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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
MatlinPatterson Global Opportunities Partners II L.P., *et al.*,	)	Case No. 21-11255 (___)
Debtors.[1]	)	(Joint Administration Pending)

DECLARATION OF MATTHEW DOHENY, CHIEF RESTRUCTURING OFFICER OF THE DEBTORS, IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS IN COMPLIANCE WITH LOCAL RULE 1007-2

I, Matthew A. Doheny, hereby declare under penalty of perjury:

1. I am the President of North Country Capital, an advisory and investment firm focused on challenging advisory assignments and special situation opportunities. I am the Chief Restructuring Officer of each of the above-captioned debtors (collectively, the "***Debtors***"). I was appointed to this role effective April 2021. Prior to my retention by the Debtors, I served as a director or chair of the board of several companies undergoing financial restructuring or other chapter 11 and distressed scenarios. I also worked for 18 years as a managing director or portfolio

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if any, are: MatlinPatterson Global Opportunities Partners II L.P. (8284); MatlinPatterson Global Opportunities Partners (Cayman) II L.P. (8246); MatlinPatterson Global Partners II LLC (6962); MatlinPatterson Global Advisers LLC (2931); MatlinPatterson PE Holdings LLC (6900); Volo Logistics LLC (8287); MatlinPatterson Global Opportunities Partners (SUB) II L.P. (9209). The location of the Debtors' address is: 600 Fifth Avenue, 22nd Floor, New York, New York 10022.

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manager focused on special situations at HSBC Securities Inc., Fintech Advisory Inc., and Deutsche Bank Securities Inc. Prior to that I spent five years as a corporate and restructuring attorney with several New York law firms. I hold a J.D. from Cornell Law School and a B.A. from Alleghany College.

2. I submit this declaration pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York (the "***Local Rules***") to provide an overview of the Debtors, their history, and the Debtors' chapter 11 petitions (the "***Chapter 11 Cases***"), as well as to support the Debtors' chapter 11 petitions and the motions seeking various types of "first day" relief (collectively, the "***First Day Motions***"). I am generally familiar with the facts set forth below, including the Debtors' financial affairs and books and records. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge of the Debtors, information learned from my review of relevant documents, information supplied to me by other members of management of the Debtors and by the Debtors' professional advisors. I am authorized to submit this declaration on behalf of the Debtors, and, if called upon to testify, I could and would testify competently to the facts set forth below.

3. The Debtors are investment funds and affiliated entities that have been ready to wind up and pay out their remaining assets to their limited partners for many years. The Debtors' efforts have been hamstrung by several litigations filed abroad that seek to recover assets in the United States, held almost exclusively by entities formed in the United States, under legal theories that run counter either to prior *res judicata* determinations by U.S. courts or settled U.S. law. The sum total of these speculative claims exceed the Debtors' assets and have thus far prevented the Debtors from distributing assets to their stakeholders.

4. The Debtors face three primary fronts of litigation, all of which are counter to established U.S. law and cannot result in a judgment enforceable in the United States against the Debtors and their assets.

5. *First*, as described in detail below, the Debtors were subjected to an arbitration award in Brazil in 2010. The United States Court of Appeals for the Second Circuit has since determined fully and finally that the arbitration award was rendered against the Debtors without jurisdiction over them, because the Debtors never consented to arbitration in Brazil, and thus the award is unenforceable in the United States as a matter of U.S. public policy and the fundamental interests of the United States. The award creditor, having lost its effort to enforce the award in the United States, then sought a second bite at the apple by pursuing enforcement of the same award in the Cayman Islands, the only other jurisdiction in which one of the Debtors is organized.[2] The Cayman trial court determined that the award was also unenforceable in the Cayman Islands, but an intermediate appellate court reversed the trial court and upheld the award in 2020. A further appeal of that decision is now pending, but regardless of the outcome, a Cayman judgment enforcing an arbitration award that the U.S. courts have already determined, *res judicata*, is not enforceable in the United States cannot be satisfied by assets located in the United States. The filing of the Chapter 11 Cases would appropriately place before this Court any dispute over the enforceability against U.S. assets of a Cayman judgment upholding a Brazilian arbitration award that U.S. courts have already determined is unenforceable in the United States.

6. *Second*, the Debtors have been targeted in litigation in Brazil by the bankruptcy administrator of the estate of their former Brazilian investment vehicle, for claims that are based

[2] MP Cayman is a Cayman Islands exempted limited partnership. Additionally, the General Partner is a foreign registered company in the Cayman Islands in connection with its role as the general partner of MP Cayman.

on factual allegations dating from more than a decade ago, and which were expressly released and indemnified under the terms of two New York law and jurisdiction-governed contracts. Although the Debtors are of the firm position that these claims, in addition to being meritless, have already been fully released in accordance with U.S. law, even speculative actions caught in Brazil's legal system drag on, and this action is not anticipated to be finally resolved for a decade or more.

7. *Finally*, certain Debtors were joined in an enforcement proceeding in a Brazilian court for their portfolio company's failure to repay certain loans. The Debtors were not served until five and a half years after the court, *ex parte*, permitted them to be added to the action on an alter ego theory of liability. The joinder of the Debtors was premised on the baseless allegation that the Debtors were responsible for the "disappearance" of approximately R$24 million from the bank account of the portfolio company's bankruptcy counsel. In fact, the funds were used to pay prepetition claims and were fully accounted for in the bankruptcy proceeding. Nonetheless, the claimant was able to exploit the *ex parte* nature of the enforcement proceeding and present unchallenged "evidence" to falsely suggest to the Brazilian court that the Debtors had acted improperly. The *ex parte* proceedings and extensive delay have prejudiced the Debtors. But fundamentally, any resultant judgment against the Debtors in Brazil will have been procured by fraud and cannot be enforced in a U.S. court. A special appeal and full merits defense are pending in Brazil, but this action may also take many years to resolve.

8. The Debtors have filed the Chapter 11 Cases to prevent these meritless foreign litigations from undermining U.S. law in respect of the Debtors' U.S. assets, and to effect an orderly, consolidated dissolution and distribution of those U.S. assets to their legitimate stakeholders. Because the Debtors face litigation in multiple fora seeking recourse to the same assets, a centralized forum is necessary to fairly and expeditiously resolve any potential liabilities

and to ensure that the Debtors' assets are liquidated and distributed in an efficient and equitable manner. This Court can manage the litigation in a singular, centralized forum to unshackle the Debtors and their stakeholders from foreign proceedings, the outcomes of which are not enforceable against the Debtors' U.S. assets as a matter of U.S. law, regardless of what the foreign courts may decide, so that the Debtors can finally wind up and rightfully distribute their U.S. assets to U.S. creditors and investors after so many years of delay.

OVERVIEW OF THE DEBTORS

9. As more fully described below, on the date hereof (the "***Petition Date***"), the Debtors commenced the Chapter 11 Cases by filing voluntary petitions in the Bankruptcy Court for the Southern District of New York (the "***Court***"). The Debtors are also filing a limited number of "first day" pleadings, including (i) pleadings seeking relief intended to allow the Debtors to perform and meet those obligations that are necessary to fulfill their duties as debtors in possession in the Chapter 11 Cases, (ii) a chapter 11 plan of liquidation (the "***Plan***") and attendant disclosure statement (the "***Disclosure Statement***"), and (iii) a motion seeking to establish a claims bar date for the VRG, VarigLog and HJDK Claims described herein and approving the form and manner of notice thereof.

I. Background

A. The MP Funds

10. Debtors MatlinPatterson Global Opportunities Partners II L.P. ("***MP Delaware***") and MatlinPatterson Global Opportunities Partners (Cayman) II L.P. ("***MP Cayman***" and together with MP Delaware, the "***MP Funds***"), are private investment funds structured as limited partnership entities organized in the State of Delaware and the Cayman Islands, respectively, which together comprise MatlinPatterson Global Opportunities Fund II. The MP Funds (along with the other Debtors) are headquartered in New York.

11. While one of the Debtors is a Cayman Islands exempted limited partnership and another Debtor is a foreign registered company in the Cayman Islands, none of the Debtors has a substantial connection to the Cayman Islands. All of the Debtors have their principal place of business in New York, all of the Debtors' management is based in New York and all of the Debtors' material assets, namely the cash in their bank accounts, are held in the United States at banks in New York branches.

12. The MP Funds were formed in 2003 and together closed their capital raising in 2004 with $1.65 billion in capital commitments. The MP Funds specialize in distressed investing.

13. The MP Funds were funded primarily by institutional investors—principally financial institutions, insurance companies and corporate and government pension funds. They invested their capital in various companies, across a diverse range of industries around the world that were in or near insolvency or that otherwise faced difficult financial circumstances. The MP Funds sought a return on investment by acquiring and/or providing the capital financing and advisory expertise necessary to reorganize and restructure the companies in which they invested, to help those companies reverse their perilous financial circumstances.

14. As is typical of private investment funds of this nature, the MP Funds were comprised of both an onshore (Delaware) limited partnership and an offshore (Cayman Islands) limited partnership. As parallel limited partnerships, the MP Funds co-invested on a side-by-side basis, and shared the same investments and liabilities ratably based on their respective sizes. Investors could choose either of the MP Funds as their investment vehicle, depending on the legal, tax, regulatory or other similar considerations specific to each such investor.

15. As is also typical among private equity investment funds, the MP Funds structured their investments through special purpose entities ("***SPEs***"), which are often created or acquired

to be subsidiaries of the MP Funds and invest in portfolio companies. The MP Funds' investments were operated at the portfolio-company level through SPEs, so that the portfolio companies operate independently of the MP Funds, and the MP Funds are better able to manage their investment risk.

B. Management of the MP Funds

16. Management of each of the MP Funds has historically been carried out by MatlinPatterson Global Partners II LLC, the general partner of the MP Funds (the "***General Partner***"). The General Partner is a limited liability company organized in the State of Delaware. It is also a foreign registered company in the Cayman Islands in connection with its role as the general partner of MP Cayman. The General Partner was formed in 2003 to serve as the general partner to, and manage and conduct the business and affairs of, the MP Funds and various alternative investment vehicles and parallel vehicles. The General Partner has also served as general partner to various SPEs through which portfolio investments are made. Prior to the Petition Date, the General Partner designated an affiliate of the MP Funds as liquidating trustee to manage the orderly wind up of the affairs of MP Delaware. The General Partner retains management authority to wind up the affairs of MP Cayman, as I understand is permitted under Cayman law.

