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

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

I, JAMES B. KOBAK, JR., under penalty of perjury, testify as follows:

**I. SUMMARY OF TESTIMONY**

1. On October 31, 2011, the Securities Investor Protection Corporation (“SIPC”) commenced a liquidation proceeding against MF Global Inc. (“MFGI”),<sup>1</sup> pursuant to 15 U.S.C. §78eee(b)(3) of the Securities Investor Protection Act of 1970 (“SIPA”). James W. Giddens was appointed as trustee (hereinafter, the “SIPA Trustee”) and the law firm of Hughes Hubbard & Reed LLP (“Hughes Hubbard”) was appointed as the SIPA Trustee’s counsel.<sup>2</sup>

2. Under the court’s order, the SIPA Trustee must liquidate MFGI’s business.

3. On November 11, 2011, the SIPA Trustee advised all former MFGI employees that their employment was terminated immediately, although they were to be paid through November 15, 2011. Approximately 150-200 former employees were extended offers to become employees of the SIPA Trustee to assist in the liquidation of MFGI’s business.

4. The SIPA Trustee coordinated the employee terminations and offers with MF Global’s Global Head of Human Resources and employees of MF Global Holdings USA, Inc. (“Holdings USA”) who were responsible for human resources for MF Global Holdings Ltd. and its U.S. subsidiaries, including MFGI. All decisions related to the termination of former MFGI employees and the hiring of personnel by the SIPA Trustee for the purposes of the liquidation, however, were solely the responsibility of the SIPA Trustee.

5. After the SIPA Trustee terminated the employment of all MFGI employees on November 11, 2011, certain former MFGI employees submitted individual claims for vacation pay in the SIPA proceeding (the “Vacation Pay Claims”), as well as a purported class claim

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<sup>1</sup> DX N is a true and correct copy of the Complaint and Application of the Securities Investor Protection Corporation.

<sup>2</sup> DX O is a copy of the order of Englemayer, J., United States District Court, Southern District of New York, dated October 31, 2011.

asserted by Plaintiffs Thielmann, Glover-Bowles, Desparois, Sivova and Sina on behalf of themselves and all similarly situated employees (the “Vacation Class Claim”). The Vacation Pay Claims were each resolved through the general creditor claims procedures and allowed as wage priority claims and/or general unsecured claims, as appropriate. A settlement of the Vacation Class Claim was entered into on a class-wide basis (the “Vacation Pay Settlement”). Plaintiffs Thielmann, Glover-Bowles, Desparois, Sivova and Sina served as MFGI employee class representatives and were compensated as such through allowed administrative claims pursuant to the Vacation Pay Settlement. The resolution of the Vacation Pay Claims and the Vacation Pay Settlement was the responsibility of the SIPA Trustee.

## **II. EXPERIENCE AND BACKGROUND**

6. I am General Counsel to Hughes Hubbard, where I was a partner from October 1978 until January 1, 2015. I have been involved in the liquidation of MFGI since its commencement on October 31, 2011 as principal counsel to the SIPA Trustee and have been involved as counsel to trustees in several SIPA liquidations.

7. In response to a notice served by plaintiffs on MFGI, I was designated by the SIPA Trustee as the Fed. R. Civ. P. 30(b)(6) witness authorized to and, at a deposition on June 29, 2011, did testify on MFGI’s behalf regarding the termination of MFGI employees.

8. I am also familiar with the Vacation Pay Claims, the Vacation Class Claim and the Vacation Pay Settlement from personal knowledge, supervision of Hughes Hubbard associates, and a review of the documents relating to the Vacation Pay Claims, the Vacation Class Claim and the Vacation Pay Settlement.

