-day activities of the Debtors, including to make payments to employees and vendors in the ordinary course of business whose services and goods are integral to the Debtors' operations.
>
> ….
>
> 50. The Debtors are seeking a waiver of the requirement of the U.S. Trustee Guidelines that the prepetition Bank Accounts be closed....I believe that closing the existing Bank Accounts and opening new accounts inevitably would disrupt the Debtors' businesses and result in delays that would disrupt the Debtors' businesses and result in delays that would impede the Debtors' ability to transition smoothly into chapter 11, and would likewise jeopardize the Debtors' efforts to successfully reorganize in a timely and efficient manner.
>
> ….
>
> 67. The Debtors' ultimate goal is to reorganize their financial affairs under the terms of a confirmed chapter 11 plan. In the near term, however, to minimize any loss of value of their business during restructuring, the Debtors' immediate objective is to maintain a business-as-usual atmosphere during the pendency of

> the chapter 11 cases, with as little interruption or disruption to the Debtors' operations as possible. I believe that if the Court grants the relief requested in each of the First-day Motions, the prospect for achieving these objectives and completing a successful, rapid reorganization of the Debtors' business will be substantially enhanced.

Abelow Affidavit, Doc. No.9 (emphases added).

27. Defendants had not altered the representations contained in the Abelow Affidavit as of November 11, 2011 when they terminated the Plaintiffs and similarly situated employees.

WARN CLASS ALLEGATIONS

28. The Class Plaintiffs bring the First Claim for Relief for violation of 29 U.S.C. §2101, et seq., on behalf of themselves and on behalf of all other similarly situated former employees, pursuant to 29 U.S.c. § 2104(a)(5) and Federal Rules of Civil Procedure, Rule 23(a), who worked at or reported to one of Defendants' Offices and were terminated without cause on or about November 11, 2011, and within 30 days of that date, or were terminated without cause as the reasonably foreseeable consequence of the mass layoffs andlor plant closings ordered by Defendants on or about November 11, 2011, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5) (the "WARN Class").

29. The persons in the WARN Class identified above ("WARN Class Members") are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

30. On information and belief, the identity of the members of the class and the recent residential address of each of the WARN Class Members is contained in the books and records of Defendants.

31. On information and belief, the rate of pay and benefits that were being paid by Defendants to each WARN Class Member at the time of his/her termination is contained in the books and records of Defendants.

32. Common questions of law and fact exist as to members of the WARN Class, including, but not limited to, the following:

(a) whether the members of the WARN Class were employees of the Defendants who worked at or reported to Defendants' Offices;

(b) whether Defendants unlawfully terminated the employment of the members of the WARN Class without cause on their part and without giving them 60 days advance written notice in violation of the WARN Act; and

(c) whether Defendants unlawfully failed to pay the WARN Class Members 60 days wages and benefits as required by the WARN Act.

33. The Class Plaintiffs' claims are typical of those of the WARN Class. The Class Plaintiffs, like other WARN Class members, worked at or reported to one of Defendants' Offices and were terminated without cause on or about November 11, 2011 due to the mass layoffs and/or plant closings ordered by Defendants.

34. The Class Plaintiffs will fairly and adequately protect the interests of the WARN Class. The Class Plaintiffs have retained counsel competent and experienced in complex class actions, including the WARN Act and employment litigation.

35. On or about November 11, 2011, Defendants terminated the Plaintiffs' employment as part of a mass layoff or a plant closing as defined by 29 U.S.C. § 2101(a)(2),(3), for which they were entitled to receive 60 days advance written notice under the WARN Act.

36. Class certification of these claims is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the WARN Class predominate over any questions affecting only individual members of the WARN Class, and because a class action superior to other available methods for the fair and efficient adjudication of this litigation - particularly in the context of WARN Act litigation, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant, and damages suffered by individual WARN Class members are small compared to the expense and burden of individual prosecution of this litigation.

37. Concentrating all the potential litigation concerning the WARN Act rights of the members of the Class in this Court will obviate the need for unduly duplicative litigation that might result in inconsistent judgments, will conserve the judicial resources and the resources of the parties and is the most efficient means of resolving the WARN Act rights of all the members of the Class.

38. Plaintiffs intend to send notice to all members of the WARN Class to the extent required by Rule 23.

NEW YORK WARN ACT CLASS ALLEGATIONS

39. Class Plaintiffs Pierre-Yvan Desparois, Natalia Sivova, Arton Sina, Marion Corrigan and Scott L. Kisch (the "NY Class Plaintiffs") bring this Second Claim for Relief for violation of NY WARN Act Labor Law § 860 et seq. on behalf of themselves and a class of similarly situated persons pursuant to NY WARN Act Labor Law § 860 et seq. and Federal Rules of Civil Procedure, Rule 23(a) and (b), who worked at or reported to Defendants' New York offices and were terminated without notice on or about November 11, 2011 (the "NY WARN Class").

40. The persons in the NY WARN Class identified above ("NY WARN Class Members") are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

41. On information and belief, the identity of the members of the class and the recent residential address of each of the NY WARN Class Members is contained in the books and records of Defendants.

42. On information and belief, the rate of pay and benefits that were being paid by Defendants to each NY WARN Class Member at the time of his/her termination is contained in the books and records of the Defendants.

43. Common questions of law and fact exist as to members of the NY WARN Class, including, but not limited to, the following:

(a) whether the members of the NY WARN Class were employees of the Defendants who worked at a covered office of Defendants;

(b) whether Defendants, as a single employer, unlawfully terminated the employment of the members of the NY WARN Class without cause on their part and without giving them 90 days advance written notice in violation of the NY WARN Act; and

(c) whether Defendants unlawfully failed to pay the NY WARN Class members 60 days wages and benefits as required by the NY WARN Act.

44. The NY Class Plaintiffs' claims are typical of those of the NY WARN Class. The NY Class Plaintiffs, like other NY WARN Class members, worked at or reported to Defendants' New York offices and were terminated on or about November 11, 2011, due to the termination of the Offices ordered by Defendants.

45. The NY Class Plaintiffs will fairly and adequately protect the interests of the NY WARN Class. The Class Plaintiffs have retained counsel competent and experienced in complex class actions on behalf of employees, including the NY WARN Act, the Federal WARN Act, other similar state laws, and employment litigation.

46. Class certification of these Claims is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the NY WARN Class predominate over any questions affecting only individual members of the NY WARN Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation - particularly in the context of NY WARN Class Act litigation, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant, and damages suffered by individual NY WARN Class members are small compared to the expense and burden of individual prosecution of this litigation.

47. Concentrating all the potential litigation concerning the NY WARN Act rights of the members of the Class in this Court will obviate the need for unduly duplicative litigation that might result in inconsistent judgments, will conserve the judicial resources and the resources of the parties and is the most efficient means of resolving the NY WARN Act rights of all the members of the Class.

48. The NY Class Plaintiffs intend to send notice to all members of the NY WARN Class to the extent required by Rule 23.

CLAIMS FOR RELIEF

Violation of the WARN Act, 29 U.S.C. § 2101, *et seq.*

49. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

50. At all relevant times, Defendants employed more than 100 employees who in the aggregate worked at least 4,000 hours per week, exclusive of hours of overtime, within the United States.

51. At all relevant times, Defendants were an "employer," as that term is defined in 29 U.S.C. § 2101 (a)(1) and 20 C.F.R. § 639(a), and continued to operate as a business until they decided to order mass layoffs or plant closings at the Offices.

52. As alleged above (primarily in paragraph 19(a-h)), at all relevant times herein, MF Global Group constituted a "single employer" of the Plaintiffs and the Class Members under the WARN Act. Indeed, as set forth above, there is a high interdependency of operations; there is commonality between management, directors and officers; there is a consolidation of financial, and human resources operations; and, at all relevant times the MF Global Group acted as essentially one entity.

53. On or about November 11, 2011, the Defendants ordered mass layoffs and/or plant closings at the Offices, as those terms are defined by 29 U.S.C. § 2101(a)(2).

54. The mass layoffs or plant closings at the Offices resulted in "employment losses," as that term is defined by 29 U.S.C. §2101(a)(2) for at least fifty of Defendants' employees as well as thirty-three percent (33%) of Defendants' workforce at the Offices, excluding "part-time employees," as that term is defined by 29 U.S.C. § 2101(a)(8).

55. The Plaintiffs and the Class Members were terminated by Defendants without cause on their part, as part of or as the reasonably foreseeable consequence of the mass layoffs or plant closings ordered by Defendants at the Offices.

56. The Plaintiffs and the Class Members are "affected employees" of Defendants, within the meaning of 29 U.S.C. § 2101(a)(5).

57. Defendants were required by the WARN Act to give the Plaintiffs and the Class Members at least 60 days advance written notice of their terminations.

58. Defendants failed to give the Plaintiffs and the Class members written notice that complied with the requirements of the WARN Act.

59. The Plaintiffs, and each of the Class Members, are "aggrieved employees" of the Defendants as that term is defined in 29 U.S.C. § 2104 (a)(7).

60. Defendants failed to pay the Plaintiffs and each of the Class Members their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 days following their respective terminations, and failed to make the pension and 401(k) contributions and provide employee benefits under COBRA for 60 days from and after the dates of their respective terminations.

61. Since the Plaintiffs and each of the Class Members seek back-pay attributable to a period of time after the filing of the Debtors' bankruptcy petitions and which arose as the result of the Debtors' violation of federal laws, Plaintiffs' and the Class Members' claims against Defendants are entitled to first priority administrative expense status pursuant to 11 U.S.C. § 503 (b)(1)(A).