17. The General Partner's management team was employed by Debtor MatlinPatterson Global Advisers LLC, a Delaware limited liability company ("***MP Advisers***"). However, all employees were terminated on December 31, 2020, and staffing personnel are now employed through Altemis, a third-party employment contractor. None of the other Debtors has any employees.

18. MP Advisers also acts as investment adviser to other, non-Debtor fund entities. None of the other Debtors has any operations beyond the management and ownership of the MP Funds and the related non-Debtor vehicles, including most of the remaining SPEs.

C. MP Funds Start Winding Up

19. Between 2004 and 2013, the MP Funds made a number of investments in financially-distressed companies in various sectors, including chemicals, utilities, metals, security services, fashion, textiles, manufacturing, food, finance, electronics and the air cargo and airline passenger industries.

20. The MP Funds are now at the end of their life. Their organizational documents triggered dissolution on September 30, 2013, and the MP Funds began to liquidate their assets and wind up their affairs. The MP Funds have already sold or liquidated all of their portfolio companies and a majority of the SPEs. The remaining SPEs have *de minimis* activities and are in the process of being liquidated.

21. To facilitate the wind up of the MP Funds, on September 27, 2018, Debtor MatlinPatterson PE Holdings LLC, the managing member of the General Partner, formed a new subsidiary entity MP GOP GP II LLC, a Delaware limited liability company ("***MP GOP GP II***"). On October 2, 2018, the General Partner delegated management of the liquidation of MP Delaware to MP GOP GP II and appointed it to serve as liquidating trustee (in such capacity, the "***Liquidating Trustee***") of MP Delaware. By its grant of authority from the General Partner, the Liquidating Trustee is charged with the proper distribution of the remainder of MP Delaware's assets to its creditors and limited partners.

22. Under Cayman law, as I understand, on the expiration of MP Cayman's term on September 30, 2013, the General Partner became charged with the responsibility of winding up the affairs of MP Cayman and distribution of its remaining assets. The General Partner retained authority over winding up the affairs of MP Cayman, and the same team manages the General Partner and the Liquidating Trustee as they oversee the orderly liquidation of the MP Funds and the distribution of their assets in accordance with their governing documents.

23. As detailed below, as of June 30, 2021, the Debtors' assets are comprised principally of $142 million in cash, all of which is held in bank accounts in the United States. In October 2020, MP Cayman entered into a Distribution and Contribution Agreement (as amended or modified from time to time, the "***Contribution Agreement***") with MatlinPatterson Global Opportunities Partners (SUB) II L.P., a Delaware limited partnership ("***SUB II***"), whereby MP Cayman transferred all of its assets and liabilities to SUB II (such assets together with the assets of MP Delaware, the "***Fund II Assets***") in exchange for the partnership interests in SUB II, which MP Cayman then distributed to its limited partners and general partner. Given the structure of the MP Funds, the events leading up to the commencement of the Chapter 11 Cases, and the fact that all of the material assets are held in the United States by U.S. entities, the administrative interests and position of MP Cayman are inextricably linked to those of the other Debtors and the Chapter 11 Cases.

24. Other than Volo Logistics LLC ("***Volo Logistics***"), the non-Debtor SPEs in which the MP Funds retain an interest are not anticipated to file any chapter 11 cases,[3] and are in the process of being liquidated under applicable non-bankruptcy law. Accordingly, the remaining SPEs are not expected to be affected by the commencement of the Chapter 11 Cases.

II. Organizational and Capital Structure

A. Organizational Structure

25. An organizational chart illustrating the corporate structure of the Debtors is annexed to this declaration as **Exhibit A**.

[3] Volo Logistics was included as a Debtor in these Chapter 11 Cases because it is a named defendant in the Variglog Brazil litigation.

B. The Debtors' Prepetition Capital Structure.

26. As of the Petition Date, the Debtors' sole funded indebtedness consists of three intercompany promissory notes held by Fund II-A (defined below) against the MP Funds in an aggregate principal amount outstanding, together with accrued and unpaid interest, of approximately $58.0 million as of June 30, 2021, secured by the Collateral Assignment and Security Agreement dated as of August 31, 2020 (described below).

1. Fund II-A Promissory Notes

27. The MP Funds are each a borrower under three separate intercompany promissory notes (the "***Fund II-A Promissory Notes***") under three secured note agreements, two dated December 4, 2009 and one dated September 14, 2011 (as may be amended, restated, supplemented or otherwise modified from time to time prior to the Petition Date, the "***Promissory Note Agreements***"), by and among each of the MP Funds, respectively as borrower, and MP II Preferred Partners L.P., as lender under each of the Promissory Note Agreements (in such capacity, the "***Note Lender***" and, together its general partner, "***Fund II-A***"). Fund II-A was formed to provide capital support to the remaining portfolio companies and/or SPEs of the MP Funds and operating capital to the MP Funds.[4] Pursuant to the Promissory Note Agreements, upon the request of such MP Fund and on the terms and conditions set forth therein, the Note Lender loaned amounts to the MP Funds in an aggregate principal amount of $16 million (the "***Promissory Note Loans***"). The maturity of these loans is to occur upon the filing of a cancellation of the MP Funds' certificate of limited partnership, or such earlier date as determined by the general partner of the Note Lender and a majority in interest of certain of the investors in the Note Lender. Under that certain

[4] While related to the MP Funds, none of the entities in Fund II-A is a Debtor in the Chapter 11 Cases. The winding up of Fund II-A is expected to occur after the winding up of the MP Funds. Accordingly, the commencement of the Chapter 11 Cases is not expected to materially impact Fund II-A.

Collateral Assignment and Security Agreement dated as of August 31, 2020, between the MP Funds and Fund II-A, the obligations under the Fund II-A Promissory Notes (the "***Promissory Note Obligations***") became secured and perfected by duly perfected liens on all assets of the MP Funds (but with a provision, consistent with section 363(c)(2)(A) of the Bankruptcy Code, that the MP Funds may use the collateral exclusive of 105% of the respective Promissory Note Obligations), in favor of Fund II-A. SUB II became a party to that agreement by the effectiveness of the Contribution Agreement and that certain Collateral Assignment and Security Agreement, dated as of June 25, 2021, between SUB II and Fund II-A. The Promissory Note Agreements are valid, binding and, subject to applicable bankruptcy law, enforceable against the Debtors in accordance with their terms.

2. Partnership Interests

28. None of the Debtors has any publicly-listed securities. The General Partner is a wholly-owned subsidiary of MatlinPatterson PE Holdings LLC, an affiliated Debtor that also wholly owns MP Advisers. MatlinPatterson PE Holdings LLC in turn is wholly owned by non-Debtor affiliate MatlinPatterson LLC.

29. MP Delaware's authorized capital structure consists of one class of interests: the limited partnership interests held by the General Partner and those held by each of the approximately 100 limited partners of MP Delaware. MP Delaware's General Partner and limited partners hold pro-rata percentages of such interests in MP Delaware based on their respective capital commitments to MP Delaware.

30. Upon effectiveness of the Contribution Agreement, SUB II stepped into the place of MP Cayman, and its ownership consists of one class of interests: the limited partnership interests held by the General Partner and those held by each of the approximately 35 limited partners of MP

Cayman. MP Cayman's General Partner and limited partners hold pro-rata percentages of such interests in MP Cayman and SUB II based on their capital commitments to MP Cayman.

31. Volo Logistics is an indirectly held, but wholly-owned SPE of the MP Funds (and now SUB II after giving effect to the Contribution Agreement).

C. The Debtors' Other Prepetition Assets and Liabilities.

32. As of the Petition Date, the Debtors' other material assets and liabilities are as follows:

- Assets:
  - the General Partner owns partnership interests in each of the MP Funds and in other related non-Debtor entities and *de minimis* amounts of cash in its accounts;
  - MP Delaware and SUB II (after execution of the Contribution Agreement), own equity interests in non-Debtor SPEs that are in the process of winding up, and class C limited partnership interests in Fund II-A, each of which has immaterial economic value, other than contingent unliquidated litigation claims that may inure to the benefit of the SPEs;
  - The MP Funds (and, as a result of the Contribution Agreement, SUB II) also have asserted insurance reimbursement claims to recoup certain fees and expenses arising out of the litigations with VarigLog and HJDK (each as defined below) which claims are under review by their insurance carrier;
  - MatlinPatterson PE Holdings LLC holds *de minimis* amounts of cash in its accounts, and the equity interests in each of the General Partner, MP Advisers, and MP Preferred Partners GP LLC (the general partner of Fund II-A and the sole owner of the Liquidating Trustee);
  - MP Advisers holds approximately $75,000 in its accounts and does not own interests in any affiliated entities, and its only prior earnings came in respect of management fees earned from the funds it managed;
  - Volo Logistics has no material holdings nor assets; and
  - Cash held by the Debtors in the aggregate amount of $142 million as of June 30, 2021 broken out by the following holdings among the Debtors:
    - MP Delaware has $104 million in its accounts;

- SUB II has $38 million in its accounts (*i.e.*, cash formerly held by MP Cayman that was transferred to SUB II pursuant to the Contribution Agreement);
- The Management Company has $50,000 in its accounts; and
- The other Debtors have zero or *de minimis* cash balances in their accounts.