## **III. TERMINATION OF MFGI EMPLOYEES**

9. MFGI was a broker-dealer registered with the United States Securities and Exchange Commission, a futures commission merchant registered with the National Futures

Association, a member of the Financial Industry Regulatory Authority, and a member of SIPC. On October 31, 2011, SIPC, having determined that the customers of MFGI were in need of the protection afforded by SIPA, commenced an action under SIPA for the appointment of a trustee for the liquidation of the business of MFGI. The application (Ex. N) requested that James W. Giddens be appointed trustee and that Hughes Hubbard be appointed counsel to the SIPA Trustee. Once SIPC's application was granted and the trustee appointed (Ex. O), all authority for MFGI devolved from MFGI's officers and directors to the SIPA Trustee.

10. As of October 31, 2011, the liquidation of MFGI was administered by the SIPA Trustee, subject to the jurisdiction of this Court. The purpose of the liquidation is to return customer property to the securities and commodities customers of MFGI, to identify, marshal and preserve the assets of the general estate for the benefit of MFGI's general creditors, and to wind up the business. The SIPA Trustee has no authority to reorganize or continue the business as an operating entity. Promptly upon his appointment, the SIPA Trustee undertook to determine what the administrative needs would be for the liquidation of MFGI and the type and number of personnel that were needed to assist in the wind down.

11. As part of that effort, the SIPA Trustee then decided which former MFGI employees and other personnel would be extended offers to work for the SIPA Trustee. The primary purpose was to determine what personnel the SIPA Trustee and the MFGI estate needed to liquidate the business in an orderly fashion and to protect the interests of customers and creditors. In many cases, the individual who was identified was an MFGI employee, but in some cases the individual might have been employed by one of the other MF Global entities.

12. Shortly after October 31, 2011, the SIPA Trustee began discussions with Thomas Connolly, the Global Head of Human Resources for MF Global Holdings Ltd., and others about

personnel issues pertaining to the MFGI estate. In particular, the SIPA Trustee and his staff worked with Mr. Connolly and his staff to (a) identify all the employees of MFGI, (b) provide notice to MFGI employees of their termination, (c) identify those employees who would be offered employment with the SIPA Trustee, whether they had been MFGI employees or not, (d) to the extent that former non-MFGI employees were to be offered employment by the SIPA Trustee, negotiate access to those individuals, and (e) offer employment to those employees whom the SIPA Trustee decided to hire to work for him.

13. The SIPA Trustee reviewed spreadsheets that identified MFGI's employees and was given access to a database on which an individual's employer was identified by a particular code.

14. Mr. Richard Siegel, the SIPA Trustee's independent advisor, was primarily tasked with identifying which employees should be offered employment by the SIPA Trustee. Mr. Siegel was responsible for determining what an individual's job function was, what duties he/she had, and how that correlated with the specific needs of MFGI's estate and the SIPA Trustee.

15. Mr. Siegel worked with Mr. Connolly to make these determinations. The ability to employ people, however, was constrained by the need to conserve estate resources and by the recognition that many functions of an ongoing business would no longer be needed.

16. Attorneys from Hughes Hubbard, as well as Mr. Siegel, worked in MFGI's Chicago and New York offices to expedite the process of identifying employees to be rehired and to vacate the offices. Hughes Hubbard, on behalf of the SIPA Trustee, worked with Mr. Connolly and others in drafting termination letters as well as letters offering employment with the SIPA Trustee.

17. On or about November 11, 2011, the SIPA Trustee notified each MFGI employee by letter that his or her employment would be terminated as of that date. In that letter, the SIPA Trustee advised MFGI employees that they would be paid through November 15, 2011.

18. Also on November 11, 2011, the SIPA Trustee informed the individuals that he wished to hire for the purposes of the liquidation that he was offering them employment with the SIPA Trustee; he sent them employment offer letters shortly thereafter. To be clear, these employees were not retained; rather, each was offered new employment with a new employer—the SIPA Trustee, not MFGI.

