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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

MF GLOBAL HOLDINGS LTD., Case No. 11-15059(MG)

Debtor.

- - - - - x

THIELMANN, ET AL.,

Plaintiffs,

v. Adv. Case No. 11-02880(MG)

MF GLOBAL FINANCE USA,

ET AL.,

Defendants.

- - - - - x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

June 25, 2015

10:05 AM

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B E F O R E :
HON MARTIN GLENN
U.S. BANKRUPTCY JUDGE

Hearing re: Adversary proceeding: 11-02880-mg Thielmann et al v. MF Global Finance USA, Inc. et al (CC: Doc. nos. 111, 112, 115, 116, 117, 120) Motion to Amend Complaint Pursuant to Federal Rule of Civil Procedure 15(a)(2) and Federal Rule of Bankruptcy Procedure 7015 filed by Charles A. Ercole on behalf of Pierre-Yvan Desparois, Sandy Glover-Bowlers, Arton Sina, Natalia Sivona, Todd Thielmann. Marked Up Documents: 111, 112, 113, 115, 116, 117, 118, 120

Transcribed by: Dawn South

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P R O C E E D I N G S

THE COURT: All right. Please be seated.

We're here in Thielmann versus MF Global Finance USA, et al., 11-02880. It's plaintiffs' motion to amend the complaint. Who's going to argue?

MR. RAISNER: Good morning, Your Honor, Jack Raisner in from -- class counsel, Outten & Golden, on behalf of the WARN plaintiffs.

THE COURT: Thank you.

MR. RAISNER: Your Honor --

THE COURT: Let me get the rest of the appearances.

MS. HAGER: Good morning, Your Honor, Melissa Hager from Morrison & Foerster, on behalf of MF Global Holdings as the plan administrator, and I have with me my colleague, James Beha.

THE COURT: Thank you. All right, Mr. Raisner.

MR. RAISNER: Your Honor, I wonder if there's anyone on the phone. I was told.

THE COURT: Oh, is there anyone appearing on the phone?

MR. ERCOLE: Yeah, Your Honor, Charles Ercole, Your Honor, Klehr Harrison, also co-counsel with Mr. Raisner.

THE COURT: Thank you, Mr. Ercole.

1 MR. RAISNER: Your Honor, I'm happy to proceed in
2 any way that the Court might prefer, otherwise I plan to
3 make an introduction as to why we're here or caused us to
4 make this motion and what has happened so far.

5 THE COURT: Sure.

6 MR. RAISNER: I assume that you may want to hear
7 from the defendants. Beyond that we are prepared to present
8 evidence, if necessary, today, and if there's going to be
9 further argument necessary today obviously we are prepared
10 for that as well. But I'll first start with an
11 introduction.

12 THE COURT: Sure.

13 MR. RAISNER: The motion to amend the complaint
14 was brought on in part by Your Honor's remarks at the last
15 conference here in court on February 18th, which brought to
16 light a reality, let's say, that sort of emerged from the
17 dust that has fallen about the nature of this case, and it
18 was that the question of whether the current plaintiffs are
19 adequate or have standing to bring claims for the class they
20 seek to represent, which includes employees that worked
21 across the organization, and we know this organization was
22 broken into several parts.

23 And a concern to Your Honor was the obvious fact
24 that the defendants, who remain, are representing the -- or
25 are part of the Chapter 11 debtors, and the question of

1 whether the plaintiffs can assert claims against those
2 debtors was raised by Your Honor.

3 And it turned -- this is recent in that we learned
4 together I think that there are about 200 or more people who
5 the company had designated as being of the Chapter 11
6 debtors and who were terminated, and so there is a
7 category --

8 THE COURT: It's hardly recent, because when I
9 initially granted the motion to dismiss and granted leave to
10 amend with respect to the claims against MF Global Holdings
11 Ltd., Chapter 11 debtors, I obviously believe made clear
12 then that the liquidating fiduciary principal would bar the
13 claims of those who worked for MFGI.

14 I was reversed with respect to that, the case is
15 back, so I mean there's a history.

16 I mean after I issued that initial ruling you
17 amended and I found that insufficient, the district court
18 disagreed, the case is back.

19 So it's hardly a new issue.

20 MR. RAISNER: That there are 200 people there,
21 Your Honor, with something that was not known to us.

22 THE COURT: Okay.

23 MR. RAISNER: And in fact Your Honor mentioned how
24 it had been -- there had been a representation by trust
25 counsel in connection with our class action in the MFGI

1 matter for vacation where there had been spreadsheets and
2 the first time we got our arms around how many people were
3 there. That's what I mean.

4 THE COURT: Okay.

5 MR. RAISNER: And there had been no evidence to
6 assert how many people there were.

7 And you mentioned the oracle spreadsheets, what
8 they call the 1027 spreadsheets, because you were looking to
9 see whether there was a cross over, and that to us was
10 something that was new that there was a 1027 spreadsheet
11 that had oracle information that was of some perhaps
12 relevance here.

13 So with those two things in mind Your Honor did
14 highlight or flag that issue on February 18th and caused us
15 to think whether maybe there is some deficiency in the
16 cohort of current plaintiffs if it's in fact true that there
17 is this 200 group that is somehow different we ought to
18 prepare the named plaintiff cohort to match what the larger
19 cohort is, and particularly the current defendants, by
20 having a plaintiff who is incontrovertibly part of the
21 chapter debtors.

22 THE COURT: So you went out and scurried and found
23 some putative plaintiffs --

24 MR. RAISNER: Well we looked into our clients --
25 our list of clients at who would most likely fit that

1 profile, and we do have -- we have two clients who
2 clearly --

3 THE COURT: So you initially came up with two who
4 would sign releases and now you've come up with a third,
5 which you've raised for the first time in the reply brief,
6 that who has not -- allegedly has not signed a release.

7 MR. RAISNER: Correct. The -- we sought to remedy
8 -- cure what was a deficiency by having two people who would
9 be class representatives for the Chapter 11 debtors and then
10 we made that known to the defendants and they raised the
11 issue of the release.

12 Well releases to us are a factor, they play into a
13 defense, but is not on its face disqualifying of a class
14 representative and certainly to have someone just be amended
15 to a complaint, which is the first of three steps.

16 First you get onto the complaint and survive a
17 motion to dismiss.

18 Second --

19 THE COURT: You know, if we hadn't been rapidly
20 moving toward a class certification hearing, which is
21 scheduled for August, your argument might have greater
22 traction with me about the standard for amending a complaint
23 and adding new plaintiffs, but -- well you've withdrawn the
24 request to amend as to one of the first two, so I guess
25 what, Corrigan (ph) -- you're continuing to press for

1 Corrigan, and with Kish (ph) -- is that the name of the --

2 MR. RAISNER: Yes. And they're here this morning,
3 Your Honor.

4 THE COURT: You know, if what you had been -- if
5 what you were seeking to do was add new plaintiffs at the
6 time, you know, shortly after I had ruled the first or
7 second time I think I would probably view this motion
8 differently than I do today.

9 The cases that you rely on, what the standard is
10 and whether you should grant a motion to amend a complaint
11 where the argument of futility is based on affirmative
12 defense rather than something that appears from the face of
13 the complaint, that would have a great attraction to me if
14 we weren't rapidly moving toward a class certification
15 hearing, which we are.

16 And I'm not saying that Corrigan couldn't assert a
17 claim against the Chapter 11 debtors, and it may be if I
18 deny the motion with respect to Corrigan that the result
19 will be I'll see another adversary proceeding filed on
20 behalf of Corrigan either in its individual capacity or as a
21 putative class action, although I'll have some real
22 questions about whether -- and I know you argue for a
23 subclass of those who've signed with the 24s, something like
24 that have signed releases?