62. The relief sought in this proceeding is equitable in nature.

Violation of the New York WARN Act, Labor Law § 860, *et seq.*

63. Plaintiffs reallege and incorporate by reference all allegations in all proceeding paragraphs.

64. NY Class Plaintiffs and similarly situated employees who worked at or reported to Defendants' Offices in New York and other "covered establishments," are former "employees," of Defendants as defined in the NY WARN Act.

65. Defendants terminated the employment of the NY Class Plaintiffs and other similarly situated employees, pursuant to a "plant closing," "mass layoff," or "relocation" as defined in the NY WARN Act on or about November 11, 2011 or thereafter.

66. At all relevant times, Defendants were an "employer" as defined in the NY WARN Act.

67. Defendants violated the NY WARN Act by ordering a "Plant Closing," "mass layoff," or "relocation" in New York without giving written notice at least 90 days before the order took effect to (1) the employees affected by the order and (2) the New York State Department of Labor, the local workforce investment board, and the chief elected official of each city and county government within which the mass layoff, relocation or termination occurred.

68. As a result of Defendants' violation of the NY WARN Act, the NY Class Plaintiffs and the other similarly situated New York employees are entitled to damages equal to 60 days wages and benefits.

69. As a result of Defendants' violation of the NY WARN Act, Defendants are liable for a civil penalty of not more than five hundred dollars ($500) for each day of the violation.

70. Plaintiffs have incurred and the other similarly situated employees will incur attorneys' fees in prosecuting this claim and are entitled to an award of attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, individually and on behalf of all other similarly situated persons, prays for the following relief as against Defendants, jointly and severally:

A. Certification of this action as a Class Action;

B. Designation of the Plaintiffs as the Class Representatives;

C. Appointment of the undersigned attorneys as Class Counsel;

D. A first priority administrative expense claim against the Debtors pursuant to II U.S.C. § 503(b)(1)(A) in favor of the Plaintiffs and the other similarly situated former employees equal to the sum of: their unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401 (k) contributions and other COBRA benefits, for 60 days (90 days for the NY WARN Act Class), that would have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act, 29 U.S.C. § 2104 (a)(1)(A), including any civil penalties; or, alternatively, determining that the first $11 ,725 of the WARN Act claims of the Plaintiffs and each of the other similarly situated former employees are entitled to priority status, under 11 U.S.C. § 507(a)(4), and the remainder is a general unsecured claim; and

E. An allowed administrative-expense priority claim under 11 U.S.C. § 503 for the reasonable attorneys' fees and the costs and disbursements that the Plaintiffs incur in prosecuting this action, as authorized by the WARN Act, 29 U.S.C. § 2104(a)(6), the WARN Act and/or other applicable laws.

F. Such other and further relief as this Court may deem just and proper.

DATED: June 22, 2015

/s/ Charles A. Ercole

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EXHIBIT B

UNITED STATES BANKRUPTCY COURT **DRAFT**

SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
MF GLOBAL HOLDINGS, LTD.; MF GLOBAL FINANCE USA, INC., *et al.*,	:	Case No. 11-15059 (MG) Case No. 11-15058 (MG)
	:	(Jointly Administered)
Debtors.	:	
TODD THIELMANN, PIERRE-YVAN DESPAROIS, NATALIA SIVOVA, SANDY GLOVER-BOWLES, ~~and~~ ARTON SINA, MARION CORRIGAN and SCOTT L. KISCH, Individually, and on behalf of All Other Similarly Situated Former Employees,	:	
Plaintiffs,	:	Adv. Pro. No. 11-02880 (MG)
v.	:	
MF GLOBAL HOLDINGS, LTD, MF GLOBAL HOLDINGS USA, INC., MF GLOBAL FINANCE USA, INC.; *et al.*,	:	
Defendants.	:	

THIRD~~SECOND~~ AMENDED CLASS ACTION ADVERSARY PROCEEDING COMPLAINT FOR VIOLATION OF THE WARN ACT, 29 U.S.C. § 2101, *et seq.*; AND VIOLATION OF THE NEW YORK WARN ACT, LABOR LAW § 860 *et seq.*

Plaintiffs Todd Thielmann, Pierre-Yvan Desparois, Natalia Sivova, Sandy Glover-Bowles, ~~and~~ Arton Sina, Marion Corrigan and Scott L. Kisch (collectively, the "Plaintiffs" or the "Class Plaintiffs") allege on behalf of themselves and a class of similarly situated former employees of Defendants, by way of this Third~~Second~~ Amended Adversary Proceeding Complaint

against MF Global Holdings, Ltd., MF Global Holdings USA, Inc., and MF Global Finance USA, Inc. (collectively hereinafter referred to as "MF Global Group" or "Defendants"), by and through their counsel, as follows:

NATURE OF THE ACTION

1. The MF Global Group operated their businesses as a single enterprise and the Class Plaintiffs, as well as more than 2,870 other employees, were employed by the MF Global Group collectively. The Plaintiffs were terminated from their employment as a result of a decision made collectively by the Defendants' leadership on or about November 11, 2011.

~~1.~~ More than 1,000 employees were laid off on November 11, without any advance notice.

2. The Plaintiffs bring this action on behalf of themselves, and other similarly situated former employees who worked for the MF Global Group and were terminated without cause, as part of, or as the result of, plant closings, mass layoffs and terminations ordered collectively by Defendants and who were not provided 60 days advance written notice of their terminations by Defendants, as required by the Worker Adjustment and Retraining Notification Act ("WARN Act"), 29 U.S.C. § 2101 *et seq.*[1] and 90 days advance written notice as required by the New York Labor Laws § 860 *et seq.* ("NY WARN Act"), together the "WARN Acts."

3. The Plaintiffs and all similarly situated employees seek to recover 60 days wages and benefits pursuant to the WARN Acts from Defendants. Plaintiffs' claims, as well as the claims of all similarly situated employees, are entitled to first priority administrative expense status pursuant to the United States Bankruptcy Code § 503(b)(1)(A), or alternatively wage priority status pursuant to United States Bankruptcy Code § 507(a)(4), (5).

[1] ~~Plaintiffs allege that Defendants actions also violate the Illinois WARN Act, but a separate count is not alleged under the Illinois WARN Act because it does not add any substantive relief or procedural advantage due to the size of the MF Global layoff.~~

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JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1331, 1334 and 1367 and 29 U.S.C. § 2104(a)(5).

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O~~0~~).

6. Venue is proper in this District pursuant to 29 U.S.C. § 2104(a)(5).

THE PARTIES

Plaintiffs

7. Class Plaintiff Todd Thielmann was an employee of Defendants and worked as a ~~7.~~ Floor Broker at the Defendants' offices located in Chicago, Illinois, which employed approximately 600 employees until his termination on or about November 11, 2011. Mr. Thielmann believed that he worked for the MF Global Defendants' collectively and not one particular Defendant. Mr. Thielmann received his paychecks from MF Global Holdings USA, Inc. which maintained a business address at 717 Fifth Avenue, New York, NY 10022. MF Global Holdings USA, Inc. was also the entity whose HR Department Mr. Thielmann regularly interacted with and contacted on his and the other employees' behalf relating to the administration of the MF Global Group's Long Term Investment Plan. Mr. Thielmann's health insurance was also administered under a group contract between United Healthcare and MF Global Holdings USA, Inc.

8. Class Plaintiff Pierre-Yvan Desparois worked as a Vice President in Credit Risk Management at the Defendants' office located at 717 Fifth Avenue, New York, New York (the ~~8.~~ "Headquarters Facility"), which employed approximately 450 employees until his termination on or about November 11, 2011. Mr. Desparois worked to advance the interests of

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each of the Defendants collectively, and it is not clear which of the Defendants employed Mr. Desparois~~Desparios~~.

9. Class Plaintiff, Natalia Sivova, worked as a Lead QA Analyst and Manager in Global IT Quality Assurance, at the Defendants' offices located at the Headquarters Facility, which employed approximately 450 employees until her termination on or about November 11, 2011. Ms. Sivova received her paychecks from MF Global Holdings USA, Inc., which maintained a business address at 717 Fifth Avenue, New York, NY 10022. Her 401(k) Investment plan was through MF Global Holdings. The Human Resources Department was located at the Headquarters Facility. Her health benefit plan was through MF Global Holdings USA, Inc. and her SOS Security Plan card was through MF Global Holdings, Ltd. Ms. Sivova's ~~9.~~ termination letter was on the letterhead of MF Global Holdings USA, Inc.

10. Class Plaintiff, Sandy Glover-Bowles, was employed by Defendants as an Accountant and worked at Defendants' office located at 440 South LaSalle Street, Chicago, Illinois (the "LaSalle Facility"), until her termination on or about November 11, 2011. Ms. Bowles' paycheck came from MF Global Holdings USA, Inc.

11. Class Plaintiff Arton Sina was employed as an international settlements specialist and worked out of the office located at 717 Fifth Ave, New York, New York. Mr. Sina's W-2 was issued under MF Global Holdings, USA, Inc., who was also the payor on his paycheck. Mr. Sina's employment contract listed MF Global Holdings USA, Inc. as the employer, and it was signed by Thomas F. Connolly, whose title was Global Head of Human Resources. That position was later taken over by Linda Angello, whose office was located at 55 East 52nd Street in New York. Mr. Sina's Labor Law Notice of Wage Rate, Background and Credit Check forms listed "MF Global" as the employer. His 40lK~~401K~~ handbook lists the employer as "MF Global

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Holdings," however, the rollover signup form lists MF Global, Inc. -Mr. Sina's health benefit plan was administered by "MF Global, Holdings, USA Inc."- Finally, his SOS Security Plan card, given to employees for medical or security advice, was issued by MF Global Holdings, Ltd.