- Liabilities:
  - a disputed claim asserted by GOL Linhas Aéreas S.A. (formerly VRG Linhas Aéreas S.A.) ("***VRG***") against certain of the Debtors on account of a decision of the Cayman Court of Appeal upholding the enforceability of a Brazilian arbitration award, further described below, in the approximate amount of R$93 million Brazilian Reais plus interest (which, including interest and costs, is approximately $60.0 million U.S. dollars based on the exchange rate as of the Petition Date), (the "***Brazilian Arbitral Award***", and the Cayman proceedings collectively, the "***Cayman Proceedings***");[5]
  - a contingent, disputed liability with respect to proceedings (the "***Brazilian Action***") brought against each of the Debtors (other than SUB II) (together, the "***MP Parties***") in the Bankruptcy First Court of the City of São Paulo, State of São Paulo ("***Brazilian Bankruptcy Court***") by the Bankrupt Estate of Varig Logistica S.A. ("***VarigLog***"), seeking to pierce the corporate veil of a portfolio company and various other entities within the investment structure, or otherwise on the basis of undue shareholder control, to hold certain of the Debtors accountable for approximately R$1.76 billion Brazilian Reais (which is approximately $345.6 million U.S. dollars based on the exchange rate as of the Petition Date); and
  - the disputed claim held by HJDK Aerospacial S/A ("***HJDK***") seeking to pierce the corporate veil of a portfolio company to hold certain of the Debtors accountable for approximately R$89 million Brazilian Reais (which is approximately $17.5 million U.S. dollars based on the exchange rate as of the Petition Date) for the failure of the portfolio company to repay certain loans.

[5] Under Brazilian law, interest on the Brazilian Arbitral Award may continue to accrue until it is paid in full. The amount of the Brazilian Arbitral Award is subject to exchange rate fluctuations, which may be significant.

The following table depicts the Debtors' material assets and the asserted liabilities:

Assets	**Liabilities**			
	Action/Claim	*Asserted Amount*	*Forum*	*Judgement Expected*
$142 million in cash	*Fund II-A Promissory Note*	$58.0 million	N/A	N/A
	VRG	$60.0 million	Cayman Islands	2022-2023
	VarigLog *Action*	$345.6 million	Brazil	2030-2036
	HJDK Action	$17.5 million	Brazil	2027-2030
	Total Liabilities	**$481 million**		

33. All of the Debtors' cash is held in accounts in the United States. The cash held by the Debtors represents the primary source of funds available to fund ongoing expenses, including professional fees and other fees associated with the Chapter 11 Cases.

34. As elaborated on below, the Debtors have not made any material disbursements of their cash to investors and have always maintained funds more than sufficient to satisfy the amount of the Brazilian Arbitral Award with interest, consistent with a voluntary undertaking that was given to VRG in connection with the Cayman Proceedings (described in footnote 11 below). Accordingly, other than paying ongoing legal fees and some *de minimis* ordinary course expenses, the cash balances described above have remained materially unchanged for a number of years.

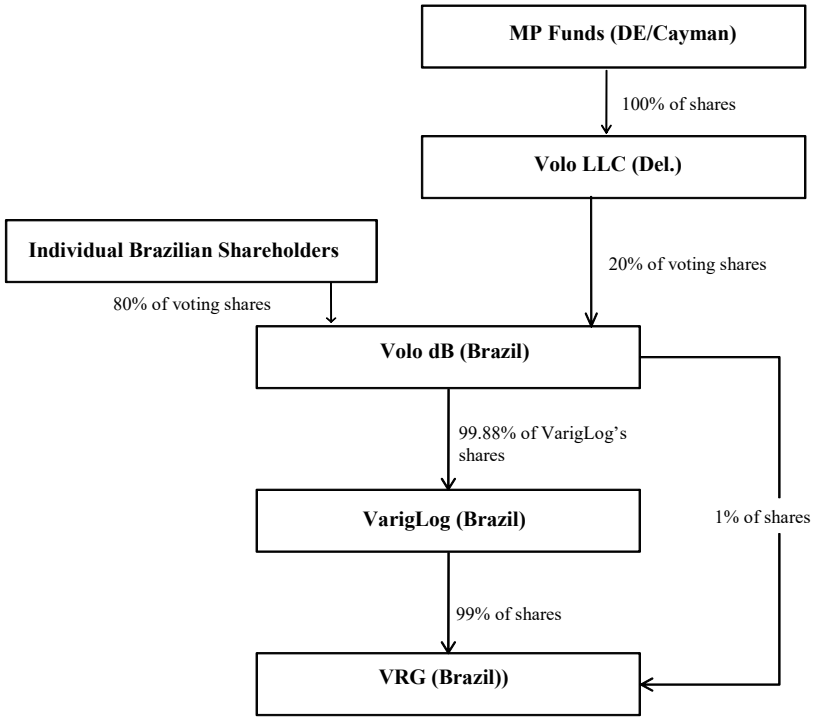
EVENTS LEADING TO THESE CHAPTER 11 PROCEEDINGS

35. As described above, the MP Funds have reached the end of their life and the time has come for an orderly distribution of their remaining assets to their investors after addressing all of their remaining legitimate liabilities. This section sets out the key events leading to the need for judicial assistance in this process, namely the Cayman Proceedings and the Brazilian Action, and further explains the reasons for the Debtors' decision to file the Chapter 11 Cases.

I. The MP Funds' Investments

36. In 2005, the MP Funds established Volo Logistics in Delaware to serve as an investment vehicle for pursuing opportunities in the Brazilian aviation industry. Volo Logistics together with three Brazilian individual investors (the "***Brazilian Shareholders***") formed a company called Volo do Brasil S.A. ("***Volo dB***"). The Brazilian Shareholders owned and controlled 80% of Volo dB's voting stock and Volo Logistics owned the remaining 20%.

37. In early 2006, Volo dB purchased VarigLog, a Brazilian cargo airline. Later in 2006, VarigLog and Volo dB purchased the passenger airline business of VarigLog's former parent via a Brazilian special purpose vehicle that was later renamed VRG. VRG became a subsidiary of VarigLog and Volo dB. The following depicts the MP Funds' historical investment structure in Brazil, consistent with how U.S. private equity firms acquire, hold and capitalize foreign, portfolio-company investments:[6]



[6] The remaining 0.12% of VarigLog's shares were held by Fudação Ruben Berta (the Ruben Berta Foundation).

38. The MP Funds' investment into the Brazilian aviation industry has generated a substantial loss for the MP Funds and led to years of meritless litigation against the MP Funds in Brazil. The MP Funds have been drawn into three unmeritorious proceedings relating to their now historic investment, including litigations commenced in 2019 and 2020 that concern events occurring more than a decade ago. The following depicts a timeline of the events leading up to and following the commencement of the VRG, VarigLog and HJDK actions:

	VRG Claims	VarigLog Claims	HJDK Claims
2005	• The MP Funds form Volo Logistics LLC (Del.) and, through Volo Logistics, invest in Volo dB (Brazil)	• The MP Funds form Volo Logistics LLC (Del.) and, through Volo Logistics, invest in Volo dB (Brazil)	
2006	• Volo dB purchases VarigLog in Brazil • Volo dB and VarigLog jointly purchase VRG in Brazil	• Volo dB purchases VarigLog in Brazil • Volo Logistics and CAT lend $250 million to VarigLog	
2007	• Volo dB and VarigLog sell VRG to GTI (a subsidiary of Gol) in Brazil • Purchaser refers a dispute over the purchase price adjustment to arbitration in Brazil		
2008		• Volo Logistics and CAT release $250 million of VarigLog debt in exchange for a full release/indemnification in relation to all facts and events prior to Dec. 31, 2008	
2009		• VarigLog commences reorganization proceedings in Brazil and a Chapter 15 in Florida	• HJDK is formed in 2009. Starting in late 2009 HJDK loans money to VarigLog for a total amount of R$24 million Brazilian Reais
2010	• Brazilian arbitral tribunal holds the MP Funds liable in tort for the purchase price adjustment, even though Purchaser did not make that claim and the MP Funds did not sign the share sale agreement containing an arbitration clause		
2011	• Purchaser seeks to enforce the Brazilian Arbitral Award in SDNY		• HJDK files enforcement proceedings against VarigLog seeking repayment of approximately R$24 million Brazilian Reais
2012		• VarigLog's Brazilian proceedings are converted into liquidation proceedings	• VarigLog is declared bankrupt
2013			• HJDK seeks to pierce the corporate veil and recover the loaned amounts from MP Advisers and another MP entity that no longer exists (the "**Named Defendants**"). The São Paulo Civil Court grants HJDK's *ex parte* request
2015	• **Second Circuit rules Brazilian Arbitral Award is not enforceable in US**		
2016	• Purchaser commences proceedings to enforce Brazilian Arbitral Award in the Cayman Islands		
2019	• Cayman trial court rules Brazilian Arbitral Award is not enforceable in Caymans		• The Named Defendants are served with notice of the proceedings and Named Defendants and two affiliates (the MP Funds) file an interlocutory appeal challenging the jurisdiction of the civil court
2020	• Cayman Court of Appeal reverses decision of Cayman trial court • The MP Funds appeal to the Privy Council (the highest appellate court for the Cayman Islands)	• Estate of VarigLog (as VarigLog is now known in Brazil) sues certain Debtors in Brazil, seeking to hold them liable for VarigLog's debts on the basis of claims arising from alleged facts and events pre-dating Dec. 31, 2008	• A full merits defense to HJDK's allegations is filed in Brazil

2005 — 2011 — 2021

II. The VRG Claim

39. In 2011, VRG sought recognition and enforcement in New York of a Brazilian arbitral award rendered against certain of the Debtors. After years of litigation, in 2015, the Second Circuit fully and finally determined that the Brazilian Arbitral Award is ***not*** enforceable in the United States, as a matter of federal law and U.S. public policy, because the Brazilian arbitral tribunal never had any jurisdiction over the Debtors. Following that decision, VRG pursued recognition of the same unenforceable award from the courts of the Cayman Islands. The Cayman Grand Court also concluded that the award was unenforceable, under Cayman law, but the Cayman Court of Appeal reversed the decision in favor of VRG. The matter is currently pending before the Judicial Committee of the Privy Council (the "***Privy Council***") in the United Kingdom, which serves as the court of final appeal for the Cayman Islands. As I understand, even if VRG prevailed in the Cayman Proceedings, VRG must still seek recognition and enforcement of the Cayman judgment in New York, where substantially all of the Debtors' assets are located.