25 MR. RAISNER: We don't know the exact number --

1 THE COURT: You don't know.

2 MR. RAISNER: -- but you're right, it would be a
3 subclass.

4 THE COURT: Because it does seem to me that the
5 defendants are right that that would necessarily raise
6 individual issues.

7 Let me ask you this. What are the consequences
8 for a settling putative plaintiff if the Court determines
9 that the release given as part of the settlement is invalid?
10 And I don't know if you -- do you understand my question?

11 I mean they entered into a settlement agreement,
12 they got some money. Your argument is the consideration
13 they received was what they were entitled to, the vacation
14 pay. One of them also got something I think for stock.

15 But if the settlement -- if the release is set
16 aside do they have to pay back the money they received? And
17 then you can litigate what they're entitlement is, but it
18 did strike me that if you were ultimately successful in
19 setting aside -- you don't just -- I can't extract from a
20 settlement agreement one paragraph if it's a consensual
21 contract, a provision -- a material provision of a contract
22 was the release. It's pursuant to that settlement agreement
23 that Corrigan received a payment. If Corrigan now wishes to
24 set aside the settlement I think Corrigan has got to pay the
25 money back, and there could be -- it would seem to me that

1 they're likely to be very individual issues for everyone of
2 a subclass of people who signed a release. It seems
3 particularly unsuitable for class treatment.

4 MR. RAISNER: Your Honor, in Finnen versus LF
5 Rothschild (ph) this was the exact question, and we may be
6 losing sight of the fact that while the question is very
7 interesting as to what the effect of the release is, this is
8 like doing a manicure on a finger --

9 THE COURT: Hardly.

10 MR. RAISNER: -- with regard to the class
11 certification --

12 THE COURT: Hardly.

13 MR. RAISNER: -- as the bus going forward --

14 THE COURT: Well --

15 MR. RAISNER: -- and we wanted -- we do want to go
16 to class certification, because that's the main thing, and
17 then see if there are asserted defenses.

18 If at the end of the day there is a settlement, we
19 wish, then we'd be happy to sort this issue out, but this
20 should not be bogging us down.

21 THE COURT: I don't work that way. I don't decide
22 matters that way. You know, let's see what happens, let me
23 grant the motion, let's see whether it settles, we'll see
24 what happens, we'll get to a class certification, and it
25 seems to me that I don't want to find myself in August with

1 a case that is -- I refuse to certify -- let's assume that
2 Kish is added -- I'm not there yet I want to make clear --
3 but let's assume that Kish winds up added, doesn't have the
4 issue about the release, okay? You have -- I haven't seen
5 -- I mean I've seen what you've said in the reply about
6 Kish, and I don't know what the other side's view of it is,
7 but you seem to make a facially plausible argument that Kish
8 may have done work for MFGI, but not exclusively did work
9 for the Chapter 11 debtors, was an MF Global Holdings USA
10 employee who worked across the enterprise, and let's assume
11 plausibly states a WARN Act claim for Kish, there's no
12 individual issue about whether -- you know, about a release,
13 I don't know the other side.

14 You know, a reply brief is not the time to raise
15 new arguments, but -- so if I say I'm not even going
16 consider Kish today, and so the result is you go back to
17 your office and you file another motion to amend, add Kish
18 as a plaintiff, and maybe you've found some others like Kish
19 who didn't sign a release. So, I don't want to be spinning
20 wheels, I want this case to move forward.

21 So let's assume that -- you know, I mean there's a
22 timeliness issue I suppose I would have to decide. Is it
23 appropriate at this stage of the case to add Kish as a
24 plaintiff?

25 And, you know, on that score I will say I looked

1 back this morning and read over one of my MF Global opinions
2 at 512 B.R. 757 where, Mr. Raisner, you -- it was the
3 vacation pay opinion, and I have a discussion about it with
4 a class claim as for vacation pay, not an adversary
5 proceeding, but I discuss Judge Bernstein's decisions in
6 Musicland and Kanot (ph), and strong support for the view
7 that if the case went forward to class certification just as
8 to the four named plaintiffs today, and if the Court were to
9 include after the class certification hearing that the class
10 should not be certified -- I'm not making that decision --
11 but let's assume it were to turn out that the four existing
12 named plaintiffs worked solely for MFGI, and if I were to
13 include that the liquidating fiduciary principal applied and
14 therefore they would not have -- you know, they couldn't
15 properly represent a class of anybody else and class
16 certification was denied, I think that based on the
17 allegations in the complaint that people like Kish and
18 perhaps those who signed releases to consent, well, I can
19 still assert a claim on my own and file a new case.

20 So it's not the -- I want to be very practical
21 about how this case goes forward. I don't unnecessarily
22 want another case and start this whole process again. So,
23 I'm very mindful of that.

24 You know, in -- you successfully argued in Dewey
25 and LeBuff (ph) in Conn (ph) versus Dewey where the -- you

1 successfully argued that a WARN claim needs to be an
2 adversary proceeding because it's equitable relief rather
3 than a class proof of claim, and so the adversary proceeding
4 went forward and you won on that issue in Dewey.

5 So, okay, this hear would have to be I think an
6 adversary proceeding and there would be nothing -- I think
7 if class certification were denied or a class of people such
8 as Kish was not -- you know, wasn't certified that they
9 could go ahead, they still have time to assert the claim.

10 I'm sort of rambling on about this, but I'm -- you
11 know, this really goes to the other side, let's get to a
12 practical result. But when I come back to the Corrigan
13 issue, I believe that I don't have to view this as -- I mean
14 the cases that you argue for on a motion to amend where the
15 futility argument is based on affirmative defense, I don't
16 think those cases really involved adding a new plaintiff
17 shortly before a class certification hearing.

18 If this was a two-party dispute and you wanted to
19 amend, add another claim, and they say, well, we have an
20 affirmative defense, and I say, well okay, you know, I'm
21 going to allow the amendment and you'll either bring on a
22 summary judgment motion or -- on the affirmative defense or
23 the exception to that would be is if from the face of the
24 complaint the validity of the affirmative defense was
25 apparent I could then rule on that basis.

1 But I've sort of rambled on here, but I'm not real
2 -- you haven't done much to persuade me to allow
3 Mr. Corrigan -- is it Mr. or Ms.?

4 MR. RAISNER: Ms.

5 THE COURT: Ms. Corrigan.

6 MR. RAISNER: Ms. Corrigan, yeah.

7 THE COURT: To be added as a plaintiff in this
8 case. If she wants to litigate the issue of whether she can
9 set aside the release and bear the risks that may come with
10 that I'm not going to -- you know, nothing I'm doing now is
11 going to stop her from doing it, but it's a side show in
12 this case.

13 MR. RAISNER: And that's why we think it should be
14 treated that way. By certifying a subclass it puts it into
15 its proper place for a later date, if necessary, so judicial
16 economy is served, we don't have to file separate actions,
17 and nothing about class certification indicates a person
18 will be dropped or not or -- because as the court said in LF
19 Rothschild, the person may still be dropped but at least --
20 you know, they -- first let me just say, Your Honor, that in
21 terms of timeliness that was not mentioned in the objection
22 to the two plaintiffs with the releases. There is no claim
23 -- maybe they'll make it now -- that there's prejudice, that
24 this is unduly delayed, that this is improper in any means
25 -- by any means, it's -- I think it's proper to do it before

1 class certification rather than bringing it up afterwards.
2 So we were looking for judicial economy to do it now rather
3 than later.