12. Class Plaintiff Marion Corrigan was employed in New York, New York as vice president senior generalist human resources by Defendants. By tenure, she was the senior-most human resources officer at MF Global Group, having been employed by Defendants and their predecessors since 1994. In 2011, her direct supervisor was Thomas F. Connolly, the Global Head of Human Resources of MF Global Holdings, Ltd. MF Global Group did not consider its employees as being employed by anyone particular entity, rather different facets pertaining to each employee's employment by MF Global Group were carried out under different entity names. On or about November 7, 2011, at Mr. Connolly's instructions, Ms. Corrigan began carrying out terminations as part of a mass layoff on or about November 7, 2011. Ms. Corrigan terminated employees based on spreadsheet lists prepared for her, and they included employees associated with carrying out corporate functions of MF Global Group as well as those associated with broker-dealer functions. Mr. Connolly terminated her on or about November 9, 2011. The letterhead of her termination letter read "MF Global Holdings USA, Inc."

13. Class Plaintiff Scott L. Kisch was employed by Defendants as Vice President Business Continuity and Employee Security. He was in charge of MF Global's security and emergency response operations. He reported directly to Thomas F. Connolly, and worked at 717 Fifth Avenue. At no point during Mr. Kisch's tenure at MF Global did he understand himself to be working for any particular entity within MF Global, rather, he worked with high-level corporate executives of what he perceived was a single organization who were responsible for directing its many operations. He understood that all domestic MF Global employees were

hired through the corporate Human Resources department and then, like himself, were subject to the supervision, directly or indirectly, of those executives. Mr. Kisch received his termination letter from MF Global Holdings USA, Inc.

Defendants

14. Defendant debtor MF Global Holdings, Ltd. is a Delaware company with principal place of business located at 717 Fifth Avenue, New York, New York and conducted business in this district. Defendant MF Global Holdings, Ltd. is the direct parent of wholly owned subsidiary ~~non-debtor~~ MF Global Holdings USA, Inc., a New York corporation, ~~, and MF Global Finance, USA, Inc.~~ Upon information and belief, this was the Defendant that administered the Plaintiffs' 401K plan, insofar as several Plaintiffs' 401K handbook lists "MF Global Holdings" as the entity administering the plan. This is also the entity listed on the Plaintiffs' SOS security plan card, which was issued to them ~~12.~~ for medical and security advice.

~~13.~~15. Defendant debtor MF Global Finance USA, Inc. is a Delaware corporation with its principal place of business located at 717 Fifth Avenue, New York, New York and conducted business in this district. The Plaintiffs are unclear what role this particular entity played in the MF Global Group's operations, but the Plaintiffs believe that their efforts and services aided this Defendant and enhanced its economic interests.

16. Defendant ~~Non-~~debtor MF Global Holdings USA, Inc. is the direct parent of MF Global Inc., a Delaware corporation, and MF Global Finance USA, Inc., a New York corporation. The Plaintiffs' paystubs, and W-2s reflect MF Global Holdings USA, Inc.~~this debtor~~ as their employer. The ~~This Defendant's letterhead was also on the~~ termination letters delivered to Pierre-Yvan Desparios, Natalia Sivova, ~~and~~ Arton

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~~14.~~ ~~-~~Sina, Marion Corrigan and Scott L. Kisch were on MF Global Holdings USA, Inc.'s letterhead.~~-~~ This Defendant was also the entity whose letterhead appeared on correspondence sent to the Plaintiffs relating to human resources matters.~~manners.~~ Specifically, Thomas F. Connolly, whose title was "Global Head of Human Resources" used letterhead issued under this Defendant's name.

~~15.~~17. Until on or about November 11, 2011, the Plaintiffs and the other similarly situated former employees were employed by Defendants and worked at or reported to one of Defendants' offices.

THE MF GLOBAL GROUP ACTED AS A SINGLE EMPLOYER

~~16.~~18. MF Global Group constitutes a single employer, as that term is defined by the WARN Act and its regulations. 29 USC § 2101(a)(I), 20 C.F.R. § 639.3(a)(2).

19. MF Global Group comprised several related Defendant entities not in an arm's

~~17.~~ ~~-~~length relationship with one another that together constituted a single integrated enterprise that employed and terminated the Plaintiffs and similarly situated former employees.

20. The Defendants each filed schedules and statements of financial affairs with this ~~-~~Court which confirmed the single entity nature of their business operations.~~-~~ Specifically, the Defendants made the following representations in each of their schedules and statements of

~~18.~~ ~~-~~financial affairs:

> Prior to October 31, 2011, when MFG filed for bankruptcy, the Debtors operated with other MFG direct and indirect subsidiaries ("non-Debtor MFG entities"), on a global, integrated and interdependent basis. ~~-~~Under this operating format, it was common for financial books and records of one affiliate to be maintained by ~~-~~a centralized regional accounting function, which was maintained by a different affiliate.~~-~~ Additionally, it was common that back office and financial reporting systems, owned or utilized by one affiliate were maintained by technology support personnel and hosted by technology infrastructure from another different

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affiliate and also then used by various other affiliates.

See e.g. Case~~case~~ No. 11-15059, Doc. No. 701 at p. 2 (Bankr. S.D.N.Y. May 18,-2012).

~~19.~~21. Upon information and belief:

~~(a)~~a) Defendants shared common ownership, as reflected by the Exhibit attached to Doc. No. 9 to Case No. 11-15059 (MG);

~~(b)~~b) Defendants' Board of Directors made unified decisions for all units in MF Global Group;

~~(c)~~c) Defendants maintained unified operations and employees were routinely identified simultaneously as employees of various MF Global Group units. -As set forth in greater detail above in paragraphs 12 through 18 of this Complaint, the MF Global Group treated the Plaintiffs as if they worked for the integrated group and not an individual entity. -All employees were governed through a centralized global human resources department, and all employees served the greater good of the entire MF Global Group. -Additionally, each Defendant's statement of financial affairs confirmed the fact that the employees were "employed" collectively by the MF Global Group. -Specifically, the Defendants included on their disclaimers the following representation:

> After October 31, 2011, certain costs were borne by MF Global -Holdings USA, Inc. which benefited all Debtors. -Additionally, -some Debtors made constructive disbursements on behalf of -another Debtor. -These costs and disbursements relate primarily to -payroll and employee benefits, human resource administration, -daily cash management, bankruptcy reporting and filings, -bookkeeping, facilities, and technology support ...~~...~~

See e.g. Case No. 11-15059, Doc. No. 701 at p. 8 (Bankr. S.D.N.Y. May 18, 2012).~~–~~ Further, the interrelationship of the Defendants' unified management is reflected in each of the Defendant's

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responses to question 3(c) and 23 on the statement of financial affairs related to payments to insiders:

> In the ordinary course of MFG's businesses, officers of one Debtor ~~may have been employed and paid by another Debtor or non-Debtor MFG entity. For ease of disclosure, payments listed by one Debtor reflect all payments to that individual by all Debtor entities.~~ may have been employed and paid by another Debtor or non-Debtor MFG entity. For ease of disclosure, payments listed by one Debtor reflect all payments to that individual by all Debtor entities.
>
> Case No. 11-15059, Doc. No. 701 at p. 11 (Bankr. S.D.N.Y. May 18, 2012);

~~(d)~~d) MF Global Group's operations/financials were consolidated for purposes of MF Global Ltd.'s audited annual financial statements;

~~(e)~~e) High level executives, including the Chief Executive Officer and Chief Operating Officer, were considered employees of MF Global Group, as set forth above, the high level executives were employed by one company and then paid by another. See e.g. Case No~~case no~~. 11-15059, Doc. No. 701 at p. 11 (Bankr. S.D.N.Y. May 18, 2012);

~~(f)~~f) MF Global Group exercised unified control over the employment practices governing the Plaintiffs and Class Members, including the decision to order the mass layoffs;

~~(g)~~g) MF Global Group maintained a single, unified human resources department, responsible for recruiting, hiring, and administering employee benefits plans of MF Global Group. In fact, the worldwide head of HR, Thomas F. Connelly, worked with the Trustee to identify employees and communicated the November 11, 2011 layoffs to employees at the New York offices;

~~(h)~~h) Employment policies and benefits (e.g, business expense reimbursement guidelines, paid vacation entitlement, etc.) were set forth in an employee handbook that

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was identical for all of MF Global Group.

~~20.~~22. The~~-~~ MF Global Group maintained and operated additional facilities ~~—~~ as that term is defined by the WARN Act ~~—~~ throughout the United States, including, but not limited to, Chicago, Illinois and New York, New York ~~-~~(collectively the "Offices").

~~21.~~23. Until on or about November 11, 2011, the Plaintiffs and all similarly situated employees were employed by Defendants and worked at or reported to one of Defendants' Offices.

~~22.~~24. Upon information and belief, the Defendants made the decision to terminate the employment of the Plaintiffs and the other similarly situated former employees collectively as a group, and not on an individual Defendant by Defendant basis.

THE DEFENDANTS WERE NOT LIQUIDATING ON THE DATE OF THE TERMINATIONS
~~ON THE DATE OF THE TERMINATIONS~~

~~23.~~25. The Defendants were not liquidating as of November 11, 2011.

~~24.~~26. Mr. Bradley ~~1~~I. Abelow, MF Global Holding Ltd's President and Chief Operating Officer and MF Global Finance USA, Inc.'s Executive Vice President and Chief Operating Officer, as of October 31, 2011, made the following representations to the Court regarding the purpose and intention of the initial Chapter 11 filings:

> 6.~~-~~ The Debtors continue to operate their businesses and manage their
>
> ~~-~~properties as debtors-in-possession in these chapter 11 cases. ~~-~~To ~~-~~enable the Debtors to operate efficiently following the chapter 11 ~~-~~filings, the Debtors will request various types of relief....
>
> ....
>
> ....
>
> 37.~~-~~ I believe that the relief sought in each of the First Day Motions (a) is vital to enable the Debtors to make the transition to, and operate in, chapter 11 with a minimum interruption or disruption to their businesses or loss of

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productivity or value and (b) constitutes a critical element in achieving the Debtors' successful reorganization.