40. Provided below is an overview of the VRG proceedings and the developments that have occurred subsequent to the Second Circuit decision.

A. Sale of VRG and the Share Purchase and Sale Agreement

41. During 2007, VarigLog and Volo dB sold their shares in VRG to GTI S.A. ("***GTI***"), a subsidiary of the Brazilian airline Gol, pursuant to a Share Purchase and Sale Agreement, dated March 28, 2007 (the "***PSA***").

42. The PSA, which included an arbitration clause, specifically identified the "Parties" to the PSA as VarigLog and Volo dB (the "***Sellers***") and GTI (the "***Buyer***"). Gol, as parent to GTI, also signed the PSA as a guarantor of the Buyer's obligations. Crucially, none of Volo Logistics, the MP Funds, nor the General Partner signed the PSA or were Parties to it.

43. Pursuant to a side letter agreement dated March 28, 2007, the MP Funds (as indirect parents of the Sellers) agreed (as is customary in such transactions) not to compete with VRG, the airline being sold, or to invest in any of its competitors in the Brazilian passenger airline market, for a period of three years. The side letter contained only a non-compete obligation of the MP Funds, and did not contain an arbitration clause.

B. A Brazilian Arbitral Award is Rendered Against the MP Funds

44. As is common in the purchase and sale of a going concern, the PSA included a purchase price adjustment to account for the fluctuation in working capital during the time between signing the PSA and closing the sale.

45. In 2007, after the completion of the sale of VRG to GTI, a dispute arose as to the purchase price adjustment due under the PSA. GTI (referred to hereafter as VRG as it was known between 2008 and 2016 following the merger of GTI and VRG in late 2008, during the arbitration) referred the purchase price adjustment dispute to arbitration under the arbitration clause contained in the PSA. VRG named the MP Funds as parties in the arbitration, even though they were not parties to the PSA or its arbitration clause.

46. Over the MP Funds' objections that they were not parties to the PSA and never agreed to be bound by the arbitration provision contained therein, the Brazilian arbitral tribunal found that it had jurisdiction over the MP Funds. The decision was made on the basis that the MP Funds had entered into the non-compete side letter, even though the side letter contained no agreement to arbitrate and the purchase price dispute was wholly unrelated to the non-compete obligation.

47. In its final award on the purchase price dispute, dated September 2, 2010, the Brazilian tribunal rejected VRG's claim that the MP Funds were alter egos of the Sellers, but held the MP Funds jointly and severally liable with the sellers of VRG for the entire purchase price

adjustment obligation of the Sellers. The tribunal awarded these contractual damages on the basis of a surprise tort liability claim that the tribunal itself came up with and even though VRG never advanced any tort claims against the MP Funds but rather premised their liability on the alter ego claim that the tribunal specifically rejected. The MP Funds sought to have the Brazilian Arbitral Award set aside in Brazil, as the seat of the arbitration, but the Brazilian courts declined to vacate it.

C. The U.S. Courts Fully and Finally Determine that the Brazilian Arbitral Award is Unenforceable in the United States

48. In January 2011, VRG filed a petition in the Southern District of New York to enforce the Brazilian Arbitral Award in the United States against the MP Funds, in accordance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "***New York Convention***"), incorporated into U.S. law by section 207 of the Federal Arbitration Act.[7]

49. Over the next four and a half years, the MP Funds and VRG fully litigated the enforceability of the Brazilian Arbitral Award, including two substantive hearings before the U.S. District Court for the Southern District Court of New York and two appeals to the United States Court of Appeal for the Second Circuit (collectively, the "***United States Proceedings***").[8] The MP Funds raised three defenses to enforcement of the Award in the United States: (1) that it was rendered without jurisdiction over the MP Funds because they never agreed to the arbitration

[7] *See* Verified Petition to Confirm Arbitration Award and for An Entry of Judgment at ¶¶ 5–6, *VRG Linhas Aereas S.A., v. Matlinpatterson Glob. Opportunities Partners II L.P.*, 2011 WL 160966 (S.D.N.Y.). This petition is not attached here but can be provided to the Court upon request.

[8] For the Court's ease of reference, copies of the 2014 Southern District of New York decision and the 2015 Second Circuit decision, which were not selected for publication, are attached hereto as **Exhibits B-1** and **B-2**, respectively. If requested by the Court, the Debtors can provide the Court with the other decisions from the United States Proceedings.

clause contained in the PSA which they intentionally did not sign (signing instead only a side letter providing for a non-compete); (2) that the arbitral tribunal violated the MP Funds due process rights by imposing liability on a the basis of a surprise tort claim that the tribunal introduced for the first time only in the final award and which VRG never advanced in the case; and (3) relatedly, that the tribunal exceeded the scope of the issues submitted by the parties for determination in the arbitration when imposing liability on the basis of a tort claim that the claimant did not allege.

50. VRG's attempts to enforce the Brazilian Arbitral Award in the United States were denied at every step of the way. Both the District Court and the Second Circuit, applying *de novo* review, concluded that the Brazilian Arbitral Award is not enforceable in the United States because the arbitral tribunal lacked jurisdiction over the MP Funds as intentional non-parties to the PSA and its arbitration clause. In so concluding, the U.S. Courts applied Article V(2) of the New York Convention and found the Brazilian Arbitral Award contrary to the public policy of the United States. Because the U.S. Courts rejected the Brazilian Arbitral Award for lack of any jurisdiction over the MP Funds, they did not address the MP Funds' other, due-process and excess-of-authority defenses.

51. VRG sought rehearing and rehearing *en banc* before the Second Circuit. By order dated August 20, 2015, the Second Circuit denied the request. VRG did not seek U.S. Supreme Court review and, as I understand, any such application is now time-barred.

52. Thus, as a matter of U.S. law, and as a result of nearly five years of litigation before the U.S. courts, the Brazilian Arbitral Award has been fully and finally adjudicated as unenforceable in the United States.

D. VRG Seeks Enforcement of the Same Brazilian Arbitral Award in the Cayman Islands After the U.S. Courts Refuse Enforcement of the Award

53. Disregarding the U.S. courts' final determination that the Brazilian Arbitration Award should not be enforced, VRG commenced proceedings in the Cayman Grand Court on September 1, 2016, one day before the Cayman limitation period expired, seeking to enforce the Brazilian Arbitral Award in the Cayman Islands under the same New York Convention that the U.S. Courts applied when rendering their decision. VRG named MP Delaware, MP Cayman and the General Partner as defendants. The MP Funds opposed enforcement of the Brazilian Arbitral Award in the Cayman Islands on the same three grounds under the New York Convention, described above, that they had raised in the U.S. proceedings.[9]

54. The Cayman Grand Court held that the Brazilian Arbitral Award was unenforceable in the Cayman Islands for all three of the grounds advanced by the MP Funds: lack of arbitral jurisdiction, denial of due process (or breach of natural justice, as it is called under Cayman law) and breach of the scope of the issues submitted by the parties to arbitration.[10]

55. VRG appealed the decision to the Cayman Court of Appeal. Notably, VRG did *not* appeal the finding of the Cayman Grand Court that the MP Funds never consented to arbitration in Brazil, only that the Cayman courts should be estopped from considering that point (and the question as to scope of the parties' submission to arbitration) because the Brazilian courts had

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[9] In connection with the Cayman Proceedings, the General Partner, in its capacity as general partner to the MP Funds, has voluntarily undertaken to VRG that the MP Funds would maintain at all times assets sufficient to satisfy the amount of the disputed Brazilian Arbitral Award and that no steps would be taken to dispose of such assets to external parties other than to satisfy routine expenses in the ordinary course of business), pending the outcome of VRG's application. This undertaking was strictly voluntary and served to preserve assets to which the MP Funds have recourse sufficient to satisfy any ultimate final judgment and allow the Cayman Proceeding to run its course and has been complied with at all times. The Debtors did not, by their voluntary undertaking, waive any of their legal rights, including to come before this Court in these Chapter 11 Cases, with full opportunity for VRG to be heard before the Debtors may distribute assets under the Plan.

[10] For the Court's ease of reference, a copy of the Cayman Grand Court decision is attached hereto as **Exhibit B-3**.

refused to set aside the Brazilian Arbitral Award and, under Cayman law, the question of consent to arbitrate was a question of Brazilian law.

56. The Cayman Court of Appeal overturned the decision, holding, *inter alia,* that the Cayman Islands' courts are estopped from considering whether the MP Funds agreed to arbitration in Brazil.[11] The Cayman Court of Appeal therefore declined to consider the issue upon which the U.S. courts determined that the Brazilian Arbitral Award is *not* enforceable in the United States under the New York Convention (*i.e.,* that the MP Funds never consented to arbitration, such that the arbitrators never had any jurisdiction over them). Accordingly, the Cayman Court of Appeal rendered a decision against the MP Funds in the approximate amount of $60 million U.S. dollars (based on the exchange rate as of the Petition Date).[12]

57. The MP Funds have appealed to the Judicial Committee of the Privy Council. The appeal remains pending, and the MP Funds expect that a final adjudication could take at least until the end of 2022 and most likely until 2023. The MP Funds appealed to the Privy Council because they are concerned VRG will seek to enforce the Brazilian Arbitration Award via the Cayman court judgment against the Fund II Assets, despite the Second Circuit decision protecting these Fund II Assets from such enforcement. While the MP Funds would vigorously contest any such proceedings in the United States as being in direct contravention of the Second Circuit decision, they nevertheless decided to appeal to the Privy Council as well.

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[11] For the Court's ease of reference, a copy of the decision of the Court of Appeal of the Cayman Islands is attached hereto as **Exhibit B-4**.

[12] Nothing herein shall be deemed a waiver of the Debtors' rights to appeal or challenge the decision of the Cayman Court of Appeal in any jurisdiction. Such rights are fully preserved.