4 We, you know, took a few months to get to today,
5 but we told the defendants of this on April 10th before we
6 even got discovery, the day that they first gave us 600
7 documents out of 10,000 was the day we told them about this.
8 So we told -- at the inception of this process we tried to
9 make this clear, and by resolving the Kish matter and by
10 having a subclass we go forward with the bus filled with the
11 microcosm of all the people, and if the defendants win this
12 case, Your Honor, all of those people are wiped out, all
13 claims are released effectively because they are part of the
14 class. So they have an advantage. Defendants actually
15 should be --

16 THE COURT: But they don't seem to see the same
17 advantage that you see for them.

18 MR. RAISNER: They practiced -- class action
19 lawyers in my experience see the virtue of having the bus
20 filled with everybody, because if they win everybody is
21 washed out and they have a full repose --

22 THE COURT: Well answer my question about what are
23 the consequences for settling putative plaintiff if the
24 Court determines that the release given as part of the
25 settlement is invalid? Do you have to -- does each of the

1 people who receive money, pursuant to a settlement, have to
2 pay the money back?

3 MR. RAISNER: You know what, we would suggest
4 that --

5 THE COURT: No, don't suggest, answer my question.

6 MR. RAISNER: -- that due process would have that
7 person tell us was this a knowing and voluntary release that
8 you gave as part of fact finding and due diligence? If this
9 person says it was knowing, it was voluntary, and I --

10 THE COURT: That sounds like an individual issue
11 for each of the people. That's the whole point.

12 MR. RAISNER: You can -- it doesn't predominate.
13 The issue for class certification is what are the
14 predominate issues? Those are whether there is a mass
15 layoff, whether there was any defenses to the mass layoff,
16 this covers everybody. And again, if they are victorious on
17 that you don't get to this individualized issue.

18 So that's why class actions anticipate
19 predominance, that's Rule 23(b), and after that as in
20 Rothschild if there's a class member who had a release or
21 had an arbitration agreement or voluntary resign, in a class
22 of a thousand, Your Honor, there's always going to be a few
23 people who, oh, I resign that day too. So there's always
24 that little -- well we fix that up, those are the little
25 details at the rough edges.

1 The main thing going forward is whether there's a
2 common predominate issue --

3 THE COURT: What --

4 MR. RAISNER: -- and then we can work it out, if
5 necessary.

6 THE COURT: What information do you have about the
7 number of people who executed releases?

8 MR. RAISNER: We heard in court Ms. Hager say that
9 there were 26 or so settlements among the Chapter 11 debtor
10 employees. We asked Mr. Gums (ph), who was the FTI person
11 in charge on Friday, is that true? He said he thought there
12 were a lot more people who have settlements.

13 So we don't -- I made a request on defendants
14 yesterday for more complete information, because we think
15 our discovery requests and our 30(b)(6) topics included
16 information about the disposition, allowance or disallowance
17 of claims -- of employee claims, and payment of wages. We
18 haven't gotten that in our discovery yet, and so we would
19 like to be able to get our arms around that number.

20 But whatever it is it's better to have them in the
21 bus, have a person who's looking out for them, and then at
22 the end of the day whether they get money or not is just
23 part and parcel of class actions.

24 THE COURT: I might be more sympathetic to your
25 argument if that's what you pled immediately after I gave

1 you leave to amend the complaint or after the district court
2 reversed and sent the matter back here. That's not what you
3 did.

4 We are rapidly moving towards a class
5 certification hearing, briefing schedule is set, discovery
6 -- fact discovery is over, right?

7 MR. RAISNER: Well we're still taking some
8 depositions, but I don't think this will extend.

9 THE COURT: That's not pursuant to the order I
10 entered is it?

11 MR. RAISNER: Well there were scheduling delays
12 and the parties are trying to do it in the orderly way that
13 wraps it up, and we don't think this would extend that.

14 THE COURT: That isn't necessarily consistent with
15 how I direct the cases proceed. So, you know, when are the
16 briefs -- under the current schedule when are the briefs due
17 on class certification?

18 MR. RAISNER: I think the 13th or 14th.

19 MS. HAGER: The 13th, Your Honor.

20 THE COURT: 13th of July.

21 MR. BEHA: July 13th.

22 MS. HAGER: Yes.

23 THE COURT: All right. Anything else you want to
24 argue now?

25 MR. RAISNER: No, Your Honor. Thank you.

1 THE COURT: Okay.

2 MR. BEHA: Excuse me, Your Honor, James Beha from
3 Morrison & Foerster. And Ms. Hager is going to argue the
4 motion, I just wanted to clarify on the schedule, we have
5 two depositions tomorrow that the plaintiffs are taking that
6 we agreed to let them take after the end of the court-
7 ordered discovery period, and then on Monday we have a
8 30(b)(6) deposition with the SIPA Trust too for MFGI, which
9 we did to schedule with them. But that's all we have left
10 in discovery.

11 THE COURT: Let me make clear so no one can
12 misconstrue my comments. In every -- you know, particularly
13 over the summer, I mean in litigation there are always
14 scheduling issues, and I don't want to hear about, you know,
15 when the parties work out and agree that, okay, we'll make
16 this witnesses available on such and such days, yeah, it's
17 after the court-ordered discovery cutoff, I'm not raising a
18 question about that. So, frankly I appreciate when counsel
19 voluntarily work those things out. The briefing schedule is
20 not altered. So by my comment that may change however.

21 I mean, you know, if suddenly Mr. Raisner is
22 asking for discovery about everybody who may have signed the
23 settlement agreement, and you know, that's not the same
24 thing as the odds and ends of the deposition that couldn't
25 be taken before discovery cutoff.

1 But go ahead, Ms. Hager.

2 MS. HAGER: That's exactly the point, Your Honor,
3 the briefing schedule has not been changed.

4 THE COURT: All right.

5 MS. HAGER: But going to the merits of the motion
6 that's before Your Honor today.

7 Your Honor, I'm a bit befuddled, to be honest,
8 because this action has been pending for over three and a
9 half years --

10 THE COURT: Well it was here and it went to -- you
11 know, there was an appeal, it went to the district court and
12 the district court sent it back. So the fact that it's been
13 pending for a long time is not the answer to the issues.

14 MS. HAGER: Understood, but when hearing about
15 recent activities and just learned about these things it is
16 a bit bewildering to me.

17 The big --

18 THE COURT: But, Ms. Hager --

19 MS. HAGER: Uh-huh.

20 THE COURT: -- I read Judge Bernstein's Kanot and
21 Musicland decisions say if the class certification hearing
22 went forward as scheduled and I refuse to certify a class or
23 classes based on the four named plaintiffs, that Kish or
24 anybody else believed they had a claim could go ahead and
25 assert it, could file an action even as a putative class

1 action. Kish you haven't had a chance to respond, it was
2 raised for the first time in the reply, but at least a
3 plausible argument was raised in the reply that Kish would
4 have a WARN Act claim and that a statute of limitations
5 would have been tolled -- I don't know, no one has raised
6 the statute of limitations -- but it would have been tolled
7 in any event, and it would still be timely even after I --
8 if I were to deny class certification. So we'd be back, you
9 know, where we are, although behind where we are now, okay,
10 and we'd all be starting over potentially, okay. I don't
11 want to do that if it can be avoided, okay?

12 MS. HAGER: Understood, Your Honor.

13 THE COURT: So, I don't -- you're not getting a
14 lot of traction with me about the timeliness issue.

15 MS. HAGER: Well a couple of things.

16 Number one, for the reasons set forth in our reply
17 with regard to Ms. Corrigan, who as I understand the only
18 party left who has a release, we think those, and
19 particularly with regard to statements made by Mr. Raisner,
20 I think there's very fact specific individualized --

21 THE COURT: Can you tell me how many people have
22 signed settlement agreements with releases?

23 MS. HAGER: My understanding, Your Honor, is
24 approximately 20 have signed them, that have signed
25 settlement agreements that typically include releases.