43. The use of Cash Collateral is necessary for the Debtors to maintain sufficient liquidity so that the Debtors may continue to operate their businesses in the ordinary course of business during these chapter 11 cases. The Debtors' access to Cash Collateral is necessary in order to ensure that the Debtors have sufficient working capital and liquidity to operate their businesses and thus preserve and maintain the going concern value of the Debtors' estates, which, in turn, is integral to maximizing the recoveries for the Debtors' stakeholders.

44. I believe that immediate and ongoing use of Cash Collateral is required to fund the day-to-day activities of the Debtors, including to make payments to employees and vendors in the ordinary course of business whose services and goods are integral to the Debtors' operations.

50. The Debtors are seeking a waiver of the requirement of the U.S. Trustee Guidelines that the prepetition Bank Accounts be closed. I believe that closing the existing Bank Accounts and opening new accounts inevitably would disrupt the Debtors' businesses and result in delays that would disrupt the Debtors' businesses and result in delays that would impede the Debtors' ability to transition smoothly into chapter 11, and would likewise jeopardize the Debtors' efforts to successfully reorganize in a timely and efficient manner.

67. The Debtors' ultimate goal is to reorganize their financial affairs under the terms of a confirmed chapter 11 plan. In the near term, however, to minimize any loss of value of their business during restructuring, the Debtors' immediate objective is to maintain a business-as-usual atmosphere during the pendency of the chapter 11 cases, with as little interruption or disruption to the Debtors' operations as possible. I believe that if the Court grants the relief requested in each of the First-day Motions, the prospect for achieving these objectives and completing a successful, rapid reorganization of the Debtors' business will be substantially enhanced.

Abelow Affidavit, Doc. No. 9 (emphases added).

~~25.~~27. Defendants had not altered the representations contained in the Abelow Affidavit as of November 11, 2011 when they terminated the Plaintiffs and similarly situated employees.

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WARN CLASS ALLEGATIONS

~~26.~~28. The Class Plaintiffs bring the First Claim for Relief for violation of 29 U.S.C. §2101, et seq., on behalf of themselves and on behalf of all other similarly situated former employees, pursuant to 29 U.S.c~~C~~. § 2104(a)(5) and Federal Rules of Civil Procedure, Rule 23(a), who worked at or reported to one of Defendants' Offices and were terminated without cause on or about November 11, 2011, and within 30 days of that date, or were terminated without cause as the reasonably foreseeable consequence of the mass layoffs and/or plant closings ordered by Defendants on or about November 11, 2011, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5) (the "WARN Class").

~~27.~~29. The persons in the WARN Class identified above ("WARN Class Members") are so numerous that joinder of all members is impracticable. ~~-~~Although the precise number of such persons is unknown, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

~~28.~~30. On information and belief, the identity of the members of the class and the recent residential address of each of the WARN Class Members is contained in the books and records of Defendants.

~~29.~~31. On information and belief, the rate of pay and benefits that were being paid by Defendants to each WARN Class Member at the time of his/her termination is contained in the books and records of Defendants.

~~30.~~32. Common questions of law and fact exist as to members of the WARN Class, including, but not limited to, the following:

~~(a)~~ (a) whether the members of the WARN Class were employees of the Defendants who worked at or reported to Defendants' Offices;

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~~(b)~~ (b) whether Defendants unlawfully terminated the employment of the members of the WARN Class without cause on their part and without giving them 60 days advance written notice in violation of the WARN Act; and

~~(c)~~ (c) whether Defendants unlawfully failed to pay the WARN Class Members 60 days wages and benefits as required by the WARN Act.

33. The Class Plaintiffs' claims are typical of those of the WARN Class. The Class ~~31.~~ Plaintiffs, like other WARN Class members, worked at or reported to one of Defendants' Offices and were terminated without cause on or about November 11, 2011 due to the mass layoffs and/or plant closings ordered by Defendants.

~~32.~~34. The Class Plaintiffs will fairly and adequately protect the interests of the WARN Class. The Class Plaintiffs have retained counsel competent and experienced in complex class actions, including the WARN Act and employment litigation.

~~33.~~35. On or about November 11, 2011, Defendants terminated the Plaintiffs' employment as part of a mass layoff or a plant closing as defined by 29 U.S.C. § 2101(a)(2)~~,(),~~ ~~(~~3), for which they were entitled to receive 60 days advance written notice under the WARN Act.

~~34.~~36. Class certification of these claims is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the WARN Class predominate over any questions affecting only individual members of the WARN Class, and because a class action superior to other available methods for the fair and efficient adjudication of this litigation ~~—~~ particularly in the context of WARN Act litigation, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant, and damages suffered by individual WARN Class members are small compared to the expense and burden of individual prosecution of this litigation.

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~~35.~~37. Concentrating all the potential litigation concerning the WARN Act rights of the members of the Class in this Court will obviate the need for unduly duplicative litigation that might result in inconsistent judgments, will conserve the judicial resources and the resources of the parties and is the most efficient means of resolving the WARN Act rights of all the members of the Class.

~~36.~~38. Plaintiffs intend to send notice to all members of the WARN Class to the extent required by Rule 23.

NEW YORK WARN ACT CLASS ALLEGATIONS

39. Class Plaintiffs Pierre-Yvan Desparois, Natalia Sivova, ~~and~~ Arton Sina, Marion Corrigan and Scott L. Kisch (the "NY Class Plaintiffs") bring this Second Claim for Relief for violation of NY WARN Act Labor Law § 860 et seq. on behalf of themselves and a class of similarly situated persons pursuant to NY WARN Act Labor Law § 860 et seq. and Federal Rules of Civil Procedure, Rule 23(a) and (b), who worked at or reported to Defendants' New York offices and were terminated without notice on or about November 11, 2011 (the "NY WARN Class").

40. The persons in the NY WARN Class identified above ("NY WARN Class ~~37.~~ Members") are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

~~38.~~41. On information and belief, the identity of the members of the class and the recent residential address of each of the NY WARN Class Members is contained in the books and records of Defendants.

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~~39.~~42. On information and belief, the rate of pay and benefits that were being paid by Defendants to each NY WARN Class Member at the time of his/her termination is contained in the books and records of the Defendants.

~~40.~~43. Common questions of law and fact exist as to members of the NY WARN Class, including, but not limited to, the following:

~~(a)~~ (a) whether the members of the NY WARN Class were employees of the Defendants who worked at a covered office of Defendants;

~~(b)~~ (b) whether Defendants, as a single employer, unlawfully terminated the employment of the members of the NY WARN Class without cause on their part and without giving them 90 days advance written notice in violation of the NY WARN Act; and

~~(c)~~ (c) whether Defendants unlawfully failed to pay the NY WARN Class members 60 days wages and benefits as required by the NY WARN Act.

44. The NY Class Plaintiffs' claims are typical of those of the NY WARN Class. The ~~41.~~ NY Class Plaintiffs, like other NY WARN Class members, worked at or reported to Defendants' New York offices and were terminated on or about November 11, 2011, due to the termination of the Offices ordered by Defendants.

~~42.~~45. The NY Class Plaintiffs will fairly and adequately protect the interests of the NY WARN Class. The Class Plaintiffs have retained counsel competent and experienced in complex class actions on behalf of employees, including the NY WARN Act, the Federal WARN Act, other similar state laws, and employment litigation.

~~43.~~46. Class certification of these Claims is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the NY WARN Class predominate over any

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questions affecting only individual members of the NY WARN Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation – particularly in the context of NY WARN Class Act litigation, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant, and damages suffered by individual NY WARN Class members are small compared to the expense and burden of individual prosecution of this litigation.

~~44.~~47. Concentrating all the potential litigation concerning the NY WARN Act rights of the members of the Class in this Court will obviate the need for unduly duplicative litigation that might result in inconsistent judgments, will conserve the judicial resources and the resources of the parties and is the most efficient means of resolving the NY WARN Act rights of all the members of the Class.

~~45.~~48. The NY Class Plaintiffs intend to send notice to all members of the NY WARN Class to the extent required by Rule 23.

CLAIMS FOR RELIEF

Violation of the WARN Act, 29 U.S.C. § 2101, *et seq.*

~~46.~~49. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

~~47.~~50. At all relevant times, Defendants employed more than 100 employees who in the aggregate worked at least 4,000 hours per week, exclusive of hours of overtime, within the United States.

~~48.~~51. At all relevant times, Defendants were an "employer," as that term is defined in 29 U.S.C. § 2101 (a)(1) and 20 C.F.R. § 639(a), and continued to operate as a business until they decided to order mass layoffs or plant closings at the Offices.

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~~49.~~52. As alleged above (primarily in paragraph 19(a-h)), at all relevant times herein, MF Global Group constituted a "single employer" of the Plaintiffs and the Class Members under the WARN Act. Indeed, as set forth above, there is a high interdependency of operations; there is commonality between management, directors and officers; there is a consolidation of financial, and human resources operations; and, at all relevant times the MF Global Group acted as essentially one entity.

~~50.~~53. On or about November 11, 2011, the Defendants ordered mass layoffs and/or plant closings at the Offices, as those terms are defined by 29 U.S.C. § 2101(a)(2).

54. The mass layoffs or plant closings at the Offices resulted in "employment losses," as that term is defined by 29 U.S.C. §2101(a)(2) for at least fifty of Defendants' employees as well as thirty-three percent (33%) of Defendants' workforce at the Offices, excluding "part-time

~~51.~~ employees," as that term is defined by 29 U.S.C. § 2101(a)(8).