III. The Varig Claim

58. More recently, the Debtors have been targeted by new, unrelated litigation in Brazil that likewise seeks to sidestep U.S. law. The Debtors' local indirect subsidiary, VarigLog, fell upon financial distress that ultimately led to Brazilian reorganization proceedings in 2009 and then liquidation proceedings in 2012, which remain ongoing. In May 2020, the administrator of VarigLog's estate filed a lawsuit in Brazil against certain Debtors, claiming they had abused their control of VarigLog and caused its bankruptcy, and should therefore be liable for VarigLog's debts. As set forth in further detail below, VarigLog's claims are clearly barred by two New York-law governed Debt Assumption Agreements, in which certain of the Debtors agreed to release VarigLog from $250 million in debt obligations in exchange for releases and indemnifications by VarigLog against any claims relating to the parties' relationship prior to December 31, 2008.

A. The Debt Assumption Agreements and VarigLog's Bankruptcy

59. In the course of the MP Funds' investments in Brazil, Volo Logistics made loans to VarigLog, and Volo Logistics and CAT Aérea LLC ("***CAT***"), now a wholly-owned subsidiary of Volo Logistics, also made loans to VRG. The loans made to VRG by Volo Logistics were subsequently assumed by VarigLog, such that VarigLog held all of the debts owed to Volo Logistics and CAT.

60. In 2008, VarigLog experienced financial difficulty. Volo Logistics and CAT took various steps to improve its performance, including to allow VarigLog to assign to Volo dB $250 million in debt obligations that VarigLog owed to Volo Logistics and CAT, and to release VarigLog from any obligation to repay the loans. This assignment and assumption of the loans was effected in two debt assumption agreements, both dated December 31, 2008 (the "***Debt***

Assumption Agreements").[13] The Debt Assumption Agreements are governed by New York law and contain a forum selection clause specifying New York courts.

61. In exchange for Volo Logistics and CAT agreeing to release VarigLog from its obligations to repay the $250 million owed to them, VarigLog, on behalf of itself and all successors and anyone claiming by or through it, released Volo Logistics, CAT and their related and affiliated parties from all claims, including those that could be asserted in the future, "*based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to*" December 31, 2008, that in any way relate to VarigLog (the "***Releases***"). VarigLog also agreed to indemnify and hold the released parties harmless from and against any and all claims and losses (including damages and expenses) incurred by any of them as a result of claims by any person including VarigLog relating to their transactions or relationship with VarigLog (the "***Indemnifications***").

62. Volo Logistics and CAT relied on the Releases, Indemnifications, and New York choice of law and forum in entering into the Debt Assumption Agreements. The Releases, Indemnifications, and choice of New York law and forum were a valuable part of the consideration that VarigLog provided to Volo Logistics and CAT in exchange for their release of the $250 million in debt obligations that VarigLog owed to them.

63. As a result of entering into the Debt Assumption Agreements, Volo Logistics and CAT changed their position *vis-à-vis* VarigLog, including by losing any recourse that they would have had against VarigLog in respect of the $250 million debt. Volo Logistics and CAT have not received repayment of the loans assumed by Volo dB. Further, as events have transpired, they are

[13] Copies of the Debt Assumption Agreements are attached as **Exhibit C-1** and **Exhibit C-2.**

now disadvantaged in VarigLog's Brazilian bankruptcy for having foregone combined unsecured claims of approximately $250 million.

B. VarigLog's Administrator Files Brazilian Lawsuit Against the MP Parties Over a Decade After VarigLog Entered Bankruptcy in Brazil

64. VarigLog's financial situation did not improve and in 2009 it entered into judicial restructuring proceedings in Brazil. On March 31, 2009, VarigLog also filed a petition for Chapter 15 Relief and Recognition of a Foreign Proceeding in the Bankruptcy Court in the Southern District of Florida.

65. In September 2012, the Brazilian reorganization was converted to a liquidation proceeding. In connection with that conversion, in 2013 VarigLog's Trustee filed a report with the public attorney's office in São Paulo, assessing the probable causes for VarigLog's bankruptcy. A year later the Trustee filed a second report confirming the first report. Neither report suggested any sort of misconduct by the MP Parties or that the MP Parties had caused VarigLog's bankruptcy. Instead, the reports pinpoint the causes of the bankruptcy to the decline in demand for air transportation services and VarigLog's general inability to generate positive results.

66. Nevertheless, on May 11, 2020, VarigLog filed proceedings in the 1st Bankruptcy and Judicial Reorganization Court of the Judicial District of São Paulo against the MP Parties seeking to hold them responsible for the entirety of VarigLog's debt (seeking approximately $345.6 million U.S. dollars based on the exchange rate as of the Petition Date).

67. The Brazilian Action alleges that the MP Parties had an improper relationship with VarigLog and caused its bankruptcy by breaching fiduciary duties allegedly owed to VarigLog and by acting as its alter ego. It relies on acts, omissions, transactions, and events that occurred more than 12 years ago, and prior to the two reports filed with the public attorney attributing the causes of the bankruptcy to other factors. All but one of the alleged events occurred during the

period between January 27, 2006 and the end of August 2008. In so doing, VarigLog impermissibly seeks to enjoy the New York-law benefits of the Debt Assumption Agreements while disavowing the New York-law consideration that VarigLog gave for that relief, *i.e.,* the Releases and Indemnities that bar the claims it now pursues in the Brazilian Action.

68. Due to the nature of the Brazilian court system I have been advised by local counsel in Brazil that, even for speculative and meritless claims such as this one, the Brazilian Action may take approximately 9–15 years to be finally resolved, including receiving a trial court judgment and concluding any opportunities to appeal.

C. The MP Parties' Adversary Proceeding in the Bankruptcy Court for the Southern District of Florida

69. On June 23, 2020, the MP Parties filed a complaint in the chapter 15 proceeding[14] that VarigLog had commenced in the Bankruptcy Court in the Southern District of Florida. The complaint requests that the court give effect to the Releases and Indemnifications granted by VarigLog to the MP Parties, or alternatively, for relief from the automatic stay to allow the MP Parties to pursue their claims in New York under the New York-law governed Releases and Indemnifications.

70. On July 27, 2020, VarigLog's chapter 15 foreign representative moved to dismiss the Debtors' Adversary Proceeding on various bases, including that the court should afford comity to the Brazilian Action and force the MP Parties to assert the Releases and Indemnifications within the same action in Brazil that the MP Parties claim breaches their New York-law rights. The foreign representative also raised various Brazilian law arguments in support of the view that the Releases were not effective.

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[14] *In re Varig Logistica S.A.*, Case No. 09-15717-RAM; Adv. Pro. No. 20-01243-BKC-RAM-A) (the "***Adversary Proceeding***").

71. The foreign representative's motion to dismiss was fully briefed by the parties between August and October 2020. The court heard oral argument on the motion to dismiss on October 19, 2020, and the parties are awaiting a decision.

IV. The HJDK Claim

72. HJDK is a Panamanian entity controlled by German Efromovich.

73. Starting in late 2009, while VarigLog was undergoing judicial restructuring in Brazil, HJDK made loans to VarigLog totaling approximately R$24 million (approximately USD $4.6 million based on the exchange rate as of the Petition Date).[15] The Debtors were not involved in VarigLog's business at that point because it had been in judicial restructuring since March 2009 and a trustee was appointed to oversee the estate.

74. VarigLog thereafter allegedly defaulted on its loans from HJDK and, on April 28, 2011, HJDK filed enforcement proceedings in the 2nd Civil Court of the Central Courthouse of the Judicial District of São Paulo (the "***São Paulo Civil Court***") seeking repayment. The São Paolo Civil Court issued a preliminary injunction to freeze R$24 million in VarigLog's accounts, but this was overturned on appeal by the Court of Appeals of São Paulo, and the funds released.

75. On September 27, 2012, VarigLog's judicial restructuring was converted to a liquidation proceeding. The Brazilian Bankruptcy Court subsequently ordered the R$24 million that had previously been frozen be used to pay certain prepetition claims.

76. Meanwhile, in 2011, other entities related to MatlinPatterson (the "***Remora Entities***") sued Mr. Efromovich in New York state court for breach of a personal guaranty given by Mr. Efromovich in September 2010 in support of HJDK's obligations as buyer to pay the

[15] The outstanding amount, accounting for inflation and interest as of January 2021 is R$89 million (which is approximately USD$17.5 million as of the Petition Date).

purchase price under an agreement between the Remora Entities and HJDK for the purchase of another Brazilian company. Between 2012 and 2014, the Remora Entities obtained various decisions in their favor, including summary judgment in January 2012 and ultimately a New York state court judgment against Mr. Efromovich entered in 2014, in the amount of approximately USD$12.8 million (which presently stands at USD$19 million including interest). That judgment was obtained in relation to a personal guaranty given by Mr. Eformovich in support of HJDK's obligations as buyer to pay the purchase price under a sale and purchase agreement between the Remora Entities and HJDK for the purchase of another Brazilian company. After HJDK defaulted on its obligation to pay the purchase price, the Remora Entities obtained judgment on the personal guaranty provided by Mr. Efromovich.

77. In September 2013, HJDK filed an *ex parte* application in the São Paolo Civil Court to pierce VarigLog's corporate veil and hold MP Advisers and another entity, MatlinPatterson Global Opportunities Partners LP, which was an entity that was affiliated with MatlinPatterson Global Opportunities Fund I and no longer exists (the "**Named Defendants**"), liable for the unpaid VarigLog loans.

78. In those *ex parte* proceedings, HJDK blatantly misrepresented to the São Paolo Civil Court that the Named Defendants had misappropriated the R$24 million that had been the subject of the prior injunction. HJDK presented evidence that it had obtained from court submissions made in VarigLog's judicial restructuring proceedings. But HJDK *did not* also present the answers to those same submissions, which would have made it clear that the purportedly "missing" funds were required to pay prepetition claims in accordance with the Brazilian Bankruptcy Court's order. The full record from the Brazilian Bankruptcy Court makes

perfectly clear that those funds were *not* taken by the Debtors, but rather had been used to satisfy prepetition claims pursuant to the Brazilian Bankruptcy Court's order.

79. Based on HJDK's false representations, the São Paolo Civil Court ruled *ex parte* in HJDK's favor on October 7, 2013. Having obtained this judgment for HJDK in Brazil, Mr. Efromovich has sought to argue that it should be set off against the judgment debt that he owes to the Remora Entities. He has claimed that the HJDK judgment is an asset assigned to him for these purposes.