1 I also want to correct the record with regard to
2 the statements made at the February 19th hearing about the
3 243 employees. To be clear there were 243 or 242 employees
4 that were employed by the Chapter 11 estates as of the
5 initial -- 243, I apologize -- employees of the Chapter 11
6 debtors as of the initial petition date of October 31st,
7 2011. When you take into account employees who remained
8 employed by the Chapter 11s, were never severed or
9 voluntarily left afterwards and there's some -- or remained
10 employed in some capacity in some instances, I think it's
11 with the SIPA trustee, that number drops down to 163, and in
12 fact there are still a handful of people that are still
13 employed by the Chapter 11 estates.

14 THE COURT: What you're telling me is 163
15 employees of the Chapter 11 debtors terminated their
16 employment with the Chapter 11 debtors and potentially have
17 WARN Act claims that they could assert.

18 MS. HAGER: Potentially, subject to various
19 defenses, yes.

20 THE COURT: I understand.

21 MS. HAGER: Yes, Your Honor.

22 THE COURT: So in your view that's the universe of
23 employees of the Chapter 11 debtors, subject to whatever
24 defenses could be asserted, would have WARN Act claims.
25 These are -- the 163 haven't signed releases, they were

1 terminated, they didn't -- arguably didn't receive WARN
2 notices.

3 MS. HAGER: I think the evidence will bear to show
4 different facts in that, Your Honor, but if you're talking
5 sort of max number and --

6 THE COURT: Yes.

7 MS. HAGER: -- also of that 163 there are -- my
8 understanding is that the 20 releases includes that 163
9 number.

10 THE COURT: Okay. The 20 releases are in the 163.

11 MS. HAGER: Correct, Your Honor.

12 THE COURT: So 140 or so, including Kish, were
13 Chapter 11 debtor employees who didn't sign releases, and
14 subject to what defenses may be asserted --

15 MS. HAGER: I'm going to caveat that with
16 Mr. Kish, because Your Honor the first time we heard his
17 name was three days ago.

18 THE COURT: In the reply. Not particularly happy
19 about that.

20 MS. HAGER: Actually it's not, because we didn't
21 have a chance to respond to the reply.

22 THE COURT: I know. I know.

23 MS. HAGER: But yes. But potentially he's within
24 that 140 number.

25 THE COURT: Okay.

1 MS. HAGER: Your Honor, the real issue that we're
2 focused on here is the discovery that's been ongoing. It's
3 been ongoing for over three and a half months.

4 When we first -- when we replaced Pepper Hamilton
5 firm in January of this year we've had numerous discussions
6 with counsel for the plaintiffs. And during those
7 discussions they've said that the five named plaintiffs, we
8 represent a whole host of other people, that's not just the
9 whole class, and we said, tell us who they are, let's get
10 down and discuss these type of things. Because the real
11 hold up here I think is the number of people on the bus in
12 Mr. Raisner's words.

13 THE COURT: Look --

14 MS. HAGER: And the more people on the bus --

15 THE COURT: -- would you be happier if Mr. Raisner
16 goes back to his office and his computer spits out a new
17 complaint -- a new class action complaint on behalf of Kish
18 and a putative class, and you know, and he probably would
19 allege a subclass of those who signed releases as well --
20 I've got a problem about that, but you know, not about his
21 asserting it in a complaint, but -- okay.

22 MS. HAGER: Your Honor, but I think --

23 THE COURT: You think you're going to be better
24 off if, you know --

25 MS. HAGER: I think once we get the issue that is

1 subject to discovery that has had 9 different depositions,
2 that has produced 10,000 issues of papers, that is what was
3 highlighted by this Court at the February 19th hearing about
4 would the MFGI employees and the flow of funds and where
5 they belong, once that issue is sorted out I think that
6 it'll make monumental movement forward in this case one way
7 or the other.

8 The parties -- we have expended significant time
9 and resources doing the discovery and making sure we hit the
10 dates in order that this -- that Your Honor already set. I
11 think if we were to add an amended complaint right now it
12 would slow down that process. If they were to add another
13 person there's going to be different issues that are raised
14 with regard to that.

15 THE COURT: Look, do you agree that the complaint
16 at least alleges that the class includes the named
17 plaintiffs and anyone who worked for the MF Global
18 businesses, whether it was the SIPC -- the MFGI or the
19 unregulated businesses, that's the essence of what's alleged
20 now.

21 MS. HAGER: It's the essence of what's been
22 alleged from day one.

23 THE COURT: Yes, it is, okay? And Mr. Raisner has
24 argued that the joint employer theory is a basis for
25 asserting liability against Holdings even if the people

1 worked at MFGI. I made clear from day one that I have a
2 problem with that, okay? I written an opinion -- two
3 opinions. All right?

4 So let's assume I adhere to that view and we get
5 to class certification. I'm not going to bind either side
6 to it. Have you -- I'm a little hesitant to ask -- but
7 you've gone through most of the discovery at this point.
8 Are the named plaintiffs -- is it still the defendants'
9 position that the named -- the current named plaintiffs
10 solely worked for MFGI?

11 MS. HAGER: Yes, Your Honor, and it's also our
12 position that the documentary evidence and the flow of
13 funds, as requested by Your Honor on February 19th, will
14 prove that.

15 THE COURT: Okay. So let's assume that we would
16 go through an evidentiary hearing, unless I conclude that
17 these were solely employee -- these people solely worked for
18 MFGI, the liquidating fiduciary principal applies, they
19 therefore have no WARN Act claim. What happens then,
20 Ms. Hager?

21 MS. HAGER: Then I would hope we would sit down as
22 to the 163 --

23 THE COURT: Well why don't you sit down now as to
24 the 163?

25 MS. HAGER: Because they will not sit down and

1 speak to us about the 163, it has to be a thousand plus
2 number, that's why, Your Honor, and that's why the bigger
3 the better for this class is what they want.

4 We've offered -- we have offered to discuss things
5 with them with regard to at least trying to work out with
6 regard to our employees, and they will not discuss anything
7 without having a subclass for MFGI employees.

8 So that's why I think it's paramount that the
9 issue that's been the subject of discovery for three and a
10 half months, will substantial efforts and energy and costs
11 of the liquidating Chapter 11 estates has been expended on
12 be decided. And unless and until we have a firm
13 understanding of whether we're talking about a thousand plus
14 or less than 200 of potential with recognition that we still
15 have all of the affirmative defenses and WARN, you know,
16 issues that need to be resolved, that this is going to be in
17 a stalemate. And as fiduciaries of this court, Your Honor,
18 the plan administrator just cannot authorize a penny to be
19 paid to MFGI employees. We just can't. And unless and
20 until we have some recognition of that we're sort of in a
21 stalemate, and that's why putting aside the fact of the --
22 you know, the raising of new issues and the procedural
23 deficiencies and also the -- of the reply and raising
24 Mr. Kish, who as I'm sure Your Honor I know you read the
25 papers, he retained the Outten firm back in December of

1 2011.

2 THE COURT: But, you know, class actions --

3 MS. HAGER: He was also --

4 THE COURT: Wait, stop.

5 MS. HAGER: Uh-huh.

6 THE COURT: So it's not uncommon. A class action
7 complaint gets filed with a limited number of named
8 plaintiffs and the plaintiffs' lawyers may have, you know,
9 in their back pocket a larger group of putative class
10 members who don't have to be named plaintiffs. The class
11 gets -- if the class gets certified it includes all of them,
12 fine, you know they're --

13 MS. HAGER: I think this case --

14 THE COURT: -- they don't need to be named.

15 MS. HAGER: -- is a little bit different though,
16 Your Honor, because there have been prior decisions and
17 prior requests by Your Honor, also his claim against MFGI
18 that was filed on behalf of his counsel was expunged back in
19 August of 2013.