~~52.~~55. The Plaintiffs and the Class Members were terminated by Defendants without cause on their part, as part of or as the reasonably foreseeable consequence of the mass layoffs or plant closings ordered by Defendants at the Offices.

~~53.~~56. The Plaintiffs and the Class Members are "affected employees" of Defendants, within the meaning of 29 U.S.C. § 2101(a)(5).

57. Defendants were required by the WARN Act to give the Plaintiffs and the Class

~~54.~~ Members at least 60 days advance written notice of their terminations.

~~55.~~58. Defendants failed to give the Plaintiffs and the Class members written notice that complied with the requirements of the WARN Act.

~~56.~~59. The Plaintiffs, and each of the Class Members, are "aggrieved employees" of the ~~Defendants as that term is defined in 29 U.S.C. § 2104 (a)(7).~~

Defendants as that term is defined in 29 U.S.C. § 2104 (a)(7).

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~~57.~~60. Defendants failed to pay the Plaintiffs and each of the Class Members their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 days following their respective terminations, and failed to make the pension and 401(k) contributions and provide employee benefits under COBRA for 60 days from and after the dates of their respective terminations.

~~58.~~61. Since the Plaintiffs and each of the Class Members seek back-pay attributable to a period of time after the filing of the Debtors' bankruptcy petitions and which arose as the result of the Debtors' violation of federal laws, Plaintiffs' and the Class Members' claims against Defendants are entitled to first priority administrative expense status pursuant to 11 U.S.C. § 503 (b)(1)(A).

~~59.~~62. The relief sought in this proceeding is equitable in nature.

Violation of the New York WARN Act, Labor Law- § 860, *et seq.*

~~60.~~63. Plaintiffs reallege and incorporate by reference all allegations in all proceeding paragraphs.

~~61.~~64. NY Class Plaintiffs and similarly situated employees who worked at or reported to Defendants' Offices in New York and other "covered establishments," are former "employees," of Defendants as defined in the NY WARN Act.

~~62.~~65. Defendants terminated the employment of the NY Class Plaintiffs and other similarly situated employees, pursuant to a "plant closing," "mass layoff," or "relocation" as defined in the NY WARN Act on or about November 11, 2011 or thereafter.

~~63.~~66. At all relevant times, Defendants were an "employer" as defined in the NY WARN Act.

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67. Defendants violated the NY WARN Act by ordering a "Plant Closing," "mass layoff," or "relocation" in New York without giving written notice at least 90 days before the order took effect to (1) the employees affected by the order and (2) the New York State

~~64.~~ Department of Labor, the local workforce investment board, and the chief elected official of each city and county government within which the mass layoff, relocation or termination occurred.

~~65.~~68. As a result of Defendants' violation of the NY WARN Act, the NY Class Plaintiffs and the other similarly situated New York employees are entitled to damages equal to 60 days wages and benefits.

~~66.~~69. As a result of Defendants' violation of the NY WARN Act, Defendants are liable for a civil penalty of not more than five hundred dollars ($500) for each day of the violation.

~~67.~~70. Plaintiffs have incurred and the other similarly situated employees will incur attorneys' fees in prosecuting this claim and are entitled to an award of attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, individually and on behalf of all other similarly situated persons, prays for the following relief as against Defendants, jointly and severally:

A. Certification of this action as a Class Action;

B. Designation of the Plaintiffs as the Class Representatives;

C. Appointment of the undersigned attorneys as Class Counsel;

D. A first priority administrative expense claim against the Debtors pursuant to 11 U.S.C. § 503(b)(1)(A) in favor of the Plaintiffs and the other similarly situated former employees equal to the sum of: their unpaid wages, salary, commissions, bonuses,

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accrued holiday pay, accrued vacation pay, pension and 401 (k) contributions and other COBRA benefits, for 60 days (90 days for the NY WARN Act Class), that would have been covered and paid under the then -applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act, 29 U.S.C. § 2104 (a)(1)(A), including any civil penalties; or, alternatively, determining that the first $11,725 of the WARN Act claims of the Plaintiffs and each of the other similarly situated former employees are entitled to priority status, under 11 U.S.C. § 507(a)(4), and the remainder is a general unsecured claim; and

E. An allowed administrative-expense priority claim under 11 U.S.C. § 503 for the reasonable attorneys' fees and the costs and disbursements that the Plaintiffs incur in prosecuting this action, as authorized by the WARN Act, 29 U.S.C. § 2104(a)(6), the WARN Act and/or other applicable laws.

F. Such other and further relief as this Court may deem just and proper.

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DATED: ~~November 26, 2012~~ June 22, 2015

/s/ Charles A. Ercole
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Exhibit C

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May 27, 2015

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Re: *Thielmann v. MF. Global Holdings Ltd., et al.*, Adv. Pro No. 11-02880 (MG)

Dear Chuck, Mary, and René:

As you know, we represent defendants MF Global Finance USA, Inc., MF Global Holdings Ltd., and MF Global Holdings USA, Inc. (collectively "MF Global Holdings") in this litigation. We write in regards to Plaintiffs' Motion for Leave to Amend, filed in this action on May 19, 2015 (the "Motion").

Your Motion seeks to add former MF Global Holdings employees Marion Corrigan and Therese Dyman as plaintiffs. After you first provided us with a copy of your proposed amended complaint on April 13, 2015, we told you that Ms. Corrigan and Ms. Dyman had previously entered into settlement agreements releasing their claims against MF Global Holdings (and all of its affiliates, including MFGI). On April 16, 2015, we provided you

with copies of those settlement agreements.[1] Over the past month, we have repeatedly asked if you had any factual or legal basis to assert these claims in light of the releases and told you that we would consider consenting to your proposed amendment if you could provide us a legitimate basis upon which the releases should be set aside. You failed to provide any such basis. After reviewing your Motion, it is clear that you lack any good faith basis to bring it, in light of the releases.

We write to ask that you withdraw the Motion promptly. If you do not, we will oppose your Motion and will seek sanctions against Ms. Corrigan, Ms. Dyman, and each of your respective law firms under Federal Rule of Civil Procedure 11 to recover any costs that MF Global Holdings incurs responding to your frivolous Motion (including the costs to bring the sanctions motion).

* * *

In their settlement agreements with MF Global Holdings, Ms. Corrigan and Ms. Dyman settled and released "***any and all claims*** (as defined in section 101(5) of the Bankruptcy Code) and rights" that either of them "asserts, has or may have" against MF Global Holdings.[2] Ms. Corrigan and Ms. Dyman each further agreed to "waive, withdraw and agree not to assert ***any and all other claims*** (as defined in section 101(5) of the Bankruptcy Code)" against MF Global Holdings. Both agreements are governed by New York law.

These broad releases are "'clearly operative not only as to all controversies and causes of action between the releasor and releasees which had, by that time, actually ripened into litigation, but to all such issues which might then have been adjudicated as a result of pre-existent controversies.'" *In re Slater*, No. 03–16647(PCB), 2008 WL 755015, at *4 (Bankr. S.D.N.Y. Mar. 19, 2008) (quoting *Lucio v. Curran*, 2 N.Y.2d 157, 161-2 (1956)). Indeed, you do not contest that Ms. Corrigan and Ms. Dyman have released the claims they now seek to assert in your proposed amended complaint.

---

[1] Ms. Corrigan and Ms. Dyman's respective executed settlement agreements are attached to this letter along with the email that I sent to you on April 16, 2015 forwarding those agreements.

[2] Section 101(5) broadly defines a "claim" to mean any "(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured."

Rather, you argue that those releases are "invalid due to a failure of consideration" and that "Defendants' misrepresentations to at least one newly proposed Plaintiff concerning the status of the WARN claims (which she was being forced to give up in exchange for payment on the admitted claims) should serve to void the release." (Motion at 8.) These assertions are both factually and legally incorrect. The releases are valid and enforceable and bar Ms. Corrigan and Ms. Dyman's respective WARN Act claims.

First, with respect to the purported lack of consideration, both Ms. Corrigan and Ms. Dyman received valuable consideration in exchange for their releases. Ms. Corrigan received an allowed claim of $9,100.00, which was paid in April 2014; Ms. Dyman received an allowed claim of $35,787.75, which was paid in August 2014. Moreover, under New York law, "[a] written instrument which purports to be a total or partial release of all claims, debts, demands or obligations, or a total or partial release of any particular claim, debt, demand or obligation . . . shall not be invalid because of the absence of consideration." N.Y. Gen. Oblig. Law § 15–303 (McKinney 2010). "As a matter of New York law, therefore, no consideration for [Ms. Corrigan and Ms. Dyman's] agreement to th[e] release[s] was needed; and thus, ***if consideration was absent, its absence did not make the Stipulation invalid.***" *United States v. Twenty Miljam-350 IED Jammers*, 669 F.3d 78 (2d Cir. 2011) (noting that "[t]he law is well settled that stipulations of settlement are judicially favored and may not lightly be set aside" (internal quotation omitted)).

Second, your bald assertions about supposed misrepresentations cannot save these claims. "A plaintiff seeking to invalidate a release due to fraudulent inducement" must "'establish the basic elements of fraud, namely a representation of material fact, the falsity of that representation, knowledge by the party who made the representation that it was false when made, justifiable reliance by the plaintiff, and resulting injury.'" *Centro Empresarial Cempresa, S.A. v. América Móvil, S.A.B. De C.V.*, 17 N.Y.3d 269, 276 (2011). And she must do so in accordance with Rule 9(b)'s particularity requirements. *See In re WorldCom*, 296 B.R. 115, 124 (Bankr. S.D.N.Y. 2003) (dismissing claim where plaintiff "failed to articulate with particularity, as required by Rule 9(b), any allegation of fraud in the inducement of the Settlement Agreement").