80. MP Advisers and the MP Funds were not made aware of, and therefore did not have the opportunity to appear in the *ex parte* veil piercing lawsuit. As a result, they did not have the opportunity to defend themselves, correct the record, or otherwise challenge the jurisdiction of the São Paolo Civil Court. MP Advisers was not served with the claim and court decision against it until over five years later, on May 23, 2019. The relevant Debtors (*i.e.,* MP Advisers and the MP Funds) now find themselves in a costly and lengthy legal battle in Brazil trying to *undo* the prejudice done to them by HJDK.

81. The relevant Debtors are seeking to correct the prejudice caused them by HJDK by challenging both the São Paolo Civil Court's jurisdiction to hear the matter and the merits of HJDK's claim. At present, HJDK is pursuing procedural arguments designed to deprive the relevant Debtors of ever having a chance to present their substantive defenses on the merits.

82. Separately, on February 25, 2021, the São Paulo Civil Court issued a Letter Rogatory requesting that the Named Defendants and the MP Funds pay approximately $15 million U.S. dollars (based on the exchange rate as of the Petition Date) in connection with the loan agreements HJDK entered into with VarigLog. It is not clear why the São Paulo Civil Court issued this Letter Rogatory. The relevant Debtors have not yet been served.

83. The litigation with HJDK remains pending in Brazil, and I understand from consultation with counsel involved that it is expected to take many years to resolve and potentially not before 2027.

V. The Debtors' Decision to File the Chapter 11 Cases in New York

84. As explained above, the MP Funds are at the end of their life. The Fund II Assets, the principal assets of the Debtors, are now reduced principally to cash sitting in bank accounts in the United States. The litigation claims asserted by VRG, VarigLog, and HJDK against the Debtors seek recourse to that cash located in the United States, and the quantum of such claims surpasses $400 million, which substantially exceeds the value of the Debtors' total assets. Because all of the claims seek recourse to the same limited pool of assets located in the United States, the Debtors have determined that chapter 11 relief enables the Debtors to resolve such liabilities in a manner that maximizes distributable value for all stakeholders and ensures that the Debtors' assets are liquidated and distributed in an efficient and equitable manner. In particular, in these Chapter 11 Cases, this Court will provide a single, centralized forum in which the MP Funds and the Fund II Assets can be wound up without further delay and through an orderly liquidation, in a manner that comports with the fundamental interests and public policy of the United States, the jurisdiction where the substantial majority of the Debtors and their creditors, investors and assets are located.

85. Given the number of years that have elapsed since the MP Funds were launched and the occurrence of the date of dissolution of the MP Funds in 2013 as provided under the organizational documents of the MP Funds, completion of the winding up of the MP Funds is long overdue yet is stalled indefinitely primarily due to the ongoing foreign litigations that the Debtors expect to continue well into the foreseeable future. Through these Chapter 11 Cases, the Debtors'

goal is to complete a prompt, orderly and efficient distribution of the Fund II Assets to the Debtors' legitimate creditors, investors and other parties in interest.

86. In particular, given the long history of multi-jurisdictional litigation and arbitration involving the Debtors, the presence of conflicting judicial decisions in different jurisdictions in respect of the arbitral award, and the likelihood of continued multi-jurisdictional litigation asserting claims that far exceed the Debtors' assets for an extended period of time (including potential ongoing attempts to enforce the Brazilian Arbitral Award against the Debtors through the Cayman court decision as well as ongoing attempts to hold the MP Parties liable for the entirety of VarigLog's debts in Brazil), the Debtors have determined that the only way to implement an orderly and equitable claims and distribution process for their legitimate creditors, investors and other stakeholders, and further to maximize the recovery available for those parties with valid claims that are enforceable in the United States, is to seek the assistance of this Court as the appropriate centralized forum for the winding up of these Debtors.

87. The Debtors consider that the protections afforded by the bankruptcy process, including the breathing space afforded by the automatic stay imposed upon the commencement of a chapter 11 case, the exclusivity period afforded to debtors for proposing a plan, the transparency of chapter 11 proceedings and the distribution scheme provided under a court-supervised process that results in equitable treatment for all stakeholders, will greatly benefit the orderly liquidation process of the Debtors and ultimately maximize the value of the estate for distribution to the Debtors' legitimate creditors, investors and other stakeholders.

88. Further, the Debtors have been conducting the wind down since 2013 consistent with obligations under the partnership agreements and the commencement of these Chapter 11 Cases is the last step to complete the process and fulfill the responsibilities of the General Partner.

Due to the complex structure of the MP Funds, the nature of their investments and the winding up of affairs across multiple jurisdictions, it will take time, along with very specific knowledge and experience, to ensure that Debtors' assets are liquidated in a manner that provides the maximum benefit to the Debtors' creditors and investors. The management team employed by the Debtors, including the Chief Restructuring Officer, is best equipped to oversee and carry out this winding up process.

89. Finally, the Debtors recognize New York as the appropriate venue for the orderly liquidation and distribution because it is the location of the Debtors' principal place of business, the Debtors' only material asset – their remaining cash – is deposited in bank accounts located in New York and, as relates to the conflicting cross-border judicial decisions, U.S. courts sitting in the Second Circuit have already fully and finally adjudicated that the Brazilian Arbitral Award is unenforceable against the MP Funds in the United States as a matter of the fundamental interests of the United States and public policy. Additionally, the Releases and Indemnifications implicated in the Brazilian Action are in instruments governed by New York law and subject to the jurisdiction of the New York courts.

VI. The Litigation Claims Bar Date Motion and the Debtors' Proposed Plan

90. To further an orderly and centralized liquidation, concurrently herewith the Debtors have filed a Litigation Claims Bar Date Motion (as defined below) setting forth an overview of the factual and legal arguments as to why the VRG, VarigLog and HJDK Claims should be disallowed and seeking to establish a bar date by which the litigation claimants must file their proofs of claim, in order to permit the Debtors to promptly object to such claims, the disallowance of which is a condition to the effectiveness of the Debtors' proposed Plan.

91. The Debtors' proposed Plan treats as unimpaired all claims against each of the Debtors (with the various litigation claims being subject to disallowance as determined by the Bankruptcy Court following disallowance proceedings); only the partnership interests in the Debtors are impaired. Under the circumstances, the Debtors believe that the Plan and disallowance proceedings present the best opportunity for optimal recoveries for those with valid claims and interests against the Debtors that are enforceable in the U.S. against the Debtors' assets. The Debtors firmly believe that it is long overdue to proceed with the liquidation and distribution of these Fund II Assets and that further delay will only result in a reduction of value of these estates due to spurious litigation, a suboptimal outcome for the interested creditors and limited partners.

FIRST DAY MOTIONS

92. Contemporaneously herewith, the Debtors filed the following First Day Motions seeking targeted relief intended to establish procedures for the smooth and efficient administration of the Chapter 11 Cases. While the relief sought in the First Day Motions is primarily driven by bankruptcy procedural matters resulting from the commencement of the Chapter 11 Cases, the Debtors nevertheless reserve their rights to file additional First Day Motions as to the ongoing business activities of the Debtors as needed:

- *Debtors' Motion for Entry of an Order (I) Directing Joint Administration of the Debtors' Chapter 11 Cases and (II) Granting Related Relief* (the *"**Joint Administration Motion**"*);

- *Debtors' Application for Entry of an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent Pursuant to 28 U.S.C. § 156(c), 11 U.S.C. § 105(a), and Local Rule 5075-1 Effective Nunc Pro Tunc to the Petition Date* (the *"**KCC 156(c) Application**"*);

- *Debtors' Motion for Entry of an Order (I) Extending the Time to File Schedules of Assets and Liabilities, Statements of Financial Affairs, and the Initial Rule 2015.3 Financial Report; and (II) Granting Related Relief* (the "***SOFA Extension Motion***");

- *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing, but not Directing the Debtors to Continue Using their Cash Management System, Including (A) Existing Bank Accounts and (B) Incurring Intercompany Claims on a Limited Basis; (II) Waiving Certain Requirements of Section 345(b) of the U.S. Trustee Guidelines; and (III) Granting Related Relief* (the "***Cash Management Motion***");

- *Debtors' Motion for Entry of an Order (I) Restating and Enforcing Protections of 11 U.S.C. §§ 105(a), 362, 365, 525 and 541(c) and (II) Granting Related Relief* (the "***Automatic Stay Motion***");

- *Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to (A) File a Consolidated List of Creditors and (B) File a Consolidated List of the Debtors' Largest Unsecured Creditors, (II) Waiving the Requirement to File the List of Equity Security Holders, and (III) Approving Form and Manner of Notifying Creditors and Interest Holders of Commencement of these Chapter 11 Cases* (the "***Consolidated Creditor Matrix Motion***");

- *Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to Redact and File Under Seal (A) Certain Personally Identifiable Information in Creditor Matrix and any other Filed Documents, and (B) the Names and Addresses of all Limited Partners of Certain Debtors in all Filed Documents, including the Corporate Ownership Statement, other than Disclosures in Retention Applications, and (II) Granting Related Relief* (the "***Motion to Seal***"); and

- *Debtors' Motion to Set Limited Bar Date for VRG, VarigLog and HJDK Litigation Claims* (the "***Litigation Claims Bar Date Motion***").

93. By the First Day Motions, the Debtors seek authority to, among other things, continue using their cash management system, including prepetition bank accounts and incurrence of limited intercompany claims, employ a claims and noticing agent, jointly administer the Chapter 11 Cases under a single case header and establish certain administrative procedures to facilitate a smooth transition into chapter 11.

94. I am familiar with the content and substance of the First Day Motions. I believe that the relief sought in each of the First Day Motions (a) is necessary to ensure minimal disruption due to the commencement of the Chapter 11 Cases and to permit the Debtors to administer the Chapter 11 Cases smoothly, (b) constitutes a critical element in the Debtors achieving their goals in this Chapter 11 process and (c) best serves the Debtors' estates and their stakeholders' interests.