20 So, I just think that there's a -- and we've also
21 been saying --

22 THE COURT: Against MFGI?

23 MS. HAGER: Against -- Mr. Kish's, yes.

24 THE COURT: I don't remember it. What was his
25 claim and what did I expunge? And I'm not faulting you.

1 You know, they raise it for the first time in their reply
2 and -- which is inappropriate, but --

3 MS. HAGER: On or about -- in June of 2012 Outten
4 & Golden filed a claim against MFGI against -- for Mr. Kish.
5 The claim was expunged under the 43rd omnibus objection, and
6 the claim as filed based upon -- was for 41,449.55.

7 THE COURT: For what?

8 MS. HAGER: My understanding -- give me one
9 second, because with regard to MFGI I just have the one
10 pager.

11 THE COURT: Uh-huh.

12 MS. HAGER: 32,363.01 was for WARN, 9,086.54 was
13 for vacation. So --

14 THE COURT: And did I write an opinion or an
15 order? What was --

16 MS. HAGER: It was the --

17 THE COURT: What was the basis for it?

18 MS. HAGER: It was non-MFGI employee basis, and it
19 was the 43rd omnibus objection filed by the SIPA Trustee.

20 THE COURT: So doesn't that support Mr. Raisner's
21 argument that Kish has a WARN Act claim against the
22 Chapter 11 debtors? Obviously the SIPA Trustee prevailed in
23 getting Kish's WARN Act claim expunged on the grounds that
24 he wasn't an MFGI employee, okay? And now they come forward
25 and say he was a Holdings USA employee and worked for non-

1 debtors. So doesn't that support the argument that he's a
2 proper -- he would be a proper named plaintiff against
3 Holdings on a WARN claim?

4 MS. HAGER: Potentially, Your Honor, but it also
5 goes to the fact then why did he wait 'til Monday to raise
6 it? And we've been asking for a while as well.

7 THE COURT: Okay.

8 MS. HAGER: But, Your Honor, I think what -- the
9 issues that are before the Court -- and I recognize that
10 down the road there may be, depending upon where Your Honor
11 decides --

12 THE COURT: So look, if I get -- if we get to
13 August we have a hearing and I conclude -- you know, if I
14 agree with the defendants that those people who work for
15 MFGI don't have a WARN claim, okay, and that the joint
16 employer theory doesn't apply, liquid -- I've already held
17 liquidating fiduciary principal applied as to MFGI
18 employees, let's assume I adhere to that view and I refused
19 to certify a class with the named plaintiffs as the class
20 representatives. I assume you would either bring on a
21 summary judgment motion to dismiss -- you know, seeking to
22 have the complaint -- because denying class certification
23 doesn't get rid of their individual claims -- but if I found
24 that they weren't adequate class representatives because
25 they weren't representatives of a class with claims against

1 Holdings. We're going to be spinning our wheels, okay?
2 Because then Mr. Raisner is going to come in and say, but
3 I've told you all along I got Mr. Kish, I got another 163
4 employees who were unquestionably employees of the
5 Chapter 11 debtors, and maybe 20 of them had signed
6 releases, but that still leaves 143 who didn't, and even as
7 to the ones who signed releases we think we can assert a
8 claim on their behalf because we think the release is
9 invalid.

10 So, you know, come September I get another -- I
11 either get a motion to amend or -- and that's probably a
12 motion to amend, because if I rule against class
13 certification it doesn't dismiss the case, the case is still
14 there. All I've done is wasted a couple of months.

15 MS. HAGER: But, Your Honor, I think you get to
16 the threshold issue in this case as to whether MFGI
17 employees can assert a claim against the Chapter 11 debtors,
18 and that'll be a significant decision in this case,
19 whichever way it goes.

20 And if you're going to amend the complaint in
21 August why do it now? Because you're going to be looking at
22 a very different complaint.

23 THE COURT: Because I don't want to waste a couple
24 of more months, okay?

25 So let's assume you prevail with class

1 certification and I refuse to certify a class on behalf of
2 the current named plaintiffs.

3 MS. HAGER: Uh-huh.

4 THE COURT: And I make -- if I permit the
5 amendment now I may conclude, okay, I will certify a class
6 as to employees of the Chapter 11 debtors.

7 MS. HAGER: But, Your Honor, then we're not going
8 to have a decision in August.

9 THE COURT: Why not?

10 MS. HAGER: Because we're going to have to open up
11 discovery, particularly think who the released party and
12 now, they're going to want discovery on all the releases and
13 all of that. They're also going to want and we're going
14 want discovery with regard to the additional plaintiff.
15 There's additional issues on numerosity and other things.

16 That adding them now is not going to keep -- there
17 -- I think also that part of the reason in seeking the
18 relief now is to sort of delay where we are, because
19 let's --

20 THE COURT: We're not delaying. I'm making it
21 clear. We're not delaying, we're moving forward? Okay?

22 MS. HAGER: That's -- and that's --

23 THE COURT: The train is not stopping.

24 MS. HAGER: And that's fine and we're happy to do
25 that, but that I think that what you're going to hear from

1 the plaintiffs is if they were to succeed today they're
2 going want a whole host of other different discovery and
3 issues on it, and I think with respect particularly with the
4 schedule that we've got, upcoming holidays and things like
5 that, which I recognize holidays don't matter to us when
6 we're on discovery schedules, but I think that Your Honor I
7 don't see this going to an evidentiary hearing in August.

8 THE COURT: We're going to an evidentiary hearing
9 in August.

10 MS. HAGER: If --

11 THE COURT: I've made clear we're going to an
12 evidentiary hearing in August. That is not changing.

13 MS. HAGER: That's fine, Your Honor, but I think
14 that we've been working for three and a half months with
15 regard to the five plaintiffs that have been here since they
16 last amended the complaint, and to raise a new -- new
17 potential plaintiffs now, some of which who have hair
18 because of their releases, et cetera, and there's case law
19 even cited in their own briefing, the reply brief that, you
20 know, an amendment is considered futile if the pleading
21 fails to state a claim or be subject to a motion to dismiss
22 on some other basis.

23 THE COURT: Well affirmative -- you know, the fact
24 that you may have an affirmative defense of release doesn't
25 make the -- a complaint futile. All right?

1 MS. HAGER: But I think where we are right now you
2 have to look at -- and there's case law that supports -- the
3 Pier (ph) versus JC Penny case says, where you are now, when
4 the purpose of an amendment is to achieve class
5 certification -- because you heard them, they said they're
6 getting a little bit nervous that --

7 THE COURT: Oh, I'm mindful of that.

8 MS. HAGER: -- and that the --

9 THE COURT: I'm not inclined --

10 MS. HAGER: -- the court chose to determine the
11 likelihood -- you know, the proposed class be certified.

12 And I think with the released parties you've got
13 real issues and real problems, number one, for the reasons
14 that are on the record already.

15 With regard to the additional Mr. Kisk (sic) --

16 THE COURT: Kish.

17 MS. HAGER: Kish?

18 THE COURT: I think it's Kish isn't it? Kish?
19 How do you pronounce it? Kish?

20 MR. FISHER: Kish like fish.

21 THE COURT: Okay.

22 MS. HAGER: Okay. Apologies.

23 You know, Your Honor, you can't as a matter of
24 procedure, as a matter of the bankruptcy rules, as a matter
25 of your case management order, as a matter of fairness and

1 level playing ground, you can't seek to in a reply amend --
2 you know, amend and add new relief.