Far from pleading the elements of fraudulent inducement with particularity, you do not even say which of your newly-proposed plaintiffs claims to have been fraudulently induced. This is plainly insufficient. *See Wood v. Applied Research Ass., Inc.*, 328 Fed. App'x 744, 748 (2d Cir. July 16, 2009) (summary order) (dismissing complaint that "fails to specify the time, place, speaker, and . . . even the content of the alleged misrepresentations" and "lacks the 'particulars' required by Rule 9(b)"). Indeed, your proposed amended complaint does not even mention the releases, let alone plead with particularity that those releases were fraudulently induced.

Moreover, even if you had identified with particularity a misrepresentation "concerning the status of the WARN claims," such a misrepresentation would not invalidate a release of those claims because "[w]here a settlement agreement releases all claims, a party may bring a claim for fraudulent inducement ***only if it can identify a fraud separate from the subject of the release***." *Morefun Co. Ltd. v. Mario Badescu Skin Care Inc.*, No. 13 Civ. 9036 (LGS), 2014 WL 2560608, at *4 (S.D.N.Y. June 6, 2014). Here, by contrast, your attempt to escape the impact of the release based on a fraudulent inducement theory is simply an impermissible request "to be relieved of the release on the ground that [the plaintiff] did not realize the true value of the claims [she] w[as] giving up." *Centro Empresarial*, 17 N.Y.3d at 276.

* * *

"'[A] release should never be converted into a starting point for litigation except under circumstances and under rules which would render any other result a grave injustice.'" *Morefun Co.*, 2014 WL 2560608, at *5 (quoting *Centro Empresarial*, 17 N.Y.3d at 276). Having bargained for broad releases from Ms. Corrigan and Ms. Dyman, MF Global Holdings should not be required to expend time and money defending against released claims.

You have known that Ms. Corrigan and Ms. Dyman released their claims since April 16, 2015, at the very latest. We repeatedly asked you to identify any factual or legal basis for asserting that these releases may be invalid. You refused to do so. After over a month, your failure to present any legitimate basis to set aside the releases confirms that your Motion is brought in bad faith.

Please confirm that you will be withdrawing your frivolous Motion.

Sincerely,

/s/ James J. Beha II
James J. Beha II

Exhibit D

OUTTEN & GOLDEN LLP

Advocates for Workplace Fairness

June 12, 2015

Via E-Mail
James J. Beha II
Morrison & Foerster LLP
250 West 55th Street
New York, NY 10019-9601

Re: *Thielmann* v. *MF. Global Holdings Ltd, et al.,* Adv. Pro No. 11-02880 (MG)

Dear Mr. Beha:

We are in receipt of your letter dated May 27, 2015, in which you request that we withdraw our Motion for Leave to Amend (the "Motion"). You contend that the Motion is frivolous because Ms. Corrigan and Ms. Dyman signed releases that bar their proposed claims against Defendants. However, as we have indicated before and in our motion papers, these releases are not valid with respect to the proposed WARN claims. Ms. Dyman's release was procured by a misrepresentation, or at a minimum was the result of a mutual mistake, and neither Ms. Dyman nor Ms. Corrigan received consideration for the release of their claims.

With respect to Ms. Dyman's release, because it was procured by a potentially fraudulent misrepresentation or was the result of a mutual mistake, her WARN claim is not barred as the release can be equitably reformed or rescinded. *See Amara v. CIGNA Corp.*, 775 F.3d 510, 525 (2d Cir. 2014) ("A contract may be reformed due to the mutual mistake of both parties, or where one party is mistaken and the other commits fraud or engages in inequitable conduct."); *Allen v. WestPoint-Pepperell, Inc.*, 945 F.2d 40, 44 (2d Cir. 1991) ("even where, as here, the language of a release is clear and unambiguous on its face, the court may still ... rescind that [release] where it finds either mutual mistake or one party's unilateral mistake coupled with some fraud ... of the other party.") (alterations in original; internal quotation marks omitted).

Ms. Dyman was told by an agent of Defendants that the WARN claims had been "kicked out of court." At that time, however, an appeal of the dismissal was fully briefed and *sub judice*. In fact, the claim was reinstated prior to Ms. Dyman executing the release, but Defendant did not advise Ms. Dyman of that fact. Rather, Defendants led her to believe her WARN Act claim was not part of the bargain because it had been dismissed and was therefore "off the table." Based on that representation she entered the release. Even if Defendants were also mistaken as to the status of the claim, this would represent mutual mistake because neither party intended the release to waive a colorable WARN claim. Under these circumstances, it is likely that the Court will reform the agreement to excise the release of the WARN claim or rescind the release in its entirety.

Although you contend that even if the release was procured by fraud, that fraud was not "separate from the subject matter of the release," you are wrong, as indicated by the cases you cite. In each of those cases the fraudulent inducement that was adjudged released arose from an underlying fraud that was released. *See Centro Empresarial Cempresa S.A. v. Am. Movil, S.A.B. de C.V.*, 17 N.Y.3d 269, 280, 952 N.E.2d 995, 1001, 1002-03 (2011) ("plaintiffs fail to allege that the release was induced by any fraud beyond that contemplated by the release" and "[t]he fraud described in the complaint . . . falls squarely within the scope of the release: plaintiffs allege that defendants supplied them with false financial information regarding the value of Conecel and TWE, and that, based on this false information, plaintiffs sold their interests in TWE and released defendants from claims in connection with that sale"); *Morefun Co. v. Mario Badescu Skin Care Inc.*, No. 13 CIV. 9036 LGS, 2014 WL 2560608, at *5 (S.D.N.Y. June 6, 2014) *aff'd*, 588 F. App'x 54 (2d Cir. 2014) ("The Settlement Agreement's subject matter was the damage Plaintiff sustained when it sold the Product in Korea, which Defendant had misrepresented was steroid free. The Amended Complaint alleges no fraud other than Defendant's misrepresentations that the Product was steroid free.")

In contrast, here, there was never an underlying fraud. Mses. Dyman and Corrigan do not allege fraud in their WARN claims. The only fraud at issue is the fraudulent inducement to enter into the release. This fraud is clearly not the subject matter of the release, which related to Ms. Dyman's employment compensation. Nor is this a case where the plaintiff merely was not aware of the value of the claims she gave up, as you indicate. Here, Ms. Dyman was misled as to the status of the WARN claim and did not simply misjudge the size of a potential recovery on that claim.

Even the cases you cite indicate that classic defenses to contract such as fraudulent inducement (or mutual mistake) are valid bases for the rescission of a release. *Centro Empresarial*, 17 N.Y.3d at 276 ("A release may be invalidated, however, for any of the traditional bases for setting aside written agreements, namely, duress, illegality, fraud, or mutual mistake") (internal quotation marks omitted); *Morefun Co.*, 2014 WL 2560608, at *5 (same). Where the fraud alleged is collateral to a release, as here, the release can be set aside. *See, e.g., Wall v. CSX Transp., Inc.*, 471 F.3d 410, 417 (2d Cir. 2006).

While you take issue with the fact that the Proposed Amended Complaint does not plead fraudulent inducement, it is not the plaintiffs' burden to plead counterarguments to defenses to their claims. Defendants are free to raise the issue of the releases in opposition to the Motion and as a defense to the claims. *See, e.g., Morefun Co.*, at *1 ("The Defendant moves to dismiss . . . citing an existing and enforceable settlement agreement between the parties."); *Joint Venture Asset Acquisition v. Zellner*, 808 F. Supp. 289, 302 (S.D.N.Y. 1992) ("once a plaintiff . . . has put into the record at least 'some evidence' showing there has been fraud . . . sufficient to void the release, the party asserting the release as a defense must come forward with 'real evidence' to sustain its burden regarding the legality of the release.").

With respect to both Ms. Dyman and Ms. Corrigans' releases, you contend that they are valid even absent consideration, arguing that "[b]oth agreements are governed by New York

law" under which a written release requires no consideration. But, the release of federal claims, including WARN claims, is governed by federal law. *See Locafrance U. S. Corp. v. Intermodal Sys. Leasing, Inc.*, 558 F.2d 1113, 1115 (2d Cir. 1977) ("It is well established that federal law governs all questions relating to the validity of and defenses to purported releases of federal statutory causes of action."); *DePalma v. Realty IQ Corp.*, No. 01 CIV 446 RMB, 2002 WL 461647, at *3 (S.D.N.Y. Mar. 25, 2002) (holding that "[f]ederal law decides whether the release of a federal statutory claim is valid" and analyzing release of WARN claims under federal law).

In determining the validity of a release under federal law, Courts consider "whether the consideration given in exchange for the waiver exceeds employee benefits to which the employee was already entitled . . . ." *Id.*, at *3 quoting *Bormann v. AT&T Communications*, 875 F.2d 399, 403 (2d Cir. 1989). Thus, while you argue that Ms. Corrigan and Ms. Dyman obtained consideration in the form of allowed claims, wages that are already owed are not valid consideration for a release of federal claims, including WARN claims. *See Maynard v. Durham & S. Ry. Co.*, 365 U.S. 160, 163 (U.S. 1961) ("A release is not supported by sufficient consideration unless something of value is received to which the creditor had no previous right. If . . . an employee receives wages to which he had an absolute right, the fact that the amount is called consideration for a release does not make the release valid."); *DePalma*, 2002 WL 461647, at *3 (S.D.N.Y. Mar. 25, 2002) (citing *Zveiter, infra*, and denying judgment on the pleadings against WARN claim because "it is unclear, at this stage, whether the '2 weeks [ ] salary' constitutes 'consideration.'") (internal citation omitted; alteration in original); *Zveiter v. Brazilian Nat. Superintendency of Merch. Marine*, 833 F. Supp. 1089, 1097 (S.D.N.Y.) *opinion supplemented on reconsideration*, 841 F. Supp. 111 (S.D.N.Y. 1993) (denying summary judgment on the basis of a release noting that "[d]efendants contend that plaintiff received some severance pay as consideration for entering into the release, but there is some dispute as to the extent to which this exceeded the pay that she was owed.")