19. The termination of a company's former employees is a necessary part of a SIPA liquidation and is consistent with the SIPA Trustee's obligations under SIPA to cease operating an ongoing business and devote limited resources to transferring customer accounts if possible, preserving assets and identifying and marshaling customer and other property to maximize the estate in a manner that is fair to all customers and creditors. Accordingly, the decision on when and under what terms MFGI's employees were to be terminated was the SIPA Trustee's alone. The SIPA Trustee was also entirely responsible for any offers of employment made to the terminated employees. Although the SIPA Trustee and his representatives worked with Mr. Connolly and others, at no time did Mr. Connolly, or anyone other than the SIPA Trustee, make or have the right to make these employment decisions.

#### **IV. VACATION PAY CLAIMS AND THE VACATION PAY SETTLEMENT**

20. The SIPA Trustee was responsible for the administration of creditor claims filed in the SIPA proceeding pursuant to court-approved claims procedures.

21. Plaintiffs Glover-Bowles, Desparois, Sivova and Sina each filed a general creditor proof of claim against MFGI in the SIPA proceeding. These proofs of claim asserted WARN

damages and Vacation Pay Claims.<sup>3</sup> The WARN damages portion of each claim was expunged pursuant to orders granting the SIPA Trustee's omnibus objections to claims.<sup>4</sup> The Vacation Pay Claims, however, were allowed as priority claims pursuant to those same orders. The Vacation Pay Claims have been paid in full and, after payment of applicable withholding taxes, the net payment on the claims was: \$2,631.67 to Ms. Glover-Bowles; \$4,566.84 to Mr. Desparois; \$4,586.76 to Ms. Sivova; and \$3,364.53 to Mr. Sina.

22. Plaintiff Thielmann filed a general creditor proof of claim in the amount of \$15,144.85.<sup>5</sup> This claim was reduced to an allowed priority claim in the amount of \$11,271.75.<sup>6</sup> This claim has been paid in full and, after payment of applicable withholding taxes, resulted in a net payment to Mr. Thielmann of \$7,310.96.

23. In order to facilitate the resolution of the Vacation Class Claim, a class settlement of those claims was entered into by the SIPA Trustee. Plaintiffs Thielmann, Glover-Bowles, Desparois, Sivova and Sina each served as a class representative in the Vacation Pay Settlement arising out of class members' employment with MFGI.<sup>7</sup> As reflected in the order approving the

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<sup>3</sup> True and correct copies of the proofs of claim as filed with the official claims register for MFGI's estate are submitted as follows: claim number 300000378 by Ms. Glover-Bowles is DX P; claim number 300000550 by Mr. Desparois is DX Q; claim number 300000490 by Ms. Sivova is DX R; and claim number 300000711 by Mr. Sina is DX S.

<sup>4</sup> DX T is a copy of the Order Granting the Trustee's Fifty-First Omnibus Objection to General Creditor Claims (Reduced and Partially Allowed Employee Claims), 11-2790-mg, ECF Doc. # 7465, which expunged the WARN Act portions of Mr. Sina's and Ms. Glover-Bowles's proofs of claim.

DX U is a copy of the Order Granting the Trustee's Fifty-Third Omnibus Objection to General Creditor Claims (Reduced and Partially Allowed Employee Claims), 11-2790-mg, ECF Doc. # 7464, which expunged the WARN Act portions of Mr. Desparois's and Ms. Sivova's proofs of claim.

<sup>5</sup> DX V is a true and correct copy of claim number 500000305, filed by Mr. Thielmann with the official claims register for MFGI's estate.

<sup>6</sup> DX W is a copy of the Order Granting the Trustee's Sixty-Sixth Omnibus Objection to Claims (Hybrid Employment-Related Claims), 11-2790-mg, ECF Doc. # 8095.

<sup>7</sup> DX X is a copy of the Final Order Granting Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019, 11-2790-mg, ECF Doc. # 8588, which approved the Vacation Pay Settlement.

settlement, each received \$2,500 as compensation for service as a class representative in that case.

I declare under penalty of perjury that the foregoing is true and correct. Executed the 14<sup>th</sup> day of August, 2015, at New York, New York.

  
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JAMES B. KOBAK, JR.