3 THE COURT: Okay.

4 MS. HAGER: And also --

5 THE COURT: So I could grant -- I could shorten
6 Mr. Raisner's time to make a motion to amend to add Kish as
7 a plaintiff. And what -- if I did that and Kish was added
8 what discovery would you wish to take? What additional
9 discovery would you wish to take, Ms. Hager?

10 MS. HAGER: We would want to depose him.

11 THE COURT: Okay. That's one. Anything else? I
12 would -- okay. Anything else?

13 MS. HAGER: I would want to -- you know, obviously
14 get any documents from him -- any relevant documents from
15 him, depose him. I would not be willing -- you know, I
16 think the other thing too is that then we've already had our
17 30(b) witnesses sit for collectively --

18 THE COURT: No, I'm just asking what discovery
19 would -- if Mr. Kish was added as a plaintiff what
20 additional discovery would you wish to take?

21 MS. HAGER: Can I just confer with my colleague
22 for a minute?

23 THE COURT: Yes, go ahead. Yeah.

24 (Pause)

25 MS. HAGER: Your Honor, we would want his

1 documents and his deposition as I stated.

2 THE COURT: Okay. All right. Let me ask -- I'll
3 give you a chance to argue some more, let me ask Mr. Raiser
4 some --

5 MS. HAGER: Certainly.

6 THE COURT: -- more questions, okay?

7 Mr. Raisner, let's assume that some time soon
8 Mr. Kish were added as a named plaintiff, what additional
9 discovery would you seek to take?

10 MR. RAISNER: None.

11 THE COURT: None.

12 MR. RAISNER: They have all the documents and we
13 don't need any for -- with respect to him.

14 THE COURT: So that we're clear, you will not seek
15 to take any additional discovery if the additional
16 plaintiffs are added, correct?

17 MR. RAISNER: Correct.

18 THE COURT: Okay. So doesn't that answer your
19 question? You know, you told me you want a deposition,
20 Ms. Hager, you have a couple of depositions you haven't
21 finished -- hasn't -- and I'm not faulting anybody for
22 that --

23 MS. HAGER: Uh-huh.

24 THE COURT: -- scheduling issue. So there's a
25 little bit of discovery that needs to be done. We're going

1 forward in August, I've made that clear, that's -- the train
2 is not stopping, we're moving forward.

3 Let me see, Mr. Raisner, if Ms. Hager wanted to
4 raise anything else, and then I'll let you reply.

5 MS. HAGER: Your Honor, do you mind if Mr. Beha
6 makes a statement?

7 THE COURT: Go ahead.

8 MR. BEHA: Your Honor, as Ms. Hager said, the key
9 issue here right now is this issue of MFGI employees and how
10 they're treated. There's an existential disagreement
11 between the parties about what this case is about --

12 THE COURT: I'm not sure it's existential but --

13 MR. BEHA: Well it is with respect to the case.

14 THE COURT: That issue is going to get resolved.

15 MR. BEHA: And that issue is going to get
16 resolved. Our interest is in getting that issue resolved.

17 While it may be possible to resolve with Mr. Kish
18 as well very quickly, the same thing could get done very,
19 very quickly in September.

20 So our interest is just in making sure that the
21 existing issue that we've been working very hard on for the
22 last three months gets resolved and in a timely fashion.

23 THE COURT: That issue is going to get resolved,
24 Mr. Beha. Let me make clear, that issue is going to be
25 resolved following the August evidentiary hearing.

1 I understand Ms. Hager has said -- I don't need
2 Mr. Raisner or his colleagues to respond to it -- the
3 defendants' position is that the named plaintiffs worked
4 exclusively -- did their work exclusively for MFGI, and you
5 will undoubtedly argue, based on the Court's prior decision,
6 that the liquidating fiduciary principal applies to them and
7 that they don't have a WARN Act claim. And so if that were
8 the Court's ruling, class certification as to those named
9 plaintiffs and a class of anyone who worked exclusively for
10 MFGI would be denied. Okay?

11 That issue is going to be teed up when I get the
12 briefs and we have any evidentiary hearing if there are
13 disputed issues of facts about it, and I'll get resolved.

14 And if, as Mr. Raisner indicated in the reply,
15 which is an inappropriate place to raise it, but assuming
16 that we go forward and I shorten his time to make a motion
17 that's procedurally proper to add Mr. Kish as a named
18 plaintiff, and if you think I have to have another hearing
19 to decide, obviously you'd have a chance to respond on
20 shortened time to that motion, we'll get the issue resolved.

21 And it may be that the result in August is that a
22 class of approximately 160 maybe with the 20, maybe without
23 the 20 would be certified, and then you would hopefully
24 resolve that issue. You know, you may have -- I'm not
25 saying you don't have defenses to it. Okay?

1 So, I don't see how -- you know, I'm sitting here
2 near the end of June, we've got an evidentiary hearing near
3 the end of August, I don't think it's going to be materially
4 changed if -- I'm going put aside the issue about the people
5 with the releases, because I'm not -- I have -- as I've said
6 before, I have more problem about adding them, because it
7 seems to me those are individual issues, and this amendment
8 is clearly being sought for purposes of class certification,
9 and (indiscernible) Mr. Raisner has been honest about that.
10 He acknowledged right at the start that they've sort of
11 rethought their position on class certification in light of
12 issues that the Court has raised before. So it's clearly on
13 class -- you know, it's being driven by the class cert
14 issues.

15 MR. BEHA: Your Honor, there's no -- we don't have
16 any evidence about Mr. Kish at this stage, and so, you know,
17 -- and it may be that there are not significant issues that
18 need to be raised with respect to him at the evidentiary
19 hearing, but we just don't know that.

20 THE COURT: I understand. I know, and you want to
21 take his deposition and you can take his deposition.

22 I don't have a procedurally proper motion in front
23 of me to add Mr. Kish as a named plaintiff, so I'm not going
24 to grant that relief.

25 (Pause)

1 THE COURT: I will enter a written order about
2 this.

3 I'm not going to permit Corrigan to be added as a
4 named plaintiff. It's being done now for purposes of class
5 certification. I've read enough in the papers to know that
6 the issues about those individuals who signed releases
7 creates individual issues making it highly unlikely that I
8 would certify a subclass that included the 20 individuals
9 who signed releases.

10 I am going to direct defendants' counsel to
11 provide Mr. Raisner the information on those who signed
12 releases. If he wants to go ahead and file another case on
13 behalf of the people who signed releases I'm not going stop
14 him from doing it. I think he's going to have a hard time
15 getting me to certify a class of those individuals.

16 Let me ask you, Mr. Beha, I asked Mr. Raisner at
17 the start about this. What are the consequences for
18 settling putative plaintiff if the Court determines that the
19 release given as part of the settlement is invalid? You
20 raised the issue about --

21 MR. BEHA: My understanding, Your Honor, is that
22 it's exactly what you suggested.

23 THE COURT: No, I didn't -- yeah, I asked a
24 question.

25 MR. BEHA: Well --

1 THE COURT: I don't know.

2 MR. BEHA: Let me -- my understanding, and you
3 know, we would look into this further, but is that those
4 were certainly -- those releases were material terms of
5 those settlements, and I believe that if you invalidate that
6 you would have to invalidate the entire agreement, which
7 would also presumably mean return of any consideration that
8 was provided.

9 THE COURT: It might, it might not. It might mean
10 that I -- that we go forward in -- you know, if those
11 individuals want to press their vacation pay claims good
12 luck defending them. I mean --

13 MR. BEHA: That might be true. And so, I think
14 what it would in all likelihood mean is that just as those
15 individual settlements were arrived at individually, that
16 there would be a case by case basis.