Here, where Ms. Corrigan and Ms. Dyman merely received payment of claims to wages which they were already owed and did not receive any additional consideration for the releases, the releases are not valid to the extent they purport to waive their rights under the WARN Act.

Ultimately, "the validity of a release is a peculiarly fact-sensitive inquiry." *Livingston v. Adirondack Beverage Company,* 141 F.3d 434, 437-38 (2d Cir. 1998). At best, you have pointed to summary judgment issues – whether Ms. Dyman was fraudulently induced to enter into a release and whether Ms. Dyman and Ms. Corrigan received payment of more than what they were already owed to support release of their WARN claims.

Finally, your letter alone does not adequately put us on notice regarding the time-frame in which decisions must be made and does not satisfy the Rule 11 procedural requirements. Accordingly, if you file a Rule 11 motion, it will be denied. *See Star Mark Mgmt., Inc. v. Koon Chun Hing Kee Soy & Sauce Factory, Ltd.*, 682 F.3d 170, 175 (2d Cir. 2012) ("The safe-harbor provision is a strict procedural requirement. An informal warning in the form of a letter without service of a separate Rule 11 motion is not sufficient to trigger the 21–day safe harbor period.") (citations omitted); *Shu Lun Wu v. May Kwan Si, Inc.*, 508 B.R. 606, 615 (S.D.N.Y. 2014)

("Plaintiffs have failed to follow the procedural requirements of Rule 11, including by not . . . serving the motion before filing it."); *Lancaster v. Zufle*, 170 F.R.D. 7 (S.D.N.Y. 1996) ("the plain language of the Rule expressly requires the serving of a formal motion . . . by serving such a motion a movant itself certifies to its own compliance with Rule 11 . . . and thus places its adversary on notice that the matter may not be viewed as simply part of the paper skirmishing among adversaries that too often characterizes litigation in this uncivil age.")

Indeed, you do not indicate when you plan to file a Rule 11 motion if we do not withdraw our motion. Accordingly, based only on your letter, we are left in the dark as to when we must make a final decision regarding the Motion. Under these circumstances, where the issue to be dealt with is highly fact-sensitive, and where you have not complied with the strict procedural requirements of the safe harbor, your filing of a Rule 11 motion would itself be frivolous.

In this regard, "'the filing of a motion for sanctions is itself subject to the requirements of [Rule 11] and can lead to sanctions.'" *Safe-Strap Co. v. Koala Corp.*, 270 F. Supp. 2d 407, 421 (S.D.N.Y. 2003) quoting Fed.R.Civ.P. 11 advisory committee's note (1993 Amendments) (alteration in original). Moreover, "'[a] party defending a Rule 11 motion need not comply with the . . . safe harbor provision when counter-requesting sanctions.'" *Id. quoting Patelco Credit Union v. Sahni* (9th Cir. 2001) 262 F.3d 897, 913 (alteration in original). Accordingly, if you choose to proceed with your proposed Rule 11 motion, we will consider making an appropriate counter-request for sanctions.

Although it is clear that the validity of the releases is far from established and the Motion is not frivolous, in order to avoid needless litigation we would withdraw the Motion as to Ms. Corrigan if you would consent to the addition of Ms. Dyman as a plaintiff.

Please advise whether you still intend to file a Rule 11 motion and whether you would like to discuss our proposal regarding resolution of the Motion.

Very truly yours,

Jack A. Raisner

cc: Charles A. Ercole
Mary E. Olsen
(both via e-mail)

Exhibit E

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 11-15059-mg; 11-02790-mg(SIPA)

- -x

In the Matters of:

MF GLOBAL INC.,

Debtor.

- -x

MF GLOBAL HOLDINGS LTD., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

February 18, 2015

10:10 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

THE COURT: Nice to see you as well. I haven't seen you in a while.

MR. RAISNER: Thank you, Your Honor.

THE COURT: Go ahead, Mr. Miller.

MR. MILLER: So, Your Honor, we're here now that the district court has ruled and remanded the WARN Act case back to this Court. And my firm has replaced Pepper Hamilton as counsel and we have been having discussions with the plaintiffs regarding the best way to move forward and we've, I guess, hit a stumbling block. Our preference would be that we move forward on the single employer issue, brief it, do discovery, get an opinion quickly and then move forward from there, because, as Your Honor might remember at the filing date of all of the MF Global cases, the Chapter 11 and the SIPA proceeding, there were approximately 1300 employees in the MF Global world in the U.S. of which the evidence that I believe has been presented in the MF Global Inc. WARN Act case, more than 1,000 of those employees were MFGI employees and approximately 240 or so were MF Global Chapter 11 debtor employees.

THE COURT: And what -- let me ask you this. What if -- let me break it into two parts. And I realize this is -- we're dealing primarily with the WARN Act claim but it also -- I guess I dismiss the vacation pay claims. But have the Chapter 11 debtors paid any of the Chapter 11 debtors' employees any accrued but unpaid vacation pay or allowed claims

for them, Ms. Hager?

MS. HAGER: Yes, Your Honor. Melissa Hager from Morrison & Foerster. Yes, Your Honor, they have. There have been very -- I don't have the exact figures here right now but there were convenience class claims, in particular, against MF Global Holdings USA, Inc., that I believe there have been at least 26 settled employee claims. Some but not necessarily all of them did have some type of vacation pay component or salary and wages that were included in those claims.

THE COURT: Okay. So let me -- I read both letters, your letter, Mr. Miller, and Mr. Ercole's letter. And I have a different take that I'm going to put out on how I think the case should proceed. I'll hear both sides about it but this is my tentative thinking.

Rule 23(c)(1)(A) provides that "At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action." And therefore, it seems appropriate to me, after all the time that's passed, to proceed with class certification. The questions that jump out at you: are the named plaintiffs members of the class they seek to represent? If they are employees of MFGI and were terminated at the direction of the SIPA trustee, may they represent a class of the WARN Act claimants against the Chapter 11 debtor entities?

So the district court reversed my dismissal with prejudice. Based on that Court's conclusion that I improperly engaged in fact finding in reliance on Defendant's September 14, 2013 letter -- that letter indicated that the named plaintiffs were employees of MFGI. The termination whether the named plaintiffs are appropriately certified as class representatives may necessarily entail fact finding. Therefore, it seemed to me that a determination whether the named plaintiffs are properly class representatives in this case should proceed promptly first with discovery addressing (1) by whom were the named plaintiffs employed; (2) was the employment of the named plaintiffs terminated at the direction of the SIPA trustee.

In my second opinion, referring to the one to dismiss the complaint with prejudice -- the second amended complaint with prejudice, I made various statements. I'm not going to read them back. They're in the opinion and are quoted by the district court in her opinion, whether the liquidating fiduciary principle would apply if the employees were employees of MF Global Inc.

In a recent opinion by the Second Circuit, Retirement Board of the Policemen's Annuity and Benefit Fund of the city of Chicago, the Bank of New York Mellon, 775 F.3d 154, (2nd Cir. 2014), a December 2014 decision written by Judge Livingston, the Court considered two questions, the first of

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
MF GLOBAL HOLDINGS, LTD.; MF GLOBAL FINANCE USA, INC. et al.	:	Case No. 11-15059 (MG) Case No. 11-15058 (MG) Case No. 11-02790 (MG) SIPA
	:	(Jointly Administered)
Debtors.	:	
Todd Thielmann, Pierre-Yvan Desparois, Natalia Sivova, Sandy Glover-Bowles, and Arton Sina, Individually, and on behalf of All Other Similarly Situated Former Employees,	:	
	:	Adv. Pro. No. 11-02880 (MG)
Plaintiffs,	:	
v.	:	
MF GLOBAL HOLDINGS LTD, MF GLOBAL HOLDINGS USA INC., MF GLOBAL FINANCE USA, INC.; MF GLOBAL INC., et al.,	:	
Defendants.	:	

DECLARATION OF MARION CORRIGAN

I, Marion Corrigan hereby declare the following under penalty of perjury:

1. I make this declaration in support of Plaintiffs' Motion to Amend the Complaint.

2. I make the representations herein based upon my personal knowledge and could and would testify to these facts if called upon.

3. I was terminated from my position as Vice President Human Resources of MF Global on or about November 9, 2011. I had been with MF Global and its predecessors for 17 years.

4. I was the human resources officer responsible for the on-boarding, out-boarding, annual reviews, benefits, training, and employee relations for MF Global employees grouped by department, or, as we called them, "teams." My teams were legal, accounting, communications, fixed income, finance, energy/metals, compliance and treasury.

5. On my last day, I was given a termination letter stating that I would be issued a final paycheck on Tuesday, November 15, sent to my home address that would include my pay through November 9, and for 14 vacation/personal days. The check I received did not include pay for any vacation/personal days

6. I filed a proof of claim in Defendants' bankruptcy proceeding seeking payment for my unused vacation days and restricted stock units.

7. I did not seek recovery for WARN damages via a proof of claim. Instead, I understood that there was a class action lawsuit that covered MF Global's former employees' WARN claims.

8. In or around March of 2014, Chris Bates, an employee of Defendants, contacted me to discuss the proofs of claim that I had filed against MF Global Holdings USA, Inc.