I have reviewed each of the First Day Motions and the facts set forth therein are true and correct to the best of my knowledge and belief with appropriate reliance on corporate officers and advisors. If asked to testify as to the facts supporting each of the First Day Motions filed contemporaneously herewith, I would testify to the facts as set forth in such motions.

Information Required by Local Rule 1007-2

95. Local Rule 1007-2 requires certain information related to the Debtors, which I have provided:

- Pursuant to Local Rule 1007-2(a)(3), **Schedule 1** provides that, to the best of the Debtors' knowledge and belief, prior to the Petition Date there were no committees formed to participate in the Debtors' ongoing restructuring efforts.

- Pursuant to Local Rule 1007-2(a)(4), **Schedule 2** lists, for each of the holders of the twenty largest unsecured claims on a consolidated basis, the name, address, telephone number, e-mail address, the name(s) of person(s) familiar with the Debtors' account, the amount of the claim, and an indication of whether the claim is contingent, unliquidated, disputed or partially secured.

- Pursuant to Local Rule 1007-2(a)(5), **Schedule 3** lists, for each of the holders of the five largest secured claims on a consolidated basis the name, the address, the amount of the claim, a brief description and an estimate of the value of the collateral securing the claims, and whether the claim or lien is disputed.

- Pursuant to Local Rule 1007-2(a)(6), **Schedule 4** provides a summary of the Debtors' assets and liabilities.

- Pursuant to Local Rule 1007-2(a)(7), **Schedule 5** provides a summary of the publicly held securities of the Debtors.

- Pursuant to Local Rule 1007-2(a)(8), **Schedule 6** provides the following information with respect to any property in possession or custody of any custodian, public officer, mortgagee, pledge, assignee of rents, or secured creditors, or agent for such entity: the name; address; and telephone number of such entity and the court in which any proceeding relating thereto is pending.

- Pursuant to Local Rule 1007-2(a)(9), **Schedule 7** lists all of the premises owned, leased, or held under other arrangement from which the Debtors' operate their business.

- Pursuant to Local Rule 1007-2(a)(10), **Schedule 8** provides the location of the Debtors' substantial assets, the location of its books and records, and the nature,

location and value of any assets held by the Debtors outside the territorial limits of the United States.

- Pursuant to Local Rule 1007-2(a)(11), **Schedule 9** provides a list of the nature and present status of each action or proceeding, pending or threatened, against the Debtors or their property where a judgment or seizure of their property may be imminent.

- Pursuant to Local Rule 1007-2(a)(12), **Schedule 10** sets forth a list of the names of the individuals who comprise the Debtors' existing senior management, their tenure with the Debtors, and a brief summary of their relevant responsibilities and experience.

- Pursuant to Local Rule 1007-2(b)(1), (2)(A), (2)(B) and (2)(C), **Schedule 11** provides the estimated amount of payroll to the Debtors' employees (not including officers, directors, stockholders and partners), the estimated amounts to be paid to officers, directors, stockholders and partners, and the estimated amounts to be paid to financial and business consultants retained by the Debtors, for the 30-day period following the Petition Date.

- Pursuant to Local Rule 1007-2(b)(3), **Schedule 12** provides a schedule for the 30-day period following the Petition Date, of estimated cash receipts and disbursements, net gain or loss, obligations and receivables expected to accrue but remain unpaid, other than professional fees, and any other information relevant to understanding the foregoing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

New York, New York
Dated: July 6, 2021

/s/ Matthew A. Doheny
Matthew A. Doheny
Chief Restructuring Officer of the Debtors

Schedule 1
Committees Organized Prepetition

Pursuant to Local Bankruptcy Rule 1007-2(a)(3), to the best of the Debtors' knowledge and belief, prior to the Petition Date there were no committees formed to participate in the Debtors' ongoing restructuring efforts.

Schedule 2
Twenty Largest Unsecured Creditors

Name of Creditor and Contact Information	Claim Amount	Claim Status
GOL LINHAS AÉREAS S.A. (formerly VRG LINHAS AÉREAS S.A.) Avenida Vinte de Janeiro s/n Passenger Terminal No. 2 Rio de Janeiro International Airport Rio de Janeiro, Brazil Telephone: +55 11 2128-4700 Fax: +55 11 3169 6245 Email: ri@voegol.com.br Attn: Richard Lark AND Rua Gomes Carvalho 1629 Vila Olimpia Sao Paulo 05457-006, Brazil Attn: Officer or Director AND **Wilberforce Chambers** **Counsel to GOL LINHAS AÉREAS S.A. (formerly VRG LINHAS AÉREAS S.A.)** Lincoln's Inn, 8 New Square London, WC2A 3QP United Kingdom Telephone: +44 (0)20 7306 0102 Email: tlowe@wilberforce.co.uk Attn: Thomas Lowe QC AND **Ogier Group L.P.** **Counsel to GOL LINHAS AÉREAS S.A. (formerly VRG LINHAS AÉREAS S.A.)** 89 Nexus Way Camana Bay Grand Cayman Cayman Islands KY1-9009 Telephone: +1 345 949 9876 Fax: +1 345 949 9877	$0	Disputed; contingent

Email: marc.kish@ogier.com; william.jones@ogier.com; anna.snead@ogier.com Attn: Marc Kish, William Jones and Anna Snead		
Varig Logistica S.A. Rua Gomes Carvalho 1629 ADJUD Administradores Rua Tabapua, no. 474, 8th floor, Suites 84 to 88 Itaim Bibi Sao Paulo 04533-001 Brazil Email: adjud@adjud.com.br Telephone: +55 11 2533-4673 Attn: Vanio Cesar Pickler Aguiar AND **Krikor Kaysserlian e Advogados Associados** **Counsel to Varig Logistica S.A.** Av. Paulista no. 1499, 19th floor, Suite 1906 Bela Vista Sao Paulo 01311-928 Brazil Telephone: +55 11 3086-1114 Attn: Rodrigo Kaysserlian, Mauricio Custodio Dourado, and Marina Michelletti Torres Email: kaysserlian@kaysserlian.com.br; rodrigo@kaysserlian.com.br AND **Sequor Law** **Counsel to Varig Logistica S.A.** 1111 Brickell Avenue, Suite 1250 Miami, FL 33131 Email: ggrossman@sequorlaw.com; jmendoza@sequorlaw.com; rfracasso@shutts.com; gilbertsquires@squiresbenson.com; nmiller@sequorlaw.com Telephone: 305-372-8282 Attn: Gregory S. Grossman, Juan J. Mendoza, Robert G. Fracasso Jr., Gilbert K. Squires, Nyana A. Miller	$0	Disputed; contingent; unliquidated

HJDK Aeroespacial S/A[16] Aquillino La Guardia, no. 08 IGRA Building Panama City Panama Attn: Officer or Director AND **Licastro & Focaccia Sociedade de Advogados** **Counsel to HJDK Aeroespacial S/A** Rua Apeninos, no. 664 - 7th floor Paraíso Sao Paulo 01533-000 Brazil Telephone: +55 11 3062-1432 E-mail: contato@licastroadvogados.com.br	$0	Disputed; contingent; unliquidated

[16] The Debtors do not have an email address for HJDK at this time but have provided an email address for counsel to HJDK.

Schedule 3
Five Largest Secured Claims

Name of Creditor and Contact Information	Claim Amount	Collateral Description and Estimated Value	Debt Status
MP II Preferred Partners L.P. 600 Fifth Avenue 22nd Floor New York, NY 10022	$57,965,995.00	*Description*: Assets and accounts of MatlinPatterson Global Opportunities Partners II L.P., MatlinPatterson Global Opportunities Partners (Cayman) II L.P., and MatlinPatterson Global Opportunities Partners (SUB) II L.P. *Estimated Value*: $142 million (secured by all assets of the MP Funds (but with a provision, consistent with section 363(c)(2)(A) of the Bankruptcy Code, that the MP Funds may use the collateral exclusive of 105% of the respective Promissory Note Obligations))	Undisputed

Schedule 4
Summary of Assets and Liabilities of the Debtor as of March 31, 2021

Pursuant to Local Bankruptcy Rule 1007-2(a)(6), the following are estimates of the Debtors' total assets and liabilities on a consolidated basis. The following financial data is the latest available information and reflects the Debtors' financial condition.

The information contained herein shall not constitute an admission of liability by, nor is it binding on, the Debtors. The Debtors reserve all rights to assert that any debt or claim included herein is a disputed claim or debt, and to challenge the priority, nature, amount, or status of any such claim or debt.

The total value of the Debtors' assets is approximately $142 million and the total amount of the Debtors' liabilities is $57,965,995.00.

Schedule 5
Publicly Held Securities

Pursuant to Local Bankruptcy Rule 1007-2(a)(7), the Debtors have not issued any publicly held shares of stock, debentures or other securities.

Schedule 6
Debtors' Property Not in the Debtors' Possession

Pursuant to Local Bankruptcy Rule 1007-2(a)(8), the Debtors do not own any property that is in possession or custody of any custodian, public officer, mortgagee, pledgee, assignee of rents, secured creditor, or agent for any such entity, other than the following deposit accounts at JPMorgan Chase Bank, N.A., which are subject to account control agreements in favor of MP II Preferred Partners L.P. and executed by each of the account holders, MP II Preferred Partners L.P., and JPMorgan Chase Bank, N.A.

Schedule 7
Premises from which Debtors Operate Their Business

Pursuant to Local Bankruptcy Rule 1007-2(a)(9), the following lists the premises owned, leased, or held under other arrangement from which the Debtors' operate their business. The Debtors operate their business at 600 Fifth Avenue, 22nd Floor, New York, NY 10022. The Debtors do not own or lease that property; instead, the property owner allows the Debtors to conduct their business from the premises at no charge.

Schedule 8
Information Regarding Debtors' Assets, Books and Records

Pursuant to Local Bankruptcy Rule 1007-2(a)(10), the following provides the location of the Debtors' substantial assets, books and records, and the nature, location and value of any assets held by the Debtors outside the territorial limits of the United States as of the Petition Date.