17 THE COURT: All right. Here's what we're doing
18 for today, because I've got another hearing coming up.

19 I'm denying the motion to amend as presently
20 filed. I'm directing that Mr. Raisner and the defendants'
21 counsel confer.

22 I'm prepared to shorten your time, Mr. Raisner, to
23 make a motion to amend to add Mr. Kish as a plaintiff. Do
24 you have others who you're proposing to add who have not
25 signed releases?

1 MR. RAISNER: No, Your Honor.

2 THE COURT: No. By the defendants' counsel own
3 approximation there's about 140 people who didn't sign
4 releases who were employees of the Chapter 11 debtors who
5 have potential -- who are potentially members of a class of
6 WARN Act claims against the Chapter 11 debtors, and you
7 ought to confer and see whether you can resolve it. I mean
8 it may be that you'll simply consent to the amendment to add
9 Mr. Kish, and if you don't we'll go forward.

10 How much time do you want to file your motion,
11 Mr. Raisner?

12 MR. RAISNER: Tuesday.

13 THE COURT: Okay. How much time do you want to
14 respond, Ms. Hager? I'm shortening time. Do you want to
15 take the deposition --

16 MS. HAGER: Unfortunately that Friday is the 4th
17 of July holiday.

18 THE COURT: I understand, I'm not forcing anybody
19 to work over the holiday weekend.

20 MS. HAGER: I would -- if I can just pull up my
21 calendar, Your Honor?

22 THE COURT: Sure.

23 MS. HAGER: Everything is electronic these days.

24 (Pause)

25 MS. HAGER: I apologize, it's not --

1 THE COURT: That's okay.

2 MS. HAGER: So that would be Tuesday the --

3 UNIDENTIFIED SPEAKER: It's June 30th.

4 MS. HAGER: Okay. Your Honor, we would
5 essentially like a week, unfortunately -- about a -- you
6 know, until the following Wednesday to respond since we have
7 the holiday mixed in there.

8 THE COURT: Let me ask you this. Do you want to
9 take Mr. Kish's deposition before you respond?

10 MS. HAGER: Ideally, yes.

11 THE COURT: Okay.

12 MS. HAGER: But I also don't want to mess up the
13 briefing with the class certification, which is due on
14 July 13th.

15 THE COURT: Okay.

16 MS. HAGER: So to include him --

17 THE COURT: That briefing is going forward.

18 MS. HAGER: Understood. Would there be a
19 supplemental brief with regard to Mr. Kish?

20 THE COURT: If we have to have supplemental
21 briefs --

22 MS. HAGER: Okay.

23 THE COURT: -- with respect to Mr. Kish we will.
24 The hearing isn't moving, the hearing is going
25 forward.

1 MS. HAGER: Understood.

2 THE COURT: Mr. Raisner says he doesn't want
3 anymore discovery, you want Mr. Kish's documents and his
4 deposition, that's fair.

5 MS. HAGER: Yeah, we would want -- if they could
6 also within the time period of filing it produce the
7 documents and be -- make him available for a deposition
8 within the next week we could file --

9 THE COURT: Can you do that, Mr. Raisner?

10 MR. RAISNER: I'll ask if --

11 THE COURT: While he's there why don't you go ask
12 him.

13 (Pause)

14 MR. RAISNER: That works.

15 MS. HAGER: Okay. So a deposition next week, and
16 then we would file our -- to the extent we have an objection
17 to the motion filed by the 13th of July. And if --

18 THE COURT: If my computer ever comes to life.

19 MS. HAGER: My Blackberry just came up, Your
20 Honor.

21 THE COURT: Yeah, if my computer comes to life I
22 will figure out when we can have a hearing, if necessary.

23 MS. HAGER: Your Honor, while we're doing that if
24 I could ask a clarifying question as well?

25 THE COURT: Sure.

1 MS. HAGER: With regard to the list of the 20 --
2 approximately 20, and again, I have those numbers in
3 approximate, I don't have everything in front of me,
4 defendants did settle and signed releases. My understanding
5 is that certain of those certainly included where they had
6 counsel. Is that something that where there's counsel
7 represented do you want to also send it over to them or -- I
8 mean it raises a whole host of different issues as well.

9 THE COURT: Does it? Why?

10 MS. HAGER: Because they have counsel of record
11 that -- you know, that reviewed and executed settlement
12 agreements --

13 THE COURT: Listen. It seems to me that you ought
14 to provide the information -- do you have a confidentiality
15 order?

16 MS. HAGER: Yes, we do.

17 THE COURT: Okay. So the -- those settlement
18 agreements ought to be provided to Mr. Raisner, subject to
19 the confidentiality agreement. It would seem completely
20 appropriate that they'd be designated as confidential and
21 produce them subject to the protective order.

22 MS. HAGER: Okay.

23 THE COURT: Do you have a problem with that,
24 Ms. Hager?

25 MS. HAGER: No.

1 THE COURT: Okay. Mr. Raisner, do you have a
2 problem with that?

3 MR. RAISNER: No, Your Honor.

4 (Pause)

5 THE COURT: It's finally coming to life.

6 All right. So you're going to file the motion by
7 next Tuesday, correct, Mr. Raisner?

8 MR. RAISNER: Yes, Your Honor. We'll try.

9 THE COURT: One additional point, you're not going
10 to try and slip in some more.

11 MS. HAGER: That was my next question.

12 MR. RAISNER: Correct, Your Honor.

13 THE COURT: All right.

14 MR. RAISNER: But if I slip and --

15 THE COURT: I'm using -- I said it with a smile.

16 MR. RAISNER: Okay.

17 MS. HAGER: And, Your Honor, also I assume there
18 won't be any other changes with regard to the plaintiffs who
19 have already taken discovery of or et cetera?

20 THE COURT: Is that correct, Mr. Raisner?

21 MR. RAISNER: Sorry?

22 MS. HAGER: The only changes would be to add
23 additional plaintiffs, you won't change any of the
24 allegations?

25 THE COURT: Additional plaintiff, singular.

1 MS. HAGER: The additional plaintiff, you will not
2 change any allegations?

3 MR. RAISNER: I expect we will just be extracting
4 this motion in the relevant parts that now exist and
5 reserving it to you.

6 MS. HAGER: Okay. I --

7 MR. RAISNER: And nothing more.

8 MS. HAGER: Okay. No, that's fine, I just want to
9 make sure.

10 MR. RAISNER: That's the present plan.

11 MS. HAGER: Because we've already deposed all the
12 five plaintiffs and we don't want to have to go through that
13 again if they make changes.

14 THE COURT: Okay. So next Tuesday is June 30th,
15 and you're going to make Mr. Kish available for deposition
16 by what date?

17 MR. RAISNER: We thought we were talking about
18 next week, so I guess it was --

19 THE COURT: Okay.

20 MR. RAISNER: -- between then 'til -- I don't 'til
21 the 4th?

22 THE COURT: Well by the 2nd.

23 MR. RAISNER: 2nd, yes.

24 THE COURT: I don't want anybody working --

25 MS. HAGER: That Friday is the 2nd?

1 THE COURT: No, Thursday. I think Friday --

2 MS. HAGER: Friday is a legal holiday.

3 THE COURT: Friday is a legal holiday, that's when
4 the 4th of July gets -- it's the 3rd --

5 MS. HAGER: Right.

6 THE COURT: -- if that's when we're reserving the
7 4th of July.

8 MR. RAISNER: So any time that week. Monday
9 through Thursday.

10 THE COURT: Okay. And you wanted 'til what date
11 to file your opposition, Ms. Hager?

12 MS. HAGER: I was looking for Monday the 13th.

13 (Pause)

14 THE COURT: Okay. Mr. Raisner -- Ms. Hager, file
15 your opposition by 5 o'clock on Monday, July 13th.
16 Mr. Raisner, file any reply by 5 o'clock on the 15th. And
17 we're going to have a hearing on Thursday, July 16 at
18 2 o'clock. I've got ResCap in the morning and we'll do it
19 at 2 o'clock. Okay?