9. At no point during my discussions with Mr. Bates did he or any other representative of Defendants ask if I was represented by an attorney or suggest that I contact an attorney.

10. I understood from my discussions with Mr. Bates that I would receive payment for my unused vacation days. We did not discuss my WARN claims I did not believe that I was settling my WARN claims.

11. On March 17, 2014, I received a letter from MF Global Holdings Ltd. (the "Letter") which was signed by Mr. Bates, who, as indicated by the Letter was MF Global Holdings Ltd.'s chief financial officer. (A copy of the Letter is annexed hereto as Exhibit A).

12. I understood the Letter to be setting forth the terms of my settlement with Defendants as discussed with Mr. Bates (the "Settlement Terms"). It did not mention the WARN Act nor the WARN Act class action and I did not believe that I was settling or releasing claims relating to the WARN Act or the WARN Act class action.

13. On March 31, 2014, I signed and returned the Letter acknowledging my assent to the Settlement Terms as I understood them.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 22, 2015
New York, New York

Marion Corrigan
MARION CORRIGAN

EXHIBIT A

March 17, 2014

MARION CORRIGAN
8761 254TH ST
BELLEROSE, NY 11426

VIA EMAIL

Re: ***In re MF Global Holdings Ltd., et al.*, Case No. 11-15059 (MG);**
Joint Notice and Request for [Modification, Withdrawal and] Allowance of Claims

Dear MARION CORRIGAN:

MARION CORRIGAN ("**Creditor**") enters into this letter agreement (the "**Letter Agreement**") with MF Global Holdings Ltd. as Plan Administrator[1] (Creditor and the Plan Administrator, together the "**Parties**") under the *Second Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code for MF Global Holdings Ltd., MF Global Finance USA Inc., MF Global Capital LLC, MF Global FX Clear LLC, MF Global Market Services LLC, and MF Global Holdings USA Inc.* (Docket No. 1382) (the "**Plan**"). This Letter Agreement settles the claims appearing on Schedule 1 attached hereto (each, a "**Claim**", and collectively, the "**Claims**"), which upon the mutual execution of this Letter Agreement by the Parties and pursuant to the terms and conditions below, are to be allowed as reflected on Schedule 1 in the columns entitled "Allowed Amount", "Allowed Debtor", and "Allowed Class". Any claimed amounts in excess of the Allowed Amount(s) are disallowed.

The allowance of each Claim as described herein shall be in full and final satisfaction of any and all claims (as defined in section 101(5) of the Bankruptcy Code) and rights Creditor asserts, has or may have against the Debtors and their estates and the Debtors' affiliates (including, without limitation, MF Global Inc. ("**MFGI**") and MF Global UK Limited ("**MFGUK**")), and Creditor waives, withdraws and agrees not to assert any and all other claims (as defined in section 101(5) of the Bankruptcy Code) not subject to this Letter Agreement against the Debtors and their affiliates, including MFGI and MFGUK, and all of their respective estates including, without limitation, any and all other proofs of claim that Creditor has filed in the Chapter 11 Cases, or the SIPA Proceeding (Case No. 11-2790 (MG)) involving MFGI or the special administration involving MFGUK.

This Letter Agreement shall be deemed to have been negotiated, executed and delivered, and to be wholly performed, in the State of New York, and the rights and obligations of the Parties

[1] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan (as defined below).

MF Global Holdings Ltd.

142 West 57th Street
Suite 401
New York, New York 10019

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shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that state's choice-of-law principles. Upon execution, this Letter Agreement shall be binding upon the Parties and their respective successors and assigns. This Letter Agreement may be executed in any number of counterparts, and each such counterpart is to be deemed an original for all purposes, but all counterparts shall collectively constitute one agreement. Further, electronic signatures or transmissions of an originally signed document by facsimile or PDF shall be as fully binding on the Parties as an original document. This Letter Agreement contains the entire agreement between the Parties with respect to the Claims and supersedes all prior agreements and understandings between the Parties with respect thereto.

Please promptly countersign a copy of this Letter Agreement and return it by regular mail or electronic mail to the addresses noted below. **Claims referenced in this Letter Agreement will not be amended, allowed, or paid until a countersigned copy of this Letter Agreement is received by regular mail or electronic mail.**

We also request that, pursuant Article VI.I.(2) of the Plan, you provide the Plan Administrator with a completed W-9 form. The enclosed W-9 form should be sent as soon as practicable by regular or electronic mail to the addresses noted below. A completed W-9 form must be received by the Plan Administrator before any distribution pursuant to this Letter Agreement can be made.

Executed Letter Agreements and W-9 forms must be sent by regular mail or electronic mail to:

If by regular mail to: MF Global Holdings Ltd.
142 W. 57th Street, 4th Floor,
New York, New York 10019
Attn: Chris Bates

If by electronic mail to: MFGH@mfglobalholdings.com

By copy of this letter, Creditor requests that GCG, Inc. update the Debtors' respective claims register, as appropriate, to reflect that the Claims are allowed as reflected on Schedule 1 in the columns entitled "Allowed Amount", "Allowed Debtor", and "Allowed Class."

Questions can be directed to the Plan Administrator at MFGH@mfglobalholdings.com or 646-568-8128.

By signing below, each of the Parties represents and warrants that it has full and requisite authority to execute, deliver and perform its obligations under this Letter Agreement.

MF GLOBAL HOLDINGS LTD., AS PLAN ADMINISTRATOR

By: _____
Christopher Bates
Chief Financial Officer

ACCEPTED AND AGREED:

MARION CORRIGAN

By: Marion Corrigan Date: 3/31/14
Name:
Title:

cc:
GCG, Inc.
P.O. Box 9846
Dublin, Ohio 43017-5746
Attn: MFG Team

Schedule 1

AS CLAIMED			AS ALLOWED			AS WITHDRAWN	
Claim No.	**Original Claimant**	**Debtor/ Entity**	**Allowed Amount**	**Allowed Debtor**	**Allowed Class**	**Claim No.**	**Debtor/ Entity**
1336	Marion Corrigan	MF Global Holdings USA Inc	$ 9,100.00	MF Global Holdings USA Inc	1F	-	-
1335	Marion Corrigan	MF Global Holdings USA Inc	N/A 6,955 shares	MF Global Holdings Ltd.	9A	-	-

Form **W-9**
(Rev. August 2013)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
MARION V CORRIGAN

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:
☒ Individual/sole proprietor ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶

☐ Other (see instructions) ▶

Exemptions (see instructions):
Exempt payee code (if any)
Exemption from FATCA reporting code (if any)

Address (number, street, and apt. or suite no.)
89-61 254th ST

Requester's name and address (optional)

City, state, and ZIP code
Bellerose, NY 11426

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
1 2 8 - 6 2 - 4 7 0 0

Employer identification number
- -

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here Signature of U.S. person ▶ Marion Corrigan Date ▶ 4/2/14

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on IRS.gov for information about Form W-9, at *www.irs.gov/w9*. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
MF GLOBAL HOLDINGS, LTD.; MF GLOBAL FINANCE USA, INC. et al.	:	Case No. 11-15059 (MG) Case No. 11-15058 (MG) Case No. 11-02790 (MG) SIPA
	:	(Jointly Administered)
Debtors.	:	
Todd Thielmann, Pierre-Yvan Desparois, Natalia Sivova, Sandy Glover-Bowles, and Arton Sina, Individually, and on behalf of All Other Similarly Situated Former Employees,	:	
	:	Adv. Pro. No. 11-02880 (MG)
Plaintiffs,	:	
v.	:	
MF GLOBAL HOLDINGS LTD, MF GLOBAL HOLDINGS USA INC., MF GLOBAL FINANCE USA, INC.; MF GLOBAL INC., et al.,	:	
Defendants.	:	

DECLARATION OF SCOTT L. KISCH

I, Scott L. Kisch hereby declare the following under penalty of perjury:

1. I make this declaration in support of Plaintiffs' Motion to Amend the Complaint.

2. I make the representations herein based upon my personal knowledge and could and would testify to these facts if called upon.

3. On December 1, 2011, I retained Outten & Golden LLP to represent me with respect to my WARN claims against MF Global.

4. It was, and is, my understanding that Outten & Golden filed a WARN Act complaint on behalf of terminated MF Global employees such as me that seeks class certification. My termination letter was issued on MF Global Holdings USA, Inc. letterhead.

5. Until my termination on November 18, 2011, I served as Vice President Business Continuity and Employee Security. I was therefore in charge of MF Global's security and emergency response operations.

6. I reported directly to Thomas Connolly, who headed Global Human Resources for MF Global. I was part of the corporate Human Resources leadership at 717 Fifth Avenue and interacted closely with Mr. Connolly and his deputies.

7. At no point during my tenure at MF Global did I understand myself to be working for any particular entity within MF Global, rather, I worked with the top executives of a single organization who were responsible for directing its many operations.

8. I came to be employed by MF Global through its corporate Human Resources department, as I believe all domestic employees were. I was then supervised by one of the corporate heads of MF Global operations as I believe all employees, directly or indirectly, were.

9. I am willing to represent all similarly situated employees who were terminated as part of the mass layoff or plant closings of November 2011.

10. I am eager and willing to prosecute this action on behalf of the other former employees of Defendants. I will continue to actively assist my counsel in this action. I have no conflict of interest with other class members that I know of

11. If permitted to be added as a named plaintiff to the Third Amended Complaint, and designated as a class representative on behalf of the similarly-situated employees of Defendants, I would be pleased to serve.

12. I did not file a proof of claim in the estates of the Debtors/Defendants listed above. Nor have I settlement and claims or entered into any releases with them.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 21, 2015
New York, New York

S. L. K.

SCOTT L. KISCH