Location of Debtors' Substantial Assets

The Debtors' assets are exclusively held in the United States. The Debtors have assets of approximately $142 million, all held in banks with branches in New York.

Books and Records

The Debtors' books and records are primarily located at 600 Fifth Avenue, 22nd Floor, New York, NY 10022.

Debtors' Assets Outside the United States

The Debtors do not have any assets outside the territorial limits of the United States.

Schedule 9

Nature and Status of Actions or Proceedings Against the Debtors Where a Judgment or Seizure of Their Property may be Imminent

Pursuant to Local Bankruptcy Rule 1007-2(a)(11), the Debtors do not believe that there are actions or proceedings, pending or threatened, in which a judgment against the Debtors or a seizure of their property is imminent. The status of ongoing litigation is detailed in the First Day Declaration, and the litigants that are asserting claims against the Debtors are included in the Debtors' list of creditors.

Schedule 10
Debtors' Senior Management

Pursuant to Local Bankruptcy Rule 1007-2(a)(12), the following provides the names of the individuals who constitute the Debtors' existing senior management, their tenure with the Debtors, and a brief summary of their responsibilities and relevant experience as of the Petition Date.

Name	Position	Tenure, Responsibilities and Experience
David J. Matlin	Co-Founder, Chief Executive Officer, and Chief Investment Officer of MatlinPatterson Global Advisers LLC	David J. Matlin is the Co-Founder, Chief Executive Officer and Chief Investment Officer of MatlinPatterson Global Advisers LLC. Prior to forming MatlinPatterson, Mr. Matlin was a Managing Director at Credit Suisse, and headed their Global Distressed Securities Group upon its inception in 1994. Mr. Matlin was also a Managing Director and a founding partner of Merrion Group, L.P., from 1988 to 1994. He began his career as a securities analyst at Halcyon Investments from 1986 to 1988. Mr. Matlin holds a JD degree from the Law School of the University of California at Los Angeles and a BS in Economics from the Wharton School of the University of Pennsylvania.
Peter H. Schoels	Managing Partner of MatlinPatterson Global Advisers LLC.\	Peter H. Schoels has been the Managing Partner of MatlinPatterson since 2009 and has been a partner with MatlinPatterson since its inception in July 2002. In his capacity as Managing Partner, Mr. Schoels has been involved in the supervision of all investments made by certain private investment partnerships managed by MatlinPatterson. Prior to joining MatlinPatterson, he was a Vice President of the Credit Suisse Global Distressed Securities Group, investing in North America, Latin America, and Europe. Prior to joining Credit Suisse, Mr. Schoels was a Director of Finance and Strategy of Itim Group Plc. from 2000 to 2001. Previously, Mr. Schoels was Manager of Mergers and Acquisitions for Ispat International NV from 1998 to 2000, now ArcelorMittal, which specialized in buying distressed steel assets globally. Mr. Schoels holds an MBA from United Business Institutes in Brussels, Belgium, and a BA in International Business from Eckerd College, St. Petersburg, Florida.

Matthew Doheny	Chief Restructuring Officer of the Debtors	Matthew Doheny is the Chief Restructuring Officer of each of the Debtors. Mr. Doheny is the President of North Country Capital, an advisory and investment firm focused on challenging advisory assignments and special situation opportunities. Mr. Doheny was appointed to this role effective April 2021. Prior to his retention by the Debtors, he served as a director or chair of the board for the boards of several companies undergoing financial restructuring or other chapter 11 and distress scenarios. Mr. Doheny also worked for 18 years as a managing director or portfolio manager focused on special situations at HSBC Securities Inc., Fintech Advisory Inc., and Deutsche Bank Securities Inc. Prior to that Mr. Doheny spent five years as a corporate and restructuring attorney with several New York law firms. Mr. Doheny holds a J.D. from Cornell Law School and a B.A. from Alleghany College.
Florina Klingbaum	Chief Financial Officer of the Debtors	Florina Klingbaum is the Chief Financial Officer of the Debtors. Ms. Klingbaum is also Chief Executive Officer of Altemis Capital Management, which she organized in 2013 to provide accounting, administration and other services to private equity and hedge fund clients. Before forming Altemis, she had more than 15 years of industry experience, including with Credit Suisse and Citibank's alternative investments platforms. Ms. Klingbaum received her MBA from Pace University in 1995 before joining KPMG in 1995.

Schedule 11
Estimated Payroll for the 30-day Period Following the Petition Date

Pursuant to Local Bankruptcy Rules 1007-2(b)(1), 2(A), 2(B) and 2(C), the following provides, for the 30-day period following the Petition Date, the estimated amount of weekly payroll to the Debtors' employees (exclusive of officers, directors, stockholders and partners), the estimated amount paid and proposed to be paid to officers, directors and stockholders, the estimated amount paid and proposed to be paid to the partners of any partnership, and the estimated amount paid or proposed to be paid to financial and business consultants retained by the Debtors.

Payroll for Employees	N/A
Payments to Officers, Directors and Stockholders	$0.00
Payments to Partners	$0.00
Payments to Financial and Business Consultants	$0.00

Schedule 12
Cash Receipts and Disbursements, Net Cash Gain or Loss, Unpaid Obligations and Receivables for the 30-day Period Following the Petition Date

Pursuant to Local Bankruptcy Rule 1007-2(b)(3), the following provides an estimate of, for the 30-day period following the Petition Date, cash receipts and disbursements, net gain or loss, and obligations and receivables expected to accrue but remain unpaid, other than professional fees.

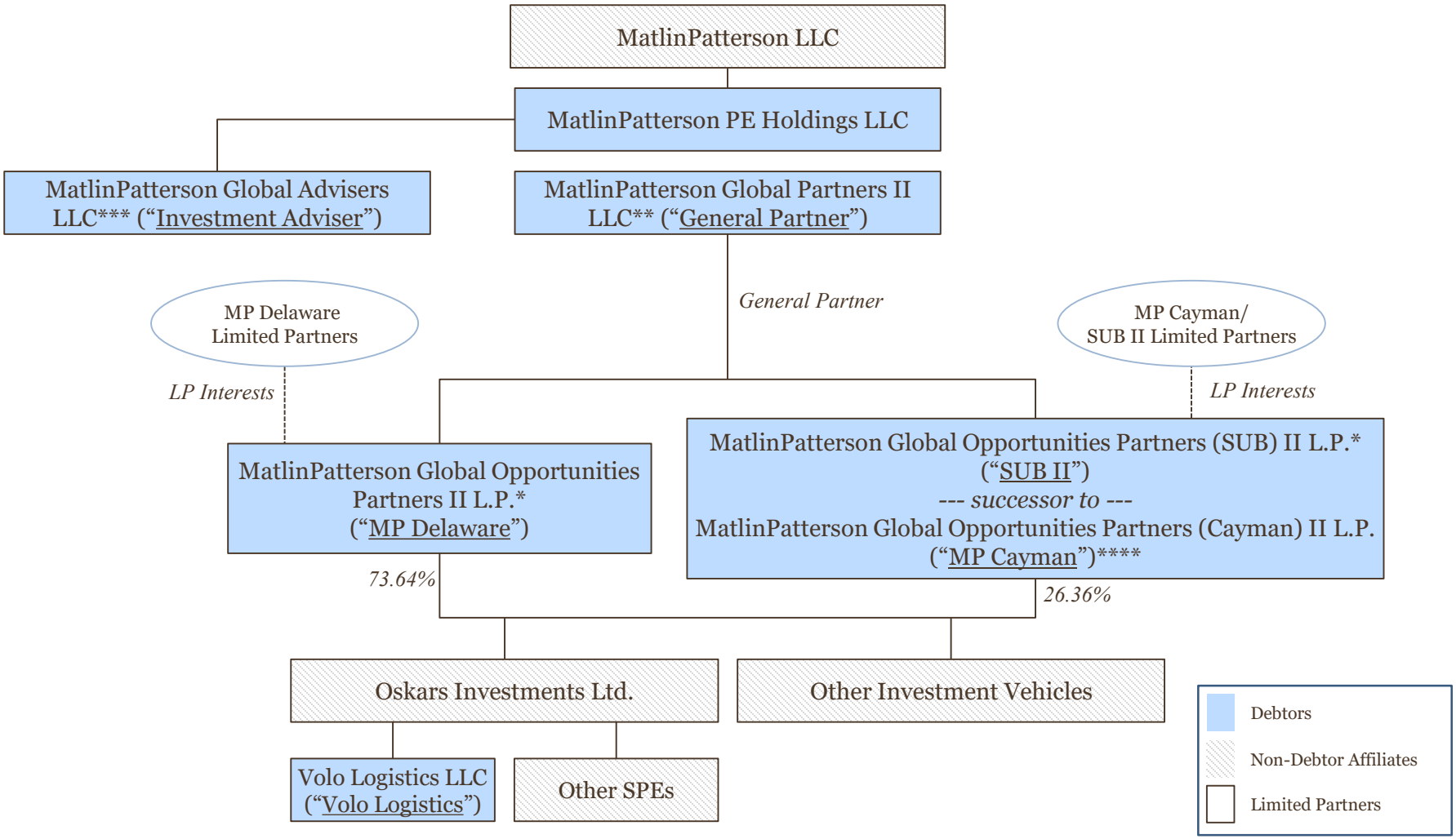
Cash Receipts	$0.00
Cash Disbursements	$0.00
Net Cash (Gain or Loss)	$0.00
Unpaid Obligations	$0.00
Uncollected Receivables	$0.00

Exhibit A

Organizational Chart

(see attached)

MatlinPatterson "Fund II" Debtors' Structure Chart



* MP GOP GP II LLC, a Delaware limited liability company formed on September 27, 2018, is the appointed "Liquidating Trustee" of this entity.
** The General Partner assigned its interests in the SPEs to the Liquidating Trustee on October 2, 2018.
*** Pursuant to an Investment Advisory Agreement with MP Delaware and MP Cayman, before the funds were in wind down the Investment Adviser received a management fee for its adviser work.
**** SUB II succeeded to all of the assets and liabilities of MP Cayman pursuant to a Distribution and Contribution Agreement effective as of October 23, 2020.