20 MS. HAGER: Thank you, Your Honor. And --

21 THE COURT: Can I make a suggestion?

22 MS. HAGER: Certainly.

23 THE COURT: We'll go forward with the hearing if
24 we need to go forward with a hearing, but let's not
25 unnecessarily -- after you take Mr. Kish's deposition you

1 may conclude that reserving all of your defenses you'll
2 consent to the amendment limited to adding Mr. Kish as a
3 plaintiff with a paragraph added that describes, you know,
4 his facts and circumstances.

5 We'll go -- I'm not trying to tell you not to go
6 forward with an opposition and a hearing, but you may
7 conclude that's not class certification, okay, class
8 certification will go forward when we have a class cert
9 hearing. So all of your defenses would be reserved, you'll
10 just simply conclude that you will not oppose Mr. Kish being
11 added as a named plaintiff.

12 With respect to Corrigan I'm denying the motion to
13 add Corrigan as a named plaintiff without prejudice.

14 When we get through the class certification
15 hearing we'll see where we are. It doesn't preclude you, if
16 you think you want to file a separate action on behalf of
17 those who signed releases. I don't want to get bogged down
18 with individual issues in this case. This case is moving,
19 okay?

20 MS. HAGER: Understood, Your Honor, and we may
21 very well decide that there's no need for a hearing or no
22 need to do objections, we just don't have the time and the
23 information in front of us.

24 THE COURT: Absolutely, I fully understand that.
25 Okay?

1 MS. HAGER: Certainly. Thank you, Your Honor.

2 MR. RAISNER: Is there a deadline for the
3 production of the documents?

4 THE COURT: You told me --

5 MS. HAGER: I presume we can get it by the
6 settlement agreements --

7 MR. RAISNER: When do we have to produce the
8 documents to Ms. Hager?

9 THE COURT: When can you produce them?

10 MR. RAISNER: I assume very shortly, but I just --

11 THE COURT: Before the deposition you'll produce
12 the documents.

13 MR. RAISNER: Well --

14 THE COURT: It's not going to be a lot of
15 documents I assume.

16 MR. RAISNER: Correct. Okay. That makes sense.

17 MS. HAGER: Ideally I think that would be great if
18 we could both shoot for producing our respected documents by
19 next Tuesday as well.

20 THE COURT: You know what, the two of you -- I
21 have no doubt the two of you will work this out.

22 MS. HAGER: Understood, Your Honor. We will work
23 it out.

24 MR. RAISNER: The documents that you directed
25 defendants to produce is the list, so that's just -- we'll

1 time that.

2 THE COURT: Look, the two of you are going to work
3 this discovery issue out. It's not a giant discovery issue.

4 MS. HAGER: Your Honor, I have full faith we'll be
5 able to work this issue out.

6 THE COURT: I do too.

7 MS. HAGER: I don't know about the rest of them,
8 but this one I have full faith.

9 THE COURT: I do too. Okay. I just -- no
10 surprises about attempting to reopen discovery, Mr. Raisner,
11 that -- part of my ruling was based on the fact that we're
12 moving forward on this schedule, you're not seeking anymore
13 discovery, you're making Mr. Kish available for deposition
14 within the parameters we've talked about. Okay?

15 MR. RAISNER: We were trying to accelerate by
16 taking away the issue of having a headless class without
17 these people, so that issue -- so it may arise, but agreed,
18 Your Honor, this was not our intent to extend this -- to try
19 to streamline it frankly.

20 THE COURT: Okay. So remind me, what I set aside
21 two days for an evidentiary hearing so we didn't -- no one
22 ever thought we really needed that?

23 MS. HAGER: It's actually three days, Your Honor.

24 THE COURT: Three days.

25 MS. HAGER: It's -- oh, I'm sorry, it's -- yeah,

1 August 24th through the 26th.

2 THE COURT: Okay.

3 MS. HAGER: Evidentiary hearing on class
4 certification.

5 THE COURT: Yeah. As of now do you have an idea
6 of how many witnesses you're going to want to call?

7 MS. HAGER: I -- without --

8 MR. BEHA: Three.

9 MS. HAGER: -- prejudice and on behalf of the
10 defendants for 30(b)(6) witnesses we anticipate three.

11 THE COURT: Okay. Mr. Raisner, what --

12 MR. RAISNER: We have not given enough thought to
13 the witness list to answer the question.

14 THE COURT: Okay. I'm not --

15 MR. RAISNER: But we look forward it to. We look
16 forward to presenting the evidence because it's finally
17 there.

18 THE COURT: Is there --

19 MR. RAISNER: And I think that will -- it will
20 persuade Your Honor.

21 THE COURT: Well is there evidence to show in your
22 view, do you represent to the Court that you're prepared to
23 put in evidence that the existing named plaintiffs performed
24 work for anyone other than MFGI?

25 MR. RAISNER: We are prepared to present evidence,

1 which we think is not in dispute, that their employer as
2 employers use, which is that an employer asked them to do
3 certain things at certain times, still makes for an
4 employer, that is the evidence that we hope to --

5 THE COURT: Okay. You didn't answer my question.

6 MR. RAISNER: -- present. And not everybody did
7 the same kind of work, so there's --

8 THE COURT: Okay. Let me ask -- look, let's stop
9 fencing, okay?

10 MR. RAISNER: I'm not fencing.

11 THE COURT: We've been fencing since the start of
12 this case.

13 Are you going to present evidence that the named
14 plaintiffs worked for any MF Global entity other than MFGI?

15 MR. RAISNER: We are.

16 THE COURT: I want a direct answer to my question.

17 MR. RAISNER: We are.

18 THE COURT: Okay. We'll see.

19 MR. RAISNER: We are.

20 MS. HAGER: Your Honor, for the record, also I'd
21 just like to point out that they have not taken the SIPA
22 Trustee's 30(b)(6) witness yet, that's Monday.

23 THE COURT: We'll see. I mean look, if people
24 worked for more than -- you know, if they did work for the
25 Chapter 11 debtors, which was not what the defendants

1 represented previously, they may well have a claim against
2 the Chapter 11 debtors for a WARN Act.

3 MR. RAISNER: Your Honor --

4 THE COURT: I'm not -- I haven't decided that, I
5 just -- I'm making -- crystal clear.

6 MR. RAISNER: I'm (indiscernible) to talk about
7 the merits because --

8 THE COURT: We'll deal with the merits when we get
9 to the merits.

10 MR. RAISNER: Yes.

11 THE COURT: Okay?

12 MR. RAISNER: Thank you.

13 THE COURT: All right. Thanks very much.

14 MS. HAGER: Thank you, Your Honor.

15 (Whereupon these proceedings were concluded at 11:14
16 AM)

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I N D E X

RULINGS

PAGE

Adversary proceeding: 11-02880-mg Thielmann et al v.
MF Global Finance USA, Inc. et al (CC: Doc. nos. 111,
112, 115, 116, 117, 120) Motion to Amend Complaint
Pursuant to Federal Rule of Civil Procedure 15(a)(2)
and Federal Rule of Bankruptcy Procedure 7015 filed
by Charles A. Ercole on behalf of Pierre-Yvan
Desparois, Sandy Glover-Bowlers, Arton Sina, Natalia
Sivona, Todd Thielmann. Marked Up Documents: 111,
112, 113, 115, 116, 117, 118, 120

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a true and accurate record of the proceedings.

Dawn South

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Date: July 20, 2015

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